

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

July 23, 2018

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, July 25, 2018 at 1:00 p.m. in room 2123 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. Net Neutrality

The FCC’s previously-adopted net neutrality protections were designed to protect consumers, free expression, and innovation online. These rules prohibited blocking, throttling, paid prioritization, and other practices by internet service providers that would have unreasonably interfered with or unreasonably disadvantaged consumers in accessing online content of their choice. The FCC voted to roll back consumers’ net neutrality protections in December 2017, deferring almost all oversight over broadband networks to the Federal Trade Commission.

B. Privacy and Data Security

Republicans in Congress used the Congressional Review Act (CRA) to repeal the FCC’s broadband privacy rules and prohibit the agency from enacting similar provisions absent Congressional approval in March of 2017. These safeguards had required that broadband providers obtain affirmative customer permission in a clear and conspicuous way before using, sharing, or selling sensitive customer information, which among other things included customers’ health, precise geo-location, and financial information, as well as the actual content of their communications and information about customers’ children.

The CRA also eliminated data security rules adopted by the FCC. Under those rules, broadband access providers would have been required to take reasonable measures to secure

customers' personal data. The companies would have also had to notify customers about data breaches except where it could be reasonably determined that no harm to customers was reasonably likely due to the breach. On adopting these rules, the FCC further encouraged broadband providers to consult industry standards such as the National Institute of Standards and Technology's Cybersecurity Framework and to consider instituting best practices recommended by the FCC's Communications Security, Reliability and Interoperability Council (CSRIC) advisory committee.

C. Media Ownership

The FCC has completed several rulemakings resulting in the significant roll-back of media-related protections for consumers and local communities since 2017. For example, the FCC voted to reinstate the UHF discount last year, which provides a 50 percent reduction in attributable audience reach when calculating whether an entity violates the statutory 39 percent national cap set by Congress. In addition, the FCC repealed the main studio rule. That rule generally required that a broadcaster have a studio in the area surrounding its community of license. The FCC also modified the Local Television Ownership Rule to allow a single entity to own two of the top four stations in a given market, pending a case by case review. In November of last year, the FCC eliminated what were its "eight voices" test and its newspaper/broadcast and radio/television cross-ownership rules, as well as reversed its earlier decision to treat joint sales agreements as conferring attributable ownership interests.

D. Universal Service Fund

The FCC adopted an order in November 2017, that drastically reduced the size of the Tribal Lifeline Benefit by, among other things, excluding carriers that serve non-rural areas from the Tribal Lifeline program.

The FCC then proposed even greater changes, including removing any non-facilities-based carriers from the Lifeline program, thereby reducing the Lifeline program by more than 70 percent. The Government Accountability Office (GAO) released a report on June 29, 2017, assessing the FCC's Lifeline program. GAO found some faults with the program, but it noted that the FCC's full implementation of the National Lifeline Verifier will address these issues. The FCC initiated a soft launch of the National Verifier in six states, in June 2018.

In April 2018, the FCC moved the account where Universal Service Fund (USF) dollars had been deposited, from a private bank where the funds accrued interest to the United States Treasury. This action was consummated without the benefit of a public process or proceeding to assess the merits or the consequences of the transfer.

E. Infrastructure

The FCC's Broadband Deployment Advisory Committee has and continues to develop recommendations for the commission, including model codes for states and municipalities, with the stated goal of speeding broadband deployment. However, the recommendations have not been unanimous; a minority report was published to express the views of some stakeholders. The FCC recently adopted rules excluding small wireless facilities from review under the

National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA). Lastly, the FCC plans to initiate bidding in the Connect American Fund Phase II Auction on July 24.

F. Spectrum

The FCC has proposed rule changes for the Citizen Broadband Radio Service in the 3.5 GHz band. Specifically, the changes would affect the second-tier Priority Access Licenses by, among other things, creating larger geographic license areas and extending license terms. The FCC has also proposed changes to the C Band to meet the spectrum demands required for 5G, including opening 500 MHz for flexible use. The FCC has also initiated an inquiry into mid-band spectrum to identify additional new potential opportunities for wireless broadband services.

G. Consumer Protection

Robocalls and spoofing continue as the top source of consumer complaints to the FCC. In the past year, the FCC has proposed or imposed \$200 million in forfeitures in high-volume robocall and spoofing cases. Another problematic area for consumers is cramming and slamming, where telecommunications companies switch consumers' telephone company without authorization, or cramming, where companies place unauthorized services or charges on a consumers' telephone bill. In the last year, the FCC has proposed or imposed just under \$10 million in forfeitures against companies engaged in these practices. The FCC adopted stronger rules and new prohibitions against these practices in June 2018.

H. Cybersecurity

One of the FCC's responsibilities is to ensure the reliability and resiliency of our communications networks. Historically, the FCC has worked with other government agencies to protect our nation's networks from malicious cyber-attacks. 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. Under Chairman Pai, the FCC initially took 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 regarding 5G network security. Recently, however, the FCC adopted a notice of proposed rulemaking to consider how to address potential insecure network components used in the networks of carriers receiving universal service funds.

I. RAY BAUM'S Act Implementation

Following the first of its kind Broadcast Incentive Auction, the FCC is charged with repacking broadcast television licensees to repurpose newly auctioned spectrum for broadband internet access and other commercial mobile services. As part of the RAY BAUM'S Act, Congress enacted the Viewer Protection Act to provide additional funding and expand entity eligibility for reimbursement resulting from the repack. The FCC recently released a Notice of Proposed Rulemaking to implement the Viewer Protection Act.

J. Emergency Alerts

The Hawaii Emergency Management Agency issued a false ballistic missile alert through the Emergency Alert System and Wireless Emergency Alert System in January 2018. The FCC began an investigation into the incident. The FCC has scheduled a nationwide test of the emergency alert systems for September 2018.

K. Pending Transactions

Sinclair Broadcasting Group has applied to the FCC for approval to purchase the Tribune Media Company. On July 18, 2018, the FCC unanimously approved an Order sending the transaction to a hearing before an administrative law judge. Chairman Pai, in a statement, explained that some of the divestitures proposed by Sinclair may not comply with law because they allow Sinclair to continue to control the stations.

T-Mobile has filed an application with the FCC for approval of its proposed acquisition of Sprint Corporation. The merger, if consummated, would reduce the number of national wireless carriers from four to three. The FCC's six-month informal "shot clock" for reviewing the transaction started on July 18, when it released a public notice inviting public comments on the transaction.

II. WITNESSES

The Honorable Ajit Pai
Chairman
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