



Policy Brief

An FCC Oversight Hearing: Senate Commerce Committee August 22, 2018

On August 16, 2018, the [U.S. Senate Committee on Commerce, Science, and Transportation](#) held a Federal Communications Commission (FCC) oversight hearing to “examine policy issues before the Commission and review the FCC’s ongoing duties and activities.”¹ All four confirmed FCC Commissioners, including Chairman Ajit Pai, offered testimony and took questions from Senators looking to address issues such as mapping, mergers, net neutrality, and more.

Opening Statements

To begin, [Chairman John Thune \(R- SD\)](#) took the opportunity in his opening statement to praise Chairman Pai for his efforts to free up more spectrum, to streamline broadband deployment, and to close the Digital Divide in rural areas. He conceded that work remains to bring service to rural areas without access to high speed connections. Given this, Thune stated that funding for legacy and model based support is needed along with continued focus on spectrum availability and barriers to broadband deployment. Chairman Thune asserted the priority of the FCC to protect consumers and applauded Chairman Pai’s transparency efforts at the Commission. Finally, he briefly touched on the FCC’s false claim that a DDoS attack caused an outage in May 2017 that temporarily prevented citizens from filing comments regarding net neutrality rules, and Thune suggested further discussion on the topic.

In a more critical opening statement, [Ranking Member Bill Nelson \(D-FL\)](#) critiqued the current FCC stating that consumer protection has been sacrificed in almost every industry the FCC regulates. Ranking Member Nelson asserted that Chairman Pai has not been working to close the Digital Divide and that affordable, high speed access is still lacking, which affects students, businesses, and development efforts. He stated that quality and affordable broadband should be prioritized, but that efforts to close the Digital Divide will not be resolved by repealing the rules of open internet, or net neutrality.

FCC Chairman Ajit Pai was up next. He first commended the Commerce Committee for their work in passing the [MOBILE NOW Act](#), stating that the FCC is taking the Committee’s lead to progress the deployment of 5G. He indicated that closing the Digital Divide is a top priority and that the FCC is taking action to do the following:

1. Reforming subsidy programs – Pai discussed that the [Connect America Fund Phase II \(CAFI\) reverse auction](#) launched last month offering up to \$2 billion in federal funding for fixed broadband in unserved areas. Additionally, he cited [\\$500 million](#) in additional funding to small carriers deploying rural broadband which the FCC made available along with the boost to telemedicine efforts. Recently, the FCC increased funding to

¹ <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=BD64E539-0863-41B5-AA8A-2B40D3FEF89C>

the [Rural Healthcare Program](#) from \$400 million to \$571 million while adjusting the cap moving forward to account for inflation.

2. Modernizing regulations – Pai referenced cutting through red tape to make it easier for broadband providers to deploy service and invest in next generation networks.

Commissioner Michael O’Rielly spent significant time during his comments addressing potentially duplicative efforts in broadband expansion. He suggested that as Congress wraps up the Farm Bill, he hopes that further safeguards to ensure duplicative efforts to close the Digital Divide are addressed, that there is alignment of speed requirements, and that efforts to serve the truly unserved are prioritized. Commissioner O’Rielly also touched on 911 and safety issues and spectrum policy.

Commissioner Brendan Carr focused his remarks on unserved areas and the need for better connectivity, stating that to achieve better connectivity, we must move forward with spectrum and infrastructure. In focusing on infrastructure, he stated that exempting small cells from costly federal review processes can help flip the business case for serving rural communities. Carr also discussed telehealth and his efforts in the proceeding regarding a new [Connected Care pilot program](#).

Commissioner Jessica Rosenworcel, the sole Democrat on the Commission, discussed unserved Americans citing 24 million who lack adequate service. She stated that too often the FCC has acted in accordance with big business. Rosenworcel also focused on broadband mapping and the need for quality data and recommended the following:

1. A new broadband plan
2. A spectrum calendar
3. The setting of “audacious goals” including raising the broadband standards from 25 Mbps to 100 Mbps

Following the opening statements, the questions laid out in the next two hours or so of the hearing addressed a wide range of topics, often partisan and contentious, with a focus on connecting unserved Americans, the race to 5G, and Commission ethics, primarily.

Connecting Unserved Americans

Broadband Mapping

A common bipartisan thread was the issue of broadband mapping and the inaccurate display of broadband availability. Form 477 data is collected from providers at the census block level to create broadband coverage maps. Unfortunately, even if a portion of the block is marked as served, the entire block is considered as having service. The result is a gross overstatement of broadband access, particularly in rural areas where census blocks can be extremely large.

Recently, the FCC released a map of areas eligible for the Mobility Fund Phase II auction and a number of senators, including Senator Roger Wicker (R-MS) have expressed concern over the accuracy. The FCC has extended the window for states and others to challenge the areas deemed eligible for MFII support by 90 days this week.

During the hearing, Senator Jerry Moran (R-KS) probed Chairman Pai on broadband mapping and the MFII eligible areas map. He cited his home state of Kansas and the recent granting of the Kansas Farm Bureau's request to challenge areas deemed ineligible for MFII support. Senator Moran stated that the FCC has put out a map that is known to be flawed and the FCC is now asking other people to correct it for them. Chairman Pai responded that he inherited a flawed map and they are working to solve the issues, most recently with the extended deadline of 90 days for a challenge process.

It is worth noting the Kansas Governor's Office is also undertaking a challenge to the MFII maps and is working with Connected Nation to conduct a drive-testing process in targeted areas believed to have limited or no cellular service in Kansas. Kansas Farm Bureau is conducting a similar challenge with input from their members across the state.

Commissioner Rosenworcel discussed the challenge process generally and reiterated that it is very difficult to launch a challenge – a challenger must download FCC data, get a variety of handsets, test signal strength and latency, upload it back in to the portal, put it on a grid, get it certified by an engineer, and more. She stated that we should be using FCC field offices to do local testing and spot checks, as well as using crowd sourcing data.

Broadband Buildout

Senator Thune, in his first question to Chairman Pai, asked Pai to commit to ensuring the Universal Service Fund (USF) High Cost funding for legacy and model-based high cost support be determined by the end of the year. Chairman Pai responded that he would indeed commit to that.

Additionally, the issue of duplication of efforts was addressed, particularly by Commissioner O'Rielly who stated several times the potential for Rural Utility Service (RUS) funding for broadband in the Farm Bill to be used in a way that could overbuild service. The importance of aligning speed requirements and addressing duplicative efforts is important to ensuring federal dollars are spent to connect those truly unserved

The Race to 5G

Chairman Pai focused many of his comments and responses on the race to 5G tackling issues such as government regulations and their ability to stifle technology deployment. Pai stated that easing regulations could spur 5G innovation and Congress should consider establishing uniform regulations for 5G deployment via the FCC.

Despite widespread support for 5G deployment, some senators, such as Senator Jon Tester (D-MT) expressed concern in unserved areas that have "no G", much less 5G.

Finally, when asked by Senator Ted Cruz (R-TX) on whether or not 5G should be nationalized or not, all four commissioners stated that it should indeed not be nationalized.

Commission Ethics

Members of the Senate Commerce Committee asked a series of heated questions around three main issues in which integrity was blatantly questioned.

DDoS Attacks and Net Neutrality

In May 2017, following a John Oliver segment on net neutrality in which viewers were encouraged to file comments in support of net neutrality on the FCC's filing system, the Commission website crashed. Shortly thereafter, the FCC claimed that it was the result of multiple DDoS attacks on the server, rather than a massive influx of comments being filed. The explanation for the crash was repeatedly given in statements, including those before Congress. A week before this Congressional hearing, however, the Inspector General released a report stating the claim of such an attack was unsubstantiated and that the facts were misrepresented.

Chairman Pai claimed that the story of DDoS attacks causing the crash was given to him by former FCC Chief Information Officer (CIO) David Bray and was thus repeated by his office. Explaining why he did not go on the record when the false claim was discovered, during the hearing, Pai explained, "[o]n January 23 of 2018, I was informed by my chief of staff, who had been informed by the Office of Inspector General, that they had suspicions that the former chief information officer's statements to us and to Congress were inaccurate. The OIG then requested, because they had referred this matter for potential criminal prosecution to the Department of Justice, 'do not say anything to anyone.'"

A White House Call on Sinclair-Tribune

During the hearing, it came out that White House Counsel Don McGahn directly called Chairman Pai after the agency announced that it would send the Sinclair-Tribune merger to a drawn-out administrative hearing process, implying the deal would inevitably fall flat. Chairman Pai claimed that Mr. McGahn called simply to ask what the FCC's decision was on the matter, rather than to influence the decision of the FCC.

President Trump and the Press

In a partisan line of questioning, Senator Maggie Hassan (D-NH) asked the Commissioners about Trump's attack on the press and if "the president's rhetoric is harmful to the values enshrined in the First Amendment." Each Republican Commissioner cited support of the press but stated they would not make political statements. Democrat Commissioner Rosenworcel answered "yes".

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