

Calendar No. 305

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-206 }

RURAL WIRELESS ACCESS ACT OF 2017

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1621



FEBRUARY 7, 2018.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

79-010

WASHINGTON : 2018

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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RURAL WIRELESS ACCESS ACT OF 2017

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 1621]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1621) to require the Federal Communications Commission to establish a methodology for the collection by the Commission of information about commercial mobile service and commercial mobile data service, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 1621 would direct the Federal Communications Commission (FCC) to establish a methodology for the collection of mobile coverage data for the Universal Service program or any other similar program.

BACKGROUND AND NEEDS

Ninety-five percent of Americans own a mobile phone,¹ and in many instances, consumers are now using mobile services, including mobile broadband, as their sole means of communicating or connecting to the Internet. As ownership of mobile phones has increased, so has the expectation of consumers that mobile services will be available to them in nearly all locations in the United States. In part due to this expectation and the recognition of the

¹See Mobile Fact Sheet, Pew Research Center, at <http://www.pewinternet.org/fact-sheet/mobile/>.

value of mobile services to the country, the FCC is planning to spend billions of dollars over the next several years to promote deployment of advanced commercial mobile services.²

Congress has found that the deployment and adoption of broadband technology have resulted in the following: enhanced economic development and public safety for communities across the Nation; improved health care and educational opportunities; and a better quality of life for all Americans.³ As a result, Congress has directed the FCC to annually assess whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.⁴ Congress also has determined that improving Federal data on the deployment and adoption of broadband service would assist in the development of broadband technology across all regions of the Nation.⁵

The FCC's primary means of obtaining data about broadband service deployment is its Form 477 data collection. Each facilities-based broadband provider is required to file FCC Form 477 biannually indicating where it offers Internet access service at speeds exceeding 200 kbps in at least one direction. The FCC established Form 477 in 2000 in an effort to collect uniform and reliable data regarding broadband services, local telephone service competition, and mobile telephony services on a single form and in a standardized manner.⁶ In 2008, Congress passed the Broadband Data Improvement Act, which requires the FCC to issue reports on the deployment of advanced telecommunications capabilities throughout the country annually,⁷ as well as to provide specific demographic information within that report,⁸ among other things.⁹

In the American Recovery and Reinvestment Act of 2009, Congress directed the National Telecommunications and Information Administration through the State Broadband Initiative program to collect robust data about broadband deployment and create "a comprehensive nationwide inventory map of existing broadband service capability and availability" through a National Broadband Map.¹⁰ Also, in 2009, the National Broadband Plan recommended that the FCC revise Form 477 data collection to better monitor broadband availability, adoption, and competition.¹¹ In a 2013 Order, the FCC

²In 2011, the Federal Communications Commission (FCC) established the Mobility Fund Phase II and Tribal Mobility Fund Phase II to allocate up to \$4.53 billion over the next decade to advance the deployment of 4G Long Term Evolution (LTE) service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist. See Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17712, para. 2 (2011) (USF/ICC Transformation Order), aff'd sub nom., In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014), at https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf.

³47 U.S.C. §1301(1).

⁴Id.

⁵47 U.S.C. §1301(3).

⁶Local Competition and Broadband Reporting, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7718, 7749-50, 7753-54, 7756-57, 7772-90, paras. 1, 66, 75, 84, App. B. (2000). Form 477 also currently collects limited information from broadband providers about the availability of broadband service. FCC Form 477 Instructions at 9-10, at <http://transition.fcc.gov/Forms/Form477/477inst.pdf>.

⁷47 U.S.C. §1302(b).

⁸47 U.S.C. §1302(c) (requiring the FCC to "compile a list of geographical areas not served by any provider of advanced telecommunications capability." Id. To the extent that Census Bureau data are available, the FCC must then "determine, for each such unserved area—(1) the population; (2) the population density; and (3) the average per capita income." Id.

⁹47 U.S.C. §1303(b).

¹⁰Public Law No. 111-5, 123 Stat. 115.

¹¹FCC, Connecting America: The National Broadband Plan, GN Docket No. 09-51, at 9, 29 (2010) (National Broadband Plan or Plan). The American Recovery and Reinvestment Act of 2009 directed the FCC to develop a national broadband plan to ensure that all people of the

substantially revised and enhanced its collection of mobile voice and broadband coverage data¹² by revising the scope and nature of the new Form 477 data on mobile services coverage in an attempt to improve, among other things, uniformity of data reporting.¹³ In 2014, the FCC proposed to use Form 477 mobile deployment data, rather than earlier sources, as it moved forward on determining how best to distribute mobile broadband universal service support for mobile broadband.¹⁴

Nonetheless, many believe that the FCC has consistently failed to gather information necessary to properly assess mobile broadband network coverage or to take the steps necessary to allow it to do so in the future. In 2015, the FCC concluded “that the mobile data available today are not sufficiently reliable to include when we determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely manner”¹⁵ Although it stated at that time that it was “taking steps to resolve inadequacies in the mobile data,”¹⁶ as recently as August 2017, the FCC decided against using its Form 477 data “as the basis for determining deployment of qualifying 4G LTE for the map of areas presumptively eligible for MF-II support.”¹⁷ As a result of this deficiency of uniform and reliable data, the FCC’s ability to direct Mobility Fund Phase II support to primarily rural areas that lack unsubsidized 4G LTE service will require costly and time-consuming analysis.¹⁸

The measure seeks to remedy this lack of uniform and reliable data. Collection of more reliable data on mobile coverage (including coverage of commercial mobile data services) would provide both the FCC and Congress a better basis upon which to base decisions about how to spend public funds and promote the deployment of mobile services.

LEGISLATIVE HISTORY

S. 1621 was introduced on July 24, 2017, by Senator Wicker (for himself, and for Senators Manchin, Sullivan, Barrasso, Fischer, Moran, Schatz, Klobuchar, Peters, and Wyden) and was referred to the Committee. Senator Heller is also a cosponsor. On August 2, 2017, the Committee met in open Executive Session and, by voice vote, ordered S. 1621 reported favorably without amendment.

United States have access to broadband. See American Recovery and Reinvestment Act of 2009, §6001(k), Pub. L. No. 111–5, 123 Stat. 115, 516 (2009).

¹²See Modernizing the FCC Form 477 Data Program, Report and Order, 28 FCC Rcd 9887 (2013) (477 Report & Order). Also see Form 477 PN 2016.

¹³See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, 2016 Broadband Progress Report, 31 FCC Rcd 699, 708–09 para. 22 (2016) (“[D]ata from the Form 477 . . . help us better analyze mobile broadband deployment than in years past.”).

¹⁴Since that time, the FCC has relied on Form 477 data to analyze mobile deployment outside the universal service context. See, e.g., id.; Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Eighteenth Report, 30 FCC Rcd 14515 (WTB 2015) (Eighteenth Mobile Competition Report).

¹⁵Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, (2015 Broadband Progress Report) at para. 75.

¹⁶Id.

¹⁷Connect America Fund, Order on Reconsideration and Second Report and Order, WC Docket No. 10-90, WT Docket No. 10-208, 32 FCC Rcd 6282, 86, at para. 7 (2017) (Mobility Fund Phase II Data Order).

¹⁸See generally, id.

A similar bill, H.R. 1546, was introduced in the House of Representatives by Representative Loeb sack on March 17, 2017, and referred to the Committee on Energy and Commerce of the House of Representatives.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 1621—Rural Wireless Access Act of 2017

S. 1621 would require the Federal Communications Commission (FCC) to conduct a rulemaking to establish a methodology for collecting information about the availability of commercial mobile data services for Universal Service Fund programs.

On the basis of costs reported for similar FCC rulemakings, CBO estimates that implementing S. 1621 would cost the agency \$1 million over the 2018–2022 period. Because the FCC is authorized under current law to collect fees sufficient to offset the costs of its regulatory activities each year, CBO estimates that the net cost to the FCC to implement S. 1621 would be negligible, assuming appropriation actions consistent with that authority.

Enacting S. 1621 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 1621 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 1621 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

If the FCC increases annual fee collections to offset the costs of the rulemaking and analysis required by the bill, S. 1621 would increase the cost of an existing private-sector mandate on commercial entities required to pay those fees. On the basis of information from the FCC, CBO estimates that the incremental cost of the mandate would be small—no more than \$1 million over the 2018–2022 period—and would fall well below the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation).

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Logan Smith (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The bill would only apply to the FCC. The bill would have no effect on the number or types of individuals and business regulated in the United States.

ECONOMIC IMPACT

By providing the FCC, Congress, other policy makers, and the public more accurate information regarding mobile service coverage data, the bill is expected to facilitate more efficient investment in mobile commercial service and to have a positive economic impact.

PRIVACY

The bill is not expected to have an adverse effect on the personal privacy of any individuals.

PAPERWORK

The Committee does not anticipate an increase in the number of entities that would be required to maintain or file paperwork as a result of this bill. However, the Committee understands that it is possible that this measure could result in an increased paperwork burden on certain regulated entities (namely providers of commercial mobile service and commercial mobile data service) as a result of the data collection methodology that would be developed by the FCC pursuant to this bill. The Committee believes, though, that any increases in paperwork resulting from this bill may be offset, at least in part, by reductions in paperwork brought about by revising existing FCC data collection processes. Additionally, the Committee believes that any increased paperwork burden resulting from this bill is outweighed by the benefit to consumers, the FCC, Congress, and the economy from having better coverage data.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would provide that the Act may be cited as the “Rural Wireless Access Act of 2017.”

Section 2. Methodology for collection of mobile service coverage data.

This section would define the terms used in the bill and would direct the FCC not later than 180 days after the date of enactment of the Act to promulgate regulations to establish a methodology that would apply to the collection of coverage data by the FCC for the purposes of the Universal Service program or any other similar program.

This section further would require the methodology established by the FCC to do the following: contain standard definitions for different mobile service speed tiers, such as the 2G, 3G, 4G, and 4G LTE tiers; ensure that coverage data is collected in a consistent and robust way; improve the validity and reliability of coverage data; and increase the efficiency of coverage data collection. The Committee understands that because a number of factors affect the

quality of service mobile users may experience even from a single tower (e.g., terrain, location, weather, foliage, time of year, type of device, congestion, etc.) definition of speed tiers may best be expressed in a range of speeds, and such ranges may overlap between speed tiers.

The Committee is aware that the FCC already has two ongoing proceedings relevant to this legislation: (collectively known as the “Coverage Data Proceedings”) one regarding Mobility Fund Phase II;¹⁹ and another on data collection on FCC Form 44720 . The Committee believes that both of these proceedings may provide additional information regarding collection of standardized coverage data. The Committee intends that in the event the Coverage Data Proceedings are not completed prior to the deadline established by this section, the FCC should supplement the framework developed under this bill as appropriate through further regulatory proceedings to incorporate improvements, refinements, or differing approaches identified in the Coverage Data Proceedings. The Committee also believes that the FCC should try to avoid adopting specific requirements pursuant to this Act that are likely to be inconsistent with rules informed by the Coverage Data Proceedings, unless such requirements better effectuate this measure.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

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¹⁹See, e.g., Connect America Fund; Universal Service Reform – Mobility Fund II, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152 (2017). In particular, the challenge process established for Mobility Fund Phase II is expected to contribute significantly to the development of coverage data collection methodology.