

WEDNESDAY, JULY 11, 2012

COMMUNICATIONS DAILY

The FCC's plans for special access reform became a prominent issue during a House Communications Subcommittee hearing Tuesday where members queried the commissioners on a broad spectrum of regulatory issues. Chairman Julius Genachowski conceded that the current framework for special access is "not working" but said the commission lacks the necessary data to determine how exactly it should be reformed. House Commerce Committee Ranking Member Henry Waxman, D-Calif., said reforming the special access framework is "long overdue" and urged the commissioners to get cracking. "There is widespread agreement that the current deregulatory 'triggers' are broken, even from many incumbent providers of these services," Waxman said. "I hope the commission will move quickly to gather additional industry data as needed and address the potentially anticompetitive terms and conditions on special access contracts."

Commissioner Ajit Pai told Waxman he believed mandatory data collection from industry would help the FCC determine how best to reform special access: "We need to understand what exactly the current state of the marketplace is before we regulate. And if there are competitive problems we should address them." Chairman of the full Commerce Committee Fred Upton, R-Mich., urged commissioners to focus on getting correct information before the FCC takes on special access. Upton pressed Genachowski to understand how the commission's special access proceedings will determine whether there is sufficient competition in the market. Genachowski said the commission intends to "move forward with the comprehensive data collection order and we also have a sufficient amount of information ... to make a wise decision." Upton fired back: "So you don't plan any preemptive strike without getting all the information?"

Genachowski responded: "We plan to proceed consistently with our obligations of the Communications Act to promote competition and drive investment."

Upton said he was glad to hear that the commissioners chose not to move forward with a draft order to suspend the current pricing flexibility regime for special access services. He reminded commissioners that the idea behind the pricing flexibility regime is to "gradually stop applying some old rules to old technology in the presence of competition, not to start imposing new rules on new technology, like fiber facilities and Ethernet services designed for the broadband world."

Upton also urged the commission to avoid "picking winners and losers" in the coming spectrum incentive auctions and said the 1755 to 1780 MHz frequencies are "ideally suited" for pairing with the 2155 to 2180 MHz block.

Subcommittee Ranking Member Anna Eshoo, D-Calif., said she was hopeful that the FCC will "proceed expeditiously with a mandatory data request and collect the data necessary to reform the special access market on a comprehensive basis." Eshoo said she would be tracking the commission's work on spectrum incentive auctions to "ensure congressional intent is closely followed." Eshoo said she also looks forward to the introduction of the FCC's political file rules, which take effect Aug. 2.

Rep. Brett Guthrie, R-Ky., asked the commissioners whether they think NTIA's \$18 billion estimate to reallocate all 95 MHz of the 1755-1850 MHz band is accurate. Commissioner Robert McDowell said there is "no way of knowing if the \$18 billion figure is real" but said there is a "strong disincentive for agencies to relinquish their spectrum." McDowell said the agencies are probably not using all their spectrum efficiently and urged the White House to direct agencies to reallocate some of the "low hanging fruit" in the federal bands.

Genachowski said satiating the spectrum demand depends on a dual approach that clears entire chunks of spectrum, and sets up spectrum sharing between the public and the private sectors. "We have to have both. ... We need to pursue spectrum sharing, but not at the expense of clearing," Genachowski said.

Rep. Doris Matsui, D-Calif., urged the commissioners to ensure transparency in the agency's upcoming spectrum auction and said she and the other members of the Federal Spectrum Working Group look forward to working with the FCC, NTIA and the Department of Defense to identify underutilized federal spectrum. Matsui commended the commission for moving forward with USF reform efforts and a broadband adoption pilot program she said was similar to her Broadband Affordability Act (HR-2163). "It is my hope that the FCC will use the data gathered from the pilot program ... to implement a responsible, permanent broadband adoption program," she said.

McDowell said Congress should take a "fresh look" at the 1996 Telecommunications Act, which he said unnecessarily stovepipes the regulation of different kinds of communications networks. Rep. Mary Bono Mack, R-Calif., asked the commissioners whether they thought the FCC has the authority to regulate Internet networks and what such a regulatory framework would look like. Commissioners Jessica Rosenworcel and Pai said the FCC does have the authority to regulate Internet networks. Existing rules regarding competition and universal service should serve as the fundamentals that should drive the agency's regulation of the networks, Rosenworcel said.

Pai said that the real question is not whether the FCC has the authority to regulate networks, it's whether the agency should. Specifically Pai said he has concerns about extending the legacy regulations for copper networks to fiber networks, which he said could dampen the incentive for industry to deploy fiber services.

Subcommittee Chairman Greg Walden, R-Ore., said most House members "remain deeply committed to the cause of improving transparency and accountability at the FCC." Walden urged the commissioners to push for more reform of the agency and ensure that it does not "abuse its power" in order to encourage marketplace competition. Walden also said members are "keenly interested in making sure the FCC and the NTIA fulfill the intent" of Congress's public safety legislation.

Rep. Joe Barton, R-Texas, urged the commission to consider letting funding for some Broadband Technology Opportunities Program (BTOP) grants continue rather than be suspended while the government develops FirstNet. "I think it would be better to go forward with the BTOP grants with the caveat that they would have to interconnect when the FirstNet system goes up," he said. "I believe it is better to have an operable system that is perhaps imperfect than an inoperable system that is theoretically perfect, which probably won't exist for a few years."

Rep. Lee Terry, R-Neb., said he had concerns with the regression analysis in the high-cost order in the commission's reform of the Universal Service Fund. "I worry that what started out as an honest effort to modernize and create an efficient fund has developed into a situation in which rural America could in fact see declining service quality and higher prices." — Bryce Baschuk