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

July 23, 2018

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Hearing entitled "Oversight of the Federal Communications Commission."

I. INTRODUCTION

The Subcommittee on Communications and Technology will hold a hearing Wednesday, July 25, 2018, at 1:00 p.m. in 2123 Rayburn House Office Building. The hearing is entitled "Oversight of the Federal Communications Commission."

II. WITNESSES

- Ajit Pai, Chairman, Federal Communications Commission;
- Michael O'Rielly, Commissioner, Federal Communications Commission;
- Brendan Carr, Commissioner, Federal Communications Commission; and,
- Jessica Rosenworcel, Commissioner, Federal Communications Commission.

III. BACKGROUND

The Federal Communications Commission (FCC) is an independent agency established pursuant to the Communications Act of 1934 (Act) to regulate interstate and international communications by radio, television, wire, satellite, and cable. The agency is comprised of five Commissioners, appointed by the President and confirmed by the Senate.[1] At present, the agency has four sitting Commissioners, with the fifth Commissioner pending full Senate confirmation. The agency currently has approximately 1,450 full time employees.

In March 2018, Congress reauthorized the FCC for the first time since 1990, appropriating $333,118,000 for fiscal year 2019 and $339,610,000 for fiscal year 2020 to carry out the functions of the agency.[2] This reauthorization effort, passed in RAY BAUM'S Act as Division P of the Consolidated Appropriations Act for Fiscal Year 2018 (FY18) (P.L. 115-141), was a bipartisan, bicameral agreement that included provisions from 18 bills by Committee members.

[1] Communications Act of 1934, 47 U.S.C. §154.
[2] P.L. 115-141.

IV. SELECTED ISSUES

A. Public Safety

One of the core statutory functions of the FCC is to promote, public safety through the use of wire and radio communication.[3] As part of this mission, the FCC plays an important role in making sure broadcasters and emergency alerting technologies effectively warn the public of impending emergencies as well as assisting in the recovery of communications networks following disasters.

Recent Congressional efforts have helped strengthen the FCC's ability to respond to disasters such as hurricanes. For example, H.R. 588, Securing Access to Networks in Disasters Act, as introduced by Ranking Member Frank Pallone and included in RAY BAUM'S Act, calls for the FCC to report on the public safety benefits, technical feasibility, and cost of making Wi-Fi access points and other unlicensed spectrum technologies available to the public in times of a disaster. This is in addition to efforts already undertaken by the FCC. Following the aftermath of Hurricanes Harvey, Irma, and Maria in 2017, the FCC provided support to rebuild infrastructure and restore critical communications services in Texas, Florida, and Puerto Rico, with additional support directed to communications networks in Puerto Rico and the U.S. Virgin Islands which were particularly impacted by hurricanes.[4]

Emergency Alert System

The Emergency Alert System (EAS) is the nation's primary alerting system to warn the public of impending emergencies. The system currently requires broadcasters, cable television systems, wireless cable systems, satellite digital audio radio service providers, and direct broadcast satellite (DBS) providers to provide communications capability to allow the President to address the American public during a national emergency.[5] Online and social media networks are increasingly being utilized by local, state and federal authorities, but do not fall under the EAS.[6] In its more familiar form, EAS is used to distribute emergency alerts issued by state and local governments and weather alerts issued by the National Weather Service (NWS). The Federal Emergency Management Administration (FEMA) in partnership with the FCC and National Oceanic and Atmospheric Administration (NOAA), is responsible for operating and maintaining EAS at the federal level.

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[3] Communications Act of 1934, 47 U.S.C. §154.
[4] *Uniendo a Puerto Rico and the Connect USVI Fund Rulemaking, et al.*, Order, Notice of Proposed Rulemaking, FCC 18-57 (2018), *available at* https://docs.fcc.gov/public/attachments/FCC-18-57A1.docx.
[5] Originally conceived at a time "when over-the-air broadcasting was the best-available technology for widely disseminating emergency alerts[.]," the inclusion of cable services, digital radio and DBS reflect upgrades in response to changing consumer consumption patterns and innovations in technology. *See Emergency Alerting, Capabilities Have Improved, but Additional Guidance and Testing Are Needed*, United States Government Accountability Office, GAO-13-375, April 2013, *available at* https://www.gao.gov/assets/660/654136.pdf.
[6] *See*, https://www.fema.gov/news-release/2018/04/16/social-media-and-emergency-preparedness

There are two general delivery mechanisms that the FCC oversees in cooperation with FEMA to deliver these warnings: 1) EAS, a broadcast-based national public warning system for the delivery of alerts; and, 2) Wireless Emergency Alerts (WEA), a system for the delivery of emergency alerts to mobile devices.[7]

In 2016, the FCC modernized WEA.[8] In that order, the FCC increased the maximum alert message length from 90 to 360 characters; created a new alert message classification for "Public Safety Messages;" required participating providers to support embedded references (i.e., URLs and phone numbers); required participating providers to support transmission of Spanish-language alert messages; and required participating providers to narrow their geographic targeting (geo-targeting) of alert messages.

Just this month, the FCC further improved the reliability of EAS. In an order adopted on July 12, 2018, the FCC established procedures for authorized state and local officials to conduct "live code" tests of the Emergency Alert System to help train officials and the public about how to respond to actual alerts.[9] The order also allows for authorized public service announcements to further educate the public, while establishing safeguards to help prevent false alerts and account for any such false alerts. The FCC, in coordination with FEMA, will host an emergency alerting webinar on July 25, 2018 to share these important updates with broadcasters, multichannel video programming distributors, wireless service providers, state and local emergency managers, and other emergency alert and warning stakeholders.[10]

9-1-1 and Next Generation 9-1-1

To honor the 50th anniversary of the first 9-1-1 call, Congress and the FCC, in cooperation with the National Telecommunications and Information Administration (NTIA), have been working to improve 9-1-1 and Enhanced 9-1-1 (E911) services and facilitate the transition to Next Generation 9-1-1 (NG911). Improvements to 9-1-1 caller information were incorporated into RAY BAUM's Act as a follow up to Kari's Law Act, which enabled 9-1-1 calls from multi-line telephone systems (MLTS). Under this provision, the FCC is to conclude a proceeding within 18 months that provides that call location information is conveyed with a 9-1-1 call, regardless of the platform used, including MLTS. This provision was based on legislation from the 114th Congress by Congresswoman Eshoo,[11] and was a follow-up to legislation by

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[7] *In the Matter of Wireless Emergency Alerts, Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-91, PS Docket No. 15-94, Notice of Proposed Order and Further Notice of Proposed Rulemaking, (2016) *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-127A1.pdf.
[8] *Id*.
[9] *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order and Further Notice of Proposed Rulemaking, FCC 18-94 (Jul. 2018), *available at* https://www.fcc.gov/document/fcc-promotes-emergency-alert-reliability-0.
[10] *See*, https://docs.fcc.gov/public/attachments/DA-18-722A1.doc
[11] *See*, https://eshoo.house.gov/issues/telecommunications/eshoo-introduces-bill-to-improve-location-accuracy-for-9-1-1-calls/

Congressman Shimkus, the Next Generation 9-1-1 Advancement Act. This legislation was ultimately enacted into law in the Middle Class Tax Relief and Job Creation Act of 2012.[12]

Funding for 9-1-1 service is primarily handled at the state and local level, generally through monthly line item charges on wireline and wireless bills. In 2016, $2.76 billion was collected by states through these charges.[13] Unfortunately, a number of states have diverted these funds for other purposes. According to the FCC, over $128 million, or approximately 5 percent of the total collected, was diverted for purposes other than 9-1-1.[14] Furthermore, the primary authority over Public Safety Answering Points (PSAPs) lies with state and local authorities. As a result, oversight and decision-making is diffuse. Some state statutes require the use of legacy network elements that are not included in NG911 architectures. These barriers, among others, demonstrate that increased funding alone will not ensure the transition to nationwide NG911. A recent update shows efforts to end 9-1-1 fee diversion have had "mixed results" and there is still significant work to be done.[15] The FCC has suggested that success lies in a greater Federal role.[16] Legislation has been introduced by Congressman Chris Collins, the 9-1-1 Integrity Act, directing the FCC to clarify acceptable expenditures for 9-1-1 equipment and services.[17] Others call for the federal government to establish certain databases that support NG911 routing and security to take advantage of economies of scale, reduce costs, and promote the consistent adoption of technical standards nationwide.[18] The Committee has requested a briefing from FCC staff in order to learn more about 9-1-1 fee diversion, the states involved in the practice, and how the action impacts public safety and what may be done to curtail this practice in the future.[19]

Universal Service Fund

The FCC has also employed the Universal Service Fund (USF) as a public safety tool. As discussed above, following the devastating 2017 hurricane season, Chairman Pai advanced USF funds to support rebuilding critical communications services and infrastructure. Specifically, the FCC announced approximately $954 million toward restoring and expanding communications networks in Puerto Rico and the U.S. Virgin Islands.[20]

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[12] P.L. 112-96
[13] *See* Federal Communications Commission Report, *Ninth Annual Report to Congress, On State Collection and Distribution of 911 and Enhanced 911 Fees and Charges*, Dec. 29, 2017, at 3, *available at* https://www.fcc.gov/files/9thannual911feereportpdf.
[14] *Id.*
[15] Hon. Michael O'Rielly, Commissioner, FCC, *Status Update: Fixing 9-1-1 Fee Diversion*, FCC BLOG, Jun. 8, 2018, *available at* https://www.fcc.gov/news-events/blog/2018/06/08/status-update-fixing-9-1-1-fee-diversion.
[16] *See Legal and Regulatory Framework for Next Generation 911 Services,* Report to Congress and Recommendations, Federal Communications Commission, at 3, *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-319165A1.pdf (FCC Report).
[17] *See*, https://chriscollins.house.gov/media-center/press-releases/collins-introduces-legislation-to-address-9-1-1-fee-diversion
[18] FCC Report *at 2.*
[19] *See*, https://energycommerce.house.gov/news/press-release/committee-seeks-update-on-9-1-1-fee-diversion/
[20] *See*, https://docs.fcc.gov/public/attachments/DOC-349583A1.docx

B. USF and Bridging the Digital Divide

Another core part of the FCC's mission is to ensure universal consumer access to reasonably comparable communications services at reasonably comparable rates, otherwise known as universal service. The FCC manages the USF through the Universal Service Administrative Company (USAC), a non-profit corporation designated by the FCC to administer nearly $10 billion in USF funding through four different programs: 1) High-Cost, 2) Rural Health Care (RHC), 3) E-rate (schools and libraries), and 4) Lifeline.

The FCC has prioritized its work on the High Cost Fund in order to close the digital divide and bring the benefits of broadband to all Americans. As discussed at the Subcommittee's hearing on July 17, 2018, entitled "Realizing the Benefits of Rural Broadband: Challenges and Solutions," deploying broadband in rural and economically disadvantaged areas can stimulate investment, jobs, and new opportunities. Also discussed at that hearing and as part of the Committee's ongoing work on the topic, the FCC recently increased funding for the RHC Program by $171 million per year, increasing the cap for the program to $571 million effective immediately.[21] This nearly 43 percent increase in funding represents what the funding level would have been today if the original $400 million cap that was established in 1997 had been adjusted for inflation. Without this action, RHC funding requests would have received a prorated percentage of the requested funding and healthcare providers would have been left having to pay more for service than expected.

In addition to modernizing the funding supporting broadband in remote and high cost areas, recent policy actions by Congress and the FCC strive to remove barriers to broadband deployment for both wireline and wireless infrastructure. The FCC's recent work to eliminate barriers to next-generation wireline networks and services includes streamlining discontinuances to incentivize providers to deploy faster networks while maintaining protections for consumers.[22] To advance wireless infrastructure, particularly in speeding the transition to 5G services, the FCC clarified treatment of small cell deployments and, among other things, excluded small wireless facilities deployed on non-Tribal lands from National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) review.[23]

C. Increasing the Amount of Available Spectrum

Congress and the FCC have worked to make additional spectrum available and expand opportunities for next-generation wireless services in low, mid, and high-band spectrum through a variety of proceedings. Through its Spectrum Frontiers proceeding, the FCC made 1,700 megahertz of additional millimeter wave spectrum above 24 GHz available to help ensure American leadership in 5G wireless services.[24] This high-frequency spectrum will support innovative new uses enabled by fiber-fast wireless speeds and extremely low latency. The FCC

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[21] *See*, https://docs.fcc.gov/public/attachments/FCC-18-82A1.doc
[22] *See*, https://docs.fcc.gov/public/attachments/FCC-18-74A1.docx
[23] *See*, https://docs.fcc.gov/public/attachments/FCC-18-30A1.docx
[24] *See*, https://docs.fcc.gov/public/attachments/FCC-18-73A1.doc

also initiated a new Spectrum Horizons proceeding that would expand access to spectrum above 95 GHz for licensed services, unlicensed operations, and a new class of experimental licenses.[25]

In the Mid-Band Spectrum, the FCC initiated a proceeding seeking comment on ways to expand opportunities for next-generation services, particularly wireless broadband, in 3.7-4.2 GHz, 5.925-6.425 GHz, and 6.425-7.125 GHz. The FCC also completed the auction for new 600 MHz licenses and granted the first licenses from the auction. The FCC explored both the 3.5 GHz Band and 4.9 GHz Band to promote investment, keep up with technological advancements, and maintain U.S. leadership in the deployment of next-generation services. Finally, the FCC considered proposed rules that would more effectively use 2.5 GHz spectrum by increasing flexibility for existing licensees and providing new opportunities for educational entities, rural Tribal Nations, and commercial entities to access unused portions of the band.[26]

D. Combatting Unwanted, Illegitimate Robocalls

The FCC, with support from Congress, has focused consumer protection efforts on combatting unlawful robocalls and malicious caller ID spoofing. RAY BAUM'S Act included H.R. 423, the Anti-Spoofing Act of 2017, as introduced by Congresswoman Grace Meng and co-sponsored by Congressman Leonard Lance and Congressman Joe Barton, which prohibits spoofing calls or texts originating outside the U.S., tasks the FCC with conducting a rulemaking on the subject, requires the FCC to work with the Federal Trade Commission (FTC) to educate consumers on identifying spoofed calls, and directs GAO to conduct a study on fraudulent, misleading, or inaccurate caller ID information. The FCC has also proposed and implemented a variety of policy initiatives to combat these unwanted, illegal calls. In November 2017, the FCC adopted rules to allow telecommunications carriers to block calls from numbers that cannot make outgoing calls.[27] In March 2018, the FCC sought comment on ways to reduce unwanted calls to reassigned numbers through the creation of a database.[28]

Industry has also aided the FCC by providing solutions to the problem by developing a set of procedures to authenticate caller ID information associated with telephone calls and assign these calls a secure, encrypted certificate. The FCC recently accepted these recommendations, so the industry can move forward to quickly establish this industry-developed call authentication system.[29]

In addition to these efforts, the U.S. Court of Appeals for the District of Columbia recently found in *ACA International v. FCC* that aspects of the Commission's most recent interpretation of the Telephone Consumer Protection Act (TCPA) in 2015 were arbitrary and

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[25] *See*, https://docs.fcc.gov/public/attachments/FCC-18-17A1.doc
[26] *See*, https://docs.fcc.gov/public/attachments/FCC-18-59A1.docx
[27] *See*, https://www.fcc.gov/document/fcc-adopts-rules-help-block-illegal-robocalls
[28] *See*, https://docs.fcc.gov/public/attachments/FCC-18-31A1.docx
[29] *See*, https://docs.fcc.gov/public/attachments/DOC-350690A1.docx

capricious.[30] Following *ACA International*, the FCC's Consumer and Governmental Affairs Bureau sought public comment in a Public Notice related to interpretation and implementation of the TCPA.[31] Both public and private sector entities have asked the FCC to clarify the aspects of its 2015 interpretation that were struck down by the court, including reviewing the definition of an automatic dialer and how businesses should treat reassigned numbers.[32]

Furthering these important policy initiatives, in May 2018, the FCC issued a $120 million fine against a massive "neighborhood spoofing" telemarketing operation.[33] This was the largest fine ever imposed by the FCC and is part of the over $200 million in enforcement actions that the FCC has taken against telemarketers for apparent illegal caller ID spoofing.

E. Net Neutrality

On December 14, 2017, the FCC returned Internet regulation back to being classified as an information service subject to Title I.[34] On June 11, 2018, the 2017 order went into effect and Internet service providers are no longer regulated as "common carriers**,**" the regulatory regime designed for a monopoly telephone carrier. Representative Marsha Blackburn has introduced H.R. 4682, the Open Internet Preservation Act, which proposed to codify certain consumer protections that have been enforced by the FCC and is currently the only legislation introduced by a Committee member to amend the Communications Act of 1934 to preserve those protections.

F. Media Regulations

As the media landscape continues to change, the FCC has acted to remove dated media regulations while working with Congress to ensure broadcasters who elected to continue broadcasting following the broadcast incentive auction repack have the ability to do so. RAY BAUM'S Act provided an additional $1 billion to broadcasters to reimburse costs associated with the broadcast incentive auction repack. Of that amount, translators and LPTV stations will have $150 million and FM radio stations will have $50 million available to ensure these stations remain on the air. The repacking process began in April 2017 and will conclude in July 2020.

In 2017, Chairman Pai committed to review outdated media rules applicable to television and radio broadcasters, cable operators, and satellite television providers.[35] Since then, the FCC has taken steps to modernize a variety of regulations. Among those actions, the FCC has eliminated several restrictions on media ownership,[36] repealed a rule requiring radio and

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[30] *ACA Int'l, et al. v. FCC*, 885 F.3d 687 (D.C. Cir. 2018) (affirming in part and vacating in part *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015)).
[31] 47 U.S.C. § 227. The Commission's implementing rules are codified at 47 CFR § 64.1200.
[32] *See*, https://mckinley.house.gov/UploadedFiles/7.10.2018_Final_TCPA_letter_to_FCC_Chairman_Pai.pdf
[33] *See*, https://docs.fcc.gov/public/attachments/FCC-18-58A1.pdf
[34] *See*, https://docs.fcc.gov/public/attachments/FCC-17-166A1.docx
[35] *See*, https://docs.fcc.gov/public/attachments/FCC-17-58A1.docx
[36] *See*, https://docs.fcc.gov/public/attachments/FCC-17-156A1.pdf

television broadcast station to maintain a main studio location in or near its community of license,[37] removed rules requiring certain broadcast and cable entities to maintain paper copies of FCC rules[38] and reduced broadcaster reporting obligations relating to the provision of ancillary or supplementary services.[39] The FCC is also currently considering a variety of proposals, including rules that would eliminate the cable channel lineup requirement;[40] whether to streamline or eliminate certain rules which require the physical posting and maintenance of broadcast licenses and related information in specific locations;[41] whether to update the leased access rules which require cable operators to set aside channel capacity for commercial use by unaffiliated video programmers;[42] and, rules that would modify children's TV programming rules otherwise known as "KidVid."[43] These proposals are offered as actions designed to reflect the modern communications marketplace as previous regimes did not anticipate the rise of social media networks and over-the-top (OTT) streaming services.

G. Transactions

The FCC also reviews transfers of licenses to ensure that the initial assignment and transfer is in the "public interest, convenience, and necessity." Thus, every time a license changes hands or control of a company holding that license changes, the FCC reviews the transaction.

The FCC reviews a few different types of transactions: major transactions and routine applications. Major transactions are significant transactions that present a novel issue of law or policy or proposes a combination of companies likely to have a significant impact on the public and/or will elicit significant public comment. The Commission is currently reviewing several major transactions, including Sinclair/Tribune and T-Mobile/Sprint.[44] On July 18, 2018, the FCC adopted a Hearing Designation Order to resolve issues involving certain divestitures in a hearing in front of an Administrative Law Judge.[45]

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Robin Colwell, Tim Kurth, or Lauren McCarty of the Committee Staff at (202) 225-2927.

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[37] *See*, https://docs.fcc.gov/public/attachments/FCC-17-137A1.docx
[38] *See*, https://docs.fcc.gov/public/attachments/FCC-18-16A1.docx
[39] *See*, https://docs.fcc.gov/public/attachments/FCC-18-41A1.docx
[40] *See*, https://docs.fcc.gov/public/attachments/FCC-18-93A1.docx
[41] *See*, https://docs.fcc.gov/public/attachments/FCC-18-61A1.docx
[42] *See*, https://docs.fcc.gov/public/attachments/FCC-18-80A1.docx
[43] *See*, https://docs.fcc.gov/public/attachments/FCC-18-93A1.docx
[44] *See*, https://www.fcc.gov/transaction/sinclair-tribune; https://www.fcc.gov/transaction/t-mobile-sprint.
[45] *See*, https://www.fcc.gov/document/fcc-approves-sinclairtribune-hearing-designation-order