

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

October 23, 2017

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

On Wednesday, October 25, 2017 at 2:00 p.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a hearing entitled “Oversight of the Federal Communications Commission.”

I. KEY FCC ISSUES AND PROCEEDINGS

A. FCC Response to Natural Disasters

Hurricanes Harvey, Irma, and Maria severely damaged critical infrastructure, including communications equipment in the areas where they made landfall. As of October 17, approximately 75 percent of cell sites in Puerto Rico were down. According to the Federal Communications Commission (FCC), one Puerto Rican cable company had restored service to only 1 percent of subscribers. Following calls to review how to better prepare for similar storms, the Commission established the Hurricane Recovery Task Force to adopt a “coordinated and comprehensive approach to support the rebuilding of communications infrastructure and restoration of communications services.”

Additionally, wildfires have ravaged the western regions of the country in recent months. These disasters have affected communities from Oregon down through California. As part of local emergency responses, local governments have used a mix of private alerting systems and the Wireless Emergency Alert system created under the WARN Act.

B. First Amendment

In response to several NBC reports earlier this month, President Trump recently tweeted that “[w]ith all of the Fake News coming out of NBC and the Networks, at what point is it appropriate to challenge their License? Bad for Country!” Six days later, and amid calls to publicly repudiate the President’s comments, FCC Chairman Pai noted “[u]nder the law, the FCC does not have the authority to revoke a license of a broadcast station based on the content of a particular newscast.”

C. Incentive Auction Repack

Following the first of its kind Broadcast Incentive Auction, the FCC is preparing to repack broadcast television licensees to repurpose newly auctioned spectrum for broadband internet access and other commercial mobile services. Congress allocated \$1.75 billion for the repack, and the FCC recently announced it would begin disbursing \$1 billion of the total \$1.75 billion available. The FCC estimates that the repack will cost at least \$1.864 billion in total—and it has noted that the potential repacking costs could increase further. The Commission has specifically noted that this estimate is “likely to rise as Eligible Entities are able to produce adequate justification for their unverified initial estimates and refine and supplement their estimates as their construction planning and execution continues.” As a result, unless Congress acts, the FCC will have insufficient funding for the repack.

D. Media Ownership

Over the past several months, the FCC has launched efforts to roll back media-related protections for consumers and local communities. For example, the FCC voted to reinstate the UHF discount earlier this year, allowing a single entity to reach a larger percentage of U.S. households. The Commission additionally proposed to repeal the main studio rule. That rule generally requires that a broadcaster have a studio in the area surrounding its community of license. The FCC is also undergoing a larger proceeding to review all media-related protections with reports indicating that the agency could begin considering revisions to the local TV ownership rule and potentially other changes at the November open meeting.

E. Net Neutrality

The FCC’s net neutrality protections 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 protections also include transparency enhancements and general protections to 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 three-judge panel of the D.C. Circuit has affirmed that decision, and that holding survived an appeal to the entire court. The telecom industry has petitioned the Supreme Court for review.

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. The Commission’s action also proposes to eliminate the general conduct rule, and asks whether to keep, modify, or eliminate the bright-line net neutrality rules. As part of that proceeding, but specifically in response to a series of requests by the National Hispanic Media Coalition, the FCC has produced some 53,000 net neutrality consumer complaints. The FCC, however, did not produce the final batch of such complaints until after the comment cycle closed in the net neutrality proceeding on August 30. Currently, individuals have submitted over 22 million comments in the proceeding.

F. Privacy

In March 2017, Republicans in Congress used the Congressional Review Act (CRA) to repeal the FCC's privacy rules and prohibit the Commission from enacting similar provisions absent Congressional approval. These safeguards required broadband providers to clearly ask for their customers' permission before collecting and selling their sensitive personal information. Nonetheless, President Trump signed the CRA resolution on April 3, leaving millions of consumers and broadband access subscribers without any meaningful internet privacy rules. Although some groups point to the Federal Trade Commission (FTC) as the appropriate agency to oversee privacy, the FTC cannot currently bring enforcement actions against broadband providers, nor can it adopt rules to protect consumers before they are harmed.

G. Data Security

The CRA also eliminated data security rules adopted by the FCC. Under the FCC's rules, companies would have been required to take reasonable measures to secure customers' personal information and notify them of data breaches that could result in harm. The FCC had 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). Even before the CRA, Chairman Pai had issued a stay of the 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.

H. Cybersecurity

One of the FCC's responsibilities 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 ordered the revocation of several cybersecurity-related reports and investigations, including an FCC White Paper on cybersecurity risk reduction and a Notice of Inquiry of 5G networks security.

The mission of the FCC's 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.

I. Broadband Infrastructure

The FCC recently adopted several broadband deployment items that would: (1) start the process to award up to \$2 billion over the next 10 years to increase broadband services in unserved areas; (2) finalize the process of providing direct support for wireless service to rural areas; and (3) begin a proceeding to improve data collected on availability of broadband.

J. Lifeline Program

The Government Accountability Office (GAO) released a report on June 29 assessing the FCC's Lifeline program. In the report, the GAO found continued weaknesses in the program that could lead to waste, fraud, and abuse. However, much of the 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. The Universal Service Administrative Company is currently implementing a national verifier system specifically designed to remove many of the risks identified by the GAO. The GAO has noted that the verifier, once implemented, will address these issues.

K. Transactions

Earlier this year, Sinclair Broadcasting Group applied to the Commission for approval to purchase the Tribune Media Company. The FCC and Department of Justice (Department) will each review this merger under their respective standards. The FCC recently paused its 180 day shot clock for reviewing this merger, extending the review period by 15 days. This shot clock is now on day 104 of 180.

CenturyLink submitted an application to acquire Level 3 in December of 2016. The FCC and the Department will each review this merger. The FCC paused its 180 day shot clock for reviewing the transaction in June. The clock was restarted on October 6, and is currently on day 187 of 180.

AT&T announced its bid to acquire Time Warner in the fall of 2016. Despite the exchange of several FCC licenses, the FCC noted it would not review the transaction. The Department has not yet approved the merger.

II. 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

The Honorable Brendan Carr

Commissioner
Federal Communications Commission

The Honorable Jessica Rosenworcel

Commissioner
Federal Communications Commission