



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

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April 11, 2016

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Hearing entitled “Legislative Hearing on Seven Communications Bills”

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**I. INTRODUCTION**

The Subcommittee on Communications and Technology will hold a hearing Tuesday, April 13, 2016, at 10:15 a.m. in 2322 Rayburn House Office Building. The hearing is entitled “Legislative Hearing on Seven Communications Bills.” Two panels of witnesses will testify.

**II. WITNESSES**

Panel 1:

- Hank Hunt, Parent of Kari Hunt;
- Katie McAuliffe, Federal Affairs Manager, Americans for Tax Reform and Executive Director, Digital Liberty;
- Abigail Medina, Trustee, San Bernardino City Unified School District;
- Steve Souder, Director, Fairfax County, VA 911 Center;
- Melissa Smith, Treasurer, Kelsey Smith Foundation and Parent of Kelsey Smith; and,
- Nathan Wessler, Staff Attorney at the ACLU Speech, Privacy and Technology Project.

Panel 2:

- Scott Bergmann, Vice President of Regulatory Affairs, CTIA – The Wireless Association;
- Detective Sergeant B.A. Finley, Criminal Investigations Division, Johns Creek Police Department, Johns Creek, Georgia; and,
- Dan Holdhusen, Director of Government Relations, Good Samaritan Society.

### **III. BACKGROUND AND SUMMARY OF LEGISLATION**

On Tuesday, the Subcommittee will review seven bills – (1) H.R. 4889, which requires cell phone providers to furnish location information, at the request of law enforcement, concerning the device of a user thought to be at risk of death or immediate serious injury; (2) H.R. 4167, which requires that multi-line telephone systems have a default setting that allows users to directly dial 9-1-1; (3) H.R. 4884, to reform the Federal Communications Commission’s (FCC or Commission) Lifeline subsidy program; (4) H.R. 4111, which allows skilled nursing facilities to apply for funding for connectivity to provide health care; (5) H.R. 4190, which authorizes the Department of Commerce to conduct a competition for solutions to improve spectral efficiency; (6) H.R. 3998, which seeks to improve access to communications networks for consumers in times of emergencies or disasters; and (7) H.R. 2031, which enhances the penalties for those found guilty of “swatting” or falsely initiating a law enforcement response to the residence of another.

#### **A. H.R. 4889, Kelsey Smith Act of 2016**

When a cell phone connects to or communicates with the network, whether to make a call, download data, or even receive a push notification or background update, the cell provider notes the approximate location using the closest cell tower and the device’s proximity to that tower. Current federal law permits telecommunications carriers to use, disclose, or permit access to call location information for users of their service to emergency personnel in order to respond to a user’s call for emergency services.<sup>1</sup> In addition, it permits carriers to provide location to the user’s legal guardian or immediate family when there is an emergency situation with risk of death or serious physical harm.<sup>2</sup> However, federal law does not compel disclosure of that information to law enforcement, leaving the decision to the discretion of the carrier.

In 2007, Kelsey Smith was abducted from a parking lot in Kansas. While a search for her began immediately, law enforcement encountered difficulty in obtaining location information from her cell phone provider. After four days of searching, law enforcement located her body within 45 minutes of receiving the device location data.

This legislation would allow law enforcement to access location data more quickly in order to better react to emergencies and locate a potential victim much more quickly. Commercial mobile service providers would be required to provide call location information to law enforcement when the device has been used to call 9-1-1 for emergency assistance, or for a device that is in the possession of a user that law enforcement believes to be in an emergency situation involving risk of death or serious physical harm. To date, similar legislation has passed in 21 states.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. 222(d)(4)(A).

<sup>2</sup> 47 U.S.C. 222(d)(4)(B).

<sup>3</sup> <http://kelseysarmy.org/#ks-act>.

**B. H.R. 4167, Kari's Law Act of 2015**

Multi-Line Telephone Systems (MLTS) serve multiple telephone users at a single site, often an office building, hotel, university campus, or similar locations. One common feature of MLTS is the configuration requiring a user to dial a digit or prefix to reach a number outside of the system—that is, dial “9” before reaching an outside line. When an emergency call is placed from a MLTS phone, the user may still have to dial the prefix to direct the call outside of the system.

In December 2013, Kari Hunt was killed by her estranged husband in a motel room in Texas. Her daughter repeatedly attempted to dial 9-1-1 from the motel room, but was unable to reach emergency responders because the motel's MLTS required users to dial “9” to reach an outside line. Kari's Law seeks to ensure that this confusion does not prevent others from accessing essential emergency services from an MLTS phone. While many hotels and office buildings have begun to make this change to their systems, this bill would make it a universal requirement.

H.R. 4167 would require that all MLTS have a default configuration that allows users to directly dial 9-1-1, without the need for any additional digit or prefix, from any phone with dialing facilities. In addition, the system must also be configured to notify a central location at the system's facility when someone initiates a call to 9-1-1 using the system. By notifying a central point of contact within the facility, emergency responders are better able to access, locate, and assist a caller who initiates a 9-1-1 call within the MLTS.

**C. H.R. 4884, Controlling the Unchecked and Reckless Ballooning of the Lifeline Fund Act (CURB Lifeline)**

The Universal Service Fund (USF) consists of four sub-funds, one of which is the low-income support known as Lifeline. This subsidy provides a monthly discount of \$9.25 for either wireline or wireless connectivity, for voice and data service, to those who qualify. The program began in 1985 as a way to help cover increases in local phone service rates experienced by low-income consumers after the divestiture of AT&T. Under the program, companies provide discounts to low-income households for telephone service and are in-turn supported by funds from the USF. The Lifeline program has grown significantly since its inception. In 2005, following Hurricane Katrina, Lifeline subsidies became available for prepaid wireless phone service, and in 2012, the Commission took steps to assess the inclusion of broadband service into the Lifeline program.<sup>4</sup> The FCC's 2012 Order included reforms to address the waste, fraud, and abuse caused in part by the inclusion of prepaid wireless service to the program and the lack of internal program controls. Although the same order indicated that the Commission would be able to determine a budget by 2013, the Lifeline program is the only portion of the USF that operates outside of a budget and without a cap.<sup>5</sup>

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<sup>4</sup> FCC 12-11 (2012).

<sup>5</sup> Id.

After the conclusion of a broadband pilot program established by the 2012 Order, the Government Accountability Office (GAO) issued a report indicating that the pilot program faced significant problems.<sup>6</sup> The problems included low enrollment as well as the lack of a needs assessment and evaluation plan.<sup>7</sup> Despite these problems, the FCC issued a Second FNPRM in June of 2015 seeking comment on, among other things, expanding Lifeline to include access to broadband services and whether to set a budget for the program.<sup>8</sup> In March 2016, the Commission adopted an order that expanded the program to include broadband, as well as setting a soft budget of \$2.25 billion, in addition to other reforms to the program.<sup>9</sup>

This legislation would reform the Lifeline fund through a statutory cap of \$1.5 billion, prohibition on the use of the subsidy for devices, and an elimination of the subsidy for voice-only mobile service. This achieves the dual goals of controlling spending and better targeting the subsidy towards modern services.

#### **D. H.R. 4111, Rural Health Care Connectivity Act of 2015**

In 1997, the FCC implemented the directives of the Telecommunication Act of 1996 (the Act) by creating the Rural Health Care Program (RHCP) funded by the Universal Service Fund. The program provided subsidies to public and non-profit rural health care providers to offset the costs of telecommunications services and Internet services. Under the Act, eligibility for funding under the RHCP is limited to public or non-profit entities.

The 2010 National Broadband Plan (NBP) observed a health IT broadband connectivity gap particularly in rural areas, notwithstanding the RHCP. Among other things, the NBP recommended various reforms to the RHCP, including that the FCC re-examine the interpretation of “health-care provider” in light of developing trends in the provision of healthcare.<sup>10</sup>

In 2012 the FCC created the Healthcare Connect Fund to reform, expand, and modernize the RHCP.<sup>11</sup> Although the FCC acknowledged that Skilled Nursing Facilities (SNF) provide some of the “same post-acute services that are traditionally provided at hospitals,” it also determined that it could not conclude whether or under what circumstances a SNF might qualify as a health care provider under the Act.<sup>12</sup> However, the FCC did establish a pilot program to test

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<sup>6</sup> GAO, *Telecommunications: FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program*, GAO-15-335 (March 2015).

<sup>7</sup> *Id.*

<sup>8</sup> FCC 15-17

<sup>9</sup> [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0404/DOC-338676A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0404/DOC-338676A1.pdf)

<sup>10</sup> See National Broadband Plan at 216 available at <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>.

<sup>11</sup> See available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-12-150A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-150A1.doc)

<sup>12</sup> *Id.* at pp 138-139 paras 345-356.

how to support broadband connectivity to non-profit skilled nursing facilities.<sup>13</sup> In 2014, the FCC announced it was deferring the SNF pilot program.<sup>14</sup>

H.R. 4111 expands the statutory definition of “health care provider” under section 254 of the Act to include skilled nursing facilities. As a result, such facilities will be eligible for support under the program.

#### **E. H.R. 4190, Spectrum Challenge Prize of 2015**

The growing use of mobile broadband has caused the demand for wireless connectivity to increase at an astounding rate. Consumer expectations for high-speed and seamless Internet connectivity have created a tremendous amount of pressure to increase spectrum efficiency. H.R. 4190, the Spectrum Challenge Prize Act of 2015 was introduced by Representative Matsui to address this growing demand. The legislation would authorize a competition for technology that improves spectrum efficiency and is capable of cost-effective deployment. The bill authorizes the Department of Commerce to enter into an agreement with a private or nonprofit entity to administer the competition and award a winner up to \$5 million in prize compensation.

#### **F. H.R. 3998, Securing Access to Networks in Disasters Act**

Hurricane/Superstorm Sandy hit the Caribbean and Northeastern United States in late October 2012. The storm developed into the largest Atlantic Hurricane on record, causing estimated damages of \$74 billion in the U.S. Damage to power and communications infrastructure was particularly severe, leading to disruption and unavailability of communications services including cellular and landline telephones, television, and broadband services for extended periods. Lack of service threatened the delivery of public safety communications and emergency response services.

The proposed legislation is intended to improve the resiliency of communications systems to avoid a recurrence of the widespread and extended service disruptions experienced in the wake of the storm. Among other things, the bill requires the FCC to begin proceedings on the provision of roaming agreements between mobile service providers to: (1) allow for mobile service at reasonable rates during emergencies when there is a mobile service outage lasting longer than 24 hours, and (2) provide for roaming agreements at no charge for communications during emergencies to or from 911 services—permitting consumers to use their cell phones on other carriers’ networks if their own network goes down. The bill also requires the FCC to create a master point of contact directory for communications between public safety answering points and telecommunications service providers; to submit a study on mobile service providers supplying outage data to public safety answering points and on making Wi-Fi access points

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<sup>13</sup> *Id* at 99139-141 paras. 347-350.

<sup>14</sup> *See* Wireline Competition Bureau Announces Deferral of the Skilled Nursing Facility Pilot Program Pending Commission Consideration of Rural Healthcare Broadband Proposals, Public Notice, February 19, 2014 *available at* . [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-14-223A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-14-223A1.pdf)

available to the public for 911 services during emergencies. The bill requires the Government Accountability Office to report on the resiliency of telecommunications networks power utility during emergencies. The bill also requires the Federal Emergency Management Agency (FEMA) to allow service providers access to relevant locations and resources to restore service.

**G. H.R. 2031, Anti-Swatting Act of 2015**

“Swatting” – using fake caller ID information when calling emergency services in order to trigger a response from law enforcement, is a growing problem as technology makes it easier to manipulate that information. Typically in swatting crimes, a caller will falsify the information that is displayed to public safety answering point dispatchers and claim that an emergency is taking place at an address not their own. Law enforcement will respond to the emergency call, catching the residents of that address unaware, and often putting both law enforcement and the residents in danger.

While current law prohibits swatting,<sup>15</sup> this legislation would create enhanced penalties for those who violate the statute, including fines and imprisonment. H.R. 2031 directs the court to order anyone convicted of the violation to reimburse law enforcement, government agencies, and any private organization that responds to a swatting call with emergency services for any expenses incurred.

**IV. STAFF CONTACT**

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

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<sup>15</sup> 47 U.S.C. 227(e)