

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

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**MEMORANDUM**

**April 15, 2016**

**To: Subcommittee on Communications and Technology Democratic Members and Staff**  
**Fr: Committee on Energy and Commerce Democratic Staff**  
**Re: Subcommittee Markup of Seven Communications Bills**

On **Monday, April 18, 2016, at 5:00 p.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Communications and Technology will convene a markup for the purpose of delivering opening statements on seven bills:

- H.R. 4889, the Kelsey Smith Act;
- H.R. 4167, the Kari's Law Act of 2015;
- H.R. 4884, the CURB Lifeline Act of 2016;
- H.R. 4111, the Rural Health Care Connectivity Act of 2015;
- H.R. 3998, the Securing Access to Networks in Disasters (SANDy) Act;
- H.R. 4190, the Spectrum Challenge Prize Act; and
- H.R. 2031, the Anti-Swatting Act of 2015

The subcommittee will reconvene on Tuesday, April 19, 2016, at 2:00 p.m. in 2123 Rayburn House Office Building, to complete consideration of the bills. The subcommittee held a legislative hearing on all seven bills on April 13, 2016.<sup>1</sup>

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<sup>1</sup> See Memorandum to Subcommittee on Communications and Technology Democratic Members and Staff (Apr. 11, 2016) (online at [democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Dem-Memo-7TelecomBills-CAT-Leg-Hrg-2016-04-13.pdf](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Dem-Memo-7TelecomBills-CAT-Leg-Hrg-2016-04-13.pdf)).

## **I. BACKGROUND AND LEGISLATION**

### **A. Summary of H.R. 4889, the Kelsey Smith Act**

H.R. 4889, introduced by Rep. Yoder (R-KS), would require—rather than use the permissive standard under current law— wireless carriers to furnish to law enforcement officials the “best available location information” upon request. Wireless carriers would be required to turn over data for (1) a device used to make a 9-1-1 call or (2) a device reasonably believed to be in the possession of an individual that law enforcement reasonably believes is in an emergency situation involving the risk of death or serious physical harm.

Under the Communications Act, wireless carriers may provide location data to a user’s family members during an “emergency situation that involves the risk of death or serious physical harm.”<sup>2</sup> In responding to a request, the wireless carrier must determine whether a given situation is an emergency that involves risk of death or serious bodily harm.<sup>3</sup>

During the 113th Congress, the Committee on Energy and Commerce considered another version of the Kelsey Smith Act. Several Democratic members of the committee raised concerns that the version of the bill being considered risked violating consumers’ privacy and Fourth Amendment rights. The committee amended the bill to address some of these concerns and then the Committee favorably reported the amended bill.

Specifically, the committee adopted Democratic amendments that would require law enforcement to make a showing closer in line with the standard required under the Fourth Amendment before forcing a carrier to hand over a private citizen’s location data.<sup>4</sup> Even with these improvements, civil liberties groups continued to raise concerns that the amended bill could give the government sweeping new powers to the detriment of personal privacy and contrary to the Fourth Amendment.<sup>5</sup>

Despite these continued criticisms, the version of the bill introduced by Congressman Yoder in this Congress omits specific protections that were adopted in the last Congress. Accordingly, the version of H.R. 4889 being considered in this Congress takes a step back from the bipartisan agreement reached in the last Congress.

### **B. H.R. 4167, Kari’s Law Act of 2015**

H.R. 4167, introduced by Rep. Gohmert (R-TX) with bipartisan support, requires that all multi-line telephone systems (MLTSs)—the phone systems that are frequently used in hotels and office buildings—made or imported into the U.S. have a default configuration that allows a user to directly call 9-1-1 without having to dial an additional digit, code, prefix, or post-fix. The bill

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<sup>2</sup> 47 U.S.C. § 222(d)(4)(B).

<sup>3</sup> *Id.*

<sup>4</sup> H.R. 1575 (113th Cong.).

<sup>5</sup> *See e.g.*, Letter from ACLU to Chairman Fred Upton and Ranking Member Henry A. Waxman, House Committee on Energy and Commerce (July 29, 2014).

also requires MLTS installers to configure the system to provide a notification to a central location when 911 is called, as long as the system can be reconfigured without improvements to the MLTS's hardware. The law would take effect two years after the date of enactment.

### **C. H.R. 4884, the CURB Lifeline Act of 2016**

The Federal Communications Commission's (FCC) Lifeline program has provided discounted and no-charge phone service for low-income Americans for over three decades.<sup>6</sup> Without the Lifeline program, which was created under President Ronald Reagan, many Americans would have no other way to find work, access healthcare, or even call 9-1-1. Today, the average Lifeline recipient is 49 years old, has been on the program for 21 months, and receives support for wireless phone service.<sup>7</sup>

By enrolling in the program, Lifeline participants receive \$9.25 per month toward paying for communications service. Four years ago, the program's total annual cost peaked at providing \$2.2 billion in support for recipients.<sup>8</sup> To help control costs, the FCC took significant steps to address waste, fraud, and abuse within the program by imposing measures such as tougher subscriber eligibility requirements and annual recertification requirements.<sup>9</sup> Due to FCC action, total Lifeline support to program participants has decreased by 68 percent since 2012.<sup>10</sup>

The FCC again took steps to modernize the Lifeline program last month, including adding new cost control measures to further curb waste, fraud, and abuse.<sup>11</sup> The FCC modified the program so that Lifeline participants can now apply their \$9.25 per month support toward broadband Internet service if they choose.<sup>12</sup> In this most recent Lifeline modernization order, the FCC also set minimum service standards for voice and broadband service. To further deter waste, fraud, and abuse, the FCC established a National Eligibility Verifier.<sup>13</sup> The FCC

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<sup>6</sup> Federal Communications Commission, *Lifeline and Link Up Reform and Modernization*, News Release, WC Docket 11-42 (Rel. Mar. 31, 2016) (online at [fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0404/DOC-338676A1.pdf](http://fcc.gov/Daily_Releases/Daily_Business/2016/db0404/DOC-338676A1.pdf)) (hereinafter Lifeline Modernization Order News Release).

<sup>7</sup> USAC 2015 Annual Report at 11 (online at [usac.org/\\_res/documents/about/pdf/annual-reports/usac-annual-report-interactive-2015.pdf](http://usac.org/_res/documents/about/pdf/annual-reports/usac-annual-report-interactive-2015.pdf)).

<sup>8</sup> Government Accountability Office, *FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program* (Mar. 2015) (GAO-15-335) (online at <http://www.gao.gov/assets/670/669209.pdf>).

<sup>9</sup> Federal Communications Commission, *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket 11-42 (Rel. Feb. 6, 2012) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-12-11A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-12-11A1.pdf)).

<sup>10</sup> USAC 2015 Annual Report at 41.

<sup>11</sup> Lifeline Modernization Order News Release, *supra* note 17 at 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 2.

established a \$2.25 billion annual budget for the program, indexed to inflation.<sup>14</sup> In addition, the order begins to phase out support for standalone mobile voice service starting in December 1, 2019, and ending support by December 1, 2021, except in areas where there is only one Lifeline provider.<sup>15</sup>

Despite the success of the Lifeline program in helping millions of Americans and the FCC's significant progress in rooting out waste, fraud, and abuse, H.R. 4884—recently introduced by Rep. Austin Scott (R-GA)—would impose a host of new restrictions on the program. Most notably, the bill sets a hard statutory cap on the program of \$1.5 billion, which does not allow adjustment for inflation. The bill also phases out all support for standalone mobile voice service in two years, and specifies that Lifeline support could not be used to subsidize the sale, lease, or other provision of a mobile telephone through the program.

**D. H.R. 4111, the Rural Health Care Connectivity Act of 2015**

H.R. 4111, introduced by Rep. Lance (R-NJ) and co-sponsored by Rep. Cramer (R-ND) and Rep. Loebsack (D-IA), modifies Section 254 of the Communications Act to add “skilled nursing facilities” to the “health care provider” definition used to administer the FCC’s Rural Health Care Programs under the USF. Under the bill, skilled nursing facilities in rural areas would be eligible to receive reasonably comparable rates for telecommunications services provided to their urban counterparts. The bill also stipulates that the FCC’s Rural Health Care Programs cap will remain unchanged, but it does not specifically define “skilled nursing facilities.”

**E. H.R. 4190, the Spectrum Challenge Prize Act of 2015**

H.R. 4190, introduced by Rep. Matsui (D-CA), would require that the Department of Commerce (Commerce) conduct prize competitions to develop technologies to improve spectrum efficiency that has cost-effective deployment. Rep. Matsui’s bill would allow Commerce to work with the private sector to administer the competitions, and for other Federal agencies to assist. It specifically requires the FCC to publish a technical paper on spectrum efficiency that provides criteria for the design of the competitions. The bill caps the prize amount at \$5 million.

**F. H.R. 3998, the Securing Access to Networks in Disasters (SANDy) Act**

H.R. 3998, the Securing Access to Networks in Disasters (SANDy) Act, introduced by Ranking Member Frank Pallone, Jr. (D-NJ), seeks to ensure the resiliency of the nation’s communications networks during emergencies. The SANDy Act would ensure that during an emergency, consumers’ cell phones work on other carriers’ networks if a consumer’s own network goes down. The bill would give priority to calls to 9-1-1 services and emergency alerts. It also would increase coordination between wireless carriers, utilities, and public safety officials by creating a directory of the contact information for relevant disaster response officials. The

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

bill would also require the FCC to report to Congress regarding whether additional outage data should be provided in times of emergency.

In addition, the bill requires the FCC to report to Congress on the viability of providing 9-1-1 services over Wi-Fi hotspots during emergencies. Finally, the SANDy Act modifies the Stafford Act to ensure that all communications providers—radio, TV, and phone: (1) have the ability to access relevant disaster stricken areas during emergencies to restore service and (2) are included in the universal credentialing program for essential service providers.

**G. H.R. 2031, the Anti-Swatting Act of 2015**

H.R. 2031, introduced by Rep. Engel (D-NY), would modify the FCC’s rules prohibiting the falsification of caller identification (also known as spoofing) to provide enhanced penalties when an individual uses spoofing in a swatting situation. The term “swatting” refers to the practice of making a hoax call to 9-1-1 with the aim of inducing a response from law enforcement—a SWAT team in particular.<sup>16</sup>

The bill would provide for a criminal violation of a fine and/or imprisonment not more than five years for violations intended to trigger a law enforcement response in the absence of circumstances that would require such a response. The potential imprisonment would increase to not more than 20 years for instances resulting in serious bodily injury. Violators also would be required to reimburse the law enforcement entity for its expenses in responding to the hoax.

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<sup>16</sup> Federal Bureau of Investigations, *The Crime of ‘Swatting’, Fake 9-1-1 Calls Have Real Consequences* (Sept. 3, 2013) (online at [fbi.gov/news/stories/2013/september/the-crime-of-swatting-fake-9-1-1-calls-have-real-consequences](http://fbi.gov/news/stories/2013/september/the-crime-of-swatting-fake-9-1-1-calls-have-real-consequences)).