

Testimony of Scott Bergmann
Vice President, Regulatory Affairs
CTIA

on

Legislative Hearing on Seven Communications Bills

Before the House Energy & Commerce
Subcommittee on Communications & Technology

April 13, 2016



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Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, thank you for the opportunity to participate in today's panel on a number of pending bills that will impact the wireless industry. On behalf of CTIA®, I am pleased to have the opportunity to provide input on several of these initiatives, including:

- H.R. 3998, Representative Pallone's Securing Access to Networks in Disasters Act;
- H.R. 4190, Representative Matsui's Spectrum Challenge Prize Act;
- H.R. 4884, the CURB Lifeline Abuse Act; and
- H.R. 4889, the Kelsey Smith Act.

CTIA appreciates the Subcommittee's continued interest in wireless policy and efforts to keep Americans safe and connected, while encouraging further innovation and investment in the world's most vibrant wireless marketplace.

H.R. 3998, the Securing Access to Networks in Disasters Act

CTIA has a long history of working with this Committee to address public safety and emergency preparedness. From the Wireless Communications and Public Safety Act of 1999 (P.L. 106-81) that made 911 the universal emergency assistance number, to the 2006 WARN Act (P.L. 109-347) that helped produce the Wireless Emergency Alert program, and more recently the 2012 Middle Class and Tax Relief Act (P.L. 112-96), which gave birth to FirstNET, we have partnered with you to help keep Americans safe.

It is in that vein that we have evaluated H.R. 3998, offered by the Committee's Ranking Member. The district he represents suffered great damage from Super Storm Sandy, and it is the lessons from that experience that spurred the SANDy Act.

I am pleased to report that the introduction of Representative Pallone's legislation, and corresponding interest in resiliency on the part of Chairman Wheeler and the Federal Communications Commission, encouraged a meaningful industry dialogue about what can be done to ensure that consumers are well-served when the need for connectivity might be most acute. These discussions have focused on the education of end-users,

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the need for flexibility - as one disaster is not necessarily like the next - and mutual or reciprocal assistance among wireless providers where appropriate. On the first point, CTIA has created a variety of consumer education tools aimed at helping consumers be better prepared when disaster strikes. To appeal to the industry's wide-range of consumers, these tools include TV-based public service announcements, informational pamphlets, and social media tools ranging from YouTube videos to Tweets. We continue to investigate new and effective ways to improve consumer preparedness for disasters and emergency situations. On the industry-side of the equation, our discussions lead us to believe that improved industry collaboration and mutual aid arrangements will facilitate greater network resiliency and faster restoration of service in instances where outages occur. Carriers are making progress toward a framework that will address many of the elements included in H.R. 3998, including making sure public safety answering points and critical public safety personnel can contact wireless providers about service and restoration status; engaging with local governments to enhance municipal preparedness; and providing flexibility for wireless providers to assist one another through roaming or mutual aid where feasible.

Given this progress, we do not consider new legislative or regulatory actions necessary, but we absolutely thank and commend Representative Pallone for his leadership in this area, through which he is fostering enhanced industry practices that will benefit all Americans. These practices, reflecting lessons learned from Super Storm Sandy and other disasters, will help keep us all safe and connected during the next storm.

H.R. 4190, the Spectrum Challenge Prize Act

CTIA supports H.R. 4190, the Spectrum Challenge Prize Act. CTIA's members are doing all they can in the research and development space to improve spectral efficiency, and as America's wireless industry has led the way from 3G to 4G, spectral efficiency has improved substantially.¹ Nonetheless, with demand for mobile broadband services

¹ See Coleman D. Bazelon and Giulia McHenry, "Substantial Licensed Spectrum Deficit (2015-2019): Updating the FCC's Mobile Data Demand Projections," June 2015, at 13-15.

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continuing to increase rapidly, more progress is needed. A challenge program such as that proposed by Representative Matsui may incentivize work that may help advance the state of spectrum-based technologies, where breakthroughs can advance the interests of consumers and our economy.

In addition to spurring additional technological work aimed at improving spectral efficiency, H.R. 4190 helps highlight that we need to be doing all we can to address rising consumer demand for spectrum-based services. A holistic approach to wireless policy demands not only a focus on efficiency, but also a continued commitment to streamlining the process for deploying network infrastructure, as well as the identification and introduction of additional licensed and unlicensed spectrum into the commercial marketplace. CTIA commends the Subcommittee for its work to expedite the deployment of communications infrastructure on Federal properties and its approval of H.R. 1641, the Federal Spectrum Incentive Act. I also want to note the FCC's efforts to examine and make available spectrum in bands above 24 Gigahertz, which may be particularly helpful as we evolved toward the deployment of 5G services. It is vitally important for the Commission to deliver on its commitment to adopt rules this summer to bring that high-band spectrum to market and we ask for your help in ensuring that happens on schedule. Collectively, these initiatives and H.R. 4190 contribute to the sort of comprehensive spectrum policy approach that is necessary if the United States is to retain its world leadership in advanced wireless services.

H.R. 4884, the CURB Lifeline Act

As explained in our response to the Committee's #CommActUpdate White Paper on "Universal Service Policy and the Role of the Federal Communications Commission," CTIA's views on universal service policy are informed by two main points: First, that all Americans should have access to high-quality communications services at just and reasonable rates; and second, that our universal service policies should be competitively and technologically neutral and recognize how consumers actually use

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communications services, including their increased reliance on wireless services. Against this backdrop, we have several concerns with H.R. 4884.

CTIA believes that a well-designed Lifeline program, with appropriate safeguards and incentives for efficiency, can play an important role in meeting Congress' directive to connect low-income consumers to critical communications services. Given that almost half of all U.S. households are wireless-only – and the shift to mobile services is even more prevalent among low-income Americans² – Lifeline should enable low-income consumers to choose wireless services to meet their occupational, educational and public safety needs.

The wireless industry has a strong incentive to ensure that the Lifeline program is efficient and free from waste, fraud or abuse because wireless consumers and providers bear almost 50% (about \$4 billion annually) of the total contribution burden to support the \$8 billion Federal universal service high-cost, E-Rate, rural health and Lifeline programs.

While CTIA appreciates the interest some have expressed in limiting the size of the Lifeline program through a cap on the total amounts that may be distributed, CTIA believes that capping the Lifeline program may be counterproductive to encouraging low-income consumers to adopt communications services that are essential to participation in today's economy. A cap on the Lifeline program will inherently exclude an undetermined number of the eligible low-income consumers. Because the Lifeline program provides support only to means-tested recipients and serves a purpose more akin to other low-income government programs that are not subject to caps, it is reasonable to distinguish Lifeline from other Federal USF programs that are appropriately subject to a cap.

If the Subcommittee nevertheless chooses to adopt a cap, the Subcommittee should consider that, in order to serve low-income consumers, participating providers require a predictable and consistent level of support that reflects the market realities of meeting

² CDC Wireless Substitution: Early Release Estimates from the National Health Interview Survey, January – June 2015, released December 2015.

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the FCC's recently adopted minimum service standards. Also, in recognition that a statutory cap may be difficult to change even if economic or market circumstances warrant such alteration, the statutory cap should be sufficiently flexible to periodically adjust based on any potential demand balanced with market realities.

In considering the appropriate funding levels for federal universal service programs, the Subcommittee should more generally consider whether it is time for a fundamentally different approach to the way the entire universal service regime is funded. A continually increasing contribution factor puts pressure on the affordability of communications services to consumers generally and exacerbates inter-industry subsidies that occur under the current system. CTIA is increasingly concerned that the Federal universal service contribution burden falls mainly on wireless consumers and providers, while more than 75% of the total \$8 Billion Federal universal service program primarily supports non-wireless services. Thus the Subcommittee may wish to consider whether it would be appropriate to transition the entire universal service program to a general revenues model and the appropriations process, as suggested in our #CommActUpdate response.

CTIA also is concerned that, by mandating the phase-out of mobile voice-only service within two years of enactment, H.R. 4884 would reverse a long-standing commitment to competitive and technological neutrality and eliminate the most efficient and effective communications services available to low-income consumers. In the lead up to the FCC's recent Lifeline Reform Order, a broad consensus of consumer advocates, state and federal policymakers and industry agreed that Lifeline support for mobile wireless voice services remains essential for low-income consumers. Given the millions of low-income consumers relying on wireless voice services to reach critical 9-1-1 emergency communications, our universal service policy should not be biased in favor of any particular technology or service.

Moreover, mandating the elimination of mobile wireless voice-only service presumes that broadband services are the most efficient services to meet the needs of all low-

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income consumers today. CTIA supports expanding eligible Lifeline services to include broadband services. However, given the significant private investments required for robust broadband deployment, particularly to maintain U.S. global leadership in mobile wireless broadband, it remains to be seen whether the Lifeline program can effectively and efficiently put affordable broadband services within reach for eligible low-income consumers. Given the current subsidy structure, eligible low-income consumers, not policymakers, should choose where to direct that limited support.

Accordingly, CTIA respectfully recommends eliminating the proposed 254A(a) and 254A(c) provisions and the corresponding provisions of Section 2(b) from the bill.

H.R. 4889, the Kelsey Smith Act

With the addition of one critical provision, CTIA supports H.R. 4889, the Kelsey Smith Act. The addition we urge is the inclusion of clear, unambiguous language to ensure that any carrier complying with the Act is protected from civil or administrative liability. Toward this end, CTIA urges the Subcommittee to adopt language identical to that which was included in the version of the Kelsey Smith Act reported by the Energy & Commerce Committee during the 113th Congress. Adoption of appropriate liability protection language will ensure that the amended version of Section 222 contains an analog to the language of 18 USC 2703(e), the other provision of Federal law which could be invoked in a situation involving immediate danger of serious bodily injury or death, the standard for disclosure included in Title 18 and the proposed legislation. Carriers that comply with law enforcement requests for assistance pursuant to either Title 18 or the terms of H.R. 4889 should be fully protected from after the fact second-guessing from courts and regulatory agencies.

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Thank you again for the opportunity to testify today. I look forward to any questions you may have.