



U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

February 8, 2016

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Subcommittee Markup of H.R. 2666, H.R. ____, Small Business Broadband Deployment Act, and H.R. 1301

I. INTRODUCTION

The Subcommittee on Communications and Technology will meet in open markup February 10 and 11, 2016, in 2123 Rayburn House Office Building.

On Wednesday, February 10, 2016, at 3:00 p.m., the Subcommittee will convene for opening statements only. The Subcommittee will reconvene on Thursday, February 11, 2016, at 10:00 a.m. to consider the following:

- H.R. 2666, No Rate Regulation of Broadband Internet Access Act;
- H.R. ____, Small Business Broadband Deployment Act; and,
- H.R. 1301, Amateur Radio Parity Act of 2015.

In keeping with Chairman Upton's announced policy, Members may submit any amendments they have two hours before they are offered in this markup. Members may submit amendments by email to peter.kielty@mail.house.gov. Any information with respect to the amendment's parliamentary standard (e.g. its germaneness) should be submitted at this time as well.

II. LEGISLATION

On Thursday, the Subcommittee will review three bills – (1) H.R. 2666, which ensures that the Federal Communications Commission (FCC) may not regulate the rates charged for broadband Internet access service; (2) a discussion draft entitled the “Small Business Broadband Deployment Act” to make permanent the temporary exemption for small Internet Service Providers (ISP) from enhanced transparency requirements for broadband Internet access service providers; and (3) H.R. 1301, which directs the FCC to adopt rules to protect the use of amateur service communications from private land use restrictions.

A. H.R. 2666, No Rate Regulation of Broadband Internet Access Act

In February 2015, the FCC reclassified broadband Internet access service as a telecommunications service regulated under Title II of the Communications Act of 1934. As a result of this reclassification, the FCC gained the ability to regulate the rates charged for broadband using both its tariffing authority and its authority over unjust and unreasonable rates for common carrier services. In the same order, the FCC decided to forbear from applying tariffing to broadband.

President Obama and FCC Chairman Tom Wheeler both have opposed the use of the Open Internet Order (Order) for regulating rates. In his YouTube video urging the FCC to reclassify broadband, President Obama stated that “I believe that the FCC should reclassify consumer broadband service under Title II of the Telecommunications Act – while at the same time forbearing from rate regulation[.]”¹ In addition to having been asked about this issue repeatedly by committees of Congress, FCC Chairman Wheeler stated at the time the Commission adopted the Order that “[w]e forbear from sections of Title II that pose a meaningful threat to network investment, and over 700 provisions of the FCC’s rules. That means no rate regulation, no filing of tariffs, and no network unbundling.”²

However, once the text of the Order was released, it was clear that the freedom from rate regulation envisioned by the President and described by Chairman Wheeler was not what the FCC had adopted. Under the terms of the Order, the Commission has used its authority to forbear from tariffing – before-the-fact setting of rates through the filing of rates with the Commission. But, this does not guarantee that the FCC will not regulate rates. First, the FCC retains the ability to regulate the rates for broadband through its enforcement authority. Sections 201 and 202 of the Communications Act provide authority to ensure that the rates charged for telecommunications services are just and reasonable.³ Through this authority, the FCC can engage in ratemaking by defining what the FCC deems a “reasonable” rate. Second, this Commission’s decision to forbear from rate regulation under the tariffing rules is not binding on successive Commissions.

H.R. 2666 would codify the vision that the President and Chairman Wheeler have both articulated: an Open Internet, free from rate regulation. H.R. 2666 would prohibit the FCC from regulating the rates charged for broadband Internet access service, whether directly through tariffing or indirectly through enforcement actions.

B. Small Business Broadband Deployment Act

¹ <https://www.youtube.com/watch?v=uKcjQPVwFDk> (transcript available at <https://www.whitehouse.gov/Net-Neutrality>).

² Statement of FCC Chairman Tom Wheeler, *Re: Protecting and Promoting the Open Internet*, GN Docket No. 14-28, available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A2.pdf.

³ 47 U.S.C. §§ 201, 202.

The FCC's 2015 Open Internet Order included enhanced transparency requirements for broadband Internet access service providers.⁴ These new transparency requirements include disclosure of commercial terms for prices, fees, and data caps; performance characteristics like packet loss and average performance over time and during peak usage; and network practices, including those applied to traffic associated with a user or group.⁵ Recognizing the burden that these enhanced disclosures could place on small businesses, the FCC temporarily exempted small ISPs with 100,000 or fewer subscribers from these disclosures. In November 2015, Republican members of the Subcommittee on Communications and Technology and Republican the Committee on Small Business wrote a letter to Chairman Wheeler, urging him to make the exemption permanent and expand the definition of small business to better reflect the definitions adopted by the Small Business Administration (SBA) and those used by the FCC and approved by the SBA in the past.⁶ Specifically, the members urged the FCC to set the threshold at telecommunications carriers with fewer than 1,500 employees or 500,000 subscribers.

Shortly before the temporary exemption in December 2015, the FCC extended it until December 2016. This legislation would make the exemption permanent, providing certainty and regulatory relief to small providers who lack the resources to comply with the enhanced disclosure requirements.

C. H.R. 1301, Amateur Radio Parity Act of 2015

H.R. 1301 directs the FCC to adopt rules to protect the rights of amateur radio operators to use amateur radio equipment from restriction. In general, communications equipment is recognized under current law as having a societal benefit in providing access to information. Land use restrictions imposed by governments or homeowners associations on other pieces of communications equipment are currently prohibited by FCC regulations. H.R. 1301 directs the Commission to adopt similar regulations for the use of amateur radio equipment, ensuring that restrictions are minimally restrictive and tailored to achieve a legitimate end.

III. STAFF CONTACT

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

⁴ *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket. No. 14-28, paras. 154, 161 (2015).

⁵ Id.

⁶ <https://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/114/Letters/20151119FCC.pdf>.