



The Committee on Energy and Commerce

Memorandum

December 10, 2013

To: Members, Subcommittee on Communications and Technology

From: Majority Committee Staff

Subject: Hearing on “Oversight of the Federal Communications Commission”

The Subcommittee on Communications and Technology will hold a hearing Thursday, December 12, 2013, at 10:00 a.m. in 2123 Rayburn House Office Building entitled “Oversight of the Federal Communications Commission.” One panel of witnesses will testify.

I. WITNESSES

1. Chairman Tom Wheeler
2. Commissioner Mignon Clyburn
3. Commissioner Jessica Rosenworcel
4. Commissioner Ajit Pai
5. Commissioner Michael O’Rielly

With the October 29, 2013, confirmation of Chairman Wheeler and Commissioner O’Rielly, the Federal Communications Commission (FCC) is back to a full complement of five commissioners. This will be the first hearing with the full commission since these appointments. What follows is a summary of some of the major issues that may arise at the hearing.

II. ISSUES

Commercial Spectrum Auctions. Last year, this Committee’s efforts to make additional spectrum available to meet the exploding demand for wireless Internet service were realized in the spectrum provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). Among other things, those provisions require the FCC to auction 65 MHz of particular spectrum by February 2015 and authorize the FCC to conduct incentive auctions through September 2022, including a special, one-time incentive auction of broadcast television spectrum. The FCC began the implementation of the broadcast incentive auction in September 2012 with a Notice of Proposed Rulemaking to initiate the proceeding and develop a record. A second round of public comment ended in February 2013. The FCC issued a Public Notice in May 2013, seeking comment on several possible band plans for the reclaimed television spectrum. Most recently, Chairman Wheeler stated that although the broadcast incentive auction is among his top priorities, the Commission will aim for an auction in 2015, one year later than Chairman Genachowski’s planned timeline.

Several fundamental implementation questions about the broadcast incentive auction remain unanswered, including broadcast station valuation and border coordination. Additionally, it remains unclear how the FCC intends to craft auction rules that comport with the changes made to the Communications Act by the Spectrum Act. The incentive auction legislation prohibits the FCC from preventing participation in the auction if an interested bidder complies with the statutory

requirements. However, some commenters are advocating for auction rules that would restrict the ability of certain bidders to participate in the incentive auction based on the amount of spectrum that is currently licensed to the bidder. The Department of Justice submitted an *ex parte* letter to the Commission in May 2013, urging it to take certain competitive and technical considerations into account when designing auctions, including the relative concentration of spectrum licenses below 1 GHz. In response, Chairman Upton, Subcommittee Chairman Greg Walden, and others sent a letter to the Commission urging the FCC to follow the language of the act and to ensure that spectrum vacated by broadcasters is “available to any qualified bidder.”

Government Spectrum. The Spectrum Act also included provisions to amend the Commercial Spectrum Enhancement Act (CSEA) to improve the process of coordinating the relocation of Federal spectrum users in order to clear and auction spectrum to commercial users. On November 25, 2013, NTIA announced that the Department of Defense (DoD) had entered into a public-private partnership agreement providing for the relocation of its communications systems out of the 1755-1780 MHz spectrum band, freeing up this spectrum for commercial purposes. This development was the result of bipartisan committee leadership working with the DoD, NTIA, and the FCC as well as significant work by the private sector stakeholders.

Additionally, the Energy and Commerce Committee will mark up legislation bill on December 10 and 11, 2013, amending the CSEA to provide Federal users an additional option for relinquishing spectrum for commercial auction. The legislation would allow Federal users to relinquish spectrum and receive a percentage of the auction proceeds to be used for relocation or to offset budget sequestration.

Universal Service. In 2010, the FCC began a proceeding to reform and modernize the programs supported by the universal service fund. In November of 2011, the FCC issued an order reforming the distribution of universal service subsidies to carriers in high-cost and rural areas of the country and expanding the program to support broadband. As reforms and modernization steps have been implemented and proposals discussed, the overall size of the fund has grown to nearly \$9 billion in 2012. On July 12, 2013, Subcommittee Chairman Walden sent a letter to the FCC advocating the implementation of a cap on the overall fund at current levels, as well as referral of expansion proposals to the Federal-State Joint Board on Universal Service. Additionally, significant concern remains regarding the impact of the use of Quantile Regression Analysis to determine high-cost support for rural rate-of-return carriers and the resulting negative effect on broadband investment in rural America. This concern is aggravated by the widely-recognized need for comprehensive corrective action and the long delay in Commission action on waivers sought by many of these companies for relief in the interim.

In January 2012, the FCC implemented a number of reforms and took steps to modernize the universal service lifeline program, including steps to address potential waste, fraud, and abuse in the program. The program has grown from \$800 million in 2009 to \$2.2 billion per year in 2012. In April of 2012, the FCC released a notice of proposed rulemaking (NPRM) seeking comment on how to reform assessment of contributions to the Universal Service Fund. The Commission has yet to act on the proposals in the NPRM.

In addition, the Administration has called on the FCC to modernize and leverage its existing E-Rate program, supported by the Universal Service Fund, to connect 99 percent of America’s students to the Internet through high-speed broadband and high-speed wireless within five years.

The Commission issued an NPRM initiating a review and further update of the E-Rate program including implementation of the proposal.

FCC Reform. FCC process reform has been an on-going priority of the Subcommittee. A number of bills aimed to minimize the potential for procedural failings and abuse, and to improve agency transparency, efficiency, and accountability have been considered. The FCC Consolidated Reporting Act of 2013 passed the House by unanimous vote in September. The legislation consolidates eight separate FCC reports into a single comprehensive report with a focus on intermodal competition, deploying communications capabilities to unserved communities, and eliminating regulatory barriers. By consolidating these reports and eliminating twelve others, the reporting burdens on the FCC would be reduced while encouraging the agency to analyze competition in the marketplace as a whole rather than based on archaic regulatory silos. The bipartisan bill is awaiting Senate action.

On December 10 and 11, 2013, the Energy and Commerce Committee will mark up process reform legislation that directs the Commission to conduct a rulemaking and an inquiry into several procedural issues, with the goal of improving transparency and accountability within the FCC. In addition, the proposed legislation sets out statutory requirements for agency rulemakings. While former Chairman Genachowski made progress in improving some aspects of FCC process, more needs to be done. Chairman Wheeler has acknowledged this fact. In one of his first actions as Chairman, he identified process reform as a priority and directed one of his special advisors to head a temporary working group and submit a report on FCC reform by January 4, 2014.

IP Transition. The “IP transition” consists of the retirement of legacy systems that use a protocol called time division multiplexing (TDM), replaced with IP-based, packet-switched networks. IP networks provide many benefits to consumers and businesses over legacy TDM systems in terms of speed, capacity, and other valuable efficiencies. There has been debate over the regulatory treatment of these new networks within a statutory framework that is premised on monopoly control of the telephone network and the delivery of voice services. Incumbents argue that their IP and fiber deployments should remain free from title II obligations, which are generally applied to legacy systems, as well as the obligation to maintain older, potentially duplicative systems. CLECs, State PUCs, and some in the public interest community argue that the transition to IP and current market conditions do not vitiate the need for title II regulation of ILEC networks, but rather validate them. These parties contend that absent the provisions of title II, competition would be compromised and consumers would be deprived of its benefits. Finally, public interest groups and State PUCs are concerned with how consumer issues will be impacted by the IP transition, including 9-1-1 service, consumer protection, and network reliability in times of emergency.

In December of 2012, the Commission formed the Technology Transitions Policy Task Force to develop policy recommendations on the evolution of network protocols, including TDM to IP. On November 19, 2013, Chairman Wheeler announced that the Task Force will present a status update on its work at the December 12th FCC agenda meeting and the “expectation” that the January 2014 FCC meeting will include consideration of an order that, among other things, will include recommendations to the FCC on how best to structure and evaluate IP transition trials.