

Sept. 17, 2020

## Partisan Views Dominate House FCC Oversight Hearing

During a nearly four-hour FCC oversight hearing today, members of the House communications and technology subcommittee belied their frequently expressed view that communications issues are bipartisan by repeatedly exploring political divides on issues ranging from Internet access for students dealing with remote learning during the pandemic to improving mapping data on broadband availability.

Republican members criticized the title, premise, and tone of the hearing — dubbed “Trump FCC: Four Years of Lost Opportunities” — as partisan, while Democrats levied charges that the Republican-majority FCC during the Trump administration has focused its efforts on undoing the work of previous, Democrat-led FCCs and other “misplaced priorities.”

The hearing was held remotely.

In his opening statement, subcommittee Chairman Mike Doyle (D., Pa.) criticized the FCC’s response to the COVID-19 pandemic, which, he noted, has made broadband connections more important than ever as so many activities move online.

In Pittsburgh, which includes his home district, supply chain issues and other problems are delaying the delivery of devices such as laptops and hot spots to students, he said. Schools are seeking corporate donations to close the funding gap, he said, but he added that “we cannot as a nation rely on the generosity of private companies to get us through this crisis. We need a national plan.”

“We have a government asleep at the wheel. ... [W]e are in this position now because of mismanagement and misplaced priorities by this administration and this FCC over the last four years,” he said.

“Instead of addressing these challenges and so many others, this FCC has been dead set on removing consumer protections, enabling increased consolidation, and hollowing out programs intended to connect low-income Americans,” Chairman Doyle added.

During her opening statement, subcommittee Vice Chair Doris Matsui (D., Calif.) spoke of the stakes involved in 5G deployment, and she said she was working on legislation “to establish a wireless leadership agenda” and “ensure we have a work force ready to build the networks of the future, promote innovation through R&D, encourage more effective use of spectrum, enhance U.S. leadership on the global stage, and close the digital divide.”

Subcommittee ranking minority member Bob Latta (R., Ohio) praised the FCC's swift distribution of \$200 million in telehealth support provided by Congress in the Coronavirus Aid, Relief, and Economic Security (CARES) Act earlier this year (TR Daily, March 31) and criticized the hearing as "partisan," saying that instead the subcommittee should be discussing how to help the FCC close the digital divide.

Full Energy and Commerce Committee Chairman Frank Pallone Jr. (D., N.Y.) said that the hearing would examine "four years of lost opportunities at the FCC during the Trump administration." He added that the Republican Commissioners might speak about the agency's "accomplishments" that he viewed as "more like an industry wish list," including the elimination of net neutrality rules' "eliminating environmental and Tribal reviews and undermining local authority and protections to give companies the upper hand, even as we all know you can't streamline your way to universal broadband deployment"; and "using official government processes to allow President Trump to get back at Twitter for, correctly, labeling one of his tweets as false."

Chairman Pallone criticized FCC Chairman Ajit Pai for not pursuing "actions to assist millions of families falling through the digital cracks."

He emphasized the need to "make sure that high-speed broadband is open, available and affordable to everyone"; that "our communications networks are resilient"; that the communications equipment supply chain is secured "from companies like Huawei"; that the U.S. develops a "thoughtful, coherent spectrum strategy and stop[s] the interagency squabbles this administration has fanned"; that the broadcast industry reflects principles of localism, diversity, and competition; and that social media platforms are held accountable to the public, "not to thin-skinned demagogues."

In his written statement, full committee ranking minority member Greg Walden (R., Ore.) said that the title of the hearing "made clear this would be another partisan attack on President Trump. I guess we're in that season, long on nasty quotes and short on facts. You'd think that when fires are destroying communities in the west and COVID is upending life nationwide that Democrats could rise above partisan rancor and show America how we can work together to close the digital divide. That should be our common goal."

He added that "while Democrats on this committee put partisan politics first, the FCC — an independent agency — has done a lot to ensure Americans are better connected. In fact, the FCC under Chairman Pai's leadership has done a lot, period."

"And where there are still challenges that require Congressional action, Republicans have put forth serious proposals to address these issues, and we would like to work across the aisle to make a difference. In fact, we sent you an urgent letter in July, Mr. Chairman, asking you to put consumers and children first and hold a hearing to close the digital divide. But that did not happen," Rep. Walden said.

He also had praise — echoed by a number of other members — for FCC Commissioner Mike O'Rielly, a former committee staffer, whose FCC term expired in June 2019 and who will have to leave the Commission at the end of this legislative session — or sooner, if the Senate were to act swiftly to confirm President Trump's nomination of Nathan A. Simington of the National Telecommunication and Information Administration to fill the seat (TR Daily, Sept. 16).

In a portion of his prepared statement that he did not read at the hearing, Commissioner O'Rielly said that "there seems to be a great deal of interest in what led to my nomination for a new term being

withdrawn by President Trump. In all honesty, there is no salacious story to report. No demands were made to support any position, and no pressure was applied to take any particular action. I was informed that the president was withdrawing my nomination, as is his prerogative, by a very short phone call. I had no conversations with the White House on withdrawing the nomination prior to that point and none since.”

In the testimony delivered at the hearing, he reiterated his view that it would be helpful if Congress said in legislation exactly what it wants the FCC to do “and, more importantly, what it does not want.”

He added his thanks to the committee “for its hospitality over the years as I look forward to the next chapter of my career, wherever it may take me.”

In his prepared testimony, Chairman Pai listed the FCC’s actions under his leadership, including four spectrum auctions, with a fifth upcoming, and the Rural Digital Opportunity Fund auction scheduled for next month, as well as pointing toward industry progress in areas such as new cell sites, 5G and LTE deployments, and increases in fixed broadband speeds. He also contrasted the fact that “under the last administration, taxpayer dollars were used to put Huawei equipment in our networks” with the action under the current administration to “put a stop to that.”

An issue that arose repeatedly during the question-and-answer portion of the hearing was whether the FCC has the authority to use E-rate funding to support home broadband connections for students now learning remotely, despite the reference to “classroom” use in section 254 of the 1996 Telecommunications Act, which authorized the E-rate program.

Commissioner Jessica Rosenworcel noted a previous pilot program to support hot spots under the E-rate program in the wake of Hurricane Katrina. “We did it before and we can do it again,” she said.

Commissioner O’Rielly insisted that the pilot program for Hurricane Katrina violated the statute. “Two wrongs don’t make it right,” he said.

Rep. Walden asked for and received agreements from all five Commissioners that they oppose the creation of a national government-owned 5G network.

Later, in his closing remarks, Chairman Doyle said, “I would note that the only person who wants to nationalize 5G is the president.”

In response to a question from Rep. Jerry McNerney (D., Calif.) about connection issues in the wake of wildfires, Commissioner Rosenworcel said that “we need to have a national conversation about backup power.”

Rep. McNerney asked Chairman Pai for a commitment to make public any consumer complaints about connectivity issues, disconnections, and other issues during the pandemic. Chairman Pai said the agency would try to do so in an aggregate form, if no protected personal information is involved and if it has the capability.

Questions about the FCC’s plans to move ahead with the RDOF Phase I auction next month, despite concerns about the accuracy of the agency’s broadband maps, also arose repeatedly.

Commissioner Brendan Carr argued that “the Phase I maps are correct. The difficulty is with the Phase II maps,” that is, maps of areas where served and unserved locations are in the same census block.

Chairman Pai said, “The other critical part of this is that Congress took away our funding, and prohibited our using USAC [Universal Service Administrative Co.] money for mapping.”

Commissioner Rosenworcel later said that the distribution of 80% of the broadband budget for the next 10 years in the RDOF Phase I auction without better data “is a stunt.”

Rep. Anna G. Eshoo (D., Calif.) asked Chairman Pai when the FCC will act on a 2009 request from California officials to share cell tower outage information during disasters, so that local officials will be better able to coordinate emergency responses.

“We put out an NPRM [notice of proposed rulemaking], and we plan to move to an order soon,” Chairman Pai said. —Lynn Stanton, [lynn.stanton@wolterskluwer.com](mailto:lynn.stanton@wolterskluwer.com)

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