

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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**MEMORANDUM**

**November 15, 2015**

**To: Subcommittee on Communications and Technology Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Hearing on “Oversight of the Federal Communications Commission”**

On Tuesday, November 17, 2015, at 10:15 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a hearing titled “Oversight of the Federal Communications Commission” (FCC). This will be the fourth subcommittee hearing this year related to FCC oversight, with appearances by the Chairman or other Commissioners.<sup>1</sup> This memo provides updates to Commission actions since the last Oversight hearing on July 28, 2015.

**I. KEY ISSUES BEFORE THE FCC**

**A. Net Neutrality**

The FCC adopted a new set of rules on February 26, 2015, that were designed to protect consumers, free expression, and innovation online. The rules, which apply to both wired and wireless broadband services, prohibit blocking, throttling, and paid prioritization. The FCC also enhanced its existing rules for transparency and adopted rules that prevent broadband access providers from unreasonably interfering with or unreasonably disadvantaging consumers’ access to the content of their choice. Finally, the FCC announced that it will also take enforcement action to ensure that discrimination against content or services does not occur at points of interconnection, which are those places along its network where a broadband provider receives and hands off traffic from, and to connect to the rest of the Internet.

The FCC rooted its decision in multiple sections of the Communications Act. Most significantly, the order classifies broadband Internet access service as a ‘telecommunications

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<sup>1</sup> FCC staff also participated in two additional hearings this year: (1) the March 4, 2015, hearing on the FCC budget, and (2) the March 26, 2015, hearing on spectrum policy.

service’ under Title II of the Communications Act. The FCC, however, chose to use its forbearance authority to exempt broadband providers from over 700 regulations that fall under Title II, including rate regulation, tariffing, and last-mile unbundling provisions. The FCC did maintain several key Title II provisions for broadband including those that protect consumer privacy, access for people with disabilities, and universal service.

The FCC’s rules went into effect on June 12, 2015, after the U.S. Court of Appeals for the D.C. Circuit denied a stay request filed by US Telecom.<sup>2</sup> The broader court challenge filed by US Telecom and other parties remains pending in the D.C. Circuit. Briefs have been filed, with oral arguments scheduled for December 4, 2015.

## **B. Spectrum Legislation**

### ***1. The Spectrum Pipeline Act of 2015***

The recently passed Bipartisan Budget Act of 2015 (Budget Act) included the Spectrum Pipeline Act of 2015. The provision requires the National Telecommunications and Information Administration (NTIA) to identify, no later than January 1, 2022, 30 megahertz of spectrum below the 3 GHz band for reallocation from Federal use to non-Federal use or shared use.<sup>3</sup> The FCC is required to reallocate and auction the spectrum no later than July 1, 2024.<sup>4</sup>

Additionally, the Budget Act requires the FCC to submit reports to Congress identifying an additional 100 megahertz of spectrum for reallocation along with an estimated timeline for auction, and a proposed plan for balance between unlicensed and licensed use.<sup>5</sup> Finally, the Budget Act extends the FCC auction authority to September 30, 2025, but only for the 30 megahertz required to be identified by NTIA under the Act.<sup>6</sup>

### ***2. Public Safety and Spectrum Act (2012)***

In the Middle Class Tax Relief and Job Creation Act of 2012 (the Public Safety and Spectrum Act), Congress charged the FCC with administering a number of spectrum auctions and making more spectrum available for unlicensed services.<sup>7</sup>

#### ***a. AWS-3 Auction***

Bipartisan oversight from the Subcommittee on Communications and Technology helped the FCC successfully complete the AWS-3 auction of 65 megahertz of mid-band spectrum in

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<sup>2</sup> *D.C. Circuit Denies Stay, Open Internet Rules Become Effective June 12*, CommLaw Monitor (June 12, 2015) (online at <http://www.commlawmonitor.com/2015/06/articles/uncategorized/d-c-circuit-denies-stay-open-internet-rules-become-effective-june-12/>).

<sup>3</sup> See Pub. L. No. 114-74, § 1004 (2015).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at § 1006.

<sup>6</sup> *Id.* at §1007.

<sup>7</sup> Pub. L. No. 112-96.

January of this year, bringing in gross proceeds that exceeded \$44 billion. Proceeds will be used (1) to fund the construction of FirstNet, the nationwide interoperable public safety broadband network, and (2) for NG 911 implementation grants. Approximately \$20 billion from those proceeds will be sent to the Treasury for deficit reduction.

Following this auction, some parties raised concerns about the use of small business bidding credits during the auction. In particular, Northstar Wireless, LLC and SNR Wireless LicenseCo, LLC (the entities) obtained \$3.3 billion in small business bidding credits despite Dish Network's 85 percent equity interest in each of these entities. The Commission released a decision in August denying the bidding credits<sup>8</sup> and the FCC has approved the entities' decision to "selectively default" on a portion of the licenses that they won at auction.<sup>9</sup>

### ***b. Incentive Auctions***

Congress authorized the FCC to conduct incentive auctions whereby spectrum licensees can voluntarily relinquish their licenses in exchange for a portion of the proceeds of the subsequent sale of the spectrum rights. The Public Safety and Spectrum Act provides a specific process for an incentive auction of broadcast television spectrum to bidders seeking to provide mobile broadband services over those frequencies. In August, the FCC adopted the final bidding procedures for the incentive auction and announced that March 29, 2016, will be the starting date for the incentive auction.<sup>10</sup> The filing window for broadcast stations to file initial applications to participate will be open from December 1 to December 18, 2015.

### **C. Pending Merger Transactions**

Generally, proposed telecommunications mergers must be approved by the FCC and the Department of Justice (DOJ). DOJ must determine whether a transaction raises antitrust concerns or may result in competitive harms. The scope of the FCC's merger review, on the other hand, is broader and takes other factors, which could affect the public interest into consideration.

The FCC continues to review the pending merger between Charter Communications and Time Warner Cable. The companies announced their intention to merge on May 26, 2015, along with a deal for Charter to buy Bright House Networks.<sup>11</sup> The formal comment period closed on

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<sup>8</sup> Federal Communications Commission, Memorandum Opinion and Order, FCC 15-104 (Aug. 17, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-104A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-104A1.pdf)).

<sup>9</sup> Letter to SNR Wireless from FCC (Oct. 1, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-1109A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1109A1.pdf)) and Letter to Northstar Wireless LLC from FCC (Oct. 1, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-1108A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1108A1.pdf)).

<sup>10</sup> Federal Communications Commission, *FCC Establishes Bidding Procedures for 2016 Incentive Auction*, Public Notice (Aug. 11, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-334756A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-334756A1.pdf)).

<sup>11</sup> *Charter Communications To Buy Time Warner Cable For \$55 Billion, Creating Cable Powerhouse*, Forbes (Mar 26, 2015) (online at

November 12, 2015.<sup>12</sup> Additionally, on September 17, 2017, Altice, a Netherlands-based telecommunications firm, announced its intention to acquire Cablevision for \$17.7 billion.<sup>13</sup> The FCC has sought comment on the application, with the comment periods ending December 22, 2015.<sup>14</sup>

#### **D. Universal Service**

The FCC administers four programs in the Universal Service Fund (USF): high cost support for rural telecommunications networks, the Lifeline program to connect low-income Americans, E-Rate funding for schools and libraries, and the rural health care program. These programs are funded through a line item charge on consumers' monthly phone bills.

##### ***1. Connect America Fund***

In October 2011, the FCC unanimously approved comprehensive reforms of the USF and intercarrier compensation systems by creating the Connect America Fund (CAF).<sup>15</sup> This fund is intended to extend broadband infrastructure to rural Americans who lack access to broadband.<sup>16</sup> Carriers receiving CAF support must build out broadband to 40 percent of funded locations by the end of 2017, 60 percent by the end of 2018, and 100 percent by the end of 2020.<sup>17</sup> Last year, the Court of Appeals for the Tenth Circuit upheld the FCC's reforms and affirmed that Section 706 was an independent grant of authority that permits the FCC to take action to facilitate broadband deployment.<sup>18</sup>

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[www.forbes.com/sites/antoinagara/2015/05/26/charter-communications-to-buy-time-warner-195-71-55-billion-cable-giant-john-malone/](http://www.forbes.com/sites/antoinagara/2015/05/26/charter-communications-to-buy-time-warner-195-71-55-billion-cable-giant-john-malone/)).

<sup>12</sup> Federal Communications Commission, *Commission Seeks Comment on Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Transfer Control of Licenses and Authorizations*, Public Notice (Sept. 11, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-1010A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1010A1.pdf)).

<sup>13</sup> *Everything to Know About the Altice-Cablevision Deal*, Time (Sept. 17, 2015) (online at <http://time.com/4038623/cablevision-altice-merger-deal/>).

<sup>14</sup> Federal Communications Commission, *Applications Filed for the Transfer of Control of Cablevision Systems Corporation to Altice N.V.*, Public Notice (Nov. 5, 2015) (online at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db1105/DA-15-1258A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db1105/DA-15-1258A1.pdf)).

<sup>15</sup> Federal Communications Commission, *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), pets. For review denied sub. Nom., In re FCC 11-161, 753 F.3d (10<sup>th</sup> Cir. 2014) (*USF/ICC Transformation Order*).

<sup>16</sup> *Id.*

<sup>17</sup> *Frontier Communications Accepts Over \$238 Million Connect America Fund Offer to Expand and Support Broadband for 1.3 Million Rural Americans*, News Release (*Frontier CAF News Release*) (June 16, 2015).

<sup>18</sup> *Direct Communs. Cedar Valley, LLC v. FCC (In re FCC 11-161)*, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014).

On August 27, 2015, the FCC announced that carriers had accepted over \$1.5 billion in annual support from the CAF.<sup>19</sup> With additional private investment, the FCC anticipates that the CAF support will expand broadband service to nearly 7.3 million rural Americans in 45 states and one U.S. Territory over the next 6 years.<sup>20</sup>

## **2. E-rate**

Since E-rate was created in the Telecommunications Act of 1996, the program has successfully connected 97 percent of U.S. classrooms to the Internet, but many schools and libraries lack affordable access to high-speed broadband service that enables digital learning opportunities. The FCC issued two orders last year to bridge this gap. In the first order, the FCC streamlined the program and prioritized increasing Wi-Fi connectivity in schools. In the second order, the FCC increased E-rate funding by \$1.5 billion annually to make sure that all schools and libraries have the capacity necessary for modern broadband services.

## **3. Lifeline**

The Lifeline program provides discounted phone service for qualifying low-income households. The FCC has taken significant steps to address waste, fraud, and abuse within the program by imposing tougher subscriber eligibility requirements and annual recertification requirements. Recognizing the barriers to broadband adoption by low-income households, the FCC has also conducted pilot projects to use Lifeline support for broadband. On June 18, 2015, the FCC opened a proceeding to seek comment on restructuring the program to support broadband service and to streamline eligibility processes.<sup>21</sup>

## **4. Rural Health Care Program**

The FCC's health care programs include: (1) the Healthcare Connect Fund; (2) the Rural Health Care Telecommunications Program; (3) the Rural Health Care Internet Access Program; and (4) the Rural Health Care Pilot Program. Eligible health care providers "use these services to provide telemedicine, transmit health records, and conduct other telehealth activities, thereby improving patient care and reducing health care costs."<sup>22</sup>

### **E. Tech Transition**

The wireline communications industry has been steadily decreasing its reliance on analog

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<sup>19</sup> Federal Communications Commission, *Carriers Accept Over \$1.5 Billion in Annual Support from Connect America Fund to Expand and Support Broadband for Nearly 7.3 Million Rural Consumers in 45 States and One Territory*, Public Notice (Aug. 27, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-335082A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-335082A1.pdf)).

<sup>20</sup> *Id.*

<sup>21</sup> Federal Communications Commission, *FCC Takes Steps to Modernize and Reform Lifeline for Broadband*, News Release (June 18, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-333992A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-333992A1.pdf)).

<sup>22</sup> Federal Communications Commission, *The FCC's Universal Service Rural Health Care Programs* (accessed Nov. 13, 2015) (online at <https://www.fcc.gov/guides/universal-service-program-rural-health-care-providers>).

copper infrastructure while using more IP-based fiber optic cable. To keep pace, the FCC has been exploring ways to modernize its rules to reflect changing technology, including establishing criteria for it to evaluate and compare replacement and legacy services. In August, the FCC acted to continue to allow carriers to have the flexibility to retire copper networks as they transition to fiber, but required that consumers be notified at least three months in advance of any retirement plans.<sup>23</sup>

The FCC also adopted interim measures to require that large telecommunications providers give smaller carriers access to their IP networks at reasonable and comparable rates to what these smaller carriers had been charged for access to legacy networks. The FCC is examining these special access issues in a broader proceeding as well.<sup>24</sup>

#### **E. Public Safety**

The FCC has taken a couple of steps this year to improve the nation's public safety communications. Near the start of 2015, the Commission adopted new rules to improve the accuracy of location data that first responders receive when someone calls 911. Further, in August, the FCC adopted new rules that give consumers the option to purchase backup power that can be used in the event of a power outage.<sup>25</sup> Since IP-based networks heavily rely on commercial power, they can be more vulnerable in times of emergency. The FCC is also nearing the conclusion of a long-pending proceeding on network resiliency, which the Chairman has committed to complete by the end of this year.<sup>26</sup>

#### **F. Consumer Protection**

Late last year, the FCC launched a new consumer complaint database. This new database makes it easier to compile data about specific issues and problems that are impacting consumers. Policymakers can also make use of this information to better detect growing issues and problems and to inform their proposed solutions and recommendations.

The FCC also passed new rules this summer regarding robocalls. While the new rules clarify a number of issues raised in related litigation, critics allege they create new loopholes that could lead to an increase in unwanted calls. Others have raised concerns that the rules could

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<sup>23</sup> Federal Communications Commission, *FCC Modernizes Rules to Encourage Technology Transitions, Protect Consumers and Competition*, Public Notice (Aug. 6, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-334747A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-334747A1.pdf)).

<sup>24</sup> Federal Communications Commission, *FCC Takes Major Step in Review of Competition in \$40 Billion Special Access Market*, Public Notice (Sept. 17, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-335352A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-335352A1.pdf)).

<sup>25</sup> Federal Communications Commission, *FCC Adopts Rules to Help Americans Communicate During Emergencies*, Public Notice (Aug. 6, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-334755A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-334755A1.pdf)).

<sup>26</sup> Committee on Energy and Commerce, Hearing on "FCC Reauthorization: Oversight of the Commission," Subcommittee on Communications and Technology (Mar. 19, 2015).

hamper the democratic process. A number of petitions for clarification of the FCC's rules remain pending at the Commission. The Budget Act provides for a new exemption that would allow the placement of robocalls for debt collection of Federal loans.<sup>27</sup> The FCC is directed to modify its rules within nine months of enactment, and has the flexibility to limit the number and duration of debt collection calls to mobile phones.

On October 22, the FCC adopted item regarding inmate calling services (ICS).<sup>28</sup> The comprehensive reforms supersede the reforms that the FCC adopted in 2013, and according to the FCC, will "correct a market failure, foster market efficiencies, encourage ongoing state reforms, and ensure that ICS rates and charges comply with the Communications Act."<sup>29</sup> The FCC also sought comment on, among other things, rates for international calls and promoting competition in the ICS industry.<sup>30</sup>

### **G. Enforcement**

The FCC's Enforcement Bureau has been very active in the past year, and has taken several actions in the past few months to protect consumers. For example, among other actions, the Enforcement Bureau recently fined a Michigan phone company \$2.4 million for cramming and slamming violations,<sup>31</sup> fined a Florida marketing company \$2.96 million for robocall violations,<sup>32</sup> reached a settlement of \$1.4 million with three companies over failure to accept and handle 911 calls from deaf and hard-of-hearing consumers,<sup>33</sup> and reached a \$595,000 settlement with Cox Communications over privacy violations.<sup>34</sup>

On October 23, 2015, Chairmen Upton and Walden asked the Government Accountability Office (GAO) to take a comprehensive look at the management of the

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<sup>27</sup> Pub. L. No. 114-74, Title III (2015).

<sup>28</sup> Federal Communications Commission, *Second Report and Order and Third Further Notice of Proposed Rulemaking*, WC Docket No. 12- 375 (Oct. 22, 2015) (online at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db1105/FCC-15-136A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db1105/FCC-15-136A1.pdf)).

<sup>29</sup> *Id.* at 7.

<sup>30</sup> *Id.* at 9.

<sup>31</sup> Federal Communications Commission, *FCC Plans \$2.4 Million Fine Against Michigan Company for Misleading Consumers*, Public Notice (July 30, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-334660A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-334660A1.pdf)).

<sup>32</sup> Federal Communications Commission, *FCC Fines Travel Club Marketing \$2.96 Million for Illegal Robocalls*, Public Notice (Aug. 11, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-334778A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-334778A1.pdf)).

<sup>33</sup> Federal Communications Commission, *Companies Fined \$1.4 Million for Failing to Accept 911 Calls for Americans Who are Hard of Hearing*, Public Notice (Sept. 24, 2015) (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-335466A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-335466A1.pdf)).

<sup>34</sup> Federal Communications Commission, *Cox Communications to Pay \$595,000 to Settle Data Breach Investigation*, Public Notice (Nov. 5, 2015) (online at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db1105/DOC-336222A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db1105/DOC-336222A1.pdf)).

Enforcement Bureau, including whether the FCC has implemented performance measures as recommended by GAO in 2008.<sup>35</sup>

## **H. Process Reform**

FCC Chairman Wheeler has stated since his tenure began in November 2013, that one of his priorities is to improve the efficiency and transparency of the agency's processes. Upon taking office, Chairman Wheeler directed an advisor to develop process reform recommendations, resulting in a February 2014 Report of proposed recommendations that are being implemented by the Chairman's office.<sup>36</sup> Earlier this year, the Chairman also created a Task Force on FCC Process Reform that includes representatives from each Commissioner's office.<sup>37</sup>

In its most recent quarterly workload report to the Committee on Energy and Commerce, the FCC indicated that since May 1, 2014, the total volume of items pending for more than 6 months has dropped more than 47 percent, with the total volume of licensing-related items pending more than six months also dropping, by more than 37 percent.<sup>38</sup>

## **I. FCC Budget**

The FCC requested \$388 million to fund the agency for FY 2016.<sup>39</sup> The request is approximately \$48 million more than what was provided by Congress for FY 2015. The FCC offsets its budgetary spending through the collection of regulatory fees from the entities that it regulates, and has not received any direct funding from the Treasury for many years. In addition, the FCC receives authority to retain proceeds from spectrum auctions to conduct its auction-related activities. The FCC currently has a \$106 million cap on auction-related activities for FY 2015, and requested an increase in the cap to \$117 million for FY 2016.<sup>40</sup> A significant portion of the FY 2016 spending increase is due to the FCC's plan to move its headquarters. The one-time expense of approximately \$44 million to move the FCC is expected to result in a savings of \$119 million over 15 years.<sup>41</sup> The FCC also requested an additional \$12 million in one-time costs to cover essential IT infrastructure upgrades.<sup>42</sup>

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<sup>35</sup> Letter to the Honorable Gene L. Dodaro, Comptroller General, U.S. Government Accountability Office (Oct. 23, 2015).

<sup>36</sup> Federal Communications Commission, *Report on FCC Process Reform* (Feb. 14, 2014) (online at [www.fcc.gov/article/da-14-199a2](http://www.fcc.gov/article/da-14-199a2)).

<sup>37</sup> Federal Communications Commission, *Task Force on FCC Process* (July 21, 2015) (online at <https://www.fcc.gov/blog/task-force-fcc-process>).

<sup>38</sup> Letter to the Honorable Greg Walden and Tim Murphy (Oct. 23, 2015).

<sup>39</sup> Federal Communications Commission, *FCC FY 2016 Budget Request* (online at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-331817A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-331817A1.pdf)).

<sup>40</sup> *Id.* at 8.

<sup>41</sup> *Id.* at 20.

<sup>42</sup> *Id.*



The House Committee on Appropriations favorably reported the Financial Services and General Government appropriations bill (H.R. 2995) on July 9, 2015. In the bill, the FCC was provided \$314.8 million for FY 2016, and the auctions funding cap was raised to \$117 million.<sup>43</sup> If enacted for FY 2016, the FCC would receive \$25 million less than FY 2015 (a 7 percent decrease), and \$73 million less than its FY 2016 request (an 18 percent decrease). The Senate Appropriations bill (S. 1910) provides approximately \$364 million for the FCC for FY 2016, with \$44 million dedicated to the agency's headquarters move, leaving approximately \$320 million for salaries and expenses for FY 2016.<sup>44</sup> It is unclear whether and to what extent these figures will be adjusted after enactment of the Budget Act.

## **II. WITNESSES**

The following witnesses have been invited to testify:

**Tom Wheeler**  
Chairman  
Federal Communications Commission

**Mignon Clyburn**  
Commissioner  
Federal Communications Commission

**Jessica Rosenworcel**  
Commissioner  
Federal Communications Commission

**Ajit Pai**  
Commissioner  
Federal Communications Commission

**Michael O'Rielly**  
Commissioner  
Federal Communications Commission

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<sup>43</sup> H.R. 2995 (as reported) (2015).

<sup>44</sup> S. Rept. 114-97 (2015).