

Senate Committee on Appropriations
Subcommittee on Financial Services and General Government
Questions for Michael O’Rielly, Federal Communications Commission
June 20, 2017 Hearing

Senator Shelley Capito

1. Commissioner O’Rielly, you previously stated that there are bad actors who may take advantage of broadband deployment, particularly those that seek to deploy 5G wireless service. What steps is the Commission taking to prevent this from occurring?

The Commission has initiated a multi-pronged approach to eliminate and minimize roadblocks to broadband deployment. For instance, earlier this year Chairman Pai established a new advisory committee, aptly named the Broadband Deployment Advisory Committee, consisting of experts tasked with examining ways to remove barriers to deployment. Further, the Commission has issued a (1) Public Notice on streamlining small cell wireless deployment (2016), (2) a broader Notice of Proposed Rulemaking and Notice of Inquiry pertaining to wireless issues (2017), and (3) a Notice of Proposed Rulemaking, Notice of Inquiry and Request for Comment pertaining to wireline services (2017). These efforts are intended, in part, to solicit steps and requisite authority the Commission can exercise to eradicate barriers. I am hopeful that these items will conclude in the very near future and providers can focus on bringing service to all Americans, instead of being smothered by unnecessary red tape and/or excessive payments to some state, local or tribal governments.

Senator Jerry Moran

1. I understand the next generation of wireless network infrastructure will be built using small-cell networks employing 5G wireless technology. The faster data speeds and improved connectivity of 5G is essential for the Internet of Things (IoT) which will unleash billions of dollars in economic growth. The U.S. is the world leader in 4G, but I am worried we are not taking the necessary steps to maintain our global leadership to deploy 5G. Carriers tell me the regulatory barriers to deploy small-cell networks are outdated, hampering investment and economic growth. Do you agree 5G deployment is critical for the American economy, and if so, what steps is the FCC taking to eliminate barriers and costs to deploying 5G technology in a timely manner?

Yes. Too many state, local and tribal governments are acting in bad faith, by imposing unreasonable approval procedures or seeking to extract excessive compensation, preventing or delaying the deployment of small cell networks. I strongly believe that the Commission must be willing to step in to aggressively use authority provided by Congress to preempt these regulatory barriers. In addition, the Chairman has established a new Commission advisory committee to examine these and other issues and make recommendations for further Commission action. I am hopeful that the advisory committee’s work will be fruitful for its intended purposes.

2. I continue to hear from Kansans who remain concerned about the status and effectiveness of the Universal Service Fund’s (USF’s) High-Cost program. In April, I joined a number of my

colleagues in a letter to the FCC strongly encouraging you to take immediate steps to ensure sufficient resources are available to enable this program to work as statutorily mandated.

- a. I hear that the budget shortfall is resulting in canceled network builds and undermining the intended effect of the reforms to make standalone broadband affordable for consumers. Are you hearing this too, and what steps are you taking to address this?

Yes, I have heard this is occurring. I support providing some additional funding resources to both the model and legacy sides for rate of return carriers. The Commission should promptly examine whether this can be done without increasing the burden on consumers, by using funding from our reserves without jeopardizing funding for other purposes.

- b. Some have talked about an infrastructure package from Congress as a potential solution for this USF budget shortfall. If Congress does come forward with such funding, would you commit to adequately funding the program for these small, rural carriers?

If Congress decides to allocate federal taxpayer dollars for broadband deployment and if such funding is allocated to the FCC for distribution via our high-cost program, which I have advocated would be the best mechanism, I would certainly commit to ensuring that the funds are properly distributed to extend broadband deployment nationwide. Depending on how the funding is designated by Congress, I would agree that additional targeted funding should go to carriers willing to serve parts of America that lack broadband service, which tend to be the more rural areas.

3. I believe that modernizing the federal government's information technology (IT) systems needs to remain a top-priority for all agencies. According to the GAO's 2015 High Risk Series report, the federal government annually spends over \$80 billion on IT, but more than 75 percent of this spending is for "legacy IT". I have worked with my colleague Senator Udall on legislation called the Modernizing Government Technology (MGT) Act of 2017 in an effort to replace "legacy IT" systems that continue to plague numerous federal agencies. With examples like the reported cyberattack on the FCC's Electronic Comment Filing System, I think that this effort needs to remain a priority.

Could you please speak to the cybersecurity benefits resulting from the FCC's current and ongoing efforts to replace "legacy IT" systems?

I may not be in the best position to comment on this, as it is an area generally overseen by the Chairman. In terms of replacing legacy IT systems, I wholeheartedly agree that modernizing our physical equipment, networks and databases is a sound investment, assuming funding is available to do so, and would tend to improve the security of our internal network from any threats.

4. Your testimony discussed the FCC's ongoing efforts to close the "Digital Divide" by expanding fixed and mobile broadband deployment in the Connect America Fund Phase II

and the Mobility Fund Phase II. What role do you see the Rural Broadband Auctions Task Force playing in implementing these important USF-related auctions?

As I understand from conversations with the Chairman's staff, the task force is charged with designing and executing the respective reverse auctions for high-cost program funds, in compliance with decisions made by the Commission. While these functions previously existed, the Chairman felt it was important to ensure that the necessary focus and attention was paid to this important topic via a dedicated task force of Commission staff.

5. Title II and "Open Internet" rules are not the same and should not be conflated. If people are worried about Open Internet issues, shouldn't Congress act to put "Open Internet" rules into statute and thus end the regulatory ping pong and market uncertainty that results every time the Administration changes parties and a new FCC Chairman steps into this issue?

The Commission currently has an open proceeding on the matter and I am committed to reviewing the record as it develops, so I will withhold lengthy commentary at this point. However, I can state that I firmly believe that the only way to ensure lasting peace on the issue of net neutrality is for Congress to enact requisite legislation on the topic, as it deems appropriate. Absent this action, changes to rules are likely to occur as Commissioners change over time.

Senator Joe Manchin

1. The Commission's budget proposes to require the auction of additional spectrum by 2027. I strongly support the continued focus on making more spectrum available for commercial use. Federal communications policy both embraces and requires that rural Americans must have access to the economic opportunities provided by broadband access. Innovative ideas are not limited by geography. We must do more to ensure they are not limited by a lack of connectivity.

How can future auctions be structured to ensure additional wireless spectrum deployment in rural areas actually occurs?

I believe the best way to facilitate wireless coverage to all areas is to have firm build-out requirements that are enforced vigorously. That being said, I do not support making retroactive changes to existing licenses for this purpose, as it would unfairly impose burdens on those licensees who purchased licenses under rules previously designed. Instead, any such reform should be done on a going forward basis.

2. Broadband has an important role to play in providing access to healthcare services, particularly in rural America. I commend the Commission's work through the Connect2Health Task Force to provide valuable insight into broadband health policies. Most fundamentally, telehealth services are only an option for those who have a broadband connection. I strongly support the Commission's focus on closing the digital divide through programs such as Mobility Fund II, which has the potential to be a critical part of the broadband expansion necessary for telehealth in rural areas.

Beyond connectivity, would you please discuss what barriers to telehealth services currently exist at the state level?

While Congress has assigned a limited role for the Commission in regard to telehealth, I am familiar with these issues from my previous employment. Certainly, the issues of licensing and liability have been roadblocks to further use of telehealth, requiring greater attention and possible action by Congress or individual states. However, the Commission recently released a Public Notice seeking additional information and answers to questions regarding a host of aspects involving telehealth and whether the Commission can play a role in facilitating its usage, within the bounds of our authority.

3. I understand the Commission opened a proceeding in April to explore barriers to wireline broadband infrastructure deployment. I applaud the Commission's continued focus on rural broadband deployment. Under current law, most providers generally have a duty to allow other providers access to its broadband infrastructure like conduit. However, because broadband conduit cannot be visibly inspected, it has been brought to my attention that providers have had difficulty finding out where it is already in the ground. In turn, this can hinder broadband deployment.

Can ensuring greater access to conduit may make financial sense for providers as well as help close the digital divide?

In terms of duty to offer access to conduit, different legal requirements may apply depending on the type of provider and the service being offered. For instance, section 251(b)(4) of the Communications Act of 1934 imposes the obligation on each local exchange carrier "to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms and conditions that are consistent with section 224" (pertaining to pole attachments). As you note, the Commission has initiated a proceeding, and one of the points it is considering is the scope of any such requirements.

The Commission is also broadly considering whether barriers to wireline investment can be eliminated or modified to facilitate broadband deployment. The record on the that item has since closed and it is now before the Commission to determine the best course of action, if any. I plan to review the record closely to see the answers commenters provided to the many questions and proposals posed.

Generally, greater access to existing conduit, consistent with obligations under the law, may be helpful to broadband deployment, depending on the remedial structure and costs. Certainly, any efforts on this front shouldn't serve directly or indirectly as an incentive not to deploy broadband facilities.

Senator Chris Van Hollen

1. Chairman Pai: In May you met with local and state MD officials on the issue of microcells. At that meeting, Montgomery County Executive Leggett underscored the importance of working with local authorities. Maryland is a unique state because we have very dense urban

communities and rural and mountainous areas--we are a microcosm of the challenges of nationwide broadband deployment. I am very excited about the expansion 5G next generation networks. However, local governments feel that they are being left out of the conversation.

- a. Commissioner Pai and Commissioner O’Rielly: You have both spoken numerous times about federal overreach and over regulation. What steps will you take to ensure that local jurisdictions are heard and that your actions do not preempt their regulations?

I believe that a good portion of state, local and tribal governments want their citizens to have the opportunity to obtain broadband services and the benefits that can come from such technology. However, a number of bad actors remain that delay the approval process for necessary deployment through various means or seek to extract exorbitant payments from broadband providers. Moreover, there are some governmental entities that prevent deployment based on reasons that are not under their purview. Accordingly, I believe that the Commission must exercise authority provided by Congress to preempt these instances.

- b. Do you think federally regulated expansion will encourage the private sector to invest profits into areas that are less profitable to serve—such as rural areas?

The development and deployment of new technologies, such as fixed wireless broadband and satellite offerings, is likely to decrease the cost to serve many of the hardest to reach areas, although there may still be areas where it is cost prohibitive to offer services. Accordingly, the Commission operates its high-cost program to provide a subsidy mechanism to entice providers to serve areas where there is no business case at the current time. In terms of removing barriers to entry, I do believe that this can reduce the cost of service or lead to greater network expansion.

- c. Do you agree that the private industry and local governments are working to create innovative solutions regarding microcells?

In many instances, the current regulatory landscape hampers the deployment of broadband. Therefore, I applaud efforts by state, local and tribal governments to find creative ways to expedite deployment and minimize the cost for siting new wireless technologies, including small cells. I do worry, however, that the patchwork of differing regulations and costs can act as an additional deployment barrier.