

LEGISLATIVE HEARING ON SEVEN COMMUNICATIONS BILLS

HEARING BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS SECOND SESSION

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LEGISLATIVE HEARING ON SEVEN COMMUNICATIONS BILLS

WEDNESDAY, APRIL 13, 2016

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:15 a.m., in room 2322 Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Latta, Shimkus, Blackburn, Lance, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Johnson, Ellmers, Collins, Cramer, Eshoo, Doyle, Welch, Yarmuth, Clarke, Loeb sack, McNerney, and Pallone (ex officio).

Staff present: Rebecca Card, Assistant Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Grace Koh, Counsel, Telecom; David Redl, Chief Counsel, Telecom; Dan Schneider, Press Secretary; Gregory Watson, Legislative Clerk, Communications and Technology; Jeff Carroll, Minority Staff Director; David Goldman, Minority Chief Counsel, Communications and Technology; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Jerry Leverich, Minority Counsel; Lori Maarbjerg, Minority FCC Detailee; Ryan Skukowski, Minority Policy Analyst; and Andrew Souvall, Minority Director of Communications, Outreach and Member Services.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. We are going to call to order the subcommittee on Communications and Technology. I know we are shy one witness whom we are trying to locate. Apparently there are some issues getting into the building today with everybody in town. So we are going to proceed with the testimony of our witnesses and our opening statements, and we have somebody out looking for Ms. McAuliffe, and hopefully this will time out. Well, with seven bills on the agenda we felt it important to move forward.

So, and maybe we can close those doors too, if somebody on the staff can—yes, thank you. Well, good morning. Today's hearing will examine seven important bills all seeking to improve the way our communication laws work and better reflect modern technology and consumer expectations. Two of these bills deal with important public safety issues and how to improve emergency response when it matters most. First, the Kelsey Smith Act sponsored by Representative Kevin Yoder gives law enforcement the tools to locate victims

in emergencies using location data from their cell phone providers. By creating a very narrow set of circumstances in which law enforcement can access these type of data, the bill seeks to protect the privacy of users while still allowing access when the situation demands it.

This bill utilizes existing technology to help law enforcement better respond when someone is in serious danger. It is important to note, however, that the legislation does not place the burden of liability on cell phone carriers. The decision is in the hands of law enforcement, and carriers should be able to hand over the data without fear of a lawsuit.

I intend to offer an amendment at subcommittee markup that will make sure that a carrier's customer service representative isn't faced with making a decision about whether complying with a request from law enforcement opens the company or individual up to liability.

The Kelsey Smith Act is already law in 22 of our states including in my own state of Oregon, where it passed in 2014. So the bill we are looking at today mirrors much of the language in the Oregon statute giving law enforcement the ability to act quickly when every second counts, but only, only in narrow circumstances of a true emergency.

It is important to note that this legislation as being proposed here today passed unanimously through both the Oregon House and the Oregon Senate and was signed into law by a Democratic governor demonstrating that this is not a partisan issue, but it is good policy.

Another important piece of public safety legislation before the committee today is Kari's Law, which requires that multi-line telephone systems typically found in hotels, offices, and schools have a default configuration to dial out to 911 without any additional prefix required. To quote FCC Commissioner Jessica Rosenworcel, you may only call 911 once in your life, but it will be the most important call you ever make.

As Kari's father will testify today, children are taught from an early age to dial 911 in an emergency. There should be no question that when they do so they will reach the emergency dispatcher. The simple fix that this bill provides, one that has been already implemented by many MLTS users, has the potential to prevent another tragedy like the one that happened to Kari Hunt.

I would like to especially thank Kari's father, Mr. Hunt; Kelsey's mother, Mrs. Smith, for agreeing to testify today. While your losses must be very difficult to discuss in public, your testimony is certainly important in our process here as a resource for the subcommittee as we work on this legislation. So we are very thankful that you are willing to be here.

We are also going to look at a bill from Representative Austin Scott which caps the Lifeline portion of the Universal Service Fund. In many ways I wish we didn't have to take up this piece of legislation, take this step we are doing today. Capping the fund is well within the authority of the Federal Communications Commission and something that they came close to doing in the most recent Lifeline reform order. Unfortunately that did not happen. As a result we are left with a so-called budget for the fund, a provision

that requires the FCC to take note when annual Lifeline spending exceeds \$2 billion and have the staff explain why that spending is so high. That is it. The FCC can basically blow right through its “budget” by as much as it desires.

I don’t think this is the way government should be handling the American people’s dollars with cavalier disregard for basic fiscal discipline. I want to be clear, we do not support eliminating the Lifeline subsidy. This is an important program for those that are truly eligible. We are not opposed to the mission of Lifeline. Universal connectivity is a core principle in this country, particularly for those who need it most like children from low-income families.

What we cannot support, however, is a fund that lacks external controls and is susceptible to waste, fraud, and abuse. And we have seen in the past how rapidly this fund can expand. I believe it is our duty and a duty to our constituents to make sure that their money is only spent responsibly.

So the reforms that the FCC has adopted over the past few years, including some adopted this month, are certainly positive steps toward a more accountable fund. But until there are better, more effective guardrails in place there is nothing to prevent the FCC from spending and spending and spending, placing an even greater burden on American household budgets who have to assume those costs. Real budgets that can’t simply keep spending other people’s money is what we need.

In addition to these three bills, we will look at a bill to encourage innovative solutions to the spectrum crunch, a problem that we have been spending a great deal of time on in our subcommittee. We will look at Ranking Member Pallone’s bill to improve post-disaster communications. That is something that he is unfortunately all too familiar with after Superstorm Sandy wreaked havoc across his district and all of New Jersey.

We will also consider a bill to allow skilled nursing facilities to improve their broadband connectivity, and finally, we will look at a bill to increase penalties for criminals who spark an unnecessary and dangerous law enforcement response by falsifying caller ID.

So I would like to thank all the sponsors on both sides of the aisle for bringing these bills to our subcommittee, and I want to thank the witnesses that we have before us today.

[The bills H.R. 2031, H.R. 3998, H.R. 4111, H.R. 4167, H.R. 4190, H.R. 4884, and H.R. 4889 follow:]

114TH CONGRESS
1ST SESSION

H. R. 2031

To amend the Communications Act of 1934 to provide for enhanced penalties for the transmission of misleading or inaccurate caller identification information with the intent to trigger a response by a law enforcement agency.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2015

Mr. ENGEL (for himself, Mr. DESJARLAIS, Ms. CLARK of Massachusetts, and Mr. REICHERT) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Communications Act of 1934 to provide for enhanced penalties for the transmission of misleading or inaccurate caller identification information with the intent to trigger a response by a law enforcement agency.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Anti-Swatting Act of
5 2015”.

1 **SEC. 2. TRANSMISSION OF MISLEADING OR INACCURATE**
2 **CALLER ID INFORMATION WITH INTENT TO**
3 **TRIGGER LAW ENFORCEMENT RESPONSE.**

4 Section 227(e)(5) of the Communications Act of
5 1934 (47 U.S.C. 227(e)(5)) is amended—

6 (1) in subparagraph (B), by striking “Any per-
7 son” and inserting “Except as provided in subpara-
8 graph (C), any person”; and

9 (2) by adding at the end the following:

10 “(C) ENHANCED PENALTIES FOR VIOLA-
11 TION WITH INTENT TO TRIGGER LAW ENFORCE-
12 MENT RESPONSE.—

13 “(i) CRIMINAL VIOLATION.—Any per-
14 son who violates this subsection with the
15 intent to trigger a response by a law en-
16 forcement agency in the absence of cir-
17 cumstances requiring such a response
18 shall—

19 “(I) be fined under title 18,
20 United States Code, or imprisoned not
21 more than 5 years, or both; or

22 “(II) if serious bodily injury re-
23 sults, be fined under title 18, United
24 States Code, or imprisoned not more
25 than 20 years, or both.

26 “(ii) REIMBURSEMENT.—

1 “(I) IN GENERAL.—The court, in
2 imposing a sentence on a defendant
3 who has been convicted of an offense
4 under clause (i), shall order the de-
5 fendant to reimburse any entity de-
6 scribed in subclause (II) that incurs
7 expenses in making or incident to the
8 response described in clause (i) for
9 such expenses.

10 “(II) ENTITY DESCRIBED.—An
11 entity is described in this subclause if
12 the entity is—

13 “(aa) a law enforcement
14 agency of the United States, a
15 State, or a political subdivision of
16 a State; or

17 “(bb) an agency of the
18 United States, a State, or a polit-
19 ical subdivision of a State, or a
20 private not-for-profit organiza-
21 tion, that provides fire, rescue, or
22 emergency medical services.

23 “(III) LIABILITY.—A person or-
24 dered to make reimbursement under
25 this clause shall be jointly and sever-

7

4

1 ally liable for such expenses with each
2 other person, if any, who is ordered to
3 make reimbursement under this clause
4 for the same expenses.

5 “(IV) CIVIL JUDGMENT.—An
6 order of reimbursement under this
7 clause shall, for the purposes of en-
8 forcement, be treated as a civil judg-
9 ment.”.

○

114TH CONGRESS
1ST SESSION

H. R. 3998

To direct the Federal Communications Commission to commence proceedings related to the resiliency of critical telecommunications networks during times of emergency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2015

Mr. PALLONE introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the Federal Communications Commission to commence proceedings related to the resiliency of critical telecommunications networks during times of emergency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing Access to
5 Networks in Disasters Act”.

1 **SEC. 2. PROCEEDINGS RELATED TO CELLULAR NETWORK**
2 **RESILIENCY.**

3 (a) ROAMING AGREEMENTS.—Not later than 90 days
4 after the date of enactment of this Act, the Commission
5 shall commence a proceeding on the provision of roaming
6 agreements between mobile service providers which shall
7 allow for mobile service at reasonable rates during times
8 of emergency during which there is a mobile service outage
9 lasting longer than 24 hours.

10 (b) EMERGENCY COMMUNICATIONS.—Not later than
11 90 days after the date of enactment of this Act, the Com-
12 mission shall commence a proceeding on the provision of
13 roaming agreements between mobile service providers at
14 no charge for all communications during times of emer-
15 gency to or from 911 services.

16 (c) DIRECTORY.—

17 (1) IN GENERAL.—Not later than 1 year after
18 the date of enactment of this Act, the Commission
19 shall create a master point of contact directory to
20 provide for effective communication between public
21 safety answering points and telecommunications
22 service providers.

23 (2) CONFIDENTIALITY.—The directory estab-
24 lished under this subsection shall be available to
25 telecommunications service providers and public
26 safety answering points on a confidential basis.

1 (3) EXEMPTION FROM PAPERWORK REDUCTION
2 ACT REQUIREMENTS.—In establishing this directory,
3 the Commission shall be exempted from chapter 35
4 of title 44, United States Code (commonly known as
5 the Paperwork Reduction Act).

6 (d) STUDY ON NETWORK RESILIENCY.—Not later
7 than 18 months after the date of enactment of this Act,
8 the Commission shall submit to Congress, and make pub-
9 lically available on the Commission’s website, a study on—

10 (1) mobile service providers supplying outage
11 data to public safety answering points in times of
12 emergency on a confidential basis; and

13 (2)(A) making telecommunications service pro-
14 vider-owned WiFi access points, and other commu-
15 nications technologies operating on unlicensed spec-
16 trum, available to the general public for access to
17 911 services, without requiring any login credentials,
18 during times of emergency when mobile service is
19 unavailable; and

20 (B) whether non-telecommunications service
21 provider-owned WiFi access points can provide pub-
22 lic access to 911 services during times of emergency.

23 **SEC. 3. GAO STUDY AND REPORT.**

24 (a) STUDY.—The Comptroller General of the United
25 States shall conduct a study on—

1 (1) the resiliency of telecommunications net-
2 works power utility during times of emergency;

3 (2) how Federal agencies can better ensure crit-
4 ical telecommunications networks remain operational
5 during times of emergency;

6 (3) the feasibility of mobile service infrastruc-
7 ture receiving backup electrical power from the in-
8 frastructure or buildings to which such mobile serv-
9 ice infrastructure are affixed during times of emer-
10 gency;

11 (4) the feasibility and advisability of adding
12 points of contact for local utilities to the directory
13 described in section 2(c); and

14 (5) any legislative matters Congress should con-
15 sider to help promote network resiliency.

16 (b) REPORT.—Not later than 18 months after the
17 date of enactment of this Act, the Comptroller General
18 shall transmit a report to Congress containing the findings
19 and recommendations of the study required by subsection
20 (a).

1 **SEC. 4. PRIORITY ACCESS TO ESSENTIAL SERVICE PRO-**
2 **VIDERS DURING FEDERALLY DECLARED**
3 **EMERGENCIES.**

4 Section 427 of the Robert T. Stafford Disaster Relief
5 and Emergency Assistance Act (42 U.S.C. 5189e) is
6 amended—

7 (1) in subsection (a)(1)(A), by striking “tele-
8 communications service” and inserting “communica-
9 tions service, including wireline and mobile telephone
10 service, Internet access service, radio and television
11 broadcasting, cable service, and direct broadcast sat-
12 ellite service”;

13 (2) by redesignating subsection (c) as sub-
14 section (e); and

15 (3) by inserting after subsection (b) the fol-
16 lowing:

17 “(c) PRIORITY ACCESS AND ESCORTS.—Unless ex-
18 ceptional circumstances apply, in an emergency or major
19 disaster, the Administrator of the Federal Emergency
20 Management Agency, to the greatest extent practicable,
21 shall take actions to ensure that an essential service pro-
22 vider has—

23 “(1) priority access to relevant locations and re-
24 sources; and

25 “(2) escorts to relevant locations.

1 “(d) CREDENTIALS.—Not later than 1 year after the
2 date of enactment of this Act, the Administrator of the
3 Federal Emergency Management Agency shall establish a
4 program to provide credentials to essential service pro-
5 viders to facilitate access to relevant locations and re-
6 sources for such providers.”.

7 **SEC. 5. DEFINITIONS.**

8 As used in this Act and for purposes of the rules re-
9 quired by this Act—

10 (1) the term “Commission” means the Federal
11 Communications Commission;

12 (2) the term “mobile service” means commer-
13 cial mobile service (as defined in section 332 of the
14 Communications Act of 1934 (47 U.S.C. 332)) or
15 commercial mobile data service (as defined in section
16 6001 of the Middle Class Tax Relief and Job Cre-
17 ation Act of 2012 (47 U.S.C. 1401));

18 (3) the term “mobile service infrastructure”
19 means a site or similar facility used to transmit or
20 receive mobile service signals;

21 (4) the term “WiFi access point” means wire-
22 less Internet access using the standard designated as
23 802.11 or any variant thereof; and

24 (5) the term “times of emergency” means ei-
25 ther an emergency as defined in section 102 of the

1 Robert T. Stafford Disaster Relief and Emergency
2 Assistance Act (42 U.S.C. 5122), or an emergency
3 as declared by the governor of a State or territory
4 of the United States.

○

114TH CONGRESS
1ST SESSION

H. R. 4111

To include skilled nursing facilities as a type of health care provider under section 254(h) of the Communications Act of 1934.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2015

Mr. LANCE (for himself, Mr. CRAMER, and Mr. LOEBSACK) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To include skilled nursing facilities as a type of health care provider under section 254(h) of the Communications Act of 1934.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rural Health Care
5 Connectivity Act of 2015”.

6 **SEC. 2. TELECOMMUNICATIONS SERVICES FOR SKILLED**
7 **NURSING FACILITIES.**

8 (a) IN GENERAL.—Section 254(h)(7)(B) of the Com-
9 munications Act of 1934 (47 U.S.C. 254(h)(7)(B)) is
10 amended—

- 1 (1) in clause (vi), by striking “and” at the end;
2 (2) by redesignating clause (vii) as clause (viii);
3 (3) by inserting after clause (vi) the following:
4 “(vii) skilled nursing facilities;”; and
5 (4) in clause (viii), as redesignated, by striking
6 “clauses (i) through (vi)” and inserting “clauses (i)
7 through (vii)”.
- 8 (b) SAVINGS CLAUSE.—Nothing in subsection (a)
9 shall be construed to affect the aggregate annual cap on
10 Federal universal service support for health care providers
11 under section 54.675 of title 47, Code of Federal Regula-
12 tions, or any successor regulation.

○

114TH CONGRESS
1ST SESSION

H. R. 4167

To amend the Communications Act of 1934 to require multi-line telephone systems to have a default configuration that permits users to directly initiate a call to 9-1-1 without dialing any additional digit, code, prefix, or post-fix, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 3, 2015

Mr. GOHMERT (for himself, Mr. FARENTHOLD, Mr. DUNCAN of Tennessee, Mr. THOMPSON of California, and Mr. CULBERSON) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to require multi-line telephone systems to have a default configuration that permits users to directly initiate a call to 9-1-1 without dialing any additional digit, code, prefix, or post-fix, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Kari’s Law Act of
5 2015”.

1 **SEC. 2. DEFAULT CONFIGURATION OF MULTI-LINE TELE-**
2 **PHONE SYSTEMS FOR DIRECT DIALING OF 9-**
3 **1-1.**

4 (a) IN GENERAL.—Title VII of the Communications
5 Act of 1934 (47 U.S.C. 601 et seq.) is amended by adding
6 at the end the following:

7 **“SEC. 721. DEFAULT CONFIGURATION OF MULTI-LINE**
8 **TELEPHONE SYSTEMS FOR DIRECT DIALING**
9 **OF 9-1-1.**

10 “(a) IN GENERAL.—A person engaged in the busi-
11 ness of manufacturing, importing, selling, leasing, or in-
12 stalling multi-line telephone systems may not manufacture
13 or import for use in the United States, sell or lease or
14 offer to sell or lease in the United States, or install in
15 the United States a multi-line telephone system, unless the
16 default configuration of such system is such that a user
17 may directly initiate a call to 9-1-1 from any station
18 equipped with dialing facilities, without dialing any addi-
19 tional digit, code, prefix, or post-fix, including any trunk-
20 access code such as the digit ‘9’, regardless of whether
21 the user is required to dial such a digit, code, prefix, or
22 post-fix for other calls.

23 “(b) ON-SITE NOTIFICATION.—A person engaged in
24 the business of installing multi-line telephone systems, in
25 installing such a system, shall configure the system to pro-
26 vide a notification to a central location at the facility

1 where the system is installed when a person at the facility
2 initiates a call to 9-1-1 using the system, if the system
3 is able to be configured to provide the notification without
4 an improvement to the hardware of the system.

5 “(c) ENFORCEMENT.—This section shall be enforced
6 under title V, except that section 501 applies only to the
7 extent that such section provides for the punishment of
8 a fine.

9 “(d) MULTI-LINE TELEPHONE SYSTEM DEFINED.—
10 The term ‘multi-line telephone system’ has the meaning
11 given such term in section 6502 of the Middle Class Tax
12 Relief and Job Creation Act of 2012 (47 U.S.C. 1471).”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall apply with respect to a multi-line tele-
15 phone system that is manufactured, imported, offered for
16 first sale or lease, first sold or leased, or installed after
17 the date that is 2 years after the date of the enactment
18 of this Act.

○

114TH CONGRESS
1ST SESSION

H. R. 4190

To promote innovation, investment, and economic growth by accelerating spectrum efficiency through a challenge prize competition.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2015

Ms. MATSUI introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To promote innovation, investment, and economic growth by accelerating spectrum efficiency through a challenge prize competition.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Spectrum Challenge
5 Prize Act of 2015”.

6 SEC. 2. FINDINGS.

7 Congress finds the following:

8 (1) The future competitiveness and global tech-
9 nology leadership of the United States depend, in

1 part, upon the availability and efficient use of spec-
2 trum.

3 (2) Dramatic improvement in spectrum effi-
4 ciency would spur innovation, investment, and eco-
5 nomic growth.

6 (3) Radio frequency spectrum is vital for emer-
7 gency communications, national security, law en-
8 forcement, aviation, maritime safety, space commu-
9 nications, and numerous other Federal functions.

10 (4) Prize competitions can spur innovation in
11 the private and public sectors.

12 **SEC. 3. DEFINITIONS.**

13 In this Act—

14 (1) the term “Commission” means the Federal
15 Communications Commission;

16 (2) the term “prize competition” means a prize
17 competition conducted by the Secretary under sec-
18 tion 4(a); and

19 (3) the term “Secretary” means the Secretary
20 of Commerce.

21 **SEC. 4. SPECTRUM CHALLENGE PRIZE.**

22 (a) IN GENERAL.—The Secretary, acting through the
23 Assistant Secretary of Commerce for Communications and
24 Information and in consultation with the Under Secretary
25 of Commerce for Standards and Technology, shall—

1 (1) conduct prize competitions to dramatically
2 accelerate the development and commercialization of
3 technology that improves spectrum efficiency and is
4 capable of cost-effective deployment; and

5 (2) define a measurable set of performance
6 goals for participants in the prize competitions to
7 demonstrate their solutions on a level playing field
8 while making a significant advancement over the
9 current state of the art.

10 (b) AUTHORITY OF SECRETARY.—In carrying out
11 subsection (a), the Secretary may—

12 (1) enter into a grant, contract, cooperative
13 agreement, or other agreement with a private sector
14 for-profit or nonprofit entity to administer the prize
15 competitions;

16 (2) invite the Defense Advanced Research
17 Projects Agency, the Commission, the National Aer-
18 onautics and Space Administration, the National
19 Science Foundation, or any other Federal agency to
20 provide advice and assistance in the design or ad-
21 ministration of the prize competitions; and

22 (3) award not more than \$5,000,000, in the ag-
23 gregate, to the winner or winners of the prize com-
24 petitions.

1 **SEC. 5. CRITERIA.**

2 Not later than 90 days after the date of enactment
3 of this Act, the Commission shall publish a technical paper
4 on spectrum efficiency providing criteria that may be used
5 for the design of the prize competitions.

6 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated such sums
8 as may be necessary to carry out this Act.

○

114TH CONGRESS
2D SESSION

H. R. 4884

To amend the Communications Act of 1934 to place an annual cap on support provided through the Lifeline program of the Federal Communications Commission and to provide for certain other requirements relating to such program.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2016

Mr. AUSTIN SCOTT of Georgia introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to place an annual cap on support provided through the Lifeline program of the Federal Communications Commission and to provide for certain other requirements relating to such program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Controlling the Un-
5 checked and Reckless Ballooning of Lifeline Act of 2016”
6 or the “CURB Lifeline Act of 2016”.

1 **SEC. 2. CERTAIN REQUIREMENTS RELATING TO THE LIFE-**
2 **LINE PROGRAM.**

3 (a) IN GENERAL.—Part II of title II of the Commu-
4 nications Act of 1934 (47 U.S.C. 251 et seq.) is amended
5 by inserting after section 254 the following:

6 **“SEC. 254A. CERTAIN REQUIREMENTS RELATING TO THE**
7 **LIFELINE PROGRAM.**

8 “(a) ANNUAL CAP ON SUPPORT.—The total amount
9 of support that may be provided through the Lifeline pro-
10 gram of the Commission in any calendar year may not
11 exceed \$1,500,000,000.

12 “(b) PROHIBITION ON SUBSIDY OF DEVICES.—Sup-
13 port provided through the Lifeline program of the Com-
14 mission may not be applied to any amount charged to a
15 consumer for the sale, lease, or other provision of a mobile
16 telephone or similar device.

17 “(c) PROHIBITION ON VOICE-ONLY MOBILE SERV-
18 ICE.—Support provided through the Lifeline program of
19 the Commission may not be applied to mobile service if
20 the service offering is limited to voice communications
21 service.”.

22 (b) EFFECTIVE DATES.—Section 254A of the Com-
23 munications Act of 1934, as added by subsection (a), shall
24 apply as follows:

25 (1) Subsection (a) of such section shall apply
26 beginning with calendar year 2017.

1 (2) Subsection (b) of such section shall apply
2 beginning on the date of the enactment of this Act.

3 (3) Subsection (c) of such section shall apply
4 beginning on the date that is 2 years after the date
5 of the enactment of this Act.

○

114TH CONGRESS
2D SESSION

H. R. 4889

To amend the Communications Act of 1934 to require providers of a covered service to provide call location information concerning the telecommunications device of a user of such service to an investigative or law enforcement officer in an emergency situation involving risk of death or serious physical injury or in order to respond to the user's call for emergency services.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2016

Mr. YODER (for himself, Ms. JENKINS of Kansas, Mr. CLEAVER, and Mr. POMPEO) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to require providers of a covered service to provide call location information concerning the telecommunications device of a user of such service to an investigative or law enforcement officer in an emergency situation involving risk of death or serious physical injury or in order to respond to the user's call for emergency services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Kelsey Smith Act”.

1 **SEC. 2. REQUIRED EMERGENCY DISCLOSURE OF CALL LO-**
2 **CATION INFORMATION TO LAW ENFORCE-**
3 **MENT.**

4 Section 222 of the Communications Act of 1934 (47
5 U.S.C. 222) is amended—

6 (1) in subsection (d)—

7 (A) by redesignating paragraphs (1)
8 through (4) as subparagraphs (A) through (D),
9 respectively;

10 (B) by striking “nothing in this section”
11 and inserting the following:

12 “(1) PERMITTED DISCLOSURES.—Nothing in
13 this section”; and

14 (C) by adding at the end the following:

15 “(2) REQUIRED EMERGENCY DISCLOSURE OF
16 CALL LOCATION INFORMATION TO LAW ENFORCE-
17 MENT.—Notwithstanding subsections (a), (b), and
18 (c), at the request of an investigative or law enforce-
19 ment officer, a provider of a covered service shall
20 provide to such officer the call location information,
21 or the best available location information, of a tele-
22 communications device that is—

23 “(A) used to place a 9–1–1 call requesting
24 emergency assistance; or

25 “(B) reasonably believed to be in the pos-
26 session of an individual that the law enforce-

1 ment officer reasonably believes is in an emer-
2 gency situation that involves the risk of death
3 or serious physical harm to the individual.”;

4 (2) in subsection (f)(1), by striking “subsection
5 (d)(4)” and inserting “subsection (d)(1)(D)”; and
6 (3) in subsection (h), by adding at the end the
7 following:

8 “(8) COVERED SERVICE.—The term ‘covered
9 service’ means—

10 “(A) a commercial mobile service (as de-
11 fined in section 332); or

12 “(B) an IP-enabled voice service (as de-
13 fined in section 7 of the Wireless Communica-
14 tions and Public Safety Act of 1999 (47 U.S.C.
15 615b)).

16 “(9) INVESTIGATIVE OR LAW ENFORCEMENT
17 OFFICER.—The term ‘investigative or law enforce-
18 ment officer’ has the meaning given such term in
19 section 2510 of title 18, United States Code.”.

○

Mr. WALDEN. With that I would yield back the balance of my time and recognize the distinguished ranking subcommittee member from California, Ms. Eshoo.

**HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CALIFORNIA**

Ms. ESHOO. Thank you, Mr. Chairman, and good morning to you, and thank you to the panelists for being here today especially on the two bills that the chairman raised first in his opening comments. We appreciate it. We are advancing several bipartisan bills today that are going to make progress in a number of critical areas.

I am disappointed that the subcommittee has once again chosen to target the FCC's Lifeline program. The name of the program is highly instructive, Lifeline. And we know, I think, better than the rest of the entire Congress that because of the issues that we deal with that wireless mobile services today are essential in our day-to-day lives for everything across the board. Whether it is commerce, employment, employee, shopping, education, you name it, we are all dependent upon it and so are poor people in our country.

So I think that this bill imposing an arbitrary cap on the Lifeline program of \$1.5 billion and eliminate the program's support for voice-only mobile services within two years and prohibiting Lifeline from being used to subsidize the sale of lease of a mobile phone is damaging to a part of our population that needs these services just as much as we do, just as much as our children do.

Really not any different, if not even more, and if it were enacted into law, a CURB Lifeline Act would deny millions of low-income Americans access to basic communication services and that includes, as I said, so many of the functions that we undertake in life every day. According to the Universal Service Administrative Company, only 33 percent of eligible households, or approximately 13 million American households, participated in the Lifeline program as of October 2015. This means that more than 26 million households qualified for the program but didn't participate.

So capping the Lifeline program would prevent these eligible households from accessing the Lifeline service if they apply after the budget cap has been reached. And just mentioning about a budget, we don't have a budget. We are not doing a budget. So now, if a household happens to fall on hard times, a cap on Lifeline's budget would arbitrarily punish these Americans. And I just think that this is eminently unfair and I think that our committee can do much, much better than this.

So I am disappointed. I hope Mr. Chairman that you and our colleagues will work with us to see if we can't come up with a better way of addressing this. I know that there has been things that have gone wrong with the program. There is something that has gone wrong with every program in the country and it is up to Congress to reform and as well as the executive branch to do what they need to do.

Just last week, the FCC fined a Lifeline provider \$51 million for enrolling ineligible and duplicate customers, the largest fine that the Commission has proposed against a Lifeline provider. So we are not opposing to going after bad actors when taxpayer dollars are involved in it.

So I hope that we can work together on this, because I think it is a historic moment for those who understand that expanding broadband to low-income households is going to help lift our country up. We know, and even in the presidential campaign that there is a great debate about inequality in our country. This increases the inequality. This creates an even larger gap. This doesn't do anything to lessen that gap.

So thank you, Mr. Chairman, for holding this hearing today. Again, thank you to the witnesses and to the sponsors of legislation, the bills that are before us, and with that I yield back. Thank you.

Mr. WALDEN. I thank the gentlelady for her comments. I recognize the gentlelady from Tennessee, the——

Ms. ESHOO. Oh, Mr. Chairman, I am sorry.

Mr. WALDEN. Yes.

Ms. ESHOO. Can I ask for unanimous consent to place the opening statement——

Mr. WALDEN. Without objection.

Ms. ESHOO [continuing]. Of Ms. Matsui in the record? And also several letters from business, from National Congress of American Indians—well, there are——

Mr. WALDEN. Without objection.

Ms. ESHOO. I think, five letters here I would like to submit for the record.

Mr. WALDEN. We have reviewed them.

Ms. ESHOO. Thank you.

Mr. WALDEN. Without objection, they will be entered into the record at the appropriate location.

[The information appears at the conclusion of the hearing.]

Mr. WALDEN. We will now recognize the gentlelady from Tennessee, the vice chair of the full committee Ms. Blackburn, for 5 minutes.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman. And I want to say welcome to our witnesses. Mr. Hunt, I want to especially welcome you and thank you for your willingness to share your story. We are appreciative.

I want to also mention Ms. Matsui's Spectrum Challenge bill. This is something that I am pleased that we are going to discuss today. I think it does really focus the efforts on spectrum efficiency, and I am appreciative of that. We need to discuss spectrum efficiency.

I also had noted the CTIA report which talks about the 350 megahertz of spectrum that are going to be needed by 2019. And whether it is that report or looking at the Cisco estimates of how many wireless devices, the Internet of Things, the utilization expansion of spectrum, that is something we need to be thoughtful as we make decisions and approach this. We don't want to get into a spectrum crisis or a spectrum crunch. We note to each of you that us being diligent and doing the due diligence, if you will, on this issue is going to be important.

So we are going to look forward to discussing that further. I will yield, Mr. Chairman, to any members on our side that—Mr. Pompeo is seeking time. I yield the remainder to Mr. Pompeo.

Mr. POMPEO. Thank you, Ms. Blackburn. And thank you, Mr. Chairman, for holding this hearing today. I want to talk about an important piece of legislation that was originally offered by Representative Yoder, my colleague from Kansas, on which I was an original cosponsor.

It has now been close to eight years since Kelsey Smith, an amazing young Kansas woman, was abducted from a shopping center parking lot in broad daylight. This horrible crime was captured on security camera outside the Target store she was visiting that day to purchase an anniversary gift for her boyfriend.

Her abduction wasn't done under the cover of night and there was no question about the urgency of the situation. And it was at this moment the clock started ticking. Three hours is what law enforcement tells you is the critical window to increase the chances of returning an abducted child alive. A hundred and eighty minutes is not a lot of time, and I am sure that for a parent praying for the safe return of their child, their son or daughter, each second that slips by is pure hell.

In this case it took four days, four days to identify the location of Kelsey. It is just Kansas common sense that law enforcement should have a way to quickly find the location of a wireless telecommunications device if a person has been determined to be at risk of death or serious physical harm due to being kidnapped or reported missing. This bill, the Kelsey Smith Act, does just that. At the same time it maintains privacy protections for all the other information including calls made, received, and text messages. The only thing that would be disclosed is the location, the all-critical location of that cell phone.

Mr. Chairman, 22 states have done this. It is truly a shame that we have not been able to pass this legislation at the federal level. It is tragic indeed. But Kelsey's legacy is not one of tragedy. Great things have happened all across the country. There was a 6-year-old boy saved in your state, Ms. Blackburn, in Tennessee, from a suspected rapist because the state had implemented the Kelsey Smith Act. It is a legacy of countless others who live today because of her work and the work of her parents, one of whom will be testifying before us this morning.

I strongly support this legislation and encourage my colleagues to join me in urging for its swift passage, and with that I yield back.

Mr. WALDEN. The gentleman might want to yield to Mr. Latta who is seeking time as well.

Mr. POMPEO. Yes, it is Ms. Blackburn's time. I will yield to Mr. Latta.

Mr. LATTA. Well, I appreciate the gentleman from Kansas for yielding. And I thank the chairman for holding today's hearing and on these seven bills which is aimed at advancing public safety reform and outdated FCC programs.

And if I could just start, in my 11 years that I was in the Ohio General Assembly I chaired the Judiciary Committee and I chaired the Criminal Committee in the State House. And I appreciate the

family for being here because I know, listening to the testimony for 11 years I unfortunately saw the most horrific and the most tragic events that occurred in the state of Ohio, and I appreciate you all for being here.

And again, the horrific tragedies that brought forth the Kelsey Smith Act and Kari's Law Act both have tangible solutions and will help save lives. In case of emergency situations we need to ensure assistance is easily accessible and provide law enforcement the necessary information to locate individuals in order to prevent serious physical harm.

Again, I commend these families for sharing their stories and seeking to protect others by urging changes in the law. I look forward to hearing from all of our witnesses and hope today's discussion generates ideas that will provide public safety and accountability at the Commission. And with that Mr. Chairman, I yield back the balance of my time.

Mr. WALDEN. I thank the gentleman, and I will now recognize the ranking member of the full committee, the gentleman from New Jersey, Mr. Pallone, for opening comments.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman and our Ranking Member Eshoo, and thank you to all the witnesses for being here today. I would like to start by acknowledging that the families of Kari Hunt and Kelsey Smith are in the hearing room and testifying today, and I understand that a terrible tragedy has befallen your families and would like to thank you for your courageous activism on these issues.

Many of the bills we are discussing today deal with public safety issues, which is particularly timely since this is National Public Safety Telecommunications Week. Telecommunications plays a critical role in public safety, and ensuring people have access to communications services can make all the difference during an emergency.

We learned firsthand in New Jersey during Hurricane Sandy that calling for help is difficult when the power is out, and when the cell towers are also down it is nearly impossible. We need to be better prepared because no one should be left with silence on the other end of the call when they dial 911.

I would like to thank Chairman Walden for adding three Democratic bills to today's hearing including my bill, the Securing Access to Network in Disasters called the SANDy Act. The bill has a number of straightforward proposals that, like the other bills introduced by my Democratic colleagues, should garner bipartisan support.

The SANDy Act would recognize the critical role that all communication providers, broadcasters, cable, and telecommunications serve in emergencies, but most notably the bill would ensure consumers have access to wireless service even if their particular wireless network goes down.

I look forward to hearing more about all the other bills on today's agenda. Unfortunately, I must express serious concerns about one

bill, H.R. 4884, which would cap the Lifeline program. In some ways it makes sense that a Lifeline bill is teed up with the other public safety bills we are considering today because our phones truly are lifelines. They are the essential lifesaving devices that we keep with us every day.

But unlike the other bills that we are considering today that propose ways to improve public safety, this bill to curb the Lifeline program would take essential lifesaving devices away from the people who need help the most. Millions of low-income Americans rely on this program to provide them with the basic communication services that most of us take for granted like the ability to call 911.

The provisions of H.R. 4884 would gut the Lifeline program by setting a cap, forcing a rapid phase-out of voice services, and preventing the subsidy for being used towards equipment like handsets. Each of these provisions alone would be bad enough. However, taken together these provisions will rip phones out of the hands of millions of Americans.

If Republicans truly want to control the costs in the Lifeline program, their blunt force bill is the wrong approach. There is a better way. Let us work together to address inequality, to improve the economy, to find more people jobs, and the best way to lower the cost of the program is to lift people up not to take away their connection to a better life.

I look forward to today's discussion, and I yield the remainder of my time to Mr. McNerney.

Mr. MCNERNEY. I thank the ranking member. I want to talk about the Lifeline program. For over 30 years millions of low-income Americans have been able to access phone service strictly because of the Lifeline program. Families that are Lifeline-eligible are low income. That means for a family of four an income of \$32,800 a year.

So for these people, the current subsidy is \$9.25 a month and that is just for the phone service. H.R. 4884 will limit the number of families that are eligible for this program, and for these families the Lifeline program makes an enormous difference. It allows Americans to apply for jobs. It allows seniors to manage health care. It allows loved ones to stay connected. And it gives families and individuals access to 911.

Mandating a cap on the Lifeline program, eliminating standalone mobile service and prohibiting funds from being used for devices would have a devastating impact on families of low-income Americans. A better way to control costs of the Lifeline program is to lift people up out of poverty. Let us work together to close the wage gap, increase the minimum wage, and start infrastructure projects that will put these folks to work.

So I think there is a much better way to go about this than capping a very critical program like Lifeline, and I yield back to the ranking member.

Mr. PALLONE. And I yield back, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Thank you Mr. Chairman and Ranking Member Eshoo. And thank you to all of the witnesses for being here today. I'd like to start by acknowledging that the fami-

lies of Kari Dunn and Kelsey Smith are in the hearing room and testifying today. I understand that a terrible tragedy has befallen your families. I would like to thank you for your courageous activism on these issues.

Many of the bills we are discussing today deal with public safety issues, which is particularly timely since this is National Public Safety Telecommunications Week.

Telecommunications plays a critical role in public safety, and ensuring people have access to communications services can make all the difference during an emergency. We learned firsthand in New Jersey during Hurricane Sandy that calling for help is difficult when the power is out. And when the cell towers are also down, it is nearly impossible. We need to be better prepared because no one should be left with silence on the other end of the call when they dial 911.

I'd like to thank Chairman Walden for adding three Democratic bills to today's hearing, including my bill, the Securing Access to Networks in Disasters, called the SANDy Act. The bill has a number of straight-forward proposals that like the other bills introduced by my Democratic colleagues should garner bipartisan support. The SANDy Act would recognize the critical role that all communications providers—broadcasters, cable, and telecommunications—serve in emergencies, but most notably, the bill would ensure consumers have access to wireless service even if their particular wireless network goes down.

I look forward to hearing more about all the other bills on today's agenda. Unfortunately I must express serious concerns with one bill—H.R. 4884, which would cap the Lifeline program.

In some ways it makes sense that a Lifeline bill is teed up with the other public safety bills we are considering today. Because our phones truly are lifelines—they are the essential lifesaving devices that we keep with us every day.

But unlike the other bills we are considering today that propose ways to improve public safety, the bill to curb the Lifeline program would take essential lifesaving devices away from the people who need help the most. Millions of low-income Americans rely on this program to provide them with the basic communications services that most of us take for granted—like the ability to call 911. The provisions of H.R. 4884 would gut the Lifeline program by setting a cap, forcing a rapid phase-out of voice services, and preventing the subsidy from being used towards equipment like handsets. Each of these provisions alone would be bad. However, taken together, these provisions will rip phones out of the hands of millions of Americans.

If Republicans truly want to control the costs in the Lifeline program, their blunt force bill is the wrong approach. There is a better way. Let us work together to address inequality; to improve the economy; to find more people jobs. The best way to lower the costs of the program is to lift people up, not to take away their connection to a better life.

I look forward to today's discussion.

Mr. WALDEN. The gentleman yields back. Before I turn to our witnesses I would like to ask unanimous consent to enter into the record the following documents: a written statement from State Senator Greg Smith on the Kelsey Smith Act; a letter from Representative Gohmert supporting Kari's Law; a letter from FCC Commissioner Ajit Pai supporting Kari's Law; a letter from the Good Samaritan Society supporting H.R. 4111; and a letter supporting H.R. 4884, the CURB Lifeline Act, from Taxpayers Protection Alliance, Sixty Plus Alliance, and Frontiers of Freedom.

Without objection, those will also go into the record.

[The information appears at the conclusion of the hearing.]

Mr. WALDEN. We are now prepared to turn to our extraordinary panel of witnesses, and again we appreciate very much your being here. We look forward to all of your comments. As a precursor, you have to push a little button on the base of that microphone and you have to pull it fairly close for us all to hear it.

And so we are going to start with Mr. Hank Hunt, father of Kari Hunt. Mr. Hunt, thank you again for being here. We are sorry for the tragedy that has befallen your family. We look forward to your testimony.

STATEMENTS OF HANK HUNT, PARENT OF KARI HUNT; MELISSA SMITH, TREASURER, KELSEY SMITH FOUNDATION AND PARENT OF KELSEY SMITH; STEVE SOUDER, DIRECTOR, FAIRFAX COUNTY, VIRGINIA 911 CENTER; NATHAN WESSLER, STAFF ATTORNEY AT THE ACLU SPEECH, PRIVACY AND TECHNOLOGY PROJECT; ABIGAIL MEDINA, TRUSTEE, SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT; AND KATIE MCAULIFFE, FEDERAL AFFAIRS MANAGER, AMERICANS FOR TAX REFORM AND EXECUTIVE DIRECTOR, DIGITAL LIBERTY

STATEMENT OF HANK HUNT

Mr. HUNT. Well, thank you. I hope I pushed that hard enough.

Mr. WALDEN. Perfectly.

Mr. HUNT. Good morning. I want to thank the committee for inviting me here and having us here for our testimony.

As the chairman said, on December the 1st, 2013, I lost my oldest daughter to a vicious murder. She was stabbed to death by her husband with their children present. This is a little over 2 years ago and I still ask that if I stumble, understand, and if I hesitate, just bear with me.

As this attack began, her 9-year-old daughter did what she was taught to do. She grabbed the phone and she called 911. It didn't work. She said she heard static. She tried again. There was nothing. She tried again and again, four times in total, nothing. When I arrived at the police station an hour or so after the event happened, my granddaughter sat on my lap and with a very defiant expression looked at me and she said, I tried but it wouldn't work, Papa. It was then I realized this had happened at a hotel, and this hotel requires an extra digit for an outside line and they utilize a multi-line telephone system, MLTS.

And after I laid my daughter to rest I became determined that that was going to stop. I wasn't sure how to do it, but figured I would just take it as it came. We don't teach our children to dial an access number. It isn't always the number 9 either. Some hotels, motels, office buildings, utilize the number 7 or the number 8.

Even more confusing, I stayed at a hotel in Waco, Texas that instructed its guests on the face of the phone to call 6821 in case of an emergency. I don't know who answers that. I didn't try it. I wasn't brave enough. I am now. I will test 911 at any hotel I go to, and the one I am staying at now you cannot call 911.

I started a Change.org petition. It is all I knew to do. And as naive as I guess I am at my age, I was wanting to get a hundred signatures, and I was going to march into my congressman's office with a hundred signatures and create a law. On my way here I checked that petition again and we are at 550,000 almost. We are closing in on that. That I believe was the magic number because here I am. And being one that can be nervous a lot, when I approached my congressman about it—I finally got an invitation—I was surprised to be welcomed, and the interest that has been taken in this issue has been overwhelming and very pleasing.

Kari's Law seeks three things: direct dialing of any phone anywhere, anytime without a prefix/post-fix number being required for a call to be connected; onsite notification, having a central point

where all calls made to 911 from any phone on any particular MLTS will also alert someone on that site that a 911 call has been placed; and number three, no interference or redirection of a 911 call. Some hotels when you dial 911 it directs it to the front desk. That front desk clerk will answer that 911 call and then decide whether or not it should be taken further to a local PSAP, a public safety answering point. It is a very simple procedure which I have found very little to no cost to implement, since almost if not all MLTS systems are already capable of being programmed to do so. In the majority of cases it is simply a reprogram by keyboard.

I have learned a lot in the past 864 days since my daughter passed away. People want this law. People will be greedy and may try to make a buck off of it. It needs to be done. It needs to be taken care of. It has been said the telecom industry will police itself without any laws or regulations requiring it to do so. Over the past 10 years they have been policing themselves, problems still exist. Red lights and stop signs do not save lives. It is the actions of the driver who is obeying the law. Laws are created when ethics fail and if that is what is required, then so be it.

I want to thank Avaya Corporation, Conveyant Systems, Verizon Corporation, National Emergency Number Association and several other companies, and most of all the 911 community for taking the responsibility to resolve this matter. A special thanks to FCC Commissioner Ajit Pai who after being approached by Mark Fletcher, chief architect of public safety for Avaya Corporation, took a stance, and since his involvement numerous hotel chains have corrected this problem on their own. I want to mention Marriott Corporation for taking the lead. They have done that and they require it at any of their hotels, even the franchises, and on their monthly inspections that is part of their inspection.

I will say this. Without the determination of Mark Fletcher we wouldn't be here today talking about this. I knew no way of how to get this done, and he contacted me approximately a week later and after discussion with him we took it forward. Kari's Law has been passed in Suffolk County New York, Illinois, Maryland, the State of Texas, and just recently the State of Tennessee, with legislation similar to Kari's Law being passed in Connecticut and Pennsylvania.

In order for this to be consistent across the country we seek a federal act requiring the three things that Kari's Law asks. Efficient 911 can be deployed free with Kari's Law. It is a simple act, direct access, onsite notification, no interception. If we can't do this, if it can't be done, if it seems to be impossible, but then I feel that we need to remove those instructions from every police car, fire truck and ambulance in our country.

I appreciate the time you have allowed me here and I will entertain any questions you might have.

[The statement of Mr. Hunt follows:]

Witness Statement
of
Henry E. Hunt Jr. (Hank)
In support of Kari's Law

Before The Subcommittee on Communication and Technology
The Energy and Commerce Committee

U.S. House of Representatives

Legislative hearing on H.R. 4167 Kari's Law Act of 2015

April 13, 2016

Introduction

Good morning Chairman Walden, Vice Chairman Latta, Ranking Member Eshoo, and members of the Subcommittee. My name is Henry Hunt (Hank) and I am here today to discuss the Legislation titled H.R. 4167, Kari's Law Act of 2015. I intend to discuss this legislation with a knowledge gained over just the last 2½ years accompanied with a broken heart,

so if you will, bear with me if I stumble, and if I hesitate, please understand. When asked throughout my adult life what my greatest fear is, my answer has always been, "losing a child". It is a genuine fear and one that makes all parents shiver and quickly change the subject. I eventually experienced that fear when my oldest daughter, Kari, was murdered in a horrific manner.

As of December 1, 2013, I can't change the subject anymore.

On that date, Kari Rene Hunt, aged 31, had separated from her husband of 10 years and had moved in with a sister in Marshall Texas which is approximately 67 miles from Lindale Texas where she and her husband were living. After about 8 years of increasingly abusive treatment from her husband she made the decision to stay with her sister and seek a divorce. This wasn't something she took lightly and after discussion with family decided this was best for her and her three children. Two girls aged 9 and 4 and a son aged 2. After about two weeks her husband asked to see the children for a few days and she agreed to let him visit them at a local hotel that he rented for several days. On Sunday, December 1, 2013 she agreed to take the children to him at the hotel and once arriving at the hotel she took the three children to the room he was staying in along with their belongings. After taking the children's things into the hotel room he convinced her to join him in the bathroom "for a cigarette". Once inside the bathroom he tried to convince her to not go through with the divorce but when she refused he

began attacking her by stabbing and cutting her. As the struggle began she screamed to her oldest daughter to “call 911”. Her then 9 year old daughter began to dial 911 from the hotel room phone. A simple exercise to do, something taught to all children by parents, grand parents, Teachers, Firefighters, Police Officers, television shows and public service announcements. She did as instructed by the adults in her life and began to dial 911, she heard static, she hung up and dialed again, static, she hung up again and dialed again, static, she tried a fourth time, same result, nothing. Instead of hearing the words every person that dials 911 in an emergency anticipates hearing, “911, What is your emergency?” she heard her mother being murdered behind a hotel bathroom door. After realizing that dialing 911 was futile, she pushed her crying siblings into the hallway and sought help elsewhere. She finally found two hotel employees and after desperately trying to explain what was happening she realized the two employees did not speak English. She then began trying find help elsewhere and eventually another patron in the hotel responded to the commotion and was able to reach 911. Kari's husband ran, as most cowards do, and he demanded that the oldest girl get her brother and come with him, however, she pushed her brother behind her and in no uncertain terms let him know they weren't going with him. He then took the her younger sister and fled. After an extensive and nerve racking several hours and numerous Amber Alert alarms, he was apprehended and we were relieved to get our grand daughter

back unharmed. Kari died that day from her multiple wounds.

Her husband has stated that it took him about 5 minutes to do the damage he inflicted on Kari. 5 minutes, such a long time when you stare at a clock. Had the 911 call gone through, the response time would have been much less than the 5 minutes he spent murdering her. Would that have saved her? He stabbed her a total of 29 times in 5 minutes, if it had been three minutes..... I began a petition on [change.org](https://www.change.org) seeking Federal Legislation that would require that any phone, any where, any time connect with the appropriate Public Safety Answering Point when the digits 9-1-1 are dialed, without a prefix, postfix or any other combination of digits or letters other than 9-1-1. After almost 2 ½ years after Kari's death I have learned much about the telecommunications industry, met numerous people in the field that showed support toward my goal and as of today we have approximately 550,000 signatures and support from around the world. It's a simple fix, a software fix in most cases and something that is cost free and that cost should be passed to the customer. I have support from the National Emergency number Association, the American Hotel and Lodging Association, Verizon Corporation, Avaya Corporation, Conveyant Technologies, and the leadership of Suffolk County New York, The State of Illinois, The State of Maryland, The State of Texas, and the State of Tennessee. Legislation similar to Kari's Law has passed in Pennsylvania and Connecticut, with Kentucky, Colorado,

Nevada and Canada weighing the benefits of legislation that has garnered the moniker “it’s a no brainer” from people around the globe. Kari's Law, as we ask, seeks three things; Direct dialing of 9-1-1 without a prefix, postfix or combination of numbers other than the three digits 9-1-1, On site notification where a MLTS system is installed shall also notify a central location within the facility where the system is installed when a person dials 911 from any extension, if that system is able to be configured. Kari's Law also seeks to require a waiver to any system not able to provide direct dialing or on site notification with a noticeable labeling on the phone informing any user there is a requirement to dial a prefix number before dialing 911 and what that prefix number may be. I ask that H.R. 4167, Kari's Law Act of 2015, be considered in order for any child in the future to be confident that should they need to call 9-1-1 for help, they will get it. There has been a few, VERY few people that appear to be seeking to make a profit from this law. That saddens me but it is to be expected from a tiny portion of the telecommunications industry. All in all, I have never seen more support for something that is in the public interest more than this legislation. I have been told, “Laws are created when Ethics fail”. This is not a new problem in the industry but only a few have applied the ethics to solve it on their own. I seek to change that with your help. Kari was my oldest daughter, I miss her terribly and I ask for your help.

I thank you for your time and I am happy to answer any questions you may have.

Mr. WALDEN. Thank you, Mr. Hunt. We appreciate your testimony, and your passion on this issue is very understood. We will now go to Ms. Melissa “Missy” Smith, treasurer of the Kelsey Smith Foundation and mother of Kelsey Smith. Ms. Smith, thank you for being here today. We are sorry for the tragedy your family has endured as well. We look forward to your testimony.

STATEMENT OF MELISSA SMITH

Ms. SMITH. Thank you, Chairman Walden. I would like to thank you and the other members for inviting me to come and speak today, and I would like to thank Congressman Yoder, Emanuel Cleaver, Representative Pompeo, and Representative Lynn for sponsoring this. I would also be remiss if I didn’t thank former Congressmen Tiahrt and Moore who started this process when Kelsey was murdered.

Kelsey Smith, she is the reason this legislation began in Kansas 7 years ago and to date has passed in 22 states. I am the mother of Kelsey Smith. Her story made national and international news when she was kidnapped in broad daylight from a Target store just 9 days after graduating from high school.

What does a parent go through when a child is missing? You do not eat because you don’t know if your child is eating. You do not sleep because you don’t know if your child is sleeping. What took so long to find Kelsey? One word, Verizon. Let me be perfectly clear. In no way do we hold them responsible for Kelsey’s death. They had nothing to do with that.

What is this law and why is it needed? Federal law states that providers may release the location information. This law states they shall. We spend a lot of time, money and resources training our police. We do not spend that same time, money and resources training a customer service rep to answer a call at 2 o’clock in the morning as to what a life emergency is.

What about privacy? We are not asking for the call information. We are just asking where is that device. I don’t care who you are texting. I don’t care the numbers you are calling. I don’t care what pictures you are taking. Where is that device? Once that information was released, within 45 minutes Kelsey’s body was found.

What about police misconduct? We hear about that also. There has not been one instance of a reported case of police misusing this law. Does it work? Yes, it does. In Kansas, a suicide was prevented when a child left a note for their parents and they traced her phone and found her in time. An elderly stroke victim was found in time. That wasn’t a way we had anticipated Kelsey’s law being used, but he could only call his wife and they were able to find him and get him the medical attention he needed in time. And then last year, and this one makes me tear up, there was a baby found in 40 minutes. That baby was found alive; it had been carjacked—because my baby wasn’t found alive.

Much legislation is about numbers, so let me give you some. 355.4 million wireless subscribers in the United States in December 2014. That is from the CTIA summary report. Forty-seven percent of U.S. households in 2014 were wireless only. Two of our daughters don’t have a land line. 4,176, that is the number of 17

to 24 year olds murdered in the United States in 2007. Twenty thousand dollars, that is what it cost us to bury Kelsey.

One hundred and twenty five is the number of detectives involved in her case. Eighteen different law enforcement agencies including the federal, county, and city agencies, multiple municipalities, two states, all tied up for four days. How much money and resources were spent on that of which I am very thankful because my daughter came home. Forty five minutes, that is how long it took to locate Kelsey once that engineer got to the tower.

One, Kelsey, the reason this legislation began in 2009. Zero, that is the cost of implementing this law. It doesn't cost anything. There are not many times a legislator can pass a law, save a life and it doesn't cost you. Priceless, the value of the lives saved using the Kelsey Smith Act.

When this law passed in Kansas I said to Senator Rob Olson at the time—he was the original sponsor who helped me with this—that maybe my baby laid out there for 4 days because God knew her mother had the mouth to get this done. And according to C.S. Lewis I will end with this. “Experience: that most of brutal of teachers. But you learn, my God do you learn.” Please learn from our experience.

Thank you. And I will answer any questions you may have.

[The statement of Ms. Smith follows:]

Prepared Testimony of Melissa Smith

Mother of Kelsey Smith

In Support of H.R. 4889

April 13, 2016



In Memory of Kelsey

First, I would like to thank Chairman Walden, Vice Chairman Latta, Ranking Member Eshoo, and the honorable committee members for considering such an important piece of legislation. My name is Missey Smith; I am the mother of Kelsey Smith. She is the reason this legislation began in Kansas seven years ago and to date has passed in twenty-two states. On June 2, 2007 - nine days after graduating from high school -Kelsey was kidnapped in broad daylight from a Target store in Overland Park, Kansas. Her story made national and international news. Four days after her disappearance Kelsey's body was recovered in Missouri, she had been raped, sodomized and strangled to death. What does a parent go through when a child is missing? You do not eat because you do not know if your child is eating. You do not sleep because you wonder if they are sleeping. It is pure HELL. What took so long to find Kelsey? ONE word, Verizon. Let me be perfectly clear, in no way do we hold Verizon responsible for Kelsey's death.

I was out of state and on my way home when our daughter Lindsey called me. She informed me that Kelsey was not answering her phone nor was she responding to text messages, I knew immediately that something was wrong. My husband Greg, Kelsey's siblings and her boyfriend John, continued to try and reach her as did I for the last hour of my trip home. After I arrived home, John explained that his uncle used to work for Sprint and that our cell phone company could "ping" Kelsey's phone so we could locate her. It seemed simple enough. Little did we know. I called our cell phone provider, explained that my daughter was missing and that I needed help to find her. They told me that they were unable to do that and that I could look online for her cell phone activity. We had already done that. The police had been contacted and I believe Kelsey's car had been located. Some time that night Greg had also contacted them and they repeated the same to him. Sgt. Tippe of the Overland Park Police Department contacted them – which was recorded – explaining why he needed this information. Still it was not

released. Over the next few days, Verizon was contacted multiple times by family, law enforcement and was even issued a subpoena by the district attorney's office asking for Kelsey's cell phone "pings". My understanding of events is that on the third day of Kelsey's disappearance an FBI agent was finally able to get through to Verizon regarding what was needed. By the time that information was released it was evening, so on the morning of the fourth day, law enforcement along with an engineer went out to the tower Kelsey's phone had last made contact with. The engineer narrowed the area law enforcement should look and Kelsey's body was found in about forty-five minutes.

In July of 2007, Greg and I had a meeting with Verizon officials regarding what had occurred in Kelsey's case. This meeting included the President of our area – Mark Crumpton – and THREE lawyers. During that meeting one of the lawyers told us that we used incorrect terminology when requesting their help. We had used the word "ping", apparently that was not terminology they used. I explained to her in some very strong language to not make a family figure out what is the magical words to get them to help when a loved one is missing. I told her that Verizon knew exactly what I was asking for because I told them my child was missing and asked them to help find her. I also told all of them to go back, check their protocols to see what was broke, and figure out where they had failed Kelsey. I informed them that I would be following up.

After several months of not hearing anything, I called Mr. Crumpton's office. His administrative assistant Nancy Bates, informed me that he was no longer with the company. I explained who I was and why I was calling. She had the unfortunate job of calling me back and explaining to me that the lawyers said to inform me they found the protocols to be adequate; to which my response was, "Please tell those lawyers they have not heard the last from this mom."

If their actions were adequate I would hate to see what inadequate is. My husband and I met again with Verizon officials sometime after the first passage of The Kelsey Smith Act. At that time, it was explained to us when we were asking for Kelsey's cell phone "pings" they were not able to do that. They explained to "ping" a phone is to send an active signal to the phone and the phone responds. They could have however, looked at the history of where her phone had made contact with the network but, because of human error that was not done. There was also human error involved many times over when Kelsey's situation was continuously handled by a customer service representative instead of being kicked up to the next level. I fully understand that employees are human and that mistakes will be made. This legislation will reduce those errors when a life is at risk.

We spend a lot of time, money, and resources training our law enforcement personnel as to what is a life threatening emergency; we do not invest the same resources training a customer service representative for a wireless provider. Sheriff Frank Denning - the sheriff when Kelsey went missing describes The Kelsey Smith Act this way: "Kelsey's Law transcends simply being labeled as "important". This puts in the hands of emergency responders a tool that can be used to immediately take action in the face of horrible crimes." Kelsey's Law saves lives. It works and the good news is that the cost is NOTHING!! There are not many times a legislator can pass a law that will save lives and it will not cost one cent. After this legislation passed has passed at the state level, we have received emails and heard from 911 managers of how the law works and of situations where lives were saved. There was an elderly gentleman who had a stroke and could only remember wife's phone number but did not know where he was. With Kelsey's law they were able to find him in time and to get him the medical assistance he needed. In Tennessee there was a child that had been taken by a man charged with crimes against ten (10) different

children. They were able to recover this child. A year ago in Lenexa, Kansas, a baby was in a car when it was carjacked. That baby was found in less than forty minutes. The police stated to the news they recovered that baby because of Kelsey's Law.

This legislation has had bi-partisan support at the state level, with sponsors from both parties. Legislation tends to lag behind technology. This bill amends the telecommunications act of 1934, were cell phones even a thought then? The twenty-two states that have passed similar legislation are the following:

- | | |
|------------------------------------|-------------------------------------|
| 1. Kansas – April 17, 2009 | 12. Colorado – May 13, 2013 |
| 2. New Jersey – January 29, 2010 | 13. Nevada- May 23, 2013 |
| 3. Nebraska – March 17, 2010 | 14. Rhode Island - July 15, 2013 |
| 4. Minnesota - May 13, 2010 | 15. Oregon March 6, 2014 |
| 5. New Hampshire – July 13, 2010 | 16. Pennsylvania – October 22, 2014 |
| 6. North Dakota – April 8, 2011 | 17. Arkansas – March 13, 2015 |
| 7. Tennessee – April 26, 2012 | 18. Iowa – May 1, 2015 |
| 8. Hawaii – April 30, 2012 | 19. Washington – May 7, 2015 |
| 9. Missouri – July 6, 2012 | 20. Louisiana – June 23, 2015 |
| 10. Utah – March 27, 2013 | 21. Delaware – August 7, 2015 |
| 11. West Virginia – April 12, 2013 | 22. Indiana – March 21, 2016 |

There are usually two main concerns when it comes to this bill; those are privacy rights and improper use by law enforcement. The Act only allows law enforcement to access the location of a wireless device. It does not allow the search of the device's contents – phone call history, actual phone calls, text messages, pictures, or any other content on the device. As to the improper use by law enforcement – this Act does not authorize unlawful action, which this would clearly be. For example - an officer who falsifies information to obtain a warrant is in violation of the law and the 4th amendment – subject to criminal prosecution and/or sanction. Misconduct by law enforcement is not unheard of but it is rare and is more the stuff of movie and

television drama than actual day-to-day conduct by law enforcement. Not a single state that has enacted the Kelsey Smith Act has reported any officer misconduct in the use of the Act.

When Greg and I found out that only one of us could testify, he was kind enough to step aside and allow me to be the voice for Kelsey today. That could not have been easy for him being her father, a former police officer and a state Senator in Kansas. We have worked as a team since Kelsey's murder in trying to keep young people safe by establishing The Kelsey Smith Foundation and working on this legislation. I believe his testimony is just as critical in doing that, so I have included his testimony in mine.

On the day that The Kelsey Smith Act passed in Kansas, I told now Senator Rob Olson, the first sponsor of this legislation, maybe the reason my baby laid in the woods for four days was because God knew this law needed to change. He also knew this mama had the mouth to do it. According to C.S. Lewis, "Experience: that most brutal of teachers. But you learn, my God do you learn." In 2007, there were 4176 young people ages 17-24 murdered in the United States. How many of those victims had a cell phone? I personally knew one of them. Please learn from our experience.

Thank you,

Melissa Smith

8605 Robinson St.
Overland Park, KS 66212
913-383-1574
Missy5mae@gmail.com

Mr. WALDEN. Thank you, Ms. Smith. We will now turn to Mr. Steve Souder, the director of the Fairfax County, Virginia 911 Center. Mr. Souder, thank you for being here. We look forward to your comments.

STATEMENT OF STEVE SOUDER

Mr. SOUDER. Good morning. And Chairman Walden and Ranking Member Eshoo and distinguished members of the subcommittee, thank you for the invitation to speak at today's hearing. My name is Steve Souder and I am the director of the Fairfax County Department of Public Safety Communications, a community in which some members of this committee may reside.

Over the course of the more than 50 years in 911 public safety communications, I have served in four public safety communications centers in the National Capital Region and have been fortunate to be the director of three. I have also been fortunate to participate in the national efforts to improve public safety communications, most recently as chair of the Federal Communications Commission's Task Force on Optimal PSAP Architecture, which addressed important issues for the 911 community such as, but not limited to, cybersecurity, technical architecture in today's century, and of course the ever-prevalent funding.

I am honored to be here today to discuss the important legislation affecting public safety communications before this subcommittee and to answer any questions that you may have. My remarks will focus on H.R. 4167, Kari's Law. We just heard Mr. Hunt speak about this issue and I was welled with emotion as I heard him describe his ordeal.

911 has earned the public's trust as the go-to number when there is something wrong. Simply 911, we all know it. It is, as others have said, on the side of every fire truck and police car, in the front page of every phone book in the United States of America. It does not say that in order to make a 911 call you have to use any kind of code, prefix or subtext. It is not required.

911, the most recognized number in the United States of America, the number that all of us would go to if anything happened in our own communities, and a number which is called 240 million times a year, 240 million times a year. No matter where you are when you expect and can call 911, it will work. That is the expectation. That was the expectation of Brianna when she called on behalf of her mother that it would work. And that is why, when she sat on her grandfather's lap and said, Daddy, or Granddad, it didn't work, that should not be the fate of any other person ever again.

Many of you are familiar with the tragic story of Kari Hunt. Kari was assaulted by her ex-husband in a small hotel in Marshall, Texas, in 2013. Her 9-year-old daughter, Brianna, did exactly what she had been taught to do. She called 911. But because the hotel's phone system required a prefix to make outside calls, her repeated attempts to get help never went through. This is a situation that exists across the country where multiple line telephone systems are employed, including in hotels, colleges, corporate campuses, and indeed government buildings.

I commend and appreciate Hank Hunt's efforts in this regard and I would like to also recognize FCC Commissioner Pai who has been mentioned previously for joining with him, Mr. Hunt, to advocate the hotel industry and multiple line telephone system manufacturers to make the changes required to enable direct dial to 911. Indeed, Commissioner Pai has reported that many national hotel chains have already changed their multiple line telephone systems to enable direct access to 911 including their owned and their franchised properties. This shows that it is possible to do so very easily and virtually without any cost.

Kari's Law, introduced by Representative Gohmert, has bipartisan support and would be an important step in addressing this problem by requiring that all new multiple line telephone systems be configured by default to directly dial 911 without requiring any additional digit code or prefix. This would be a substantial improvement for 911 calls from MLTS systems, and it is also an opportunity to address important issues such as the delivery of accurate location information.

When those 240 million 911 calls are made annually, they are answered by a 911 call taker or dispatcher that sits at a console in one of America's 6,100 911 centers. And as that call taker answers that 911 call, the very first question they ask is where is your emergency? They don't ask what. They don't ask why. And they don't ask how. They ask where, because of the location of the emergency is absolutely the single most important piece of information the call taker has to acquire.

In addition to direct 911 access, MLTS phones traditionally lack another key feature: accurate information location. Example, before this meeting I walked down the hallway and there was an office door opened, and I asked the attendant there if I could use their phone. I had my uniform on. She said can I help you? And I said I would like to call 911. She said OK, and I dialed 911 and I got the very efficient U.S. Capitol police. I also dialed 9911 and I got the Capitol Police. I thanked her very much. When I asked the Capitol Police operator that had answered if they knew where this phone call was coming from, they said they knew the telephone number, meaning that I was calling from, but they would have to reference another list to identify in what office that telephone number terminated.

I walked into the hallway. I then used my own cell phone and I dialed 911. It was answered by the Metropolitan Police Department's 911 center not far from where we sit today. I asked the gentleman that answered that call what location it showed that I was calling from. He said Number 50 Independence Avenue, Southwest. That is the location that we are at today. The Rayburn House Office Building stretches for two city blocks. It is at least four floors above ground and two floors below ground. And I asked, was there any indication on what we commonly call in the business the ANI or the ALI screen as to where at Number 50 Independence Avenue I was located, and he said no, sir.

If I were having a heart attack or someone was having a heart attack and I called on their behalf, can you imagine the challenge that would exist in trying to locate one person in this building that

is this large that provides no more accurate information than simply the address?

This leaves the public in danger and public safety answering points, PSAPs, the first responders, expending significant resources to locate and provide emergency assistance to the scene. In order to ensure that every caller gets the help they need, every multiple line telephone system should transmit a dispatchable address where the call is actually coming from, such as the room number, the office number, so that responders can quickly locate the calling party.

Additionally, while the bill eventually makes direct dial the default for all new multiple line telephone systems, there will still be a large number of embedded base of telephones that wouldn't support 911 dialing by default. Depending upon equipment cycles these systems may not be replaced for many years to come, allowing continued consumer confusion and most tragically delayed response.

Whether a person can direct dial 911 should not depend upon where he or she is located, such as a hotel room or a dormitory, or how old the telephone is that they are calling from. Kari's Law is a great first step in what will hopefully lead to additional efforts to fully solve the 911 problems associated with multiple line telephone systems.

Again I want to thank you for the opportunity to address the subcommittee for your work to improve public safety communications. I would especially like to thank Representative Eshoo as one of the four founding members of the Next Generation Congressional 911 Caucus, and I would also take the privilege of asking Mr. Pallone—I see that he has now left the dais—from my home State of New Jersey because he referenced a very important week in the 911 world and that is this week, National Public Safety Telecommunicators Week. The week that is set aside by the Congress and signed by the President to recognize those most unsung heroes in our profession, the 911 call takers and dispatchers that serve the community and citizens that you men and women represent. Thank you.

[The statement of Mr. Souder follows:]

**WRITTEN TESTIMONY
OF
STEPHEN H. SOUDER
DIRECTOR, DEPARTMENT OF 9-1-1/PUBLIC SAFETY COMMUNICATIONS,
FAIRFAX COUNTY, VIRGINIA**

**Before the House Energy & Commerce Committee,
Subcommittee on Communications and Technology
“A Legislative Hearing on Seven Communications Bills”
April 13, 2016**

Chairman Walden, Ranking Member Eshoo, and distinguished members of the Subcommittee, thank you for the invitation to speak at today’s hearing. My name is Steve Souder and I am the Director of the Fairfax County Department of 9-1-1/Public Safety Communications. Over the course of more than 50 years in public safety communications, I have served in four public safety communications centers in the National Capitol Region, and have been the director of three. I have also been fortunate to participate in national efforts to improve public safety communications – most recently as the Chair of the Federal Communications Commission’s (FCC’s) Task Force on Optimal PSAP Architecture, or TFOPA, which addressed important issues for 9-1-1 such as cybersecurity, architecture, and funding. I am honored to be here today to discuss the important legislation affecting public safety communications before this Subcommittee and to answer any questions you may have.

My remarks focus on H.R. 4167, Kari’s Law, which addresses direct-dial for 9-1-1 in Multi-Line Telephone Systems (MLTS), but of course, I would be happy to share my experience with regard to any other topics.

Everyone is taught that in an emergency, help is only three digits away. “9-1-1” has earned the public’s trust because it’s simple, and it’s reliable for connecting those who need help with the talented professionals who work in 9-1-1 centers. No matter where you are, you expect

that dialing 9-1-1 will work. Unfortunately, depending on where you are today, that might not be enough.

Many of you are familiar with the tragic story of Kari Hunt. Kari Hunt was assaulted by her ex-husband in a small hotel in Texas. Her nine year old daughter – doing exactly what she had been taught to do – dialed 9-1-1 for help. But because the hotel's phone system required a prefix to make outside calls, her repeated attempts to get help never went through. This is a situation that exists across the country where MLTS is employed, including at hotels, college and corporate campuses, and governmental offices.

Hank Hunt should be commended for his efforts to address this problem, and I'd like to also recognize FCC Commissioner Ajit Pai for joining with him to advocate the hotel industry and MLTS manufacturers to make the changes required to enable direct dial to 9-1-1. Indeed, Commissioner Pai has reported that many national hotel chains have already changed their MLTS to enable direct access to 9-1-1, including their owned and franchised properties. This shows that it is possible to solve this problem with existing MLTS installations.

Kari's Law, introduced by Representative Gohmert, has bipartisan support and would be an important step in addressing this problem by requiring that all new MLTS be configured by default to directly dial 9-1-1 without requiring any additional digit, code, or prefix. This would be a substantial improvement for 9-1-1 calls from MLTS, and it's also an opportunity to address important issues such as the delivery of accurate location information.

In addition to direct 9-1-1 access, MLTS have traditionally lacked another key feature – accurate location information. The general public has also come to rightly expect that 9-1-1 professionals will know their location, especially when dialing from landline phones like MLTS.

But MLTS often do not provide the location of the phone itself, but rather the general building or campus address, which may be blocks or many miles away. This leaves the public in danger and public safety answering points (PSAPs) and first responders expending significant resources to locate and provide emergency assistance to the scene. In order to ensure that every caller gets the help they need, every MLTS phone should transmit a dispatchable location, such as the room or office number, so responders can quickly locate the calling party.

Additionally, while the bill eventually makes direct dial the default for new MLTS devices, there would still be a large embedded base of phones that wouldn't support direct 9-1-1 dialing by default. Depending on equipment cycles, these systems may not be replaced for many years, allowing continued consumer confusion and delayed response. Whether a person can direct-dial 9-1-1 should not depend on where he or she is located – such as a hotel room or a dormitory – or how old the phone is. Kari's Law is a great first step, and will hopefully lead to additional efforts to fully solve the 9-1-1 problems associated with MLTS.

Again, I want to thank you for this opportunity to address the Subcommittee and for your work to improve public safety communications. I'd be happy to answer any questions.

Mr. WALDEN. You are welcome. Thank you for your testimony. That may also be a reason we are having all these bills up today, so thank you. I will now go to Mr. Wessler. Nathan Wessler is the staff attorney for the ACLU Speech, Privacy, and Technology Project.

Mr. Wessler, welcome. We look forward to your comments on these pieces of legislation, and please go ahead, sir.

STATEMENT OF NATHAN WESSLER

Mr. WESSLER. Chairman Walden, Ranking Member Eshoo, members of the committee, thank you for the opportunity to testify today on behalf of the ACLU concerning H.R. 4889. Although we agree with the important goals of this legislation, we oppose it in its current form because it lacks sufficient safeguards against abuse.

The tragedy that gave rise to this legislation today is truly, truly terrible. In emergencies where the safety of a person is in imminent jeopardy, we all want to ensure that law enforcement can quickly access cell phone location information to avoid this kind of a tragic outcome. Allowing companies the discretion to provide these records in an emergency is an effective mechanism for ensuring access while preventing the abuse that could jeopardize the safety of others.

In 2015, just two service providers alone, AT&T and Verizon, processed more than 81,000 emergency requests for information. These and the other service providers maintain large law enforcement compliance teams that operate around the clock responding to requests at any hour in order to help avoid tragedies like the one that gave rise to this bill. This process has been refined and improved in recent years.

The same features of cell phone location information that make it useful to law enforcement, the ability to track people's movements over time and to precisely pinpoint their locations, also trigger the protections of the Fourth Amendment. As the Supreme Court has recognized and lower courts have reaffirmed, government access to cell phone location information can invade reasonable expectations of privacy by laying bare some of the most sensitive aspects of our lives when we are at home, where we spend the night, which doctors or psychiatrists we visit and more.

For that reason, any legislation allowing law enforcement access to location records in an emergency must include strong protections. Those protections are important to prevent false invocations of emergencies by police who want to avoid obtaining a court order or a warrant in a normal criminal investigation.

Our written testimony includes examples of such abuse including cases where police obtained unfettered access to cell phone location information, but later admitted under oath that no emergency actually existed, and a case where police in California reportedly coerced a kidnapping victim into saying that she had been—sorry, coerced a person into saying she had been kidnapped falsely, and then sent a false emergency request for location information to the purported kidnapper's cellular service provider. Law enforcement agencies including the Department of Justice and the Reno, Ne-

vada Police Department have themselves admitted to issuing emergency requests where no emergency in fact existed.

Protections will also empower service providers to turn away requests from criminals and stalkers who attempt to impersonate law enforcement. Effective privacy safeguards can coexist with speedy emergency request procedures without interfering with law enforcement's important job of protecting the public.

The ACLU has three recommendations for the committee. First, the committee should preserve a system where service providers have discretion to turn down a warrantless request when it appears the emergency is false, or when the requester does not appear to actually be a law enforcement official. Making disclosure mandatory can facilitate abuse by removing this important safety valve.

Second, if the committee moves forward with a mandatory disclosure requirement it should add protections. Law enforcement should be required to obtain after-the-fact approval from a judge so that there is a neutral decision maker ensuring that the claimed emergency is genuine. In cases where police are found to have violated the law, there should be remedies including suppression of illegally obtained evidence and a civil remedy for those affected. And law enforcement should be required to provide notice to the person whose location information was obtained in order to allow that person to seek redress if police violated the law or to learn if someone may have impersonated an officer illegally to obtain sensitive information.

These protections are modest. They are well established in other statutes including the Wiretap Act, the Pen Register statute, the USA Freedom Act, which governs certain requests for information in national security investigations, and state laws dealing with cell phone location records in places like Indiana, California, and Colorado. The version of the Kelsey Smith Act introduced in the last Congress also included some of these protections.

Finally, the current bill allows emergency requests when law enforcement have a reasonable belief that there is an emergency. This standard should be raised to probable cause which is the standard that was used in the version of this legislation in the last Congress. A probable cause standard will help ensure that sensitive location records are obtained only when there is a good reason to believe an emergency exists.

I look forward to answering any questions and to working with the committee to ensure access to location records in emergencies while simultaneously safeguarding Americans' privacy and preventing abuse. Thank you.

[The statement of Mr. Wessler follows:]



**Written Testimony of Nathan Freed Wessler
on behalf of the American Civil Liberties Union
Before the U.S. House of Representatives Committee
on Energy and Commerce, Subcommittee on
Communications and Technology**

Hearing on

**“Seven Communications Bills”
including H.R. 4889, the Kelsey Smith Act of 2016**

Wednesday, April 13, 2016, at 10:15am

*Submitted by the
ACLU Washington Legislative Office*

**For further information, please contact Neema Singh Guliani,
Legislative Counsel, at nguliani@aclu.org or 202.675.2322**

Chairman Walden, Ranking Member Eshoo, and Members of the Committee:

Thank you for the opportunity to testify on behalf of the American Civil Liberties Union (ACLU) regarding H.R. 4889, the Kelsey Smith Act.¹ Although the impetus behind this legislation is commendable, as currently drafted the bill raises a number of concerns.

When used properly, cell phone location information can be a powerful public safety or law enforcement tool. But, because of the sensitivity of this data, it is crucial that government access be permitted only in the context of strong safeguards that protect Americans' privacy. Because H.R. 4889 does not include sufficient safeguards, the ACLU opposes the legislation in its current form. However, if the bill moves forward, we urge the subcommittee to amend it to include the following protections:

- Make emergency disclosure of location information by service providers voluntary rather than mandatory, in order to protect against disclosure when there is no genuine emergency, or when criminals seek location records by impersonating law enforcement officials.
- Require after-the-fact judicial review and prompt notice to the person whose location information was obtained.
- Require judicially enforceable remedies when location information is acquired in violation of the law.
- Raise the legal standard governing access to location information in an emergency from "reasonable belief" to "probable cause" in order to avoid disclosure of sensitive location information in the absence of a genuine emergency.

¹ For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. With more than a million members, activists and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico and Washington, D.C., to preserve American democracy and an open government.

I. The Fourth Amendment protects individuals' location information.

Under current law, providers of electronic communications are required to keep the records and personal information of users confidential from the general public and the government.² Given the technical realities of modern communications, this protection is critical. Cell phones are capable of tracking every American's movements continuously and for an extended duration. As such, location information is some of the most revealing data possessed by carriers. As Justice Sonia Sotomayor wrote in her concurrence in a recent Supreme Court decision regarding location tracking, *United States v. Jones*:

GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations. . . . Disclosed in [GPS] data . . . will be trips the indisputably private nature of which takes little imagination to conjure: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-the-hour motel, the union meeting, the mosque, synagogue or church, the gay bar and on and on. . . . The Government can store such records and efficiently mine them for information years into the future.³

The full Supreme Court recently reiterated this concern when it recognized that strong Fourth Amendment protections are needed for cell phones in part because "location information is a standard feature on many smart phones and can reconstruct someone's specific movements down to the minute, not only around town but also within a particular building."⁴ Other federal and state courts have likewise held that people have a reasonable expectation of privacy in their cell phone location information, and therefore

² 18 U.S.C. § 2701 et. seq.; 47 U.S.C. § 222.

³ *United States v. Jones*, 132 S. Ct. 945, 955–56 (2012) (Sotomayor, concurring); *accord id.* at 963–64 (Alito, J., concurring in the judgment) (recognizing that "cell phones and other wireless devices now permit wireless carriers to track and record the location of users" and explaining that "longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy").

⁴ *Riley v. California*, 134 S. Ct. 2473, 2490 (2014).

that the full protections of the Fourth Amendment apply.⁵ As the Florida Supreme Court put it:

because cell phones are indispensable to so many people and are normally carried on one's person, cell phone tracking can easily invade the right to privacy in one's home or other private areas, a matter that the government cannot always anticipate and one which, when it occurs, is clearly a Fourth Amendment violation.⁶

In light of the deep privacy interest in cell phone location information, it is critical that any legislation permitting law enforcement access to that data include strong privacy protections.

II. Mandatory disclosure would facilitate abuse of emergency requests.

In its current form, H.R. 4889 requires certain telecommunications carriers to provide cell phone location information to law enforcement any time a “law enforcement officer reasonably believes [the individual in possession of the phone] is in an emergency situation that involves the risk of death or serious physical harm to the individual.” This disclosure would be mandatory on the part of the provider. While the objectives of this legislation are laudable—to assure speedy access to location information in the case of emergencies—there are already effective and timely mechanisms in place to share location information. The danger is that this legislation will not improve on those mechanisms, but instead simply expand the number of wrongful disclosures in non-emergency circumstances.

⁵ See *United States v. Graham*, 796 F.3d 332 (4th Cir. 2015), *rehearing en banc pending*; *Tracey v. State*, 152 So. 3d 504 (Fla. 2014); *Commonwealth v. Augustine*, 4 N.E.3d 846 (Mass. 2014); *State v. Earls*, 70 A.3d 630 (N.J. 2013); *State v. Andrews*, __ A.3d __, 2016 WL 1254567 (Md. Ct. Spec. App. March 30, 2016); *In re Application for Telephone Information Needed for a Criminal Investigation*, 119 F. Supp. 3d 1011 (N.D. Cal. 2015); *In re Application for an Order Authorizing Disclosure of Location Information for a Specified Wireless Telephone*, 849 F. Supp. 2d 526 (D. Md. 2011).

⁶ *Tracey*, 152 So. 3d at 524.

Congress has recognized that there are times when, consistent with the exception for warrantless exigent searches under the Fourth Amendment, cellular service providers must breach this confidentiality and share information, including location information, with the government. As such, an existing federal statute already allows disclosure by a provider “to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency.”⁷

This current process works. According to the transparency reports of two major providers, AT&T and Verizon, those companies processed more than 81,000 requests for emergency information (unrelated to 911 calls) just in 2015.⁸ Cellular service providers take seriously their responsibility to respond to law enforcement requests in emergencies, maintaining large law enforcement compliance teams that operate around the clock and can respond to requests at any hour.⁹ In order to facilitate emergency requests, the

⁷ 18 U.S.C. § 2702(c)(4).

⁸ AT&T, Transparency Report (2016), *available at* http://about.att.com/content/dam/csr/Transparency%20Reports/ATT_Transparency%20Report_Jan%202016.pdf; *United States Report*, Verizon <https://www.verizon.com/about/portal/transparency-report/us-report/> (last visited April 11, 2016).

⁹ *See, e.g.*, Letter from Timothy P. McKone, Executive Vice President, Federal Relations, AT&T, to Sen. Edward Markey (Oct. 13, 2013), https://www.markey.senate.gov/imo/media/doc/2013-10-03_ATT_re_Carrier.pdf (“AT&T employs more than 100 full time workers and operates on a 24x7 basis for the purposes of satisfying law enforcement requests for information.”); *Law Enforcement Relations*, T-Mobile USA, Inc., <https://www.t-mobile.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/0000BDF20016F5DE011CB9630A8D07DE/file/Law%20Enforcement%20Security%20Procedures%20For%20T-Mobile%20Website.pdf> (explaining that “[t]he T-Mobile USA, Inc. Law Enforcement Relations Group (LER Group) is committed to efficiently assisting the law enforcement community with all lawfully authorized activities” and that it operates “24 x 7”); Letter from Charles W. McKee, Vice President, Government Affairs, Federal and State Regulatory, Sprint Corporation, to Sen. Edward Markey (Oct. 25, 2013), <https://assets.documentcloud.org/documents/889100/response-sprint.pdf> (“Pursuant to the legal requirements of CALEA, Sprint is required to have a team available 24 hours per day, 7 days per week to respond to demands form law enforcement.”).

providers even waive the fees they charge for normal (non-exigent) cell phone tracking requests.¹⁰

Not all emergency requests meet the existing standard for emergencies, however, meaning that there must be some mechanism for curbing unjustified attempts to obtain location information. If providers must turn over records any time law enforcement asserts an emergency, there is a real danger of significant oversharing stemming from law enforcement's incorrect use of the emergency exception. Indeed, there is a record of law enforcement pushing the envelope and using the emergency procedure to avoid seeking judicial review of a request. In a number of cases involving requests under the emergency provisions of the Electronic Communications Privacy Act¹¹ or analogous state laws, courts have criticized law enforcement for illegally seeking emergency disclosure on "a speculative basis,"¹² or otherwise without justification. Recent examples of abuse of the emergency request process include:

- Police in Anderson, California, coerced a person seeking a restraining order into saying she had been held against her will for six hours, and then sent a false emergency request for location information to the purported kidnapper's cellular service provider.¹³
- A police officer in Lewisville, Texas, obtained a suspect's cell phone location information through an emergency request, but under questioning "could not say specifically whose life he thought was in danger."¹⁴
- Police in Rochester, New York, obtained location information about a suspect's cell phone when they already knew the suspect's location but wanted to build a better case by obtaining information from the phone.¹⁵

¹⁰ See AT&T Letter to Sen. Markey, *supra* note 9 ("AT&T imposes no charges for handling emergency requests."); Sprint Letter to Sen. Markey, *supra* note 9 ("No fee in exigent . . . situations.").

¹¹ 18 U.S.C. § 2702.

¹² *Freedman v. Am. Online, Inc.*, 303 F. Supp. 2d 121, 128 (D. Conn. 2004).

¹³ *Jayne v. Sprint PCS*, No. CIVS072522LKKGGHP, 2009 WL 426117, at *2 (E.D. Cal. Feb. 20, 2009).

¹⁴ *State v. Harrison*, No. 02-13-00255-CR, 2014 WL 2466369, at *4–5 (Tex. App. May 30, 2014).

¹⁵ *People v. Moorer*, 959 N.Y.S.2d 868, 872, 875 (N.Y. Co. Ct. 2013).

- A police officer in Princess Anne County, Maryland, used an emergency request form to obtain records from Sprint, but later conceded in sworn testimony that “there was no such emergency at the time he requested the records.”¹⁶

Likewise, records obtained from police departments by the ACLU have revealed “some departments specifically warn[ing] officers about the past misuse of cellphone surveillance in nonemergency situations.”¹⁷ In Reno, Nevada, for example, a law enforcement training document cautioned that warrantless cell phone tracking “IS ONLY AUTHORIZED FOR LIFE-THREATENING EMERGENCIES!!” Emergency tracking had been “misused,” however, leading the police department to warn officers that “[s]ome cell carriers have been complying with such requests, but they cannot be expected to continue to do so as it is outside the scope of the law. Continued misuse by law enforcement agencies will undoubtedly backfire.”¹⁸

Indeed, providers have had to deny emergency requests for cell phone location records in cases where “they determined that a true emergency did not exist.”¹⁹ At least in some contexts, emergency requests are denied by providers with a level of frequency suggesting that there are numerous instances where such requests fail to meet the appropriate standards. For example, from January to June 2015, Google denied 31% of the emergency requests it received.²⁰ Even the U.S. Department of Justice has recognized its own abuse of emergency requests. In a comprehensive 2010 investigation, the DOJ

¹⁶ *Upshur v. State*, 56 A.3d 620, 625–26 (Md. App. 2012).

¹⁷ Eric Lichtblau, *More Demands on Cell Carriers in Surveillance*, N.Y. Times, July 8, 2012, <http://www.nytimes.com/2012/07/09/us/cell-carriers-see-uptick-in-requests-to-aid-surveillance.html>.

¹⁸ Eric Lichtblau, *Police Are Using Phone Tracking as a Routine Tool*, N.Y. Times, Mar. 31, 2012, <http://www.nytimes.com/2012/04/01/us/police-tracking-of-cellphones-raises-privacy-fears.html>; *see also* Response to ACLU Public Records Request from the Reno, Nevada, Police Department (Aug. 5, 2011), *available at* <https://www.aclu.org/cell-phone-location-tracking-documents-nevada?redirect=protecting-civil-liberties-digital-age/cell-phone-location-tracking-documents-nevada#Reno..>

¹⁹ Lichtblau, *More Demands on Cell Carriers in Surveillance*, *supra* note 17.

²⁰ *Transparency Report: United States*, Google, <https://www.google.com/transparencyreport/userdatarequests/US/> (last visited April 11, 2016). Those rejections include cases where Google did not have any responsive records as well as cases where law enforcement failed to substantiate the claimed emergency.

Inspector General found that, in the years following the 9/11 attacks, the FBI repeatedly misused so-called “exigent letters” and other informal requests to compel the production of telephone records and other material. In many cases, the FBI presented the request as exigent when it was not, in fact, an emergency.²¹ As the Chief Justice of the Georgia Supreme Court has explained, we should be wary of attempts by “law enforcement to circumvent the strict procedural requirements for accessing protected records by simply ‘requesting’ such records with a tone of sufficient urgency so as to generate a belief on the part of the custodian that an emergency exists.”²²

Additionally, mandatory emergency disclosure coupled with the potential for thieves to impersonate law enforcement when “dialing for data” poses serious privacy concerns. Recognizing the danger of thieves calling service providers and asking for customer records under false pretenses, Congress enacted the Telephone Records and Privacy Protection Act of 2006,²³ which makes it a federal felony, punishable by up to 10 years in prison, to use “pretexting” to obtain call records.²⁴ Tellingly, the statute includes heightened penalties if the records are used to facilitate cyber-stalking, one of the primary concerns driving the legislation.²⁵ The law’s passage followed disclosures that Hewlett

²¹ In other cases, the FBI failed to provide the relevant details and the providers just assumed that the requests were exigent. Dep’t of Justice, Office of the Inspector General, *A Review of the Federal Bureau of Investigation’s Use of Exigent Letters and Other Informal Requests for Telephone Records* 257–72 (2010) (detailing the IG’s findings with respect to improper FBI use of exigent letters and other informal requests in violation of 18 U.S.C. § 2702’s emergency exception).

²² *Registe v. State*, 734 S.E.2d 19, 22 (Ga. 2012) (Hunstein, C.J., concurring).

²³ Pub. L. No. 109-476, 120 Stat. 3568 (2007).

²⁴ 18 U.S.C. § 1039(a).

²⁵ *Id.* § 1039(d). Reinforcing this concern, Louisiana and Washington State’s versions of the Kelsey Smith Act includes specific protections against release of device location information “to a person who either has a history of domestic violence or stalking or who is subject to any court order restricting contact with the device user.” La. Stat. Ann. § 45:844.9(B)(5); *accord* Wash. Rev. Code § 80.36.570(1)(d), (f).

Packard had used false pretenses to obtain the phone records of journalists in an attempt to undercover the source of media leaks.²⁶

Although service providers comply with most emergency requests, the ability to reject a request functions as an important safety valve. In the face of emergency requests by individuals falsely claiming to be law enforcement or by law enforcement agents in the absence of a true emergency, communications providers must be given the discretion to resist the request. Under current law, service providers are able to do just that.²⁷ This discretion is particularly important given the unique time pressures and heightened emotion attendant in an emergency request.

III. Any mandatory emergency disclosure should include after-the-fact judicial review, judicially enforceable remedies, and notice.

Although the ACLU opposes a mandatory emergency disclosure requirement, if adopted, any such requirement must incorporate strong protections against abuse. Those protections should include after-the-fact judicial review, a judicially enforceable remedy for any person whose location information is illegally obtained, and notice to the person whose location information was sought.

As currently written, H.R. 4889 provides no opportunity for judicial review of emergency requests by law enforcement. In a true emergency, where there is no time to obtain a court order prior to seeking and obtaining location records, it is crucial that law

²⁶ Anne Broache, *The President Signs Pretexting Bill into Law*, CNET, Jan. 17, 2007, <http://www.cnet.com/news/president-signs-pretexting-bill-into-law/>.

²⁷ See AT&T Letter to Sen. Markey, *supra* note 9 (“Before responding to emergency tracking requests, AT&T requires law enforcement to provide a written description of the emergency and to certify the facts presented are true and that they constitute an emergency involving danger of death or serious physical injury to a person, requiring disclosure without delay.”); Sprint Letter to Sen. Markey, *supra* note 9 (“Sprint’s processes require law enforcement to fax in a form that Sprint uses to authenticate the law enforcement requestor and to verify that an appropriate emergency exists.”); T-Mobile, *Law Enforcement Relations*, *supra* note 9 (“During an emergency, the Law Enforcement Relations Group (LER Group) will attempt to verify the caller’s identity as a legitimate representative of the Public Safety Answering Point (PSAP or 911 Emergency Dispatcher).”).

enforcement be required to seek judicial approval as soon as possible after making the request. Doing so will deter abuse of the emergency requests process and provide a check on unjustified emergency demands. Indeed, the version of this legislation introduced in the 113th Congress contained such a requirement, providing:

Not later than 48 hours after an investigative or law enforcement officer makes a request for call location information under subsection (a), the law enforcement agency of such officer shall request a court order stating whether such officer had probable cause to believe that the conditions described in subsection (b)(1) or subsection (b)(2) existed at the time of the request under subsection (a).²⁸

Just last month, the Indiana legislature enacted similar legislation that includes a requirement for retroactive judicial approval following an emergency request for location information.²⁹ California and Colorado law likewise includes this requirement.³⁰

The requirement that law enforcement secure retroactive judicial approval after obtaining communication records in an emergency is longstanding. The Pen Register Statute, which provides for law enforcement monitoring of “dialing, routing, addressing, or signaling information” transmitted or received by a phone,³¹ permits emergency requests only if, “within forty-eight hours after the [monitoring] has occurred, or begins

²⁸ H.R. 1575, 113th Cong. (2d Sess. 2015).

²⁹ Ind. Pub. L. 57 (H.B. 1013), § 3 (2016) (to be codified at Ind. Code § 35-33-5-15(b)) (“If law enforcement makes a request for geolocation information under this subsection [in an emergency] without first obtaining a search warrant or another judicial order, the law enforcement agency shall seek to obtain the search warrant or other judicial order issued by a court based upon a finding of probable cause that would otherwise be required to obtain the geolocation information not later than seventy-two (72) hours after making the request for the geolocation information.”).

³⁰ Cal. Penal Code § 1546.1(h) (“If a government entity obtains electronic information pursuant to an emergency involving danger of death or serious physical injury to a person, that requires access to the electronic information without delay, the entity shall, within three days after obtaining the electronic information, file with the appropriate court an application for a warrant or order authorizing obtaining the electronic information”); Colo. Rev. Stat. § 18-9-312(1.5)(e) (“Not more than forty-eight hours after ordering a previously designated security employee of a wireless telecommunications provider to provide [emergency] information as described in paragraph (a) of this subsection (1.5), a law enforcement agency shall request a court order”).

³¹ 18 U.S.C. §§ 3122–23, 3127(3)–(4).

to occur, an order approving the installation or use is issued” by a judge.³² “In the absence of an authorizing order, such use shall immediately terminate when the information sought is obtained, when the application for the order is denied or when forty-eight hours have lapsed since the installation of the pen register or trap and trace device, whichever is earlier.”³³ Congress has likewise recognized the importance of retroactive judicial approval following emergency requests even in the national security context. The recently passed USA Freedom Act requires that the government apply for a court order following an emergency request for records obtained under Section 215 of the Patriot Act, which the government asserts is used in national security-related investigations.³⁴

The Pen Register Statute provides a mechanism for law enforcement access to basic information like the phone numbers dialed on a telephone to connect a call. Recognizing that cell phone location information is even more sensitive than these dialing records, and thus deserving of a higher level of protection, in 1994 Congress explicitly prohibited use of the Pen Register Statute to obtain “information that may disclose the physical location of the subscriber.”³⁵ It would be a step backward to now provide *lesser* protection to location information, which Congress and the courts have explicitly recognized to be deserving of *greater* safeguards against unjustified government access. Requiring after-the-fact judicial approval protects against abuse

³² *Id.* § 3125(a).

³³ *Id.* § 3125(b).

³⁴ 50 U.S.C. § 1861(i)(1)(D), as enacted by USA Freedom Act of 2015, Pub. L. No. 114-23, 129 Stat. 268 (“[T]he Attorney General may require the emergency production of tangible things if the Attorney General . . . makes an application in accordance with this section to a judge having jurisdiction under this section as soon as practicable, but not later than 7 days after the Attorney General requires the emergency production of tangible things under this subsection.”).

³⁵ 47 U.S.C. § 1002(a), enacted by Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994).

without interfering with law enforcement's ability to quickly obtain location information in a genuine emergency.

The legislation should also provide a remedy in cases where the court finds a violation of the law or fails to provide retroactive authorization. In criminal, immigration, or administrative proceedings, the illegally obtained location information and any evidence derived from it should be suppressed. Without suppression, an individual could be harmed by clearly illegal conduct, but have no remedy—a gross injustice that is at odds with criminal procedural remedies in other contexts. The legislation should also provide a civil remedy so that all people, including those never charged with a crime, can obtain relief from the courts when a judge has determined that law enforcement violated the law. These protections will not only provide redress to people harmed by illegal searches of their location information, but will also deter law enforcement officers from violating the law in the first place. Suppression and civil remedies are common and important features of other electronic surveillance statutes, and should be included here.³⁶

Finally, the legislation should mandate prompt notice to the person whose location information is obtained. Without notice, that person cannot know that police sought and obtained his or her records, and cannot pursue judicial remedies in cases where the location tracking request violated the law. California's recently enacted statute addressing emergency requests for location information requires such notice,³⁷ and this

³⁶ See, e.g., 50 U.S.C. § 1861(i)(5) (“If such application for [emergency] approval is denied, or in any other case where the production of tangible things is terminated and no order is issued approving the production, no information obtained or evidence derived from such production shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding.”); 18 U.S.C. § 2707 (providing civil remedy for violation of emergency disclosure provisions of Electronic Communications Privacy Act); Cal. Penal Code § 1546.4 (providing for suppression of evidence obtained in violation of emergency request procedures).

³⁷ Cal. Penal Code § 1546.1(h).

legislation can easily incorporate it without jeopardizing legitimate law enforcement investigations.

IV. The standard for emergency disclosure should be raised.

The current version of H.R. 4889 mandates disclosure of location information whenever a law enforcement officer “reasonably believes” an individual “is in an emergency situation that involves the risk of death or serious physical harm to that individual.” The “reasonable belief” standard is too low, and will result in disclosure of sensitive location information when there is not actually a qualifying emergency. Instead, any mandatory emergency disclosure should be permitted only when law enforcement has probable cause to believe immediate disclosure is required by an emergency involving death or serious physical harm and that the records sought relate to the emergency. A probable cause standard will ensure that law enforcement can only access sensitive location information without a prior court order when officers have good reason to believe an emergency exists.

The probable cause standard is familiar to law enforcement, who apply it daily when applying for search warrants,³⁸ conducting warrantless searches of vehicles,³⁹ and engaging in exigent searches without a warrant.⁴⁰ Probable cause has the twin virtues of being familiar to law enforcement and protective of individual privacy rights in the context of sensitive information recognized as deserving of the highest protections of the Fourth Amendment.⁴¹ Indeed, law enforcement in several states already abide by a

³⁸ See, e.g., U.S. Const. amend. IV (“no Warrants shall issue, but upon probable cause”).

³⁹ See *California v. Acevedo*, 500 U.S. 565, 579–80 (1991) (“[T]he police may search [a vehicle and its contents] without a warrant if their search is supported by probable cause.”).

⁴⁰ See, e.g., *Welsh v. Wisconsin*, 466 U.S. 740 (1984).

⁴¹ See *supra* cases cited in note 5.

probable cause standard for emergency requests for location information,⁴² and the version of this legislation introduced in the 113th Congress included a probable cause standard.⁴³

V. Conclusion.

The ACLU respectfully urges the Committee to reject the current version of H.R. 4889. Current law already provides an effective mechanism for emergency requests for cell phone location information, making this legislation unnecessary. If a bill is to move forward, however, it should include safeguards to protect personal privacy, including eliminating the mandatory disclosure provision, providing for after-the-fact judicial review, judicial remedies for violation of the law, and notice, and incorporating a probable cause standard for emergency requests.

⁴² See Colo. Rev. Stat. § 18-9-312(1.5)(a); Ind. Pub. L. 57 (H.B. 1013), § 3 (2016) (to be codified at Ind. Code § 35-33-5-15(b)).

⁴³ H.R. 1575, 113th Cong. (2d Sess. 2015) (“A request to a provider of a covered service by an investigative or law enforcement officer for call location information under subsection (a) shall be accompanied by a sworn written statement from such officer stating facts that support such officer’s *probable cause* to believe that disclosure without delay is required—(1) by an emergency involving risk of death or serious physical injury” (emphasis added)).

Mr. WALDEN. Mr. Wessler, we appreciate your input on this issue as well. We will now turn to Ms. Abigail Medina, trustee of the San Bernardino City Unified School District. Good morning, welcome, and we look forward to your comments.

STATEMENT OF ABIGAIL MEDINA

Ms. MEDINA. Thank you. Good morning, Chairman Walden, Ranking Member Eshoo, and committee members. My name is Abigail Medina. I am a mother of five children, two of whom are in college; a wife of over 20 years; and currently vice president of the San Bernardino City Unified School District Board of Education. I am here to express the value of Lifeline to the many families it helps, especially in my community of the city of San Bernardino in which it has endured bankruptcy, poverty, and most recently the December 2nd mass killings.

As a resident of San Bernardino, my family too struggles financially. When my husband was laid off, I worked in the fields Monday through Friday leaving my family behind in order to pay to help reconnect our electricity bill. Every penny counted. I remember searching through our furniture for the cent that would complete a dollar.

My husband heard about Lifeline from a family friend who saw our struggles. You see, having affordable utility services helped us keep afloat, and while we worked to improve our situation having phone service also helped us when my husband would receive a call for a job. And also in emergencies, especially since we had children at home, we could make that call.

These seem like little things and many people don't realize how important these services are until we have none. These days many need the internet to look for work. Children need to do research online for homework assignments. Many of our families are experiencing the widening technology in homework and access gaps. Sixty four percent of all Americans believe that expanding broadband access should be a national priority, and the FCC's recent Lifeline decision will help expand access in low-income communities.

Lifeline internet services will allow many families to better their situation. In fact, research shows that the expanding internet access helps to grow the gross domestic product and personal incomes; that children would have a better and greater educational opportunity especially to do homework assigned on the internet that many but not all children today can complete; and that teens and others would have a greater opportunity to get health care advice online and save money on expenses.

And I also want to mention that college students are also struggling, because if they, my children who are in college, if they have their internet disconnected or they are cut off they have no access to do their homework assignments, which many are online.

So I ask you today to think of the many families, especially families in San Bernardino, the city of San Bernardino, and the many communities throughout the nation who need help to find a way to succeed. I stand before you to oppose capping the Lifeline program so that no eligible family is turned away from this important necessity. Thank you.

[The statement of Ms. Medina follows:]

Good morning.

My name is Abigail Medina. I am a mother of 5 children, 2 of whom are in college, a wife of over 20 years and currently, Vice President of the San Bernardino City Unified School District Board of Education. I am here to express the value of Lifeline to the many families it helps, especially in my community of the City of San Bernardino, a city which has endured bankruptcy, poverty and most recently, the December 2nd mass killings.

As a resident of San Bernardino, my family, too, struggled financially. When my husband was laid off I worked in the fields Monday through Friday, leaving my family behind in order to pay to reconnect our electricity. Every penny counted. I remember searching through our furniture for that cent that would complete a dollar.

My husband heard about Lifeline from a friend who saw our struggles.

You see, having affordable utility services helped us keep afloat while we worked to improve our situation. Having phone service helped us get that call, needed for a job. And in case of an emergency, especially with our children, we could make that call. These seem like little things, and many people don't realize how important these services are until they have none.

These days, people need the internet to look for work. Children need to research online for homework assignments. Many of our families are experiencing the widening technology, homework and access gaps.

64% of all Americans believe that expanding broadband access should be a national priority. And he FCC's recent Lifeline decision will help expand access in low income communities. Lifeline internet services will allow many families to better their situations.

In fact, research shows that that expanding internet access "helps to grow the Gross Domestic Product and personal incomes; that children would have greater educational opportunity, especially to do homework assigned on the Internet that many but not all children today can complete; and that teens and others would have greater opportunity to get health care advice online and save money on health expenses."

I ask you today to think of the many families in my city, San Bernardino, and the many communities throughout our nation who need help to find a way to succeed. I stand before you to oppose capping the Lifeline program, so that no eligible family is turned away from this important necessity.

Thank you.

Mr. WALDEN. We appreciate your input on the legislation. Thank you for being here. We will now go to Ms. Katie McAuliffe who is the federal affairs manager for Americans for Tax Reform and executive director of Digital Liberty. Welcome. We are glad you are here. Please proceed.

STATEMENT OF KATIE MCAULIFFE

Ms. MCAULIFFE. Thank you. Chairman Walden, Ranking Member Eshoo, and members of the subcommittee, thank you for the opportunity to testify before you today on behalf of all taxpayers, or in this situation rate payers. My name is Katie McAuliffe, federal affairs manager at Americans for Tax Reform. Americans for Tax Reform advocates on behalf of taxpayers for a system in which taxes are simpler, flatter, and more visible and lower than they are today.

I am happy to lend a voice of support for H.R. 4884, Controlling the Unchecked and Reckless Ballooning of Lifeline Act of 2016, also known as CURB Lifeline Act of 2016. This legislation provides the necessary safeguards to enhance methods for stopping waste, fraud and abuse while also ensuring those most in need of Lifeline receive support as intended. It also protects ratepayers from footing the bill on waste, fraud and abuse.

Before delving into the CURB Act I wanted to congratulate you and all Congress on passing the Permanent Internet Tax Freedom Act. This is a great way to encourage internet access for consumers while also keeping costs low.

The fees for the Universal Service under which Lifeline is a part will still be included as a line item on ratepayers' bills. However, Permanent Internet Tax Freedom does not stop fees from being assessed on bills, on voice and data service at this point. The fees of the Universal Fund will still be included as a line item on ratepayers' bills.

Lifeline is part of the Universal Service Fund that has long been in need of reform. It was established in 1985 in the form of a fixed dollar subsidy to the carriers for eligible low-income subscribers for Americans to afford basic phone service. In 2012, spending hit an all-time high and the Federal Communications Commission moved to target rampant waste, fraud and abuse with a \$400 million spending decrease between 2012 and 2013 alone.

The FCC has shown it is capable of controlling its budget. Spending in the Lifeline program is set to drop a total of \$670 million by the end of this year, with spending dropping from \$2.2 billion to \$1.5 billion. The FCC recently voted to expand the Lifeline subsidy to cover broadband as well as voice service. As we saw, when a new service is added spending goes up not necessarily because of need or increased availability, but more likely because of fraud and abuse.

In its new order, the FCC reestablished the \$9.25 subsidy to carriers to use for Lifeline eligible subscribers and set the quality standard for broadband at 3G with 500 megabytes of data for wireless and speeds of 1 up and 1 down. It creates a new verification process for the eligible applicants and sets a budget of 2.5 billion that can be reevaluated should spending hit 90 percent of the \$2.5 billion fund.

While I will agree that the expanding of the verification process the FCC will do a better job of targeting fraud and abuse unless the third party verifier incurs a waste on its own, the order does not do all it can. A powerful tool for controlling waste and fraud is to set a hard budget. While Americans for Tax Reforms would prefer there were no subsidies lashed to ratepayers that is not the option before us today.

When faced with no budget or a \$1.5 billion cap as proposed in H.R. 4884, Congress has the authority and responsibility to set a firm cap. All other programs under the Universal Service Fund do have budget caps. I would like to suggest that the \$1.5 billion cap is solid legislation on two points. 1.5 billion is an ample budget and the budget is necessary to control waste, fraud and abuse.

So in closing, the affordability gap. All other preferences aside, Americans for Tax Reform strongly supports a budget cap on the Lifeline fund, especially in the current environment. The stated goal for including broadband as part of the subsidy is to bridge the digital divide and close the broadband affordability gap. While perhaps broadband may become more affordable for some, the order does not focus on those who need access the most, those who have no broadband access at all.

In 2014, the NTIA found that 48 percent of non-adopting households cited lack of need or lack of interest as a reason for not subscribing to broadband at home. The Pew Charitable Trust found in 2015 that 70 percent of non-adopters were uninterested in subscribing to broadband in the future. Many smartphone-only users say that the reason they do not have broadband at home is because the smartphone lets them do all that they need to do online, underscoring the device's utility without a home high-speed subscription, and 59 percent say they have other options for internet access outside the home.

Another survey conducted jointly by the FCC and Connected Nation found that 37 percent of non-subscribers were willing to adopt broadband at a reasonable price. The remaining 68 percent of non-subscribing households cited non-price associated reasons. Among the 37 percent willing households, price as an adoption factor was highest for those making below \$15,000. It was about 50 percent. Upon reaching the \$35,000 marker for a family of four, 32 percent cited cost as a primary factor as a non-subscriber.

So cost can be interpreted in different ways depending on how a question is asked, but more so in terms of what else is available. I don't believe this hypothesis has been tested, but it is possible that those who cite cost as the primary reason for not subscribing may actually mean they don't see the point in spending that cost at home when broadband is so readily available elsewhere.

In America we are fortunate that broadband availability via wireline or wireless covers 99 percent of the population with an 88 percent in-home adoption rate. We used to go to internet cafes and pay by the minute to get online. Then there were hotspots or private wireless networks, then there was usually a cost. Now access is freely available everywhere. If not a local coffee shop, restaurant, or McDonald's, there is access in public libraries and schools. This leads us to a position where monetary cost has significantly decreased as the prominent deterrent for having access at home for

non-subscribers. Even as early as 2013, consumers demonstrated the cost factor was decreasing as a barrier to connecting the unconnected. In 2013, the FCC's 14 experimental broadband Lifeline offerings, wireline and wireless broadband providers signed up less than 10 percent of the predicted number of new subscribers.

This, the only real world experiment with Lifeline applied to broadband, showed it is exceedingly difficult to encourage the disconnected to subscribe via discounts. To participate in the pilots, subscribers had to certify they met income requirements and had not had a broadband subscription for at least 6 months. For one carrier, just over half of the applicants were rejected because they had broadband sometime within the previous 6 months.

If the goal is connecting the disconnected to reduce the digital divide, then the subsidies applied to broadband were not as effective as expected and shown in this experiment. From this data it is likely that subsidies given based on income criteria will mostly go to those who already subscribe to broadband rather than connecting the disconnected. In his paper, Learning from the FCC's Lifeline Broadband Pilot Projects, Scott Wallstein concluded if this is the case, then the Universal Service Fund becomes an inefficient general welfare fund rather than a mechanism that encourages connectivity.

In controlling waste, fraud and abuse—the Lifeline program has a long history of abuse. Congress should use its oversight to rein in spending that encourages abuse on the backs of ratepayers. A budget of \$2.25 billion that can be reevaluated when 90 percent of the fund has already been spent does not adequately provide the proper incentives to stop abuse. The Federal Communications Commission has taken measures to stop rampant abuse in the program.

The Lifeline annual recertification process established in the 2012 Lifeline Reform Order to verify that a subsidy recipient did meet the Lifeline requirements, and households were not receiving multiple subsidies significantly cut spending in the program. As a result, 29 percent of all 2012 Lifeline subscribers were de-enrolled, and between 2012 and 2013, waste, fraud, and abuse of the program was cut by nearly \$400 million. As a whole, since 2012 abuse has been cut by nearly 670 million, and spending of the fund reduced from \$2.2 billion to about 1.5 billion.

As broadband is included, the National Eligibility Verifier adds another layer of abuse protection, though I cannot speculate as to whether this entity will incur more government waste. Another reason a budget cap is important is not only to curb carrier abuse, but also to prevent government waste of dollars that should be directed towards helping those in need.

This shows promise, and the Commission under Congress' direction should not stop there. While there are penalties both monetary and otherwise, they serve as only a mild deterrent. Importantly, the ones actually defrauded, the ratepayers, do not receive restitution. Setting an actual budget that must be adhered to is key to protecting ratepayers, while still providing support to those in need of access.

Mr. WALDEN. Ms. McAuliffe?

Ms. MCAULIFFE. Yes.

Mr. WALDEN. Are you about finished? I have let you go an extra 5 minutes.

Ms. MCAULIFFE. Oh, I am about done.

Ms. ESHOO. About 10 minutes, she has —

Mr. WALDEN. Yes, it is supposed to be 5 minutes.

Ms. MCAULIFFE. Oh, then I will just stop right there. Yes, we will stop there.

[The statement of Ms. McAuliffe follows:]

AMERICANS *for* TAX REFORM

Statement of

Katie McAuliffe
Federal Affairs Manager
Americans for Tax Reform

House Subcommittee on Communications and Technology

Hearing Testimony on HR 4884 CURB Lifeline Act of 2016

April 13, 2016

I. Introduction

Chairman Walden, Ranking Member Eshoo and Members of the Subcommittee, thank you for the opportunity to testify before you today on behalf of all taxpayers, or, in this situation, I should say fee-payers. My name is Katie McAuliffe, Federal Affairs Manager at Americans for Tax Reform. Americans for Tax Reform advocates on behalf of taxpayers for a system in which taxes are simpler, flatter, more visible, and lower than they are today.

I am happy to lend a **voice of support for HR 4884, Controlling the Unchecked and Reckless Ballooning of Lifeline Act of 2016, also known as the CURB Lifeline Act of 2016**. This legislation provides the necessary safe guards to enhance methods for stopping waste, fraud and abuse, while also ensuring those most in need of Lifeline receive support as intended. It also protects ratepayers from footing the bill on waste, fraud and abuse.

Before delving into the CURB Act, **I would like to congratulate you and all of Congress on passing the Permanent Internet Tax Freedom Act, a widely popular bipartisan legislation that permanently prevents taxes on Internet access for consumers**. This is certainly a positive step in keeping broadband costs low. However, it does not prevent the assessment of fees on consumers' voice

and/or data service. The fees for the universal service fund, of which lifeline is a part, will still be included as a line item on ratepayers' bills.

II. Lifeline

Lifeline is a part of the universal service fund that has long been in need of reform. It was established in 1985 in the form of a fixed dollar subsidy to the carriers for eligible low-income subscribers Americans afford basic phone service.

In 2012, spending hit an all time high and the Federal Communications Commission moved to target rampant waste fraud and abuse. With a \$400 million dollar spending decrease between 2012-2013 alone, the FCC has shown it is capable of controlling its budget. Spending in the Lifeline program is set to drop a total of \$670 million by the end of this year, with spending dropping from \$2.2 billion to \$1.5 billion.

The FCC recently voted to expand the Lifeline subsidy to cover broadband as well as voice service. As we saw, when a new service is added, spending goes up, not necessarily because of need or increased availability, but more likely because of fraud and abuse. In its new order, the FCC reestablished the \$9.25 subsidy to carriers to use for Lifeline eligible subscribers, and set the quality standard for broadband at 3G with 500MB of data for wireless, and speeds of 1mbps upload and

10mbps download. It creates a new verification process for eligible applicants, and sets a budget of \$2.5 billion that can be “reevaluated” should spending hit 90% of the \$2.5 billion fund.

While I will agree that expanding on the verification process the FCC will do a better job of targeting fraud and abuse, unless the new third party verifier incurs waste on its own, the order does not do all that it can. A powerful tool for controlling waste and fraud is to set a hard budget. While Americans for Tax Reform would prefer there were no subsidies lashed to ratepayers that is not the option before us today.

When faced with no budget or a \$1.5 billion dollar cap, as proposed in HR 4884 the CURB Lifeline Act of 2016, **Congress has the authority and the responsibility to set a firm budget cap.** All other programs under the Universal Service Fund do have budget caps.

I would like to suggest that the \$1.5 billion dollar cap is solid legislation on two points:

- (1) \$1.5 billion is an ample budget, and
- (2) The a budget is necessary to control waste, fraud and abuse.

III. Closing the Affordability Gap

All other preferences aside, Americans for Tax Reform strongly supports a budget cap on the Lifeline fund, especially in the current environment.

The stated goal for including broadband as part of the subsidy is to bridge the digital divide and close the broadband affordability gap. While perhaps broadband may become more affordable for some, the order does not focus on those who need access the most – Those who have no broadband access at all.

In 2014, the NTIA found that 48% of non-adopting households cited lack of need or lack of interest as reason for not subscribing to broadband in the home. The Pew Charitable Trust found in 2015 that 70% of non-adopters were uninterested in subscribing to broadband in the future.

Many “smartphone-only” users say that the reason they do not have broadband at home is because their smartphone lets them do all they need to do online, underscoring the device’s utility for those without a home high-speed subscription, and 59% say they have other options for internet access outside of the house.

Another survey conducted jointly by the FCC and Connected Nation Inc., found that 37% of non-subscribing households were willing to adopt broadband at a “reasonable” price. The remaining 68% of non-subscribing households cited non-price associated reasons. Among 37% of willing households, price as an adoption factor was highest for those

making below \$15,000 (49.1) upon reaching the \$35,000 marker only 32% cited cost as the primary factor.

Cost can be interpreted in different ways depending on how a question is asked, but more so in terms of what else is available. I don't believe this hypothesis has been tested, but it is possible that those who cite cost as the primary reason for not subscribing, may actually mean that they don't see the point in subscribing at home when broadband is so readily available elsewhere.

In America, we are fortunate that broadband availability via wireline and/or wireless covers 99% of the population, with an 88% in-home adoption rate. We used to go to Internet cafes and pay by the minute to get online, then there were hotspots or private wireless networks, but there was usually a cost. Now, access is freely available nearly everywhere. If not at a local coffee shop, restaurant or McDonalds, there is access in public libraries and schools.

This leads us to a position where monetary cost has significantly decreased as the prominent deterrent from having access at home for non-subscribers.

Even as early as 2013 consumers demonstrated the cost factor was decreasing as a barrier to connecting the unconnected. In 2013, the FCC's 14 experimental broadband Lifeline offerings, wireline and wireless broadband providers signed up less than 10% of the predicted number of new subscribers.

This, the only real world experiment with Lifeline applied to broadband, showed it is exceedingly difficult to encourage the disconnected to subscribe via discounts. To participate in the pilots, subscribers had to certify that they met income requirements and had not had a broadband subscription for at least 6 months. For one carrier, just over half of the applicants were rejected because they had broadband sometime within the previous six months.

If the goal is connecting the disconnected to reduce the digital divide, then the subsidies applied to broadband were not as effective as expected. From this data it is likely that subsidies given based on income criteria will mostly go to those already subscribing to broadband, rather than connecting the disconnected. In his paper *Learning from the FCC's Lifeline Broadband Pilot Projects*, Scott Wallsten concluded if this is the case, then "the Universal Service Fund becomes an inefficient general welfare fund rather than a mechanism that encourages connectivity."

IV. Controlling Waste, Fraud & Abuse

The Lifeline program has a long history of abuse. Congress should use its oversight to reign in spending that encourages abuse on the backs of ratepayers.

A budget of \$2.25 billion dollars that can be “re-evaluated” when 90% of the fund has already been spent does not adequately provide the proper incentives to stop abuse.

The Federal Communications Commission has taken measures to stop rampant abuse of the program.

The Lifeline annual recertification process established in the 2012 Lifeline Reform Order to verify that a subsidy recipient did meet the lifeline requirements, and households were not receiving multiple subsidies significantly cut spending in the program.

As a result, 29 percent of all of 2012 lifeline subscribers were de-enrolled, and between 2012 and 2013 waste, fraud, and abuse of the program was cut by nearly \$400 million dollars.

As a whole, since 2012 abuse has been cut by nearly \$670 million, and spending of the fund reduced from nearly \$2.2 billion to about \$1.5 billion.

As broadband is included, the National Eligibility Verifier adds another layer of abuse protection, though I cannot speculate as to whether this entity will incur more government waste. Another reason a budget cap is important is not only to curb

carrier abuse, but also to prevent government waste of dollars that should be directed toward helping those in need.

This shows promise, and the Commission under Congress' direction should not stop there.

While there are penalties both monetary and otherwise, they only serve as a mild deterrent. Importantly, the ones actually defrauded, the ratepayers, do not receive restitution. Setting an actual budget that must be adhered to is key to protecting ratepayers, while still providing support to those in need of access.

There is no direction as to how the budget will be reevaluated should spending reach 90% of 2.5 billion dollars. Without a statutory budget cap the FCC could choose to unilaterally increase its own budget, meaning there never really was a budget to begin with.

An endless budget does not provide the newly formed National Eligibility Verifier or the carriers the most robust incentive to stop waste and fraud. It certainly does not dissuade bad actors from signing up ineligible participants and households multiple times.

V. Conclusion.

With Lifeline eligibility set at 135% of the poverty line, about \$32,737 for a family of 4, the cost of wireline access becoming a decreasing factor, smartphone substitution on the rise, and current Lifeline spending at just over \$1.5 billion, it can be expected that a \$1.5 billion budget cap can adequately address the digital-divide for those most in need.

I would like to reiterate that Congress has the authority and the responsibility to set a firm budget cap.

Thank you again for the opportunity to provide testimony today.

Mr. WALDEN. OK. Thank you very much. Yes, I gave everybody a little flexibility today, but we were doubling down, so no problem.

I am going to start with the questions. And Ms. Smith, Mr. Wessler had some comments from the ACLU about potential abuse and all, and I would like to get your take and Mr. Souder's take on that. What do you think? What have you seen in states? I was going to inquire in my own state of Oregon if they have seen any abuse. And aren't there other statutes that would govern a fraudulent claim of emergency when none existed?

Ms. SMITH. Thank you, Mr. Chairman. I have not heard of any reports. I did read his examples. But if a law enforcement officer is going to commit a fraudulent claim, I do believe we have laws that already address that and they could be prosecuted. My husband was a police officer for almost 20 years and was a police officer when Kelsey went missing. And does it happen? Sure, but the same can be said about cell phone providers not releasing that information.

Mr. WALDEN. Mr. Souder, what is your experience in this realm?

Mr. SOUDER. Thank you for the question. Personally, and the folks that I work with around the National Capital Region where we all live, we do not see any abuse of that at all. It is used very judiciously, and only where it is absolutely incredibly important that it be used. And there are ample, ample situations where by it being used for the right reason at the right time, many lives have been saved or have been saved from being more injured than they had already been.

Mr. WALDEN. Mr. Wessler, I have a question for you. On the Oregon statute it says it passed unanimously, the House the Senate, and signed by a Democratic governor. What was ACLU's position on that?

Mr. WESSLER. I am sorry, Congressman. I don't know that. Each of our state affiliates handles state legislation separately. I work for our national office.

Mr. WALDEN. Could you find out for me?

Mr. WESSLER. I can.

Mr. WALDEN. I am not an attorney. I know better though than to ask a question I don't know the answer to.

Mr. WESSLER. Absolutely. And Congressman, if I can just say quickly that—

Mr. WALDEN. Sure.

Mr. WESSLER [continuing]. There have been a variety of protections put into place in different versions of the Kelsey Smith Act enacted by states around the country. In states like Indiana and Colorado, for example, there are requirements for after-the-fact judicial review, probable cause requirements. In California, a comprehensive cell phone privacy act had similar protections.

Mr. WALDEN. So Mr. Souder, can you speak to the after-the-fact judicial review and what that effect would have on a 911 dispatcher or your system?

Mr. SOUDER. As someone mentioned earlier, you may only call 911 once in your life, but it is the most important phone call you may make.

Mr. WALDEN. That was one of the Democrat members of the FCC.

Mr. SOUDER. I think that is the foundation from which we really look at the whole industry of 911 and the delivery of service. Providing help to those that need it in the quickest, most efficient way is absolutely the most important thing. I can't imagine how awkward our job would be if restrictions were placed on it greater than those that are on it already. It would clearly distract from the entire intent of 911.

Mr. WALDEN. OK. Ms. Smith, anything you want to finish up with?

Ms. SMITH. I just wanted to say we have protocols in that in place that the police would have to verify that they are the police. And it is not like a police officer can just call up and say to Verizon, hey, give me this information. There are steps that have to be taken and there are protocols. And I just find it somewhat amusing that the ACLU has said we don't want this mandated, but yet in his testimony there are several mandates that he would like put in place. You can't really have it both ways.

Mr. WALDEN. All right. In the essence of time I am going to end my questioning and now recognize the gentlelady from California, Ms. Eshoo, for questions.

Ms. ESHOO. Thank you, Mr. Chairman, and to each one of the witnesses, thank you for your testimony. Moving, instructive, helpful, and—well, that is a lot because that is what a hearing is for.

Mr. Souder, thank you for your wonderful work. It has been part of the joy of my public service to have become involved with all of the first responders across our country, so thank you for what you have done to advance that collective work.

I think that we all agree with it, when you dial 911 from a hotel, an office, anywhere that you shouldn't have to have some kind of prefix. I mean, I never taught my children any prefix. It was just what did Mommy tell you? Tell me the number again, say it again, from their earliest consciousness. And we all embrace this.

Now location accuracy for our systems is very, very important because once you reach a 911 call center the people answering the phones have to know where you are to dispatch first responders. I think it is the other bookend. No prefix and location. And I think that if one is missing, then the other really has an overall effect on the emergency.

And the reason why I ask this is because Kari's Law is very, obviously very important. It is born out of tragedy which is instructive to us, but I am concerned that it doesn't have any, it doesn't speak to location technology. Do you have the same unsettled sensibility as I do on this?

Mr. SOUDER. Ms. Smith, would you like to say anything, because I would like to follow on you, if you don't mind.

Mr. HUNT. The reason it is not included in Kari's Law is because of the expense. In order to have a dispatchable phone number you have to have one for every phone in every building that will tell you the room number, the floor number and as such, whereas those phone numbers aren't bought, they are leased. They are a monthly recurring charge per phone. This is a cost that is unnecessary with onsite notification.

Ms. ESHOO. Well, let me ask you, do you think the cost matches the urgency of the tragedies that you are living through and others

are living through? I mean, where do you cut off cost? Do you think some people, there is a cost attached so sorry about you, but—I just think it is part of the emergency system.

Mr. HUNT. When a building has 5,000 phones in it and each one has to pay an extra two dollars per phone a month that can put a company under. Onsite notification, had my daughter experienced onsite notification, someone from that hotel would have known that call was made and had gone to that room, we would hope. Therefore—this gentleman told the courts that it took him 5 minutes to kill my daughter.

Ms. ESHOO. Let me get back to—if I might, I only have five minutes not ten. I want to get back to Mr. Souder. Does it concern you that Kari's Law requires that these problems be fixed on only new phone systems purchased two years after enactment?

Mr. SOUDER. Very personally, I want to be sure that we are looking at this in the context of the provisions of the Kari proposed law as well as the broader implications of location technology when it—

Ms. ESHOO. What is your opinion of it? I am just asking.

Mr. SOUDER. My opinion very definitely is that Kari's Law is very well written, but it has to be tied with the location that the call is coming from, yes.

Ms. ESHOO. Thank you. Thank you. It is an important thing to get on the record.

Ms. McAuliffe, did you write your own testimony? It seemed like you weren't sure about what you were reading.

Ms. MCAULIFFE. Oh, no. I wrote my own testimony.

Ms. ESHOO. You wrote it, OK. Do you think that the budget cap can lead to more wasteful spending in the program? And this is the issue that I want to raise. If those that are eligible for the service but don't need it, then decide to apply for the subsidy out of fear that the service is going to run out of money, what kind of an effect do you think that is going to have?

Ms. MCAULIFFE. So are you referencing something kind of similar to when—

Ms. ESHOO. No, it is just a straightforward question. I mean, if you can't answer it I will go to someone else because I don't have—

Ms. MCAULIFFE. No, I don't think that would be an issue.

Ms. ESHOO. Why? Based on what?

Ms. MCAULIFFE. I don't think it would be an issue that a bunch of people would rush out and try to get the subsidy because it was capped.

Ms. ESHOO. And that is a sensibility of yours? I mean, have—

Ms. MCAULIFFE. Yes.

Ms. ESHOO [continuing]. You done any research on it?

Ms. MCAULIFFE. No, I have not.

Ms. ESHOO. Thank you.

Mr. WALDEN. The chair now recognizes the vice chair of the subcommittee, Mr. Latta, for 5 minutes.

Mr. LATTI. Well, thank you, Mr. Chairman. And thank you very much again to our witnesses, especially the family members for providing your testimony today because I know how difficult it is for you to have to give it to us today. But it is very important that

we hear your stories so those stories aren't repeated by other families across our country.

And also, Mr. Souder, I would like to thank you for what you did a little bit earlier before you came into our hearing room about making 911 calls from here, because I have heard that problem before that it is not very easily, especially in a building this size, to find out where someone is. And I appreciate that.

But Mr. Hunt, if I could just maybe ask you a question in regards to encouraging the fact especially from the MLTS vendors is that every single one of their phones can be configured to allow for that dialing of that 911. And moreover, the reprogramming system for the phones not set up for direct dialing from the factory is relatively easy and inexpensive. In other words, there is no technical reason why every phone in the U.S. cannot be set up to allow for that direct 911 dialing.

Despite this, and again as we have heard in the testimony today, there are thousands of hotels, schools, and office buildings across the country that do not have that direct dial program into their MLTS systems. What else could we doing out there besides when we are looking at the law or the bill before us to incentivize institutions to adopt that direct 911 dialing?

Mr. HUNT. Well, I think that the biggest fear that some companies have right now is liability. In some cases they can be held liable for not providing a proper atmosphere. People as we have said earlier, 911 is ingrained in our children and even in adults, and that is an expected result that you should get by dialing those numbers. When a phone prevents you from doing that you have no idea which direction to take it in, and therefore you have immediate danger to life.

At this point right now most companies will do it on their own. We have been having very good luck with the hotels and motels that are doing that as I said earlier and——

Mr. LATTA. Could I interrupt for one second? Now how did you reach out to different hotels and maybe the other providers out there?

Mr. HUNT. We had the backing of the American Hotel and Lodging Association. And once Commissioner Pai released his questionnaire to the top ten CEOs of the hotel corporations, word spread quite a bit. The industry itself seems to be taking a proactive role in it, but that is hotels and motels. We are talking about colleges, schools, office buildings. And in reference to being able to locate a person you can have all the information in the world, but if that firefighter doesn't know where that room is it does them no good. When we got here today, even though we had a map on the wall and the room number we had no idea. We had to ask someone. Someone pointed it out and it ended up being fairly easy to find.

But the numbers in some cases, numbers that are in between two others are in this direction and then the opposite numbers are this way and they should be next to each other, in my brain. But it was difficult to find without asking someone. And onsite notification, in our opinion, is a solution to that.

If you don't have onsite notification and the room is locked what are they going to do, break the door down? If it is a dire situation then I can understand that. But if it is even a misdial you can have

someone come and unlock the door for you, unlock the front door if it is after hours. They can get you there, but once the firefighters or police officers are in but gets to that location they need someone to direct them quickly without having to go through a map or a directory. Cubicle 2C3F could be an exact location, but that would probably mean nothing to a firefighter who is trying to get to someone who is injured.

Mr. LATTA. Thank you very much, Mr. Chair. I see my time is about to expire. I yield back.

Mr. WALDEN. The gentleman yields back. Before I recognize Mr. Yarmuth, I think, next, I have a letter I would like to enter into the record, with unanimous consent, from Commissioners Mike O'Rielly and Ajit Pai, which I think we already have seen. Without objection.

Now I would like to recognize the gentleman from Kentucky, Mr. Yarmuth, for questions.

Mr. YARMUTH. Thank you very much, Mr. Chairman. I want to thank all the witnesses, particularly Mr. Hunt and Ms. Smith. Thank you for your courage in coming here today. I join my colleagues in expressing my sorrow for your loss, and thank you for your dedication to improving this situation and heading off any potential incident like occurred to you.

I am going to spend most of my time talking about Lifeline because I am very concerned about any legislation that would reduce access to what in my district and I know many districts across the country are very critical. My district is urban. It is Louisville, Kentucky. We don't qualify for the high cost fund or the rural health care fund under USF.

Our schools and libraries use the E-rate providing access to the internet, but once those facilities close there is nowhere for most kids to go to complete their homework assignments or to just connect to the world as we know is as valuable part of education these days as what you find in school.

The Kentucky Department of Education Technology Readiness Report indicates that more than one in four households with children in my district lack internet access. And I was at a school a couple years ago, a middle school, and asked the principal that because 95 percent of the kids were on free and reduced lunch. And I asked her, what would you estimate the percentage of your kids who have access to the internet at home? She said 10 percent. I said, well, that 90 percent, those kids are done. I mean, they are lost. And the thing about that particular situation is most of the kids at that school were bussed miles and miles away, some as many as eight or nine miles.

So just, and I am going to get to a question for Ms. McAuliffe, because this notion that there are other places for students to go or families to go including McDonald's seems a little bit cavalier to me. I mean, how many blocks would you say it would be OK to have a second or third grader walk to get their homework done so they could find a McDonald's or in case a library was open? And are the parents going to take them and are the McDonald's going to welcome them and, because they are not going to be able to afford to buy anything there.

It just seems to me such a cold-hearted approach to saying that these kids, I mean, and I see these kids in our schools every day and I know that there are no alternatives for them that are reasonable. You take a 9 or 10-year-old kid and say, oh, the McDonald's is ten blocks away. Go walk there at 8 o'clock at night and get your homework done. Do you think that is really a reasonable alternative for people in this country, for kids in this country?

Ms. MCAULIFFE. Well, what I was referring to is the people who are completely unconnected, and the people who have decided they will never connect ever. So for people like that, yes, they probably do go to public places. They have someplace else to access. But for people who have completely no access, I think that is what the program should be targeted to.

So that 90 percent of students that you were talking about who don't have access at home, Lifeline should be targeted directly towards them and to those low-income families rather than serving as a subsidy for people who are already subscribing.

Mr. YARMUTH. Well, you threw a lot of numbers out in your testimony. I didn't quite get that point from listening to your testimony. I am concerned also about this notion that—and I think all of us agree that we ought to do everything we can to end fraud, waste, and abuse in any government program. It is absolutely essential. And I think we, as Democrats, I wrote an op-ed piece about this last week. We as Democrats ought to be the most aggressive in that because we want to prove the government can work and it can be effective, so we ought to be the ones who talk about that all the time.

But I do have just a theoretical question about why a cap is something that promotes a reduction in fraud and abuse. Logically, there doesn't seem to be any connection. I can see from the agency's standpoint if you cut their funds they are going to probably be more efficient so maybe there is not as much waste. But the fraud and the abuse in this system, do you have any evidence that cutting a budget actually reduces fraud and abuse?

Ms. MCAULIFFE. Cutting the budget has more incentives for pursuing that. And I think combined with the National Eligibility Verifier that those two working in concert is a great incentive to keep everything targeted to the people who need it most.

Mr. YARMUTH. Well, the verifier is going to be in place so—

Ms. MCAULIFFE. Right.

Mr. YARMUTH [continuing]. We don't have to legislate that. But are there any, do you have any evidence that cutting a budget has reduced fraud and abuse in any particular program?

Ms. MCAULIFFE. I would say abuse.

Mr. YARMUTH. OK. Well, if you could submit any evidence you have I would like to see that.

Ms. MCAULIFFE. Right.

Mr. YARMUTH. Thanks very much. My time is up, Mr. Chairman. I thank you.

Mr. WALDEN. I thank the gentleman for his questions. We will now go to the gentleman from Kansas, Mr. Pompeo, for 5 minutes.

Mr. POMPEO. Thank you, Mr. Chairman. And thank you to all the witnesses today. Ms. Smith, thank you especially to you for coming today to talk about your daughter and all the work you

have done that has been absolutely tireless. And so we heard some concerns expressed by one of the folks who gave testimony this morning about the possible abuses of this law. You talked about it being in 22 states. Can you tell me, how would you respond to the concerns about privacy that were raised today?

Ms. SMITH. Only at the level when I testified would there be an ACLU member trying to oppose the legislation. That is the only time we have heard about privacy issues. You won't hear it from a parent of someone that is missing.

Mr. POMPEO. I also haven't heard it from law enforcement. I have talked to law enforcement throughout the state as I travel around. We have had it in Kansas now for a good long period of time. I haven't heard them, I haven't heard the senior officers expressing any concerns about their officers abusing the power and the process they have. Are you aware of any of that?

Ms. SMITH. I am not.

Mr. POMPEO. Ms. Smith, some of the state versions have a limited liability exception for carriers providing some protection to them. Are you comfortable with that provision as some of the states have it if we put that in the federal version?

Ms. SMITH. I believe most of the states have it. Previous federal versions have that also.

Mr. POMPEO. Right. Mr. Wessler, thank you, Ms. Smith. Mr. Wessler, you identified in your written testimony, I think in your oral testimony as well maybe it was just three, but in the written testimony four examples. We now have 22 states that have had this on the books for cumulatively dozens and dozens of years. Are those the four examples that you think provide the case for arguing against allowing cell phones geolocation data be made available in emergency situations?

Mr. WESSLER. Thank you, Congressman. Those are examples that appear in case law specifically, where judges have actually had an opportunity to review police's conduct and point to that. We also point to some systemic examples including a 2010 report by the Department of Justice Inspector General showing systemic violation of emergency request procedures by the Federal Bureau of Investigation for telephone records.

Mr. POMPEO. Right. That is not exactly what—I have read that. That is not exactly what it says. Two of the four examples, just so the record's right, two of the four examples—I have now read the court cases—looked like they were plain old mistakes, which I will concede law enforcement makes from time to time just like I do. So it seems to me that the case for protecting human life and finding people who are in dire need of assistance from law enforcement far outweighs what now is, by my count, one example of case law that shows some form of a potential abuse of practice over the course of years and years and years.

Mr. WESSLER. And Congressman, I think that point is actually to the importance of one of the very modest protections we ask for which is notice to the person whose location is obtained after the fact. Not before, obviously not to interfere with the investigation, but notice is included in federal statutes like in the Wiretap Act and in state statutes and is really key mechanism so that people can know if it was an inappropriate request. If somebody is tracked

down who was truly in danger then they will have no complaint, and we want law enforcement to have that access. But notice, after-the-fact judicial review, and remedies can coexist with emergency access.

Mr. POMPEO. Great, thank you. Mr. Chairman, I yield back what little time I have left. Thank you.

Mr. WALDEN. Thank you very much. The gentleman yields back, and the chair recognizes for 5 minutes the gentleman from Pennsylvania.

Mr. DOYLE. Thank you, Mr. Chairman. And I want to thank the witnesses, and particularly Mr. Hunt and Ms. Smith. Thank you so much for being here and participating. Your loss is a reminder to all of us that we need to make sure that our public safety laws are updated and modernized to account for changing technologies and which is one of things we on the committee take very seriously.

In the last session of Congress in this committee we passed a modified version of Kelsey's Law by voice vote, I believe. I think it passed unanimously, which provided some of the provisions that Mr. Wessler was talking about. I know as a parent, I have four children, I would want that call and information to happen immediately. I think that is important.

I don't, quite frankly, see a problem with after-the-fact review. I think that creates a disincentive whether it be law enforcement or anyone else from misstating who they are or what they are. I think the most important thing is when something like this happens, locate that person immediately. Nothing should stop that.

But I wonder, Mr. Souder, if the action occurs immediately so that we hopefully save a life or get law enforcement to that situation as quick as possible, what harm do you see with after-the-fact, having some sort of review to make sure that the emergency was really an emergency and that the individual whose information or location was given out is notified that that was done? And obviously if that is someone who was missing and located, they are not going to have a problem with that. But if it was used for some other nefarious purpose that they would know this and have some redress. Do you see a problem with that?

Mr. SOUDER. I do not. And internally, meaning within the 911 center and the law enforcement agencies that we work very closely with, we have a multitude of safeguards to ensure that when a request is received there is legitimacy to it, when information is provided it is provided in a secure manner, so all of those things internally are already in place. But you are talking after the fact.

Mr. DOYLE. Yes.

Mr. SOUDER. I don't see any problem with it. I would only ask that the 911 center not be tasked with doing that.

Mr. DOYLE. Yes. No, I understand what you are saying. I mean, I think there is a solution to this. We want to do this and we want to see it happen. And I think that as long as we are not impeding the immediate location, information to where that location is because that should be paramount before any of this other, but that after the fact, to make sure that we have some safeguards in place that would be a disincentive for anyone to fraudulently say I have an emergency here when it isn't because there is going to be some after the fact review of it, seems to me to be a reasonable solution

to a problem which doesn't imperil the families or the victims, and at the same time provides some safeguards against any—and I am sure that these instances are rare anyway, but the fact that if there is documentation that they have existed in some instances, this seems to be the reasonable compromise between the two.

Mr. Hunt, I have got to tell you, I think most people don't even give it a thought that there is prefixes before 911. I was just sitting here thinking, I think all of us just thought, boy, you just grab any phone and dial 911 and you are getting connected. And when you think about it, I mean, even on our phones in the Capitol, if you are going to an outside line you have to hit that 9 first before you dial.

And it just seems to me in this age of technology this should be a simple fix and that no matter which phone you touch when you hit 911, because you are right, as parents that is what we tell our kids from the very beginning. That is the one number we drill into their heads that when something like this happens that is what we do.

So I really hope we can address both of these problems, and I think they go hand in hand by the way that this should be done. And I certainly, Mr. Chairman, are looking forward to working with you and members of this committee to find a solution to this very serious problem that—and I think it is within our ability to get this done and hopefully passed into law.

And so I thank both of you for coming, and Mr. Souder, I thank you too for the great work you guys are doing. And your reputation and the work of your agency in Fairfax is well known and we certainly appreciate it. And Mr. Wessler, I think some of the things you mentioned especially the after-the-fact stuff just to me makes sense. That is a safeguard we can—and still make sure these families, when there is a victim.

I have to tell you with regards to the Lifeline program, I know the Americans for whatever, Americans for Tax Reform, is that your group? I know you claim to speak for taxpayers. I guess you speak for some; you certainly don't speak for all. To cap this program to especially to take away poor people's ability to call 911, because this bill you speak of has a two-year phase-out of voice-only services and I just wonder what happens to the people on this program in two years when we phase out voice-only to this. They are going to have buy—I know this isn't favored by the industry. It is not favored by consumer groups. It is not favored by anybody I am aware of except maybe your organization.

And I would say to you too, when you talk about the waste and fraud in this program, people immediately think, yes, that is just poor people defrauding the program. The fraud is coming from the phone companies that are trying to sell these products, trying to sell two and three and four phones to people and saying it is OK, it is within the rules. I mean, most of the fraud we have seen in this Lifeline program isn't coming from the poor, it is coming from telephone solicitors that are trying to make a commission selling these products.

So I think it is a terrible idea to cap the program. The FCC is working on a reform package. The phase-out is five years instead of two. It seems eminently reasonable to me, and I hope this com-

mittee will not pursue this legislation 4884. I think it is counter-productive. And Mr. Chairman, thank you for your indulgence.

Mr. WALDEN. Thank you very much. The gentleman yields back and the chair now recognizes the gentleman from Florida for five minutes.

Mr. BILIRAKIS. Thank you very much, Mr. Chairman. I thank the entire panel, particularly Mr. Hunt and Ms. Smith, for your testimony today. I am going to start off with the Lifeline.

Ms. McAuliffe, since Florida is a net payer into the—and I represent Florida as the chairman said. Since Florida is a net payer into the Universal Service Fund it only underscores the importance that cutting down on fraud and waste, abuse again within the system, is imperative. We and the FCC must continue to improve and adapt the program to modernize reality so that only eligible customers receive Lifeline credits.

Can you describe the effect that an uncapped budget as currently constructed affects payer states like Florida, and how would a firm budget at any level around a million and a half or two billion dollars better protect against waste and unbalanced Lifeline disbursement?

Ms. MCAULIFFE. Sure. So in terms of a firm budget it kind of keeps things more in line because Florida is what, 300, over 300 million payee or into Lifeline, and that is money that could come back to Florida to help Florida residents who need that. So in having a budget to kind of quell this waste, fraud and abuse will make sure that the money stays more towards where it goes. And kind of in reference to the mobile-only, all I am testifying here is about having a firm budget and that that is very important to have that cap.

Mr. BILIRAKIS. Very good, thank you, next question. It is apparent for you, again Ms. McAuliffe. It is apparent that the rampant fraud and abuse within the Lifeline program five years ago has been addressed to some extent. Do you agree with that?

Ms. MCAULIFFE. Yes.

Mr. BILIRAKIS. I do note that since 2012 abuse has been cut by nearly \$670 million. That is significant. And yet we see instances just last week where a company can bypass federal safeguards to enroll 99.8 percent of their subscribers using stolen identifications or even the lack of identification for eligibility. The ratepayers are the ones that truly suffer in my opinion.

What is the best way for us to add teeth to these eligibility requirements so it can act as an actual deterrent? Can we completely cut some companies out of the program at a certain level for non-compliance? Can we cut them out?

Ms. MCAULIFFE. There should be and I believe there are, there are deterrents and abilities to cut companies' participation if they are acting in an abusive way. And I think the National Eligibility Verifier will go, will definitely help with that since it won't be the carriers self-certifying, it will be a third-party agency certifying that the people there submitting are a part of it.

And I think the level that you have, 135 percent of the poverty line, which is about \$32,000 for a family of four, I think that won't be an issue with the \$1.5 billion budget cut because that is about

where we are right now. So anyone who is currently participating in Lifeline will still be able to continue participating.

Mr. BILIRAKIS. And that is so very important obviously.

Ms. MCAULIFFE. Yes.

Mr. BILIRAKIS. Mr. Hunt, your testimony today to the committee is truly admirable and we appreciate it so much. I cannot imagine how your loss must affect you every minute of the day, but your perseverance and determination with Kari's Law is remarkable. Thank you so very much, sir. It is common sense legislation as far as I am concerned. We have got to get this done.

Mr. HUNT. Thank you.

Mr. BILIRAKIS. Shifting to Director Souder, thank you for being here as well. In your experience, where do these multi-line telephone systems present the biggest challenges to their users? Would the notification system that alerts a central site to the exact location of the emergency as required under Kari's law cut down on response times in nursing homes and other elder facilities, and also what about schools?

Mr. SOUDER. Schools would be included in that group of multi-telephone line subscribers as well. We are very fortunate in our region that there is a large level of compliance, but this is a very large nation and there are many hotels throughout the states, and I cannot speak to how many of them are voluntarily being compliant. But clearly I would hope that if this law is passed it will be a significant incentive so that this problem that does exist in many places will be rapidly addressed and not waiting until the incumbent telephone equipment has lived its life cycle which could then even be many years away.

Mr. BILIRAKIS. Again thank you, sir, for your advocacy.

Mr. BILIRAKIS. All right. Mr. Chairman, can I ask one question of Ms. Smith? Well, if we don't have time—

Mr. COLLINS [presiding]. No, not a problem.

Mr. BILIRAKIS. OK, thank you. Ms. Smith, your testimony today obviously is equally heartbreaking. Your loss is unconscionable. In today's modern age of telecommunication anything short of immediate, again short of immediate, in my opinion, is frustrating. It should be immediate.

I commend you for working so diligently for so long across our entire country in pursuit of this change. As you note, this law is already saving numerous lives that might otherwise be lost. That in and of itself is extraordinary, so thank you so very much. Can you elaborate a bit who this law, as enacted by almost half of the country, I think 22 states, is benefiting the most? Who is it benefiting the most? How could this affect residents in my state of Florida? And I understand we do not have a law on the books.

Ms. SMITH. Thank you, Congressman. Unfortunately your state has not passed it yet. Who does it benefit the most? The lives that have been saved. I testified to an elderly gentleman who had had a stroke and could not talk, but he could dial his wife's phone. He was recovered. There was a suicide attempt. The young lady had left a note and she was tracked and found in time. There was a baby, and this made news last year in our area, who was carjacked. Her parents' car was carjacked and that baby was found in less

than 40 minutes and the police stated it was absolutely because of Kelsey's Law. Those are the people that benefit.

And an additional benefit, I believe the very first time Kelsey's Law was ever used in Kansas there was a young lady murdered and she was taken to another state. But she came home, and her father does not believe she would have come home, she wouldn't have been found had it not been for Kelsey's Law. Those are the people that benefit from this law.

Mr. BILIRAKIS. Thank you so very much. I appreciate it. I yield back, Mr. Chairman.

Mr. COLLINS. Thank you. The chair now recognizes the gentleman from California.

Mr. MCNERNEY. I thank the chair. Mr. Souder, we have three public safety bills on our first panel. Although two of these bills seek to strengthen public safety, I am worried that one may undermine public safety for millions of low-income Americans. This would be the CURB Lifeline Act which makes so that low-income families may not have access to cell phones. In your experience, how important is it for low-income Americans to be able to use their mobile devices for 911 emergencies?

Mr. SOUDER. No different than it is for you or I.

Mr. MCNERNEY. How would cutting off 911 services for low-income Americans impact public safety?

Mr. SOUDER. We would have unfortunately less calls to respond to, although it wouldn't impact at all the need.

Mr. MCNERNEY. Thank you. Pretty blunt answers there.

Ms. Medina, thank you for testifying. What impact would a rigid funding cap on Lifeline have on current and future subscribers?

Ms. MEDINA. Well, I live in San Bernardino, the city of San Bernardino where there is a high population of poverty, and not only that crime. It would impact significantly because many families can't afford, and currently right now we have a limited amount of internet access.

And when you look at, when they were mentioning earlier regarding McDonald's and other places, when you have safety issues in your community you can't easily just walk to the neighborhood McDonald's or other locations. And we have had recently, unfortunately, two youths, one 14 and one 12, die while walking to a gasoline station which is around the corner.

So we have incidents in many communities throughout the nation that you can't have, it is not easy to have access especially after school and walking to different locations. So it definitely makes a huge impact on our communities.

Mr. WESSLER. Congressman, if I could just add to that. A hard cap also doesn't take into account the potential for economic crises and downturns or natural disasters. It sets the cap at a limit they may make sense this second, but economic circumstances of families can change very fast and this could leave people in really dire straits.

Ms. MEDINA. And I do want to mention when you look at caps it sets limitations on how many families you can serve, and that is the bottom line. You could have either a hundred families that could receive the service, but when you have a cap and you can no longer service them then what happens to them?

Mr. MCNERNEY. OK, thank you. As part of the CURB Lifeline Act, support for standalone mobile voice service would be cut off for many families. Standalone mobile service has become a simple focus of the program while a majority of the program's participants connect over mobile phones. Can you explain why being able to make voice calls using mobile phones would make the most sense for low-income Americans?

Ms. MEDINA. Emergency, I mean it has to do with emergencies. When I have my five children, if I am not home and they have to access, my teenagers have to access to call me they have that access to call. And also with finding work, my husband was laid off at one point and how do you find work? And you have to receive a call when you apply, and as well as internet access as well when you do the applications.

Mr. MCNERNEY. OK, thank you. Well, I think we all want to make sure that low-income families have access to emergency services.

Ms. McAuliffe, in your testimony you stated that broadband internet access is freely available nearly everywhere. You mentioned restaurants, McDonald's, but many low-income Americans have multiple jobs, a lot of these establishments are closed when they have any kind of free time. How can these Americans still access the internet to do essential things like help their kids with homework and apply for better jobs?

Ms. MCAULIFFE. Sure. And that is true that those time frames are difficult. And one of the things about the new order is that it does bring in broadband access and a lot of people are choosing to access on mobile devices. So that also links in the cost of voice service has gone down so much, so when you bundle both the voice and the data service together—right now we are at the 1.5 billion—it wouldn't cut anyone out, but it would actually add a service so you would end up with voice and an internet connection rather than neither.

Mr. MCNERNEY. Well, I don't think that is realistic because the subsidy is \$9.25 a month, which doesn't really even pay for mobile service much less mobile plus bundled services, so I would be careful about what that means. Thank you, Mr. Chairman.

Mr. COLLINS. I want to thank you for your questions and thank the panel for your testimony today. That has been very useful. And we have a second panel coming up, so with that thank you for your time and you are dismissed. We will call the second panel up. Thank you.

(Pause.)

Mr. COLLINS. If we could have the witnesses grab a seat we will get going here. All right, we will just wait a second for Detective Finley to join us.

OK, now that the panel is here we can get moving on the second panel. During this panel discussion we are going to be talking about H.R. 2031, the Anti-Swatting Act of 2015; H.R. 3998, Securing Access to Networks in Disasters, or SANDy Act; H.R. 4111, the Rural Health Care Connectivity Act of 2015; and H.R. 4190, the Spectrum Challenge Prize Act of 2015. So with that the witnesses each will have 5 minutes for their testimony. The lights there will

let you know green is good, yellow means start to wrap up, and red means we are going to cut you off.

With that Detective Sergeant Finley, we will begin with you. Welcome, and thank you for your testimony.

STATEMENTS OF DETECTIVE SERGEANT B.A. FINLEY, CRIMINAL INVESTIGATIONS DIVISION, JOHNS CREEK POLICE DEPARTMENT, JOHNS CREEK, GEORGIA; SCOTT BERGMANN, VICE PRESIDENT OF REGULATORY AFFAIRS, CTIA—THE WIRELESS ASSOCIATION; AND DAN HOLDHUSEN, DIRECTOR OF GOVERNMENT RELATIONS, GOOD SAMARITAN SOCIETY

STATEMENT OF B.A. FINLEY

Mr. FINLEY. Can you hear me OK, Mr. Collins?

Mr. COLLINS. Yes, sometimes you do have to lean close to the microphone.

Mr. FINLEY. All right.

Mr. COLLINS. We appreciate that.

Mr. FINLEY. Thank you for your time, sir. Again, thank you, Mr. Collins, Ranking Member Eshoo. Thank you to all the members. Again, my name is Detective Sergeant Finley from the Johns Creek Police Department in Johns Creek, Georgia. A 20-year veteran of law enforcement, I am currently the supervisor of a criminal investigations unit in my department. The majority of the crimes I investigate are internet and cyber related crimes, and over the last couple of years I have had quite a bit of experience and success investigating swatting, hoax 911 calls in which spoofing technology was utilized.

But first, let me say it is an honor and a privilege to be here today, be in front of this committee and provide testimony on these important issues. And some of the things that I will speak of today are, quite a few of them are listed in my written stuff and I won't go over each and every one of those. But I will just give you a couple of examples of some of the things I have been involved in.

In 2014, I was the lead investigator in a multi-state and international swatting investigation that involved a serial swatting suspect who had swatted 40-plus cities here in the United States and Canada. He had terrorized multiple families all over the United States and was responsible for hundreds of thousands of dollars in wasted time and resources by local and federal law enforcement officers responding to these fake incidents. He used VoIP technology as well as anonymizer Web sites, spoofing technology, multiple emails, and social media profiles to hide himself.

During this same time period, I was investigating another swatting hoax 911 incident involving an individual who lived up in the Northeast portion of the United States and in his hoax he was using several layers of spoofing technology. He actually had a spoofing phone app. He actually created his own spoofing Web site, and then ran that through a nationally known spoofing company.

He also incorporated the VoIP services as well, and as you can imagine it took quite some time to sort through all of this to find him out of this multi-layer spoofing. He also used some voice-disguising software on that which made it even more difficult to finally uncover who he is.

But in a lot of these situations we talk them out or you hear on the news about the incident that was called in, how many law enforcement were involved, how many ambulances and all that other stuff, and a lot of people, I think, forget about the actual victim, what happens to them. And sometimes I don't think they really understand that they suffer some intense emotional distress and trauma as well.

In one of these incidents that I investigated, a male caller had called our 911 center and he said that all right, he said I killed the mom, I killed the dad, I killed the little boy in the house and I have got the little girl right here and I need \$30,000 or I am killing her too. The only people that were present in the home that day were a nanny and a babysitter. There were two small children in the home at the time of the swatting call. Mom and Dad were both gone. They both found out by friends calling them and telling them that they had seen their house on the news and that something horrible had happened there.

So imagine as a parent that you get a call and you rush home thinking it is your entire family that has been killed. And as you get there you see multiple police vehicles lining up and down the street, police officers in this cul-de-sac pointing rifles at your home, EMS crews and stretchers are out on the street with ambulances and stretchers standing by for resulting casualties.

I was there that day and I saw that mother as she was running through her neighbors' yards trying to get to the home. She was in a panic. She was totally distraught and had a look of horror on her face. We had to physically restrain her and tell her that her children were fine and that they were sitting in the back of our fire chief's vehicle. And to see the raw emotion pour out of that woman that day as she embraced her children and just sobbed out loud it affected everyone there.

That is when you realize the impact that these swatting hoaxes can have on these victims, and it truly makes you angry to know that someone did this for fun and it motivates you to want to go find out who this person is and find them. It also makes you wonder what type of person would derive some type of enjoyment out of doing this to people.

Some of the other crimes I investigated involve the spoofing, except one of them is quite popular this time of year and that is the IRS scam where people call and then they will use the local IRS number to appear on your phone and say that hey, we are from the IRS. You owe us money. We are either going to lock you up or deport you or whatever, and people readily pay this money because they are scared to death of the IRS.

Another scam is the arrest warrant scam where they call up and say you have a warrant for your arrest. We are going to take you to jail if you don't pay this amount of money. People that don't have normal contact with law enforcement don't realize that we don't call you and tell you we have warrants for your arrest. We show up at your house to come get you.

But these are just a few examples of the criminals that utilize spoofing technology to facilitate their crimes. I hope it has given you a little bit of a better understanding of what goes on in these situations. They are not harmless pranks as some might describe

them. When you see the toll it takes on some of these families that have gone through some of these situations you will understand.

We do need good legislation to deal with this issue. As our technology increases so will these incidences. It is important to note that these criminals will always update their techniques to use the most recent technology to help further their criminal enterprise. They will always use and abuse any new technology to help them exploit companies or people. And at the end of the day the American people are going to look to both of us for help. They are going to look to you to make the good laws and they are going to look for me to enforce them.

I thank you for your time today and for the honor and privilege of being here before this institution and talking to you guys, and I will be happy to entertain any questions you may have.

[The statement of Mr. Finley follows:]

Written Testimony of

Detective Sergeant Ben A. Finley
Johns Creek Police Department – Johns Creek, Georgia

Before the House Committee on Energy & Commerce
Subcommittee on Communication and Technology
"A Legislative Hearing on Seven Communications Bills"

April 13th, 2016

Chairman Walden, Ranking Member Eshoo and Members of the Subcommittee: My name is Detective Sergeant Ben A. Finley from the Johns Creek Police Department in Johns Creek, Georgia. I am a 20 year veteran of law enforcement and I am currently the Supervisor of the Criminal Investigations Division in my department. The majority of the crimes I investigate are internet/cyber related crimes. Over the last couple of years I have had quite a bit of experience and success investigating Swatting/Hoax 911 calls in which Spoofing technology was utilized.

First let me say it is both an honor and a privilege to be here before this committee this morning to provide testimony on this important issue. Some of the issues I will speak on today will include swatting/hoax 911 calls and the use of spoofing technology. Before we start I want to make sure everyone understands exactly what I'll be talking about.

Swatting/Hoax 911 Calls: This is the act of calling and deceiving an Emergency Service/ 911 Center with the report of a false report of an ongoing critical incident. The calls usually contain reports of Active Shooters with multiple people dead or injured- Persons held hostage – Bombs/ IED's and threats to fire upon and kill law enforcement upon their arrival. Calls of this nature not only require a large law enforcement response but it diverts other critical resources as well. No one is immune from these acts from Hollywood celebrities – Members of Congress and just regular everyday people.

Call Spoofing: Caller ID "spoofing" occurs when a caller deliberately falsifies the information transmitted to your Caller ID display to disguise their identity. Spoofing is often used as part of an attempt to trick someone into giving away valuable personal information so it can be used in fraudulent activity or sold illegally. It is also used in many Swatting/Hoax 911 calls. There are some legitimate uses for spoofing numbers such as a business like a domestic violence shelter, rape crisis center etc. Some spoofing services even offer the ability to disguise and change your voice from male to female and add background noises.

IP Spoofing: IP Spoofing is a technique used to gain unauthorized access to machines, whereby an attacker illicitly impersonates another machine by manipulating IP packets. IP Spoofing involves modifying the packet header with a forged (spoofed) source IP address, a checksum, and the order value. Internet is a packet switched network, which causes the packets leaving one machine may be arriving at the destination machine in different order. The receiving machine resembles the message based on the order value embedded in the IP header. IP spoofing involves solving the algorithm that is used to select the order sent values, and to modify them correctly. (Source: iplocation.net)

Example #1: In 2014 I was the lead investigator in a multi-state and international swatting investigation that involved a serial swatting suspect who had swatted 40+ cities in the US and Canada. This individual had terrorized multiple families all over the USA and was responsible for hundreds of thousands of dollars of wasted time and resources by local and federal law enforcement officers responding to these fake incidents. He used VoIP (Voice over Internet Protocol) phone services (Skype – Google Voice etc.) anonymizer websites, spoofing technology and multiple email and social media profiles to hide himself.

During my investigation I was able to link this one individual to all of these swatting cases here in the United States. I also uncovered the fact that my suspect lived in Canada. I then contacted the FBI Atlanta Field Office- Cyber Program to get their assistance. With the help of FBI Atlanta we contacted the Royal Canadian Mounted Police in British Columbia, Canada and coordinated our efforts to stop this individual. We found out the suspect was very well known to them as well for swatting in their country.

After all the legal aspects were worked out between our two countries, the Canadian Crown Counsel (Canadian Courts) agreed to have our cases transferred to them for prosecution of the suspect. The suspect was then arrested and charged in their court system with our offenses as well as the charges he faced there in Canada. The suspect eventually pleaded guilty to a majority of the counts against him and was sentenced to jail time in Canada.

Example #2: During the same time period I was investigating another Swatting/Hoax 911 incident involving an individual from the North East United States. In his swatting hoaxes he was used several layers of spoofing technology. He started with a spoofing phone app that he ran through his own personally created spoofing website and then onto a nationally known spoofing company. He also incorporated VoIP (Voice over Internet Protocol) phone services as well (Skype-Google Voice etc.). As you can imagine, it took quite some time to sort through all of this and get to the offender. Along with this multi layered spoofing, the suspect had also used voice disguising software to alter his voice in hopes that he could remain undetected. All of this spoofing technology allowed him to do multiple swatting/hoax 911 calls all over the country until he was finally identified.

Some of these spoofing companies and anonymizer websites that these individuals use are located in foreign countries that have none or very limited data retention policies. They maintain no logs of the users; they accept untraceable currency (Bitcoin – Darkcoin etc.) and are generally non-compliant with any request from law enforcement requesting user logs and records.

During my investigations I have traced these individuals to countries such as Russia, Germany, Amsterdam, Hong Kong any many others.

Even if we have an MLAT (Mutual Legal Assistance Treaty) with that nation, it is still a very difficult task to get the information you need in a timely manner.

Victim Impact of Swatting: Most of the time the news coverage on Swatting/Hoax 911 calls deals primarily with the call that was received, the alleged incident that was reported and the amount of Police, Fire and EMS equipment that responded to the fake call. In a lot of these cases there are real victims that suffer some intense emotional distress and trauma.

In one of the swatting incidents I investigated, a male caller called into our 911 center and said **“Alright, I killed the Mom, I killed the Dad and I killed the little boy in the house. I got the little girl right here. “ I ... I need \$30,000 dollars or I’m killing her too”**.

The only people present in the home that day were a Nanny and babysitter. There were two small children in the home at the time of the swatting call. Mom and Dad found out by friends calling them and telling them they saw on the news where something horrible had happened at their home. Imagine as a parent you get that call and you rush home thinking that your entire family has been killed. You arrive and see multiple Police vehicles lining your street. Officers with rifles pointed at your house. EMS crews with stretchers out in the street beside the ambulances on standby for casualties.

I was there and saw the Mother as she was running through neighbor’s yards trying to get to her home. She was in a panic, totally distraught with a look of horror on her face. We had to physically restrain her and tell her that her children were fine and they were sitting in the back of our Fire Chief’s vehicle. To see the raw emotion pour out of that woman as she embraced her children and sobbed out loud affected every one there. That’s when you realize the impact that these swatting hoaxes can have on its victims. It truly makes you angry to know that someone did this for fun. It motivates you to want to find the person who did this act. It also makes you wonder what type of person would derive some type of enjoyment out of doing this to people.

There are quite a few other crimes I have investigated that involve criminals using spoofing technology to scam citizens out of their money and personal identifying information.

IRS Scam: This is the one that is the most prevalent this time of year. Scammers will call unsuspecting people and claim to be IRS agents and tell the victims they have outstanding tax debts and they have to be paid now to avoid jail time, deportation etc. The scammers will usually have the victim's last name and last four of their Social Security number which will further convince the victim the call is legitimate. Also if the victim checks the number that appears on their caller ID they will find that the number is a real phone number to the local IRS division. The criminals use readily available spoofing phone apps and spoofing websites to further their criminal activity by making the legitimate number appear on the victim's phone.

Arrest Warrant Scam: This is a growing scam that is reaching victims all over the country. The victim will receive a phone call from a person who impersonates being a local police officer from the victim's home area. The phone number that appears on the potential victim's phone will be a legitimate number to their local Police or Sheriff's Office from their area. The Police Impersonator will then tell the potential victim there is an arrest warrant out for them for an unpaid debt, missed jury duty or some other infraction. The Impersonator claims they can get the warrant dismissed if the victim will send the fine amount by Western Union or Green Dot Card. After the victim realizes they have been scammed it is too late. This is yet another instance in which criminals use phone spoofing apps and spoofing websites to further their criminal enterprise.

These are just a few examples of criminals that utilize spoofing technology to facilitate their crimes.

I hope this has given you a little better understanding of what all goes on in these situations. These are not harmless "pranks" as some may describe them. When you see the toll it takes on families that have gone through some of the situations you will understand.

We do need good legislation to deal with this issue. As our technology increases so will these incidents. It is important to note that criminals will always update their techniques to use the most recent technology to help further their criminal enterprise. They will always use and abuse any new technology to help them exploit companies or people. At the end of the day the American people are going to look to both of us for help. They'll look to people like you to make the laws and to people like me to enforce them.

I thank you for your time today and again for the honor and privilege of being here to speak to this committee on this legislation. Thank you.

Sergeant Ben A. Finley

Johns Creek Police Department- Georgia

Mr. COLLINS. Thank you for sharing that testimony. There are things we can't conceive of and this happens to be——

Mr. FINLEY. Yes, sir.

Mr. COLLINS [continuing]. In that category, so we may have some other questions afterwards. Thank you very much.

Mr. FINLEY. Not a problem, sir.

Mr. COLLINS. Mr. Bergman, you are now recognized for 5 minutes.

STATEMENT OF SCOTT BERGMANN

Mr. BERGMANN. Thank you to the chair, and thank you to Chairman Walden and Ranking Member Eshoo and members of the subcommittee for the opportunity to provide CTIA's influence on four of the initiatives that you will consider today. CTIA appreciates this subcommittee's continued interest in wireless policy in efforts to keep Americans safe and connected while encouraging innovation and investment in the world's most vibrant wireless marketplace.

CTIA has a long history of working closely with this committee to address public safety and emergency preparedness. From the adoption of 911 to wireless emergency alerts and FirstNet we have partnered with you to help keep Americans safe. In that vein, we appreciate Ranking Member Pallone's introduction of H.R. 3998. The district he represents suffered great damage from Superstorm Sandy.

Mr. COLLINS. Excuse me. Is your microphone on?

Mr. BERGMANN. Thank you, sir. The district he represents suffered great damage from Superstorm Sandy, and lessons from that experience spurred the SANDy Act. I am pleased to report that H.R. 3998 and corresponding interest from Chairman Wheeler and the FCC have encouraged meaningful dialogue about steps to improve disaster preparedness.

Carriers are making progress toward a framework that would address many elements in the bill, including identifying new ways to help consumers be prepared when disaster strikes, making sure that critical public safety personnel can contact wireless providers, engaging local governments to enhance their readiness, and giving providers flexibility to help one another restore service. Given this progress, we do not consider new legislative or regulatory actions necessary, but we absolutely commend Representative Pallone for his leadership.

Turning to H.R. 4190, CTIA supports the Spectrum Challenge Prize Act. CTIA's members invest heavily in research and development to improve spectral efficiency, but with demand for mobile broadband continuing to rise more progress is needed. A challenge program such as that proposed by Representative Matsui may incentivize breakthroughs that can benefit consumers and our economy.

CTIA believes that a comprehensive approach to wireless policy should focus on efficiency and also on identifying additional spectrum and streamlining processes for deploying network architecture. CTIA commends Chairman Walden and the subcommittee for your work to expedite the deployment of communications infrastructure on federal properties and the approval of H.R. 1641, the

Federal Spectrum Incentive Act. We would also highlight the FCC's important efforts to make available spectrum above 24 gigahertz which offers promise as we move towards 5G services. We welcome your help in ensuring that the Commission adopts rules this summer to bring high-band spectrum to market. Collectively, these initiatives will help the U.S. retain its world leadership in advanced wireless services.

Moving to the Lifeline bill, CTIA's views are informed by two main points. First that all Americans should have access to high quality communication services, and second that Universal Service policies should recognize consumers' increased preference for wireless services. While CTIA appreciates the subcommittee's interest in ensuring a more efficient Lifeline program, we are concerned that a cap will inherently exclude low-income consumers that Lifeline is intended to support. CTIA is also concerned that eliminating support only for mobile voice services would reverse longstanding consensus that USF policy be technology neutral.

The subcommittee may wish to consider whether it would be appropriate to transition the entire USF program to a general revenues model. Wireless consumers today bear almost half of the annual \$8 billion USF contribution burden, while 75 percent of that support goes to non-wireless services. A general revenues approach would give this subcommittee the opportunity to consider funding levels, affordability, and inter-industry subsidies implicated under the current approach.

Finally, CTIA supports H.R. 4889, the Kelsey Smith Act, with the addition of one critical provision. We urge the inclusion of clear, unambiguous language to ensure that any carrier complying with the act is protected from civil or administrative liability. Adoption of appropriate liability safeguards will ensure that carriers that comply with law enforcement requests have the necessary protection to aid in the response to critical life-threatening emergencies.

Thank you for the opportunity to testify today and I look forward to your questions.

[The statement of Mr. Bergmann follows:]

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Testimony of Scott Bergmann
Vice President, Regulatory Affairs
CTIA

on

Legislative Hearing on Seven Communications Bills

Before the House Energy & Commerce
Subcommittee on Communications & Technology

April 13, 2016



Testimony of Scott Bergmann
Vice President, Regulatory Affairs, CTIA
Before the House Subcommittee on Communications & Technology
April 13, 2016

Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, thank you for the opportunity to participate in today's panel on a number of pending bills that will impact the wireless industry. On behalf of CTIA®, I am pleased to have the opportunity to provide input on several of these initiatives, including:

- H.R. 3998, Representative Pallone's Securing Access to Networks in Disasters Act;
- H.R. 4190, Representative Matsui's Spectrum Challenge Prize Act;
- H.R. 4884, the CURB Lifeline Abuse Act; and
- H.R. 4889, the Kelsey Smith Act.

CTIA appreciates the Subcommittee's continued interest in wireless policy and efforts to keep Americans safe and connected, while encouraging further innovation and investment in the world's most vibrant wireless marketplace.

H.R. 3998, the Securing Access to Networks in Disasters Act

CTIA has a long history of working with this Committee to address public safety and emergency preparedness. From the Wireless Communications and Public Safety Act of 1999 (P.L. 106-81) that made 911 the universal emergency assistance number, to the 2006 WARN Act (P.L. 109-347) that helped produce the Wireless Emergency Alert program, and more recently the 2012 Middle Class and Tax Relief Act (P.L. 112-96), which gave birth to FirstNET, we have partnered with you to help keep Americans safe.

It is in that vein that we have evaluated H.R. 3998, offered by the Committee's Ranking Member. The district he represents suffered great damage from Super Storm Sandy, and it is the lessons from that experience that spurred the SANDy Act.

I am pleased to report that the introduction of Representative Pallone's legislation, and corresponding interest in resiliency on the part of Chairman Wheeler and the Federal Communications Commission, encouraged a meaningful industry dialogue about what can be done to ensure that consumers are well-served when the need for connectivity might be most acute. These discussions have focused on the education of end-users,

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the need for flexibility - as one disaster is not necessarily like the next - and mutual or reciprocal assistance among wireless providers where appropriate. On the first point, CTIA has created a variety of consumer education tools aimed at helping consumers be better prepared when disaster strikes. To appeal to the industry's wide-range of consumers, these tools include TV-based public service announcements, informational pamphlets, and social media tools ranging from YouTube videos to Tweets. We continue to investigate new and effective ways to improve consumer preparedness for disasters and emergency situations. On the industry-side of the equation, our discussions lead us to believe that improved industry collaboration and mutual aid arrangements will facilitate greater network resiliency and faster restoration of service in instances where outages occur. Carriers are making progress toward a framework that will address many of the elements included in H.R. 3998, including making sure public safety answering points and critical public safety personnel can contact wireless providers about service and restoration status; engaging with local governments to enhance municipal preparedness; and providing flexibility for wireless providers to assist one another through roaming or mutual aid where feasible.

Given this progress, we do not consider new legislative or regulatory actions necessary, but we absolutely thank and commend Representative Pallone for his leadership in this area, through which he is fostering enhanced industry practices that will benefit all Americans. These practices, reflecting lessons learned from Super Storm Sandy and other disasters, will help keep us all safe and connected during the next storm.

H.R. 4190, the Spectrum Challenge Prize Act

CTIA supports H.R. 4190, the Spectrum Challenge Prize Act. CTIA's members are doing all they can in the research and development space to improve spectral efficiency, and as America's wireless industry has led the way from 3G to 4G, spectral efficiency has improved substantially.¹ Nonetheless, with demand for mobile broadband services

¹ See Coleman D. Bazelon and Giulia McHenry, "Substantial Licensed Spectrum Deficit (2015-2019): Updating the FCC's Mobile Data Demand Projections," June 2015, at 13-15.

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continuing to increase rapidly, more progress is needed. A challenge program such as that proposed by Representative Matsui may incentivize work that may help advance the state of spectrum-based technologies, where breakthroughs can advance the interests of consumers and our economy.

In addition to spurring additional technological work aimed at improving spectral efficiency, H.R. 4190 helps highlight that we need to be doing all we can to address rising consumer demand for spectrum-based services. A holistic approach to wireless policy demands not only a focus on efficiency, but also a continued commitment to streamlining the process for deploying network infrastructure, as well as the identification and introduction of additional licensed and unlicensed spectrum into the commercial marketplace. CTIA commends the Subcommittee for its work to expedite the deployment of communications infrastructure on Federal properties and its approval of H.R. 1641, the Federal Spectrum Incentive Act. I also want to note the FCC's efforts to examine and make available spectrum in bands above 24 Gigahertz, which may be particularly helpful as we evolved toward the deployment of 5G services. It is vitally important for the Commission to deliver on its commitment to adopt rules this summer to bring that high-band spectrum to market and we ask for your help in ensuring that happens on schedule. Collectively, these initiatives and H.R. 4190 contribute to the sort of comprehensive spectrum policy approach that is necessary if the United States is to retain its world leadership in advanced wireless services.

H.R. 4884, the CURB Lifeline Act

As explained in our response to the Committee's #CommActUpdate White Paper on "Universal Service Policy and the Role of the Federal Communications Commission," CTIA's views on universal service policy are informed by two main points: First, that all Americans should have access to high-quality communications services at just and reasonable rates; and second, that our universal service policies should be competitively and technologically neutral and recognize how consumers actually use

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communications services, including their increased reliance on wireless services. Against this backdrop, we have several concerns with H.R. 4884.

CTIA believes that a well-designed Lifeline program, with appropriate safeguards and incentives for efficiency, can play an important role in meeting Congress' directive to connect low-income consumers to critical communications services. Given that almost half of all U.S. households are wireless-only – and the shift to mobile services is even more prevalent among low-income Americans² – Lifeline should enable low-income consumers to choose wireless services to meet their occupational, educational and public safety needs.

The wireless industry has a strong incentive to ensure that the Lifeline program is efficient and free from waste, fraud or abuse because wireless consumers and providers bear almost 50% (about \$4 billion annually) of the total contribution burden to support the \$8 billion Federal universal service high-cost, E-Rate, rural health and Lifeline programs.

While CTIA appreciates the interest some have expressed in limiting the size of the Lifeline program through a cap on the total amounts that may be distributed, CTIA believes that capping the Lifeline program may be counterproductive to encouraging low-income consumers to adopt communications services that are essential to participation in today's economy. A cap on the Lifeline program will inherently exclude an undetermined number of the eligible low-income consumers. Because the Lifeline program provides support only to means-tested recipients and serves a purpose more akin to other low-income government programs that are not subject to caps, it is reasonable to distinguish Lifeline from other Federal USF programs that are appropriately subject to a cap.

If the Subcommittee nevertheless chooses to adopt a cap, the Subcommittee should consider that, in order to serve low-income consumers, participating providers require a predictable and consistent level of support that reflects the market realities of meeting

² CDC Wireless Substitution: Early Release Estimates from the National Health Interview Survey, January – June 2015, released December 2015.

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the FCC's recently adopted minimum service standards. Also, in recognition that a statutory cap may be difficult to change even if economic or market circumstances warrant such alteration, the statutory cap should be sufficiently flexible to periodically adjust based on any potential demand balanced with market realities.

In considering the appropriate funding levels for federal universal service programs, the Subcommittee should more generally consider whether it is time for a fundamentally different approach to the way the entire universal service regime is funded. A continually increasing contribution factor puts pressure on the affordability of communications services to consumers generally and exacerbates inter-industry subsidies that occur under the current system. CTIA is increasingly concerned that the Federal universal service contribution burden falls mainly on wireless consumers and providers, while more than 75% of the total \$8 Billion Federal universal service program primarily supports non-wireless services. Thus the Subcommittee may wish to consider whether it would be appropriate to transition the entire universal service program to a general revenues model and the appropriations process, as suggested in our #CommActUpdate response.

CTIA also is concerned that, by mandating the phase-out of mobile voice-only service within two years of enactment, H.R. 4884 would reverse a long-standing commitment to competitive and technological neutrality and eliminate the most efficient and effective communications services available to low-income consumers. In the lead up to the FCC's recent Lifeline Reform Order, a broad consensus of consumer advocates, state and federal policymakers and industry agreed that Lifeline support for mobile wireless voice services remains essential for low-income consumers. Given the millions of low-income consumers relying on wireless voice services to reach critical 9-1-1 emergency communications, our universal service policy should not be biased in favor of any particular technology or service.

Moreover, mandating the elimination of mobile wireless voice-only service presumes that broadband services are the most efficient services to meet the needs of all low-

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income consumers today. CTIA supports expanding eligible Lifeline services to include broadband services. However, given the significant private investments required for robust broadband deployment, particularly to maintain U.S. global leadership in mobile wireless broadband, it remains to be seen whether the Lifeline program can effectively and efficiently put affordable broadband services within reach for eligible low-income consumers. Given the current subsidy structure, eligible low-income consumers, not policymakers, should choose where to direct that limited support.

Accordingly, CTIA respectfully recommends eliminating the proposed 254A(a) and 254A(c) provisions and the corresponding provisions of Section 2(b) from the bill.

H.R. 4889, the Kelsey Smith Act

With the addition of one critical provision, CTIA supports H.R. 4889, the Kelsey Smith Act. The addition we urge is the inclusion of clear, unambiguous language to ensure that any carrier complying with the Act is protected from civil or administrative liability. Toward this end, CTIA urges the Subcommittee to adopt language identical to that which was included in the version of the Kelsey Smith Act reported by the Energy & Commerce Committee during the 113th Congress. Adoption of appropriate liability protection language will ensure that the amended version of Section 222 contains an analog to the language of 18 USC 2703(e), the other provision of Federal law which could be invoked in a situation involving immediate danger of serious bodily injury or death, the standard for disclosure included in Title 18 and the proposed legislation. Carriers that comply with law enforcement requests for assistance pursuant to either Title 18 or the terms of H.R. 4889 should be fully protected from after the fact second-guessing from courts and regulatory agencies.

* * * * *

Thank you again for the opportunity to testify today. I look forward to any questions you may have.

Mr. COLLINS. Appreciate your testimony. Now Mr. Holdhusen, you have 5 minutes.

STATEMENT OF DAN HOLDHUSEN

Mr. HOLDHUSEN. Thank you, Mr. Collins and Ranking Member Eshoo and other members of the subcommittee. I am here today and have the honor to appear before you to support bipartisan legislation H.R. 4111, the Rural Health Care Connectivity Act of 2015. This was sponsored by subcommittee members Lance, Loeb sack, and Cramer. I respectfully ask that my written testimony be submitted.

My name is Dan Holdhusen and I am the director of government relations for the Evangelical Lutheran Good Samaritan Society. The society is the nation's largest not-for-profit faith based senior care and services organization. It was founded in 1922 and is headquartered in Sioux Falls, South Dakota.

We offer a broad spectrum of senior services including not only skilled nursing care, but also home health, respite care, assisted living, post-acute care, senior apartments and affordable housing, and hospice care. Currently, the society serves more than 240 locations across the country in 24 states, caring daily for more than 30,000 people and employing more than 23,000 staff members.

On behalf of the society and the American Health Care Association, which is the nation's largest association of long term and post-acute care providers, I would like to express our strong endorsement of the Rural Health Care Connectivity Act. If enacted, this bill would offer substantial and critical support for not-for-profit and public providers of skilled nursing care that operate in rural and frontier areas across the country.

The society currently operates 168 skilled nursing facilities, also called SNFs, of which 122 or about three-quarters of those are in the Universal Service Administrative Company defined rural areas. In fact, we have facilities in many of your districts, including Oregon, Iowa, North Dakota, Ohio, Kentucky, and Kansas. These SNFs play a critical role in the delivery of care in rural and frontier areas of our country and are significant and growing pioneers in telehealth services.

Like many providers serving an aging population, the society is a provider of skilled nursing care in many rural areas of the country. As such, we are dependent on the growing use of technology to deliver needed care and services to locations that do not have the benefit of nearby health clinics or rural hospitals.

The use of broadband networks is critical to accommodate the delivery and exchange of data, images, web streaming, electronic medical records, and other health information that is vital to ensure that the day-to-day care needs of residents and patients are met. Further, an important resource for assisting with the funding of these broadband networks is the Universal Service Fund that is administered by the FCC.

Although the majority of our health care partners in rural areas of the country are afforded the privilege of accessing Universal Service Fund to assist with funding broadband investment, skilled nursing facilities are not. It has been our long held belief that Congress fully intended to make rural, not-for-profit, long term care

SNFs as eligible health care providers under Section 254 of the 1996 Telecom Act. In fact, on several occasions we have provided both informal and formal comments to the FCC expressing these strong held views.

With the passage of this bill, the FCC will have the direction it needs to continue to develop the Healthcare Connect Fund and implement the health care broadband experiment program so that SNFs can benefit along with other covered health care providers.

In conclusion, we are extremely grateful for your leadership on this important issue that deeply impacts some of society's most vulnerable populations, our nation's seniors, and we strongly urge the committee's swift adoption of the bipartisan bill, especially given that the bill was recently scored by the CBO as resulting in a net reduction in the deficit. We hope to get this bill across the finish line soon and to have access to these funds within a year of enactment.

Again, we are particularly thankful to the number of members, namely Representatives Lance, Loebsack, and Cramer for their support of this bill. I thank you for allowing me the opportunity to strongly support the Rural Health Care Connectivity Act and I stand ready to respond to any questions. Thank you.

[The statement of Mr. Holdhusen follows:]



4800 West 57th Street
P.O. Box 5038
Sioux Falls, SD 57117-5038

Phone: 605-362-3100
Fax: 605-362-3309
www.good-sam.com

Testimony of The Evangelical Lutheran Good Samaritan Society re. H.R. 4111, the Rural Health Care Connectivity Act of 2015

Good Morning.

Chairman Walden, Ranking Member Eshoo and other members of the Subcommittee. It is my honor to appear before you today in support of H.R. 4111, the Rural Health Care Connectivity Act of 2015 sponsored by Subcommittee Members Rep. Leonard Lance (R-NJ), Rep. Dave Loebsack (D-IA) and Rep. Kevin Cramer (R-ND).

My name is Dan Holdhusen, and I am the Director of Government Relations for The Evangelical Lutheran Good Samaritan Society (The Society). The Society is the nation's largest not-for-profit, faith-based senior care and services organization. The Society was founded in 1922, and is headquartered in Sioux Falls, South Dakota. We offer a broad spectrum of senior services ranging from home health, respite care, assisted living, post-acute care, senior apartments and affordable housing to skilled nursing care and hospice care. Currently, the Society serves more than 240 locations in 24 states caring daily for more than 30,000 people and employing more than 23,000 staff members.

On behalf of the Society and the American Health Care Association (AHCA), the nation's largest association of long-term and post-acute care providers, I would like to express our strong support for the Rural Health Care Connectivity Act of 2015. If enacted, this bill would offer substantial and critical support for not-for-profit and public providers of skilled nursing care that operate in rural and frontier areas and across the country.

The Society currently operates 168 skilled nursing facilities (SNFs), of which 122 (73%) are in the Universal Service Administrative Company (USAC)-defined rural areas. These SNFs play a critically important role in the delivery of care in rural and frontier areas of our country, and are significant and growing pioneers in telehealth services.

By amending the Communications Act of 1934 to include SNFs among the types of health care providers who may request support from a telecommunications carrier under the Universal Service Fund, the bill would provide the necessary telecommunications and information services to serve persons who reside in rural areas at rates that are reasonably comparable to rates charged for similar services in urban areas.

It has been our long-held belief that Congress fully intended to make rural, non-profit, long-term care SNFs as eligible health care providers under section 254(h)(5)(B) of the 1996 Telecom Act.

In fact, on several occasions we provided informal and formal comments to the Federal Communications Commission (FCC) expressing these strong-held views.

With the passage of this bill, the FCC will have the direction it needs to continue to develop the Health Care Connect Fund, and implement the Healthcare Broadband Experiment program such that SNF's can benefit along with other covered health care providers.

As the Committee explores the ways in which telehealth and telemedicine will be applied in the care of our nation's aging, we would like to share our views and experience in this area. The Society strongly believes in the importance of recognizing rural, not-for-profit SNFs as a vital part of the healthcare spectrum. Further, the Society believes that it is critically important for providers providing long-term care in SNFs to utilize and advance the use of new technologies to better deliver healthcare services to their patients and – like other providers in the healthcare continuum – have access to affordable broadband connectivity.

Unfortunately, we have seen SNFs overlooked in terms of resources available for access to affordable broadband services in a number of federal policies. But, this bill gives us hope that SNFs will no longer be treated as second-class providers of senior care.

For nearly a century, operations in rural populated states like South Dakota, North Dakota, Iowa, Kansas, Nebraska and Minnesota have enabled the Society to develop an expertise in providing senior care in rural settings.

The Society as an Innovator

The Society has been forward-thinking in the comprehensive provision of care for seniors, and has invested significantly in developing innovative services and technologies designed to improve the quality of care and lower the overall costs of care. For example:

- The Society has developed, implemented and is advancing eLongTermCare telehealth technology designed to connect patients in rural SNFs to hospitals and their doctors without having to physically transport patients on a regular basis.
- The Society has also developed and is advancing the LivingWell@Home (LW@H) program, which offers a suite of technologies designed to help seniors live more independently and remain longer in the place they choose to call home. Use of this patient remote-sensing technology suite began in the Society's assisted living and home care communities in July 2012. The LW@H program is designed to enhance care and service delivery through the use of sensor technology, telehealth and a central data monitoring system, all developed and managed by the Society.
- The Society has undertaken a pilot project that deploys tablet-style computers to patients in some of its facilities and provided training that enabled seniors to "connect"

to family, caregivers, and doctors online. The intent of this program is to demonstrate how Internet usage by seniors can decrease depression and isolationism – a chronic problem among the elderly of this country that often leads to collateral physical and emotional healthcare concerns – and increase communication between senior patients, their family members and their communities.

- The Society has implemented an electronic point-of-care documentation system in all of its facilities, and has deployed electronic billing systems built to interact with payers and insurance providers.
- The Society is continuously working to improve its ability to utilize remote sensing technologies using telehealth technology in independent senior housing settings to transmit and convey clinical information to doctors and clinics, thereby producing timelier, convenient, cost effective and better quality outcomes for its patients.

Access to broadband connectivity at robust speeds and affordable prices is essential in the provision of the Society's wide range of services. If the Society is to continue to develop innovative technologies designed to lower costs and improve care for seniors in its long term care facilities like SNFs – particularly those in rural or frontier areas – focus must be given to the SNFs ability to obtain robust and affordable broadband connectivity.

SNFs Need Robust and Affordable Broadband Connectivity to Provide Vital Services to Senior Citizens in Rural America

SNFs need access to advanced broadband connectivity in order to provide necessary healthcare related services to seniors. It is important to make clear that the need for broadband technology, telehealth and other advanced technologies are no different for a SNF than those of an acute care setting (i.e. a hospital or urgent care clinic). The Federal Communications Commission (FCC) itself recognized that "There is evidence that skilled nursing facilities are particularly well-suited to improve patient outcomes through greater use of broadband." (Report and Order in WC Docket No. 02-06, *In the Matter of Rural Health Care Support Mechanism*, Released December 12, 2012, FCC No. 12-150.) Yet, because SNFs fall somewhere between not-for-profit hospitals (47 U.S.C. Sec. 254(h)(7)(b)(v)) and rural health care clinics (47 U.S.C. Sec. 254(h)(7)(b)(vi)), SNFs lack access to the federal financial assistance that acute care settings and other healthcare providers have enjoyed, in part through the various programs under the federal Universal Service Fund (USF) program.

In spite of these obstacles – and without access to USF funding – the Society has implemented Electronic Medical Records, telehealth and other technologies into its care system that allows facilities to connect with its brethren in the acute healthcare community. We do this for a simply, yet profound, reason: we believe it is critical and essential to work with providers of acute care services as we care for our elderly populations.

We believe these efforts are critical because in many rural communities, a SNF is often the only healthcare provider available for 100 or more miles. With telehealth capabilities, for example, the Society can extend ambulatory and emergency health care services into rural communities.

However, advancing the Society's technology capabilities is becoming more and more difficult as the healthcare environment evolves in more complicated directions, and SNF providers operate with slim and progressively decreasing operating margins. The cost of broadband connectivity is extraordinary in rural areas, and often the robust speeds necessary to advance the most state-of-the-art health technology services are out of reach to SNFs due to cost and availability. For example, in the 168 SNFs operated by the Society, the breakdown of the bandwidth currently installed is as follows:

- 98 sites have single T1 circuits which is 1.5Mbit/second
- 52 sites have two T1 circuits which is 3.0Mbit/second
- 16 sites have three T1 circuits which is 4.5Mbit/second
- 2 sites have 5Mb ethernet circuits

The local access – which is the largest portion of the Society's monthly technology costs – is based on mileage and therefore tends to be more expensive for the rural sites. The average access cost for rural locations is \$497 for each T1 circuit installed, compared with \$256 for urban sites. Therefore, rural sites cost \$240 more per month than urban locations. Obtaining more robust broadband connectivity (which is greatly needed) would result in an even greater price disparity between rural and urban prices.

Furthermore, it is important to note that upgrading circuits at the SNFs is an ongoing and constant concern and effort, which puts even further financial pressure on the rural sites. Indeed, SNFs require affordable, sustainable access to broadband if they are to continue to advance the use of technologies for other related and critical functions, such as remote training initiatives, maintenance and dissemination of electronic medical files, further the integration with online pharmacies, and enable rural healthcare providers and caregivers to obtain continuing education.

Enabling SNFs to obtain robust and affordable broadband connectivity is critical. It will not only help lower overall healthcare costs; but also enhance the well-being of seniors by improving care, reducing hospital visits, and helping to keep them connected to their professional and family caregivers. Beyond the critical healthcare benefits described above, broadband access enhances the quality of life for seniors by enabling increased social interactions, limiting isolation concerns (particularly in rural areas), and providing economic benefits and access to healthcare-related services and information.

As the Committee continues its dialogue on modernizing the laws governing the technology sector and examines the universal service policy, the Society believes that it is vital that the critical needs of the rural, not-for-profit, long term care skilled nursing sector are included in these discussions.

Discussion on the FCC and SNF eligibility for Rural Healthcare Support Mechanism

Section 254(h) of the Telecommunications Act ensures that our nation's educational institutions and health care facilities have access to the USF for the purpose of deploying broadband to these facilities. At the time this provision was drafted, there was nothing in the Congressional Record indicating the intent to exclude SNFs from the benefits of Section 254. Indeed, SNFs fall somewhere between not-for-profit hospitals, 254(h)(5)(B)(v) and rural health care clinics, 254(h)(5)(B)(vi). The telecommunications needs of SNFs do not differ from those of acute care facilities, such as hospitals or urgent care centers. Logically, there would be no reason to exclude SNFs from rural health care universal service funding and ***yet the FCC has done just that.***

When the FCC adopted the pilot program for skilled nursing facilities in 2012 in its *Rural Healthcare Support Mechanism* (WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678) (FCC 12-150), the FCC was unable to determine at the time whether or not SNFs fit under the definitions of eligible health care providers under section 254(h). Hence, the FCC created the SNF pilot program. In the 2014 *Technology Transitions Report and Order and Further Notice of Proposed Rulemaking* (FCC 14-05) the FCC eliminated the SNF pilot program and incorporated the SNF pilot funding into the general funding for rural healthcare broadband experiments.

- ***Eliminating the pilot program and keeping SNFs from applying for rural healthcare broadband experiments on their own (instead of as part of a consortium) seems to be a double blow to SNFs.***

SNFs play an important role in the delivery of care in communities across the country. SNFs provide care to over 3 million relatively high acuity patients each year, and a significant and growing site of service for telehealth. The inclusion of SNFs is necessary in any broad based, care coordination effort.

The aim of the FCC rural healthcare connect initiative is to:

- increase access to broadband for health care providers (HCPs), particularly those serving rural areas;
- foster the development and deployment of broadband health care networks; and
- maximize the cost-effectiveness of the program.

➤ ***Clearly, including SNF's in the rural healthcare connect initiatives at the FCC would be beneficial in lowering healthcare costs for seniors in rural settings.***

The Society submitted formal comments arguing that the FCC should implement the SNF Pilot Program. These comments were consistent with the Commission's critical and important rural healthcare goals in ensuring that there is "connectivity" for the patient population in SNFs, particularly in rural areas where costs of broadband connectivity are often not sustainable. The Society was joined in its pleading to reinstate the SNF Pilot Program funding by AHCA and Leading Age, the country's two largest professional associations. Together, the Society and the national associations advocated that the FCC provide important assistance to SNFs in obtaining access to broadband services. Unfortunately, the FCC Commissioners voted to indefinitely defer the SNF Pilot Program and SNFs have been denied access to critical resources ensuring broadband access in the rural areas they serve.

As the FCC pushes forward with rules and regulations on the Rural Healthcare Connect Fund and the Rural Broadband Healthcare Experiments, we are pleased to see Members of Congress acting to ensure that SNFs are classified as eligible for funding under Section 254(h). Allowing rural seniors to have the same access to telecommunications technology as the rest of the country is a good and fair policy and should have been embraced by the FCC.

In conclusion, we are extremely grateful for your leadership on this important issue that deeply impacts some of society's most vulnerable populations, our nation's seniors, and we strongly urge the Committee's adoption of this bill.

Again, I thank you for allowing me to testify in strong support of the Rural Health Care Connectivity Act of 2015, and I stand ready to respond to any questions you may have.

For further information, please contact me as follows:

*Dan Holdhusen, Director of Government Relations
The Evangelical Lutheran Good Samaritan Society
605-362-3355 or dholdhus@good-sam.com*

Mr. LATTA [presiding]. Well, thank you very much, and I apologize for being out. We have two other, or two subcommittees meeting in one hearing room today and so we have multiple things going on, so I appreciate you all being here today.

And if I could start with the first question to Sergeant Finley, one of the things the bill does is require that the perpetrator reimburse law enforcement agencies involved in responding to a swatting call for the cost of the response. I have a two-part question, if I may.

The first is looking back at some of the cases you have worked on could you give us a range or idea of the kind of dollars we are talking about? And then absent any reimbursement like this bill would allow, who bears the burden and what impact does that have on a police department like yours?

Mr. FINLEY. Well, sir, to answer part of the second question first, I guess it would depend upon the amount of personnel that was out there, obviously on the initial one the response to it.

But the part that takes up the most time obviously is the post-investigation side of this in trying to find out who this person is, because they are not quick investigations. They are long, labor intensive, because there are so many different things that you have to follow down and a lot of these places that provide these services are not even in the United States. They are in other foreign countries. And even though we may have mutual law enforcement treaties with those, me as a municipal police officer trying to call a guy in Moscow at the Russian Federation and to give me records for something that went through a VPN that he owns is probably not going to happen, the fact if he even keeps records.

So it depends, I guess, on some situations. Some of the swatting incidents that I have been involved in after the fact have been well up into the hundreds of thousands of dollars. One that I spoke with some officers around the New York area, they had an individual that called in about a boat that was sinking off the coast out there that not only involved the NYPD, it involved the New Jersey State Police, I think the United States Coast Guard, Homeland Security.

They had at least, I think, eight different aircraft out there for about 4 hours. If you know anything about aircraft, it takes quite a bit of money to operate one of those and the air crew that are on there, not to mention all the boats that were in the water doing grid searches for about a 16-mile block looking for this individual, only to find out that they were out there for, I think, right at 9 hours to find out that this was a hoax.

The big thing is we are all in law enforcement and in all first responders we are there to help people. And when you call us and tell us bad things are happening, we are going to come there and help. And it is very frustrating when we get to these locations and find out that we mobilized all of this equipment, brought all of these people down here, because there is a big thing obviously that it takes us away from other things.

And we don't know any more over the way the country is going and the world is going, we don't know if these things are real or not. You call and give us a fraudulent call and say there is an active shooter somewhere, we know that just from past experiences in the last few months there is no shortage of crazy people. There

is no shortage of people who want to come over here and do harm to our country and to our people.

So it is very frustrating when we have to expend these types of resources to go to these different locations only to find out that there is nothing there.

Mr. LATTA. Can I interrupt for one second?

Mr. FINLEY. Yes, sir, you can.

Mr. LATTA. And let me ask, when you say like the Russian Federation, how often do you get a call or calls that would come from a foreign country like that that you would be investigating?

Mr. FINLEY. There are quite a few individuals that we have got from foreign countries. I have been involved with one, he was from Canada. Even though it is right next door it is a foreign country. They are not real big on responding to any legal processes that come from the United States into Canada unless it originates with the RCMP up there and their jurisdiction and/or their local police.

So you have to involve all the legal attaches from their country to our country, federal government here and the federal government there. It is a long arduous process. But the relationships I have made with the guys in the FBI Atlanta Cyber Program as well as the United States Secret Service down in my area, they routinely find individuals in other countries and we have to partner with them to go in and get these people into custody.

And a lot of times we end up doing the prosecution in the home country because it is going to be cost-prohibitive for us to go and get this person and bring them back down into the United States. We can work with them and say, look, we are going to do the same for you if you will do the same for us. And it is just a long process to do that.

But I mean, to put a dollar amount on it I cannot tell you. I have probably spent a thousand something hours investigating just on the two of the cases that I had that were running simultaneously. One was a kid up here in the northeast United States, the other one in Canada. I mean that is not to count, you count the other 43 agencies that I linked into and all the time that I spent coordinating with the other 43 agencies, because I ended up being the go-to guy in the United States for all of them to send their information to and funnel that through the FBI Atlanta office up to the RCMPs.

So we were the clearinghouse, so to speak. We sat down with 40-some odd cases and went through each and every one of them to try to find out that the top 10 best cases that we had to send up here on this individual, because he literally was just an internet terrorist. There was no other word for him but he was an internet terrorist. The things that he did we could talk for the rest of the afternoon, and the horrible acts that he did to young people, to young ladies especially was his target.

Mr. LATTA. Thank you. If I could ask the gentlelady for her indulgence, since we have three members right now would you mind if we did just second questions, the follow-up, if we could do five each and then come back and do five again? Would that be acceptable?

Ms. ESHOO. What time do you think we are going to finish?

Mr. LATTA. We will be about 15 minutes or so.

Ms. ESHOO. No, that is fine.

Mr. LATTA. OK. OK, the chair recognizes the gentlelady, the ranking member of the subcommittee, from California.

Ms. ESHOO. Thank you, Mr. Chairman, and thank you to the witnesses. You did an excellent job. To Mr.—how do you pronounce your name, Holdhusen?

Mr. HOLDHUSEN. Holdhusen, yes.

Ms. ESHOO. Holdhusen. Thank you for your work. It is never to be taken for granted what nonprofit and church organizations, charitable organizations do in our country. It is nothing short of remarkable, so thank you to you for your work. And I think that the bill that you are here in support of is a good one. It is going to help people, and that is what I came to Congress to do, so not to hurt anybody but to help people.

To Mr. Bergmann, the recently adopted FCC Lifeline reform order phases out, as you know, the support for voice-only services by '22. Does your association support that provision?

Mr. BERGMANN. So we supported evolution of Lifeline to broadband services. What we thought was critical was to have a sufficient transition timeline so that the nine million or more low-income consumers who have mobile voice services today can make that transition.

Ms. ESHOO. But what is the difference between the legislation we are considering today and the recent FCC action with respect to the phase-out of voice-only services, because there is a difference.

Mr. BERGMANN. So what we pushed for was a longer transition period which is what the FCC adopted. We certainly appreciate their sensitivity with that transition so that as that program evolves from voice to broadband low-income consumers can make that transition.

Ms. ESHOO. And to Sergeant Finley—

Mr. FINLEY. Yes, ma'am.

Ms. ESHOO [continuing]. You are a great witness, you really are.

Mr. FINLEY. Thank you, ma'am.

Ms. ESHOO. Your professionalism is right out there in front, and the passion that you bring to your professionalism, and I think that it is very important.

Mr. FINLEY. Thank you so much.

Ms. ESHOO. In the cases where there are minors that are inflicting this great harm on people, how do you think the legislation deals with the fine that is attached to it?

Mr. FINLEY. Well, as far it goes—

Ms. ESHOO. What is the best way for us to do that? It doesn't seem to me realistic that we are going to extract what should be extracted in terms of a penalty. And my sense is that from what you said that there are a lot of young people that are doing this.

Mr. FINLEY. Yes, ma'am. There are some adults that actually do this. It depends on where they are at and when they graduate from 17 to 18 years old, depending on what they classify as an adult. But the biggest issue with anybody that is a juvenile, prosecuting them in the federal system is almost impossible or they are not going to do it. I mean, short of some kind of heinous crime, terrorism or mass homicide, they are not going to be prosecuted in federal court.

Ms. ESHOO. But couldn't we structure this so that there is responsibility either on the part of the individual or the family?

Mr. FINLEY. Yes, ma'am, we very well could.

Ms. ESHOO. In terms of the fines?

Mr. FINLEY. Yes, there is quite a few states that do have state legislation on swatting.

Ms. ESHOO. What is the best one?

Mr. FINLEY. You want to know who is the best one, I will go ahead and tell you. I think Georgia is because I just helped write the one for the state of Georgia.

Ms. ESHOO. OK, great.

Mr. FINLEY. We are waiting on our governor to sign it right now. But it all depends. The biggest thing is they have to have some type of recourse for the victim, obviously the heartache and whatever it put them through. But one thing that I found even when we were doing our law in Georgia, one of our victims was there at the state capital when we were doing some subcommittee hearings, and it was a year and a half later. And she was standing in the hall and we started talking about it and she just broke down and started crying.

Ms. ESHOO. Over what she had done?

Mr. FINLEY. And I am thinking to myself, she loves the police. She loves everything, but when her kids are outside in the street if one of our cars comes down the street that is doing neighborhood patrol she freaks out and thinks, oh my gosh, are they coming to my house? Because unfortunately for her in their situation, they used to live in a location where a person that they were actually targeting was this family had nothing to do with it. And one of them, they did the initial swatting at the house and then the kid in Canada came back and did a follow-up eight days later. So two times within a couple weeks their family was influenced by this.

Ms. ESHOO. Well, do you have any advice for us on—

Mr. FINLEY. Well, this law does a good job. It does some really good stuff and it does handle a lot of spoofing, but what happens when they don't spoof? What do we do then? What if they don't use spoofing technology in this? How are we going to address that situation? I know there is some other, there is a—

Ms. ESHOO. Well, there an awful lot of laws that are—

Mr. FINLEY. Yes, ma'am.

Ms. ESHOO [continuing]. Written in reaction to less than good things taking place, so I guess that is when we would address it.

Mr. FINLEY. Absolutely.

Ms. ESHOO. But one bill, I don't think, is going to do that. I think that is what you're instructing us.

Mr. FINLEY. Yes, ma'am. There is actually, Congresswoman Clark from Massachusetts, she has an interstate swatting bill that covers a lot of things I think that may be missing in this respect, OK. And—

Ms. ESHOO. Well, maybe we should take a look at that, Mr. Chairman.

Mr. FINLEY. Those are two very good things that are—her and I, we were down at South by Southwest a couple months ago speaking on the same issue and talking about some of that at the

inaugural Online Harassment seminar because she deals with a lot of the same issues. And quite honestly, I——

Ms. ESHOO. Well, that is very helpful to us though. I think that we should review and see what Congresswoman Clark has in her bill that maybe we can merge them, or strengthen one because of the other.

Mr. FINLEY. Well, she will give you some good testimony because she got swatted a couple of months ago.

Ms. ESHOO. All right.

Mr. FINLEY. That is what I told her office. I said anytime you stick your neck out and do any of this stuff just know that you are going to be a target.

Ms. ESHOO. Well, thank you to the three of you. You cover very important sectors of our country from law enforcement to communications to charitable organizations. Thank you very much.

Mr. LATTA. Thank you very much. The gentlelady's time has expired and the chair would now recognize the gentleman from North Dakota for five minutes.

Mr. CRAMER. The light is green, but it is clearly not on. How about if I slide down here? Will that work? How is that? That is not working either. How about if I talk really loudly? Oh, here we go. I bet this one will work.

All right. Well, thank you, Mr. Chairman. Thanks to all of the outstanding witnesses. It really was great testimony. I agree with the ranking member.

Mr. Holdhusen, thank you especially for being here on behalf of our bill, for your incredible testimony. But first let me say thank you for the incredible work of the Good Samaritan Society in North Dakota, South Dakota, throughout the Midwest. As you know, I am very familiar with your facilities and many of your residents over the years, and I appreciate your good work.

And getting to the point of this bill, I appreciate very much that you referenced in your testimony the fact that the score came back as a net gain, if you will, for the taxpayers. But even at that, even with that sort of static scoring system in Congress, I don't think it adequately captures what in my mind is the real cost/benefit analysis.

Anytime we provide greater access, whether it is through critical access hospitals, skilled nursing facilities, home health care, the use of technology to increase access certainly is good for the residents and the patient, certainly helpful to those that are providing it, but I think sometimes we don't adequately address or speak of the other benefits of that not just to the residents and the health care provider but to the taxpayers.

Is there any type of an example you could think of that I could use as a cost/benefit analysis where perhaps access to the technology provides somebody the opportunity whether it is in preventive, a preventive measure or maybe an emergency that is captured that wouldn't otherwise be addressed, because I just think there is a lot more to this story even than we know today.

Mr. HOLDHUSEN. Yes, sir. Thank you, Congressman. Indeed, there are many stories even beyond anecdotal and we are beginning to amass empirical data that identifies that. I can give you one very concrete example and that is with what we call our

LivingWell@Home program. It allows a couple of major objectives. One is, and most importantly it is patient- or individual-centric, it allows individuals to stay in their living environment independently for as long as possible.

It is a motion sensor technology that captures different data points and sends it through broadband, which is why this bill is important, and it goes to a place where in a remote location where the preconditions can be identified and identify things that will, from a practical point of view, begin to bend the cost curve, eliminate or reduce the number of emergency room visits, eliminate re-hospitalizations which are very, very costly to the system.

In addition, kind of the social benefits beyond that is it provides not only the opportunity to be independent for much longer, but also security of families. We can live states away, rely on technology to follow as a consumer, my mother who now lives three states away, and identify many things that are going on in her particular life.

So there are social aspects. In particular, we look at the individual-centric to allow individuals to stay in their homes much longer, and then the cost savings associated with identifying preconditions which avoid those hospitalization, gets in front of the health conditions prior to the time that they actually exist and then begin to cost the care system much more money.

Mr. CRAMER. Mr. Chairman, I will not run the risk of screwing up a really good answer, so I will yield back the balance of my time.

Mr. LATTA. The gentleman yields back. And I was going to actually give you an extra minute since you were having problems with your mic there so, but the gentleman yields back. The chair now recognizes the gentleman from New Jersey, the ranking member of the full committee, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman. I wanted to ask my questions of Mr. Bergmann. I mentioned in my opening statement that Hurricane Sandy hit my district particularly hard and I have spent the last three years studying what went wrong and how we can do better next time. And the result of that work is a bill I introduced last year called the SANDy Act which is one of the bills we are considering today. It would ensure, it would help ensure that people have essential access to communications networks when they need them the most.

In your testimony you note that telecom carriers are making progress towards a framework that will address many of the elements included in my bill, and I thank you for your work and appreciate the industry's commitment to working with us to help solve these problems. In my experience, regulations are not always necessary when an industry steps up and commits to solving a problem voluntarily.

So that said, I am interested in hearing exactly where the industry is headed on these issues. Could you explain what steps industry is taking to address some of these issues in my bill and how long you think it would take to reach a resolution?

Mr. BERGMANN. So thanks so much for the question, and thank you, Congressman, for your leadership on this issue. We know how

important it is and the introduction of the SANDy Act I think really did spur meaningful industry conversations.

As you have noted, we have been hard at work to develop a consensus framework on how to improve preparedness for consumers, for communities, and then for caregivers as well, too. I am confident that the wireless industry has been a good partner in this effort and will continue to be so, and it is certainly very helpful that we will be able to coordinate with your office to have that effort bear fruit very soon.

Mr. PALLONE. But you don't want to talk about any specifics now that the industry is working on?

Mr. BERGMANN. Sure, absolutely. So I would sort of put things into a couple different buckets, working to make sure that consumers have all of the information that they need and that they are prepared in advance of disaster situations, making sure that local governments as well, too, are educated and ready so that municipal governments can respond. I would say also, making sure that critical public safety personnel have the ability to contact wireless providers in the case of a disaster and then finally, making sure that providers themselves can work together where appropriate to make sure that we can restore service quickly. Those are the four areas that are really a focus for us.

Mr. PALLONE. Now what about the 911 call centers? Are you working with local governments and 911 call centers to make sure that public safety officials can contact carriers during an emergency? Do you want to talk about that at all?

Mr. BERGMANN. Sure. Obviously, as you have heard throughout the day as consumers rely on wireless service more and more to reach public safety, by some estimates over 70 percent of 911 calls coming from wireless phones, we think that is absolutely critical. And communication between PSAPs and providers is very much something that we are thinking about as well too.

Mr. PALLONE. Now let me go to the Lifeline bill which I have been critical of. We have heard a lot about needing to control the costs of the program, and I have said that one way to fix this is to adopt policies that help people find well paying jobs so they don't need to subscribe to the Lifeline program. But are there any other ways to help control costs or improve the program without taking phones away from people who need them?

Mr. BERGMANN. Sure. So for a number of years CTIA has worked closely to try to improve program administration. Going back to 2012, industry worked voluntarily to help develop the duplicates database to make sure that the same subscriber didn't get more than one Lifeline subscription. But I think the most critical reform there is the adoption of a national verifier. That is something that CTIA has pushed hard for for a number of years and something that I think that all parties can agree is critical to making sure that Lifeline services get to the people who need it, but only to the people who are eligible to receive it.

Mr. PALLONE. OK. Mr. Chairman, I just wanted to ask more thing. I know CTIA has talked a lot about making sure we enable next generation wireless technology, and I believe we should examine and have a leverage of benefits of new technology to help address priorities like addressing inequality. Can you tell us how next

generation wireless technology could help the people stuck on the wrong side of this inequality gap?

Mr. BERGMANN. So as we think about what the next generation of wireless will be and folks are looking toward 5G, there will be tests here in the U.S. this year. There is a development of standards. I think some of the most exciting applications of 5G in the Internet of Things are around the policy priorities that are so important to this community and this committee, things like improving health care, improving education.

Smart cities is one of the key focuses for 5G technology, so making sure that we are able to launch autonomous vehicles that can cut down on congestion, reduce energy loss. Trying to have that hundred times increase in the number of devices that are connected is why you see mayors across the country lining up to become the first smart city.

So that is some of what we are looking forward from 5G, and we certainly appreciate this committee's help and support delivering spectrum, speeding infrastructure deployment to help us get there.

Mr. PALLONE. All right. Thank you. Thank you, Mr. Chairman.

Mr. LATTA. Well, thank you very much. And seeing no other members here to ask questions, I would just like to first thank our witnesses for being with us today. And I know that the gentleman from Oregon, the chairman of the subcommittee, the gentlelady from California, the ranking member of the subcommittee, and also the gentleman from New Jersey, the ranker of the full committee, we thank you for your testimony today. It was very, very informative. And if there is nothing else to come before the subcommittee today, we will stand adjourned.

[Whereupon, at 12:53 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. DORIS O. MATSUI

Thank you Mr. Chairman. I'm pleased we are discussing my Spectrum Challenge Prize Act of 2015 today.

Spectrum has become an increasingly valuable resource due to the growing demands of our modern mobile economy it is the invisible infrastructure of the 21st century.

My Challenge Prize legislation which I introduced with Senator Tom Udall would encourage wireless innovation by creating a federal spectrum challenge prize.

The spectrum challenge competition would help incentivize innovators and entrepreneurs to develop technologies that eclipse the current state-of-the-art.

Challenge prizes have a long track record of spurring innovation from early navigation efforts to more recent driverless car technology.

The U.S. has always been a global leader in wireless technologies, but we need to continue to innovate in order for our wireless economy to continue to grow.

The Spectrum Challenge Prize Act creates a new opportunity for the federal government and the private sector to work collaboratively in the pursuit of a spectrum efficiency breakthrough which is ultimately a victory for American consumers.

While I'm pleased we are considering my Spectrum Challenge Prize bill, I'm disappointed that my Republican colleagues are using today's hearing to attack the Lifeline program.

Two weeks ago, the FCC took a major step forward in our efforts to close the digital divide. Lifeline will support broadband connectivity and help low income households get and stay connected to the communications services they need to participate in the 21st century economy.

Just as we are celebrating this progress for struggling families across the country, our Republican colleagues bring up legislation to take us backwards. A cap on Lifeline only artificially restricts the number of people this program can help.

Mr. Chairman cutting off Lifeline means cutting off economic opportunity for low income Americans. I urge my colleagues to reject any legislation that places a cap on Lifeline.

Thank you and I yield back.

PREPARED STATEMENT OF HON. ELLIOT L. ENGEL

Thank you, Chairman Walden and Ranking Member Eshoo, for convening today's hearing and for your consideration of my bill, H.R. 2031, the Anti-Swatting Act.

"Swatting" refers to the act of provoking law enforcement to respond to a phony emergency. The act gets its name from the SWAT teams that are often deployed to respond to these hoaxes.

Though swatting might sound like a prank, its consequences are no laughing matter.

According to the FBI, a single SWAT team deployment can cost thousands of taxpayer dollars. Swatting also risks injury to the unassuming victims who are present when law enforcement arrives at an alleged crime scene, as well as to the officials who respond to these hoaxes, anticipating danger. On top of that, swatting wastes law enforcement's precious time, keeping them from responding to actual, life-threatening emergencies.

I introduced the Anti-Swatting Act to address these very serious risks.

The Anti-Swatting Act would expand on the Truth in Caller ID Act, which Chairman Emeritus Joe Barton and I introduced and was signed into law in 2010.

My bill would increase penalties for people who falsify their caller ID information to mislead law enforcement. This technological trick called "spoofing" allows swatters to make law enforcement believe they are calling in an emergency from a different phone number or location. My bill would also force swatters to reimburse the emergency services that squander valuable funds responding to their invented emergency.

The goal of my bill is to dissuade potential swatters from wasting law enforcement resources and—most importantly—from putting their neighbors and emergency response teams in harm's way.

I introduced the Anti-Swatting Act last year, following a string of swattings in my district. Incidents have also occurred in Tennessee, Ohio, New Jersey, North Carolina—the list goes on. It is my hope that this bill will keep additional communities from falling victim to these despicable crimes.

**The Leadership Conference
on Civil and Human Rights**

1629 K Street, NW 202.466.3311 voice
10th Floor 202.466.3435 fax
Washington, DC www.civilrights.org
20006



April 12, 2016

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

SUPPORT LIFELINE, OPPOSE H.R. 4884

Dear Chairman Walden and Ranking Member Eshoo:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States, and its Media/Telecommunications Task Force, we write to express our support for the Lifeline program and opposition to H.R. 4884, the "Controlling the Unchecked and Reckless Ballooning of Lifeline Act of 2016." Passage of H.R. 4884 would undercut both the goals of the Lifeline program and the principles for Lifeline modernization supported by our members and a wide range of other consumer and public interest organizations.

We believe that it is essential to ensure that people of color, low-income people, and other vulnerable populations have access to broadband. Without Internet access, students of color cannot do their homework, working single mothers cannot earn degrees online at night, and seniors and people with disabilities cannot utilize the most modern and accessible health care. Accordingly, The Leadership Conference was a strong supporter of the Federal Communications Commission's proposed modernization of Lifeline to include broadband, to address the persistent digital divide between those who have a broadband Internet connection and those who do not.

H.R. 4884 would impose a hard cap of \$1.5 billion annually on the Lifeline program. We oppose the proposed cap, which would prevent eligible participants from using the Lifeline program and preclude universality, a key principle for Lifeline reform.¹ The Lifeline program has never approached full participation rates by eligible populations. This cap could halt payments to eligible consumers mid-stream or result in unacceptable waiting lists for eligible households or other unreasonable and administratively cumbersome management mechanisms. By contrast, the FCC's new budget mechanism combines fiscal responsibility

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Policy and Enforcement

Committee Chair
Michael Lieberman
Anti-Defamation League
President & CEO
Wade J. Henderson
Executive Vice President & COO
Karen McGill Lawson

April 12, 2016
Page 2 of 2



with the ability to respond intelligently in the event of an unanticipated increase in need, such as one caused by an economic downturn or natural disaster.

In addition, H.R. 4884 would eliminate support for voice-only mobile services in two years. As we stated in our comments to the FCC, it is evident from marketplace choices that mobile services have been a particularly important choice for people of color, low-income people, and other vulnerable populations.ⁱⁱ Moreover, access to mobile services align with important anti-poverty programs.ⁱⁱⁱ The FCC's planned modernization of Lifeline will phase out support for voice-only services by 2021 after a full review and report prior to the phase out, enabling the Commission to weigh the extent to which consumers have moved from voice-only to bundled voice and data plans. This provision of H.R. 4884 is unnecessary and will fail to protect low-income people.

We urge you to oppose H.R. 4884 and to support the Lifeline program and the FCC's modernization of that program. Thank you for considering our views. Please contact Leadership Conference Media/Telecommunications Task Force Co-Chairs Cheryl Leanza, UCC Office of Communication, Inc., at 202-904-2168, Michael Macleod-Ball, ACLU, at 202- 675-2309, or Corrine Yu, Leadership Conference Managing Policy Director at 202-466-5670, if you would like to discuss the above issues.

Sincerely,

The Leadership Conference on Civil and Human Rights
AFL-CIO
American Civil Liberties Union
Center for Media Justice
Common Cause
Communications Workers of America
NAACP
National Consumer Law Center, on behalf of its low-income clients
National Council of La Raza
National Disability Rights Network (NDRN)
National Hispanic Media Coalition
OCA – Asian Pacific American Advocates
United Church of Christ, OC Inc.

ⁱ Letter to FCC Chairman Tom Wheeler from Access El Dorado et al., FCC WC Docket 11-42 (filed June 10, 2015).

ⁱⁱ See Comments of Leadership Conference on Civil and Human Rights, FCC WC Docket 11-42 at 3 (filed August 31, 2015) (citing Pew Research Center, *U.S. Smartphone Use in 2015* (April 1, 2015) available at: <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015>).

ⁱⁱⁱ *Id.*

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

NEW YORK, NY
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

(202) 342-8400

FACSIMILE
(202) 342-8451
www.kelleydrye.com

BRUSSELS, BELGIUM

JOHN J. HEITMANN
EMAIL: jheitmann@kelleydrye.com

AFFILIATE OFFICE
MUMBAI, INDIA

April 12, 2016

The Honorable Greg Walden
Chairman
Committee on Energy and Commerce
Subcommittee on Communications and
Technology
U.S. House of Representatives
Washington, DC 20515

The Honorable Anna G. Eshoo
Ranking Member
Committee on Energy and Commerce
Subcommittee on Communications
and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

On behalf of the Lifeline Connects Coalition, a non-partisan industry group representing four Lifeline providers serving more than 2.1 million subscribers in over 40 states, we write to voice our opposition to H.R. 4884, the "Controlling the Unchecked and Reckless Ballooning of Lifeline Act of 2016." We urge you to oppose passage of this legislation, which threatens to unfairly deprive eligible low-income Americans of modern communications.

In its Lifeline Modernization Order, the FCC established a budget of \$2.25 billion and requires the Wireline Competition Bureau to notify the Commission if spending reaches 90 percent of the budget and to prepare an analysis of the causes of the spending growth, with recommended actions for the FCC to consider. This budget mechanism strikes a reasonable balance between fiscal responsibility and the FCC's statutory responsibility to make communications services affordable to low-income Americans. The \$1.5 billion Lifeline hard cap proposed in H.R. 4884, on the other hand, threatens to undermine the affordability and accessibility goals of the Lifeline program by:

- **Potentially cutting off eligible Americans from affordable voice and broadband service.** The \$1.5 billion cap is lower than the size of the program in 2015. Therefore, as the program reaches the cap each year, the FCC will be faced with an awful choice: either reduce Lifeline benefits for low-income consumers, likely resulting in a co-pay that would make service unaffordable for millions of eligible consumers, or shut out new

Chairman Walden, Ranking Member Eshoo
 April 12, 2016
 Page Two

applicants from the program entirely, an unjust and discriminatory result for those eligible households that—through no fault of their own—apply for service the month after the program reached the \$1.5 billion cap.

- **Removing the safety valve that the Commission wisely established in its own Lifeline budget.** The proposed \$1.5 billion cap deprives the Commission of the opportunity to study the underlying causes of increases in program participation (e.g., economic crisis or successful digital literacy campaigns), which can be done without unfairly cutting off eligible low-income Americans from service.
- **Preventing millions of eligible Americans from accessing broadband service that they otherwise could not afford.** In its press release announcing the Lifeline Modernization Order, the Commission notes that 43 percent of the nation's poorest households say they can't afford modern broadband service. And yet, today only approximately one-third of eligible consumers participate in the Lifeline program, with disbursements less than the proposed cap. If Congress were to cap the Lifeline program at \$1.5 billion, it would leave a significant portion of eligible households unserved and unable to participate in the digital economy.
- **Exposing the Lifeline program to discrimination or political games.** Under a strict \$1.5 billion cap, the Commission likely would face calls to exempt certain classes of low-income individuals, or otherwise to prioritize certain groups over others. This exposes the program to arbitrary line-drawing and political gamesmanship, potentially disadvantaging some eligible groups while favoring others.

Additionally, we urge you to reject the proposal in H.R. 4884 to discontinue support for **standalone mobile voice service** in two years because it would cut off eligible low-income Americans, particularly the elderly, from critical communications including to emergency services, before the market has fully transitioned to support IP-enabled voice service. The Commission recognized the value of preserving stand-alone voice service when it established a sensible, technology-neutral glide path that will gradually phase-down support for voice service from 2019 until 2021. Indeed, even after this transition period, the Commission proposes to preserve stand-alone voice service in areas where there is only one Lifeline provider. Congress should not substitute the Commission's reasoned judgment with an arbitrary cut-off period that would deprive consumers of choice.

This coalition worked closely with the FCC on its Lifeline modernization efforts, and we look forward to working with you and your committee to ensure Lifeline is an efficient and

KELLEY DRYE & WARREN LLP

Chairman Walden, Ranking Member Eshoo
April 12, 2016
Page Three

effective program for years to come. But it is critical that you oppose H.R. 4884 and the danger it poses to millions of low-income Americans.

Sincerely,



John J. Heitmann



Kim. M. Keenan
President and CEO
Maurita Coley
Vice President and COO
Nicol Turner-Lee, Ph.D.
Vice President and Chief
Research and Policy Officer
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**1620 L Street NW, Suite 250
Washington, D.C. 20036
Phone: 202-763-9548
www.mmtconline.org**

April 13, 2016

The Honorable Greg Walden
2186 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
241 Cannon House Office Building
Washington, DC 20515

Dear Congressman Walden and Congresswoman Eshoo:

The Multicultural Media, Telecom and Internet Council ("MMTC") respectfully submits this letter to express our concern about the proposals included in H.R. 4884, Controlling the Unchecked and Reckless Ballooning of the Lifeline Fund Act ("CURB Lifeline Act 2015"). Our concerns are focused on the two-year phase out of mobile voice as an eligible service and the proposal of a hard cap on the Lifeline program budget. We also provide feedback on H.R. 3998, Securing Access to Networks in Disasters Act ("SANDy Act").

On March 24, 2016, fourteen civil rights organizations, including MMTC, sent a letter to the Federal Communications Commission ("the Commission") requesting that newly adopted Lifeline program rules embrace and support multiple technologies so that the nation's neediest communities can reach parity with the rest of the nation in terms of broadband infrastructure.¹ Our organizations also called on the Commission to be cautious in the establishment of new minimum standards for mobile voice services, coupled with the immediate reduction and eventual elimination of available support for mobile voice services. We continue to maintain that removing support for mobile voice will potentially price out the very people that the Lifeline program is seeking to support. Consequently, we urge that Congress not mandate the phase-out of mobile voice-only service within two years of enactment. Historically disadvantaged consumers, such as low-income populations, seniors, the disabled, and others, have demonstrated their reliance on wireless voice services as their primary "lifeline" to communications services and a road out of poverty. As MMTC has shared with the Commission, access to broadband services must be more ubiquitous before redirecting the subsidy toward broadband-only services for these vulnerable populations.

MMTC also does not support a hard budget cap for the Lifeline program. Rather, we believe that the Commission should work to improve program administration and institute a National Third Party Verifier to eliminate waste, fraud, and abuse. In MMTC's White Paper, we identified several areas where program changes could actually generate cost

¹ See Letter to Tom Wheeler, Chairman, Federal Communications Commission from MMTC and other civil rights and social justice organizations, regarding "Lifeline Reform and Modernization", filed March 24, 2016, available at http://www.mmtconline.org/wp-content/uploads/2016/03/FINAL_Civil-Rights-Letter_March-24-2016.pdf (last visited April 13, 2016).



1620 L Street NW, Suite 250
Washington, D.C. 20036
Phone: 202-763-9548
www.mmtconline.org

savings and value to the program, thereby accommodating the adoption of broadband as an eligible service. In our view, the adoption of a hard cap will make it more difficult to expand the reach of the program to consumers most in need of modernized Lifeline services and would interfere with the FCC's goal of creating a more competitive Lifeline marketplace. Moreover, a hard cap will not align the program with other means-tested social service programs, such as the Supplemental Nutrition Assistance Program (SNAP) and others, where access to Lifeline can not only bolster the benefit, but also lead to social dividends as more of these applicants attain the resources and life-skills to become more self-sufficient. Given these reasons, MMTC urges Congress to avoid hard budget caps on the Lifeline program, and instead allow the program to grow into a more desirable opportunity for eligible, low-income consumers.

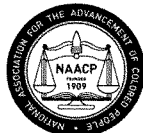
Finally, MMTC is pleased to voice its support for Congressman Pallone's proposed SANDy Act with one revision. We support any and all efforts to ensure that the communications structure remains intact before, during, and after emergencies, especially in natural disasters that have the potential to break apart families and unravel access to essential needs, including housing, food, and medical care. MMTC further requests that Congress encourage the wireless industry to publish consumer education materials in multiple languages in both traditional and social media. It is critically important as the nation experiences a shift in its demographics that government and the private sector adopt policies that promote diversity and inclusion.

MMTC appreciates the opportunity to contribute our voice to this review and record of pending legislation.

Sincerely,

Kim Keenan
 President and CEO

² See, Nicol Turner-Lee, et. al, LIFELINE TO HIGH SPEED-INTERNET ACCESS: AN ECONOMIC ANALYSIS OF ADMINISTRATIVE COSTS AND THE IMPACT ON CONSUMERS (Multicultural Media, Internet and Telecom Council) (2016), available at <http://mmtconline/WhitePapers/March2016-Lifeline-Analysis-Consumer-Impact.pdf> (last visited April 13, 2016).



WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
 1156 15TH STREET, NW SUITE 915 · WASHINGTON, DC 20005 · P (202) 463-2940 · F (202) 463-2953
 E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

April 11, 2016

Members
 U.S. House of Representatives
 Washington, D.C. 20515

RE: NAACP STRONG OPPOSITION TO H.R. 4884, THE *CURB LIFELINE ACT OF 2016*

Dear Representative:

On behalf of the NAACP, our nation's oldest, largest and most widely-recognized grassroots-based civil rights organization I strongly urge you to oppose and join us in working against H.R. 4884, the *CURB Lifeline Act of 2016*. This misguided legislation would unnecessarily put limits on the Lifeline program, one of the most successful federal programs to date in helping low income people to maintain telecommunications contact with crucial, often life-saving services; their families; and their communities. The NAACP strongly supports the Lifeline program and opposes any efforts to curb it, to limit it, or to otherwise hinder the positive impact Lifeline has had on the communities we serve and represent.

Given the clear benefits of the Lifeline program, it is inconceivable to the NAACP that there are those who wish to cap, curb, or otherwise harm this very effective program. All eligible households who want Lifeline should receive it without delay. There should be no waiting lists for eligible participants; no termination of benefits to eligible Lifeline participants due to budgetary constraints; and no decrease in the Lifeline benefit amount to accommodate additional households. Putting a dollar cap on Lifeline does *not* ensure program integrity; instead it denies millions of income-eligible families the assistance necessary to participate in essential activities needed for safety, security, and full integration into society, if not survival.

For 30 years, the Lifeline program has provided our nation's most vulnerable and chronically underserved communities with telephone service that would otherwise be unaffordable and out of reach. First implemented in 1985 by then-President Ronald Reagan and expanded in 2005 by then-President George W. Bush to include wireless service, the "Lifeline" program ensures that all Americans have the opportunities, assistance, and security that phone service brings. Lifeline is a successful program, currently enabling 12 million of our most vulnerable populations to call 911 and other emergency services, contact prospective and current employers, and connect with essential health, social, employment, and educational services.

According to one Lifeline provider, more than 80% of Lifeline subscribers in 2011 had an average household income below \$15,000; more than 45% of Lifeline subscribers were Caucasian compared to 40% who were African American and 7% who were Hispanic.

Most recently, the FCC voted to expand Lifeline to include broadband internet services, a move strongly supported and applauded by the NAACP. This move will address the estimated nearly 100 million Americans who still do not have broadband Internet services at home. Studies have established that broadband adoption rates in urban and rural communities are largely associated with incomes levels and the high cost of broadband services. While more than 90% of the homes nationwide with incomes over \$50,000 a year have broadband Internet service, that figure drops to 68% for homes bringing in \$30,000-\$50,000 a year, and to less than half in households making under \$30,000. By expanding Broadband access, we will be enabling the most vulnerable among us, including unemployed workers who miss out on job announcements that are only listed online, students who go to fast-food restaurants to use the Wi-Fi hotspots to do homework, veterans who are unable to apply for their hard-earned benefits, and seniors who can't look up health information when they get sick, or other crucial services and assistance.

In January 2012, in response to reports of abuse of the program, the FCC reformed and modernized the Lifeline program to eliminate waste, fraud and abuse and to improve effectiveness and to reflect the changing needs of the communities served by Lifeline. While still on-going, these reforms have already yielded impressive results, and the NAACP applauds these efforts.

Thank you in advance for your attention to the deep support of the NAACP for the Lifeline program. I welcome any questions or comments you may have; please feel free to contact me at (202) 463-2940.

Sincerely,



Hilary O. Shelton
Director, NAACP Washington Bureau &
Senior Vice President for Policy and Advocacy



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NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

NATIONAL CONGRESS OF AMERICAN INDIANS

April 11, 2016

The Honorable Greg Walden
Chairman
Energy & Commerce Committee
Subcommittee on Communications and
Technology
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
Energy and Commerce Committee
Subcommittee on Communications and
Technology
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

**RE: NCAI OPPOSITION TO H.R. 4884, THE *CONTROLLING THE UNCHECKED
AND RECKLESS BALLOONING OF LIFELINE ACT OF 2016***

Dear Chairman Walden and Ranking Member Eshoo:

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative organization of American Indian and Alaska Native tribal governments, I write to express our opposition to H.R. 4884 the *Controlling the Unchecked and Reckless Ballooning of Lifeline Act of 2016* (CURB Lifeline Act). Passage of the CURB Lifeline Act would undermine recent efforts by the Federal Communications Commission (FCC or Commission) to modernize and reform the Lifeline program to support voice and broadband services for low-income consumers. NCAI does not support capping the program at \$1.5 billion annually, prohibiting subsidy use for devices, or prohibiting voice-only services.

At the FCC's recent Open Meeting on March 31st the Commission adopted certain reforms to the Lifeline program. Among other things, the Commission capped the Lifeline program at \$2.25 billion annually; authorized support for standalone voice or broadband services, or the option to bundle these services; requirements for mobile devices to have Wi-Fi and hotspot functionality; and built on 2012 reforms to cut waste, fraud, and abuse by creating a third party National Eligibility Verifier. These reforms, among others to be released in the final rulemaking, seek to modernize a program to support low-income consumers and especially those residing on tribal lands.

In addition to the Lifeline \$9.25 base monthly phone bill discount, low-income residents of tribal lands are eligible for an enhanced tribal discount of up to an additional \$25.00. This enhanced tribal Lifeline subsidy was adopted by the Commission in 2000 in recognition of the telecommunications and economic disparities prevalent throughout Indian Country. Coupled with funding from the Universal Service Fund (USF) High Cost program, Lifeline has been one of the most successful USF programs in incentivizing the build out and adoption of vital communications services on tribal lands.

According to the FCC's recent 2016 Broadband Progress Report, tribal lands have the highest disparity nationwide in access to advanced telecommunications services. The Commission found that 41 percent of tribal lands overall lacked access to these vital services, and also further noted the disparity of connections on rural tribal lands with 68 percent of rural tribal areas lacking access. While the Lifeline program is not intended to provide advanced broadband speeds, it is important to recognize and safeguard the program to ensure low-income residents of tribal lands are able to access vital communications for healthcare, emergencies, social services, and use for job searching.

The CURB Lifeline Act would severely hamper the Lifeline program and its purpose to provide low-income consumers with vital communications services. Passage of the Act would inevitably, if not immediately, impact services offered to tribal lands and would undermine decades-long efforts to bridge the Digital Divide in Indian Country. We are hopeful that you will stand with Indian Country in opposing efforts to further restrict a program that has been so vital in providing communications service to tribal lands.

Sincerely,



Jacqueline Pata
Executive Director
National Congress of American Indians

Att: NCAI Resolution #MSP-15-036, "Preserve the Universal Service Fund Lifeline & Link Up Programs for All Tribal Lands and All Native Peoples"
NCAI Resolution #TUL-13-061, "Request that the Federal Communications Commission Preserve and Protect the Tribal Lifeline and Link-Up Programs"



NATIONAL CONGRESS OF AMERICAN INDIANS

**The National Congress of American Indians
Resolution #MSP-15-036**

**TITLE: Preserve the Universal Service Fund Lifeline & Link Up Programs for
All Tribal Lands and All Native Peoples**

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NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, upon passage of the Telecommunications Act of 1996 the Universal Service Fund (USF) was charged by Congress to provide affordable, nationwide telecommunications service for low-income consumers, schools and libraries, high cost areas, and rural health care providers; and

WHEREAS, the Lifeline program was created under President Reagan's Administration to provide low-income consumers with a discounted monthly telephone bill, and this monthly discount was expanded under President Bush's Administration to support wireless cell phone services; and

WHEREAS, eligible low-income consumers participating in the Lifeline program can access a monthly discount of \$9.25 on their telephone bills, and in recognition of the historic and disparate levels of telecommunications services that persisted on tribal lands, the Federal Communications Commission (FCC) expanded the Lifeline program in 2000 to provide an increased Lifeline discount for residents of tribal lands; and

WHEREAS, in addition to qualifying for the \$9.25 monthly discount, low-income consumers residing on tribal lands qualified for an additional subsidy up to \$25.00, for a total monthly telephone discount of up to \$34.25 for residents of tribal lands; and

WHEREAS, on June 18, 2015, the FCC adopted a Second Further Notice of Proposed Rulemaking (FNPRM) and a Report and Order (R&O) to reform and modernize the Lifeline program to support access to broadband; and

WHEREAS, among the many proposals and questions announced in the FNPRM many will affect tribal communities such as the proposal to establish minimum service levels for both broadband and voice service, elimination of certification by telecommunications companies and establishing a third-party national entity to verify eligibility of applicants, and whether the current Tribal Lifeline and Link Up subsidies achieve the affordability goals for tribal lands residents; and

WHEREAS, among items adopted in the R&O, the FCC ruled to redefine its definition of tribal lands (47 CFR § 54.400(e)) to re-designate what constitutes “former reservations in Oklahoma”, and instead references the Historical Map of Oklahoma reservation lands from 1870 to 1890 provided by the Department of the Interior, Bureau of Indian Affairs; and

WHEREAS, the FCC’s new definition of tribal lands under 47 CFR § 54.400(e) will come into effect on December 15, 2015, and prior to the implementation of the new definition, the FCC has been charged with consulting tribal nations in Oklahoma to identify any additional maps or geospatial data that should be identified to recognize the boundaries of Oklahoma tribal lands; and

WHEREAS, NCAI Resolution #TUL-13-061, “Request that the Federal Communications Commission Preserve and Protect the Tribal Lifeline and Link-Up Programs” was adopted at NCAI’s 70th Annual Convention in Tulsa, Oklahoma in October 2013, and called for the FCC, Congress, and the Administration to preserve the continuation of the Tribal Lifeline and Link Up programs for all tribal lands and all Native peoples.

NOW THEREFORE BE IT RESOLVED, that NCAI reaffirms Resolution #TUL-13-061, and urges Congress, the Federal Communications Commission (FCC), and the Administration to preserve, protect, and expand the Tribal Lifeline and Link Up programs to support broadband and voice services for all tribal lands and all Native peoples; and

BE IT FURTHER RESOLVED, that under the current Reform and Modernization of the Lifeline program, NCAI urges the FCC to adopt proposals that do not adversely affect Native recipients receiving and eligible to receive the Tribal Lifeline subsidy by the redefinition of tribal lands under 47 CFR § 54.400(e); and

BE IT FURTHER RESOLVED, that the FCC preserve its definition of “former reservation lands in Oklahoma” as specified by the Oklahoma Corporation Commission, and that NCAI rejects and requests the withdraw of the FCC’s use of the Historical Map of Oklahoma Reservations between 1870 and 1890; and

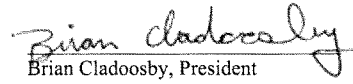
BE IT FURTHER RESOLVED, that NCAI urges the FCC to have meaningful government-to-government consultation with sovereign tribal nations consistent with *Executive Order 13175 and the FCC’s 2000 Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*; and

BE IT FURTHER RESOLVED, that NCAI supports the FCC’s focus of enhanced tribal support provided that it does not exclude, urban, suburban, or high density areas within tribal lands; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2015 Midyear Session of the National Congress of American Indians, held at the St. Paul River Centre, St. Paul, MN, June 28 to July 1, 2015, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary

April 12, 2016

The Honorable Paul Ryan
Speaker
U.S. House of Representatives

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives

Dear Speaker Ryan and Leader Pelosi:

We understand that floor consideration of H.R. 2666, the "No Rate Regulation of Broadband Internet Access Act," is expected following a meeting of the House Committee on Rules this week.

The undersigned groups strongly urge you and your colleagues to vote against H.R. 2666, because it would block the Federal Communications Commission (FCC) from fulfilling its essential consumer-protection responsibilities. This would be disastrous for all of the people and businesses in America that use the Internet. Simply, H.R. 2666 would prevent the FCC from doing its job to protect the American people.

H.R. 2666's overly broad definitions and undefined language would create extreme regulatory uncertainty. It would hamstring the FCC's ability to carry out its congressionally-mandated responsibilities. The impacts of this legislation are wide-ranging and difficult to fully enumerate, given the broad definitions of "rates" and "regulation" in the bill, which conflict with legal precedent¹. Yet several harmful impacts are readily apparent.

First, it is clear that the bill is yet another attempt to undermine the FCC's Open Internet Order and the principles of net neutrality. The Order "expressly eschew[ed] the future use of prescriptive, industry-wide rate regulation"² and the FCC forbore from the legal authorities that enable it to set rates³.

Although the FCC is not setting rates, stripping away its authority to review monopoly charges and other unjust and unreasonable business practices would harm everyone. It would especially harm the families and small businesses that rely on an affordable and open Internet to find jobs, do schoolwork, or reach consumers to compete in the 21st century global marketplace.

This legislation threatens the FCC's ability to enforce merger conditions that provide low-cost broadband to disadvantaged communities, harming low-income Americans who already have limited broadband access, and further widening the digital divide.

It would give a free ride to companies currently imposing punitive data caps and introducing zero-rating schemes, which the FCC has rightly questioned and continues to investigate. And despite the bill's imprecise references to interconnection and paid prioritization, it would leave open the very real possibility that these companies may try to extort and extract additional payments from websites and

¹ http://www.supremecourt.gov/opinions/15pdf/14-840_k537.pdf

² https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf

³ http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0322/DOC-338520A1.pdf

applications to reach their customers—even though the ability to download and upload the content of their choosing is exactly what broadband customers pay for.

By using the term interconnection in an undefined manner, H.R. 2666 also creates significant uncertainty about what, if anything, the FCC can do to protect the public from interconnection-related harms. Congestion at interconnection points—locations where the Internet's backbone infrastructure connects to last-mile providers such as Comcast and AT&T—has hurt consumers and online businesses in recent years, and this bill would leave the public vulnerable to those harms.

Lastly, the legislation would undermine the FCC's efforts to protect consumer privacy, including oversight of so-called "pay-for-privacy" plans that require customers to pay significant additional fees to their broadband provider to avoid having their online data collected and sold to third parties.

In sum, the broad definition of "regulation" in H.R. 2666 would make it difficult, if not impossible, for the FCC to review and then prohibit even clearly anti-competitive and anti-consumer actions by broadband companies. Under the bill, broadband providers could characterize any and every rule or determination the FCC makes as a "rate regulation" if it prevents these ISPs from charging abusive penalties or tolls.

Over four million Americans called for the FCC to protect an open Internet. It is time for members of Congress to stop sneak attacks that would allow big cable companies to break net neutrality rules without consequences. We strongly believe that the limited and inadequate exemptions in the current bill are neither credible nor sufficient. These limited exceptions for a small number of regulatory issues are not enough, as they simply create opportunities for companies to circumvent them.

Congress has made the FCC the guardian of the public interest. The Commission must be able to protect America's Internet users from unreasonable business practices.

It is unfortunate that the Energy & Commerce Committee Majority twice rejected proposed compromises that would have been harmonious with the FCC's decision not to set broadband rates, while ensuring the Commission still had the ability to protect consumers. Instead, this bill is little more than a wolf in sheep's clothing that would reduce the FCC's oversight abilities and strip away communications rights for hundreds of millions of Americans.

We respectfully urge you to vote against this bill to show your support for America's consumers and businesses that need the free and open Internet.

Sincerely,

18MillionRising.org
 Alternate ROOTS
 Arts & Democracy
 Center for Media Justice (CMJ)
 Center for Rural Strategies
 Cogent Communications, Inc.

Color Of Change
Common Cause
Common Frequency
Consumer Action
Consumer Federation of America
Consumer Watchdog
Daily Kos
Demand Progress
Engine
Faithful Internet
Families for Freedom
Fight for the Future
Free Press Action Fund
FREE! Families Rally for Emancipation and Empowerment
Future of Music Coalition
Generation Justice
Global Action Project (G.A.P.)
Greenlining Institute
Human Rights Defense Center
Instituto de Educacion Popular del Sur de California (IDEPSCA)
Line Break Media
Martinez Street Women's Center
Media Action Center
Media Mobilizing Project
National Consumer Law Center, on behalf of its low-income clients
National Hispanic Media Coalition (NHMC)
New America's Open Technology Institute
Ohio Valley Environmental Coalition
Open Access Connections
People's Press Project
PhillyCAM
Progressive Technology Project
Prometheus Radio Project
Public Knowledge
School for Designing a Society
St. Paul Neighborhood Network (SPNN)
TURN
United Church of Christ, OC Inc.
Urbana-Champaign Independent Media Center
Voices for Racial Justice
Women Action Media
Working Films
Working Narratives
Writers Guild of America, West

Kansas Senate
STATE CAPITOL
300 S.W. TENTH AVENUE
TOPEKA, KS 66612



Senator Greg Smith

21st District

Senate Corrections and Juvenile Justice Committee – Chairman
Senate Judiciary Committee – Vice Chairman

Written Testimony for the U.S. House of Representatives
Energy and Commerce Committee – Subcommittee on Communication & Technology
H.R. 4889 – The Kelsey Smith Act of 2016

April 13, 2016

Chairman Walden, Vice Chairman Latta, Ranking Member Eshoo, and honorable committee members:

Thank you for allowing me to submit written testimony in support of H.R. 4889, the Kelsey Smith Act of 2016. This bill means a great deal to me. It is named after my daughter. She was kidnapped, raped, sodomized and murdered on June 2, 2007. Kelsey was taken in broad daylight in a parking lot of a major department store, located across from a large and busy shopping mall. She was buying a gift for her boyfriend of six months at the store. They were to have gone to a party later that evening to celebrate high school graduation and their six month “anniversary” of being boyfriend and girlfriend. She was eighteen years old.

Seventeen law enforcement agencies participated in her case – federal, state and local agencies. Hundreds of people from the community responded to help canvass neighborhoods, search fields and

wooded areas, or pass out fliers with Kelsey's picture and information on them. Missey and I contacted every news outlet in our area as well as national news networks. I began calling radio stations asking them to give a description of Kelsey. Missey and I worked tirelessly to bring attention to Kelsey so that she could be located. We did interviews with every news station that would have us. We went on talk shows – Nancy Grace, Inside Edition, and Larry King, to name a few, to bring awareness to Kelsey's story and to bring her home alive.

Within hours of Kelsey having gone missing – law enforcement was not able to determine that she had been kidnapped until surveillance video was obtained and analyzed from the department store – Missey was on the phone with our cell phone provider – Verizon – attempting to get them to release the location of Kelsey's cellphone. They would not do it. Kelsey was eventually found 18 miles away from where she had been kidnapped and in another state (Missouri). She had been savagely raped, sodomized, strangled to death with her own belt, and left, naked, in a wooded area. Many of the agents and officers working on Kelsey's case had daughters. F.B.I. agents on the scene later told me when Kelsey was found the agents and officers dropped to their knees in grief. In that instant they all became Kelsey's dad. The key that led them to Kelsey was the eventual release of her cellphone's location. Once that information finally got into the hands of law enforcement Kelsey's body was located in forty-five minutes.

The delay in receiving this potentially lifesaving information was not due to any error by law enforcement. All of the agencies and their agents, officers, and support personnel responded in exemplary fashion. They were true professionals. I know. I have nearly twenty years' experience as a law enforcement officer and was an officer when Kelsey was kidnapped. The error was committed by the telecom company. The first error was that a customer service representative made a decision at two o'clock in the morning to not act on the locate request for Kelsey's phone. In essence, an employee

trained to handle service issues or calling plan upgrades made the decision on what action should be taken – or not taken, in this case – in an emergency. The second error is that without legislative certainty, no business will knowingly put itself at risk of litigation by an affirmative act. Releasing “records,” even the location of a cellular device in an emergency, could – and did in Kelsey’s case – make a business pause or refuse to cooperate. They refused to release the information despite having been served with all the legal process required to obtain the information. H.R. 4889 provides a safe avenue to use for companies.

These circumstances led to the bill that is now under consideration by this subcommittee. It is law in twenty-two states. Of the thirty-one members of this subcommittee, ten of you have this law in your home state. It has been a long process. Missey has gone to many of the states and provided testimony in support of the bill. I have accompanied her and provided oral testimony when I could – written testimony when I could not be there in person. My service in the Kansas State Senate sometimes prohibits me from being able to go to other states to testify. My public service is driven by Kelsey’s memory. I work diligently to craft and pass legislation with the goal of protecting the citizens of Kansas. I agree with President Ronald Reagan’s statement he made in 1981 - “Government’s first duty is to protect the people, not run their lives.” This is exactly what H.R. 4889 does. It fulfills the “first duty” of government. It is necessary to have this protection in place at both the state and federal level. Wireless devices are subject to a bifurcated regulation system – Federalism – by both state and federal government.

I can speak from the experience of a law enforcement veteran as to the value of this law. It will, has, and can save lives. Time is of the essence when a person goes missing and, statistically speaking, if the missing person is not found within 48 hours their chance of surviving the ordeal is minimal. If the victim is a child, chances of survival rapidly decrease after two to four hours. The Kelsey Smith Act was

signed into law in Kansas on April 17, 2009. Since then it has been used multiple times by law enforcement with favorable results in Kansas as well as other states that have enacted the law. It is a tool that gives law enforcement an immediate edge in a case where a person is missing and there is a reasonable belief that person is in danger of physical harm or death. Technology has advanced and it is necessary for us to advance with the technology to keep people safe. H.R. 4889 allows law enforcement to use evidence based best practices. The telecom providers understand this. They were instrumental in crafting the law in Kansas as well as in other states.

I can speak from the experience of a legislator. The Kelsey Smith Act has no fiscal note. My understanding is that in the twenty-two states that now have the law only one state had a fiscal note. The fiscal note was only generated because according to that state's law all legislation has a cost to enact that legislation. Even so the fiscal note was miniscule. In today's environment imagine a law that fulfills the "first duty" of government and at no cost to the citizens.

I can speak from the experience of a father whose daughter has gone missing. The agony of not knowing what has happened to your daughter or knowing where she is for four days is indescribable. The refusal of a cell phone company to cooperate with a simple request to locate my daughter's cell phone, and then disregard legal process, was inexcusable.

What was the cost of four days of searching for Kelsey by seventeen law enforcement agencies? Why was it even necessary? The technology was there to find her in forty-five minutes – and that was in 2007. The locate time is much quicker now. Why aren't we using this technology everywhere? I don't know the answer to the first question – although I'm sure the cost was in the hundreds of thousands of dollars if not more. The answer to the second question is fear. We don't use this technology everywhere for these specific instances because of fear. The fear is baseless.

The leading opponent to this legislation across the United States is the American Civil Liberties Union. Here are the objections I have heard in the past from them and I suspect you will hear these as well:

- 1) It's a violation of privacy.

Response: There is no such thing. According to the ACLU's website: *"The right to privacy is not mentioned in the Constitution, but the Supreme Court has said that several of the amendments create this right."* Therein lies the problem. Courts and Constitutions do not create rights. God grants each of us "with certain unalienable Rights." The ACLU believes that the state grants us our rights. Obviously, only one view is correct. A rejection of the foundational principle of God-given rights would inevitably lead someone to come to different conclusions about any number of things compared to someone who believes that rights are granted by God. If rights are not God-given then the only other option is rights are granted by the state – by government. To be more frank – rights would be granted by the majority party in power at the time. Anything given by the state can be taken away by the state.

There is clearly a right for the people to "be secure in their persons, houses, papers, and effects," but that is not an absolute right, which leads me to the second common objection:

- 2) It's a violation of the 4th amendment's search and seizure provision.

Response: According to the fourth amendment of the U.S. Constitution, *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."* The fourth amendment only protects against unreasonable searches. H.R. 4889 makes no provision to "search" or "seize" anything. It

does not allow content on a cellular device to be “seized” – pictures, texts, phone numbers, documents, and recordings are not allowed to be viewed. The only “thing” allowed is the location of a device. Truth be told, someone who has been kidnapped would dearly love to let law enforcement know where they are but can’t because their abductor is preventing them from doing so. This merely gives law enforcement a place to start looking and is no different than someone telling law enforcement where they last saw that person except for one fact – it is an accurate location.

The bill releases no personal information to anyone. All it releases is the location of a cellular device so law enforcement can find a person who is danger of serious bodily harm or death. This bill can expedite the investigation and give law enforcement a huge advantage in finding the missing person alive.

In closing, my wife has said it takes either lawsuits or legislation to make big corporations take notice. As a state senator in Kansas I believe that the Legislature’s primary duty is to provide for the public safety. Kelsey’s Law is an excellent example of how government can do that. I respectfully request this subcommittee recommend H.R. 4889 favorable for passage. Fulfill the first duty of government, please.

Thank you.



HON. LOUIE GOHMERT
FIRST DISTRICT, TEXAS

WASHINGTON OFFICE:
2243 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3035
FAX: (202) 226-1230



COMMITTEES
JUDICIARY
NATURAL RESOURCES
REPUBLICAN STUDY COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515

April 13 in the Year of Our Lord 2016

Just over two years ago, tragedy struck an east Texas town. Not only did our community lose a loving mother, daughter, and sister, but the nation also lost trust in a system it relies on in life-threatening circumstances.

In December 2013, Kari Rene Hunt Dunn was murdered by her estranged husband in a hotel room in Marshall, an east Texas city with a reputation for being kind and helpful. Kari's 9-year-old daughter, while witnessing her mother being assaulted and stabbed, did exactly what we train our children to do in an emergency --- dial 9-1-1. However, in this case, Kari's daughter could not get through to the authorities because she failed to dial "9" as a prefix to get an outside line.

After Kari's death, I received an outpouring of comments from constituents and other Americans across the country expressing concern over this issue. It was clear that our 9-1-1 system failed at a time of crisis. Every day, scores of people may encounter an emergency, and the last thing they need is confusion over whether or not dialing 9-1-1 will reach emergency responders.

The task of making 9-1-1 standard on all phones throughout the U.S. is a surprisingly simple and achievable task. As it turns out, the more recent multi-line telephone systems (MLTS) can be easily configured or reconfigured to enable callers to reach emergency personnel by dialing 9-1-1, without having to dial a prefix at all. Most of the time, these changes can be made at no cost or very minimal cost. Some MLTS vendors have offered to upgrade or tune-up existing MLTS phone systems for free to accommodate direct dial for 9-1-1.

Additionally, the American Hotel & Lodging Association (AH&LA) has worked aggressively with its many members across the country to swiftly ensure that their systems in place allow guests to directly dial 9-1-1 from guestrooms in the event of an emergency. Some properties across the country have taken steps to upgrade or replace their existing phone systems. Most of AH&LA's largest hotel member chains have activated 9-1-1 direct dial access at nearly all of their owned and managed properties. Further, most of these chains have updated, or are in the process of updating, brand standards to ensure franchisees upgrade their phone systems as well. Led by AH&LA, all of these chains, as well as the broader hotel industry, also have worked hard to educate franchisees and their properties on the need to make the switch as quickly as possible.

These developments are encouraging to say the least. Still, voluntary reform within the hotel industry alone will not bring the uniformity and reliability that hotel guests need while engaging in interstate commerce across the country. Though many hotels which are not within the AH&LA are still insuring 9-1-1 direct dial capabilities, some are not. Though many non-hotel businesses engaging in interstate commerce across the nation have multi-line systems, numerous businesses are not insuring the

LONGVIEW OFFICE
101 EAST METHUEN STREET, SUITE 302
LONGVIEW, TX 75601
PHONE: (936) 236-8587

LUFKIN OFFICE
300 EAST SHEPHERD
LUFKIN, TX 75901
PHONE: (936) 632-3180

MARSHALL OFFICE
102 WEST HIGHTON STREET
MARSHALL, TX 75670
PHONE: (936) 938-8386

NACOGDOCHES OFFICE
101 W. MAIN, SUITE 180
NACOGDOCHES, TX 75961
PHONE: (936) 715-9514

TYLER OFFICE
1121 ESE LOOP 323, SUITE 206
TYLER, TX 75701
PHONE: (936) 561-4348
TOLL FREE: (866) 535-6302

9-1-1 capability even though the cost is non-existent or minimal. This risk is still unacceptable. The possibility of even one more person experiencing the horror of not getting help during an emergency when the solution is so amazingly simple is intolerable. That is also why it is quite comforting to know that all hotels owned or managed by Carlson, Hyatt, InterContinental, LaQuinta, Marriott, Motel 6, Starwood and Wyndham now have direct 9-1-1 dialing. Federal Communications Commissioner Ajit Pai is to be commended for his concerned and passionate work in helping bring about such desirable results thus far.

Since the day we lost Kari in 2013, Texas and other states have made significant strides in addressing this issue. Last year, the state of Texas passed a version of Kari's Law, requiring 9-1-1 direct dial to be standardized throughout the state. Eighteen other states also have a similar requirement in place, and five others have begun considering such legislation. Since telephone service truly crosses state lines and is an important part of interstate commerce, this bill, H.R. 4167, will be decisive in making 911 universally accessible in our country. This is the right and necessary course of action to take. Whether Americans pick up a phone in their home state or elsewhere in our country, they assume they can get help when they call 9-1-1. We have an obligation to make that assumption a reality as stewards of American safety and trust.

It might be noted that from behind bars, Kari's killer says that his attack went on over five minutes, but he doubts a 9-1-1 call that got through to emergency personnel would have mattered. The trouble with that comment is that in Marshall, Texas, responses of 2 minutes or less do happen. Additionally, Kari was likely still alive when her assailant left her. A prompt and effective 9-1-1 call, was needed and a nine-year old girl experienced the horror of not getting one through, though she did all she knew to do.

It is also noteworthy that this bill should remove from hotels the risk of potential liabilities. After the need and ease of setting up direct dial for 9-1-1 became known as the industry standard, future tragedies akin to Kari's would likely trigger lawsuits on the part of hotel guests who could not get through to emergency personnel. By requiring hotels and other institutions to fix their phones systems now, this requirement should remove their risk of one day being liable for enormous damages. Businesses and dialers alike will, therefore, benefit from this bill.

Kari's Law takes several concrete steps to bring about this reform. Most basically, it requires 9-1-1 direct dial to be the default configuration for a multi-line telephone system before the phone enters the stream of commerce in the United States. The direct dial requirement will also apply to the installation of a multi-line telephone system, thus protecting the direct dial configuration from being overwritten by a local installer. Finally, the bill provides for a two-year implementation period where the provisions will be phased in. Each of these provisions are created by amending the Communications Act, and, in keeping with that historic legislation, the FCC will retain full authority to enforce the new measures. Such enforcement will allow for civil penalties only to be administered.

The tragic loss of Kari Hunt Dunn and the pain her children suffered spawned a national movement, and that movement has is reaping results, especially by virtue of this bill. Now, Congress needs to act in a final and decisive way to restore security, dependability, and uniformity to our emergency dialing system. This bill will solidify the meaning of 9-1-1 in the minds of our citizens, and it

will earn once again their trust by elevating our emergency dialing standards to match the quality and reliability of first responders across the country.

Thank you for your consideration.

Sincerely,



Hon. Louie Gohmert



Ajit Pai
Commissioner

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

April 12, 2016

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
United States House of Representatives
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
United States House of Representatives
237 Cannon House Office Building
Washington, DC 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
United States House of Representatives
2182 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications and Technology
United States House of Representatives
241 Cannon House Office Building
Washington, DC 20515

Dear Chairman Upton, Ranking Member Pallone, Chairman Walden, and Ranking Member Eshoo:

I want to commend the U.S. House Energy and Commerce Committee's Subcommittee on Communications and Technology for holding its April 13, 2016, hearing on several worthy bills, including H.R. 4167, the Kari's Law Act of 2015.

Many people now know the tragedy that inspired this legislation. In December 2013, Kari Rene Hunt Dunn was attacked and killed by her estranged husband in a Marshall, Texas hotel room. Her nine-year-old daughter, who was with her, tried calling 911 four times as she had been taught to do. But her calls for help never went through. That's because the hotel's phone system required guests to dial a "9" before calling 911.

Since that day, Kari's father, Hank Hunt, has worked tirelessly to ensure that every call to 911 directly connects callers to emergency personnel. When I learned about this two years ago, I started an inquiry into the status of 911 dialing at hotels across the country that use multi-line telephone systems (MLTS). I wanted to understand the scope of the problem and what could be done to fix it.

I have attached a copy of the report I gave on the one-year anniversary of that inquiry, but I want to highlight a couple of points here. First, my inquiry showed that nearly every MLTS could be configured or reconfigured to allow direct 911 calling. Indeed, in the course of just one year, many lodging properties did reconfigure their systems. Second, MLTS vendors reported that it cost little to no money to reprogram a system to allow direct 911 calling. Third, and perhaps most relevant to the Subcommittee, a number of MLTS vendors—including Shoretel, Windstream, NEC, and Vertical Communications—reported that they had or were making direct 911 calling the default setting in all of their MLTS products.

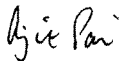
Much progress has been made in fixing this problem at hotels and motels, but there's much more to be done. For those are far from the only facilities that use MLTS. Office buildings, schools, libraries,

and other large buildings also rely upon MLTS. That is why it is so important that we continue to make direct access to emergency personnel a priority.

The legislation introduced by Congressman Louie Gohmert and co-sponsored by Congressmen Farenthold, Duncan, Thompson, and Culberson would do just that, bringing us one step closer to accomplishing Hank Hunt's mission. I applaud the efforts of Hank, this bipartisan group of Congressmen, and the countless others who are leading on this issue.

Thank you for holding this hearing and for working to ensure that calls to 911 always go through.

Sincerely,

A handwritten signature in black ink that reads "Ajit Pai". The signature is written in a cursive, flowing style.

Ajit Pai
Commissioner
Federal Communications Commission

Attachment

**REMARKS OF FCC COMMISSIONER AJIT PAI
AT THE MARSHALL, TEXAS POLICE DEPARTMENT**

**"ON CONNECTING AMERICANS TO EMERGENCY PERSONNEL
WHENEVER THEY DIAL 911"**

MARSHALL, TX

JANUARY 23, 2015

Our nation's third President, Thomas Jefferson, said that "one man with courage makes a majority." Today, we are gathered here in Marshall, Texas because of one such man.

As a father, I can't begin to imagine what it would be like to lose one of my children. But Hank Hunt knows that pain. Thirteen months ago, his daughter Kari was killed by her estranged husband in a hotel room not far from here.

Hank's nine-year-old granddaughter was in the room and tried to save her mother by dialing 911, but the call didn't go through. So she tried dialing 911 again, and again, and again—each time, the same result. She was never able to reach anyone who could help because the hotel's phone system required her to first use an access code—"9"—before dialing 911. Had the hotel's phone system been configured properly, her 911 call would have been answered by a public servant working in this very building—by someone who could have helped.

Confronted with such a tragedy, many people would retreat into their grief. And no one would fault them for doing so. But Hank chose another path. He didn't want anyone else to suffer the way that his family had suffered. So he began a movement to raise awareness about the problem his granddaughter experienced when she dialed 911 in that hotel room—a problem that delayed the arrival of first responders by precious minutes.

Like many of you, I am here because of Hank's fortitude. After hearing his story one year ago, I gave Hank my personal commitment that I would do my best to ensure that no one would ever again confront the same situation that his granddaughter faced, dialing 911 but not being able to reach anyone who could help.

By and large, our nation's 911 system has been a tremendous success story. And much of that success is due to the simplicity and uniformity of that three-digit number. When your life or the life of a loved one is on the line, you shouldn't have to think about whether you need to use a "9", "8", or "7" to get an outside line. You should be able to dial 911 and reach first responders who can assist you in your time of need. Dialing 911 must always work.

And this is especially true when it comes to our kids. My colleague Commissioner Rosenworcel says that the first phone number she taught her children was 911. And I bet that there are millions of parents across the United States who did the same thing. But when we teach our children to call for help, we don't tell them that in some places they need to dial 911, in other places they need to dial 9-911, and in still other places they need to dial 8-911. No, we teach them that the number is the number—everywhere and every time.

After hearing Hank's story, I wanted to assess the scope of the problem as well as potential solutions. So, almost one year ago, I started an inquiry into the use of multi-line telephone systems (MLTS) for 911 dialing. Working with our nation's lodging industry and MLTS manufacturers and vendors, we quickly determined that what happened with the phone system in Marshall wasn't an anomaly. It was indicative of a widespread problem.

For example, according to a survey conducted by the American Hotel & Lodging Association (AHLA) early last year before remediation efforts began, dialing 911 would *not* work in over 55% of franchised hotels. And for independently-owned hotels, the figure was even worse: 68%. These numbers were particularly troubling because the vast majority of the nation's lodging properties are franchised or independently owned.

Moreover, most MLTS vendors reported that they did not ship all of their products with a default setting to allow for the direct dialing of 911. This meant that the problem extended well beyond hotels. In tens of thousands of other large buildings across our country, such as schools and offices, the telephone system could fail Americans when they need it the most.

Finally, we learned that this problem could be solved. The MLTS vendors reported that every single one of their phone systems could be configured to allow for direct dialing of 911. And they said that reprogramming systems that were set up without direct dialing would be relatively easy and inexpensive. So in nearly all cases, there is no technical reason why every phone in this country cannot be set up to allow direct 911 calling.

Once we had a handle on the extent of the problem, we rolled up our sleeves and went to work to fix it. And I want to emphasize the word "we." Although my name has appeared in some news stories about this issue, this has truly been a team effort. Mark Fletcher, for one, has been tireless in raising awareness—including my own, for which I would like to thank him—and advocating for change. And as a result of that team effort, there is good news to share this morning.

Let's start with hotels and motels, where the picture is much brighter than it was one year ago. At the beginning of 2014, none of our nation's largest hotel chains had brand standards requiring their franchised properties to allow direct access to 911. This might explain why franchised locations lagged far behind their owned and managed counterparts when it came to direct dialing. But today, Carlson, Hilton, La Quinta, Marriott, Motel 6, and Starwood have adopted such brand standards, and Hyatt has committed to adopting one this year. These steps alone will extend direct 911 dialing to over 7,800 lodging properties.

These companies are now in the process of making sure that their franchised locations come into compliance with these new brand standards, and their work is paying off. For example, at all 854 La Quinta properties in the United States, guests can now directly dial 911. Direct access to 911 is now a reality at over 75% of Marriott's franchised properties, and Marriott reports that the number will be 100% by the end of 2015.

Lodging companies are also leading by example. At every single hotel owned or directly managed by Carlson, Hyatt, InterContinental, La Quinta, Marriott, Motel 6, Starwood, and Wyndham, guests can now directly dial 911. And that is also the case at 99% of properties owned or managed by Hilton—which is up from just 50% a few months ago.

Even at those chains that have not yet adopted a formal brand standard, substantial progress has been made with respect to franchised properties. Consider the InterContinental Hotels Group, which includes Holiday Inn, Crowne Plaza, and Staybridge. Last year, it found that 927 of its franchised properties didn't allow direct access to 911. But now, according to the company's latest report, that problem has been fixed at 824 of those hotels. And it will be corrected at the remaining 103 properties by the end of March. Think about that; one company by itself soon will have fixed this problem at 927 locations across our country.

Stepping back from the blizzard of facts and figures, what does this all mean? One way to look at it is this: We are on track to have solved this problem by the end of this year at all Country Inn & Suites, Crowne Plaza, Doubletree, Embassy Suites, Fairfield Inn, Four Points, Gaylord, Hampton Inn, Hilton, Holiday Inn, Hyatt, InterContinental, La Quinta, Marriott, Motel 6, Park Plaza, Radisson, Residence Inn,

Ritz-Carlton, St. Regis, Sheraton, Staybridge, W, and Westin properties. That's all hat *and* a lot of cattle. That's real progress.

But our efforts haven't been limited to these large hotel chains. AH&LA has been working with all of the association's 19,790 member properties to move the ball forward on this issue. It's been explaining how to upgrade phone systems to enable direct 911 dialing and educating them on the urgency of getting this done before another tragedy strikes. The results? Thousands of independent hotels and motels now have direct 911 dialing. I salute AH&LA for its leadership and commitment to solving this problem, and in particular, Vanessa Sindors, who's here today. She and her organization have taken the bull by the horns and worked hard on this issue.

Credit for our progress also goes to dedicated Americans throughout our nation. One great example is C.J. Clayton, the general manager of the Staybridge Suites down the road in Longview. When she learned about Kari's story, she proactively did what was necessary for her hotel to permit direct 911 dialing. C.J. is here with us today, too. Thank you, C.J., and thanks to every other manager who has stepped up and done the right thing for the safety of their guests.

When it comes to hotels and motels, we've achieved significant results. But there's still more to do. Hotel chains must follow through and fully implement the brand standards they have adopted. We need to convince those chains that have yet to adopt brand standards to do the right thing. And we need to make sure that the smaller chains and independent hotels continue their efforts as well.

Now, as I said earlier, this problem isn't limited to hotels. That's why our effort has also included the companies that make and distribute commercial phone systems. All of the systems being manufactured today *can be* configured to enable direct 911 dialing. But the key question is whether they *are* configured that way in the field.

I am pleased that vendors generally recommend to their customers that their phone systems should be configured to enable direct 911 dialing. But a recommendation buried in an avalanche of instructions isn't good enough. Instead, these systems should be shipped with a default setting that permits direct 911 dialing. That way, a school, company, or library won't have to take special steps to activate direct 911 dialing in its building.

Thankfully, we have made progress in achieving that goal. Specifically, I am grateful to Shortel, Windstream, NEC, and Vertical Communications for making direct 911 dialing a default setting in all of their MLTS products. I hope that other vendors will soon follow suit.

We also need the cooperation of vendors to make sure that phone systems that have already been installed throughout our country are configured properly. For instance, Avaya has recommended that its customers verify that their systems allow direct 911 dialing. It's also sent a Product Support Notice listing the 911 checkup services they can use. Panasonic has issued a Service Bulletin to their resellers encouraging them to tell customers to program their systems for direct 911 dialing. And some MLTS vendors and distributors have been offering free or low cost ways for property owners to modify their existing systems and ensure that direct 911 dialing is enabled. I commend these efforts, and I hope that all vendors will follow these companies' leads, take steps to alert their customers about this issue, and help them ensure that their systems permit direct 911 dialing.

But more is needed. Many institutions have phone systems that aren't configured to allow for direct 911 dialing. They need to fix them. And in this respect, I am disappointed that the place where I work, the Federal Communications Commission, has fallen short.

Last year, my colleague Commissioner O'Rielly discovered something disturbing. At the FCC's headquarters, the phone system doesn't allow for direct 911 dialing. When you pick up a phone and dial 911, this is what you hear: "Your call cannot be completed as dialed. Please consult your directory and call again or ask your operator for assistance. This is a recording." I know this remains the case because

the last thing I did before leaving Washington for this event was dial 911 from my office. I got that same recording.

In my view, another sentence should be added to that message: "This is completely unacceptable." At the FCC, we should be leading the way, not lagging behind, when it comes to public safety communications. Unfortunately, I don't have the authority to solve the problem. That's why both Commissioner O'Rielly and I have asked the Chairman of the FCC to fix it.

It hasn't yet happened. But I'm going to be a pest until it does. If hotel chains can step up to the plate and enable direct 911 dialing at thousands of properties across the country in one year's time, then surely the FCC can do the same at our own headquarters.

* * *

The bottom line is that we never know when and where an emergency will occur. It could happen tomorrow in a Marshall, Texas hotel room. It could happen next week at an office building or a school. But we do know that when disaster strikes, when life and death may hang in the balance, there is a pretty good chance that someone is going to pick up the phone and dial 911. That call needs to reach emergency personnel like the dedicated public servants here at the Marshall Police Department.

That's why the movement that Hank Hunt started right here in Marshall has been so successful. Hank brought to light a problem that never occurred to most of us. And he championed an issue where the right answer is obvious. You don't need to be an expert in communications law or electrical engineering to understand that people who dial 911 should be able to reach someone who can help. You just need some good, old-fashioned common sense.

But to begin that movement in the face of such a horrific personal tragedy required much more than common sense. It required selflessness. It required persistence. And most importantly, it required courage—the courage of one man who is in the process of making a majority with each and every phone system that is reconfigured to connect those in need with those who can help.

It has been a tremendous honor to work alongside this man. I know that he'll keep working until the job is done. And I'll be there with him.

**SUMMARY OF FCC COMMISSIONER AJIT PAI'S REPORT ON THE PROGRESS
BEING MADE TO ENSURE THAT DIALING 911 ALWAYS WORKS**

On January 23, 2015, Commissioner Ajit Pai updated the American public on the progress being made to ensure that dialing 911 always works. Commissioner Pai launched an inquiry into this issue one year ago when he learned that the multi-line telephone systems (MLTS) used in many hotels and other large buildings often required guests to dial "9" or some other access code before dialing 911. At the headquarters of the Marshall, TX Police Department, Commissioner Pai reported as follows:

- **Where We Started One Year Ago**

- None of the major hotel chains required their franchisees to permit direct 911 dialing.
- At 68% of independently-owned hotels and at 55% of franchised hotels, directly dialed 911 calls would not go through. Only 25% of surveyed MLTS vendors reported that all of their products shipped with a default setting that allowed for direct 911 dialing.

- **Where We Are Now**

Hotels

- 100% of the hotels owned or managed by Carlson, Hyatt, InterContinental, La Quinta, Marriott, Motel 6, Starwood, and Wyndham now permit direct 911 dialing. Hilton is at 99% (up from 50% in April 2014) and expects to reach 100% this year.
- 70% of the largest hotel chains have required or are in the process of requiring all franchise locations to have direct 911 dialing. That alone will extend direct 911 dialing to over 7,800 properties.
- 100% of the franchised locations of La Quinta now permit direct 911 dialing. Over 75% of Marriott's franchised locations do, and it expects to reach 100% this year.
- InterContinental, which includes Holiday Inn, Crowne Plaza, and Staybridge, now has direct 911 dialing at 824 of the 927 locations that previously lacked the capability. It is committed to converting the remaining 103 properties by the end of March.
- By the end of 2015, the 911 problem should be solved at *all* Country Inn & Suites, Crowne Plaza, Doubletree, Embassy Suites, Fairfield Inn, Four Points, Gaylord, Hampton Inn, Hilton, Holiday Inn, Hyatt, InterContinental, La Quinta, Marriott, Motel 6, Park Plaza, Radisson, Residence Inn, Ritz-Carlton, St. Regis, Sheraton, Staybridge, W, and Westin properties.

MLTS Vendors

- 50% of surveyed MLTS vendors now ship all of their MLTS products with a default setting of direct 911 dialing. This includes Shortel, Windstream, NEC, and Vertical Communications.
- 100% of surveyed MLTS vendors now recommend that their products be set up to allow direct 911 dialing.
- Several vendors are taking other steps to ensure that existing customers configure their MLTS systems to allow direct 911 dialing, such as offering free or low cost options to modify equipment and sending product support notices.



4800 West 57th Street
P.O. Box 5038
Sioux Falls, SD 57117-5038

Phone: 605-362-3100
Fax: 605-362-3309
www.good-sam.com

April 11, 2016

The Honorable Fred Upton,
Chairman
United States House of Representatives
Washington, DC 20515

The Honorable Greg Walden,
Subcommittee Chair
United States House of Representatives
Washington, DC 20515

The Honorable Frank Pallone,
Ranking Member
United States House of Representatives
Washington, DC 20515

The Honorable Anna G. Eshoo,
Subcommittee Ranking Member
United States House of Representatives
Washington, DC 20515

Dear Chairman Upton:

SUBJECT: Energy & Commerce Hearing on H.R. 4111

On behalf of The Evangelical Lutheran Good Samaritan Society, I am writing to thank you for including H.R. 4111 (*the Rural Health Care Connectivity Act of 2015*) as part of the hearing scheduled to be conducted by the Subcommittee on Communications and Technology on April 13. If enacted, this bill would offer huge and much-needed support for providers of skilled nursing care – like The Evangelical Lutheran Good Samaritan Society (the Society) – that operate in rural and frontier areas of the country.

Like many providers serving an aging population, the Society is a provider of skilled nursing care in many rural areas of the country. As such, we are dependent on the growing use of technology to deliver needed care and services to locations that do not have the benefit of nearby health clinics or rural hospitals. The use of broadband networks is critical to accommodate the delivery and exchange of data, images, Web streaming, and other health information that is vital to ensure that the day-to-day care needs of residents and patients are met. Further, an important resource for assisting with the funding of these broadband networks is the Universal Service Fund (USF) that is administered by the Federal Communications Commission. Although the majority of our healthcare partners in rural areas of the country are afforded the privilege of accessing the USF to assist with funding broadband investment, skilled nursing facilities (SNFs) are not.

We have endeavored to work with the FCC for a number of years to seek the ability for not-for-profit SNFs like the Society to access the USF. However, this work has been fruitless despite our ongoing efforts. Thus, enactment of H.R. 4111, along with its counterpart in the Senate (S. 1916) will ensure critical access for SNFs to FCC broadband funds as, we believe, the Telecommunications Act of 1996 intended.

We are extremely grateful for your leadership on this important issue to the Society, and will be doing whatever we can to promote support of the passage of this bill. We are particularly thankful to Representatives Lance, Loebsack and Cramer for their sponsorship of H.R. 4111. Please accept our thanks. We look forward to the upcoming hearing to offer our support to these important efforts.

Sincerely,

David J. Horazdovsky
President & CEO

Cc: Ranking Member Pallone
Cc: Subcommittee Chair Walden
Cc: Subcommittee Ranking Member Eshoo



Federal Communications Commission
Washington, D.C. 20554

April 13, 2016

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
U.S. House of Representatives
2125 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman,

We write to express our strong support for Congressman Austin Scott's effort to enact a budgetary cap on the Commission's Lifeline program (H.R. 4884). This measure represents a necessary and important step toward greater fiscal responsibility for the program, especially as it expands in size and scope to cover broadband services.

As you know, this issue garnered significant attention during the Commission's recent consideration of an order expanding the Lifeline program two weeks ago. At the time, we had hoped that our colleagues would agree that enacting prudent fiscal constraints would strengthen the program and help address the abundant waste, fraud, and abuse prevalent in its operations. We had even reached an agreement among a majority of Commissioners to adopt a firm cap at a level of \$2.0 billion. This represented deep compromise as individually we support a smaller program at funding levels along the lines of Congressman Scott's proposal. Unfortunately, this agreement was undermined by various individuals and groups (encouraged by the FCC leadership) and ultimately abandoned after the Chairman postponed the Commission vote three times.

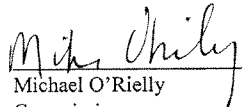
Moreover, it is extremely disturbing to learn that the association representing America's wireless carriers is now opposing the imposition of any spending limitation on the Lifeline program. This is an interesting position as a number of wireless carriers are either directly or indirectly responsible for some of the waste, fraud and abuse existing in the Lifeline program. It is not surprising that these carriers seek and enjoy federal government subsidies, but it seems that they

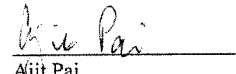
The Honorable Greg Walden
Page 2
April 13, 2016

are ignoring the financial impact of the program on those Americans – and their subscribers – who are not program recipients, especially those who live on incomes just above program eligibility, and will see their wireless bills increase substantially.

We hope these views are helpful as the Subcommittee considers legislation on this matter.

Sincerely,


Michael O'Rielly
Commissioner
Federal Communications Commission


Ajit Pai
Commissioner
Federal Communications Commission



March 30, 2016

Dear Representative:

The Taxpayers Protection Alliance (TPA), representing millions of taxpayers across the country, writes in support of **H.R. 4884, Controlling the Unchecked and Reckless Ballooning of (CURB) Lifeline Act of 2016**. This bill would implement much-needed reforms to the Lifeline program, including a phase-out of the so-called "Obama Phone" program that has seen rampant waste, fraud, and abuse. The legislation also caps the Lifeline budget at \$1.5 billion as opposed to the \$2.25 billion requested by the Federal Communications Commission (FCC), thus saving taxpayers \$725 million.

This legislation puts in place needed caps to a program that has seen its budget grow while abuses within the program have also increased, costing taxpayers a great deal of their hard earned dollars in the process.

A March 2015 Government Accountability Office (GAO) report noted that the, "FCC should conduct a program evaluation to determine the extent to which the Lifeline program is efficiently and effectively reaching its performance goals. FCC agreed that it should evaluate the extent to which the program is efficiently and effectively reaching its performance goals and said that FCC staff will address GAO's recommendation." Asking for more money before these questions are answered is premature and this is why H.R. 4884 is so important.

TPA urges all members of the House to support H.R. 4884. This legislation will implement much needed reforms to a program that has been plagued by waste, fraud and abuse.

Regards,

A handwritten signature in dark ink, appearing to read "David Williams", is written over a light blue horizontal line.

David Williams
President

**Taxpayers Protection Alliance, 1401 K Street, NW, Suite 502,
Washington D.C. 20005
www.protectingtaxpayers.org**



60 PLUS ASSOCIATION 60PLUS.ORG

FOR IMMEDIATE RELEASE
April 11, 2016

Contact: Gerry Scimeca
804-402-0032

**CURB Lifeline Act Puts Cutting Waste and Lower
Cell Phone Fees on Speed Dial for Taxpayers**

(Alexandria, Virginia) -- The non-partisan 60 Plus Association today released the following statement in support of H.R. 4884, titled "Controlling the Unchecked and Reckless Ballooning of Lifeline Act of 2016" or the "CURB Lifeline Act of 2016". Sponsored by Georgia Rep. Austin Scott (R), the legislation caps the Federal Communication Commission's (FCC) Lifeline program at \$1.5 billion annually and ends that bureaucracy's ability to adjust spending on the program even higher.

Said 60 Plus Vice President Matthew Kandrach, "With our nation barreling toward a \$20 trillion debt, the CURB Lifeline Act of 2016 is an important piece of Congressional oversight that will prevent hundreds of millions of taxpayer dollars from being wasted this year. The Lifeline program is already fraught with a staggering amount of waste, fraud and abuse, and capping the program is a sensible and necessary step to getting our nation's budgetary priorities straight, both for taxpayers today and future generations who will be saddled with the tab."

The Lifeline program is partially funded by a federal fee on cell phones, so capping the program also benefits cell phone users in the U.S. by keeping this fee lower.

"We know that seniors have to watch every penny in the current economic climate, and keeping their monthly cell phone bill from inflated fees is of great importance to them. This legislation offers both the bonus of less government waste and lower cell phone fees to consumers and taxpayers, which is why we and our 7.2 million supporters nationwide stand behind this common sense legislation."

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60 Plus Association
515 King Street • Suite 315 • Alexandria, VA 22314
(703) 807-2070 • Fax (703) 807-2073
info@60plus.org

George C. Landrith
President & CEO



Senator Malcolm Wallop
(1933 - 2011)
Founder

Lifeline Reform Legislation

On March 31, 2016, Frontiers of Freedom President, George Landrith made the following statement about H.R. 4884, the "CURB Lifeline Act of 2016:

The CURB Lifeline Act of 2016 does a number of important things. The FCC will be exploding the "Lifeline Budget" by roughly 50%. It is time for Congress to begin requiring some accountability and some reasonable restraint. This legislation does exactly that!

Phasing out the mobile-voice-only "Obama Phone" program is a positive step for the American taxpayer. The program has been fraught with waste, fraud and abuse. Capping Lifeline spending at its current rate, rather than allowing spending to dramatically balloon protects the taxpayer and requires the FCC to be responsible stewards of the power entrusted to them.

One of the most important parts of the legislation is that it protects American consumers from further increases in their phone bills because the program is ultimately paid for by consumers on their monthly bills. If you look at your phone bill, you will see a charge, typically listed as the "Federal Universal Service Fee" which is used to help fund for these subsidies.

The legislation also creates standards for how the funds are to be used — including prohibiting the funds from being used to purchase or subsidize devices. The original statute was designed to guarantee phone access to all Americans in a time and place where phone lines were wired — so it is only appropriate to have the subsidy be used to reduce the cost of cellular service. However, it is not appropriate to torture the statute and use the funds to provide all Americans with expensive electronic devices.

The bottom line is that if we are ever going to get control of government spending and its rapid growth, we need to start passing a lot more legislation like this. If we ever hope to shrink the size and scope of government, then we need to start passing a lot more legislation like this. This legislation won't fix everything that needs to be fixed. But it is the right approach and it is an encouraging start.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3841

May 13, 2016

Mr. Nathan Wessler
Staff Attorney
ACLU Speech, Privacy, and Technology Project
915 15th Street, N.W.
Washington, DC 20005

Dear Mr. Wessler:

Thank you for appearing before the Subcommittee on Communications and Technology on Wednesday, April 13, 2016, to testify at the hearing entitled "Legislative Hearing on Seven Communications Bills."

During the hearing, you were asked to provide additional information for the record, and you indicated that you would provide that information. The format of your responses to these requests should be as follows: (1) the name of the Member whose request you are addressing, (2) the complete text of the request you are addressing in bold, and (3) your answer to that request in plain text.

To facilitate the printing of the hearing record, please respond to these requests with a transmittal letter by the close of business on Friday, May 27, 2016. Your responses should be mailed to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Greg.Watson@mail.house.gov.

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

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

WASHINGTON
LEGISLATIVE OFFICE



May 13, 2016

Greg Watson
Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Mr. Watson,

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6th FL.
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

KARIN JOHANSON
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 16th FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

Enclosed with this letter is my response to Chairman Walden's request for additional information for the record made orally during the April 13, 2016, hearing of the Subcommittee on Communications and Technology entitled "Legislative Hearing on Seven Communications Bills," and provided to me in writing on May 13, 2016. A copy of Chairman Walden's request is attached. I have also transmitted a copy of my response to you via e-mail.

If you have any further questions, please feel free to contact me at the below number or Legislative Counsel Neema Singh Guliani at 202-675-2322 or nguliani@aclu.org.

Sincerely,

Nathan Freed Wessler
Staff Attorney
ACLU Speech, Privacy, and Technology Project
(212) 519-7847
nwessler@aclu.org

To: Greg Watson, Legislative Clerk, House Committee on Energy and Commerce

From: Nathan Freed Wessler, Staff Attorney, American Civil Liberties Union

Date: May 13, 2016

Re: Response to Member Request for the Record

Request for the Record of Congressman Greg Walden:

The Oregon version of the Kelsey Smith Act passed the state House and Senate unanimously and was signed into law by a Democratic governor. What was ACLU's position on the Oregon statute?

Response of Nathan Freed Wessler:

State legislation is handled by the ACLU's state affiliates, not by the national ACLU. The ACLU of Oregon was neutral on the version of the Kelsey Smith Act enacted by the Oregon legislature in 2014 (HB 4022), and did not submit written testimony.¹ In brief oral testimony,² the ACLU of Oregon raised concerns about a provision of the legislation that may have conflicted with the federal Electronic Communications Privacy Act. In response to a question from the committee, the ACLU of Oregon's representative also urged inclusion of an after-the-fact reporting requirement to identify any abuse of the emergency request procedures included in the bill.

In 2015, the ACLU of Oregon supported SB 640, which would have imposed a warrant requirement for law enforcement access to cell phone location information and required law enforcement to report to a court within 48 hours of obtaining cell phone location data pursuant to a warrantless emergency request.³

Various after-the-fact protections against abuse of emergency cell phone location authority appear in state laws across the country. For example, the versions of the Kelsey Smith Act enacted in Colorado and Indiana require law enforcement to obtain an after-the-fact court order upon a probable cause showing within 48 hours after the emergency request.⁴ California law requires after-the-fact judicial review within three days, as well as notice to the person whose location information was obtained and judicially enforceable remedies in cases of abuse.⁵ Illinois requires after-the-fact judicial review within 72 hours and provides a suppression remedy when

¹ The witness registration form from the Oregon House hearing on HB 4022 showing the ACLU of Oregon's position on the legislation is available at:

<https://olis.leg.state.or.us/liz/2014R1/Downloads/CommitteeMeetingDocument/33277>.

² Audio of the February 4, 2014 hearing of the Oregon House Committee on Veterans' Services and Emergency Preparedness is available at: http://oregon.granicus.com/MediaPlayer.php?clip_id=900.

³ SB 640, § 4(3), available at

<https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/SB640/Introduced>. The ACLU of Oregon's support for this bill is noted here: <http://aclu-or.org/category/legislation/2015-legislation>.

⁴ Colo. Rev. Stat. § 18-9-312(1.5)(e); Ind. Pub. L. 57 (H.B. 1013), § 3 (2016) (to be codified at Ind. Code § 35-33-5-15(b)).

⁵ Cal. Penal Code § 1546.1.

no emergency was found to have existed.⁶ Maine imposes a notice requirement and requires law enforcement to report to a court “[w]ithin a reasonable period of time.”⁷ Minnesota and Montana provide a suppression remedy for violations of the law.⁸ Virginia requires law enforcement to notify a court within three days of the emergency location request.⁹

These protections, like the protections sought by the ACLU in the context of H.R. 4889, are a reasonable safeguard against abuse and do not interfere with law enforcement’s ability to quickly locate a phone in an emergency.

⁶ 725 Ill. Comp. Stat. 168/15(6)(B)–(C).

⁷ Me. Rev. Stat. tit. 16, §§ 649–50.

⁸ Minn. Stat. § 626A.42(6)(a); Mont. Code Ann. § 46-5-110(1)(c).

⁹ Va. Code Ann. § 19.2-70.3(E).

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (2021 225-2927)
Minority (2021 225-3641)

May 13, 2016

Ms. Katie McAuliffe
Federal Affairs Manager, Americans for Tax Reform
Executive Director, Digital Liberty
722 12th Street, N.W.
Washington, DC 20005

Dear Ms. McAuliffe:

Thank you for appearing before the Subcommittee on Communications and Technology on Wednesday, April 13, 2016, to testify at the hearing entitled "Legislative Hearing on Seven Communications Bills."

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. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, May 27, 2016. Your responses should be mailed to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Greg.Watson@mail.house.gov.

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

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment



AMERICANS for TAX REFORM

June 30, 2016

Mr. Greg Watson
Legislative Clerk, Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable John Yarmuth

Can you provide the studies or other documentation that was used to support your testimony that capping funding for a program, such as Lifeline, results in a reduction in waste, fraud, and abuse?

Dear Congressman Yarmuth:

Thank you for your questions regarding the CURB Lifeline Act. You asked for evidence on whether cutting a budget has reduced waste fraud and abuse. I hope you find the information below helpful.

A study published in Deloitte University Press, "Shutting down Fraud, Waste, and Abuse: Moving from Rhetoric to Real Solutions in Government Benefit Programs," recommended that programs use prospective and retrospective systems that identify potential areas where fraud can occur before funding is allocated, and then institute a more efficient system to recover funds once waste has been detected.

The study does not point to cutting budgets as the number one way to reduce waste fraud and abuse, but suggests methods for managing budgets more efficiently:

The best available data argue that intentional fraud typically accounts for a third or less of all improper payments; the data also show that reducing waste, abuse, and error in benefits programs usually costs less than chasing fraudsters. Oregon's Secretary of State began with data matching, comparing beneficiary information against lists of dead people, lottery winners, and prisoners to determine vulnerabilities in the eligibility criteria for Medicaid, SNAP, and Temporary Assistance to Needy Families.⁵⁵ Clearing away waste and error can reveal the magnitude and location of true fraud more clearly.

The Congressional Research Service estimates that the federal government allocated nearly \$2.1 trillion for mandatory expenditures in 2014, mostly for benefits programs.¹⁵ How much of that enormous sum was lost to fraud, waste, and abuse? For 2015, the White House estimated a loss of \$137 billion through improper payments.¹⁶

The Federal Communications Commission has instituted programs that have successfully decreased waste, fraud, and abuse. The testimony on HR 4884 CURB Lifeline Act of 2016 did acknowledge these efforts:

"The Lifeline annual recertification process established in the 2012 Lifeline Reform Order to verify that a subsidy recipient did meet the lifeline requirements, and households were not receiving multiple subsidies significantly cut spending in the program. As a result, 29 percent of all of 2012 lifeline subscribers were de-enrolled, and between 2012 and 2013 waste, fraud, and abuse of the program was cut by nearly \$400 million dollars.

722 12th Street N.W.

Fourth Floor

Washington, D.C.

20005

T (202) 785-0266

F (202) 785-0261

www.atr.org



As a whole, since 2012 abuse has been cut by nearly \$670 million, and spending of the fund reduced from nearly \$2.2 billion to about \$1.5 billion. As broadband is included, the National Eligibility Verifier adds another layer of abuse protection.

However, a new service has been added to the program, and that should be evaluated before increasing funding.

Costs will likely change, with the addition of a new service and new qualification requirements as part of the Lifeline program. Considering savings already achieved, a budget increase, particularly without a firm cap, is unnecessary and does not provide an incentive to pursue waste and error at the source. From Americans for Tax Reform's perspective, the positive changes and savings already achieved with these verification programs does not warrant a budget increase or a budget without a cap.

Viechnicki, Peter, William D. Eggers, Brien Lorenze, Michael Greene, James Guszczka, and Dan Olson. "Shutting down Fraud, Waste, and Abuse: Moving from Rhetoric to Real Solutions in Government Benefit Programs." *Deloitte University Press*. N.p., 11 May 2015. Web. 29 June 2016. <http://dupress.com/articles/fraud-waste-and-abuse-in-entitlement-programs-benefits-fraud>

Sincerely,

Katie McAuliffe
Federal Affairs Manager
Americans for Tax Reform

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Minority (202) 225-3641

May 13, 2016

Detective Sergeant B.A. Finley
Criminal Investigations Division
Johns Creek Police Department
11445 Johns Creek Parkway
Johns Creek, GA 30097

Dear Detective Sergeant Finley:

Thank you for appearing before the Subcommittee on Communications and Technology on Wednesday, April 13, 2016, to testify at the hearing entitled "Legislative Hearing on Seven Communications Bills."

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

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment



CITY OF JOHNS CREEK POLICE DEPARTMENT

Detective Sergeant B.A. Finley # 015

Criminal Investigations Division
11445 Johns Creek Parkway
Johns Creek, Georgia 30097
Ba.finley@johnscreekga.gov

To: Congressman Eliot Engel

Date: 05-17-2016

Subject: Cost of Swatting – Amount of Police needed to respond

Obviously each case will vary slightly depending on location and nature of the hoax called in. Most responses will have a minimum of 20 or more law enforcement officers responding to these events.

The initial perimeter will have to be established around the reported location. Traffic will have to be blocked or diverted in the area, staging areas for Police and Fire Command Post will need to be established.

Police Departments that have Aviation units will have their helicopters on scene providing any needed assets from the air.

On the low end these hoaxes can cost close to \$10,000 per event depending on the time it takes to establish that it is in fact a swatting/hoax call. That deals with all the wasted hours of the responding officers on scene, equipment and tactical personnel that had to be mobilized, ie, SWAT, Bomb squad, Aviation, K-9 units, Mobile Command Posts etc.

On the high end you can use the Swatting Hoax from June 12th 2012 off the coast of New Jersey. A person reported a luxury super yacht had caught fire and was sinking approx. 17 miles off shore. Person reported three dead; nine injured with 2nd and 3rd degree burns. Total of 21 people on board the vessel.

US Coast Guard dispatched planes, helicopters and well as several boats to the area. Police helicopters and Police boats from New York, New Jersey responded to the area. 200+ first responders were involved in the search and rescue before it was deemed a hoax. The estimated cost of this was reported to be over \$335,000. The offender in this case was never identified.

http://www.nj.com/news/index.ssf/2012/06/sandy_hook_boat_explosion_hoax.html

An April 2014 swatting incident in Long Beach, New York cost about \$100,000 as local police, Nassau County police and transit police -- including more than 70 first-responders -- responded to call from a man saying he had shot his family members and threatened to kill others. The call turned out to be a prank aimed at a 17-year old boy who was playing "Call of Duty," <http://abc7ny.com/archive/9512819/>

You can see by just a few of these incidents that the cost of personnel and equipment needed to respond to one of these swatting/hoax calls is significant. There is no way to measure the toll it has on the victims of these cases. Many being held at gun point, handcuffed or roused from their beds at night with the Police outside their homes.

Here is a link of a swatting case that almost turned tragic for this local Police Chief in Oklahoma.

<http://bearingarms.com/bob-o/2015/01/17/oklahoma-police-chief-shot-apparent-swatting-raid-homeowner->

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Minority (202) 225-3841

May 13, 2016

Mr. Scott Bergmann
Vice President, Regulatory Affairs
CTIA – The Wireless Association
1400 16th Street, N.W.
Washington, DC 20036

Dear Mr. Bergmann:

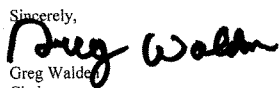
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Attachment

Responses to Questions for the RecordThe Honorable Marsha Blackburn

1. **Mr. Bergmann, HR 4190 is intended to encourage greater spectrum efficiency - a worthy objective - but even enhanced efficiency is unlikely to keep us ahead of rising demand for wireless capacity, which Cisco estimates will grow by a factor of six over the next five years.**

So would you agree that the real key to keeping America at the forefront of the wireless revolution is finding additional spectrum that can be turned over to the commercial sector?

A. CTIA strongly supports efforts make additional spectrum available for commercial mobile use to satisfy the exponential growth in consumer demand for bandwidth-intensive mobile applications and services. Congress and the Executive Branch should focus in particular on spectrum that can be reallocated for exclusive non-federal use. As CTIA has explained, there is no substitute for licensed, exclusive-use spectrum.

Unfortunately, there is virtually no unencumbered spectrum below 3 GHz, which is ideally suited for commercial mobile use. As a result, to keep pace with consumer demand for mobile bandwidth, Congress and the Executive Branch need to examine opportunities to relocate incumbent users. But encouraging more efficient use of spectrum should be at least part of the solution because greater spectral efficiency will make relocating incumbent users (or enabling them to simply relinquish spectrum) faster and less costly.

2. **Finding 5.1 of the President's 2012 PCAST report titled Realizing the Full Potential of Government held Spectrum to Spur Economic Growth states the following: There is no incentive system today for Federal Government agencies to be efficient in their use of spectrum or to share spectrum allocated to them with the non-federal sector.**

That report concluded that "there is no incentive system today for Federal government agencies to be efficient in their use of spectrum."

Do you believe Federal users, in general, are any more efficient today than they were then? Why or why not? How can we get them to be more efficient?

A. CTIA strongly supports efforts to encourage Federal users to use spectrum more efficiently so that additional spectrum can be reallocated for commercial mobile use to satisfy the exponential growth in consumer demand for bandwidth-intensive mobile applications and services. Congress and the Executive Branch should adopt affirmative measures that will enable federal agencies to take advantage of incentives to free up the additional spectrum that will continue to drive the growth of the wireless industry and our Nation's economy.

In considering incentives for federal agencies to make additional spectrum available, Congress and the Executive Branch should focus in particular on spectrum that can be reallocated for exclusive non-federal use. As CTIA has explained, there is no substitute for licensed, exclusive-use spectrum.

Congress should consider financial incentives to encourage Federal users to utilize spectrum more efficiently. While the Commercial Spectrum Enhancement Act ("CSEA") provides federal agencies with reimbursement for costs they incur as a result of spectrum relocation, agencies do not otherwise recognize any revenue from the auction of spectrum on which their systems operate.

Congress could allocate some percentage of auction revenues of spectrum voluntarily relinquished by Federal users to the affected agencies. Federal entities that agree to relinquish exclusive use spectrum should enjoy a higher percentage of auction revenues than agencies that relinquish shared spectrum.

Any incentive payments provided to agencies would be in addition to payments that they would otherwise receive for relocation or sharing under the CSEA (unless they merely relinquish spectrum and do not relocate to other frequency bands). In addition, agency budgets should not be reduced by the amount of payments they receive from auction proceeds if an agency voluntarily relinquishes spectrum. CTIA commends H.R. 1641 for proposing financial incentives to encourage Federal users to relinquish spectrum.

The CSEA can also incentivize Federal users to utilize spectrum more efficiently. The CSEA's Spectrum Relocation Fund ("SRF") should be made available for research and development regarding more efficient use of spectrum for which there are no immediate plans for reallocation or sharing. Funding for long-term research will provide the precise incentives for federal agencies to investigate the use of more spectrum-efficient or state-of-the-art technologies. CTIA commends Congress for permitting the SRF to be used for such purposes in the Bipartisan Budget Act of 2015. In addition, H.R. 4190 would create prize competitions to dramatically accelerate the development of technology that improves spectrum efficiency, which could be utilized by federal agencies.