

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

Majority (202) 225-2927
Minority (202) 225-3641

MEMORANDUM

July 21, 2017

To: Subcommittee on Communications and Technology Democratic Members and Staff
Fr: Committee on Energy and Commerce Democratic Staff
Re: Subcommittee Hearing on “Oversight and Reauthorization of the Federal Communications Commission”

On **Tuesday, July 25, 2017, at 10:00 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Communications and Technology will hold a hearing entitled “Oversight and Reauthorization of the Federal Communications Commission.”

I. KEY FCC ISSUES AND PROCEEDINGS

A. Net Neutrality

The Federal Communications Commission (FCC) adopted network neutrality rules on February 26, 2015, to assist and protect internet and broadband consumers from harmful marketplace and anticompetitive practices.

The rules are designed to protect consumers, free expression, and innovation online. Those protections apply to both wired and wireless broadband services. Specifically, they prohibit blocking, throttling, and paid prioritization. The FCC also enhanced its existing protections for transparency and adopted protections that prevent broadband access providers from unreasonably interfering with, or unreasonably disadvantaging, consumers’ access to the content of their choice (*i.e.*, the “general conduct rule”). The U.S. Court of Appeals for the D.C. Circuit upheld the FCC’s net neutrality rules in a 2-1 decision released on June 14, 2016, solidifying the FCC’s authority to regulate broadband service providers under Title II of the Communications Act.

The FCC voted on May 18 to start a proceeding that proposes to classify wired and wireless broadband service as an information service under the Communications Act, proposes to eliminate the general conduct rule, and asks whether to keep, modify, or eliminate the bright-line net neutrality rules. The public comment period is open with reply comments due August 17. Currently, there are 10.7 million comments filed in the proceeding. The FCC recently denied a request to extend the comment period.

B. Privacy

The FCC adopted new privacy protections for broadband providers in October 2016. These safeguards required broadband providers to clearly ask for their customers' permission before collecting and selling their sensitive personal information.

In March 2017, Republicans used the Congressional Review Act to repeal the FCC's privacy rules and prohibit it from enacting similar provisions absent Congressional approval. President Trump signed the CRA resolution on April 3, leaving consumers without internet privacy rules. Although some groups point to the Federal Trade Commission (FTC) as the appropriate agency to oversee privacy, the FTC cannot bring enforcement actions against broadband providers, nor can it adopt rules to protect consumers before they are harmed.

C. Data Security

As part of its 2016 privacy rules decision, the FCC also outlined new data security rules. While it declined to mandate specific actions, companies were required to take reasonable measures to secure customers' personal information and notify them of data breaches that could result in harm. The FCC also encouraged broadband providers to consider adopting industry standards such as the National Institute of Standards and Technology's Cybersecurity Framework, and best practices recommended by Communications Security, Reliability and Interoperability Council (CSRIC). In January, the FCC, under Chairman Pai, issued a stay of the new data security rules, reasoning that its move was necessary to unify oversight of data security for both broadband providers and edge providers at the FTC. Congress has not granted the FTC express authority to directly regulate or take enforcement action against broadband providers.

D. Cybersecurity

The role of the FCC is to ensure the reliability and resiliency of our communications networks. With the rapid growth of network-connected devices, the agency's congressional mandate to oversee commercial communications networks is an important component of a larger effort to protect our nation's networks from malicious cyber-attacks.

The FCC, under Chairman Pai, has taken steps to limit the agency's role in cybersecurity matters. The Chairman recently ordered the revocation of several cybersecurity-related reports and investigations, including an FCC White Paper called "Cybersecurity Risk Reduction" and a Notice of Inquiry of 5G networks device security.

The mission of the FCC's Communications Security, Reliability and Interoperability Council (CSRIC) is to provide recommendations to the Commission to ensure, among other things, optimal security and reliability of communications systems, including telecommunications, media, and public safety. Some concerns have arisen over whether the CSRIC has sufficient cybersecurity expertise and experience to address today's cyber environment challenges. Of the 50 working group members who make up the council, only two are currently affiliated with cybersecurity companies.

E. Broadband Infrastructure

In September 2016, then-Commissioner Pai released a "Digital Empowerment Agenda" designed to increase the availability of broadband in unserved areas. The main proposal in the agenda is the creation of Gigabit Opportunity Zones through the provision of tax breaks and

capital gains deferrals to companies that build gigabit-capable services in low income or rural communities. Rep. Collins (R-NY) introduced the Gigabit Opportunity Act (H.R. 2870) on June 16.

The FCC recently adopted several proposals at its April meeting, including starting proceedings on wireline and wireless infrastructure deployment and modifying rules for construction projects in high-cost areas funded by the Connect America Fund. The FCC plans to take up additional issues related to broadband deployment in August. The actions include: (1) starting the process to award up to \$2 billion over the next 10 years to increase broadband services in unserved areas; (2) an order finalizing the process to direct support for wireless service to rural areas; and (3) starting a proceeding to improve data collected on availability of broadband.

Access to affordable high-speed internet access is a growing necessity for consumers. To address this growing need, Democrats included provisions for broadband infrastructure within the Leading Infrastructure For Tomorrow's America Act (LIFT America Act). The LIFT America Act provides \$40 billion over five years to deploy secure and resilient broadband, to expand access for communities nationwide while promoting security by design. Three quarters of this funding will be used to deploy broadband in unserved areas of the country through a national reverse auction. The remaining funds will be given to states to distribute through separate state-wide reverse auctions. If there are no unserved areas in a state, the state may use the funding to deploy broadband in underserved areas, to deploy broadband or connective technology, to schools and libraries, or to fund the deployment of Next Generation 9-1-1.

F. Lifeline Program

The Government Accountability Office (GAO) released on June 29 a report assessing the FCC's Lifeline program. In the report GAO found continued weaknesses in the program that could lead to waste, fraud, and abuse. However, much of GAO's investigation occurred before the FCC made significant reforms to the Lifeline program. The report also relies on old data from before the reforms went into effect. In fact, the Universal Service Administrative Company is currently implementing a national verifier system specifically designed to remove many of the risks identified by GAO.

II. DRAFT REAUTHORIZATION BILL

The Majority released a 42-page draft FCC Reauthorization bill on July 18. The main provisions of the Republican package are: (1) a \$322 million authorization level for appropriated funding for fiscal years 2018 to 2022; (2) various reforms to FCC process, such as quarterly reports on FCC workload and a cost-benefit analysis requirement on any new rule or rule change that may have an "economically significant impact"; (3) elimination of the newspaper-broadcast cross-ownership rule; and (4) a requirement that FCC establish an Office of Economics and Data. A more detailed summary of the draft reauthorization bill will be provided by Democratic committee staff.

III. WITNESSES

The Honorable Ajit Pai

Chairman

Federal Communications Commission

The Honorable Mignon Clyburn

Commissioner

Federal Communications Commission

The Honorable Michael O’Rielly

Commissioner

Federal Communications Commission