



March 17, 2015

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Hearing entitled “FCC Reauthorization: Oversight of the Commission”

I. INTRODUCTION

On Thursday, March 19, 2015, at 11:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a hearing entitled “FCC Reauthorization: Oversight of the Commission.” The purpose of this hearing is to conduct oversight of the Commission’s policy decisions and the process by which it reaches them. The hearing will also consider a discussion draft of legislation to address concerns raised at the Committee’s March 4, 2015, hearing on the Commission’s budget and management.

II. WITNESSES

- The Honorable Tom Wheeler, Chairman, Federal Communications Commission;
- The Honorable Mignon Clyburn, Commissioner, Federal Communications Commission;
- The Honorable Jessica Rosenworcel, Federal Communications Commission;
- The Honorable Ajit Pai, Commissioner, Federal Communications Commission; and,
- The Honorable Michael O’Rielly, Commissioner, Federal Communications Commission.

III. BACKGROUND

The Federal Communications Commission (FCC) was created by Congress in 1934 as an independent agency to regulate interstate communications in the public interest.¹ Like other independent agencies, the FCC is not a part of any executive department.

Process reform and agency overreach are two particular matters of concern in this hearing. FCC process reform has been an on-going priority of the Subcommittee. During the 112th and 113th Congresses, the House unanimously approved a number of bipartisan bills designed to address potential procedural failings and abuses of process, and to improve agency

¹ 47 U.S.C. § 151.

transparency, efficiency, and accountability.² The Commission also has made repeated attempts at reforming itself. At the beginning of his tenure, Chairman Wheeler commissioned a report and recommendations for process reform at the agency.³ Since that report was issued in February 2014, there have been several instances that raise concerns about the integrity of the Commission's decision-making processes. These allegations prompted Chairmen Upton, Walden, and Murphy to issue a letter requesting additional information to determine the extent of the Commission's process failures.⁴

The Committee also questions the statutory basis for several recent FCC actions that appear to expand the reach of the Commission well beyond the authority granted by law. Federal agencies must operate within the bounds of the authority granted to them by Congress. Commission actions that go beyond its existing authority will result in costly and extensive litigation and deprive FCC-regulated entities of consistent, predictable interpretations of the law. Moreover, the uncertainty created by these decisions harm investment and innovation. Independent agencies are tasked with faithful implementation of the laws and policies adopted by Congress. Changes to the scope of an agency's reach are therefore properly achieved only through legislation.

IV. OVERSIGHT ISSUES

- Net Neutrality. On February 26, 2015, the Commission voted to classify broadband Internet service as a "telecommunications service" subject to regulation under Title II. The process leading to both the Notice of Proposed Rulemaking (NPRM)⁵ and the Order⁶ have raised questions about the sufficiency of the public notice and comment process required for Commission action. Specifically, the rules adopted were never proposed in the form in which they were adopted. The NPRM did not detail consideration of a regulatory framework under Title II; trade press noted that the Commission expanded the Title II references in the weeks before the Open Meeting to respond to backlash from net neutrality advocates.⁷ Commenters

² See Federal Communications Commission Process Reform Act of 2014, H.R. 3675, 113th Cong. (2014); Federal Communications Commission Consolidated Reporting Act of 2013, H.R. 2844, 113th Cong. (2013); Federal Communications Process Reform Act of 2012, H.R. 3309, 112th Cong. (2012); and Federal Communications Commission Consolidated Reporting Act of 2012, H.R. 3310, 112th Cong. (2012). The House of Representatives passed the Federal Communications Commission Consolidated Reporting Act, H.R. 734, for the third time with unanimous approval on Feb. 24, 2015.

³ Report on FCC Process Reform (published Feb. 14, 2014) at https://apps.fcc.gov/edocs_public/attachmatch/DA-14-199A2.pdf.

⁴ See Press Release, Letter to FCC Regarding Decision-Making Processes (Feb. 18, 2015) at <http://energycommerce.house.gov/letter/letter-fcc-regarding-decision-making-processes>.

⁵ *Protecting and Promoting the Open Internet*, Notice of Proposed Rulemaking, 29 FCC Rcd 5561 (2014) ("*Open Internet NPRM*").

⁶ *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24 (adopted Feb. 26, 2015) ("*Open Internet Order*").

⁷ See Gautham Nagesh, "FCC Head to Revise Broadband-Rules Plan," Wall St. J. (May 11, 2014) at <http://www.wsj.com/articles/SB10001424052702303468704579574122637947700> (indicating that the reclassification language was included to "address the backlash to his initial proposal while sticking to what he thinks will be the fastest course of action"); Amy Schatz, "Internet Providers Strike Back on Net Neutrality,"

had little notice of the Commission's shift until the President announced his plan for net neutrality in November of the past year,⁸ which may not constitute proper notice and also raises questions regarding undue influence on the agency.⁹ Further, the process leading up to the Order may not have provided commenters with a meaningful opportunity to comment.

In addition, the basis for the decision lacks adequate legal support. The Order relies on statutes written before the regulation of the Internet was even contemplated. As such, the reclassification of broadband Internet access services as Title II telecommunications services reverses course on decades of bipartisan policy.¹⁰

The application of the agency's Order to wireless broadband presents particular concerns on both substance and process. Section 332 has been interpreted by the Commission and the courts to prohibit the classification of mobile broadband services as a telecommunications service.¹¹ Ignoring both past Commission precedent and the dictates of the Federal courts, the Commission has attempted to regulate wireless broadband on the theory that the IP networks are the "functional equivalent" of the telephone networks over which the Commission has authority. This interpretation is concerning because the Commission failed to provide notice of this change to a 20-year-old definition, instead claiming it was a "logical outgrowth" of its work on net neutrality to assume the Commission would have to amend the definition of a telephone network in order to address an issue unrelated to telephony.

Additionally, regulatory overreach creates problems for the jurisdictional division between Federal agencies. Specifically, the boundaries between FCC and Federal Trade Commission (FTC) are now less clear. By including ISPs under the "common carrier" rubric, the FCC has removed ISPs from the jurisdiction of the FTC and therefore assumed responsibility for privacy policy.¹² Moreover, the FTC may no longer be able to regulate anticompetitive behavior of ISPs under this new interpretation of law by the FCC.¹³

Re/Code (May 13, 2014) at <http://recode.net/2014/05/13/internet-providers-strike-back-on-net-neutrality/> ("Amid complaints about his plan, Wheeler added more language in the draft proposal asking if Title II is a better way to approach the net neutrality issue"); Statement of Commissioner Jessica Rosenworcel, *Protecting and Promoting the Open Internet*, Notice of Proposed Rulemaking, 29 FCC Rcd 5561 (2014) (stating that the process leading to the NPRM was "flawed" but that the Chairman had made "significant adjustments" to the NPRM to cover Title II).

⁸ The White House, Net Neutrality: President Obama's Plan for a Free and Open Internet (Nov. 10, 2014) at <https://web.archive.org/web/20150204034321/http://www.whitehouse.gov/net-neutrality>.

⁹ See Gautham Nagesh and Brody Mullins, "Net Neutrality: How White House Thwarted FCC Chief," Wall St. J. (Feb. 4, 2015) at <http://www.wsj.com/articles/how-white-house-thwarted-fcc-chief-on-internet-rules-1423097522?tesla=y>.

¹⁰ See 47 U.S.C. § 230(b); Federal-State Joint Board on Universal Service, Report to Congress, 13 FCC Rcd 11501 (1998) at para. 13.

¹¹ See 47 U.S.C. 332(c).

¹² See Brendan Sasso, "Net Neutrality Has Sparked an Interagency Squabble Over Internet Privacy," Nat'l J. (Mar. 9, 2015) at <http://www.nationaljournal.com/tech/the-future-of-broadband/net-neutrality-has-sparked-an-interagency-squabble-over-internet-privacy-20150309> ("Jessica Rich, the director of the FTC's Bureau of Consumer Protection, warned that the FCC's decision 'takes an experienced cop off the beat in this important area'").

¹³ See "AT&T argues Title II Shields it from FTC Lawsuit, Ruling Pending," Electronista (March 13, 2015) at <http://www.electronista.com/articles/15/03/13/att.claims.new.fcc.ruling.exempts.it.from.ftc.oversight/>

Of further concern is the effect of the FCC's reclassification on international regulatory frameworks. Countries have sought to increase U.N. jurisdiction over broadband and Internet services at the International Telecommunications Union and other fora. By classifying broadband Internet access service as a telecommunications service, the FCC has laid groundwork for countries seeking to increase ITU oversight of broadband providers.¹⁴ Moreover, under the Commission's interpretation of IP addresses as the functional equivalent of telephone numbers, the regulation and implementation of Internet numbering and naming may become a function of the FCC.

- CPNI Enforcement Action. In October 2014, the FCC issued a Notice of Liability that fined two universal service Lifeline providers \$10 million for alleged privacy breaches.¹⁵ It is unclear if the FCC has the authority to issue the penalty. Section 222 of the Act requires the Commission to oversee how carriers share and use Customer Proprietary Network Information, or CPNI, which includes details such as length of call or numbers dialed. The provision, however, does not address personally identifiable information, the treatment of which traditionally has been under the purview of the FTC.¹⁶ Moreover, section 222 originally was intended to ensure that carriers did not use CPNI to engage in anti-competitive marketing tactics. With this action, however, the FCC appears ready to expand its authority beyond CPNI to include any form of personally identifiable information. The FCC provides no legal justification for this expansion.
- Preemption of State Laws Governing Municipal Broadband. The FCC also has taken action to preempt the laws of Tennessee and North Carolina that place limits on the provision of broadband by taxpayer—or ratepayer—funded entities.¹⁷ The agency justified this action under its section 706 authority to regulate if it concludes that advanced telecommunications is not being deployed in a reasonable and timely manner. In the *Verizon* case, the D.C. Circuit concluded that the FCC may have some authority under section 706;¹⁸ however, the provision does not offer an explicit grant of authority to preempt State law. Under well-established principles of federalism, States are separate sovereigns and may order, withhold, grant, or withdraw powers and privileges to the municipalities within their borders as they see fit. The Supreme Court has found that only a clear statement of authority allows a Federal agency to preempt State law,¹⁹ and that clear statement is not present in section 706.
- Unfinished Dockets. While the Committee commends the FCC's efforts to clear the backlog in a number of complaint procedures, too many rulemakings, petitions, and other applications remain unanswered for extended periods of time. Of particular note, the AM Revitalization

¹⁴ See, e.g. McDowell, Robert and Goldstein, Gordon, "Dictators Love the FCC's Plan to Regulate the Internet" WALL ST. J. (Feb. 17, 2015).

¹⁵ *TerraCom, Inc. and YourTel America, Inc.*, Notice of Apparent Liability, 29 FCC Rcd 13325 (2014).

¹⁶ 47 U.S.C. § 222.

¹⁷ *City of Wilson, North Carolina Petition for Preemption of North Carolina General Statute Sections 160A-340, et seq.; the Electric Power Board of Chattanooga, Tennessee Petition for Preemption of a Portion of Tennessee Code Annotated Section 7-52-601*, WC Docket Nos. 14-115, 14-116, Memorandum Opinion & Order, FCC 15-25 (adopted Feb. 26, 2015).

¹⁸ See *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

¹⁹ See *Gregory v. Ashcroft*, 501 U.S. 452 (1991).

docket,²⁰ the program access NPRM on buying groups,²¹ and the petition of Entercom Communications to allow online disclosures for contests on the radio²² remain unresolved, while petitioners and other interested stakeholders hold business activity until the Commission acts. Most problematic is the failure to complete the statutorily mandated 2010 Quadrennial Review,²³ despite the Commission's willingness to regulate media ownership in multiple other ways.

- Delegated Authority. The Commission may delegate authority to its bureaus to complete routine, non-controversial matters that do not introduce new policy. Yet, in March 2014, the Media Bureau adopted, on delegated authority, a change to established policy on how sharing agreements would impact FCC consideration of broadcast television transactions.²⁴ This Both the substance of the decision and the procedure by which it was reached were challenged and the matter is currently pending before the D.C. Circuit.²⁵ Of particular interest is the grant of a waiver of the auction rules to permit Grain Management, LLC to qualify for small business bidding credits. It was only after two commissioners challenged the release of the item by the Wireless Telecommunications Bureau that Chairman Wheeler placed the item on circulation for vote by the full Commission. A letter from Chairmen Upton, Walden, and Murphy seeks information on the exercise of delegated authority and the role of the Chairman in directing its use.
- Transparency. The Commission has engaged in a number of actions that fail to demonstrate the willingness to ensure that all parties have adequate and meaningful notice of Commission activity. For example, the agency, for the first time, has instituted a procedure in the review of the Comcast-Time Warner merger, which permits parties to meet with the Commission without having to document the *ex parte* presentation in the record. It appears that lack of transparency extends further to the dealings among the Commissioners. The trade press have reported that the Chairman's office withheld the Open Internet NPRM from Republican Commissioners for 20 to 24 hours after the circulating the item to Democratic Commissioners.²⁶ The Chairman's office also has circulated substantially revised items to the Commissioners less than 24 hours before the vote.²⁷

²⁰ See *Revitalization of AM Radio Service*, Notice of Proposed Rulemaking, 28 FCC Rcd 15221 (2013).

²¹ See *Revision of the Commission's Program Access Rules, et al.*, Report and Order, 27 FCC Rcd 15221 (2012).

²² See *Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests*, Notice of Proposed Rulemaking, 29 FCC Rcd 14185 (2014).

²³ See *2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371 (2014) (explaining also that the 2010 Quadrennial Review would be incorporated into the 2014 Quadrennial Review without producing a separate report).

²⁴ See Public Notice, "Process of Broadcast Television Applications Proposing Sharing Arrangements and Contingent Interests," DA 14-330 (rel. Mar. 12, 2014) at https://apps.fcc.gov/edocs_public/attachmatch/DA-14-330A1.pdf.

²⁵ *NAB v. FCC*, Docket No. 14-1072 (D.C. Cir. filed May 12, 2014).

²⁶ Wheeler Said Not to be Negotiating with Republicans on Net Neutrality, CommDaily, May 14, 2014.

²⁷ AT&T, Verizon Score Late Win as FCC Approves Incentive Auction Rules. CommDaily May 15, 2014.

The Committee has concerns over the recent testimony given by the Commission's Managing Director on the fiscal year 2016 Budget Request. Mr. Wilkins was unable to provide details on the planned closures and staff re-organization of the field offices. Recent reports from the field indicate that the Commission is planning significant structural changes to its Enforcement Bureau. The Committee is concerned that transparency problems extend further into the budget request.

V. DISCUSSION DRAFT REAUTHORIZING FCC APPROPRIATIONS

On March 4, 2015, the Subcommittee on Communications and Technology held a hearing entitled "Reauthorization of the Federal Communications Commission: The FCC's FY 2016 Budget Request." At the hearing, the Committee expressed concerns with the FCC's request to increase its budget to \$505 million, including \$388 million in budget authority from regulatory fee collection, \$117 million from auctions receipts,²⁸ and an additional \$25 million transfer from the Universal Service Fund (USF or Fund) to cover FCC costs related to the administration of the Fund.²⁹

The Committee remains concerned with several aspects of the Commission's expanding budget. First, the sheer size of the Commission's request warrants additional scrutiny. For the first time ever, the Commission is requesting more than \$500 million dollars to support its ongoing operations. Even adjusted for the rate of inflation, this far surpasses the amount the FCC needed to conduct its work when it was arguably its busiest: implementing the Telecommunications Act of 1996.

Second, the Commission's request to support personnel associated with the Universal Service Fund by transferring money out of the Fund would move these costs away from the Commission's annual appropriation. Moreover, it does not appear that the Commission has shown any corresponding reduction in the personnel costs of the other bureaus it intends to fund through its USF request. This is particularly troubling because the Commission is authorized under current law to expand the size of the Universal Service Fund to meet the Funds' obligations.

Finally, the Committee continues to be troubled by the lack of an independent Inspector General to ensure accountability, transparency, and compliance with the law.

VI. STAFF CONTACT

If you have any questions regarding this hearing, please contact David Redl of the Committee staff at (202) 225-2927.

²⁸ See generally, "Fiscal Year 2016 Budget Estimates Submitted to Congress," Federal Communications Commission (February 2015).

²⁹ *Id.*

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To amend the Communications Act of 1934 to reauthorize appropriations for the Federal Communications Commission and to streamline the provisions governing the assessment of offsetting collections by the Commission, to provide for an independent Inspector General for the Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Communications Act of 1934 to reauthorize appropriations for the Federal Communications Commission and to streamline the provisions governing the assessment of offsetting collections by the Commission, to provide for an independent Inspector General for the Commission, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “FCC Reauthorization Act of 2015”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FCC REAUTHORIZATION

- Sec. 101. Authorization of appropriations.
- Sec. 102. Application and regulatory fees.
- Sec. 103. Effective date.

TITLE II—INDEPENDENT INSPECTOR GENERAL FOR FCC

Sec. 201. FCC Inspector General appointed pursuant to section 3 of the In-
specter General Act of 1978.

TITLE III—DETERMINATION OF BUDGETARY EFFECTS

Sec. 301. Determination of budgetary effects.

3 **TITLE I—FCC**
4 **REAUTHORIZATION**

5 **SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

6 (a) IN GENERAL.—Section 6 of the Communications
7 Act of 1934 (47 U.S.C. 156) is amended to read as fol-
8 lows:

9 **“SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

10 **“(a) AUTHORIZATION.—**

11 **“(1) IN GENERAL.—**There are authorized to be
12 appropriated to the Commission to carry out the
13 functions of the Commission \$339,844,000 for each
14 of the fiscal years 2016 through 2020.

15 **“(2) COSTS OF ADMINISTERING AUCTIONS.—**In
16 addition to the amounts authorized to be appro-
17 priated in paragraph (1), there are authorized to be
18 appropriated to the Commission \$819,000,000 for

1 fiscal years 2016 through 2022 to carry out the pro-
2 gram required by section 309(j) (including carrying
3 out section 6403 of the Middle Class Tax Relief and
4 Job Creation Act of 2012 (47 U.S.C. 1452)).

5 “(b) OFFSETTING COLLECTIONS.—

6 “(1) IN GENERAL.—The sum appropriated in
7 any fiscal year to carry out the activities described
8 in subsection (a), to the extent and in the amounts
9 provided for in advance in Appropriations Acts, shall
10 be derived from fees authorized by section 9.

11 “(2) DEPOSIT OF COLLECTIONS.—Amounts re-
12 ceived from fees authorized by section 9 shall be de-
13 posited as an offsetting collection in, and credited to,
14 the account through which funds are made available
15 to carry out the activities described in subsection
16 (a).

17 “(3) DEPOSIT OF EXCESS COLLECTIONS.—Any
18 fees collected in excess of the total amount of fees
19 provided for in Appropriations Acts for a fiscal year
20 shall be deposited in the general fund of the Treas-
21 ury of the United States for the sole purpose of def-
22 icit reduction.

23 “(c) UNIVERSAL SERVICE CONTRIBUTIONS SUBJECT
24 TO APPROPRIATIONS PROCESS.—

1 “(1) AUTHORIZATION OF APPROPRIATIONS.—
2 There are authorized to be appropriated to the Com-
3 mission to carry out Federal universal service sup-
4 port programs established pursuant to section 254
5 \$9,000,000,000 for each of the fiscal years 2016
6 and 2017.

7 “(2) CONTRIBUTIONS TREATED AS OFFSETTING
8 COLLECTIONS.—

9 “(A) IN GENERAL.—The sum appropriated
10 in any fiscal year to carry out the programs de-
11 scribed in paragraph (1), to the extent and in
12 the amounts provided for in advance in Appro-
13 priations Acts, shall be derived from contribu-
14 tions received under section 254(d).

15 “(B) DEPOSIT OF CONTRIBUTIONS.—Con-
16 tributions received under such section shall be
17 deposited as an offsetting collection in, and
18 credited to, the account through which funds
19 are made available to carry out the programs
20 described in such paragraph.

21 “(C) DEPOSIT OF EXCESS CONTRIBU-
22 TIONS.—Any contributions received under such
23 section in excess of the total amount provided
24 for in Appropriations Acts for a fiscal year shall
25 be deposited in the general fund of the Treas-

1 ury of the United States for the sole purpose of
2 deficit reduction.

3 “(3) LIMITATION TO AMOUNTS PROVIDED FOR
4 IN APPROPRIATIONS ACTS.—Contributions under
5 such section may be assessed and collected in a fis-
6 cal year only to the extent and in the amounts pro-
7 vided for in advance in Appropriations Acts for such
8 fiscal year.

9 “(4) ESTABLISHMENT OF RATES.—The Com-
10 mission shall provide for the assessment and collec-
11 tion of contributions under such section at rates that
12 will result in the collection, in each fiscal year, of an
13 amount that can reasonably be expected to equal the
14 amount provided for in advance in Appropriations
15 Acts for such fiscal year.”.

16 (b) COSTS OF ADMINISTERING AUCTIONS COVERED
17 THROUGH APPROPRIATIONS.—

18 (1) IN GENERAL.—Section 309(j)(8) of the
19 Communications Act of 1934 (47 U.S.C. 309(j)(8))
20 is amended—

21 (A) in subparagraph (A), by striking

22 “(B),”;

23 (B) by striking subparagraph (B);

24 (C) in subparagraph (D)(ii), by striking

25 “and except as provided in subparagraph (B)”;

1 (D) in subparagraph (F), by striking “sub-
2 paragraphs (B) and” and inserting “subpara-
3 graph”; and

4 (E) in subparagraph (G), by striking “and
5 except as provided in subparagraph (B)” each
6 place it appears.

7 (2) CONFORMING AMENDMENTS.—Section
8 6403(e)(2) of the Middle Class Tax Relief and Job
9 Creation Act of 2012 (47 U.S.C. 1452(e)(2)) is
10 amended—

11 (A) in subparagraph (B)—

12 (i) in clause (i), by adding “and” at
13 the end;

14 (ii) by striking clause (ii); and

15 (iii) by redesignating clause (iii) as
16 clause (ii); and

17 (B) by striking subparagraph (C).

18 (c) ELIMINATION OF DUPLICATIVE AUTHORIZATION
19 OF APPROPRIATIONS.—

20 (1) IN GENERAL.—Section 710 of the Tele-
21 communications Act of 1996 (Public Law 104–104)
22 is repealed.

23 (2) CONFORMING AMENDMENT.—The table of
24 contents of section 2 of such Act is amended by
25 striking the item relating to section 710.

1 (d) TRANSFER OF FUNDS.—On the effective date de-
2 scribed in section 103, any amounts in the account pro-
3 viding appropriations to carry out the functions of the
4 Federal Communications Commission that were collected
5 in excess of the amounts provided for in Appropriations
6 Acts in any fiscal year prior to such date shall be trans-
7 ferred to the general fund of the Treasury of the United
8 States for the sole purpose of deficit reduction.

9 **SEC. 102. APPLICATION AND REGULATORY FEES.**

10 (a) IN GENERAL.—Section 9 of the Communications
11 Act of 1934 (47 U.S.C. 159) is amended to read as fol-
12 lows:

13 **“SEC. 9. APPLICATION AND REGULATORY FEES.**

14 “(a) GENERAL AUTHORITY.—The Commission shall
15 assess and collect application fees and regulatory fees to
16 recover the costs of carrying out the activities described
17 in section 6(a) only to the extent and in the amounts pro-
18 vided for in advance in Appropriations Acts.

19 “(b) APPLICATION FEES.—

20 “(1) IN GENERAL.—The Commission shall as-
21 sess and collect application fees at such rates as the
22 Commission shall establish in a schedule of applica-
23 tion fees to recover the costs of the Commission to
24 process applications.

25 “(2) ADJUSTMENT OF SCHEDULE.—

1 “(A) IN GENERAL.—In every even-num-
2 bered year, the Commission shall review the
3 schedule of application fees established under
4 this subsection and, except as provided in sub-
5 paragraph (B), set a new amount for each fee
6 in the schedule that is equal to the amount of
7 the fee on the date when the fee was established
8 or the date when the fee was last amended
9 under paragraph (3), whichever is later—

10 “(i) increased or decreased by the per-
11 centage change in the Consumer Price
12 Index during the period beginning on such
13 date and ending on the date of the review;
14 and

15 “(ii) rounded to the nearest \$5 incre-
16 ment.

17 “(B) THRESHOLD FOR ADJUSTMENT.—
18 The Commission may not adjust a fee under
19 subparagraph (A) if—

20 “(i) in the case of a fee the current
21 amount of which is less than \$200, the ad-
22 justment would result in a change in the
23 current amount of less than \$10; or

24 “(ii) in the case of a fee the current
25 amount of which is \$200 or more, the ad-

1 justment would result in a change in the
2 current amount of less than 5 percent.

3 “(C) CURRENT AMOUNT DEFINED.—In
4 subparagraph (B), the term ‘current amount’
5 means, with respect to a fee, the amount of the
6 fee on the date when the fee was established,
7 the date when the fee was last adjusted under
8 subparagraph (A), or the date when the fee was
9 last amended under paragraph (3), whichever is
10 latest.

11 “(3) AMENDMENTS.—In addition to the adjust-
12 ments required by paragraph (2), the Commission
13 shall by rule amend the schedule of application fees
14 established under this subsection if the Commission
15 determines that the schedule requires amendment so
16 that such fees reflect increases or decreases in the
17 costs of processing applications at the Commission
18 and the consolidation or addition of new categories
19 of applications.

20 “(c) REGULATORY FEES.—

21 “(1) IN GENERAL.—The Commission shall as-
22 sess and collect regulatory fees at such rates as the
23 Commission shall establish in a schedule of regu-
24 latory fees that will result in the collection, in each

1 fiscal year, of an amount that can reasonably be ex-
2 pected to equal the difference between—

3 “(A) the amounts described in subsection
4 (a) with respect to such fiscal year; and

5 “(B) the amount of application fees rea-
6 sonably expected to be collected in such fiscal
7 year.

8 “(2) ADJUSTMENT OF SCHEDULE.—

9 “(A) IN GENERAL.—For each fiscal year,
10 the Commission shall by rule adjust the sched-
11 ular of regulatory fees established under this
12 subsection to—

13 “(i) reflect unexpected increases or
14 decreases in the number of units subject to
15 the payment of such fees; and

16 “(ii) result in the collection of the
17 amount required by paragraph (1).

18 “(B) ROUNDING.—In making adjustments
19 under this paragraph, the Commission may
20 round fees to the nearest \$5 increment.

21 “(3) AMENDMENTS.—In addition to the adjust-
22 ments required by paragraph (2), the Commission
23 shall by rule amend the schedule of regulatory fees
24 established under this subsection if the Commission
25 determines that the schedule requires amendment so

1 that such fees reflect the full-time equivalent number
2 of employees within the bureaus and offices of the
3 Commission, adjusted to take into account factors
4 that are reasonably related to the benefits provided
5 to the payor of the fee by the Commission's activi-
6 ties. In making an amendment under this para-
7 graph, the Commission may not change the total
8 amount of regulatory fees required by paragraph (1)
9 to be collected in a fiscal year.

10 “(d) JUDICIAL REVIEW PROHIBITED.—An adjust-
11 ment or amendment to a schedule of fees under subsection
12 (b) or (c) is not subject to judicial review.

13 “(e) NOTICE TO CONGRESS.—The Commission shall
14 transmit to Congress notification—

15 “(1) of any adjustment under subsection (b)(2)
16 or (c)(2) immediately upon the adoption of such ad-
17 justment; and

18 “(2) of any amendment under subsection (b)(3)
19 or (c)(3) not later than 90 days before the effective
20 date of such amendment.

21 “(f) ENFORCEMENT.—

22 “(1) PENALTIES FOR LATE PAYMENT.—The
23 Commission shall by rule prescribe a penalty for late
24 payment of fees under this section. Such penalty

1 shall be 25 percent of the amount of the fee that
2 was not paid in a timely manner.

3 “(2) INTEREST ON UNPAID FEES AND PEN-
4 ALTIES.—The Commission shall charge interest, at a
5 rate determined under section 3717 of title 31,
6 United States Code, on a fee or penalty under this
7 section that is not paid in a timely manner. Such
8 section 3717 shall not otherwise apply with respect
9 to a fee or penalty under this section.

10 “(3) DISMISSAL OF APPLICATIONS OR FIL-
11 INGS.—The Commission may dismiss any applica-
12 tion or other filing for failure to pay in a timely
13 manner any fee, interest, or penalty under this sec-
14 tion.

15 “(4) REVOCATIONS.—

16 “(A) IN GENERAL.—In addition to or in
17 lieu of the penalties and dismissals authorized
18 by paragraphs (1) and (3), the Commission
19 may revoke any instrument of authorization
20 held by any licensee that has not paid in a
21 timely manner a regulatory fee assessed under
22 this section or any related interest or penalty.

23 “(B) NOTICE.—Revocation action may be
24 taken by the Commission under this paragraph
25 after notice of the Commission’s intent to take

1 such action is sent to the licensee by registered
2 mail, return receipt requested, at the licensee's
3 last known address. The notice shall provide the
4 licensee at least 30 days to either pay the fee,
5 interest, and any penalty or show cause why the
6 fee, interest, or penalty does not apply to the li-
7 censee or should otherwise be waived or pay-
8 ment deferred.

9 “(C) HEARING.—

10 “(i) GENERALLY NOT REQUIRED.—A
11 hearing is not required under this para-
12 graph unless the licensee's response pre-
13 sents a substantial and material question
14 of fact.

15 “(ii) EVIDENCE AND BURDENS.—In
16 any case where a hearing is conducted
17 under this paragraph, the hearing shall be
18 based on written evidence only, and the
19 burden of proceeding with the introduction
20 of evidence and the burden of proof shall
21 be on the licensee.

22 “(iii) COSTS.—Unless the licensee
23 substantially prevails in the hearing, the
24 Commission may assess the licensee for the
25 costs of such hearing.

1 “(D) OPPORTUNITY TO PAY PRIOR TO
2 REVOCATION.—Any Commission order adopted
3 under this paragraph shall determine the
4 amount due, if any, and provide the licensee
5 with at least 30 days to pay that amount or
6 have its authorization revoked.

7 “(E) FINALITY.—No order of revocation
8 under this paragraph shall become final until
9 the licensee has exhausted its right to judicial
10 review of such order under section 402(b)(5).

11 “(g) WAIVER, REDUCTION, AND DEFERMENT.—The
12 Commission may waive, reduce, or defer payment of a fee,
13 interest charge, or penalty in any specific instance for
14 good cause shown, if such action would promote the public
15 interest.

16 “(h) PAYMENT RULES.—The Commission shall by
17 rule permit payment—

18 “(1) in the case of fees in large amounts, by in-
19 stallments; and

20 “(2) in the case of fees in small amounts, in ad-
21 vance for a number of years not to exceed the term
22 of the license held by the payor.

23 “(i) EXCEPTIONS.—

1 “(1) APPLICATION FEES.—The application fees
2 established under this section shall not be applicable
3 to—

4 “(A) a governmental entity; or

5 “(B) a nonprofit entity licensed in the
6 Local Government, Police, Fire, Highway Main-
7 tenance, Forestry-Conservation, Public Safety,
8 or Special Emergency Radio service.

9 “(2) REGULATORY FEES.—The regulatory fees
10 established under this section shall not be applicable
11 to—

12 “(A) a governmental entity or nonprofit
13 entity; or

14 “(B) an amateur radio operator licensee
15 under part 97 of the Commission’s rules (47
16 C.F.R. part 97).

17 “(j) ACCOUNTING SYSTEM.—The Commission shall
18 develop accounting systems necessary to make the amend-
19 ments authorized by subsections (b)(3) and (c)(3).”.

20 (b) CONFORMING AMENDMENTS.—The Communica-
21 tions Act of 1934 (47 U.S.C. 151 et seq.) is amended—

22 (1) by repealing section 8; and

23 (2) in section 309(j)(6)(H), by striking

24 “charges imposed pursuant to section 8 of this Act”

1 and inserting “application fees assessed under sec-
2 tion 9”.

3 (c) RULEMAKING TO AMEND SCHEDULE OF REGU-
4 LATORY FEES.—

5 (1) IN GENERAL.—Not later than 1 year after
6 the effective date described in section 103, the Fed-
7 eral Communications Commission shall complete a
8 rulemaking proceeding under subsection (c)(3) of
9 section 9 of the Communications Act of 1934, as
10 amended by subsection (a) of this section.

11 (2) REPORT TO CONGRESS.—If the Federal
12 Communications Commission has not completed the
13 rulemaking proceeding required by paragraph (1) by
14 the date that is 6 months after the effective date de-
15 scribed in section 103, the Commission shall submit
16 to Congress a report on the progress of such rule-
17 making proceeding.

18 **SEC. 103. EFFECTIVE DATE.**

19 This title and the amendments made by this title
20 shall take effect on October 1, 2015.

1 **TITLE II—INDEPENDENT**
2 **INSPECTOR GENERAL FOR FCC**

3 **SEC. 201. FCC INSPECTOR GENERAL APPOINTED PURSU-**
4 **ANT TO SECTION 3 OF THE INSPECTOR GEN-**
5 **ERAL ACT OF 1978.**

6 (a) AMENDMENTS.—The Inspector General Act of
7 1978 (5 U.S.C. App.) is amended—

8 (1) in section 8G(a)(2), by striking “the Fed-
9 eral Communications Commission,”; and

10 (2) in section 12—

11 (A) in paragraph (1), by inserting “, the
12 Federal Communications Commission,” after
13 “the Chairman of the Nuclear Regulatory Com-
14 mission”; and

15 (B) in paragraph (2), by inserting “the
16 Federal Communications Commission,” after
17 “the Environmental Protection Agency,”.

18 (b) TRANSITION RULE.—An individual serving as In-
19 spector General of the Federal Communications Commis-
20 sion on the date of the enactment of this Act pursuant
21 to an appointment made under section 8G of the Inspector
22 General Act of 1978 (5 U.S.C. App.)—

23 (1) may continue so serving until the President
24 makes an appointment under section 3(a) of such
25 Act with respect to the Federal Communications

1 Commission consistent with the amendments made
2 by subsection (a); and

3 (2) shall, while serving under paragraph (1), re-
4 main subject to the provisions of section 8G of such
5 Act which, immediately before the date of the enact-
6 ment of this Act, applied with respect to the Inspec-
7 tor General of the Federal Communications Commis-
8 sion and suffer no reduction in pay.

9 **TITLE III—DETERMINATION OF** 10 **BUDGETARY EFFECTS**

11 **SEC. 301. DETERMINATION OF BUDGETARY EFFECTS.**

12 The budgetary effects of this Act, for the purpose of
13 complying with the Statutory Pay-As-You-Go-Act of 2010,
14 shall be determined by reference to the latest statement
15 titled “Budgetary Effects of PAYGO Legislation” for this
16 Act, submitted for printing in the Congressional Record
17 by the Chairman of the House Budget Committee, pro-
18 vided that such statement has been submitted prior to the
19 vote on passage.