

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

March 17, 2015

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

On Thursday, March 19, 2015, at 11:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a hearing titled “FCC Reauthorization: Oversight of the Commission.”

I. OVERVIEW OF THE FCC

The Federal Communications Commission (FCC) is an independent agency charged with regulating interstate and international communications by wire and radio. The FCC is led by five Commissioners who are appointed by the President and confirmed by the Senate to serve staggered five-year terms, except when filling an unexpired term. Commissioners serve until their successors have taken office but cannot serve in an unconfirmed or reappointed position “beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office.”¹

The Administrative Procedure Act (APA) largely governs the FCC’s rulemaking and adjudicatory processes. Congress last formally authorized the FCC in 1990. The last comprehensive revision of the Communications Act was the Telecommunications Act of 1996, which was designed to increase competition and reduce regulatory barriers to entry in the telecommunications marketplace.

¹ 47 U.S.C. § 154(c).

II. KEY ISSUES BEFORE THE FCC

A. Net Neutrality

The FCC adopted a new set of rules on February 26 of this year that were designed to protect consumers, free expression, and innovation online. The rules, which apply to both wired and wireless broadband services, are:

- (1) *no blocking*—broadband access providers are prohibited from stopping consumers from accessing content online;
- (2) *no throttling*—broadband access providers cannot slow down or degrade the quality of online content such as streaming videos; and
- (3) *no paid prioritization*—broadband access providers cannot cut special deals for Internet fast lanes, thereby maintaining a level playing field for competition.

The FCC also enhanced their 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 hands off traffic 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 service as a telecommunications service under Title II of the Communications Act. At the same time, the FCC recognized that many aspects of Title II are not relevant to modern broadband service, and it therefore chose not to apply over 700 of the regulations that fall under Title II. This includes refraining from provisions that prescribe rate regulation, tariffs, and last-mile unbundling. 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.

In January 2015, Senator Thune and Rep. Upton and Walden released a discussion draft of legislation that would codify some of the principles of network neutrality, but would also strip the agency of nearly all of its existing authority over broadband providers. On March 3, 2015 Rep. Blackburn introduced H.R. 1212, a bill that would overturn the FCC's net neutrality order. H.R. 1212 would further block the FCC from issuing new or revised consumer protections for the open Internet.

B. Community Broadband

On the same day that it adopted the new network neutrality protections, the FCC also granted petitions to two municipalities seeking to meet local demand for broadband service. The cities of Chattanooga, Tennessee and Wilson, North Carolina both provide gigabit speed broadband but were unable to expand their networks due to state laws restricting community broadband. The FCC pre-empted these state laws because they act as a barrier to broadband investment and competition, in conflict with Section 706 of the Telecommunications Act.

Rep. Blackburn introduced H.R. 1106 on February 26, 2015, to prohibit the FCC from preempting state laws that present barriers to municipal broadband networks.

C. Pending Merger Transactions

On February 14, 2014, Comcast proposed a \$45 billion acquisition of Time Warner Cable, a combination of the first and second largest cable companies in the country. If approved, the merged entity would serve roughly one-third of the nation's broadband Internet subscribers and nearly 30% of the pay TV market. On May 19, 2014, AT&T proposed a \$49 million acquisition of DirecTV, the nation's largest satellite television provider.

Both transactions must be approved by the FCC and the Department of Justice. The Department of Justice has to determine whether a transaction raises any anti-trust concerns, while the FCC conducts a public interest review that looks at factors beyond competitive harms. Last week the FCC paused what it refers to as its informal shot clock for reviewing major transactions, pending a judicial decision about access to review certain contracts that are being reviewed as part of the deals.

D. Spectrum

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.²

First, the Commission was tasked with auctioning 65 megahertz of mid-band spectrum for mobile broadband use. Bipartisan oversight from the Subcommittee on Communications and Technology helped the FCC successfully complete the AWS-3 auction in January of this year, bringing in net proceeds that exceeded \$42 billion. Under the law, \$7 billion of the revenue generated in these auctions will go toward the construction of the nationwide interoperable public safety broadband network known as FirstNet. The auction proceeds will also result in \$20 billion in net deficit reduction. Finally, \$115 million will be used for next generation 911 implementation grants.

Second, Congress authorized the FCC to conduct "incentive auctions" whereby spectrum licensees can voluntarily relinquish spectrum in exchange for a portion of the proceeds. The Public Safety and Spectrum Act provides a specific process for an incentive auction of the broadcast television spectrum for mobile broadband services. In addition, the legislation permits the FCC to create guard bands in the 600 MHz band plan following the broadcast television incentive auction, which can be used for innovative unlicensed services such as super Wi-Fi with longer reach and faster speeds than traditional Wi-Fi. The Public Safety and Spectrum Act also preserves the FCC's ability to promote competition through spectrum aggregation limits and other rules.

Last year, Chairman Wheeler announced his intention to hold the broadcast television incentive auction in early 2016. To stay on this timeframe, the FCC is expected to adopt in the

² P.L. 112-96.

next few months a Public Notice containing the detailed procedures for the auction. The Commission staff is also engaging in extensive outreach efforts across the country to encourage broadcaster participation.

Finally, Congress directed the FCC to work with the National Telecommunications and Information Administration to explore ways to allow new unlicensed services in several parts of the 5 GHz spectrum band. The FCC acted last year to free an additional 100 megahertz in the lower part of the 5 GHz band for unlicensed services. Last month Rep. Eshoo, Latta, and Matsui introduced the Wi-Fi Innovation Act to direct the FCC to conduct tests in the 5 GHz band to determine if the spectrum can be shared without interfering with current users.

E. Universal Service

The FCC administers four programs in the Universal Service Fund: 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. High Cost Fund

In 2011, the FCC adopted major reforms to update the high cost USF program. 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.³

2. E-rate

Since E-rate was created in the Telecommunications Act of 1996, the program has successfully connected 97% 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, 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, among other reforms. Recognizing the barriers to broadband adoption by low-income households, the FCC has also conducted pilot projects to use Lifeline support for broadband.

³ *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

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