

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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August 9, 2018

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Pai:

Thank you for appearing before the Subcommittee on Communications and Technology on Wednesday, July 25, 2018, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Thursday, August 23, 2018. Your responses should be mailed to Evan Viau, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Evan.Viau@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Marsha Blackburn
Chairman

Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member, Subcommittee on Communications and Technology

Attachment

Attachment—Additional Questions for the Record

The Honorable Greg Walden

1. Our colleague Congressman Tom Cole, who chairs the House Appropriations Subcommittee on Labor, HHS and Education, sent you a letter recently asking for your assurance that transitioning C-Band frequencies for wireless services would not degrade or impair public radio's programming distribution and public safety function.

As you know, public radio relies on C-Band frequencies to distribute 450,000 hours of programming annually, 80 percent of which is live, to 42 million Americans each week – including in rural and remote areas where citizens rely on their local public radio station because there are few or no alternative sources of news and emergency information. Will you please provide Congressman Cole and our Committee with your plan to protect public radio's satellite-based programming distribution and public safety activities while making more intensive use of the band?

2. Since the oversight hearing, you announced a circulation order to extend the Mobility Fund Phase II challenge process by an additional 90 days. With \$4.53 billion at stake to support 4G LTE service in unserved areas, how can you assure the Committee the extended challenge process will be sufficient to update the map with more reliable data to determine eligible areas?

The Honorable Marsha Blackburn

1. Chairman Pai: I understand the FCC has taken a number of actions to stop unwanted calls from reaching consumers and is looking into this issue through a variety of pending rulemakings. This is another example of the FCC and FTC working together, and I commend all of you for that. Can you give us an update on when we might see additional steps taken from the rulemakings that are currently pending before the FCC?

The Honorable John Shimkus

1. I understand that the National Association of Regulatory Utility Commissioners recently passed a resolution raising concerns regarding the implementation of the National Verifier and the absence of Application Programming Interfaces ("APIs") that allow for automated interaction between consumers, carriers and the National Verifier when consumers are attempting to enroll in Lifeline with carriers. NARUC is concerned that the absence of these APIs will make it unnecessarily difficult for eligible consumers to enroll. I understand you also have a petition before you asking the FCC to address this. I also understand that the National Lifeline Accountability Database already uses similar APIs. Are you are reconsidering reinstating API's as part of the National Verifier and

whether they should be part of the design, and if so, will you complete any decision-making before “hard launch” of the National Verifier?

The Honorable Robert E. Latta

1. What steps have you taken to reduce regulatory burdens for small entities, and what do you have planned for the future?
2. I have over 20 telecommunications companies operating in my district. The majority are small businesses in rural areas that are recipients of USF. I'm concerned that the uncertainty of budget controls in the USF High-Cost program is stifling investment and preventing rural Americans from getting the broadband they deserve. I know the Commission has taken steps to address USF budget shortfalls in some of the programs, but the High-Cost program hasn't had a recent recalibrated budget, or an inflationary factor applied to it. Are you considering addressing the concerns with the High-Cost program in a manner similar to how the FCC has addressed the other USF programs?

The Honorable Brett Guthrie

1. When it comes to describing the Commission's work within global fora such as the ITU or others, what role do you believe the Commission should play as an influential voice on spectrum policy and connectivity? This could be in relation to other U.S. agencies and foreign policy makers or relative to domestic and foreign stakeholders.

The Honorable Gus M. Bilirakis

1. The Final National Verifier Plan reviewed by the Commission and released by the Universal Service Administration Company (USAC) in January 2017 included plans to design application programming interfaces (APIs) both between the National Verifier and state eligibility databases, and between the service providers and the National Verifier to facilitate modern machine-to-machine interaction necessary to ensure efficient and effective enrollment processes for eligible Lifeline subscribers. How does the Commission expect these two verification systems to operate with each other in order to verify an eligible Lifeline applicant? For example, will the applicant be tasked with providing proof of state eligibility to the service provider upon approval (siloed interfaces) or will the two verification systems interact autonomously to prove who a particular applicant is and their eligibility?
2. As a follow up to your testimony during the hearing on the Telephone Consumer Protection Act (TCPA), does the FCC need any additional authority from Congress in order to adequately address issues related to TCPA and robocalls that could enhance your ability to fight bad actors?

The Honorable Bill Johnson

1. Earlier this year, 130 members of the House, including many members of this Subcommittee, sent a letter thanking the FCC for providing additional resources in the Universal Service Fund (USF) High-Cost Program for areas served by smaller rural broadband providers.

While we are very thankful that all of you at the FCC helped to address the USF budget shortfalls in the last fiscal year, a new budget cut took effect last month that will reduce USF support on average by 15.5% – or about \$230 million – over the next 12 months. This budget control keeps growing every year, taking more and more USF support away from companies. Companies that elected model USF support are also not able to deliver on what they had hoped to due to funding shortfalls.

It's my understanding that your agency is taking a fresh look at these budget concerns and trying to address sufficiency in the program.

- a. After having made significant positive changes to the budget of the Rural Health Care Program recently, the High-Cost Program is the only USF program without a recently recalibrated budget or an inflationary factor applied to it. Are you considering addressing the concerns with the High-Cost Program in a manner similar to how the FCC has addressed the other USF programs?
- b. Would any steps you take aim to address sufficiency concerns and provide more support both for those small carriers that adopted model support as well as those that are being hit by the 15% budget control right now?
- c. Can you commit to a vote by the end of this year to address these concerns?

The Honorable Bill Flores

1. The record in the 6 GHz Notice of Inquiry includes studies that show potential interference from unlicensed operations to mission critical communications systems, and there are concerns regarding mitigation strategies to reduce the potential for interference. If the FCC does expand the 6 GHz band to include unlicensed operations, how does the FCC plan to develop technical rules and implement mitigation capabilities to protect incumbent mission critical communications against interference?

The Honorable Susan W. Brooks

1. Bridging the digital divide in rural areas remains a challenge, particularly regarding wireless connectivity. Since deployments by Educational Broadband Service (EBS)

licensees and leasing partnerships with small wireless operator have been successful in delivering wireless broadband services in hundreds of rural communities, do you see a feasible opportunity to extend this successful model to areas where EBS has not been licensed before considering auctions?

2. I introduced H.R. 5329, the Poison Control Center (PCC) Network Enhancement Act, which will help improve Americans' access to poison control center services during an emergency. I'm proud that this bill was packaged into H.R. 6, the SUPPORT for Patients and Communities Act, however there is one provision aimed at improving call routing accuracy for PCC's we pulled from the bill so we could further explore how to best go about addressing the issue. The provision would have:

- Requested enhanced communications capabilities such as texting be established
- Requested the FCC work with HHS to ensure calls to the 1-800 number are properly routed
- Directed HHS to implement call routing based on a caller's actual location to ensure timely responses

Currently, calls to the poison control center's 1-800 number are routed based on the area code associated with the phone number of the caller. For example, if I (Susan Brooks) am in Washington, D.C. and call the poison control center's 1-800 number with my personal phone (Indiana area code 317), I would be connected to the center in Indiana, rather than a center closer to my actual location in Washington, D.C. This could present a problem in situations where a caller is in an area with a specific poisoning danger that might not be as well known to the poison control center staff in another location. PCC's standardize training across all regions, but it is still practical to assume that certain region's will be more familiar with certain situations. For example, if you visit California and are bitten by a rattle snake and call the poison control center's 1-800 number, you would be directed to the poison control center in Indiana, which is likely not as well equipped with knowledge and experience regarding the treatment of a rattlesnake bite as someone in a California location. In this instance, as with most poisoning situations, timing is critical. It is important that the caller be directed as quickly as possible to the poison control center closest to where they are currently located.

- a. Are you aware of this issue with call routing accuracy with regard to PCC's?
 - b. Working on this issue made me wonder what we can learn from other emergency lines, like the Suicide Hotline and Veterans Crisis Lines to improve 9-1-1 and vice versa. Can you elaborate on what some of these potential similarities and learning opportunities might look like, and what, if any, role the FCC could play?
3. How should we ensure that we do not use universal service funding to overbuild an existing broadband provider when that existing provider serves, or has plans to serve, a significant number of, but not all, locations in a census block?

4. How should we ensure that universal service funding is not used by a recipient to enter an adjacent area that is already served?
 - a. Would you consider an audit of current universal service spending to review this issue?

The Honorable Frank Pallone, Jr.

1. I'm concerned that the only time Democratic Members seem to get responses from you or the FCC to our oversight letters is either when we send public follow-up letters, or shortly before you're scheduled to testify before the Committee. Moreover, your responses often are incomplete and, further, the answers you do provide are so general and lacking in specificity that they do not truly satisfy the questions raised. This is particularly troubling given your commitment to Ranking Member Doyle and me at the beginning of this Congress to be responsive to both Democrats and Republicans.
 - a. Going forward, will you commit to providing complete responses to both Republican and Democratic Members of this Committee within three weeks of receiving such inquiries?
 - b. To the extent you need additional time on some aspect of an inquiry, will you commit to submitting a written response within three weeks of receiving such request explaining what information you cannot provide at that time, what steps are being taken to provide a complete response to the inquiry, and by when the complete response will be sent?

The Honorable Yvette Clarke

1. Following FCC Auction 97 for AWS-3, which raised more than \$44 billion in auction proceeds, some committee Democrats, including myself, sent your agency a letter in June 2015, asking you to curb instances of "gaming" of the Designated Entity (DE) program. In our letter, we'd also offered some recommendations to make smart reforms to the FCC's designated entity and other small business-related rules and policies. Our letter was prompted largely by public disclosures that DISH Network had heavily financed and could potentially exert unauthorized control over these DEs and licenses.

I understand though, that in late August 2017, the DC Circuit remanded the FCC's decision to deny bidding credits to some of the winning DEs back to your agency. The DC Circuit agreed with the DE petitioners that in the past, the FCC had allowed small companies a chance to modify their contractual agreements with large investors to gain enough independence from those investors to satisfy the FCC.

Judge Pillard, who wrote that case opinion stated, “the FCC’s rules and decisions] did not give [the Petitioners] clear notice” of which violations of its control rules were irreparable. (Op. at 45). Judge Pillard wrote further, “Where, as here, hundreds of millions of dollars are at stake, regulated parties need fair notice of the circumstances in which a finding of de facto control will and will not be subject to an opportunity to attempt to negotiate a cure.” (Op. at 45) The Circuit Court concluded “that an opportunity for [the] petitioner to renegotiate their agreements with DISH provides the appropriate remedy.” (Op. at 46).

The appeal holds very important implications for the future inclusion of designated entities and small businesses who wish to participate in spectrum auctions. Invariably, these bidders will need to seek out capital and execute financing and operations agreements that pass Commission muster. Without more clear guidance from the Commission, consistent with the DC Circuit’s remand, it is highly probable that designated entities and small businesses will continue to be shut out from the wireless marketplace.

- a. What is the status of the remand and when will the FCC act consistently with the DC Circuit opinion?
 - b. Have the petitioners in that appeal attempted to renegotiate with DISH Network and submitted those renegotiated terms to the FCC?
 - c. Provided that a satisfactory cure with respect to the petitioners is achievable, how will the Commission resolve the matters of the disputed Auction 97 licenses and the denied bidding credits?
2. It has come to my attention that the Commission recently notified at least two 600 MHz auction winners of *de facto* control concerns and afforded them an opportunity to cure.
- a. Please identify all DE bidders participating in the AWS-3 and 600 MHz auctions that were afforded opportunities to cure *de facto* control issues.
 - b. Do all Designated Entities (DEs) applying for FCC licenses and bidding credits have similar opportunities to cure potential *de facto* control issues consistent with the DC Circuit's ruling?
 - c. Do these opportunities to cure involve back-and-forth discussions or meetings between the FCC and the DEs?
 - d. Please identify which DEs have received or been denied licenses and/or bidding credits and detail what specific steps that the Commission took on its own or pursuant to delegated authority to notify these DEs about these issues or to guide them on how to cure those issues.

- e. Will the Commission be taking any further actions under your Chairmanship to increase designated entity and small business ownership and participation, through spectrum auctions in the communications and IT sectors?

The Honorable Debbie Dingell

1. Given the Congressional and public attention questioning the FCC's reported DDoS attack, what did you do to verify whether the DDoS attack occurred and what steps did you take to address the alleged attack? Please provide all correspondence and other documentation between you and your staff that reflect your engagement on the issue.
2. When did you personally suspect that there was no May 7th DDoS attack?
3. During the most recent FCC oversight hearing on July 25, 2018, when asked about providing the Committee with reports, requests, memoranda, and service logs related to the DDoS attack, you referenced the OIG and said you "would expect him to issue more information on this in the very near future."
 - a. Were you aware of the findings of the IG's report at that time?
 - b. Prior to the OIG's report being released, were you ever advised by either the FCC's General Counsel or the OIG to not correct the public record and your misrepresentations to Congress that there had not been a cyber-attack during the net neutrality comment period? If so, were those advisories in writing and will you commit to sharing those with the Committee?

The Honorable Jerry McNerney

1. During the oversight hearing, I asked you about VPNFilter—Russian-linked malware that can be used to steal users' information, exploit devices, and block network traffic. I noted that dozens of router models have been identified as susceptible to VPNFilter, and yet many consumers know nothing about it. While some consumers might be aware of it, they have been left wondering if their router is affected and what steps they should take to protect themselves from potential threats. Since your responses to my questions regarding this matter were not clear, I wanted to give you another opportunity to answer them.
 - a. What is the FCC doing to make sure ISPs inform customers about VPNFilter malware, how to update their routers, and whether their routers have been compromised? Please specify all actions the FCC has taken to date and any steps the FCC plans to take going forward.
 - b. Is the FCC doing anything at all to help make consumers aware of how to protect themselves against their routers being infected by malware? Please specify all

actions the FCC has taken to date since you became Chairman and any steps the FCC plans to take going forward.

2. You recently announced that you will be making changes to the FCC's Electronic Comment Filing System (ECFS) in an effort to address fake comments. You have also noted that if your reprogramming request is approved by the House and Senate Appropriations Committees, the FCC will incorporate CAPTCHA or a similar mechanism to prevent bots from submitting comments.
 - a. In addition to your plans to incorporate CAPTCHA or a similar mechanism, can you provide us with details about what else you plan to do to combat fake comments and the misuse of Americans' identities?
 - b. Are there any steps you can take now to prevent fake comments from being filed in matters currently pending before the Commission?
 - c. Following the reprogramming request's approval, how quickly can you get started?
 - d. How long do you expect the process to take?
 - e. Will you commit to giving me and the quarterly briefings on the FCC's actions to address fake comments, prevent identity theft, and restore the public's trust in the ECFS?
3. RAY BAUM's Act of 2018, which was signed into law as part of the Consolidated Appropriations Act of 2018, included my bill, the Improving Broadband Access for Veterans Act. Pursuant to this law, the FCC is required to produce a report examining the current state of veterans' access to broadband and what can be done to increase access, with a focus on low-income veterans and veterans residing in rural areas. In preparing this report, the FCC is to provide the public with notice and an opportunity to comment. The report must be completed by March 23, 2019 and include findings and recommendations for Congress.

Veterans, who fight tirelessly to protect our country, face many challenges when they return home. Not having internet access makes what is already an incredibly difficult transition process to civilian life even harder. It is critical that we move quickly to close the digital divide for veterans.

- a. Has the Commission started the process for producing this report?
- b. On what date do you expect that the Commission will begin to seek public comment for this report?
- c. Will you commit that by November 1, 2018 you will provide my office with a briefing on the status of the report?