



January 8, 2016

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Hearing on “A Legislative Hearing on Four Communications Bills”

I. INTRODUCTION

The Subcommittee on Communications and Technology will hold a hearing Tuesday, January 12, 2015, at 10:15 a.m. in 2123 Rayburn House Office Building entitled “A Legislative Hearing on Four Communications Bills.”

II. WITNESSES

- Ms. Elizabeth Bowles, President & Chair of the Board, Aristotle, Inc. (on behalf of Wireless Internet Service Providers Association);
- Mr. Harold Feld, Senior Vice President, Public Knowledge; and,
- Hon. Robert McDowell, Partner, Wiley Rein LLP and Senior Fellow, Hudson Institute.

III. BACKGROUND AND SUMMARY OF LEGISLATION

On Tuesday, the Subcommittee will review four bills – (1) H.R. 2666, which ensures that the Federal Communications Commission (FCC) must forbear from regulating 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 ISPs from enhanced transparency requirements for broadband Internet access service providers; (3) H.R. 2669, to prohibit the use of text messages and Voice over Internet Protocol services in spoofing efforts; and (4) 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 and enforcement authorities. 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 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[.]” 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 Open Internet Order (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.”

Unfortunately, it became clear once the text of the Order was released that forbearance 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. However, 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. Through this authority, the FCC can engage in after-the-fact ratemaking by using enforcement decisions to define the contours of 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 place in statute 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

The FCC’s 2015 Open Internet Order included enhanced transparency requirements for broadband Internet access service providers. 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 members of the Small Business Committee 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. 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 December 2015 expiration of the temporary exemption, 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. 2669, the Anti-Spoofing Act of 2015

Spoofing is a practice in which a phone number shown on a phone or caller identification device is deliberately falsified, often to portray an official entity such as a government agency or credit card company, typically with malicious intent. Spoofing is a commonly used tool for a number of illegal practices, including phishing for personal information and “swatting” – calling in a fictitious crime in progress in order to generate a police response.

The original Truth in Caller ID Act of 2009 prohibits spoofing voice caller identification. However, as communications methods and consumer habits continue to evolve, so too do the attempts by third parties to fraudulently gain personal information for criminal use. Many Americans are now relying on text messaging to stay connected, and this method of communication has become a target for spoofing in much the same way voice calls have been for years. H.R. 2669 extends the provisions of the Truth in Caller ID Act to include text messaging as well as Voice over Internet Protocol services. The legislation, introduced by Rep. Barton, Rep. Lance, and Rep. Meng, also addresses the growth of services that allow users to knowingly transmit misleading or inaccurate caller identification information by adding a definition of “spoofing service” to the Truth in Caller ID Act.

D. 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 communications equipment are currently prohibited by FCC regulations. H.R. 1301 idirects 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.

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.