

LEGISLATIVE HEARING ON FOUR TELECOMMUNICATIONS BILLS

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

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THURSDAY, MARCH 22, 2018

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

The subcommittee met, pursuant to call, at 10:24 a.m., in room 2322, Rayburn House Office Building, Hon. Marsha Blackburn (chairman of the subcommittee) presiding.

Members present: Representatives Blackburn, Lance, Shimkus, Latta, Olson, Kinzinger, Bilirakis, Johnson, Flores, Brooks, Collins, Costello, Doyle, Welch, Loeb sack, Eshoo, Engel, Matsui, McNerney, and Pallone (ex officio).

Also present: Representatives Tonko, Schrader, and Chris Stewart.

Staff present: Jon Adame, Policy Coordinator, Communications and Technology; Robin Colwell, Chief Counsel, Communications and Technology; Sean Farrell, Professional Staff Member, Communications and Technology; Adam Fromm, Director of Outreach and Coalitions; Elena Hernandez, Press Secretary; Tim Kurth, Deputy Chief Counsel, Communications and Technology; Lauren McCarty, Counsel, Communications and Technology; Austin Stonebraker, Press Assistant; Evan Viau, Legislative Clerk, Communications and Technology; Jeff Carroll, Minority Staff Director; Jennifer Epperson, Minority FCC Detailee; David Goldman, Minority Chief Counsel, Communications and Technology; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Jerry Leverich, Minority Counsel; Jourdan Lewis, Minority Staff Assistant; Dan Miller, Minority Policy Analyst; and C.J. Young, Minority Press Secretary.

Mr. SHIMKUS [presiding]. We are going to call the hearing to order and get our panelists to take seats. That's to help us get our arrangement for how we ask questions. They've called votes. So we are going to adjourn—I mean, recess.

We are going to go vote, and then we are going to come back. So you can keep walking around. But your place in line has been saved.

So with that——
[Recess.]

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

Mrs. BLACKBURN [presiding]. All right. The committee will reconvene, and I recognize myself for 5 minutes for an opening statement.

And I want to welcome you all. I apologize to everyone. We thought we had votes at 10:00, and then it was going to be 10:10 and come on back over here—you know, it's just one of those days—a getaway day, an omnibus day, and we are going to go ahead and start this hearing because you never know when the bell is going to go off.

A little less than 2 months ago, we did our first legislative hearing. This is our second. We sat here in this room discussing 25 pieces of legislation addressing broadband infrastructure, representing all the views on the table.

Last month, we shocked the naysayers by shepherding many of the subcommittee's top priorities through the full committee unanimously in RAY BAUM'S Act.

Today, just as that package is about to head to the President's desk, we've got four more bipartisan bills that address everything from combating illegal pirate radio to identifying ways technology can help prevent suicide across the country.

I couldn't be more pleased with the work of members of the subcommittee and all the important initiatives we've gotten some work going on this year.

I'd also like to commend Congressman Stewart on being a champion for the National Suicide Hotline Improvement Act, which currently has 78 cosponsors, including seven of our subcommittee members: Bilirakis, Clarke, Eshoo, Flores, McKinley, Rush, and Tonko.

Suicide is the tenth leading cause of death in Tennessee, and this legislation would make it easier for those facing a mental crisis to get the help they need with a dedicated N-1-1 number.

We'll also be discussing Mr. McKinley and Mr. Welch's bill, the Rural Reasonable and Comparable Wireless Access Act, which takes a new perspective on getting wireless broadband out to rural areas.

This subcommittee has long been looking for ways to close the digital divide, and today we have got another potential solution—bipartisan, I will add.

And speaking of infrastructure, another bill which could help spur investment in broadband infrastructure is Mr. Latta and Mr. Schrader's Small Entity Regulatory Relief Opportunity Act, or SERRO.

Small entities across the country, regardless of technology, face miles of red tape at the FCC to comply with regulations designed for large providers.

Money that those small, often rural entities spend on complying with regulations is money that could be used for investing in broadband deployment, and it's important for us and the Commission to keep this in mind instead of assuming that one size should fit all in every case.

Finally, we'll be discussing Mr. Lance and Mr. Tonko's PIRATE Act, which many members of the subcommittee have worked on, including Mr. Collins, Tonko, Bilirakis, Green, Moulton, King, and Mrs. Dingell.

Illegal pirate radio disrupts access to important public safety communications, including our Nation's Emergency Alert System and critical aviation frequencies. These illegal broadcasts deprive Americans of important programming provided by legitimate license holders serving the public interest.

It's high time we pay more attention to the harm being done to consumers and broadcasters alike.

[The prepared statement of Mrs. Blackburn follows:]

PREPARED STATEMENT OF HON. MARSHA BLACKBURN

Good morning and welcome to our second legislative hearing of 2018. A little less than 2 months ago, we sat here in this room discussing 25 pieces of legislation addressing broadband infrastructure representing all the views on the table. Last month, we shocked the naysayers by shepherding many of the subcommittee's top priorities through the full committee unanimously in RAY BAUM'S Act. Today, just as that package is about to head toward the President's desk, we've got four more bipartisan bills that address everything from combating illegal pirate radio to identifying ways technology can help prevent suicide across the country. I couldn't be more pleased with the work of members of the subcommittee and all the important initiatives we've got going on this year.

I'd also like to commend Congressman Stewart on being a champion for the National Suicide Hotline Improvement Act, which currently has 78 cosponsors, including seven of our subcommittee members: Mr. Bilirakis, Ms. Clarke, Ms. Eshoo, Mr. Flores, Mr. McKinley, Mr. Rush, and Mr. Tonko. Suicide is the 10th leading cause of death in Tennessee, and this legislation would make it easier for those facing a mental crisis to get the help they need with a dedicated N-1-1 number.

We'll also be discussing Mr. McKinley and Mr. Welch's bill, the Rural Reasonable and Comparable Wireless Access Act, which takes a new perspective on getting wireless broadband out to rural areas. This subcommittee has long been looking for ways to close the digital divide, and today we will be discussing another potential solution.

And speaking of infrastructure, another bill which could help spur investment in broadband infrastructure is Mr. Latta and Mr. Schrader's Small Entity Regulatory Relief Opportunity Act, or SERRO. Small entities across the country, regardless of technology, face miles of red tape at the FCC to comply with regulations designed for large providers. Money that these small, often rural entities spend on complying with regulations is money that they could instead be investing in broadband deployment, and it's important for us and for the Commission to keep this in mind instead of assuming that one size should fit all in every case.

Finally, we'll be discussing Mr. Lance and Mr. Tonko's PIRATE Act, which many Members of the subcommittee have helped work on; including Mr. Collins, Mr. Tonko, Mr. Bilirakis, Mr. Green, Mr. Moulton, Mr. King, and Mrs. Dingell. Illegal pirate radio disrupts access to important public safety communications, including our Nation's Emergency Alert System and critical aviation frequencies. These illegal broadcasts deprive Americans of important programming provided by legitimate license holders serving the public interest. It's high time we pay more attention to the harm being done to consumers and broadcasters alike.

I'd like to thank our witnesses for being here, and with that I will yield 1 minute to the vice chairman of the subcommittee, Mr. Lance.

Mrs. BLACKBURN. I'd like to thank our witnesses for being here, and Mr. Lance is not here, so would anyone like the 1 minute?

Mr. Latta, you're recognized.

Mr. LATTI. Well, thank you, Madam Chair, and I appreciate you holding today's hearing on these four bills, including my own, the Small Entity Regulatory Relief Opportunity Act, or SERRO.

Recognizing that small businesses are the engines of our economy and do not require the same level of regulatory oversight as large entities, the gentleman from Oregon, Mr. Schrader, and I put forth a commonsense proposal to create a regulatory environment that encourages innovation, spurs competition, and fosters consumer choice.

SERRO offers a pathway for regulatory relief for small entities by directing the FCC to streamline their existing waiver process. This will benefit small business and their customers by providing greater certainty, fewer costs, and administrative efficiency.

Since introducing H.R. 3787, Mr. Schrader and I have made countless efforts to consider all stakeholder feedback and input, and today's discussion is a continuation of those efforts.

I look forward to hearing from our panelists, and I thank the gentlelady, the chair of the subcommittee, for yielding.

Thank you.

[The prepared statement of Mr. Latta follows:]

PREPARED STATEMENT OF HON. ROBERT E. LATTA

Thank you, Chairman Blackburn. I appreciate the chairman for holding today's hearing on four promising bills, including my own—the Small Entity Regulatory Relief Opportunity Act or SERRO.

Recognizing that small businesses are the engines of our economy and do not require the same level of regulatory oversight as large entities, Mr. Schrader and I put forth a commonsense proposal to create a regulatory environment that encourages innovation, spurs competition, and fosters consumer choice.

SERRO offers a pathway for regulatory relief for small entities by directing the FCC to streamline their existing waiver process. This will benefit small business and their customers by providing greater certainty, fewer costs, and administrative efficiency.

Since introducing H.R. 3787, Mr. Schrader and I have made countless efforts to consider all stakeholder feedback and input, and today's discussion is a continuation of those efforts. I look forward to hearing from the panelists. I thank the chairman and yield back.

Mrs. BLACKBURN. The gentleman yields back.

Mr. Doyle, you're recognized.

OPENING STATEMENT OF HON. MICHAEL F. DOYLE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. DOYLE. Thank you, Madam Chair, for holding this hearing, and thank you to the witnesses for appearing before us today.

Today we are considering four pieces of legislation. In particular, I am happy to see before us a bill by my good friend Peter Welch, H.R. 2903, the Rural Reasonable and Comparable Wireless Act.

This bipartisan legislation seeks to establish national standards for mobile service, mobile data service, and broadband services in rural America that are comparable to those in urban America.

I know this is an issue that my friend and colleague is very passionate about, and as this bill points out, under the Communications Act, Congress tasked the FCC with ensuring that rural areas had similar access and availability of service as their urban counterparts.

But I don't have to tell anyone here that we have fallen short of that goal. Get on a highway that isn't the I-95 corridor, and wireless service gets spotty fast.

Or move from Pittsburgh or DC to rural Tennessee and try to get fiber internet. We need to make sure that people in rural America can get the same kind of widespread high-speed access as we have in urban areas and along urban corridors.

I am proud the committee Democrats have proposed a plan with Ranking Member Pallone's LIFT America Act that seeks to close this gap with a \$40 billion investment in capital investments.

Congressman Lance and I have also introduced the AIRWAVES Act along with a number of our colleagues on both sides of the aisle that sets aside 10 percent of the revenue from the spectrum auctions set out in the bill for deployment of broadband infrastructure in unserved and underserved communities in rural America.

Another bill we have under discussion today is Congresswoman Bernice Johnson's National Suicide Hotline Improvement Act, which would require the FCC to work in coordination with SAMHSA to explore the feasibility of a three-digit dialing code similar to 9-1-1 or 3-1-1 for suicide prevention.

This legislation passed by UC in the Senate, a seemingly rare feat these days, and I hope we can continue to move this important legislation forward.

We are also discussing a bill on unlicensed radio broadcasts today, and while I have heard anecdotes that there is a problem on the rise in major cities like New York and Miami, I am concerned that the proposed solution is to increase fines for these broadcasts tenfold.

Years ago, I worked with Congressman Lee Terry on the Low Power FM Radio legislation. We saw that there was an issue of illegal broadcasts but also that there weren't many opportunities for communities around the country to express themselves on the air.

We sought to address this by increasing the opportunities available to these communities by opening a Low Power FM application window, which resulted in thousands of new stations across the country.

As we consider this legislation, I think we need to balance the legitimate concerns of broadcast licensees with the limited opportunities for expression available to some communities.

My hope is as we consider this bill we can take an approach that addresses both groups' needs.

And the last bill we are considering today is Congressman Latta's H.R. 3787, the Small Entity Regulatory Relief Opportunity Act.

I am very concerned about this bill. The way that it is drafted would open up a huge regulatory hole at the FCC and would enable companies with over a billion dollars in revenue to be exempted from a wide range of rules intended to protect consumers and, to be honest, small businesses as well. I am very skeptical about the merits and need for this legislation.

[The prepared statement of Mr. Doyle follows:]

PREPARED STATEMENT OF HON. MICHAEL F. DOYLE

Thank you, Madam Chairman, for holding this hearing, and thank you to the witnesses for appearing before us today.

Today we are considering four pieces of legislation. I'm happy that we've decided to take these up and hope that we can proceed with consideration of these bills under regular order.

In particular, I'm happy to see before us a bill by my good friend Peter Welch: H.R. 2903 the Rural Reasonable and Comparable Wireless Act. This bipartisan piece of legislation seeks to establish national standards for mobile service, mobile data service, and broadband services in rural America that are comparable to those in urban America. I know this is an issue that my friend and colleague is very passionate about. As this bill points out, under the Communications Act, Congress tasked the FCC with ensuring that rural areas had similar access and availability of service as their urban counterparts. I don't have to tell anyone here that we have fallen far short of that goal.

While we've done an enviable job of electrifying the rural parts of our country, we've fallen far short in getting broadband not just to people's homes, but to the areas they live, work, and commute. Get on a highway that isn't the I-95 corridor, and wireless service gets spotty fast. We need to make sure that people in rural America can get the same kind of widespread high speed access as we have in urban areas and along urban corridors.

I'm proud that committee Democrats have proposed a plan with Ranking Member Pallone's Lift America Act that seeks to close this gap with \$40 billion in capital investments.

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The last bill that we are considering today is Congressman Latta's H.R. 2787, the Small Entity Regulatory Relief Opportunity Act. I am very concerned about this bill. The way that it is drafted would open up a huge regulatory hole at the FCC and would enable companies with over a billion dollars in revenue to be exempted from a wide range of rules intended to protect consumers and, to be honest, small businesses as well. I'm very skeptical about the merits and need for this legislation.

With that I want to yield the balance of my time.

Mr. DOYLE. With that, Madam Chair, I want to yield the balance of my time to my good friend and colleague, Mr. Welch.

Mr. WELCH. Thank you very much.

You know, as we sit here today we all know that rural broadband infrastructure is insufficient and rural America is being left behind.

The FCC, in my view, is not meeting its congressionally mandated goal, which is ensuring rural America has access to, quote, "reasonably comparable service to their urban areas."

We basically haven't had a definition of what "reasonably comparable" is, and my bill, with Mr. McKinley, is designed to get at this issue and make "reasonably comparable" real and meaningful in rural America, just like electricity was when we made that public policy commitment in the 1930s to wire rural America.

The FCC, under this bill, would have to gather data from the 20 most populous metro areas and detail the average signal strength and speeds of mobile voice and mobile internet services.

It would also require the FCC to determine the extent to which mobile and fixed broadband service provided in rural areas is reasonably comparable.

That's what the bill would do. It is absolutely essential we do that in order to be able to say yes or no, that rural America has reasonably comparable services.

Thank you, Madam Chair, and thank you, Ranking Member Doyle.

Mrs. BLACKBURN. The gentleman yields back.

Mr. DOYLE. I yield back.

Mrs. BLACKBURN. Chairman Walden is not here. Are there Members seeking to claim the chairman's time for an opening?

No one seeking the time?

Mr. Pallone, you're recognized for 5 minutes for an opening statement.

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

Mr. PALLONE. Thank you, Madam Chair.

Our hearing today will examine four bipartisan communication bills. Though communications is the thread that binds them all, they each touch on vastly different but important issues.

First, I am pleased we are considering the National Suicide Hotline Improvement Act of 2017, which aims to quickly connect individuals experiencing a mental health crisis with a professional.

Suicide is the tenth leading cause of death for people of all ages, and every year hundreds of thousands of people are injured in attempted suicides or other mental health emergencies, and this bill would require the Federal Communications Commission to study how to establish a nationwide three-digit number to access the National Suicide Prevention Lifeline.

With rates of suicide increasing each year, we must do all we can to get support services to those in need, and I'd like to thank one of our witnesses, Mr. Madigan, for all the important work you do at the American Foundation for Suicide Prevention, and thanks also for being with us today.

We will also be discussing the Rural Reasonable and Comparable Wireless Access Act introduced by Congressmen Welch and McKinley.

This bill would shine a light on the quality of voice and broadband services offered in rural areas. It would direct the FCC to examine whether people in rural communities actually receive the same level of service as those in urban areas, and the FCC has talked a lot over the past year about improving connections in rural areas.

This bill would require the FCC to collect and analyze the facts on the ground and make sure that it's actually getting the job done.

I am also glad we will be discussing the problems caused by pirate radio broadcasters—people who broadcast illegally on our pub-

lic airwaves. Pirate broadcasters flout the law and interfere with the licensed broadcasters who follow the law.

These pirate broadcasts can be frustrating for people but, more critically, they prevent people from hearing important communications and public safety information in times of emergency, and that's simply unacceptable, and I look forward to hearing about ways that we can work to solve this problem.

And finally, we will discuss the Small Entity Regulatory Relief Opportunity Act. While I certainly appreciate the difficulties faced by small businesses across the country, I have concerns with the ways this bill would try to solve those problems.

The bill would allow the FCC to roll back or delay consumer protections for subscribers of telecommunications and cable companies that serve as many as 6.5 million customers.

These supposedly small businesses could be larger than 35 States, and many of the millions of customers of the providers have fewer or no choices.

But aside from size, given the current FCC's animosity for consumer protections, I don't think this is the right time for Congress to encourage the agency to strip away more safeguards for millions of people, and we would be better off figuring out ways to better protect the American people.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Our hearing today will examine four bipartisan communications bills. Though communications is the thread that binds them all, they each touch on vastly different, but important, issues.

First, I am pleased we are considering the National Suicide Hotline Improvement Act of 2017, which aims to quickly connect individuals experiencing a mental health crisis with a professional. Suicide is the tenth leading cause of death for people of all ages, and every year hundreds of thousands of people are injured in attempted suicides or other mental health emergencies. This bill would require the Federal Communications Commission to study how to establish a nationwide three-digit number to access the National Suicide Prevention Lifeline. With rates of suicide increasing each year, we must do all we can to get support services to those in need. I'd like to thank one of our witnesses, Mr. Madigan, for all the important work you do with the American Foundation for Suicide Prevention, and thanks also for being with us today.

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I'm also glad that we will be discussing the problems caused by "pirate" radio broadcasters—people who broadcast illegally on our public airwaves. Pirate broadcasters flout the law and interfere with the licensed broadcasters who follow the law. These pirate broadcasts can be frustrating for people, but more critically, they prevent people from hearing important communications and public safety information in times of emergency. That is simply unacceptable. I look forward to hearing about ways that we can work to solve this problem.

Finally, we will discuss the Small Entity Regulatory Relief Opportunity Act. While I certainly appreciate the difficulties faced by small businesses across the country, I have concerns with the ways this bill would try to solve these problems. The bill would allow the FCC to roll back or delay consumer protections for subscribers of telecommunications and cable companies that serve as many as 6.5 million customers. These supposedly small businesses could be larger than 35 States. And many of the millions of customers of the providers have few or no choices.

But aside from size, given the current FCC's animosity for consumer protections, I do not think this is the right time for Congress to encourage the agency to strip away more safeguards for millions of people. We would be better off figuring out ways to better protect the American people.

I look forward to the discussion today and hearing from all of the witnesses before us. Thank you.

Mr. PALLONE. So I look forward to discussion today and hearing from all the witnesses, and I'd like to yield my remaining 2 minutes to Mr. McNerney.

Mr. MCNERNEY. Well, I thank the ranking member for yielding and I thank the committee for having this hearing today.

I am very glad that we were able to get the Improving Broadband Access for Veterans Act into the omnibus bill, and I say this is an important piece of legislation that will set us on a path towards closing the digital divide for veterans. I'd like to thank my colleague, Mr. Kinzinger, for working with me on the bill.

One of the bills before us today would help further achieve the critical goal of closing the digital divide by setting targets for building out high-speed broadband in rural America—very important in my district.

Another bill before us would help Americans, including veterans, when they are in crisis. I am glad these commonsense proposals are before us today.

However, I have a concern about one of the bills, the Small Entity Regulatory Relief Opportunity Act. While I am very open to finding ways to streamline compliance for small businesses, I am troubled by the larger trend we are witnessing of protections across the board being eliminated.

I am very concerned that this bill will be another step backwards for consumer protection.

And with that, I'll yield back to the ranking member and to the committee.

Mrs. BLACKBURN. Gentleman yields back.

This concludes our Member opening statements. Members are reminded that all opening statements are made a part of the record.

At this time, I want to welcome our witnesses and give them the opportunity for their opening statements, which will be followed by a round of questions.

We are welcoming Mr. Tim Donovan, vice president of legislative affairs at the Competitive Carriers Association; Mr. David Donovan, president and executive director of the New York State Broadcasters Association; Mr. Robert Gessner, president of MCTV; Mr. John Madigan, vice president and chief public policy officer of the American Foundation for Suicide Prevention; and Ms. Sarah Morris, director of Open Internet Policy at the Open Technology Institute at the New America Foundation.

We appreciate that you are each here today. We will begin today with you, Mr. Tim Donovan, and you are recognized for 5 minutes for your opening statement.

STATEMENTS OF TIM DONOVAN, SENIOR VICE PRESIDENT, LEGISLATIVE AFFAIRS, COMPETITIVE CARRIERS ASSOCIATION; DAVID L. DONOVAN, PRESIDENT AND EXECUTIVE DIRECTOR, NEW YORK STATE BROADCASTERS ASSOCIATION, INC.; ROBERT GESSNER, PRESIDENT, MASSILLON CABLE TV, INC., AND PRESIDENT, AMERICAN CABLE ASSOCIATION; JOHN H. MADIGAN, JR., VICE PRESIDENT AND CHIEF PUBLIC POLICY OFFICER, AMERICAN FOUNDATION FOR SUICIDE PREVENTION; AND SARAH MORRIS, DIRECTOR OF OPEN INTERNET POLICY, OPEN TECHNOLOGY INSTITUTE, NEW AMERICA FOUNDATION

STATEMENT OF TIM DONOVAN

Mr. TIM DONOVAN. Thank you.

Chairman Blackburn, Ranking Member Doyle, and members of the subcommittee, thank you for inviting me to testify on meeting Congress' mandate for universal service and policies that will help close the digital divide for mobile connectivity between urban and rural areas.

I am here on behalf of CCA, representing nearly 100 wireless carriers as well as the companies that make up the wireless ecosystem.

All CCA members have an interest in closing the digital divide, and the vast majority of CCA members employ the same consumers that live and work in their communities.

I thank the subcommittee for steadfast efforts to preserve and expand mobile broadband nationwide. We support several committee initiatives included in the Consolidated Appropriations Act, and thank the leadership, Members, and staff for their hard work and long hours to make that happen.

Today, I will focus primarily on H.R. 2903, the Rural Reasonable and Comparable Wireless Access Act of 2017.

While the title is a mouthful, the underlying issue is critically important: making sure that rural America has the same opportunities as urban areas, from economic growth and jobs to public safety, health, and education because of access to robust mobile broadband services.

CCA thanks Representatives McKinley, Welch, and their nine bipartisan cosponsors for focusing on this important issue.

Universal service is not only a good policy objective, it is the law. Congress was clear in its mandate to the FCC to ensure that all consumers have access to reasonably comparable services as those provided in urban areas.

H.R. 2903 will provide important transparency into whether the FCC is meeting the universal service mandate or if work remains by having the FCC promulgate regulations to determine whether services available in rural areas are reasonably comparable to those in urban areas.

This committee has been hard at work on addressing issues necessary to expand broadband and pave the way to 5G. CCA supports those efforts.

While 5G promises to support services that were once considered science fiction, we cannot neglect Americans living in areas that lack service.

We need not look far to see how H.R. 2903 will immediately support the FCC in its USF mission. The FCC recently released a map depicting areas initially deemed eligible for Mobility Fund phase 2 support.

Because the technical parameters selected by the FCC were not sufficient to produce a map that reflects the experience you have as you travel your districts, significant portions of your States may not be eligible for funding through the mobility fund.

It is now clear that standardizing data as directed in the House-passed Rural Wireless Access Act as part of RAY BAUM'S Act is not enough to produce an accurate map if the standard is not sufficiently calibrated to meet the goal of the program.

Final maps for eligible areas must reflect the statute's call for reasonably comparable services. Further, without a set standard, it is not clear that resources allocated by the FCC are sufficient.

Without a goal, it is not possible to set a budget. H.R. 2903 will help guide funding levels necessary to achieve universal service.

Other important policy decisions also rest on comparable service, including access to spectrum and streamlined deployment of infrastructure.

Any evidence that rural Americans do not enjoy comparable services as their urban peers should reinvigorate the need for policymakers to take steps to support deployment.

For example, spectrum is a finite resource, and all carriers must have access to low-, mid-, and high-band spectrum to deploy next-generation mobile broadband, whether in urban or rural areas.

It is necessary to make additional spectrum available for all carriers to provide rural areas with the latest services, and Congress should first complete the 600 megahertz repack as safely, swiftly, and efficiently as possible to allow winning bidders to put the spectrum to use to serve consumers, and second, auction all available millimeter wave bands as soon as possible.

I thank Representatives Lance, Doyle, and a dozen bipartisan co-sponsors for their leadership on setting time lines to auction this spectrum in the AIRWAVES Act and creating a fund from auction proceeds to support deployment in rural areas. This makes the bill a win-win for rural America.

Carriers cannot provide comparable services without comparable infrastructure, and any challenges with cost delays or permitting are magnified in areas with sparse populations.

The goals of H.R. 2903 again demonstrate how important efforts from the FCC and Congress are to support deployment. Separately, CCA appreciates H.R. 3787, sponsored by Representatives Latta and Schrader, also under consideration today.

Smaller carriers already must overcome challenges larger carriers take for granted, and any appropriate regulatory relief Congress can provide will allow them to marshal resources to better serve their customers.

With Congress, the FCC, and the administration all focused on closing the digital divide, the time to act is now, and H.R. 2903 provides a yardstick to measure where efforts remain necessary to make sure that rural America is not left behind.

CCA looks forward with you to making the promise of reasonably comparable services a reality as access to mobile broadband becomes even more essential for modern life.

Thank you again for holding today's hearing, and I welcome any questions.

[The prepared statement of Mr. Tim Donovan follows:]



"Legislative Hearing on Four Communications Bills"

Executive Summary of Testimony of
Tim Donovan, SVP, Legislative Affairs, Competitive Carriers Association
Before the U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Communications and Technology
March 22, 2018

Competitive Carriers Association ("CCA") Supports H.R. 2903, The Rural Reasonable and Comparable Wireless Act of 2017.

H.R. 2903 will ensure the Federal Communications Commission ("FCC") establishes reasonably comparable service standards based on what is available to consumers in urban areas and periodically requires the Commission to update these standards.

H.R. 2903 Will Improve the Universal Service Fund ("USF").

Congressional mandate requires that all Americans have access to telecommunications and information services that are reasonably comparable to those provided in urban areas. This must include mobile broadband services. Congress created USF to serve areas where private capital alone is not sufficient to provide such services. Determining what constitutes reasonably comparable services will guide the FCC as it administers the fund.

Current Data Parameters for Determining Mobility Fund Phase II Eligible Areas Are Insufficient.

Technological parameters selected by the FCC for establishing areas initially eligible for Mobility Fund II ("MF II") do not reflect reasonably comparable services. The FCC must base decisions on standardized data using parameters that are reasonably comparable to urban areas to direct support to areas that are unserved or underserved, and to determine if resources allocated by the FCC are sufficient.

H.R. 2903 Will Support Access to Spectrum and Streamlined Deployment of Infrastructure.

Comparable services standards also guide policymakers as they work to support mobile broadband deployment in rural areas and provide access to low-, mid-, and high-band spectrum.

H.R. 3787, the Small Entity Regulatory Relief Opportunity ("SERR") Act of 2017 Provides Helpful Guidance.

Policymakers should ensure that small carriers have appropriate regulatory relief to direct resources to providing service.

COMPETITIVE CARRIERS ASSOCIATION

805 15th St NW, Suite 401 | Washington, DC 20005 | ccamobile.org

Legislative Hearing on Four Communications Bills

Testimony of Tim Donovan
Senior Vice President, Legislative Affairs
Competitive Carriers Association

Before the

United States House of Representatives Committee on Energy and Commerce
Subcommittee on Communications and Technology

March 22, 2018

Chairman Blackburn, Ranking Member Doyle, and Members of the Subcommittee, thank you for the opportunity to testify about policies that will help close the digital divide for mobile connectivity between urban and rural areas.

I am testifying on behalf of Competitive Carriers Association (“CCA”), the nation’s leading association of competitive wireless providers. CCA is made up of nearly 100 carrier members ranging from small, rural providers serving fewer than 5,000 customers to regional and national providers serving millions of customers as well as vendors and suppliers that provide products and services throughout the mobile communications ecosystem.

CCA applauds this Committee’s steadfast efforts to preserve and expand mobile broadband nationwide. To provide mobile broadband, carriers must have access to finite spectrum resources, available only through license or lease from the Federal Communications Commissions (“FCC”). Operators must be able to deploy infrastructure, the towers, small cells, and fiber that make up the physical network, to keep up with exponentially increasing demands for mobile broadband data services. And finally, carriers must be able to make a business case to deploy and upgrade these services. In rural and high cost areas, carriers need funding mechanisms to provide resources where private capital alone is not sufficient to deploy and operate networks in unserved and underserved areas. Led by this Subcommittee, there are currently dozens of bills pending to meet these three critical pillars and support carriers’ abilities to meet consumers’ insatiable demands for mobile broadband. CCA supports these efforts and encourages Congress and the FCC to move swiftly to enact policies that provide streamlined access to spectrum, infrastructure deployment, and funding where necessary.

CCA supports H.R. 2903, the Rural Reasonable and Comparable Wireless Access Act of 2017, a focus of today’s hearing. CCA thanks Representatives McKinley and Welch, along with the seven bipartisan cosponsors, for their leadership on this issue. Specifically, H.R. 2903 provides important

transparency into FCC processes by having the agency “show its work” regarding its efforts to support reasonably comparable services. Late last year, the FCC announced the launch of an online dashboard to provide the public with greater insight into the agency’s work, the fruition of an idea FCC Chairman Pai proposed in 2013. The regulations promulgated as directed by H.R. 2903 can further this transparency, letting the public know whether the mandate for reasonably comparable services in urban and rural areas are “heading in the right direction” or need work, to use the parlance of the dashboard. Having a clear and updated understating of the mission is critical to design policies both from Congress and the FCC to achieve the goal of closing the digital divide.

Comparable mobile broadband services in rural areas are vital to ensure that rural Americans have the same opportunities for economic growth and jobs, healthcare, public safety, education, social engagement, and countless new innovations powered by mobile networks as those living in more densely populated areas. CCA looks forward to continued work with the Subcommittee to advance ideas enshrined in H.R. 2903 to provide all Americans with a yardstick to measure whether the congressional mandate for Universal Service is being met.

USF Policies Must Meet Congress’s Mandate

Universal service is not only a good policy objective, it is the law. Congress was clear in its mandate that the FCC enact policies to ensure that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas.” To provide ubiquitous service in areas where private capital alone is not enough to make a business case, the FCC administers the Universal Service Fund (“USF”), which seeks to implement Congress’s direction that “[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.” In today’s modern economy, universal

service must include access to mobile broadband. While next-generation technologies and 5G promise to support the Internet of Things and services that were once considered science fiction, we cannot neglect Americans living in areas lacking 4G or any G service.

Importantly, H.R. 2903 provides proper oversight of USF by directing the FCC to establish reasonably comparable service standards based upon what is available to consumers in urban areas and to periodically update those standards. An established standard will help to guide the FCC on data needed to update or enact new policies while making sure programs are funded to meet these objectives.

H.R. 2903 Will Ensure Appropriate Data is Collected

We need not look far to see how H.R. 2903 will immediately support the FCC in its USF mission. The FCC recently released mobile broadband data depicting areas initially deemed eligible for Mobility Fund Phase II (“MF II”) support from the USF High Cost Fund. The technological parameters selected by the FCC were not sufficient to produce a map that reflects the true consumer experience you have as you travel throughout your districts. For example, the initial areas of eligibility map shows that Representative Welch’s home state of Vermont enjoys near-ubiquitous availability of 4G LTE service through unsubsidized providers, yet his constituents know this is not the case. Unfortunately, many members of this Subcommittee share the same frustration. These maps have failed in part because the standards do not reflect reasonably comparable services.

In addition to H.R. 2903, CCA commends this Committee for advancing H.R. 1546, the Rural Wireless Access Act, as part of the House passed H.R. 4986, RAY BAUM’S Act, and thanks Representatives Loeb sack and Costello for their commitment to standardize any collection of mobile coverage data. This is an important step in the right direction. However, as is clear from the initial MF II

eligibility map, standardized data is not enough if the standard is not sufficiently calibrated to meet the goal of the program.

Working in concert with the Rural Wireless Access Act, H.R. 2903 will guide the FCC going forward with directions to collect data that is standardized *and* a sense of what qualifies as reasonably comparable services to produce a map depicting where advanced mobile broadband services are available. Only then can the FCC direct USF support to areas that are unserved or underserved to meet Congress's direction.

H.R. 2903 Will Help Size USF to Achieve its Objectives

Without a set standard for what services are considered reasonably comparable, it is not clear that resources allocated by the FCC are sufficient. CCA is realistic in understanding that USF cannot provide an unlimited amount of support; however, it is not possible to set a budget without knowing what the project strives to achieve. H.R. 2903 will provide a guide for funding levels necessary to achieve Universal Service. Just as Congress strives to adjust budgets and appropriations to meet current objectives, the FCC should not base funding levels for USF programs based on amounts that were previously determined to be adequate.

H.R. 2903 Will Support Access to Spectrum and Streamlined Deployment of Infrastructure

In addition to policies regarding USF, other important policy decisions rest on comparable service standards to support policies to advance services in rural America. Carriers cannot provide reasonably comparable services without access to the inputs necessary to provide that service, namely spectrum and infrastructure. Spectrum is a finite resource, and all must have access to low-, mid-, and high-band spectrum to deploy next-generation mobile broadband, whether in urban or rural areas. Accordingly, this bill complements efforts to make spectrum available for carriers to serve rural areas. For low-band use, this includes completing the 600 MHz repack process to clear broadcasters out of the

600 MHz band as safely, swiftly, and efficiently as possible. Regarding higher frequency millimeter-wave bands, H.R. 4953, the Advancing Innovation and Reinvigorating Widespread Access to Viable Electromagnetic Spectrum (“AIRWAVES”) Act, sponsored by Representatives Lance and Doyle along with another dozen bipartisan cosponsors, supports the mission of reasonably comparable service by making additional spectrum available at auction and also creating a fund from those auction proceeds to support deployment in rural areas. CCA supports these efforts.

To put this spectrum to use, all carriers must deploy physical infrastructure to serve their customers. Where rural areas are not currently receiving reasonably comparable services, policymakers must use all available options to support deployment. This includes streamlining the infrastructure process, including where application review timelines, fees, and other regulations stand to delay deployment in rural America or make the business case for deployment untenable. The FCC is scheduled to vote on an Order addressing some of these concerns today, and both Congress and the FCC must remain focused on streamlining the deployment process not only to expand services in urban areas but also in rural America, in line with the promise of reasonably comparable services.

SERRO Can Provide Helpful Guidance for Policies that Disproportionately Affect Small Carriers

Also under consideration at today’s hearing, H.R. 3787, the Small Entity Regulatory Relief Opportunity (“SERRO”) Act of 2017, sponsored by Representatives Latta and Schrader, takes an appropriate look at regulatory relief for small carriers. Small carriers serve the communities they call home, often offering services to rural locations with sparse populations. Small carriers are innovative and they provide critical mobile broadband service to many Americans in rural areas. However, no amount of ingenuity can overcome their smaller size and subscriber base, particularly when regulatory mandates carry flat implementation costs and other compliance burdens.

Small carriers already must overcome challenges larger carriers take for granted, and any appropriate regulatory relief Congress can provide will allow them to marshal resources to better serve their customers. Smaller wireless carriers do not enjoy the same economies of scale as their larger competitors and face challenges accessing the latest equipment and devices. Specifically, many competitive carriers serving rural America continue to struggle to get access to the latest devices and are often 12 to 24 months delayed as compared to the largest providers. This harms competition, and results in technology denial for certain rural Americans. While frustrating for consumers and carriers alike, lack of access to devices and other equipment can make it harder or nearly impossible to comply with regulatory mandates premised on the latest technology, including Next-Generation 9-1-1 services and Wireless Emergency Alerts. Even where rural and regional carriers have access to devices or network equipment, they may face increased costs based on lower purchasing power from smaller-sized orders. Policymakers should ensure that competitive carriers are not punished simply because they are small businesses.

Today's hearing considers important legislation to support the clear objectives of Congress, the FCC, and the Administration to close the digital divide. CCA supports H.R. 2903 and encourages Congress's continued efforts to facilitate mobile infrastructure deployment, spectrum access, and funding mechanisms. Policymakers must enact solutions that ensure rural America is not left behind without the critical mobile broadband networks being deployed in urban areas.

Thank you for your attention to these issues and for holding today's important hearing. I welcome any questions you may have.

Mrs. BLACKBURN. I thank the gentleman.
Mr. Donovan, you're recognized for 5 minutes.

STATEMENT OF DAVID L. DONOVAN

Mr. DAVID DONOVAN. On behalf of the New York State Broadcasters Association and along with the National Association of Broadcasters, I am honored to support the PIRATE Act.

Let me start by thanking Congressman Leonard Lance and Congressman Paul Tonko for their leadership in drafting this legislation. I also want to thank Congressman Chris Collins, who's been a leader on this issue for several years.

But before I begin, I also want to thank the committee for their work in helping to secure repacking funding, which is in today's omnibus, and I truly want to thank you for all your work in that, and also Congressman Pallone for his work in the SANDY Act.

FCC Chairman Pai and Commissioner Mike O'Rielly have made pirate enforcement a priority, and I want to recognize Rosemary Harold, who works in the enforcement bureau, and her team for her efforts.

They were on the front lines, and their work is essential. But despite these efforts, it's become clear that the FCC needs additional tools to combat this problem, and the PIRATE Act provides those tools.

There are hundreds of illegal stations transmitting from balconies and rooftops of residential and commercial buildings across New York City and northern New Jersey. There are more illegal stations in the New York metropolitan area than there are legally licensed stations, and the problem is growing. It is spreading to Boston, it is spreading to Connecticut, and it is spreading throughout the United States.

Pirates disrupt the emergency alert system. Their interference prevents listeners from hearing life-saving information broadcast by legal stations.

Pirates do not participate in the EAS system. So consumers listening to these stations will not hear EAS messages.

But more importantly, they undermine the basic fabric of the entire EAS system, which is premised on one station monitoring another station, and so on down the line, similar to a row of dominoes.

Pirate interference breaks this chain, which means stations who are relying on the EAS messages and consumers listening to those EAS messages will not hear them.

Moreover, in the event of an emergency, whether it's local news or public affairs, that lifesaving information consumers won't hear because of pirate interference.

Pirates threaten public health. Their transmitters operate and they threaten the health of unsuspecting citizens to RF frequency radiation.

Let me provide you just with a few examples from our engineering analysis in 2016. You have slides before you, and they're also appearing on the board.

[The slides appear at the end of Mr. David Donovan's prepared statement.]

What you see before you are pictures of illegal pirate radio stations operating in New Jersey and in New York. But the critical issue here, why I want you to see these stations, is because none of these stations comply with FCC and Government RF radiation standards.

They're broadcasting at power levels between 10 and 3,000 watts, and if you look at the slides, included in there is how close you should be to these pirate antennas. And as a result, there are folks who are receiving above Government standard levels of RF radiation that can range from 20 to 80 feet.

Now, on the last slide I will also notice it's right next to the East Orange, New Jersey, police station, which we found ironic.

But the bottom line is that, if you live in the top floors of these buildings or if you use a rooftop deck, you are being exposed to levels that are above Government standards, and this is occurring in communities throughout New York, throughout New Jersey.

They're occurring in—we have pirates in Albany. You're seeing them in Connecticut. You're seeing them in Boston.

This requires, we believe, action. But pirates also interfere with airport communications on frequencies assigned to the FAA, creating an extremely dangerous situation. They ignore all consumer protections laws, whether it's sponsorship ID laws, indecency, public file requirements, alcohol and tobacco advertising laws.

They have absolutely flouted all FCC political rules and regulations. Whether it's access to candidates, equal time, all the rules that have been set down by the Federal Communications Commission are flatly ignored.

The PIRATE Act solves this problem. It gives the FCC additional tools. It significantly increases the fines for operating an illegal station. It clarifies existing law with regarding to liability for those who facilitate pirates.

It also provides working with State laws and recognizes those State laws, and it streamlines the FCC's enforcement process.

In conclusion, in 2015, 33 Members of Congress asked the FCC to increase its pirate radio enforcement. The FCC under Chairman Pai have done that. But they need more tools.

The fundamental purpose of the FCC is to manage the spectrum and avoid interference.

I thank you and look forward to your questions.

[The prepared statement and slide presentation of Mr. David Donovan follow:]



Statement of
David L. Donovan
President and Executive Director
New York State Broadcasters Association, Inc.

IN SUPPORT OF THE PIRATE ACT

Before the
Energy and Commerce Committee
Subcommittee on Communications & Technology
U.S. House of Representatives
Washington, DC

March 22, 2018

Executive Summary

The New York State Broadcaster's Association, Inc. and the National Association of Broadcasters strongly support the PIRATE Act, which combats the growing problem of illegal pirate radio stations. In New York City and Northern New Jersey alone, the number of illegal pirate radio stations exceeds the number of licensed stations. But this has become a nationwide issue. Illegal pirate radio stations harm the public in several ways:

- Pirates undermine the Emergency Alert System (EAS)
- Pirates threaten public health by exposing to RF radiation
- Pirate stations interfere with airport communications
- Pirates ignore federal and state consumer protection laws
- Pirate ignore all FCC engineering, public interest and political broadcast rules

The PIRATE Act gives the FCC additional tools to address the growing pirate radio problem. It significantly increases fines to a maximum of \$2 million and \$100,000 per violation. Upon prior notice, it holds liable persons, including property owners, who "knowingly" facilitate illegal pirate operations. It gives the FCC the ability to go to Federal District court and obtain court orders to seize equipment. The PIRATE Act streamlines the enforcement process. It also authorizes the FCC to seize illegal pirate radio equipment if it discovers someone broadcasting illegally in real time. Finally, the PIRATE Act requires the FCC to conduct pirate radio enforcement sweeps in cities with a concentration of pirate radio stations.

We are reaching the point where illegal pirate stations undermine the legitimacy and purpose of the FCC's licensing system to the detriment of listeners in communities across the country. The PIRATE Act will help the FCC restore integrity to the system.

I. INTRODUCTION

The New York State Broadcaster's Association, Inc.¹ and the National Association of Broadcasters², strongly support the PIRATE Act, legislation that gives the Federal Communications Commission (FCC) additional and much needed tools to combat illegal radio operators. For years unauthorized pirate radio stations have harmed communities across the country both by interfering with licensed stations' abilities to serve their listeners, undermining the Emergency Alert System (EAS), and by posing direct health and safety risks. The time has come to take significant steps to resolve this vexing problem.

We want to thank Congressman Leonard Lance (NJ-07) and Congressman Paul Tonko (NY-20) for their leadership in drafting this legislation, and Congressman Chris Collins (NY-27), who has been a leader on this issue. FCC Chairman Ajit Pai and Commissioner Michael O'Rielly are to be applauded for making pirate enforcement a priority. In addition, we want to thank Rosemary Harold, Chief of the FCC's Enforcement Bureau, and her team. They are on the front lines. Chasing down illegal radio stations is not glamorous. This is difficult and sometimes dangerous work. Nonetheless, the work is essential to protecting the public.

Spectrum enforcement in general and enforcement against illegal pirate radio operations in particular, lies at the heart of the FCC's mission. It is the very reason the FCC was

¹ The New York State Broadcasters Association, Inc. is a not for profit trade association representing approximately 450 radio and television broadcasters licensed to communities throughout New York State. Our mission is to foster an economic and regulatory environment that helps local broadcasters serve their communities in the public interest, convenience and necessity.

² The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

created. Absent strong FCC spectrum enforcement, the airwaves will become nothing more than a “cacophony” of radio transmissions. Economists refer to this as a “tragedy of the commons.” In the real world it means that interference from unauthorized and illegal radio transmissions will clutter the airwaves, causing widespread interference. The result is that no one will hear anything. The American public will lose access to a vital information service – no emergency “EAS” alerts, no local news, no emergency weather or tornado alerts, no music and no traffic reports during drive time.

The importance of the PIRATE Act must be viewed in context. The enforcement mechanisms in the Communications Act are aimed primarily at communications systems that are, or want to be, licensed or authorized by the FCC. Current enforcement mechanisms are really designed to regulate entities that fundamentally agree to be regulated. The current FCC enforcement process is not designed to address truly bad actors that willfully ignore the law including all FCC regulations. Fundamental changes are needed to address these situations.

II. ILLEGAL PIRATE RADIO HARMS THE PUBLIC

A. Illegal Pirate Stations are a Pervasive Problem

Illegal pirate radio stations are not ships off shore broadcasting “rock and roll.” We have all seen the movie. This is not a movie. Illegal pirate radio stations are widespread and growing in the United States. Their illegal broadcasts emanate from rooftops, apartment balconies and back yards in major urban areas such as New York City, Northern New Jersey, Miami, Tampa, and Boston. Pirates have operated in upstate New York, Colorado, Texas,

Louisiana, Tennessee, California and Connecticut.³ The FCC has documented enforcement actions against pirate radio operators in many states across the country.

The New York State Broadcasters Association commissioned the noted engineering firm of Meintel, Sgrignoli and Wallace (MSW) to conduct engineering sweeps of illegal pirate activity in New York City and Northern New Jersey. MSW estimated that there may be more than 100 illegal pirate operators in the New York Metropolitan Area.⁴ In fact there may be more illegal pirate operators in New York and Northern New Jersey than there are legitimately licensed stations.

The pervasiveness of the problem can be seen in a “Go Fund Me” page for the Brooklyn Pirate Sound Map Project. The purpose of the project is to create a map showing the locations and frequencies of all the illegal pirate stations in Brooklyn.

The Brooklyn Pirate Radio Sound Map (BPRSM) documents a homegrown cultural phenomenon at once aesthetically vibrant, technologically tumultuous, and undeniably illegal. **Every night, over 30 stations take to the air transmitting a wide array of programming to the West Indian Community.** ...For the past four years, I’ve been recording the local pirate radio scene from my home in Flatbush Brooklyn while seeking out station owners and listeners on both sides of the legal divide to dig into the history and understand the context in which these stations thrive.

This high level of radio activity goes back at least to the early 90’s when unlicensed radio stations, popularly called pirates, began popping up on the local FM broadcast band. Originating from secret studios scattered around Brooklyn, they transmit adjacent to and often right on top of legal stations. This creates a certain amount of risk for the pirate operators, **but the combination of cheap**

³ See FCC website at <https://www.fcc.gov/reports-research/maps/fcc-enforcement-actions-against-pirate-radio-location/>

⁴ Wallace Dennis, Meintel, Sgrignoli & Wallace, *Field Measurements of Unauthorized FM Band Radio Signals in New York NY Metropolitan Area*; Phase Four, May 19, 2016 at 2. The study may be found at <http://nysbroadcasters.org/wp-content/uploads/2018/03/Pirates-MSW-2016-study-final-pdf.pdf>

FM transmitters and the sheer number of stations offer a sort of protection from an understaffed FCC enforcement division.....⁵

The Brooklyn Pirate Map Sound Project is not a pirate radio operation. Nonetheless it plans to map and lists the frequencies on which pirates operate in Brooklyn and perhaps the other boroughs.

From our perspective it confirms two basic facts. First, illegal pirate stations are a pervasive problem in New York City. The 30 stations listed confirm our engineering survey in 2016 that found you could receive 30 pirate stations in Brooklyn from one location. Second, the FCC's enforcement policies have little or no deterrent effect. The lack of deterrence has been a well-known fact for years. The chances of being caught are minimal. Even where a pirate is caught by the FCC, most simply received a Notice of Unlicensed Operation, *i.e.*, a paper warning. In the past, there has been very little follow up, very few fines and only a few seizures.

B. Illegal Pirate Operations May Be Part of a Larger Criminal Activity

Illegal pirates are not benign disc jockeys playing "rock and roll" to their fans from ships off shore. They are not college students firing up a transmitter or experimenting with radio. Pirate radio is an illegal, coordinated and highly profitable business. Most illegal pirate operators have been broadcasting for years. Some broadcast in multiple markets. Many have advertising "rate cards." Pirates have web sites, and *Facebook* pages. They will accept advertising for both legitimate and illegal businesses. Some even broadcast political ads.

⁵ *Brooklyn Pirate Sound Map* at <https://gogetfunding.com/the-brooklyn-pirate-radio-sound-map/> visited March 18, 2018 at 8:54 pm.

Some illegal pirate operators are part of a much larger criminal enterprise. For example, in Miami the Orange County Gang Unit arrested an illegal pirate operator. Apparently, the complaint filed with the FCC alleged, illegal operations, vulgar language and telling people where to buy drugs and prostitutes.⁶ In Alaska a pirate radio operator was arrested after making threats of violence to law enforcement over his illegal pirate radio station.⁷

While the level of collateral illegal activity may vary, there is one undeniable fact – those operating illegal pirate operations do so in direct violation of the law. Most would never receive a license to operate a legitimate broadcast station under the FCC “character” policies.

More importantly pirate operations jeopardize the lives of American citizens. Even if one were to find an illegal pirate operator of “sufficient character,” the failure to follow the FCC’s engineering rules damages the public. The harm is real and palpable.

C. Interference From Illegal Pirate Stations is Pervasive

Interference from pirate radio stations is generated in two ways. First, “co-channel interference” which is caused by operating on the same frequency at the same time in the same geographic area will cause interference. The second type of interference is “adjacent channel interference,” which results from operating a radio station on frequencies that are next to or adjacent to a frequency used by a licensed station. To avoid this type of interference, the FCC has strict engineering rules requiring stations operating on adjacent channels to be

⁶ *Orlando Weekly*, at <https://www.orlandoweekly.com/orlando/killing-the-messenger/Content?oid=2255711> visited March 17, 2018 at 2:37 pm.

⁷ *Anchorage Daily News*, “FBI arrests Anchor Point man for threatening law enforcement in pirate-radio broadcasts” *Anchorage Daily News*, October 2, 2015 at <https://www.adn.com/crime-justice/article/fbi-arrests-anchor-point-man-over-pirate-radio-threats/2015/10/02/> visited March 17, 2018 at 3:08 PM.

geographically separated. Illegal pirate stations ignore these separation requirements, often operating within the coverage areas of licensed stations. In fact, the 2016 engineering analysis found that most of the “adjacent” channels in the New York Metropolitan area have one or more pirates operating on those channels.

By violating the FCC’s channel and adjacent channel spacing rules, all pirate stations in New York are, by definition, causing interference to legitimately licensed stations. In other words, under its engineering rules, the FCC would not grant these pirate stations a license to operate because they would interfere with legitimately licensed stations.

The problems with pirate station interference are exacerbated because illegal operations do not comport with sound engineering practices. Power levels may fluctuate considerably. They may also drift and spill over on to other frequencies. In many instances illegal pirate stations are using transmitting equipment that has not been approved by the FCC. Equipment that has been approved is often altered.

The interference caused by pirate stations is pervasive and insidious. MSW’s engineering analysis found that the power levels for these illegal stations may range from 10 watts to as high as 3000 watts. Depending on the height of the building the signal from these stations may range from a few blocks to several miles. This means that you can have multiple pirates operating on the same channels in the Bronx, Brooklyn, Queens, Manhattan and Northern New Jersey. Collectively, this means there is interference from hundreds of pirate stations that operate on nearly every adjacent channel and many co-channels throughout the New York Metropolitan area.

The impact on licensed stations is profound. For example, depending on the type of station, a licensed station in New York may have a coverage area that spans 30 to 50 miles. Within this coverage area there may be dozens of illegal pirate stations operating on the same channel or adjacent channels. These illegal stations create pockets of interference in neighborhoods throughout the station's coverage area. In effect, the coverage area of the licensed station begins to resemble "Swiss Cheese," with interference holes appearing throughout the protected coverage area of the station.

From a consumer's perspective, service from the licensed stations will be disrupted. For example, a person listening to a legal station in the car will start the trip receiving a good quality signal from the legal station. As the driver gets closer to a pirate transmitter, he will first receive interference, blocking out the signals of both the legal and illegal station. As the driver gets closer to the illegal pirate station, the pirate's signal will overwhelm the signal from the legitimate station in the radio receiver, and the listener will hear only the pirate station. Depending on the power of the pirate station and the height of its antenna, this could last for a few city blocks or a few miles. With a number of pirate stations located within the stations service area, a stations licensed coverage area becomes filled with interference zones, where consumers no longer receive service from the licensed station.

D. Pirates Stations Undermine the Emergency Alert System

Interference from pirate stations is not confined to entertainment programs. Such interference also affects the Emergency Alert System (EAS). EAS is critically important to protect the public and national security. During national, regional and local emergencies, the broadcast EAS system is essential to saving lives. Whether it's a tornado, flash flood, and

hurricane or man-made disaster, the system must function properly. It is monitored closely by the FCC and Federal Emergency Management Agency (FEMA), which have conducted several national tests of the system. There are required monthly tests for EAS participants. Every state has an EAS plan that is required to be filed with the FCC.

The system is built on a basic principle. Stations participating in the EAS system must be able to transmit and receive interference-free signals. This becomes impossible with hundreds of illegal pirate stations operating in a region. The EAS system is undermined in three ways.

First, illegal pirate stations do not participate in the EAS system. They do not follow the FCC's rules regarding EAS participation. They have no equipment to monitor other EAS stations. They have not installed the required Common Alert Protocol equipment to receive messages via the Integrated Public Alert and Warning System. These stations do not participate in any required monthly tests or in the national EAS test conducted by FEMA and the FCC. In short, a consumer listening to an illegal pirate station will not hear an EAS alert.

Second, as noted above, these stations cause interference to licensed radio stations. The interference also blocks the EAS messages from licensed stations. Thus consumers located near an illegal pirate radio transmitter will not hear the legitimate station's EAS alert. Moreover, they will not hear any follow up newscasts which provide life-saving information in the event of an emergency. The situation becomes truly dangerous with hundreds of illegal pirate stations interfering with many licensed stations located throughout a metropolitan area.

Third, and perhaps most importantly, illegal pirate radio stations interfere with the technical foundations of the off-air EAS system. The EAS system is based on alerts being broadcast from primary stations, which first receive the message directly from the government.

These primary stations then transmit the EAS message over the air on their assigned channels. Other “secondary” stations in the market monitor these primary channels for the EAS messages. These messages are received by the secondary stations and broadcast over the air on their channels. The process is repeated by other stations in the market, across the state and ultimately nationwide in a “daisy chain.” Any break in the “daisy chain” will mean that stations and listeners further down the chain will not receive the EAS message. It is similar to a row of dominos where one domino fails to fall.

Interference from illegal pirate stations may cause a break in this vitally important system. An example of this problem was the basis for a complaint at the FCC in 2015. WWRV 1330 AM, which served the Hispanic community in New York City and Northern New Jersey, was required to monitor two stations as part of the New York State EAS plan - WINS 1010 AM and the New York public radio station - WNYC FM 93.9. However, because of an illegal pirate station operating in New Jersey on FM 93.7 (a channel adjacent to WNYC’s 93.9) it became difficult to monitor and receive a clear signal from WNYC. As a result, the WWRV had to change its EAS monitoring assignment to WABC AM 770.

The danger is compounded because pirate radio stations are unpredictable. Power levels rise and fall. Stations switch channels and locations at will. As a result legitimate stations may not realize they have an issue with the stations they are monitoring until an emergency requiring an EAS alert takes place. Fortunately, the EAS system requires that each station monitor two primary stations. Nonetheless, the ability of the system to function will become more challenged as the number of illegal pirate radio stations grows.

E. Pirate Radio Stations Threaten Public Health

Legally licensed stations are required to meet the FCC Radio Frequency Radiation (RFR) rules. The standards defining exposure limits to RFR are governed by the National Council on Radiation Protection and Measurements' (NCRP's) Maximum Permissible Exposure (MPE) limits.⁸ These standards ensure that consumers and workers are not exposed to harmful levels of RF radiation that emanate from broadcast transmissions. It is the reason why broadcast towers are surrounded by fences or have special precautions if located on the top of a building like the Empire State Building or One World Trade in New York City. It is also one of the reasons broadcast stations "power down" when technicians are working on broadcast towers and transmitting antennas.

Pirate radio stations completely ignore these public health considerations. Transmitting antennas are located in neighborhoods on rooftops, balconies and fire escapes with little concern about the residents living or working next to these transmitting antennas.

In 2016 MSW conducted an analysis of several pirate radio locations in the Bronx, Brooklyn and Northern New Jersey.⁹ Of course, pirate radio stations operate at power levels below full service radio stations, ranging from 10 to 3000 watts. Nonetheless, MSW found RFR

⁸ On August 1, 1996, the Commission adopted the NCRP's recommended Maximum Permissible Exposure limits for field strength and power density for the transmitters operating at frequencies of 300 kHz to 100 GHz. In addition, the Commission adopted the specific absorption rate (SAR) limits for devices operating within close proximity to the body as specified within the ANSI/IEEE C95.1-1992 guidelines. (See Report and Order, FCC96-326) <https://www.fcc.gov/general/radio-frequency-safety-0>

⁹ Wallace Dennis, Meintel, Sgrinoli & Wallace, *Field Measurements of Unauthorized FM Band Radio Signals in New York NY Metropolitan Area*; Phase Four, May 19, 2016 at 16 -23. The study may be found at <http://nysbroadcasters.org/wp-content/uploads/2018/03/Pirates-MSW-2016-study-final.pdf>

levels in excess of the MPE standards.¹⁰ For example, a pirate station located in Clifton, New Jersey operated at 2,573.3 watts. This means that anyone located within 68 feet of the transmitting antenna would be exposed to RF levels above the MPE standard. In the Bronx, a pirate station was found to be operating at 288.4 watts, meaning that anyone located within 22.76 feet of the transmitting antenna would be exposed to RF above the MPE standard. In other words the power level of the pirate transmitter will dictate how close you can get to the illegal transmitter before exceeding the MPE standards.

While the distances may seem small, the risk of harm in congested urban areas is very real. While the level of constant exposure may depend on the types of construction materials used, families living or working in the top floors of the buildings are well within 22 or 68 feet of the transmitting antenna. MSW also found that many of the buildings containing pirate antennas are located on two or three story wood framed buildings. Apartments in these buildings, as well as in adjacent buildings, are well within 22 or 68 feet of the transmitting antenna. If the illegal antenna is on a balcony, those living in the adjacent apartment may be exposed to RF levels above the MPE standard. A person using a roof top deck or working on the roof would be located in an area above the MPE standard.

The problem is compounded because there are hundreds of illegal pirate stations operating in the New York City Metropolitan area. Citizens living and working near illegal pirate transmitting antennas have absolutely no idea that they are at risk. The risk to public health means that the FCC and Congress should make pirate radio enforcement a top priority.

¹⁰ See Appendix A for examples of the locations where RFR exposure analysis was conducted.

F. Illegal Pirate Radio Stations Interfere with Airport Communications

Pirate stations interfere with airport communications on frequencies assigned to the Federal Aviation Administration (FAA), creating an extremely dangerous situation. For example, in 2013, the FCC and the Department of Justice shut down an unauthorized radio station operating on 91.7 MHz in Boston, MA. According to the Department of Justice's Press Release, the FAA complained about pirate radio interference:

"According to an affidavit filed with the civil complaint, the unlicensed FM radio station was causing interference to Federal Aviation Administration (FAA) frequency 120.6 MHz, which is one of the primary frequencies used by pilots to communicate with FAA controllers when flying in the Boston metropolitan area. The FCC issued verbal and written warnings to the residents of 9 Rutland Street on several occasions, but the radio station continued to broadcast."¹¹

The growth in illegal pirate radio stations increases the probability there will be more interference issues with airport communications. The FM broadcast band is adjacent to aeronautical frequencies (108 to 137MHz). Interference from pirate stations could cause errors in navigational guidance, interference to pilot to ground communications, as well as other aeronautical systems. Because illegal pirate stations ignore all engineering rules and standards, there is a significant chance that their signal will spill over on to airport communications systems.

The risk of interference grows as the number of illegal pirate stations increase. For example in 2016, MSW found a pirate stations in Newark, NJ, operating on 107.7 MHz, which is only one channel away from being directly adjacent to the FAA frequencies that start at 108

¹¹ Department of Justice Press Release, Tuesday March 12, 2013 at <https://www.justice.gov/usao-ma/pr/radio-equipment-seized-pirate-radio-station>; visited March 18, 2018 at 12:03pm.

MHz. Newark has an extremely busy airport. The survey found an unauthorized pirate station in Brooklyn operating on 107.9, which is directly adjacent to FAA frequencies. This station could potentially affect communications at JFK airport.

The interference concern is not limited to pirate stations operating on FM channels that are adjacent to FAA frequencies. Pirate stations may unexpectedly cause “intermodulation products” that cause interference to frequencies assigned to the FAA. Intermodulation is a commonly known interference mechanism caused by strong local signals overloading or overpowering the tuner in a receiver. Typically, this non-linear effect will produce interfering signals on multiple frequencies at the front end of the aeronautical radio. For example, a strong pirate signal on 105.1 MHz may mix with an aeronautical signal on 115.05 MHz and produce an intermodulation product at 125.0 MHz, potentially causing interference to the voice communications of aircraft.

The potential harm from this type of interference cannot be overstated. Because pirate stations may start transmitting at any time, without notice, neither the FCC nor the FAA can predict when interference to aeronautical frequencies will occur. Enforcement can only be taken after the interference has affected FAA frequencies. To reduce the risk of this type of interference, the FCC must take affirmative steps to reduce the overall number of illegal pirate stations.

G. Pirate Stations Ignore All Consumer Protection and FCC Regulations and Undermine Investment in Legitimately Licensed Stations

Because they operate outside the law pirate stations need not comply with any of the FCC rules. They may ignore sponsorship identification requirements, indecency rules, on-line public file requirements, or issue responsive programming obligations. They may completely

ignore all state and federal consumer protection laws. Pirates may broadcast advertisements for illegal products with impunity. They may avoid all federal and state taxes. Pirates pay no FCC regulatory fees. They may ignore demands for copyright payments from BMI and ASCAP. Sadly, some pirates broadcast political ads for certain candidates. Of course, illegal pirate operators have no obligation to provide access to federal candidates, comply with the lowest unit charge rules or provide equal opportunities to candidates under Section 315 of the Communications Act.

Radio stations are licensed by the FCC to serve the public interest. By ignoring these laws, most of the illegal pirate radio stations do not serve their communities. To the contrary they often prey on the most vulnerable populations.

Beyond direct harm to their communities, illegal pirate operations create an unfair competitive environment for legally licensed stations. They do not have to bear the costs associated with legitimate broadcasters. Not only does this create an unfair business climate, it undermines investment. This is especially true for legitimate minority owned broadcast stations.

By selling advertising in minority communities to legitimate businesses, pirates give themselves the false appearance of legitimacy and undermine the advertising base for legitimate licensed minority owned stations. It is patently unfair to NABOB members to invest substantial sums purchasing and operating radio stations only to discover they must compete against illegal operators who do not live by the same rules. These operators do not have to build or purchase a facility that meets the Commission's engineering and operating standards. They do not have to comply with the Commission rules, consumer protection laws, or EAS requirements.¹²

¹² Letter to the Honorable Thomas Wheeler, Chairman FCC from James L. Winston, President National Association of Black Owned Broadcasters (NABOB), May 7, 2015.

In summary, illegal pirate radio stations do no serve the public interest. Violating the FCC's engineering rules, by itself, causes a direct and immediate harm to the public. Ignoring all consumer protection and FCC content based rules compels provides an additional, compelling reason, for increased enforcement by the FCC. The time has come to give the FCC the tools necessary to achieve its fundamental mission.

III. RADIO BROADCASTERS SUPPORT THE PIRATE ACT

We strongly agree with FCC Commissioner Michael O'Rielly that Congress must give the FCC additional tools to combat illegal pirate radio stations. For too long FCC enforcement efforts have been hampered by limitations contained in the Communications Act itself. These limitations have rendered ineffective many FCC enforcement efforts. Some complain that pirate enforcement is too difficult, using the "whack a mole" analogy. The reason why there is a "whack a mole" problem, however, is that the enforcement tools and resources employed by the FCC to address the problem have been ineffective. The PIRATE Act will provide the FCC with the tools necessary to achieve its mission.

A. Fines for Illegal Pirate Radio Stations Should be Raised Significantly

The PIRATE Act will increase the fines for illegal pirate radio operations to up to \$100,000 per violation and up to a maximum of up to \$2 million. By significantly increasing the fines the FCC will be sending a clear signal to pirate operators that it serious about pirate radio enforcement. Broadcasters support this increase.

Under the Communications Act, the fines that may be assessed on a non-licensee are essentially limited to \$10,000 per violation and capped at a maximum of \$75,000. In some

instances, these amounts may be increased for flagrant violations.¹³ Because illegal pirate operators are “non-licensees,” they are subject to these limits. Unfortunately, these amounts are well below any amount that could have a deterrent effect. Pirate radio is a business, and this amount is simply considered a cost of doing business. Ironically pirate radio fines are well below the amounts that the FCC often applies to licensed stations for a single infraction. In other words you can completely ignore all FCC rules and be subject to a fine of around \$10,000. If you are a licensee, however you may be assessed a forfeiture of hundreds of thousands of dollars for violating a single rule. The current policy makes little sense.

Increasing the fines will also save Commission resources. The current limit of \$10,000 per violation means that the FCC must send out its monitoring truck multiple times in order to assess a pirate station with a significant fine. Changing the per violation limit to \$100,000, means the FCC may assess larger fines, without having to expend resources send out its monitoring trucks multiple times.

Increasing the fines may have a salutary effect on the relationship between the Department of Justice and the FCC. The FCC must work with the Department of Justice to seize equipment and to bring a collection action in Federal District court. Increasing the fines should provide the local U.S. Attorney’s offices with an added incentive to bring pirate radio cases in Federal District Court.

¹³ A recent case in Miami resulted in a forfeiture of \$144,344, for ignoring a number of FCC warnings. The case started in 2012 and the pirate radio operators ignored several orders including a prior forfeiture order and equipment seizures. In the context of pirate radio, such forfeitures are rare. *In the Matter of Fabrice Polyniece and Harold Sido*, Notice of Apparent Liability, FCC 17-127, released September 26, 2017. https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-127A1_Rcd.pdf

B. Extending Liability to those who “Facilitate” Pirate Operations is Essential

Illegal pirate radio operators are elusive. They can be difficult to track down. For example, illegal stations broadcasting in New York may be provided with content via microwave from another state or from another country by satellite. When confronted by the FCC, illegal pirate stations simply move to another location.

The PIRATE Act makes clear that people who “knowingly” facilitate illegal pirate operations may also be subject to a forfeiture of up to \$2 million. This provision is essential, and perhaps the most important part of the PIRATE Act. It is especially important as it applies to property owners who allow access to pirate radio operators.

Under existing FCC precedents, the Commission may impose liability on those who assist pirates only where there is a strong nexus between the person and the underlying pirate radio operation. Essentially the FCC must find that the person assisting the pirate was part of the pirate operation. For example, the FCC will look for a number of facts such as allowing a pirate exclusive access to a property, providing the pirate with electricity, providing the pirate with Internet access, and providing the pirate with programming.¹⁴

The PIRATE Act clarifies existing law by making it clear that property owners may receive forfeiture (*i.e.*, a fine) if they “knowingly” provide an illegal pirate operator with access to property. In this regard, the FCC need not prove that the property owner was essentially part of the pirate operation. “Knowingly” providing access will be sufficient.

¹⁴ *In the Matter of Fabrice Polyniece and Harold Sido*, Notice of Apparent Liability, FCC 17-127, released September 26, 2017. https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-127A1_Rcd.pdf

This standard better reflects the reality of many pirate operations. Pirate operators broadcast from the roofs of buildings and on balconies. Some pirates pay rent for the space. Others have entered into an arrangement with the building manager or supervisor. In some cases, the tenant of a building is operating a pirate station. In many cases, other than providing access to the roof or balcony, the property owner may not be involved in the day to day operations of the pirate. By holding building owners accountable the PIRATE Act will take a major step forward in pirate radio enforcement. While pirate operators are elusive, you cannot move a building. The PIRATE Act will deny pirate operators the physical locations they need to engage in their illegal broadcasts.

Importantly, the PIRATE Act requires that those who facilitate pirate broadcasts may be held liable only if they “knowingly” facilitated the pirate. The bill requires that those “facilitating” pirates, including property owners must first receive notice from the FCC, before they can be held accountable. This requirement strikes the appropriate balance. It is also consistent with Section 503 of the Communications Act which requires that non-licensees must be notified before they are held liable.

C. The PIRATE Act Recognizes the Importance of State Law Enforcement

The PIRATE Act recognizes the legitimacy of state laws that impose criminal penalties on illegal pirate radio stations. Today three states, New York, Florida and New Jersey, make it a crime to operate a pirate radio station without an FCC license. No doubt other states will adopt similar laws as illegal pirate radio operations grow and spread across the nation. We do not believe these state laws are in conflict or preempted by the Communications Act. Nonetheless,

the PIRATE Act removes any ambiguity and makes it clear that these laws will not be preempted.

Recognizing state laws will also assist the Commission's enforcement efforts. Working with local law enforcement gives the FCC a "force multiplier," providing it with more "boots on the ground" to confront illegal pirate radio operators. This legislation helps solidify the FCC's ability to work with state law enforcement officials.

D. Enforcement Sweeps Will Help in Markets with High Pirate Concentrations

We support the provisions in the PIRATE Act that require the FCC to conduct pirate radio enforcement sweeps twice a year. This provision will ensure that the FCC keeps pace with this growing problem. While such a requirement will be resource intensive, we have reached a point where there are more illegal pirate operators in some cities than there are legitimate stations. We are close to the point where the federal licensing system will lose all meaning. Significant action is required. Enforcement sweeps will help the FCC keep pace with this problem and restore the integrity of the licensing process. In addition, such sweeps are necessary to determine whether FCC enforcement policies are effective.

E. The FCC's Enforcement Process Must be Streamlined

The typical process of assessing a fine against pirate stations takes several stages. The process is contained in Section 503 of the Communications Act. Basically, the process tracks the following steps:

- **Notice of Unlicensed Operation:** Illegal operators are first presented with a Notice of Unlicensed Operation. This is the most common enforcement action, and is essentially a letter telling the pirate station to stop broadcasting. These notices are often simply ignored by the pirates.

- **Notice of Apparent Liability:** The next step in the process is to issue a Notice of Apparent Liability (NAL). In this step the pirate is warned that the FCC may assess a forfeiture (i.e., a fine) if illegal operations continue. The illegal operator has the opportunity to respond to the NAL.
- **Forfeiture Order:** After the NAL is issued, the FCC then moves forward and issues the actual Forfeiture Order. This is the order that issues the actual fine. Illegal pirate operators have an opportunity to appeal this decision to the Commission. If the fine is paid, they may then appeal the decision in Federal Court.
- **Federal District Court:** If the illegal pirate operator fails to pay the fine, the FCC must go to Federal District Court, *for a trial de novo*, to obtain an order to collect the fine. The FCC must however, work the local U.S. attorney's office to obtain the court order.

This entire process takes months, if not years to complete. It is one of the reasons illegal pirate radio stations do not fear the FCC. Something must be done to streamline the process. Today illegal pirate radio operators simply game the process.

The PIRATE Act creates a new process for pirate radio enforcement. Under the bill, the FCC would be able to skip the first two steps in the process, and move directly to the step issuing the fine. Of course due process requires that the FCC may not issue a Forfeiture Order without a hearing. While rarely used, Section 503(b)(3) of the Communications Act gives the FCC the ability to impose such a fine, provided the person has an opportunity to appear before an administrative law judge.

This provision may have the potential to streamline the process. It may require the FCC to secure more administrative law judges in Washington to hear these types of cases. Moreover, consistent with due process, new procedures may have to be enacted to streamline the administrative process. Nonetheless, foregoing the first two administrative steps and requiring illegal operators to appear before an Administrative Law judge in Washington, would

not only shorten the process, but it would make it clear the FCC is serious with respect to pirate radio enforcement.

F. The FCC Should Have the Authority to Go to Court and Obtain an Order to Seize Pirate Radio Equipment

Seizing pirate radio equipment is an important enforcement tool. Perhaps one of the most significant obstacles to efficient pirate radio enforcement is the requirement that the FCC work through a local U.S. Attorney's offices in order to obtain a court order to seize equipment. This should be no surprise. U.S. Attorneys' offices are dealing with a host of vitally important issues ranging from organized crime, drug interdiction and terrorism. It is no surprise that illegal pirate radio operators are not given a higher priority.

The PIRATE Act provides a solution to this problem. It gives the FCC the authority to go into Federal District Court to obtain the necessary orders to seize equipment. In addition the PIRATE Act gives the FCC the authority to seize equipment if it finds the equipment being used in "real time."

We think both provisions are important to address the growing illegal pirate radio problem. Issues regarding coordination with the local U.S. Attorney's office have been around for decades and will not be resolved and time soon. On the other hand, policing the airwaves is at the heart of the FCC's mission. The Commission has a vested interest in ensuring that the airwaves are not overwhelmed with illegal operators.

Granting the FCC the authority to go directly to court and obtain a seizure order raises resource issues. Today, the Commission has no trial attorneys with expertise in Federal District Court procedures. Also there are security and safety concerns regarding the Enforcement Bureau's ability to seize equipment.

If the Congress and the FCC wants to eradicate the illegal pirate radio problem, however, then they must begin to rethink the enforcement process. As noted earlier, the current FCC enforcement process was not designed to deal with truly bad actors. The time has come to make changes. We believe the provisions of the PIRATE Act are a step in the right direction.

IV. CONCLUSION

In 2015, 33 bipartisan members of the House of Representatives sent a letter to the FCC demanding additional pirate radio enforcement. Today illegal pirate radio stations outnumber legitimately licensed stations in some major markets. The integrity of the federal licensing system is being tested. Significant steps must be taken. Resources have to be allocated to enforcement. The Communications Act needs to be amended to address this growing problem. As Commissioner O’Rielly has stated, the FCC needs Congress to provide it with additional tools. The PIRATE Act provides those tools.

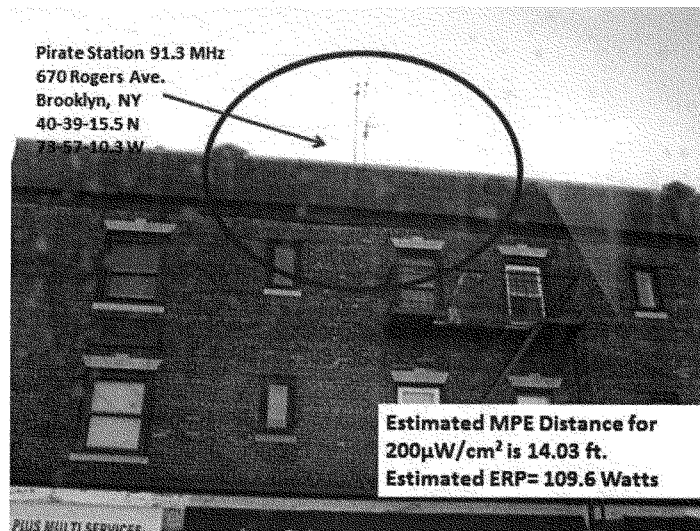
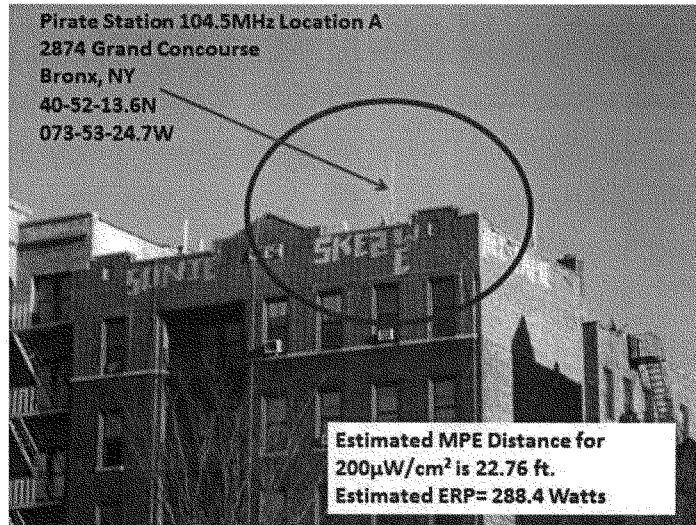
Appendix A

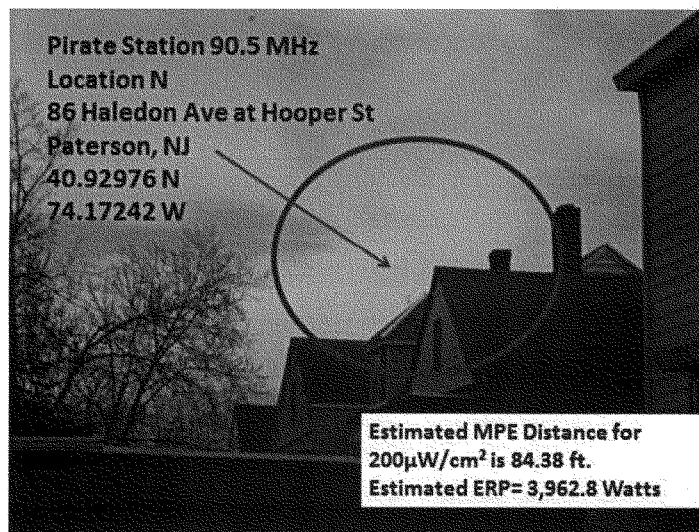
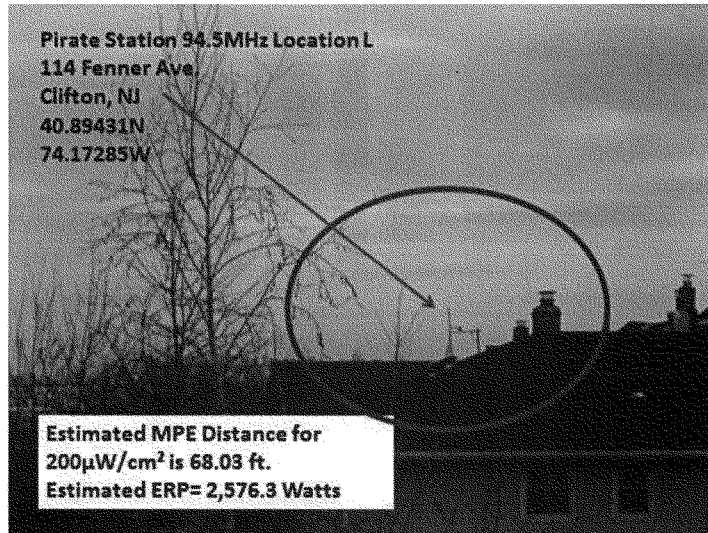
Examples of RF Radiation and Illegal Pirate Radio Stations

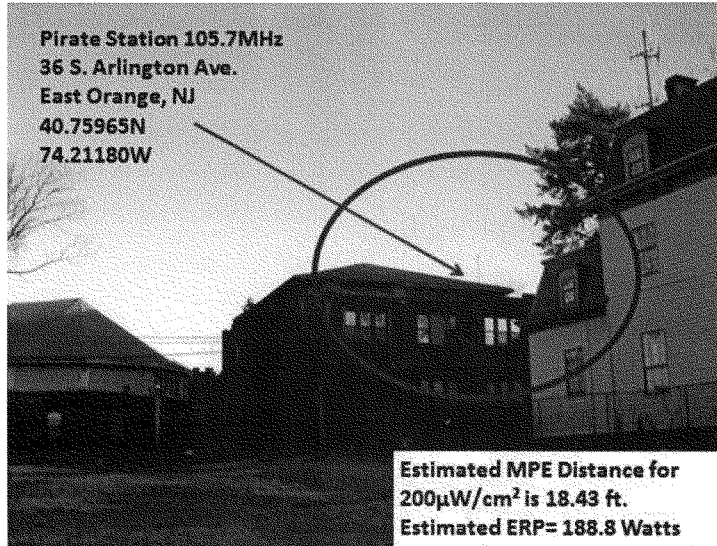
The examples in this Appendix were taken from an engineering analysis conducted by Meintel, Sgrignoli & Wallace, *Field Measurements of Unauthorized FM Band Radio Signals in New York NY Metropolitan Area*; Phase Four, May 19, 2016.

The complete engineering analysis may be accessed at

<http://nysbroadcasters.org/wp-content/uploads/2018/03/Pirates-MSW-2016-study-final-pdf.pdf>







Mrs. BLACKBURN. The gentleman yields back.
Mr. Gessner, 5 minutes.

STATEMENT OF ROBERT GESSNER

Mr. GESSNER. Good morning.

Chairman Blackburn, Ranking Member Doyle, members of the subcommittee, my name is Robert Gessner.

I am president of Massillon Cable TV, a small family-owned broadband and cable company serving 50,000 customers in five Ohio counties. Mostly, really nervous, as this is my first time testifying in any sort of venue.

I also currently serve as chairman of the American Cable Association, which represents more than 700 small and mid-size companies, a mixture of municipalities, telephone companies, electric companies, rural co-ops, as well as cable TV operators.

The majority of ACA members have fewer than 1,000 customers, fewer than 10 employees, and almost none have an attorney on staff.

Despite our small size, we make large investments in our networks to provide critical connectivity to the communities we serve—typically, rural communities.

And I thank you for inviting me to testify about H.R. 3787, the Small Entity Regulatory Relief Opportunity Act, or SERRO.

SERRO is a narrowly tailored bipartisan bill whose purpose is to streamline the process by which deserving small communications entities may request—and I stress that word request, regulatory relief.

Many regulations at the FCC are one-size-fits-all. Because of our limited size, small entities often are not the source of the specific harms that the FCC is targeting. Now, in theory, the FCC waiver process gives small entities an opportunity to show good cause for an exemption or a delay in the application of a one-size-fits-all rule.

But, in practice, deserving small entities often are deterred from seeking relief because of the administrative costs and the uncertainty of the waiver process.

To give you just one example, in 2010, my company, which had recently converted to an all-digital platform, went to considerable expense to petition the FCC for a waiver of certain analog-based technical performance testing requirements.

It was not until last September, more than 7 years after we filed our waiver request, that the FCC finally addressed our concerns.

Now, the goal of SERRO is to ensure that the FCC is more attentive to small entities' well-founded need for exceptions to or relief from one-size-fits-all rules and it accomplishes that in three provisions.

First, SERRO directs the FCC to adopt streamlined provisions to reduce the administrative burdens faced by small entities that file waiver petitions and to expedite the resolution of those petitions.

Second, SERRO clarifies that Congress intends for the FCC, as part of its mandated triennial review process to consider the impact of its rules on any and all small entities within its jurisdiction.

SERRO further instructs the FCC to modify or repeal the application of particular regulations to small entities where the commission determines there is good cause to do so.

And third, SERRO establishes an automatic referral period of at least 1 year in the application of most new regulations to small entities, subject to exceptions for rules that address public safety concerns or that reduce waste, fraud, and abuse.

If SERRO had been in place in 2010, my company would not have been subjected to 7 years of regulatory uncertainty, waiting for the FCC to act on our petition. In fact, we might not have needed to go to the expense of filing the petition in the first place.

I want to stress that SERRO is focused only on the procedures by which small entities can request regulatory relief. That's the O in SERRO—an opportunity. Nothing in the bill would change the substantive legal standard for obtaining that relief.

And I also want to emphasize that while I am here representing the American Cable Association, SERRO is not a cable-only bill. SERRO will apply to and has the support of small entities in every sector of the communications industry, as evidenced by this letter that was sent to Chairman Walden.

Now, in conclusion, I do want to express my thanks to Representatives Latta and the absent Mr. Schrader to move SERRO forward.

As Representative Latta stated in this introduction, while small businesses are the engines of the economy, generating two out of three new jobs, they also are the most susceptible to burdensome regulations that harm their ability to grow, expand, and hire new employees.

ACA looks forward to working with you on this sensible and important piece of bipartisan procedural regulatory relief legislation and be happy to answer any questions.

Thank you.

[The prepared statement of Mr. Gessner follows:]

March 22, 2018

**One Page Summary of Written Statement of Robert Gessner
President, Massillon Cable TV, Inc. and
Chairman, American Cable Association
Before the Subcommittee on Communications and Technology
“Legislative Hearing on Four Communications Bills”**

The American Cable Association (ACA) is pleased to join with other organizations representing small communications service providers to support H.R. 3787, the Small Entity Regulatory Relief Opportunity Act (SERRO), a narrowly-tailored, bi-partisan bill whose purpose is to streamline the process by which deserving small communications entities request regulatory relief.

As Rep. Latta stated in introducing SERRO, while “small businesses are the engines of our economy – creating two out of three new jobs,” they also are “the most susceptible to burdensome regulations that harm their ability to grow, expand and hire new employees.” Many FCC regulations take a one-size fits all approach and rely on a case-by-case waiver approach to give small entities the opportunity to show that there is good cause for targeted regulatory relief (typically in the form of an exemption from the rule or a delay in its effective date). However, in practice, deserving small entities often are deterred from seeking such relief because of the administrative costs involved in pursuing a waiver, and because there is no guarantee the FCC will act on a waiver request in a timely fashion.

SERRO does not change the substantive standard for requesting relief from one-size fits all rules. Rather, it ensures that the FCC will be more attentive to the impact of its rules on small entities by focusing on the procedural obstacles that impede small entities from requesting the relief to which they are entitled. It accomplishes that objective through three provisions:

First, SERRO directs the FCC to adopt streamlined procedures to reduce the administrative burdens faced by small entities that file waiver petitions and to expedite the resolution of those petitions.

Second, SERRO clarifies that Congress intends for the FCC, as part of its mandated “triennial review” process, to consider the impact of its rules on any and all small entities within its jurisdiction and to modify or repeal the application of particular regulations to some or all small entities where the Commission determines there is good cause to do so.

Third, SERRO establishes an automatic deferral period of at least one year in the application of most new regulations to small entities. subject to exceptions for rules that address public safety concerns or that reduce waste, fraud, and abuse.

These provisions will help reduce the cost of regulatory compliance and allow small entities to better meet the unserved and underserved needs of millions of customers in thousands of small communities throughout the country.



**Written Statement of Robert Gessner
President, Massillon Cable TV, Inc.
Chairman, American Cable Association**

**Before the House Energy and Commerce Committee
Subcommittee on Communications and Technology**

“Legislative Hearing on Four Communications Bills”

March 22, 2018

Chairman Blackburn, Ranking Member Doyle, and Members of the Subcommittee, my name is Robert Gessner and I am President of Massillon Cable TV, Inc., a small Ohio-based company that provides a full complement of advanced broadband products, including high-speed Internet, digital television, and residential and enterprise phone, to 50,000 homes and businesses in Stark, Wayne, Summit, Holmes, and Tuscarawas counties. I also currently serve as the Chairman of the American Cable Association (“ACA”). I appreciate the opportunity to appear before you today in that capacity to discuss H.R. 3787, the Small Entity Regulatory Relief Opportunity Act (“SERRO”). As I will describe, SERRO is a narrowly-tailored, bi-partisan bill introduced by Representatives Latta and Schrader that, if enacted, will greatly reduce the burdens and uncertainty currently faced by small companies seeking regulatory relief from the FCC.

I. The Role Played By Small Entities in the Communications Marketplace

ACA, which celebrates its 25th anniversary this year, represents over 700 small and medium sized broadband and video service providers. These companies, which include not only traditional cable operators but also traditional telephone companies, municipally owned systems,

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and rural electric co-ops, pass over 18 million homes mostly in rural areas and small cities and provide a wide range of services, including high-speed Internet, television, phone and dedicated fiber-optic connections to more than 7 million subscribers. Like my company, which was founded by my parents more than 50 years ago, a great many of ACA's members are privately-owned, family-run entities: true "mom and pop" operations. Eighty percent of these companies serve fewer than 5,000 subscribers and around half serve fewer than 1,000 subscribers and have ten or fewer employees.

While ACA's members are substantially smaller than the national communications service providers that dominate the marketplace, they are technically sophisticated and play a critically important role in the American economy. Over the past five years, ACA's members have invested more than \$10 billion to upgrade and expand their networks. These investments are helping to close the digital divide by providing competition in areas served by larger providers and by bringing advanced telecommunications services to areas – particularly rural areas – that the larger service providers have passed by. As ACA President and CEO Matthew Polka testified before this Subcommittee earlier this year, ACA members have invested private funds to extend their facilities to more than 840,000 homes that the Federal Communications Commission would consider to be high-cost areas eligible for federal universal service support.

ACA's members generally believe that consumers and competition benefit most when regulation is kept to a minimum. While there are instances where regulatory intervention is necessary to address specific harms, small entities frequently are not the source of the harm that the regulation is intended to address. Thus, it is important that the FCC be thoughtful in applying its rules to small entities. Furthermore, it is equally important that the FCC monitor its rules over time and take prompt action to modify or repeal rules when it becomes apparent that

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they are not serving their intended purpose or are imposing disproportionate burdens on small entities. If the Commission is inattentive to the impact of its rules on small entities, and is not responsive to well-founded requests for regulatory relief, the resulting burdens will inevitably harm the public by making it more difficult for small entities to invest in their systems and deploy innovative new services.

I should emphasize that while I am here representing ACA, the indiscriminate imposition of regulatory burdens on small entities is not just a “cable company” issue. Small entities can be found in virtually every segment of the communications industry. These small entities, which provide vital services to millions of consumers, likewise are vulnerable to one-size fits all regulation and face the same kinds of obstacles as ACA’s members when they seek regulatory relief from the FCC. Thus, the procedural benefits that SERRO would provide ACA’s members also would be shared by small entities throughout the communications industry.

II. SERRO

As indicated, SERRO is a modest, bi-partisan piece of legislation that will provide significant benefits to the many small entities that make up an important part of the communications landscape for thousands of communities and millions of customers. Those procedural benefits, as reflected in the title of the legislation, come from an increase in the “opportunity” for small entities to request relief from unnecessary or unduly costly regulatory burdens.

Among the forms of regulatory relief that would most benefit small entities are exemptions from one-size fits all rules or a delay in the implementation of a new rule as applied to small entities. Today, the principal means by which regulated entities, large and small, obtain such relief is by obtaining a waiver of a particular rule from the Commission. But because the

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procedural and substantive requirements for obtaining a waiver are the same for all entities regardless of size, small entities often are deterred from seeking relief to which they would otherwise be entitled by the costs associated with the waiver process. Moreover, while the Commission is required by Congress to conduct biennial and triennial reviews of certain of its rules, there is disagreement about the scope of the Commission's duties under those provisions and the extent to which the Commission is required to take action to provide regulatory relief to small entities.

Thus, even if a small entity believes there is good cause for the FCC to exempt it from a particular regulatory obligation or to delay the application of that obligation, it still faces a hard decision as to whether it can justify the cost of pursuing such relief. Those costs typically start with an analysis by legal counsel of the Commission's rules and decisions to determine the likelihood of obtaining relief and the required evidentiary showing required to support the requested relief. A small entity considering whether to move forward with a waiver petition also must be prepared to bear the significant legal costs that typically are incurred in drafting and filing the petition and in preparing the affidavits and exhibits that frequently are needed to support the petition. The Commission's filing fees vary from one type of regulated service to another and can add hundreds, or even thousands of dollars to the initial costs of applying for a waiver. Because most small entities do not have in-house counsel and have little or no budget for unplanned legal expenses, the absence of a sufficiently large subscriber base over which to spread such costs can put the option of seeking regulatory relief out of reach.

Furthermore, assuming that a small entity is able to overcome the initial cost hurdles associated with the waiver process, a decision still must be made as to whether incurring these costs is worthwhile given that there is no guarantee that the petition will be acted on in a timely

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fashion, if at all, and that additional legal costs may have to be incurred in order to see the process through to conclusion. As a general matter, there is no designated timetable for the Commission to act on a waiver request. Typically, after receiving a waiver petition, the Commission issues a Public Notice acknowledging receipt of the petition, assigning it a file number and establishing deadlines for interested parties to submit comments in support or opposition to the petition. How long it takes the FCC to issue the Public Notice and how long the comment periods run can and do vary widely. Sometimes the Public Notice appears within a week or two of the filing of the waiver petition; other times, it could be months before the Commission starts the process. Similarly, the comment periods usually run around six weeks, but are subject to extension and can run substantially longer. And a petitioner could face significant additional legal costs if it becomes necessary to file reply comments or to meet with Commission staff to discuss the petition. Most importantly, after incurring these costs, there is no guarantee when or if a decision will be issued by the Commission granting or denying the waiver petition.

As you can imagine, this process can be daunting for small entities with limited resources and a limited customer base. I can speak from personal experience as to how frustrating it can be. In 2009, we converted our systems to an all-digital platform. After doing so, it dawned on us that the FCC's "proof-of-performance" testing rules only worked with analog systems. Not knowing what we were supposed to do, we hired counsel and filed a petition asking the Commission to waive our obligation to comply with the now outmoded proof-of-performance rules. A half dozen other small entities filed similar waiver petitions between 2009 and 2012. But it was not until this past September – over seven years after we filed our petition – that the FCC finally got around to addressing these petitions and the issue raised therein. Being unable

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to both comply with the rules and get the FCC to act on our waiver petition for this long is not a position that any company, let alone a small entity, should be put in.

SERRO recognizes that small entities should not have to confront such obstacles when they seek regulatory relief to which they would otherwise be entitled. The legislation does not change the substantive standard for judging waiver requests. However, it enhances the opportunity for small entities to request waivers by requiring the FCC to establish streamlined procedures governing the filing, consideration and resolution of waiver petitions filed by or on behalf of small entities seeking targeted small entity relief from Commission rules. Moreover, SERRO does not dictate precisely what streamlined procedures the Commission is to adopt. Rather, it identifies certain objectives those streamlined procedures should meet, namely expediting the consideration and resolution of small entity waiver petitions and reducing the costs and administrative burdens associated with filing such petitions. These are reasonable objectives that the FCC has occasionally met on a case-by-case basis by shortening comment periods, allowing petitioners to support their waiver requests with simple certifications rather than extensive documentation, and deeming petition requests to be automatically granted if not affirmatively denied by a date certain. SERRO will remove the uncertainty that accompanies the current case-by-case approach to streamlining.

Even with streamlined procedures, relying on waiver requests may not always be the most certain and efficient way to ensure that the Commission's rules do not impose unnecessary or unwarranted obligations on small entities. Therefore, SERRO also would clarify the purpose and scope of the Commission's "triennial review" of its regulations under Section 257 of the Communications Act. That process requires the Commission to report to Congress every three years on the regulations it has prescribed to eliminate "market entry barriers for entrepreneurs

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and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services,” as well as any such statutory barriers that the Commission recommends be eliminated.

Members of the Commission have differed in their interpretation of Section 257. Some read the provision as directing the Commission to focus solely on those regulations applicable to the telecommunications and information service sectors of the communications industry and only to report its findings to Congress. On the other hand, other members of the Commission have taken a more expansive view of the provision’s intent and the range of regulations (and regulated entities) covered. Recognizing that there is no reason to limit the triennial review to the rules applicable to entrepreneurs and small businesses in certain sectors of the communications industry to the exclusion of other sectors, SERRO wisely clarifies that the triennial review conducted pursuant to Section 257 should consider the impact of Commission rules on any and all small entities within the agency’s jurisdiction. Moreover, as amended by SERRO, Section 257 requires the Commission not only to report its findings to Congress, but also to repeal or modify particular regulations impacting small entities where the Commission determines good cause exists to do so.

Finally, the bill proposes to establish an automatic deferral period of no less than a year in the application of most new rules to small entities (with exceptions for rules that implicate public safety or reduce waste, fraud, and abuse). Deferring the effective date of certain rules can be beneficial for small entities in several ways.

In the case of rules that require small entities to acquire and install new equipment, it often is difficult for small entities to meet a one-size fits all compliance deadline. Manufacturers

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typically fill orders for new equipment for their largest customers ahead of orders placed by small entities. In addition, in some instances, the equipment needed to comply with the requirements of a new FCC rule initially is designed and manufactured to meet the specifications of large service providers' facilities, and only later is modified to be compatible with the facilities of smaller entities. The deferred application of equipment mandates thus can help ensure that there is a sufficient supply of compatible equipment available for small entities. Delaying an equipment mandate's effective date also can hold down compliance expenses for small entities since the initial cost of developing or bringing the equipment to market often is absorbed by the larger companies that purchase in volume.

Deferring the effective date of a rule also allows small entities to save money by drawing on the experience of larger entities with earlier compliance deadlines. For instance, resource-strapped small entities can reduce the cost of implementing notice and similar requirements by reviewing and adopting (with such modifications as might be warranted by the small entity's particular circumstances) the best practices developed by the larger companies and their teams of lawyers and engineers. Deferral also reduces the risk that a small operator will go to the expense of developing a compliance program only to find that the FCC has clarified or otherwise altered the underlying obligation during the first year following its adoption.

In conclusion, ACA is particularly appreciative of the efforts undertaken by Representatives Latta and Schrader to move SERRO forward. SERRO not only has the strong support of ACA, but also of a wide array of other communications industry groups, including the Competitive Carriers Association, the Fiber Broadband Association, INCOMPAS, ITTA, the LPTV Spectrum Rights Coalition, NRECA-America's Electric Cooperatives, NTCA-The Rural Broadband Association, the Rural Wireless Association, the Wireless Internet Service Providers

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Association, and WTA-Advocates for Rural Broadband. As Rep. Latta stated in introducing SERRO, while “small businesses are the engines of our economy – creating two out of three new jobs,” they also are “the most susceptible to burdensome regulations that harm their ability to grow, expand and hire new employees.” On behalf of ACA, I urge you to advance this sensible and important piece of bi-partisan legislation.

Mrs. BLACKBURN. The gentleman yields back.
Mr. Madigan, 5 minutes.

STATEMENT OF JOHN H. MADIGAN, JR.

Mr. MADIGAN. Madam Chairman and Ranking Member Doyle, thank you very much for inviting the American Foundation for Suicide Prevention to testify this morning.

My name is John Madigan. I have the honor and privilege of being the association's chief public policy officer. We are a nonprofit health agency about 30 years old and we are organized in all 50 States, and I believe my team has provided all members of the subcommittee with fact sheets that illustrate the suicide issue in your particular State.

I am also here to testify about H.R. 2345, the National Suicide Prevention Hotline Improvement Act of 2017. We want to thank, obviously, Representative Chris Stewart from Utah and Representative Eddie Bernice Johnson from Texas for her leadership on this important issue, and the other cosponsors in the House, which is somewhere around seven cosponsors.

Let me speak frankly. Suicide is now the tenth leading cause of death in our country for adults age 18 to 64. For every one suicide, there are 25 suicide attempts.

The annual age-adjusted suicide rate is 13.42 per 100,000 individuals. After adjusting for differences in age and sex, risk for suicide is 19 percent higher for male veterans than for U.S. non-veteran male adults.

Risk is 2.5 times higher among female veterans when compared to U.S. non-veteran women. Men die by suicide three and a half times more than women and white males account for seven out of 10 deaths in 2016.

Suicide is often the result of unrecognized and untreated mental illness. Get this. One in four Americans have a diagnosable mental illness but only one in five are seeking professional help for this condition.

Suicide tends to be the highest when multiple risk factors or precipitating events occur in an individual with mental illness.

Despite public perception, most people with mental illness do not die by suicide. Mental illnesses such as depression, bipolar disorder, alcohol and drug dependence, post-traumatic stress, and traumatic brain injury may create the underlying risk that, when combined with life stressors such as transition from military life, job loss, relationship, financial, or legal problems increase risk.

There's good news. There's a grass roots movement that's now being formed, like it has for many other disease groups.

Our movement is being catalyzed by both survivors of suicide loss—I lost my younger sister, Nancy, 21 years ago when she was 37—and also the emerging voices of those that have what we call the lived experience—those people who have survived their own suicide attempts.

So as I said earlier, I am here today to talk about why H.R. 2345 could be a game changer for our national public safety net. It was discussed by Chairman Pallone. Essentially, the FCC is going to look into the possibility of converting the 1-800-273-TALK number into an easy-to-remember three-digit number like 9-1-1.

It will require SAMHSA to study the effectiveness of the current system and also to assess how veterans are being helped in this system.

Finally, the study will provide cost estimates and resource needs for increasing Federal support for phone hotline, chat, and text.

To hear some important facts, a national easy-to-remember single point of access free, anonymous, and toll-free for all American residents is necessary to provide a health safety net for all persons in the United States.

The experience of SAMHSA's national suicide prevention lifeline indicates that a national hotline number has been essential in addressing this public health crisis.

Since 2005, the lifeline has served more than 11 million callers. In 2017, the national network answered 2 million calls. According to independent evaluators of the service, 75 percent are non-suicidal and 25 percent are suicidal.

So the bottom line, in closing, is that this legislation is critically important. When my 25-year-old daughter texted me this morning and asked me, "Daddy, why are you testifying before the Communications and Technology Subcommittee?" I said, "Preventing suicide is all about communication, and in the 21st century it's all about technology."

So I will be glad to answer any questions you have.

[The prepared statement of Mr. Madigan follows:]



**AMERICAN FOUNDATION FOR
Suicide Prevention**

Statement

Of

John H. Madigan, Jr.

**Vice President and Chief Public Policy Officer
American Foundation for Suicide Prevention**

submitted to

**House Energy and Commerce Subcommittee on
Communications and Technology**

Regarding H.R. 2345

The National Suicide Prevention Hotline

Improvement Act of 2017

March 22, 2018

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Chairman Blackburn, Ranking Member Doyle, and members of the Committee, thank you for inviting the American Foundation for Suicide Prevention (AFSP) to testify today on H.R. 2345, “The National Suicide Prevention Hotline Improvement Act of 2017.” I am John Madigan and I am AFSP’s Chief Public Policy Officer. Many thanks to Representatives Chris Stewart (R-UT) and Eddie Bernice Johnson (D-TX) for their leadership on this important legislation.

I became the VP and Chief Public Policy Officer for the American Foundation for Suicide Prevention in the fall in December of 2009. In the last decade, I have met with and interacted with experts in suicide prevention research, leaders within federal, state and local governments, Veterans and their families, those who have lost a loved one to suicide, and those who have survived their own suicide attempt. In my 32-year-career prior to AFSP I have directed advocacy or fundraising activities for the American Cancer Society, The Alzheimer’s Association, The Make-A-Wish Foundation and Students in Free Enterprise. I have also worked on the staff of former U.S. Senator Birch Bayh of Indiana, a White House Commission on Alcohol Fuels under President Jimmy Carter and with quasi-nonprofit that worked to help Veterans who desired to become entrepreneurs.

I am a public health advocate who has experienced the mental health crisis with family members, my own sister Nancy completed suicide in 1997. I have family, friends and colleagues who have lost sons and daughters, fathers and mothers, sisters and brothers and those who have struggled with mental health and substance/alcohol use disorders. I know my work on cancer control, with Alzheimer’s patients and their families and with Veterans living with PTS and other life issues, has prepared me for my current work in mental health and suicide prevention.

I like my colleague, AFSP's outstanding Medical Director, Dr. Christine Moutier, who could not be here with us today because of weather issues, believe that many effective suicide prevention efforts not only save lives, but reach individuals where they are along the continuum of human experience. AFSP strongly believes that suicide prevention initiatives may have the added benefit of increasing coping skills, elevating mental health and fostering personal resilience for all Americans.

The American Foundation for Suicide Prevention (AFSP)

Established in 1987, AFSP is a voluntary health organization, with 82 Chapters in all 50 states. AFSP gives those affected by suicide a nationwide community empowered by research, education and advocacy, to take action against this leading cause of death.

AFSP is dedicated to saving lives and bringing hope to those affected by suicide. AFSP creates a culture that's smart about mental health by engaging in the following core strategies:

- Funding scientific research,
- Educating the public about mental health and suicide prevention,
- Advocating for public policies in mental health and suicide prevention,
- Supporting survivors of suicide loss and those affected by suicide in our mission.

Scope of the Problem of Suicide

My message today about suicide is hopeful and actionable. It is worth emphasizing the scope of suicide's impact on the US population: in recent years suicide has taken more lives than war,

murder, and natural disasters combined. The suicide rate in the U.S. continues to climb, with the most recent CDC data revealing 44,965 in 2016, and occupational loss and direct healthcare costs estimated to be more than \$69 billion annually. Suicide is one of the leading, yet largely preventable causes of death in our country.

Here are some facts:

- Suicide is now the 10th leading cause of death in adults age 18-64,
- For every 1 suicide, there are 25 suicide attempts,
- The annual age-adjusted suicide rate is 13.42 per 100,000 individuals,
- After adjusting for differences in age and sex, risk for suicide is 19% higher for male Veterans, than U.S. non-Veteran male adults,
- Risk for suicide is 2.5 times higher among female Veterans, when compared to U.S. non-Veteran women,
- Men die by suicide 3.53 x more than women,
- White males accounted for 7 of 10 deaths in 2016.

Our AFSP Public Policy Team has provided each member of the Subcommittee with a copy of “Suicide Facts” specific to your home state.

Causes of Suicide

Suicide is often the result of unrecognized and untreated mental illness. In more than 120 studies of series of completed suicides, at least 90% of the individuals involved were suffering from a mental illness at the time of their deaths. 1 in 4 Americans have a diagnosable mental illness, but only 1 in 5 of them are seeking professional help for that condition. As a country we have a lot of

work to do in improving mental health literacy. We can elevate the general lay understanding of how mental health problems are experienced or look like in a loved one or co-worker and destigmatize “help-seeking” when family, friends or co-workers detect a change in their own or their loved one’s mental health. Just like we would be proactive about any other aspect of our health like heart-disease, cancer, Alzheimer’s and diabetes.

Suicide risk tends to be highest when multiple risk factors or precipitating events occur in an individual with a mental illness. Despite public perceptions, most people with mental illness, thankfully, do not die by suicide. Mental illnesses such as depression, bipolar disorder and alcohol and drug dependence, Post-Traumatic Stress (PTS) and Traumatic Brain Injury (TBI) may create the underlying risk that when combined with life stressors such as transition from military life, job loss, relationship issues and financial or legal problems increase suicide risk. Additional stressors include social isolation, biological factors like aggression and impulsivity, childhood abuse, a history of past suicide attempts, serious medical problems, and a family history of suicide.

The most important interventions we can start with are recognizing and effectively treating mental illness and related disorders. On a population level, we can implement more upstream approaches such as shoring up community, mentorship and peer support, teaching students how to problem solve and process stress, make access to mental health care available without stigma, train frontline citizens like teachers, first responders, and clinicians to recognize mental illness, and limit access to lethal means.

The good news is that suicide is preventable. Thanks to a grassroots movement, catalyzed by both suicide loss survivors and the emerging voice of those with “Lived Experience” their own suicide attempts, the fight against suicide is nearing a tipping point. To answer this call to action, AFSP has evolved a three-point strategy that covers Research, Prevention, and Support, and if we push now, we hope to reduce the annual suicide rate 20% by 2025.

Key Policy Areas for Addressing Suicide

AFSP believes our country needs to focus on three key policy areas to prevent suicide that include:

- Increased suicide prevention research;
- Sustaining suicide prevention programs along with increased access to Mental Health Services; and,
- Expanding programs and strategies that provide more support to those touched by suicide.

I am here today to talk about why H.R. 2345 could be a game-changer for our national public policy safety net.

A vote for H.R. 2345, as proposed by Representatives Chris Stewart and Eddie Bernice Johnson, will (1) require the FCC and our federal suicide prevention authorities to fully understand how a three-digit code (such as 411 or 611) will enable rapid access to life-saving assistance for persons in emotional and suicidal crisis. This change can also divert many individuals in crisis from the unnecessary use of precious 911 emergency services, (2) This legislation will require a

study of the effectiveness of the current National Suicide Prevention Lifeline (1-800-273-TALK), and (3) access how well the current system addresses the needs of veterans. The system study would benefit from exploring how the current system is addressing the needs of Alaskan Natives and American Indians, along with our LGBTQ youth. Finally, (4) the study will provide cost estimates and resource needs for increasing federal support for phone hotline, chat and text.

Here are some important facts –

- A national, easy to remember, single point of access—free, anonymous and toll-free for all American residents—is necessary to provide a public health safety net for all persons in the United States experiencing emotional distress and/or suicidal crisis. With approximately 2/3 of persons with diagnosable mental health problems not currently accessing mental health providers, suicide rates and deaths related to substance misuse (including opioids) are on the rise, it is essential that we provide immediate access to help for people in crisis when, where and how they need it.
- The experience of the SAMHSA’s National Suicide Prevention Lifeline (800-273-8255) indicates that a national hotline number has been essential for addressing this public health crisis. Lifeline call volume has increased significantly every year since its launch in 2005, serving more than 11 million callers. In 2017, the Lifeline’s national network of 160 local crisis centers answered over 2 million calls. According to independent evaluators of the service, approximately 25% of these callers present with suicidal crises, with the remaining 75% reporting a non-suicidal, mental health or substance related problem (Gould et al, 2012). Because the VA also utilizes the Lifeline number as a single point of access to provide a special VA-funded service for U.S. veterans and members of

military since 2007, the Lifeline network and the Veterans Crisis Line together have assisted millions of veterans and service members in crisis. Approximately 1 of 3 callers to the Lifeline presses 1 for this special service for veterans and members of military service.

- This national point of access works in reducing emotional distress and suicidality. SAMHSA-funded evaluations of Lifeline crisis center work have consistently demonstrated that the service is reducing emotional distress and suicidality for persons engaging the service.
- In a study of 1085 suicidal caller evaluated at beginning and end of call—and then 3 weeks later—significant reductions in suicidality, psychic pain and hopelessness by end of call and 3 weeks later. Upon follow-up, 12% of suicidal callers spontaneously offered that the call prevented him/her from killing or harming self. (Gould et al, 2007)
- In another study of 1617 non-suicidal crisis callers evaluated at beginning and end of call—and three weeks later. Significant reductions in confusion, anger, anxiety, helplessness and hopelessness by end of the call, and more so 3 weeks later. (Kalafat et al, 2007)
- With more than 12 million persons in the U.S. having suicidal thoughts annually, providing a more ready AND EASY access to this effective, lifesaving service could be beneficial. Lifeline Services are currently serving about half-a-million suicidal callers (25% of 2m callers).
- As more people access the single number for mental health and suicidal crises, the need to enhance infrastructure capacity becomes essential. As the Lifeline call volume has grown 60% in the past year alone, capacity has become strained. While about 85% of

callers are being answered in about 30 seconds, more than 1 in 10 callers are averaging waits of over 2 minutes as they roll over to national back-up centers. This is because local centers are under-funded and under-resourced to manage the growing number of calls.

- It is anticipated that a separate 3-digit number for mental health/suicidal crises will significantly reduce burdens on the 911 system, reducing unnecessary use of emergency services nationally. Lifeline standards, trainings and practices of its national network of local call centers is designed to effectively de-escalate persons in suicidal crises, reduce risk for callers in crisis and ensure that they receive the most appropriate, least invasive care that supports their health, safety and well-being. SAMHSA-funded evaluations indicate that Lifeline member centers are effectively de-escalating persons in suicidal crisis whom might otherwise be diverted to emergency services.
- Of Lifeline's highest-risk callers (e.g., assessed to be at "imminent risk"), 40% are effectively de-escalated without utilizing emergency services. In 36% of cases, imminent risk callers agree to the use of emergency services (collaborating with counselor to promote their safety), and about 24% of imminent risk callers receive emergency services, because they are unwilling and unable to collaborate with the counselor to prevent their suicide (Gould et al 2016).
- Many 911 centers report a high volume of non-suicidal callers with mental health issues that would more effectively and efficiently be assisted on a mental health hotline.

Suicide touches so many lives. And now, as more and more people speak out, we have reached the tipping point for action. Ten years ago, we had only a handful of people banding together. Today we have a movement that rallies over 250,000 people who participate in over 400 AFSP

Community Out of the Darkness Walks and 150 AFSP College Campus Walks. This coming April 21st, AFSP along with many other national suicide prevention and mental health organizations are sponsoring a first-ever Rally on the West Front of the U.S. Capitol Building from 5:30 pm – 6:30 pm. We hope that many of you and your staff teams can join us for this important call to action.

It's time to answer that grassroots call for action. It's time to wage war on suicide, like the war on cancer and Alzheimer's, and put a stop to this tragic loss of life. The first line of defense can be a robust, 24-7, crisis support services for all Americans, in all fifty-states, the District of Columbia and all US territories, accessible by phone hotline, chat and text.

H.R. 2345, the National Suicide Prevention Hotline Improvement Act of 2017 is first step in the right direction.

Chairman Blackburn and Ranking Member Doyle, the American Foundation for Suicide Prevention thanks you again for the opportunity to provide testimony today and looks forward to working with you, other members of the Congress, the Administration, and all mental health and suicide prevention organizations inside and outside of government to prevent suicide.

I will be happy to answer any questions you have today, and or follow up with you and your staff with any additional information. Thank you.

Mrs. BLACKBURN. We thank the gentleman.
 Ms. Morris, you're recognized for 5 minutes.

STATEMENT OF SARAH MORRIS

Ms. MORRIS. Thank you, Chairman Blackburn, Ranking Member Doyle, and subcommittee members for the opportunity to testify today at this legislative hearing on four communications bills.

My name is Sarah Morris and I represent New America's Open Technology Institute, or OTI, where I am the director of open internet policy.

New America is a nonpartisan nonprofit civic enterprise dedicated to the renewal of American politics, prosperity, and purpose in the digital age.

OTI is a program within New America that works at the intersection of technology and policy to ensure that every community has equitable access to digital technology and its benefits.

OTI promotes universal access to communications technologies that are both open and secure, using a multi-disciplinary approach that brings together advocates, researchers, organizers, and innovators.

Our primary focus areas include net neutrality, broadband access and adoption, surveillance and security, and consumer privacy.

My testimony will focus on concerns related to one of the four bills under consideration today: H.R. 3787, or the Small Entity Regulatory Relief Act, which I will refer to as SERRO.

OTI's concerns are fourfold. First, it is not clear that an immediate problems exists that this bill would effectively solve.

Indeed, against the backdrop of the current heavily deregulated landscape, the proposed bill seems particularly unnecessary.

Second, to the extent that a need for waivers from or exemptions to certain regulations exist, numerous processes for securing them also already exist at the Federal Communications Commission.

Third, the definition of small entities in the bill is unclear. Finally, the proposed triennial review process reforms would create a high degree of confusion and uncertainty at the commission.

I've submitted a detailed written testimony to the subcommittee already and I will use my time here to briefly explain each of those four concerns.

Regulations of general applicability are the standard in Federal regulatory policy making, and for a good reason. The point of consumer protection laws, from telecommunications to food service to health care, is to protect all consumers from harmful practices, not just consumers of the biggest entities.

All consumers are entitled to the protections of Federal telecommunications laws. There may be instances where waivers from certain regulations under the Communication Act are appropriate. As I will discuss shortly, there are mechanisms for addressing the need for specific waivers.

However, neither Mr. Gessner nor the bill's cosponsors have demonstrated widespread and significant harms that would be most effectively remedied by the reforms proposed in SERRO.

It is unclear why the triple play proposed in the bill, an expedited waiver application process, a near blanket exemption from all future regulations for a period of 1 year and an expanded triennial

review of the applicability of all regulations to small entities as necessary.

Indeed, the commission already provides numerous avenues of recourse for a small business that believes an existing or proposed regulation is unduly burdensome.

The most obvious and fundamental opportunity to discuss burdens on small businesses is to engage with the commission during the notice and comment periods that are required each time new rules are created.

In those proceedings, the commission has opportunities to hear from multiple perspectives on the parties' assertion of burdens and can appropriately weigh those burdens with the need for the regulations in question.

In addition, as the bill itself acknowledges, the commission's rules already allow the commission to waive specific requirements of the rules on its own motion or upon request.

The best approach for ensuring certainty and reducing administrative burdens is to use existing processes to identify the need for a narrow waivers when a need for such a waiver is clearly demonstrated.

This bill, however, uses an arbitrary definition of small entity that creates considerable confusion and shifts the burden of the defending the applicability of a given regulation onto consumer groups and other parties every single time a regulation is considered.

Not only is this a significant administrative cost to bear on its face, the problem is compounded by the fact that the 2 percent market share threshold will need to be defined every single time a regulation is considered.

As we have seen in antitrust analysis, this type of market share definition is entirely dependent on how a given market is defined. As telecom industries become more integrated and services evolve, defining relevant market could become even more difficult.

Finally, the modifications to the 257 triennial review requirement proposed in this bill could create significant administrative burdens for consumer groups and other parties.

As written, the amendments to 257 would allow the commission to, once the bill is enacted, re-litigate every single regulation currently on the books at the commission.

This reevaluation would require multiple proceedings to be reopened and create enormous bureaucratic strain throughout the communications part as well as uncertainty for consumers.

Each of the three proposals in SERRO raise concerns. Taken together, however, they represent a fundamental shift in burdens and advocacy before the Federal Communications Commission.

I urge the subcommittee to reject H.R. 3787.

[The prepared statement of Ms. Morris follows:]



Written Testimony of

**Sarah Morris, Open Internet Director
New America's Open Technology Institute**

Respectfully submitted to the

**House Committee on Energy and Commerce,
Subcommittee on Communications and Technology**

In advance of

Legislative Hearing on Four Communications Bills

Submitted March 20, 2018

Summary

The following testimony focuses on one bill among the four bills being considered in the Subcommittee on Communications and Technology's "Legislative Hearing on Four Communications Bills 2018." While New America's Open Technology Institute (OTI) appreciates the concerns raised implicitly in H.R. 3787 ("Small Entity Regulatory Relief Opportunity Act of 2017" or SERRO), I submit this testimony to address concerns with the necessity and scope of the proposed bill.

SERRO would take a multifaceted approach to expanding access to waivers from a variety of potential Federal Communications Commission (Commission) regulations by 1) directing the Commission to review and streamline waiver processes for "small entities"; 2) creating an automatic one-year waiver for all small entities from all Commission regulations, subject to limited exceptions; and 3) requiring a triennial review of agency actions' impact on small entities.

OTI's concerns are four-fold. First, it is not clear that an immediate problem exists that this bill would effectively solve. Indeed, under the current heavily deregulated landscape in the communications sector, the proposed bill seems particularly unnecessary. Second, numerous avenues for waivers and exemptions already exist at the Commission. Third, the definition of "small entities" in the bill is unclear. Finally, a triennial review process would create a high degree of confusion and possible legal uncertainty at the Commission.

I. Introduction

Thank you for the opportunity to testify today at this Legislative Hearing on Four Communications Bills. I represent New America's Open Technology Institute (OTI), where I am the Director of Open Internet Policy.

New America is a nonpartisan, nonprofit, civic enterprise dedicated to the renewal of American politics, prosperity, and purpose in the digital age through big ideas, technological innovation, next generation politics, and creative engagement with broad audiences.

OTI is a program at New America that works at the intersection of technology and policy to ensure that every community has equitable access to digital technology and its benefits. OTI promotes universal access to communications technologies that are both open and secure, using a multidisciplinary approach that brings together advocates, researchers, organizers, and innovators. Our primary focus areas include surveillance and security, net neutrality, broadband access and adoption, and consumer privacy.

My testimony will focus on concerns related to one of the four bills under consideration today: H.R. 3787, or the Small Entity Regulatory Relief Act of 2017 (SERRO). This testimony will: 1) query the significance of those burdens relative to the need for regulation; 2) explain that the Federal Communications Commission (Commission) already has mechanisms in place for assessing compliance burdens against the need for regulation; 3) outline specific concerns related to relying on a market percentage definition for small entities; and 4)

review the history of the media ownership quadrennial review requirement and the future it may portend for the modified triennial review process proposed in this bill.

II. The Small Entity Regulatory Relief Opportunity Act of 2017 appears to be a solution in search of a problem.

Without any legislative findings in the bill, and with a highly deregulatory landscape at the Commission as a present backdrop, it is unclear precisely what problem H.R. 3787 is seeking to address.

The point of consumer protection laws, from telecommunications to food service to healthcare, is to protect all consumers from harmful practices—not just customers of the biggest entities. All consumers are entitled to the protections of federal telecommunications laws. The Commission’s mandate under the Communications Act is:

“[...] to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications [...]”¹

Regulatory approaches that apply differently to different entities based on a definition that is premised on market share would cut against this mandate, rather than advance it.

¹ 47 U.S.C. §151.

In addition, the bill does not articulate a particular sector or sectors of entities within the Commission's purview to which it would apply.² Presumably then, any subset of sectors, from internet service providers, to cable television operators, to phone providers would be covered under the broad reach of the bill. Without comprehensive and sector-specific evidence about the relative burdens imposed by the various laws and regulatory frameworks applicable to each of these sectors, it seems impossible for Members of Congress to adequately weigh the relative burdens against the necessity or benefits of the entire world of possible regulation.

Finally, to the extent that there are yet unidentified burdens that might warrant some waivers in certain circumstances, it is unclear why an expedited waiver application process, a near-blanket waiver of all future regulations for a period of one year, and an expanded triennial review of the applicability of all regulations to small entities, would be necessary. Indeed, the current Commission has taken an unabashedly deregulatory stance on major communications issues from consumer privacy to internet openness, and the Commission (or Congress, in the case of broadband privacy) has successfully and systematically walked back several of the reforms enacted under the previous Commission.

² The bill's definition of "small entity" contemplates the provision of a subscription service, but provides little other guidance. "(2) With respect to a regulation applicable to a particular subscription service, the entity provides such subscription service to 2 percent or fewer of the consumers receiving such subscription service in the United States."

In this context, the proposals in this bill would merely gild the deregulatory lily, while upending longstanding processes at the Commission without clear analysis as to the ultimate effects on consumers.

III. The Federal Communications Commission already has effective mechanisms in place to avoid or address undue regulatory burdens.

As the section immediately above suggests, the Commission already provides numerous avenues of recourse for a small business that believes an existing or proposed regulation is unduly burdensome.

The most obvious and fundamental opportunity to discuss burdens on small businesses is to engage with the Commission during the notice-and-comment period that is statutorily required before new rules or regulations are created. At that point, the Commission has opportunities to hear from multiple perspectives on the party's assertion of burdens, and can appropriately weigh those burdens with the need for the regulations in question.

In addition, as the bill itself acknowledges, the Commission's rules already allow the Commission to "waive specific requirements of the rules on its own motion or upon request."³

Indeed, the storied history of the 2015 Open Internet Order⁴ provides a useful case study in the ways in which the above two processes may play out in practice, even under a Commission that was decidedly not "deregulatory" in its

³ 47 C.F.R. 1.925 (a), *see also* 47 C.F.R. 1.3 (general waiver rule), and 47 C.F.R. 76.7 (cable-specific waivers).

⁴ *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) (*2015 Open Internet Order*).

approach. In February 2015, the Commission approved the Open Internet Order, which included new rules that required Internet Service Providers to be more transparent with their customers. The Order included a provision that exempted small providers from complying with these transparency rules for one year. The Commission determined that this exemption was warranted based on the public feedback it received during the notice-and-comment process. The Commission released a Public Notice later that year seeking comment on whether to extend the exemption beyond one year.⁵ After considering the comments in that proceeding, the Commission extended the exemption for an additional year.⁶ In February 2017, the Commission extended the waiver once again—this time for an additional *five* years—and broadened the scope of the exemption to include larger companies with 250,000 subscribers or fewer.⁷

This case study demonstrates the relative ease with which a small entity obtained a 7-year exemption from a new regulation. The fact that this waiver was granted and extended under both Chairman Wheeler and Chairman Pai demonstrates bipartisan consensus that the concerns of small entities are a priority at the Commission. Small internet service providers were able to receive a waiver based on their participation in the underlying proceeding; that waiver

⁵ *Consumer and Governmental Affairs Bureau Seeks Comment on Small Business Exemption from Open Internet Enhanced Transparency Requirements*, GN Docket No. 14-28, Public Notice, 30 FCC Rcd 6409 (2015) (Public Notice).

⁶ *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order (Dec. 15, 2015), https://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db1215/DA-15-1425A1.pdf at 6.

⁷ *Statement of Chairman Ajit Pai On Voting to Protect Small Businesses from Needless Regulation* (Jan. 27, 2017), https://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0127/DOC-343229A1.pdf.

was ultimately extended; and the Order was more broadly repealed, essentially in total, after just two years (during which the waiver only briefly lapsed).

IV. The vague definition of “small entity” would add bureaucratic costs and uncertainty to the rulemaking process.

The bill's definition of “small entity” creates confusion and could result in exemptions being applied to entities that are much bigger than what many would consider to be a “small” business. Section (c)(2) defines small entities as a “subscription service” that “provides such subscription service to 2 percent or fewer of the consumers receiving such subscription service in the United States.” The lack of any legislative findings makes it difficult to understand what, if any, justification exists for this two-percent threshold.

Moreover, this language does not adequately define the market. The term “subscription service” is not defined, which creates significant uncertainty about which entities are covered by the bill. The Commission cannot identify an entity's market share if the market itself is not clearly defined. In absence of that clarity, the Commission would be forced to adjudicate fights over market definition for every rulemaking simply to determine which entities are covered by the bill. Based on the experience of the antitrust agencies, fights over market definition can be expensive and lengthy.⁸ Thus, the bill would add a layer of bureaucratic complexity to virtually every rulemaking at the Commission for no clear benefit.

⁸ See, e.g. Louis Kaplow, *Why (Ever) Define Markets?*, Harvard Law Review (Dec. 17, 2010), <https://harvardlawreview.org/2010/12/why-ever-define-markets/>.

V. Adding new directives to the triennial review process would add complexity and create confusion and additional burdens for the Commission and the public.

Mandatory, recurring review periods can cause significant problems for the Commission and the public. This bill would require the Commission to determine, upon review of every regulation promulgated during the triennial review period and prior to it to determine whether there is good cause to grant relief from that regulation to small entities.⁹ This more extensive inquiry under Section 257's current triennial review would cause confusion and additional burdens for the public, and could require extensive agency resources, as the Commission would likely need to engage in additional rulemakings if it determined relief for small entities from certain regulations was warranted.

The quadrennial review of the media ownership rules demonstrates how fraught these types of mandatory reviews can become.¹⁰ Originally a biennial review, which Congress changed to four-year review in 2004,¹¹ the quadrennial review requires the Commission to review every four years its local media ownership rules, such as its various cross-ownership rules and local ownership limits.¹² This review has kept the media bureau, broadcasters, and the public

⁹ H.R. 3787 Sec. 13 (5)(b)(1).

¹⁰ Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996).

¹¹ Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 100 (2004).

¹² Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996); Appropriations Act § 629, 118 Stat. at 100. See FCC Broadcast Ownership Rules, FCC <https://www.fcc.gov/consumers/guides/fccs-review-broadcast-ownership-rules>; 47 CFR §73.3555.

extremely busy since the early 2000s. Each docket has been voluminous. The Commission commissioned studies, and outside parties submitted studies, comments, and other data to support their arguments. There have been at least five court cases in the Third Circuit based on the 2002 biennial review and the 2006, 2010, and 2014 quadrennial reviews (two of which are currently held in abeyance pending further Commission action).¹³ Each case with a decision on the merits remanded some portion of the Commission's order back for further review. Some of the early proceedings are still open pending resolution of issues from the relevant court case. To expect that a similar process, except more frequent and covering every Commission rule, would be smoother is unrealistic.

VI. Conclusion

For the reasons explained above, I urge this subcommittee to vote against H.R. 3787 and to encourage small entities to take advantage of the numerous avenues currently available at the Federal Communication Commission to avoid overly burdensome regulations.

¹³ *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) ("Prometheus I"); *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011) ("Prometheus II"); *Prometheus Radio Project v. FCC*, 824 F.3d 33 (3d Cir. 2016) ("Prometheus III"); *Prometheus Radio Project v. FCC*, Dkt. 17-1107 (3d Cir. 2017) ("Prometheus IV"); *Prometheus Radio Project v. FCC*, Dkt. 18-1092 (3d Cir. 2018) ("Prometheus V"); *In re Prometheus Radio Project and Media Mobilizing Project*, Dkt. 18-1167 (3d Cir. 2018).

Mrs. BLACKBURN. The gentlelady concludes her statement.

At this time, that concludes all of our opening statements. We are going to move to questions. I do want everyone to be mindful—it looks like 12:15 to 12:30 will be the next vote series, and I want to move through as many of these questions as we can.

So, Mr. Shimkus, I will begin with you. You're recognized for 5 minutes for questions.

Mr. SHIMKUS. Madam Chair, thank you. You're very kind.

Let me—let me go to Tim, and I want to ask Mr. Gessner this question, because I've just been wrestling with it.

So we want competition. We want deployment. You're in the rural areas—very difficult. You're trying to get 5G in.

I keep hearing from my local municipalities the concern that their input as to siting for 5G—they're not going to—you know, they'll weave a story. We've got this great park. We don't want a refrigerator-sized 5G sitting in there.

So talk me through this on competition 5G and how do we make sure that the concerns of local communities are still, at least, listened to?

Because a lot of this is these regulatory burdens get it moved, right?

Mr. TIM DONOVAN. Thank you, Congressman, and you're probably also hearing from them about how they want to be one of the first smart cities and want to make sure that all of your constituents are able to connect to the latest services. So you do need to have the infrastructure to provide that.

We are working together with ways to look at it not as a zero sum gain but how can we make the application process both easier for carriers for deploying this as well as reduce the resources needed by municipalities to review.

If there's some low-hanging fruit of places that make sense to streamline the review then that also means one less application—a couple less hours that somebody who works for the municipality has to spend reviewing that application.

Mr. SHIMKUS. So, Mr. Gessner, obviously, from the rural cable perspective, there also could be, you know, debates. You have already done negotiations with local communities on right-of-ways and wires.

And talk to me about the competitive pressure or what would be the response as there is a great desire to also move 5G in the areas and the local communities have been able to—the old historic models—what, the historic model is the cable company comes in, they negotiate, there's fees, they work with the local communities.

5G could disrupt the way this paradigm has been established. But a lot of us want the competition.

So can you talk through that, from your perspective?

Mr. GESSNER. Good question. We haven't had a great deal of interaction between the 5G proponents and traditional cable companies, at least not in our size markets.

We look forward, actually, to working with the 5G operators because we know they're going to need a lot of back haul. When you have got a 5G transmitter every few hundred feet, it has to connect to something.

So companies like mine are certainly prepared to work with them through our high-capacity fiber networks to bring all of that 5G data back without having to have more repeater towers and that sort of thing.

Mr. SHIMKUS. Great. And I was going to spend time asking you to talk about some of the other challenges and problems you have. But in lieu of the time, Madam Chair and everybody else wants to ask questions. I yield back.

Mrs. BLACKBURN. The gentleman yields back.

Mr. Doyle, 5 minutes.

Mr. DOYLE. Thank you, Madam Chair.

Under the Regulatory Flexibility Act, Congress created an independent office of advocacy within the Small Business Administration, and the job of that office is to go out and advocate before Congress, the White House, and Federal agencies on behalf of small businesses in America.

The Office of Advocacy has come on against regulation that harms small businesses like the FCC's order to deregulate business data services.

Much like the FCC's rollback of business data protections, I am worried that this small entity bill would actually hurt small businesses.

I want to ask you, Ms. Morris, do you believe that H.R. 3787 could unfairly disadvantage some small businesses over others?

Ms. MORRIS. Sure. I thank you, Ranking Member, for the question.

And I certainly think that there is a high risk of harm to all types of entities, whether it's consumers, other small—and consumers can include small businesses that are purchasing broadband from an entity that would be covered by this act.

In the case of the net neutrality protections where a waiver was granted for certain parts of the rules, a more automatic and sweeping waiver in that case would have resulted in many small businesses that rely on an open internet access to be harmed by the lack of that access in certain instances.

We want all consumers to have access to the protections afforded by the commission, not just those of the largest entities.

Mr. DOYLE. So let me ask you, under this bill, the threshold for expedited small business relief is set at 2 percent or fewer of the consumers receiving such subscription service in the United States. It seems like a vague standard but also a rather overly inclusive one as well.

In the video market, for example, 2 percent of the market would be over 1.6 million customers, and when you look at a couple of companies that fall into that range, they have annual revenues of over \$1.5 billion.

That doesn't seem like a small business to me. Does that seem small to you? And what effect would exempting these companies from the FCC's rules have on consumers?

Ms. MORRIS. We certainly agree that the definition is both unclear and potentially much too large and as you point out, Ranking Member Doyle, this—implementation of this bill has the potential to remove protections for millions of Americans across the coun-

try—protections that the FCC would have otherwise be deemed necessary in a thorough rulemaking process.

Mr. DOYLE. Yes. I think more to the point, the FCC interacts with a wide range of small businesses from radio and TV stations, voice video, data providers, device manufacturers, wireless licensees, and many of the FCC's rules that these businesses comply with are not only tailored to the size of those businesses but also to ensuring that these entities uphold their obligations under the Communications Acts.

So what effect would granting these wide-ranging waivers have on industry sectors under the FCC's jurisdiction?

Ms. MORRIS. We think it would create a significant uncertainty as we try to figure out which application—which regulations apply to which entities—which ones apply to other—or don't apply to other entities.

And meanwhile, I will just repeat that consumers in those industries will be harmed in the process when those protections don't apply to their providers.

Mr. DOYLE. Thank you.

Madam Chair, in the interest of time, I yield back.

Mrs. BLACKBURN. The gentleman yields back.

Mr. Lance, 5 minutes.

Mr. LANCE. Thank you, Madam Chair.

To the distinguished panel, thank you all for being here.

Mr. Donovan, can you comment on some of the limitations of the FCC's current enforcement tools against pirate radios? Have you seen issues with the commission's ability to shut down pirates in your role as president of New York Broadcasters?

Mr. DAVID DONOVAN. Thank you, Congressman Lance.

Yes. I think that there is some limitations and those limitations now are based on the statute. Let me give you some examples.

Under the Communications Act, the fine, for example, for an entity not licensed by the FCC is, roughly, \$10,000. Pirate radio operators—this is big business, and a \$10,000 fine is absolutely nothing. When you actually look at someone who's been violating the law literally for decades, this is just a cost of doing business.

The second piece is that in order to get a seizure order or an order to enforce the fine, the FCC is required to go through the—through the U.S. attorney's office. They are busy on things like terrorism, drug interdiction, and this becomes the fourth level issue.

What I think—and I worked at the commission for 10 years—I think what we really need to do is to give the FCC the authority to go to court to defend its own orders and also to get seizure orders as well.

The FCC currently has the authority to go to the U.S. Court of Appeals to defend its orders at the appellate level. It seemed it would make sense to get rid of the number one issue, which is would love to help you but the U.S. Attorneys Office just isn't interested.

Mr. LANCE. Thank you. I am working on this issue, as you know, and the PIRATE Act and I want to continue to work with you and the other distinguished members of the panel, and I certainly agree with you.

And Madam Chair, I ask unanimous consent to submit the New York Broadcasters' report on pirate radio into the record.

Mrs. BLACKBURN. Without objection.¹

Mr. LANCE. Thank you, and I yield back 3 minutes.

Mrs. BLACKBURN. The gentleman yields back.

Ms. Matsui, you are recognized.

Ms. MATSUI. Thank you very much, Madam Chairman.

Since its creation in 2004, the Spectrum Relocation Fund has become a critical tool for Federal agencies relocating or sharing spectrum for wireless broadband use.

In 2015, Congress made improvements to the SRF that allowed agencies to use funds in SRF to support engineering research that could lead to the repurposing of spectrum for commercial use.

The improvements have worked. Last month, NTIA and DOD identified 100 megahertz of spectrum that could potentially be repurposed.

However, current law limits how much of existing SRF funds can be used for this research and related activities. This has created an unintended situation that could prevent agencies from accessing existing SRF funds and potentially prevent more spectrum entering the commercial marketplace.

I am working on legislation called the Spectrum Now Act to address this problem.

Mr. Donovan—Tim—would you support this effort to ensure that we are maximizing the amount of spectrum that could be repurposed for wireless broadband use?

Mr. TIM DONOVAN. Thank you, Congresswoman, and thank you for your leadership on these efforts. I think you are—it's a proven case model that it works and working with spectrum relocation fund to reallocate Federal spectrum for commercial use, your leadership on that issue led to the single highest grossing spectrum auction ever in the AWS-3 auction.

So this money is clearly well spent. We absolutely support your efforts to continue that. You know, spectrum is something that we are not making any more of it. So if we can be more efficient then that research is money well spent.

Ms. MATSUI. Thank you.

To successfully expand broadband access to the rural and remote areas of this country, broadband maps must accurately identify where service is and where it isn't.

One of the most effective ways to get better maps is by collecting better standardized coverage data. I understand that a consensus proposal to get better mobile wireless coverage data was put forward as part of the Mobility Fund II Challenge Process.

Specifically, that proposal suggested modelling 4G LTE coverage at download speeds of 5 megahertz per second at a 90 percent cell edge probability under cell loading factor of 50 percent.

Mr. Donovan—Tim again—how can accurately modelling mobile broadband data help expand coverage?

Mr. TIM DONOVAN. Thank you, and this has been an important issue going on, on making sure that we know where there is service

¹The information has been retained in committee files and also is available at <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=108059>.

and where there isn't so that we can direct funding where it's appropriate.

One thing that is missing from that model that is included in Congressman McKinley and Congressman Walters' bill is also looking at signal strength.

And while it gets technical quickly, it's important. We measure signal strength in decibel milliwatt loss, but a difference of only five leads to a difference of about a 100 percent geographic coverage.

In rural areas a difference of 10 we've developed 300 percent geographic coverage. When you look at that, you know, while there was consensus to move forward before, the factors selected by the FCC produced this map that we now know from looking at it that it doesn't pass the test that you all know from your travels across your States that it's not the experience that your consumers are receiving.

Ms. MATSUI. OK. Well, thank you very much, and I yield back the remainder of my time.

Mrs. BLACKBURN. The gentlelady yields back.

Mr. Latta, you're recognized for five.

Mr. LATTA. Well, thank you, Madam Chair.

And Mr. Gessner, when I travel around my district and meet with a lot of my business owners, especially the smaller business owners, they talk about the over regulations occurring, especially on the Federal side.

And then also how that regulation affects your business and also a lot of times as legislators and then the regulators they don't really see the after effect of what happens.

And I was wondering if you might be able to look, as a small business owner and also in telecommunications, if you can think of some real-world examples where SERRO could have helped your business and, consequently, your customers.

Mr. GESSNER. Thank you for the question.

I offered a brief explanation of my situation in 2010 during my testimony. I will expand on it a little bit.

We converted from an analog cable system to an all-digital system in 2010. We thought that was the right thing to do. We were well before everybody else and we went along with the broadcasters at the same time.

Shortly thereafter, we realized that we could no longer complete analog testing as required by the FCC because we had no analog signals to test.

So we requested a waiver from analog testing and it was supposed to—should have been very, very easy because there had already been one operator who had received a waiver from analog testing. So we thought just give me one of those.

So we went to the expense. We went to the time. Produced the affidavits and all that sort of thing, and there were several, maybe a half dozen of us, who were doing the same thing at the same time.

Radio silence. We didn't hear anything for 7 years, and what finally happened was the FCC changed the rules and told all of us that our petitions were moved.

Now, if SERRO had been in effect then, we could have been those 7 years of regulatory uncertainty. If SERRO had been in place then, the FCC would have been through at least two triennial reviews and had recognized that analog testing by digital systems was something that had to be addressed and they could have addressed it and no waivers would have been—no waiver petitions would have been required in the first place.

Mr. LATTA. Well, thank you very much, Madam Chair.

And I will yield back the balance of my time.

Mrs. BLACKBURN. The gentleman yields back.

Ms. Eshoo, you're recognized.

Ms. ESHOO. Thank you, Madam Chairwoman, and thank you to each of the witnesses. It's good to see you, and I think that you all did a good job in presenting what you want to present.

To Ms. Morris, in your written testimony you noted that the small entity bill, 3787, is vague in its definition of a small entity.

Now, some entities may have very few subscribers, in the thousands. But the language also applies to companies with millions of subscribers, and I wouldn't consider millions of subscribers as small.

If this were to become law, well, first of all, I think it's an ambiguous definition, obviously, because millions is not small.

So if this were to become law, what's the outcome of this? What would actually take place?

Ms. MORRIS. Thank you, Congresswoman Eshoo. I appreciate the question.

And on this issue of the definition of small entities, I would note that the bill may seem like it clearly and cleanly defines what a small entity is.

But it creates worry that gamesmanship could be used to sort of water down the definition and that that can change over time and be very costly and complicated to determine on a recurring basis.

And because, as you point out, that the range of potential entities covered in the definition is so expansive, as I noted earlier, we risk disenfranchising millions of consumers from the important consumer protections that the commission determines that they need once they're in—

Ms. ESHOO. Because tied to this are what you just described, correct?

Ms. MORRIS. Yes. Essentially, what this bill would do would be every time the commission makes a determination that a regulation is needed at a general level, what would be otherwise a regulation of general applicability that there would be essentially an automatic waiver for a year's time for small entities as defined, broadly, in the act.

And so for that period of time those customers and consumers would be—would not have access to the protections afforded to those who were customers of larger companies.

Ms. ESHOO. I think that this is an area of this bill that really needs to be tightened up because otherwise it can swing one way or another.

One way it could be determined that small is in the thousands and waivers can be granted for those that have millions.

It just doesn't—it would have been better if they just said “waive everything,” because that seems to be the intent.

In your testimony, you also said, quote, “the point of consumer protection laws is to protect consumers from all harmful practices, not just those from the biggest entities.”

It seems to me that this is a Trojan Horse, because it's going to hamstring the FCC's ability to do the job that's been laid out relative to the protection of consumers.

Again, small companies would not have to play by the rules that everyone else has to play by in terms of the—how it's defined or not defined in the language of the bill.

Can you describe if there's an alternative to burden? Is there significant consumer risk there as well?

Ms. MORRIS. I am sorry. If there's an alternative burden—if a new burden is placed on—I think that, you know, there is the sort of immediate risk of the what happens when the 1-year waiver is in place. I think that there is also a concern that this will just overly complicate rulemaking processes at the FCC.

We are going to have to pre-litigate what counts as a small entity in every proceeding. We'll probably have to litigate after the fact as well, and meanwhile there will be less focus on the—making sure that we get the rules right so that they don't create the types of situations that—

Ms. ESHOO. Well, I think that there is always a legitimate case to be made for streamlining. But I think that this is going to turn into a hairball. I really do. And I would just suggest to the authors that they tighten up the language because the definition is so wide a Peterbilt truck can drive through it.

Thank you.

Mrs. BLACKBURN. All right. The lady yields back.

And if everyone, I am told, can try to keep it 3 minutes or less, we should be able to dismiss our panel before we go for votes.

Mr. Olson, you're recognized.

Mr. OLSON. I thank the Chair.

Welcome to our five witnesses. My comments and questions are for you, Mr. Madigan, on suicide and H.R. 2345.

Like you, suicide has hit me directly as a Congressman and even in my family.

In 2014, a Marine veteran, Casey Owens, killed himself in Colorado. He was 32 years old. I met Casey in 2007 in our hometown of Sugarland, Texas.

He had lost both legs. PTSD, TBI—when a small Humvee hit a tank mine, the thing flew up 30 feet in the air. He found peace in Colorado, snow skiing. He was a competitive monoskier. His goal was to ski for our country in the Paralympics.

But he never found true piece. He was on CBS News in 2012 and he responded this way, quote, “I really don't think I will ever be free. I don't think the burden of war is ever gone,” end quote. And, sadly, it wasn't.

And now my family. When I was in high school, my mom got a master's in family therapy for kids. She met a little girl named Sherri Silvas at the Harris County Youth Village.

Sherri had been abused by her father. Her mom was worthless. She was in the gangs, drugs, and she also had a natural chemical

imbalance. All those came together to make her regularly think about committing suicide.

Mom became very close to Sherri. In fact, she became a de facto fourth child in my family. But she was a handful. She disappeared for three months. My dad found her halfway across the country. He brought her back.

But 2 years after that, Sherri took her own life, as well. My mom, my dad, and my entire family are still haunted we couldn't stop her from taking her own life.

And in your written testimony you said that having a verbal counselor—a line to call a person—is so effective that it actually reduces suicides and their feelings of hopelessness.

Would that have helped Sherri, and how important is that number to have, that 3-1-1 number?

Mr. MADIGAN. Well, Congressman, first of all, I am sorry for all of your experiences, and I hope you find some closure and peace.

And I think the legislation that we are looking at today is one piece of the puzzle in that, the data that we have, 25 percent of the callers have some suicidal ideation.

So they do get immediate help in terms of talking out what is currently going on.

Clearly, with veterans, there's a whole host of—as I described in my oral statement but more detailed in my written statement—the life stressors that then set off a preexisting mental health condition.

So that's the bottom line, is that we, as a nation, need to more quickly recognize someone's mental illness situation, much like you would someone having a diabetic attack or having heart disease, and then—I love to talk about the face when you go ask a 5-year-old, you know, what's the biggest organ in the body and they normally say the heart.

And I say, well, wrong—the biggest organ in the body is the brain. And if your heart is broken, you go to the heart doctor to get it fixed. If your brain is broken, you need to go to the brain doctor.

So it's part of that process, and we believe a three-digit number would make access for counseling more readily available.

Mr. OLSON. Yes, and hopefully DOD can use that three-digit number, because there has been a report by JO that says, hey, you guys were overwhelmed by some calls—people aren't getting the therapy they need via phone call.

So hopefully this helps them, gives them a chance to get to guys like Casey.

Mr. MADIGAN. Yes. The phone calls from this January to now versus January last year have increased 60 percent. So the need is clearly there, sir.

Mr. OLSON. I am sorry for your loss as well.

Madam Chairman, I yield back.

Mrs. BLACKBURN. The gentleman yields back.

Mr. McNerney, you're recognized.

Mr. MCNERNEY. I thank the Chair.

As I mentioned earlier in my opening statement, I am concerned about the larger trend we are seeing with consumer protections across the board being eliminated from my constituents.

Ms. Morris, what protections do consumers currently have with respect to their online privacy and the information that is shared with their broadband provider?

Ms. MORRIS. None. None from the Federal Communications Commission. They were repealed.

Mr. MCNERNEY. OK. What protections do consumers have with respect to their broadband provider keeping their data secure?

Ms. MORRIS. I do less data security work. But I would imagine very little, because the work I did was in the broadband privacy.

Mr. MCNERNEY. OK. Well, what about with respect to consumers' access to information being—online being throttled or blocked? Will there soon be any protections left for consumers from blocking and throttling?

Ms. MORRIS. Once the 2017 December order takes effect, no.

Mr. MCNERNEY. Well, I am certainly open to finding ways to streamlining regulatory compliance for small business but I am worried that the SERRO bill would move us further in the direction of eliminating safeguards for consumers, many of which have already been eliminated.

Ms. Morris, in your written testimony you stated that triennial review process would create a high degree of confusion and possibly legal uncertainty at the commission. Can you explain how a high degree of confusion at the commission is likely to impact consumers?

Ms. MORRIS. Sure. And what I mean by that is that once the bill would take effect there is this—every 3 years the triennial review but there's also the initial review when it seems like it would be essentially open season on any regulations in the FCC's currently on the books. There's no sort of limitation. It would be a retroactive review as part of—I can tell from the text of their bill.

So that would mean that what small protections remain for consumers in this deregulatory environment at the commission would be under scrutiny once again, presumably with new proceedings open to reconsider the application of all those regulations, which could tie up the commission's hands for months or years on end.

Mr. MCNERNEY. Thank you.

Mr. Madigan, in written testimony your organization submitted it was noted that veterans, in particular male veterans, are more often at risk of suicide.

In my experience serving in the Veterans Affairs Committee I found that veterans sometimes feel isolated when they return home. Do you think that's one of the contributing factors?

Mr. MADIGAN. Absolutely. Isolation, alcohol, access to guns—I mean, all those kinds of things are something that contribute to veterans contemplating suicide.

Mr. MCNERNEY. Do you think that making sure veterans have access to 21st century infrastructure like broadband could help our veterans?

Mr. MADIGAN. Well, as I said at the closing of my oral statement, I think yes, communication is the key. Talking about mental health issues like any other health issue and if technology can be increased and broadened I believe that's—our organization believes that's the way to go.

Mr. MCNERNEY. Good. And I thank the Chair, and I will yield back.

Mrs. BLACKBURN. The gentleman yields back.

Mr. Bilirakis, and I remind everyone if we can keep it to 3 minutes, then we'll probably be able to gavel out.

Mr. Bilirakis, you're recognized.

Mr. BILIRAKIS. Thank you, Madam Chair.

Mr. Madigan, as vice chairman of the Veterans Affairs Committee, the full committee, I know the veterans are a uniquely situated population and their experiences and challenges.

The last OIG report on the veterans crisis line identified a number of problems, including a considerable volume of calls going to voicemail, which is unacceptable.

Since some time has passed since then, I agree with the intent of H.R. 2345 to study how the needs of veterans are addressed by the National Suicide Prevention Hotline—the lifeline.

In your testimony, you say that one in three callers to the suicide hotline are veterans or members of the military families because they suffer as well.

Can you explain the unique challenges that these callers face and in your position have you seen specific issues related to a call responder's ability to address these needs through the hotline?

In other words, also if some of the responders—are the veterans? Can they identify with the veteran?

Mr. MADIGAN. Yes, that's a great question.

When you call 1-800-273-TALK and press 1, you're immediately handed over to a peer-to-peer counseling service where veterans who have been through the same experiences that most callers have been through are there.

So I think it's an awesome program. The budget needs to be increased. The number of counselors need to be increased and, clearly, with the fact that, sir, that we lose anywhere from 18 to 22 veterans a day that we know of—

Mr. BILIRAKIS. That we know of. Exactly. Yes.

Mr. MADIGAN. That we know of—that's a major problem. So we are committed. Again, that's why we support this legislation, to look at the whole picture, see what's working.

But the bottom line, when Orrin Hatch called me last May to talk about this bill, I said, Senator, it's a great idea, but if you make it easier to call and there's no one there on the other end to answer the call or they're not competent to answer the call then that's a big problem.

Mr. BILIRAKIS. So a veteran can speak—a combat veteran can speak to a combat veteran. Is that correct?

Mr. MADIGAN. Absolutely. Yes, sir.

Mr. BILIRAKIS. Was in a similar situation?

Mr. MADIGAN. More and more any of the veteran hotlines that I am aware of employ peer-to-peer counsellors.

Mr. BILIRAKIS. OK. I would like to speak with you on that.

Mr. MADIGAN. Yes. I will also tell you about something. Let's talk offline about the—that's for warriors out of New Jersey, which is Rutgers University sponsors it and it's upstream counselling of veterans.

So before someone gets to a bridge or puts a gun in their mouth, it helps veterans when they might lose their home, they're having personal problems or financial problems.

Mr. BILIRAKIS. OK. I am going stick with the 3 minutes. But the three-digit number is obviously more—it's easier to remember—

Mr. MADIGAN. Yes.

Mr. BILIRAKIS [continuing]. As opposed to the 1-800 number.

Mr. MADIGAN. It's 1-800-273-TALK, but I imagine, you're in the middle of a suicidal ideation, unless it's written somewhere, it's hard to remember.

So I even think a 5-year-old knows to dial 9-1-1 when they need to call the police, and we also think that having a dedicated number like 3-1-1 or whatever it might be would reduce the burden on 9-1-1 and get people to the right location the first time.

Mr. BILIRAKIS. Agreed.

Thank you. I yield back, Madam Chair.

Mrs. BLACKBURN. Gentleman yields back.

Mr. Engel, you're recognized.

Mr. ENGEL. Thank you, Madam Chair.

Mr. David Donovan, nice to see New Yorkers here. Welcome to Washington.

I am interested in the enforcement requirements of the PIRATE Act.

Mr. DAVID DONOVAN. Yes, sir.

Mr. ENGEL. You testified that pirate radio stations outnumbered licensed stations in some major markets and, as I understand it, the draft legislation in front of us today would require, and I quote it, "sustained enforcement and attention on pirate broadcasting," unquote, including the requirement that the FCC conduct pirate radio enforcement sweeps in some markets.

So to your knowledge, has any agency—DOJ, FCC, or any other—conducted regular pirate radio enforcement sweeps in the past? Do you have a sense for the amount of time, money, and personnel these sweeps would require?

Mr. DAVID DONOVAN. To my knowledge, the Department of Justice had not done any sweeps. The FCC may have done one.

In terms of time to do a sweep, for example, it took us four days to find 76 pirates in New York City and in northern New Jersey.

So the actual amount of those sweeps does not take that amount of time, and in fact, with technology you can actually reduce the amount of time that you need.

For example, there are pirate—there are radios that are currently on the market that you connect to the internet and you place them throughout New York City or northern New Jersey and you can sit in the FCC's office in Washington or in New York and literally turn the dial and you know what stations you have licensed and you will be able to hear what stations aren't licensed.

That will tell you, depending on the location of where that radio is, that we know we have 30 pirates near Flatbush or we have some in the Bronx.

What it does is by using technology in a smart way we'll actually reduce the ability or reduce the burdens that are imposed by doing sweeps.

But, frankly, we've done sweeps—I've done four sweeps over the last several years and, again, I found 76 pirates in four days. So it's not—the burden of doing the spectrum sweep is really not—it can be done, and the FCC has the capability and equipment to do it.

And, sir, to be blunt, I will be more than happy work with the Federal Communications Commission to help get those sweeps done.

Mr. ENGEL. Thank you.

Ms. MORRIS, let me ask you a quick question. I think you point out something really important in your written testimony regarding the small entity regulatory bill.

The Paperwork Reduction Act and the Regulatory Flexibility Act already requires the FCC to contemplate the effects of new protections on small businesses and there is already a number of opportunities for small cable or phone companies to get waivers under the FCC's procedures.

So, in your view, are there too few avenues for small business to be accommodated in FCC proceedings?

Ms. MORRIS. It is my view that there are not too few—that there are sufficient avenues already at the FCC. I am sympathetic to situations where a waiver, as in Mr. Gessner's case in his testimony, was not able to be achieved in a timely fashion.

We would simply advocate for a more surgical solution to those specific problems rather than the blunt tools that are—would be employed under SERRO.

Mr. ENGEL. Thank you. Thank you, Madam Chair.

I yield back my time.

Mrs. BLACKBURN. Thank the gentleman.

Mr. Johnson, you're recognized. Three minutes.

Mr. JOHNSON. Thank you, Madam Chairman.

Mr. Gessner, first of all, thanks for what you do in your role as the president of Massillon Cable. You serve a large number of people in one of my counties of 18, so I appreciate that.

I saw in your comments that you highlighted one example where the waiver process did not work in a timely fashion for you. Do you have other statistics or insights that you could share with us about that dynamic?

Mr. GESSNER. Thank you. Thank you for your question.

Yes, I probably have four or five current examples that would probably be more anecdotal than anything else. But by way of description, I would refer to a staff report that was issued to this committee in 2011 and it was entitled "The Staff Report on Workload at the FCC."

And part of their conclusion was, and I quote, "the commission faces significant challenges in its work including a significant backlog of unanswered petitions," and they went on to note that more than 5,300 petitions, which was 20 percent of the total petitions at that time, had been at the FCC for more than 2 years, and that more than 3,000 petitions had been pending before the FCC for more than 5 years.

And I think that's—it speaks volumes to the ability of small entities who don't have on-staff attorneys to keep after this process to see their petitions for needed relief through to a conclusion.

Mr. JOHNSON. And to give our Members and the American people some idea of what that means on the business side, I am told that this cost can be up to \$50,000 per year for a small company that, while they're awaiting resolution.

So you have got 5 years, that's \$250,000 out of that small business. That's a—that's a big pot of money.

Mr. GESSNER. Correct. That came from a more recent petition request where a small telephone company applied for relief, and while it was granted in about 3 years, they estimated the cost to be about \$50,000 a year, which for them is enough to hire another full time associate to actually serve customers.

Mr. JOHNSON. OK. Well, thank you.

Mr. Donovan, Mr. McKinley and Mr. Welch's bill, H.R. 2903, embodies the spirit of our effort to close the digital divide between rural and urban areas.

What kind of data is necessary to close this divide on wireless broadband coverage?

Mr. TIM DONOVAN. Thank you, Congressman.

As you know, the data that's currently on hand is not reflecting the experience that you have. Your portion of Ohio on the map looks like it's covered with service.

I think you have explained to me before how that's not the case.

Mr. JOHNSON. We know that's not true.

Mr. TIM DONOVAN. So what the bill does is it takes a look at the services that are available in urban areas and uses that as a measuring stick to see what services should be available.

With that in place, you can then collect data based on the experience that other Americans are having to make sure that there's services available to everyone.

Mr. JOHNSON. Well, thank you.

I wish we had more time to talk about it. But I understand you need to yield.

Thank you, Madame Chair.

Mrs. BLACKBURN. I thank the gentleman for yielding.

Mrs. Brooks for 3 minutes, please.

Mrs. BROOKS. Thank you, Madam Chairwoman.

I am going to follow up on what my colleague from Ohio just talked about, Mr. Donovan. Let's go on and allow you to answer a bit with a bit more time.

What kind of analysis does the FCC do as to whether or not its USF policies are meeting the goals of the program and do we have information on how effective USF program is in ensuring that comparable service that you just started to talk about?

Mr. TIM DONOVAN. Thank you, Congresswoman, and thank you for joining the bill as a cosponsor. We appreciate the support.

So right now, as Mr. Welch noted during his opening statement, there is no determination of what is reasonably comparable services.

So the FCC collects data. They collect Form 477 data. They collected, in the case of mobility fund, a special one-time collection of data.

But they're not then going back and applying any sort of report card over whether that's working, whether we are getting the job done.

And so we are continuing to move forward and as we are talking frequently about 5G, there are places in the country that don't have any G.

We have a saying at CCA that you have to keep up with your G's and when you start falling behind on the digital divide it gets harder and harder to catch up.

That becomes even more important as so many different aspects of our society are connected.

Mrs. BROOKS. Is it fair to say if we—if we do resolve some of these issues involving the digital divide, whether it is the targeted support through the USF program and siting reform, access to spectrum, is it possible that those rural areas will jump to 5G?

Mr. TIM DONOVAN. Well, you just nailed the three-legged stool of infrastructure, spectrum, and USF. Those are all important to solving these problems in rural areas.

And yes, so carriers that are now looking at making sure you get to the 4G services or looking at how you can layer on top of that at the same time the 5G services, whether it's through technology or they're using different spectrum bands to make sure that the same services are available in urban areas and rural areas.

Mrs. BROOKS. Thank you. I will yield back the balance of my time. I know we are trying to get other Members in. Thank you.

Mrs. BLACKBURN. I thank the gentlelady.

Mr. Collins, you're recognized.

Mr. COLLINS. Thank you, Madam Chair.

My question is directed to David Donovan.

Thank you again for your testimony today on pirate radio. This bill is going to create a database of licensed radio operators. I call that a commonsense kind of bill.

I've been battling this for years, primarily with our former Chair Tom Wheeler, who, frankly, as Chair of the FCC did not seem interested at all.

I can assure you Ajit Pai, our new FCC Chair, does take this seriously, to which I think we are going to see a big change.

You know, obviously, these pirate radio operators are raising money. In some cases we have advertisers who have no idea it's a pirate radio so, again, our commonsense bill will let them easily scan through and say oops, I am not going to be sending money this way.

So to keep this brief, I will just turn it over to you, David, to maybe comment on how this should work in helping deprive these stations of revenue.

Mr. DAVID DONOVAN. Congressman, and thank you for your leadership on the issue.

I think one of the problems that you have in not just in New York but in Florida, in Boston, in Connecticut is that your illegal operators take on the aura of a legitimate station.

As a result, advertisers, including folks buying political time, have no idea that they're buying advertising on an illegal station.

I think it would be important for the FCC to create transparency, which would be to list all the stations in a market that are in fact licensed by the FCC.

List all the stations that it knows are illegal, and that list, making it easily accessible so you don't have to dig down 12 layers into

the FCC database, would make it—a Web site that's publically available and easily accessible would go a long way towards advertisers understanding oh, OK, this person isn't licensed by the Federal Communications Commission.

And I think that transparency in the marketplace would be very, very important to helping to resolve those who are facilitating illegal pirate operations, sir. I think it's a great idea.

Mr. COLLINS. And, hopefully, as you say, let's list the illegal operators, hopefully under Chairman Ajit Pai, he'll be putting them out of business instead of listing.

Mr. DAVID DONOVAN. We hope. Absolutely we hope, and with the help of Congress to actually increase the enforcement tools and your suggestion, I think that will go a long way.

Mr. COLLINS. Well, thank you for your testimony.

Madam Chair, I yield back.

Mrs. BLACKBURN. The gentleman yields back.

I have questions that I am going to submit in the interests of time and, Tim and Mr. Gessner, they'll come to you—looking at the efforts we are doing on streamlining and how those, with the FCC, how that will help speed broadband deployment. But I will submit that.

Mr. Madigan, I've got one that will come to you. We will UC Mr. Tonko on for either submission or questions or a real quick ask?

Mr. TONKO. Real quick ask, and I thank you for waiting beyond to the subcommittee, Madam Chair.

I have several serious concerns with pirate radio and the weakness of current enforcement, which, in turn, has encouraged pirate radio operators to continue undeterred.

For years now, I, along with many members of New York and New Jersey delegations, have voiced our concerns on this issue, yet pirate radio operators are as prevalent as ever and their actions have been met with few consequences.

This legislation, obviously, comes in response to the growing number of pirate radio broadcasters in the region that are harming consumers and public safety.

According to complaints filed with the FCC, the number of pirate FM radio stations throughout New York City could outnumber the number of licensed operations while the problem in northern New Jersey may be equally as pervasive.

In Albany, we had a problem with private radio operators where a private—a pirate radio station was interfering with another legitimate station and was a nuisance to my constituents who were exposed oftentimes to what was vulgar language.

I've worked on this legislation and am proud to have done so in a bipartisan way with Congressman Leonard Lance, and I hope that this committee will work and move this forward.

To Mr. Donovan—Mr. David Donovan, what effect can pirate radio have on the emergency alert systems?

Mr. DAVID DONOVAN. What it does is it interferes with those who rely on the emergency alert system—consumers who are listening to the radio.

Pirate stations don't participate in the alert system and the pirate stations actually interfere with the EAS signals that consumers rely on.

In addition to that, it also interferes with any important life-saving news that follows up. You take it one step beyond, and apart the EAS, the interference to FAA frequencies is rather scary because the enforcement is post hoc.

The interference occurs while the plane is trying to land, and then you have to go try to find the pirate, and those situations, taken together, create a very dangerous situation, sir.

Mr. TONKO. Thank you for that clarification.

Mrs. BLACKBURN. Mr. Tonko, I need to limit you to that question.

Mr. Schrader has come in, and they have called the vote. If you don't mind.

Mr. TONKO. OK. Thank you. OK. Thank you.

Mrs. BLACKBURN. The gentleman yields back.

Mr. Schrader, you're recognized, 3 minutes.

Mr. SCHRADER. Thank you, Madam Chair and Ranking Member Doyle, for allowing me to sit in.

Sorry I couldn't spend more time here throughout the hearing. We are bouncing back and forth. We've got another hearing in the Health Subcommittee that we are talking care of, too.

I just want a few minutes to speak in favor of H.R. 3787, the Small Entity Regulatory Relief Opportunity Act. It's a bill I am working on with Representative Latta. I want to thank him and his team for all their help and support. Good bipartisan effort here.

Every member of the committee wants to expand rural broadband. The answer to doing that isn't necessarily always more money. Burdensome regulations harm many of these small entities' ability to grow, expand, and hire new employees, and maybe we can do something to alleviate some of those burdens.

Hopefully, by establishing some of these streamlined procedures in the bill, by obtaining waivers from regulations that are often unnecessary and not even designed for these smaller entities we provide a little relief for our small telecom providers, with a little greater certainty and efficiency to help them to continue to do the things they do best for our very, very small and rural communities.

At the basic level, we are finally recognizing locally based small business do not have the same ability as major corporations to comply.

Many of these small entities have an entire workforce of, like, eight or 10 people. They don't have the resources or floor of lawyers to file petition after petition with the FCC.

I think it's incumbent we all recognize and acknowledge that these unique—that there are unique business regulatory challenges for these small entities and we are trying to help them with this bill here and would hope the committee and Congress and gentleman out there would share and consider this bill.

Thank you very much.

Mrs. BLACKBURN. And I think there's been plenty of support expressed for that today, and also Representative Stewart has entered the room and we thank him for the work that he has done on the suicide bill.

Seeing there are no further Members wishing to ask questions for the panel, I want to thank our witnesses very much for your patience today, for being here with us.

As we've said, it is a busy day, just a few things going on, both in Energy and Commerce and on the floor.

Before I conclude, I ask unanimous consent to enter the following documents in the record: Mr. Donovan's slides, and Mr. Lance, the New York State Broadcasters' pirate radio study.

Without objection, so ordered.¹

Mrs. BLACKBURN. Pursuant to committee rules, I remind Members that they have 10 business days to submit additional questions for the record, and I ask that each of you witnesses respond to these questions within 10 business days upon receipt of those questions.

Seeing no further business to come before the subcommittee today, the committee is adjourned.

[Whereupon, at 12:42 p.m., the committee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. LEONARD LANCE

Thank you, Madam Chairman, and thank you to our distinguished panel for appearing before us today.

I am pleased we are considering the Preventing Illegal Radio Abuse Through Enforcement, or PIRATE, Act.

Unlicensed FM and AM radio operators are a significant harm to public safety and public health. By disrupting and interfering with licensed broadcasts, these "pirate radios" can cause radio listeners to miss important updates during times of emergency by blocking the Emergency Alert System. As they do not adhere to FCC regulations, pirate radios also emit a harmful level of Radio Frequency radiation, posing a health risk to nearby residents and workers.

I commend Chairman Pai and Commissioner O'Rielly for their leadership in enforcing against pirate radio operators at the FCC. However, as Commissioner O'Rielly has stated before this subcommittee, the FCC's current enforcement tools are not sufficient to eliminate these bad actors. My bill would increase the FCC's ability to crackdown on pirates by increasing the maximum fine, streamlining enforcement and holding facilitators liable among other things.

I thank Congressmen Tonko, Collins, and Bilirakis for their leadership on this issue and for working with me on this important legislation. Our States are among the most affected by pirate radio operators in the country and I am pleased we are able to work bipartisanly to protect our constituents from these menaces to public safety and health.

Thank you also to David Donovan from the New York Broadcasters for your advocacy on this issue and for testifying today. I look forward to our discussion.

¹The slides appear with David Donovan's prepared statement. The New York State Broadcasters' study has been retained in committee files and also is available at <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=108059>.



115TH CONGRESS
1ST SESSION

H. R. 2345

To require the Federal Communications Commission to study the feasibility of designating a simple, easy-to-remember dialing code to be used for a national suicide prevention and mental health crisis hotline system.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2017

Mr. STEWART (for himself, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MCKINLEY, Mrs. NAPOLITANO, Ms. SINEMA, Mr. GRIJALVA, Mr. THOMPSON of Pennsylvania, and Mr. BISHOP of Utah) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To require the Federal Communications Commission to study the feasibility of designating a simple, easy-to-remember dialing code to be used for a national suicide prevention and mental health crisis hotline system.

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 “National Suicide Hot-
5 line Improvement Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) According to the National Center for Health
2 Statistics, suicide rates in the United States have
3 surged to their highest levels in nearly 30 years.

4 (2) The overall suicide rate rose by 24 percent
5 from 1999 to 2014.

6 (3) The National Suicide Prevention Lifeline
7 (1-800-273-TALK [8255]), created under the lead-
8 ership of the Center for Mental Health Services of
9 the Substance Abuse and Mental Health Services
10 Administration (commonly known as “SAMHSA”),
11 is a network of 161 crisis centers that provide a toll-
12 free hotline 24 hours a day, 7 days a week to anyone
13 experiencing a mental health or suicidal emergency
14 or crisis.

15 (4) In 1967, the President’s Commission on
16 Law Enforcement and Administration of Justice rec-
17 ommended the creation of a single telephone number
18 that could be used nationwide for reporting emer-
19 gencies.

20 (5) In 1968, the Federal Communications Com-
21 mission agreed upon the number 9-1-1, one of eight
22 N11 dialing codes, as a simple, easy-to-remember
23 telephone number to be the dedicated number for re-
24 porting emergencies, and 9-1-1 became the national

1 emergency number for individuals in the United
2 States to access police, fire, and ambulance services.

3 (6) Based on the success of the 9–1–1 nation-
4 wide emergency number, a study by the Federal
5 Communications Commission regarding the use of a
6 simple, easy-to-remember dedicated 3-digit dialing
7 code for a suicide prevention and mental health cri-
8 sis hotline system would be beneficial in the preven-
9 tion of suicide nationwide.

10 **SEC. 3. DEFINITIONS.**

11 In this Act—

12 (1) the term “Assistant Secretary” means the
13 Assistant Secretary for Mental Health and Sub-
14 stance Use;

15 (2) the term “Commission” means the Federal
16 Communications Commission;

17 (3) the term “covered dialing code” means a
18 simple, easy-to-remember, 3-digit dialing code; and

19 (4) the term “N11 dialing code” means an ab-
20 breviated dialing code consisting of 3 digits, of
21 which—

22 (A) the first digit may be any digit other
23 than “1” or “0”; and

24 (B) each of the last 2 digits is “1”.

1 **SEC. 4. FCC STUDY AND REPORT.**

2 (a) STUDY.—

3 (1) IN GENERAL.—The Commission, in coordi-
4 nation with the Assistant Secretary, shall conduct a
5 study that—

6 (A) examines the feasibility of designating
7 an N11 dialing code or other covered dialing
8 code to be used for a national suicide preven-
9 tion and mental health crisis hotline system;
10 and

11 (B) analyzes the effectiveness of the cur-
12 rent National Suicide Prevention Lifeline, in-
13 cluding how well the lifeline is working to ad-
14 dress the needs of veterans.

15 (2) REQUIREMENTS.—In conducting the study
16 under paragraph (1), the Commission shall—

17 (A) request that the Assistant Secretary
18 study and report to the Commission on the po-
19 tential impact of the designation of an N11 di-
20 aling code, or other covered dialing code, for a
21 suicide prevention and mental health crisis hot-
22 line system on—

23 (i) suicide prevention;

24 (ii) crisis services;

25 (iii) the National Suicide Prevention
26 Lifeline; and

- 1 (iv) the Veterans Crisis Line;
- 2 (B) consider—
- 3 (i) each of the N11 dialing codes, in-
- 4 cluding the codes that are used for other
- 5 purposes; and
- 6 (ii) other covered dialing codes;
- 7 (C) consult with the North American
- 8 Numbering Council; and
- 9 (D) consult with the Secretary of Veterans
- 10 Affairs with respect to how well the current Na-
- 11 tional Suicide Prevention Lifeline is working to
- 12 address the needs of veterans.
- 13 (b) REPORT.—Not later than 180 days after the date
- 14 of enactment of this Act, the Commission shall submit to
- 15 Congress a report on the study conducted under sub-
- 16 section (a) that—
- 17 (1) recommends a particular N11 dialing code
- 18 or other covered dialing code to be used for a na-
- 19 tional suicide prevention and mental health crisis
- 20 hotline system;
- 21 (2) outlines the logistics of designating such a
- 22 dialing code;
- 23 (3) estimates the costs associated with desig-
- 24 nating such a dialing code, including—

- 1 (A) the costs incurred by service providers,
2 including—
3 (i) translation changes in the network;
4 and
5 (ii) cell site analysis and reprogram-
6 ming by wireless carriers; and
7 (B) the costs incurred by States and local-
8 ities;
9 (4) provides legislative recommendations for
10 designating such a dialing code;
11 (5) provides a cost-benefit analysis comparing
12 the recommended dialing code with the current Na-
13 tional Suicide Prevention Lifeline; and
14 (6) makes other recommendations for improving
15 the national suicide prevention lifeline system gen-
16 erally, which may include—
17 (A) increased funding;
18 (B) increased public education and aware-
19 ness; and
20 (C) improved infrastructure and oper-
21 ations.

○



115TH CONGRESS
1ST SESSION

H. R. 2903

To direct the Federal Communications Commission to promulgate regulations that establish a national standard for determining whether mobile and broadband services available in rural areas are reasonably comparable to those services provided in urban areas.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2017

Mr. MCKINLEY (for himself and Mr. WELCH) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

To direct the Federal Communications Commission to promulgate regulations that establish a national standard for determining whether mobile and broadband services available in rural areas are reasonably comparable to those services provided in urban areas.

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 Reasonable and
5 Comparable Wireless Access Act of 2017”.

1 **SEC. 2. AVAILABILITY OF MOBILE AND BROADBAND SERV-**
2 **ICES IN UNDERSERVED RURAL AREAS.**

3 (a) IN GENERAL.—Not later than 180 days after the
4 date of the enactment of this Act, the Commission shall
5 promulgate regulations that establish a national standard
6 for determining, for purposes of rural, insular, and high
7 cost universal service support pursuant to subsection
8 (b)(3) of section 254 of the Communications Act of 1934
9 (47 U.S.C. 254), whether commercial mobile service, com-
10 mercial mobile data service, and broadband internet access
11 service available in rural areas are reasonably comparable
12 to those services provided in urban areas.

13 (b) UNDERSERVED RURAL AREAS.—The standard
14 established under subsection (a) shall—

15 (1) define a “rural area” as any area that is ei-
16 ther—

17 (A) a rural area (as defined in paragraph
18 (1) of section 54.600(b) of title 47, Code of
19 Federal Regulations); or

20 (B) a service area (as defined in section
21 214(e) of the Communications Act of 1934 (47
22 U.S.C. 214(e))) served by a rural telephone
23 company (as defined in section 3 of such Act
24 (47 U.S.C. 153));

25 (2) define a rural area as “underserved”, with
26 respect to a service described in subsection (a), if

1 service that meets or exceeds the standard estab-
2 lished under such subsection is not available in the
3 area; and

4 (3) provide that a rural area will be considered
5 “underserved”, with respect to a service described in
6 subsection (a), if tests show that the service avail-
7 able in the area does not meet or exceed the applica-
8 ble averages determined under subsection (c)(1).

9 (c) DATA FROM URBAN AREAS.—The Commission
10 shall—

11 (1) gather data on average signal strengths and
12 average speeds of commercial mobile service and
13 commercial mobile data service, and on average
14 speeds of broadband internet access service, provided
15 in the 20 most populous metropolitan statistical
16 areas; and

17 (2) specify in the standard established under
18 subsection (a) that—

19 (A) commercial mobile service or commer-
20 cial mobile data service available in rural areas
21 is reasonably comparable to that service pro-
22 vided in urban areas only if the average signal
23 strengths and average speeds meet or exceed
24 the averages determined under paragraph (1)
25 for such service; and

1 (B) broadband internet access service
2 available in rural areas is reasonably com-
3 parable to that service provided in urban areas
4 only if the average speeds meet or exceed the
5 averages determined under paragraph (1) for
6 such service.

7 (d) PERIODIC UPDATING OF DATA.—The Commis-
8 sion shall periodically update the data gathered under sub-
9 section (c)(1).

10 (e) DEFINITIONS.—In this section:

11 (1) BROADBAND INTERNET ACCESS SERVICE.—

12 The term “broadband internet access service” means
13 a mass-market retail service by wire or radio that
14 provides the capability to transmit data to and re-
15 ceive data from all or substantially all internet
16 endpoints, including any capabilities that are inci-
17 dental to and enable the operation of the commu-
18 nications service, but excluding dial-up internet ac-
19 cess service. Such term includes any service that the
20 Commission finds to be providing a functional equiv-
21 alent of the service described in the previous sen-
22 tence.

23 (2) COMMERCIAL MOBILE SERVICE.—The term
24 “commercial mobile service” has the meaning given

1 such term in section 332 of the Communications Act
2 of 1934 (47 U.S.C. 332).

3 (3) COMMERCIAL MOBILE DATA SERVICE.—The
4 term “commercial mobile data service” has the
5 meaning given such term in section 6001 of the Mid-
6 dle Class Tax Relief and Job Creation Act of 2012
7 (47 U.S.C. 1401).

8 (4) COMMISSION.—The term “Commission”
9 means the Federal Communications Commission.

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115TH CONGRESS
1ST SESSION

H. R. 3787

To amend the Communications Act of 1934 to provide for streamlined procedures for waiver petitions seeking relief for small entities from regulations issued by the Federal Communications Commission, to require the Commission to defer the application of new regulations to small entities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2017

Mr. LATTA (for himself and Mr. SCHRADER) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to provide for streamlined procedures for waiver petitions seeking relief for small entities from regulations issued by the Federal Communications Commission, to require the Commission to defer the application of new regulations to small entities, 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 “Small Entity Regu-
5 latory Relief Opportunity Act of 2017”.

1 **SEC. 2. REGULATORY RELIEF FOR SMALL ENTITIES.**

2 (a) IN GENERAL.—Title I of the Communications Act
3 of 1934 (47 U.S.C. 151 et seq.) is amended by adding
4 at the end the following:

5 **“SEC. 13. REGULATORY RELIEF FOR SMALL ENTITIES.**

6 “(a) STREAMLINED PROCEDURES FOR WAIVER PE-
7 TITIONS.—

8 “(1) IN GENERAL.—Not later than 180 days
9 after the date of the enactment of this section, the
10 Commission shall complete a rulemaking to establish
11 streamlined procedures applicable to the filing, con-
12 sideration, and resolution of any petition—

13 “(A) seeking a waiver of a regulation
14 issued by the Commission under this Act;

15 “(B) in which the relief sought is limited
16 to small entities; and

17 “(C) that is filed—

18 “(i) by a small entity on its own be-
19 half or jointly with other small entities; or

20 “(ii) by a representative organization
21 on behalf of one or more classes of small
22 entities.

23 “(2) OBJECTIVES.—The objectives of the
24 streamlined procedures established under paragraph
25 (1) shall be—

1 “(A) to expedite the consideration and res-
2 olution of petitions described in such para-
3 graph; and

4 “(B) in the case of a petition described in
5 such paragraph that is filed by a small entity
6 on its own behalf or jointly with other small en-
7 tities, to reduce the costs and procedural obliga-
8 tions associated with filing such petition.

9 “(b) DEFERRED APPLICATION OF REGULATIONS.—

10 “(1) IN GENERAL.—Except as provided in para-
11 graphs (2) and (3), in the case of a regulation
12 issued by the Commission under this Act, the Com-
13 mission shall defer application to small entities of
14 such regulation for not less than 1 year after the
15 latest date on which such regulation becomes effec-
16 tive for an entity that is not a small entity.

17 “(2) EXCLUSION.—Paragraph (1) shall not
18 apply if the statutory provision under which the reg-
19 ulation is issued expressly states that the Commis-
20 sion may not exercise the authority granted under
21 such paragraph to defer the application of such reg-
22 ulation to small entities.

23 “(3) LIMITATIONS.—The Commission may de-
24 cline to grant some or all small entities a deferral
25 under paragraph (1), or may grant some or all small

1 entities a deferral under such paragraph for less
2 than 1 year, if—

3 “(A) the Commission finds (and incor-
4 porates the finding and a statement of reasons
5 therefore in the order or other decision docu-
6 ment in which the regulation is adopted) that—

7 “(i) the regulation is principally in-
8 tended—

9 “(I) to reduce waste, fraud, and
10 abuse by a small entity; or

11 “(II) to protect public safety; and

12 “(ii) no deferral or deferral for less
13 than 1 year would be in the public interest;
14 or

15 “(B) a showing has been made by the
16 small entities that would benefit from the defer-
17 ral otherwise required by paragraph (1) that
18 the benefits to such small entities of such defer-
19 ral are outweighed by the benefits to such small
20 entities of no deferral or deferral for less than
21 1 year.

22 “(4) REGULATIONS SUBJECT TO INFORMATION
23 COLLECTION APPROVAL.—In the case of a regulation
24 requiring a collection of information that is subject
25 to approval under subchapter I of chapter 35 of title

1 44, United States Code, the deferral period under
2 this subsection shall begin on the latest date fol-
3 lowing such approval on which such regulation be-
4 comes effective for an entity that is not a small enti-
5 ty.

6 “(5) ENTITIES THAT CEASE TO BE SMALL EN-
7 TITIES.—An entity that is eligible under this sub-
8 section for deferred application of a regulation on
9 the date on which the deferral commences shall con-
10 tinue to be entitled to the full term of the deferral
11 notwithstanding that such entity ceases to be a
12 small entity, whether through a change in the defini-
13 tion of the term ‘small entity’ or otherwise.

14 “(e) SMALL ENTITY DEFINED.—In this section, the
15 term ‘small entity’ means any entity that meets either of
16 the following requirements:

17 “(1) The entity is a small entity (as defined in
18 section 601 of title 5, United States Code).

19 “(2) With respect to a regulation applicable to
20 a particular subscription service, the entity provides
21 such subscription service to 2 percent or fewer of the
22 consumers receiving such subscription service in the
23 United States.”.

1 (b) TRIENNIAL REGULATORY REVIEW.—Section 257
2 of the Communications Act of 1934 (47 U.S.C. 257) is
3 amended—

4 (1) in the heading, by striking “**MARKET**
5 **ENTRY BARRIERS PROCEEDING**” and inserting
6 “**ELIMINATION OF MARKET ENTRY BARRIERS**
7 **AND UNNECESSARY REGULATION OF SMALL**
8 **ENTITIES**”; and

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

10 “(d) REVIEW OF APPLICATION OF REGULATIONS TO
11 SMALL ENTITIES.—As part of the periodic review con-
12 ducted under subsection (c), the Commission shall—

13 “(1) review all regulations issued under this Act
14 in effect at the time of the review that apply to the
15 operations or activities of any provider of any service
16 subject to the jurisdiction of the Commission under
17 this Act;

18 “(2) determine whether there is good cause for
19 the Commission to grant relief to some or all small
20 entities (as defined in section 13) from any such
21 regulation, in whole or in part; and

22 “(3) if the determination under paragraph (2)
23 is affirmative, grant such relief by modifying such

1 regulation as such regulation applies to some or all
2 small entities.”.

○

[DISCUSSION DRAFT]115TH CONGRESS
2D SESSION**H. R.** _____

To amend the Communications Act of 1934 to provide for enhanced penalties
for pirate radio, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. LANCE introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend the Communications Act of 1934 to provide for
enhanced penalties for pirate radio, 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 “Preventing Illegal
5 Radio Abuse Through Enforcement Act” or the “PIRATE
6 Act”.

7 **SEC. 2. PIRATE RADIO ENFORCEMENT ENHANCEMENTS.**

8 Title V of the Communications Act of 1934 (47
9 U.S.C. 501 et seq.) is amended—

1 (1) in section 510(b), by inserting after “Attor-
2 ney General of the United States” the following: “,
3 or by the Commission, acting on its own behalf,”;
4 and

5 (2) by adding at the end the following new sec-
6 tion:

7 **“SEC. 511. ENHANCED PENALTIES FOR PIRATE RADIO**
8 **BROADCASTING; SEIZURE OF ILLEGAL**
9 **EQUIPMENT; ENFORCEMENT SWEEPS.**

10 “(a) INCREASED GENERAL PENALTY.—Any person
11 who willfully and knowingly does or causes or suffers to
12 be done any pirate radio broadcasting shall be subject to
13 a fine of not more than \$2,000,000.

14 “(b) VIOLATION OF RULES, REGULATIONS, AND SO
15 FORTH.—Any person who willfully and knowingly violates
16 any rule, regulation, restriction, or condition made or im-
17 posed by the Commission under authority of this Act, or
18 any rule, regulation, restriction, or condition made or im-
19 posed by any international radio or wire communications
20 treaty or convention, or regulations annexed thereto, to
21 which the United States is or may hereafter become a
22 party, relating to a pirate radio broadcasting shall, in ad-
23 dition to any other penalties provided by law, be subject
24 to a fine of not more than \$100,000 for each day during
25 which such offense occurs.

1 “(c) LIVE PIRATE RADIO BROADCASTING.—Section
2 503(b)(4) does not apply for a forfeiture penalty imposed
3 on a person if the Commission has direct evidence that
4 the person is responsible for a pirate radio broadcast and
5 such broadcast is occurring in real time.

6 “(d) FACILITATION.—Any person who knowingly and
7 intentionally facilitates pirate radio broadcasting shall be
8 subject to a fine of not more than \$2,000,000.

9 “(e) DISPOSAL OF ILLEGAL PIRATE RADIO EQUIP-
10 MENT.—The Commission may dispose of any equipment
11 seized under this section as the Commission determines
12 to be appropriate without notice after the expiration of
13 the 90-day time period beginning on the date on which
14 the equipment was seized.

15 “(f) ENFORCEMENT SWEEPS.—

16 “(1) BIENNIAL SWEEPS.—Not less than twice
17 each year, the Commission shall assign appropriate
18 enforcement personnel to focus specific and sustained
19 attention on the elimination of pirate radio broad-
20 casting within the top five radio markets identified
21 as prevalent for such broadcasts. Such effort shall
22 include identifying, locating, and terminating such
23 operations and seizing related equipment under sub-
24 section (c).

1 “(2) NO EFFECT ON REMAINING ENFORCE-
2 MENT.—Notwithstanding paragraph (1), the Com-
3 mission shall not decrease or diminish the regular
4 enforcement efforts targeted to pirate radio broad-
5 cast stations for other times of the year.

6 “(g) STATE AND LOCAL GOVERNMENT AUTHOR-
7 ITY.—

8 “(1) STATUTES OR ORDINANCES PERMITTED.—
9 A State or local government may enact a statute or
10 ordinance that imposes civil or criminal penalties for
11 pirate radio broadcasting, or for knowingly and in-
12 tentionally facilitating pirate radio broadcasting,
13 provided that the determination whether a radio sta-
14 tion is engaged in pirate radio broadcasting shall be
15 made exclusively by the Commission.

16 “(2) COMMISSION AUTHORITY PRESERVED.—
17 Enforcement by a State or local government of a
18 statute or ordinance under this section shall not pre-
19 clude the Commission or Federal law enforcement
20 authority from concurrently enforcing this section
21 and section 301 of this Act, any other Federal law,
22 or any regulation of the Commission thereunder.

23 “(h) DEFINITIONS.—In this section:

24 “(1) PIRATE RADIO BROADCASTING.—The term
25 ‘pirate radio broadcasting’ means the transmission

1 of communications on spectrum frequencies between
2 535 to 1705 kHz or 88 to 108 MHz (AM or FM
3 broadcast bands) without a license issued by the
4 Federal Communications Commission, but does not
5 include unlicensed operations in compliance with
6 part 15 of title 47, Code of Federal Regulations.

7 “(2) FACILITATES.—The term ‘facilitates’
8 means providing access to property (and improve-
9 ments thereon) or providing physical goods or serv-
10 ices, including providing housing, facilities, or fi-
11 nancing, that directly aid pirate radio broadcasting.

12 “(3) KNOWINGLY AND INTENTIONALLY.—The
13 term ‘knowingly and intentionally’ means the person
14 was previously served by the Commission with a no-
15 tice of unlicensed operations, notice of apparent li-
16 ability, or citation for efforts to facilitate pirate
17 radio broadcasting.”.



**Statement
Of
Christine Moutier, M.D.
Chief Medical Officer
American Foundation for Suicide Prevention
submitted to
House Energy and Commerce Subcommittee on
Communications and Technology
regarding H.R 2345
The National Suicide Prevention Hotline
Improvement Act of 2017**

March 22, 2018

Chairman Blackburn, Ranking Member Doyle, and members of the Subcommittee, thank you for inviting the American Foundation for Suicide Prevention (AFSP) to testify today on H.R. 2345, “The National Suicide Prevention Hotline Improvement Act of 2017.” I am Dr. Christine Moutier and I am AFSP’s Chief Medical Officer. Many thanks to Representatives Chris Stewart (R-UT) and Eddie Bernice Johnson (D-TX) for their leadership on this important legislation.

I became the Chief Medical Officer for the American Foundation for Suicide Prevention in the fall of 2013. Previously, I was at the University of California, San Diego (UCSD) School of Medicine, where I was a Professor of Psychiatry and served as Assistant Dean for Student Affairs and Medical Education. I maintained an active outpatient and inpatient clinical practice through the UCSD Medical Group, the VA Healthcare System, and UPAC (Union of Pan Asian Communities), a community mental health clinic for the Asian refugee population. I worked with both high functioning people with mood and anxiety disorders, as well as with more severely ill people with chronic mental illness, continuously throughout my academic career.

I am a suicide prevention expert who has experienced the issue in a 360-degree manner with family members who struggle, colleagues who have died by suicide, suicidal patients and medical trainees, and whose research focused on optimizing treatment of depression and anxiety, and addressing burnout and mental health distress of physicians and trainees. I have developed and co-led a suicide prevention program for physicians and other health professionals at the University of California, San Diego School of Medicine. I have been fortunate to help advise national change currently underfoot related to health professionals' burnout, resilience and suicide prevention.

All of this has led me to a holistic way of integrating the body of clinical and suicide research into a framework that approaches mental health and suicide prevention along its fullest continuum. I believe that many effective suicide prevention efforts not only save lives, but reach individuals where they are anywhere along the continuum of human experience, and therefore suicide prevention initiatives may have the added benefit of elevating coping, mental health, and resilience for many more.

The American Foundation for Suicide Prevention (AFSP)

Established in 1987, AFSP is a voluntary health organization that gives those affected by suicide a nationwide community empowered by research, education and advocacy to take action against this leading cause of death.

AFSP is dedicated to saving lives and bringing hope to those affected by suicide. AFSP creates a culture that is smart about mental health by engaging in the following core strategies:

- Funding scientific research,
- Educating the public about mental health and suicide prevention,
- Advocating for public policies in mental health and suicide prevention,
- Supporting survivors of suicide loss and those affected by suicide in our mission.

Scope of the Problem of Suicide

My message today about suicide is hopeful and actionable. It is worth emphasizing the scope of suicide's impact: in recent years suicide has taken more lives than war, murder, and natural disasters combined. The suicide rate in the U.S. continues to climb, with the most recent CDC

data revealing 44,965 deaths in 2016, and occupational loss and direct healthcare costs estimated to be more than \$69 billion annually. Suicide is one of the leading, yet largely preventable causes of death in our country. Here are some facts:

- Suicide is now the 10th leading cause of death in adults age 18-64,
- For every suicide, there are 25 attempts,
- The annual age-adjusted suicide rate is 13.42 per 100,000 individuals,
- After adjusting for differences in age and sex, risk for suicide is 19% higher for male Veterans, than U.S. non-Veteran male adults,
- Risk for suicide is 2.5 times higher among female Veterans, when compared to U.S. non-Veteran women,
- Men die by suicide 3.53 x more than women,
- White males accounted for 7 of 10 deaths in 2016.

The AFSP Public Policy Team has provided each of the members of the Subcommittee with a copy of your particular “Suicide Facts” in your home state. These infographics, based on data from 2016, highlight the suicide situation back home for each of you.

Causes of Suicide

Suicide is often the result of unrecognized and untreated mental illness. In more than 120 studies of series of completed suicides, at least 90% of the individuals involved were suffering from a mental illness at the time of their deaths. When 1 in 4 Americans have a diagnosable mental illness, but only 1 in 5 of them are seeking professional help for that condition, we have a lot of

work to do in mental health literacy, elevating the general lay understanding of how mental health problems are experienced or look like in a loved one or co-worker and toward destigmatizing help-seeking when you detect a change in your own or a loved one's mental health. Just like you would be proactive about any other aspect of your health such as your heart or kidneys.

Mental illness is the necessary, but not sufficient, risk factor for suicide in most cases, since most people with mental illness thankfully do not die by suicide. Mental illnesses such as depression, bipolar disorder and alcohol and drug dependence, Post-Traumatic Stress (PTS) and Traumatic Brain Injury (TBI) may create the underlying risk that when combined with life stressors such as transition from military life, job loss, relationship issues and financial or legal problems and a recipe for increased suicide risk can occur. Other important risk factors include social isolation, biological factors like aggression and impulsivity, childhood abuse, a history of past suicide attempt, serious medical problems, and a family history of suicide.

Suicide risk tends to be highest when multiple risk factors or precipitating events occur in an individual with a mental illness. The most important interventions we can start with are recognizing and effectively treating these disorders. On a population level, we can implement more upstream approaches such as shoring up community, mentorship and peer support, teaching students how to problem solve and process stress, make access to mental health care available and non-stigmatized, train frontline citizens like teachers, first responders, and clinicians, and limit access to lethal means.

The good news is suicide is preventable, and thanks to a grassroots movement, catalyzed by both suicide loss survivors and the emerging voice of those with their own history of attempt, the fight against suicide is nearing a tipping point. To answer this call to action, AFSP has evolved a three-point strategy that covers Research, Prevention, and Support, and if we push now, we hope to reduce the annual suicide rate 20% by 2025.

Key Policy Areas for Addressing Suicide

I believe we need to focus on three key policy areas to prevent suicide that include:

- Suicide prevention research;
- Suicide prevention programs; and,
- Programs and strategies that provide more support to those touched by suicide.

I am here today to talk about why H.R. 2345 could be a game-changer for our national public safety net.

A vote for H.R. 2345 would allow the FCC and our federal suicide prevention authorities to fully understand how a three-digit code (such as 411 or 611) could enable rapid access to life-saving assistance for persons in emotional and suicidal crisis, while also diverting many individuals in crisis from the unnecessary use of precious 911 emergency services. This legislation will study the effectiveness of the current National Suicide Prevention Lifeline (1-800-273-TALK), and how well it addresses the needs of veterans. We should also look at how the current system in addressing the needs of Alaskan Natives and American Indians, along with our LGBTQ youth.

H.R. 2345 would also provide cost estimates and resource needs for supporting phone hotline, chat and text.

Here are some important facts –

- A national, single point of access—free, anonymous and toll-free for all American residents—is necessary to provide a public health safety net for all persons in the United States experiencing emotional distress and/or suicidal crisis. With approximately 2/3 of persons with diagnosable mental health problems not currently accessing mental health providers, suicide rates and deaths related to substance misuse (including opioids) on the rise, it is essential that we provide immediate access to help for people in crisis when, where and how they need it.
- The experience of the SAMHSA’s National Suicide Prevention Lifeline (800-273-8255) indicates that a national hotline number has been essential for addressing this public health crisis. Lifeline call volume has increased significantly every year since its launch in 2005, serving more than 11 million callers. In 2017, the Lifeline’s national network of 160 local crisis centers answered over 2 million calls. According to independent evaluators of the service, approximately 25% of these callers present with suicidal crises, with the remaining 75% reporting a non-suicidal, mental health or substance related problem (Gould et al, 2012). Because VA also utilizes the Lifeline number as a single point of access to provide a special VA-funded service for U.S. veterans and members of military since 2007, the Lifeline network and the Veterans Crisis Line together have assisted millions of veterans and service members in crisis. Approximately 1 of 3 callers to the Lifeline presses 1 for this special service for veterans and members of military service.

- This national point of access works in reducing emotional distress and suicidality. SAMHSA-funded evaluations of Lifeline crisis center work have consistently demonstrated that the service is reducing emotional distress and suicidality for persons engaging the service.
- In a study of 1085 suicidal callers evaluated at beginning and end of call—and then 3 weeks later—significant reductions in suicidality, psychic pain and hopelessness by end of call and 3 weeks later. Upon follow-up, 12% of suicidal callers spontaneously offered that the call prevented him/her from killing or harming self. (Gould et al, 2007)
- In another study, 1617 non-suicidal crisis callers evaluated at beginning and end of call—and three weeks later. Significant reductions in confusion, anger, anxiety, helplessness and hopelessness by end of the call, and more so 3 weeks later. (Kalafat et al, 2007)
- With more than 12 million persons in the U.S. having suicidal thoughts annually, providing more ready access to this effective, lifesaving service could be beneficial. Service currently serving about half-a-million suicidal callers (25% of 2m callers).
- As more people access the single number for mental health and suicidal crises, the need to enhance infrastructure capacity becomes essential. As the Lifeline call volume has grown 60% in the past year alone, capacity has become strained. While about 85% of callers are being answered in about 30 seconds, more than 1 in 10 callers are averaging waits of over 2 minutes as they roll over to national back-up centers. This is because local centers are under-funded and under-resourced to manage the growing number of calls.
- It is quite possible that a separate 3-digit number for mental health/suicidal crises would significantly reduce burdens on the 911 system, reducing unnecessary use of emergency services nationally. Lifeline standards, trainings and practices of its national network of

local call centers is designed to effectively de-escalate persons in suicidal crises, reduce risk for callers in crisis and ensure that they receive the most appropriate, least invasive care that supports their health, safety and well-being. SAMHSA-funded evaluations indicate that Lifeline member centers are effectively de-escalating persons in suicidal crisis whom might otherwise be diverted to emergency services.

- Of Lifeline's highest-risk callers (e.g., assessed to be at "imminent risk"), 40% are effectively de-escalated without utilizing emergency services. In 36% of cases, imminent risk callers agree to the use of emergency services (collaborating with counselor to promote their safety), and about 24% of imminent risk callers receive emergency services, because they are unwilling and unable to collaborate with the counselor to prevent their suicide (Gould et al 2016).
- Many 911 centers report a high volume of non-suicidal callers with mental health issues that would more effectively and efficiently be assisted on a mental health hotline.

Suicide touches so many lives, but only recently, as more and more people speak out, has the need for action become so apparent. Ten years ago, we had only a handful of people banding together. Today we have a movement that rallies over 250,000 people to participate in over 400 AFSP Community Out of the Darkness Walks and AFSP 150 College Campus Walks. This coming April 21, AFSP and many other national suicide prevention and mental health organizations are sponsoring a first-ever Rally on the West Front of the US Capitol Building, from 5:30 pm to 6:30 pm. We hope that many of you and your staff can join us for this important call to action.

It's time to answer that grassroots call for action. It's time to wage war on suicide and put a stop to this tragic loss of life. The first line of defense should be robust, 24-7, crisis support services for all Americans, by phone hotline, chat and by text. H.R. 2345, the National Suicide Prevention Hotline Improvement Act of 2017 is another step in the right direction.

Chairman Blackburn and Ranking Member Doyle, and Members of the Subcommittee. On behalf of the American Foundation for Suicide Prevention, I thank you again for the opportunity to provide testimony today and we look forward to working with you, other members of the Congress, the Administration, and all mental health and suicide prevention organizations inside and outside of government to prevent suicide.

I will be happy to answer any questions.

Thank you.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH 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) 225-3641
April 9, 2018

Mr. Tim Donovan
Senior Vice President, Legislative Affairs
Competitive Carriers Association
805 15th Street, N.W.
Washington, DC 20005

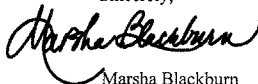
Dear Mr. Donovan:

Thank you for appearing before the Subcommittee on Communications and Technology on Thursday, March 22, 2018, to testify at the hearing entitled "Legislative Hearing on Four 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. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, April 23, 2018. Your responses should be mailed to Evan Viau, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Evan.Viau@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

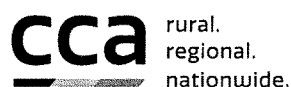
Sincerely,



Marsha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member, Subcommittee on Communications and Technology

Attachment



"Legislative Hearing on Four Communications Bills"

Additional Questions for the Record

Tim Donovan, SVP, Legislative Affairs, Competitive Carriers Association
 Before the U.S. House of Representatives Committee on Energy and Commerce
 Subcommittee on Communications and Technology
 March 22, 2018

The Honorable Marsha Blackburn:

1. On March 22, 2018, the FCC passed a Wireless Infrastructure Streamlining Order that provides exemptions from certain environmental and historic reviews. How useful is this effort to closing the digital divide?
 - a. To what degree are the FCC's effort and this Subcommittee's efforts on streamlined infrastructure complimentary?

The FCC's Second Report and Order, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, is a significant step toward closing the digital divide, and CCA commends its adoption. The Order provides competitive carriers with clarity in the National Environmental Protection Act (NEPA) and National Historic Preservation Act (NHPA) review processes. This will give carriers the opportunity to make faster, more informed decisions when building out their networks and will allow operators to provide critical services to rural areas currently unserved or underserved.

The Communications and Technology Subcommittee's efforts on streamlined infrastructure are complementary to the FCC's Second Report and Order and any further actions the FCC may take. CCA supports Congressional efforts to provide clarity to carriers regarding broadband infrastructure deployment, and urges Congress, the FCC, and the Administration to work in concert to close the digital divide.

The Honorable John Shimkus

1. In your testimony you noted that ensuring rural areas have comparable wireless service to urban areas requires streamlining infrastructure deployment. Several bills introduced by members of this Subcommittee would exempt broadband deployments from study requirements under the National Environmental Protection Act and the National Historic Preservation Act. My bill, the SPEED Act, would exempt broadband facilities from NEPA and NHPA reviews on Federal property that have already granted another communications facility on the same property.
 - a. How important is this to streamlining the digital divide?
 - b. How important is this to winning the international race to 5G?

CCA thanks you for your leadership and supports H.R. 4842, The Streamlining Permitting to Enable Efficient Deployment of Broadband Infrastructure (SPEED) Act. The SPEED Act provides common-sense solutions to

COMPETITIVE CARRIERS ASSOCIATION

805 15th St NW, Suite 401 | Washington, DC 20005 | ccamobile.org

broadband infrastructure deployment challenges by reducing or removing duplicative or unnecessary review requirements.

As carriers work to preserve, upgrade, and expand mobile broadband services, rural America must not be left behind. Eliminating unnecessary reviews increases certainty and decreases costs, supporting broadband deployment. This is particularly true in rural and high cost areas, where enhanced services are necessary to bridge the digital divide and allow full participation in the modern mobile economy.

While the United States has led the world in 4G, there are still places in our nation that lack the latest mobile broadband services. As technology evolves to 5G services, winning the race to 5G must include connecting rural America. Efforts to focus reviews and related costs, both monetary and opportunity, where truly necessary are critical to maintaining mobile broadband leadership.

The Honorable Adam Kinzinger

- 1. In terms of spectrum needed to close the digital divide for wireless broadband, should the focus be on low-medium-or high band spectrum? Or will it require an all-of-the-above strategy?**
 - a. What are the implications of spectrum availability for 5G deployment in rural areas?**

Spectrum is the lifeblood of the wireless industry. As demand for mobile broadband services continues to increase exponentially, all carriers must have access to low,-mid,-and high-band spectrum resources. Competitive carriers serving rural areas must have spectrum that is available in sufficiently small license sizes while balancing that need with technology uses, and spectrum bands must be interoperable to provide rural America with the same services and devices.

CCA commends your leadership on this issue through H.R. 1814, the Rural Spectrum Accessibility Act of 2017, which was recently enacted through the Consolidated Appropriations Act, 2018. Ensuring that low, mid, and high spectrum bands that are not being used are available for providing service in rural America is a necessary step to support deployment of the latest mobile technologies in rural areas today and eventually 5G services, and CCA looks forward to continued work with you to provide appropriate incentives to make spectrum available.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
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Mr. David Donovan
President and Executive Director
New York State Broadcasters Association, Inc.
1805 Western Avenue
Albany, NY 12203

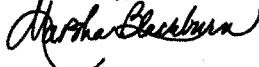
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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Mersha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member, Subcommittee on Communications and Technology

Attachment



New York State Broadcasters Association, Inc.

May 7, 2018

The Honorable Marsha Blackburn
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office building
Washington DC 20515

RE: Answers to Hearing Questions on the PIRATE Act

Dear Chairman Blackburn:

Thank you for the opportunity to appear before the subcommittee on Thursday March 22, 2018 to discuss the continued problem of illegal pirate radio operators. Illegal pirate radio operations harm the public by: 1) interfering with the broadcast emergency alert system (EAS); 2) exposing communities to levels of RF radiation above government standards; 3) interfering with FAA communications channels and 4) ignoring all FCC and consumer protection laws.

Attached please find my answers to questions that were sent to me following the hearing. The New York State Broadcasters Association, Inc. and the National Association of Broadcasters strongly support the PIRATE Act.

If you need additional information, please do not hesitate to contact me.

cc: The Honorable Paul Tonko
The Honorable Adam Kinzinger
Mr. Evan Viau





David L. Donovan, President
New York State Broadcasters Association, Inc.

Answers to Hearing Questions Regarding Pirate Radio
Subcommittee Hearing: Thursday March 22, 2018

The Honorable Adam Kinzinger:

As a pilot, it concerned me to hear that illegal pirate operations have led to documented interference with aviation communications. Can you elaborate on the harm that these pirate stations pose to aviation safety.

a. How would policies in the PIRATE Act better enable the FCC to shut down pirate radio operations and minimize aviation safety risk and other harms?

Pirate stations interfere with airport communications on frequencies assigned to the Federal Aviation Administration ("FCC"), creating an extremely dangerous situation. For example, in 2013, the Federal Communications Commission ("FCC") and the Department of Justice shut down an unauthorized radio station operating on 91.7 MHz in Boston, MA. According to the Department of Justice's Press Release, the FAA complained about pirate radio interference:

"According to an affidavit filed with the civil complaint, the unlicensed FM radio station was causing interference to Federal Aviation Administration (FAA) frequency 120.6 MHz, which is one of the primary frequencies used by pilots to communicate with FAA controllers when flying in the Boston metropolitan area. The FCC issued verbal and written warnings to the residents of 9 Rutland Street on several occasions, but the radio station continued to broadcast."¹

Over the years the FCC has documented numerous of cases involving interference to airport communications from pirate radio operations. For example, the FCC has found interference to FAA frequencies from illegal pirate operations in the Bronx NY², Sacramento³, Miami⁴, San Juan⁵, San Jose⁶, West Palm Beach⁷, Boston/Brockton⁸ and Broward County FL⁹. Of course these are only the

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cases where complaints have been filed and the pirates have been caught. With respect to interference to airport frequencies, it represents only a small portion of the much larger problem.

The growth in pirate illegal pirate radio stations increases the probability there will be more interference issues with airport communications. Interference from pirate stations could cause errors in navigational guidance, interference to pilot to ground communications, as well as other aeronautical systems.

First, there is the threat of "adjacent channel spill over" interference. The FM broadcast band (88 to 107 MHz) is adjacent to aeronautical frequencies (108- 137MHz). Because illegal pirate stations *ignore all engineering rules and standards*, there is a significant chance that their signal will spill over on to airport communications systems. Modern aviation systems – both on-board aircraft and on the ground, particularly in the vicinity of airports – use radio spectrum for a variety of important purposes, including voice communications and navigation. Since pirate stations may operate at power levels far greater than FAA equipment, the chances that illegal pirate stations might cause electromagnetic interference to nearby FAA facilities is significant. The result could be inaccurate navigational guidance to the pilot – showing the aircraft to be on course when it's not – or interference to air-to-ground communications. We can all agree that such results are best avoided.

The risk of interference grows as the number of illegal pirate stations increase. For example in 2016, the New York Association of Broadcasters ("NYSBA") commissioned an engineering analysis performed by the noted engineering firm of Meintel, Sgrignoli and Wallace. MSW found a pirate station in Newark, NJ, operating on 107.7 MHz, which is only one channel away from being directly adjacent to the FAA frequencies that start at 108 MHz. Newark has an extremely busy airport. The survey found an unauthorized pirate station in Brooklyn operating on 107.9, which is directly adjacent to FAA frequencies. This station could potentially affect communications at JFK airport. To avoid this type of interference, the FCC must make sure that there are no illegal pirate radio stations operating in the upper portion of the FM radio band.

The second type of interference is "intermodulation product" or "harmonic skip." This interference concern is not limited to pirate stations operating on FM channels that are adjacent to FAA frequencies. Pirate stations may unexpectedly cause "intermodulation products" that cause interference to frequencies assigned to the FAA. Intermodulation is a commonly known interference mechanism caused by strong local signals overloading or overpowering the tuner in a receiver. Typically, this non-linear effect will produce interfering signals on multiple frequencies at the front end of the aeronautical radio. For example, a strong pirate signal on 105.1 MHz may mix with an aeronautical signal on 115.05 MHz and produce an intermodulation product at 125.0 MHz, potentially causing interference to the voice communications of aircraft.

The potential for interference from FM broadcasts to FAA communications is well known. For years the FAA sought to become involved in licensing FM stations. In 2006, however, the FAA decided not to become directly involved in the licensing of stations. Nonetheless it recognized the on-going concern and adopted a coordination policy with the FCC.

FM broadcast service transmissions operating in the 88.0–107.9 MHz frequency band pose the greatest concern to FAA navigation signals. The FAA, FCC and NTIA are collaborating on the best way to address this issue.¹⁰

If a problem arises with licensed broadcasters, which it rarely does, the FCC is able to immediately find the stations and resolve the problem. This is not the case with an illegal pirate radio operator. Because pirate stations may start transmitting at any time, at any power level, and without notice, neither the FCC nor the FAA can predict when interference to aeronautical frequencies will occur.

The potential harm from this type of interference cannot be overstated. The FCC's current approach is to apply a *post hoc* remedy. Enforcement can be taken only after the interference has occurred and affected FAA frequencies. Thus, as the number of illegal pirate stations in operation increases, there is a concomitant increase in the potential for significant interference to FAA communications systems.

The interference concerns are exacerbated because it takes time to track down an illegal pirate radio operations. Interference from legitimate broadcast stations can be resolved immediately upon detection. This is not the case with illegal pirate operations. It can take days to track down, find and terminate a specific pirate stations. During this time the interference continues.

The PIRATE Act will help solve this problem. The enforcement tools given to the FCC will help reduce the overall number of illegal pirate operators broadcasting in the FM band, especially in major urban areas. Such a reduction will reduce the risk that there will be interference to airport communications. The new tools will provide the process and necessary penalties to not only eradicate existing pirate stations, but also deter new pirate operators. It will accomplish this in a number of ways.

First, increasing the fines to \$2 million sends a strong signal to illegal pirate radio operators that the FCC is serious about illegal pirate operations, and creates a strong deterrent to unlawful pirate broadcasting.

Second, the new law would hold those who "facilitate" illegal operations liable for up to \$2 million in fines. This would include property owners who *knowingly* allow their property to be used for illegal pirate operations. This provision is extremely important. While it may be difficult to track down a pirate operator, it is not difficult to find the location from which it is transmitting. In many cases the property owner or building supervisor is being compensated for allowing the pirate operator to use the property. While you can move an illegal antenna, you cannot move a building. Holding property owners accountable has been successful in reducing criminal activity.

Third, the PIRATE Act would give the FCC the authority to seize illegal equipment. Today, the FCC must work through the various offices of the U. S. Attorneys office; pirate radio is not on the top of their enforcement lists. The new \$2 million fines will help to get these offices' attention. Moreover, giving the FCC the ability to go to court and obtain an order to seize equipment will provide a more efficient process.

¹⁰ Department of Transportation, Federal Aviation Administration 14 CFR Part 77 [Docket No. FAA-2006-25002; Amendment No. 77-13] RIN 2120-AH31 Safe, Efficient Use and Preservation of the Navigable Airspace 75 Fed Reg. No 39, July 21, 2010 at 42296, 42297

Fourth, the PIRATE Act envisions a more expedited process for assessing fines. The current process can take months or years to assess and collect a fine from a pirate radio operator.

Fifth, the PIRATE Act requires the FCC *affirmatively* to conduct enforcement sweeps in cities with high levels of illegal pirate activity. Thus, the FCC will be obligated to seek out and eliminate the interference, and not simply wait for the interference to occur and then try to find the illegal operator. This will significantly diminish the risk to aviation.

Finally, Florida, New Jersey and New York have made pirate operation illegal under state law. Other states, such as Massachusetts, are looking legislation. The PIRATE Act recognizes state laws as an important enforcement tool.

Taken together, these new enforcement tools will ensure that the number of illegal pirate stations declines. The deterrent effect provided by the legislation will serve as a preventative measure, significantly reducing the number of illegal pirate operators and the risk of interference to frequencies used for airport communications. This approach is superior to the current, *post hoc*, enforcement policy.

The Honorable Paul Tonko

1. Why is it important for us to extend liability to those who facilitate pirate operations?

Today pirate radio operations have become very sophisticated. Upon the receipt of a Notice of Unlicensed operation from the FCC, illegal operators often move their facilities to a different building. In addition, many of the illegal pirate stations are not necessarily located on the property or building from which the illegal radio broadcast transmit. For example, some illegal pirate stations actually operate from another location. Some are from nearby states and others from out of the country. Thus, while the illegal transmitter may be located in New York, the actual pirate operates from a distant location, sending a signal to the illegal transmitter via microwave or even satellite. Tracking down these types of illegal operators is extremely difficult. You can find the illegal transmitter, but you cannot find the pirate to hold them accountable.

Extending liability to those who facilitate illegal pirate operations will significantly help the enforcement effort. First, the PIRATE Act will hold liable those property owners who knowingly allow their property to be used for illegal pirate operations. This approach is fairly straight forward. You can move an illegal antenna and transmitter, but you cannot move a building. The goal is to deny the illegal operator a location or platform from which to engage in illegal broadcasts. An approach that focuses on property owners has been used successfully in other contexts, including drug enforcement.

Under current law the FCC already has the authority to hold a property owner liable. The FCC's precedent, however, requires that the property owner be intricately involved in pirate operations. For example, to be held liable the property owner must provide electricity, Internet access, allow the pirate to have exclusive use of the property, and otherwise participate in the illegal operations. In other words, to be liable, the property owner must effectively be a partner of the pirate.

Unfortunately this approach does not reflect most of the pirate radio scenarios. For example, pirate radio operators erect illegal transmitters on rooftops throughout New York City. Some instances involve cases where the building owner or supervisors have rented space on a rooftop or balcony.

The PIRATE Act will allow the FCC to proceed on the basis that property owners have knowingly allowed a pirate station access to the property. There would be no need to provide additional elements, such as providing free electricity, Internet access or participation in the operations. Importantly, the PIRATE act would require that property owners knowingly allow such operators on their property. There is no strict liability. Prior to any assessment of a fine, the property owners would receive a notice from the FCC. It is only after the notice has been received, and ignored, that a property owner could be held liable under the PIRATE Act.

The "facilitation" provision is not confined to property owners. It would also apply to those who knowingly provide direct financing, or supply equipment or services to illegal pirate

operations. Again, the PIRATE Act will require that these entities knowingly facilitate pirate operations. As with property owners, we believe this approach strikes the appropriate balance.

We believe the facilitations provisions are vitally important to resolving the illegal pirate radio problem. The “facilitation” provisions are a key element of this legislation.

2. Can you explain the concerns with interference with FAA frequencies

Pirate stations interfere with airport communications on frequencies assigned to the Federal Aviation Administration (“FAA”), creating an extremely dangerous situation. For example, in 2013, the Federal Communications Commission (“FCC”) and the Department of Justice shut down an unauthorized radio station operating on 91.7 MHz in Boston, MA. According to the Department of Justice’s Press Release, the FAA complained about pirate radio interference:

“According to an affidavit filed with the civil complaint, the unlicensed FM radio station was causing interference to Federal Aviation Administration (FAA) frequency 120.6 MHz, which is one of the primary frequencies used by pilots to communicate with FAA controllers when flying in the Boston metropolitan area. The FCC issued verbal and written warnings to the residents of 9 Rutland Street on several occasions, but the radio station continued to broadcast.”¹¹

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The growth in pirate illegal pirate radio stations increases the probability there will be more interference issues with airport communications. Interference from pirate stations could cause errors in navigational guidance, interference to pilot to ground communications, as well as other aeronautical systems.

First, there is the threat of “adjacent channel spill over” interference. The FM broadcast band (88 to 107 MHz) is adjacent to aeronautical frequencies (108- 137MHz). Because illegal pirate stations *ignore all engineering rules and standards*, there is a significant chance that their signal will

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frequencies used for airport communications. This approach is superior to the current, *post hoc*, enforcement policy.

3. **Why do you believe the FCC needs more enforcement "tools" to help with the pirate radio problem?**

The enforcement mechanisms contained in the Communications Act are generally designed to focus on those entities that are, or want to be, FCC licensees. There is a general consensus among legitimate licensees and users that they avoid interference and are willing to operate by the basic rules established by the FCC. These entities are inclined to follow FCC regulations, including enforcement decisions, because they want to remain as legitimate licensees. Accordingly the enforcement process and sanctions, which are for the most part civil sanctions, are effective in policing the spectrum. While it is possible to trigger criminal liability under the Communications Act of 1934 ("Communications Act" or "Act"), it is rarely employed. In short, the Communications Act did not contemplate a class of individuals that would knowingly operate illegal radio transmitters outside the law.

In recent years we have seen two critical factors leading up to the illegal pirate radio problem. First, there are a growing number of individuals who have determined that they can operate outside the law and the FCC's licensing process. There are simply no deterrent to operating illegally. The FCC's primary enforcement tool has been the Notice of Unlicensed Operation, which is simply a letter asking the pirate station to cease operations. These letters are generally ignored. Historically there has been little enforcement follow up, with relatively few fines and even fewer equipment seizures. The present enforcement system does not deter any illegal pirate operations.

Second, adding to this problem is the rapid decline in the price and size of transmitting equipment. In the past, radio transmitters were huge, taking up an entire room. Today an illegal transmitter can be as small as a large suitcase. The costs of equipment have also declined. You can obtain an illegal transmitter for anywhere from \$5,000 to \$10,000. By purchasing equipment on line from a foreign country, illegal operators are able to use equipment that has not been approved by the FCC.

The best evidence can be found by those who keep track of Pirate operations in New York City. An organization named "Brooklyn Pirate Watch" (<https://twitter.com/BkPirateWatch?lang=en>) observed recently on Twitter that on the evening of May 5, 2018 that it found 35 pirates operating in and around Flatbush, Brooklyn. Brooklyn Pirate Watch commented on the FCC's recent claims that it was making progress in a Twitter post on April 12, 2018 (<https://twitter.com/BkPirateWatch>)

"Significant progress"?! It doesn't sound all that significant to us (so far) in southern Bklyn. Still lots of pirates causing interference to legit stations all up & down the FM dial."

Importantly, this is not a situation where there are a few anecdotal cases of illegal pirate operations. As noted in my written testimony, the engineering analysis performed by the noted

engineering firm of Meintel, Sgrignoli and Wallace documented a systematic problem over a four year period. Even after the hearing, the Brooklyn Pirate Project correctly observed that nothing has really changed.

There is no question that the current enforcement process is not working. Past FCC administrations have not been able to make significant progress in reducing the number of illegal pirate radio operators. Under FCC Chairman Wheeler, pirate enforcement lapsed. Under FCC Chairman Pai, there is a renewed attitude to enforcement. The current FCC, however, is limited in the tools it can use to enforce against illegal pirate operations. Historically these tools have proven to be inadequate.

We believe it is time to change the Communications Act and give the FCC greater enforcement authority. The new tools will provide the process and necessary penalties to not only eradicate existing pirate stations, but also deter new pirate operators. It will accomplish this in a number of ways.

First, increasing the fines to \$2 million sends a strong signal to illegal pirate radio operators that the FCC is serious about illegal pirate operations, and creates a strong deterrent to unlawful pirate broadcasting.

Second, the new law would hold those who "facilitate" illegal operations liable for up to \$2 million in fines. This would include property owners who *knowingly* allow their property to be used for illegal pirate operations. This provision is extremely important. While it may be difficult to track down a pirate operator, it is not difficult to find the location from which it is transmitting. In many cases the property owner or building supervisor is being compensated for allowing the pirate operator to use the property. While you can move an illegal antenna, you cannot move a building. Holding property owners accountable has been successful in reducing criminal activity.

Third, the PIRATE Act would give the FCC the authority to seize illegal equipment. Today, the FCC must work through the various offices of the U. S. Attorneys ; pirate radio is not on the top of its enforcement list. The new \$2 million fines will help to these offices' attention. Moreover, giving the FCC the ability to go to court and obtain an order to seize equipment will provide a more efficient process.

Fourth, the PIRATE Act envisions a more expedited process for assessing fines. The current process can take months or years to assess and collect a fine from a pirate radio operator.

Fifth, the PIRATE Act requires the FCC *affirmatively* to conduct enforcement sweeps in cities with high levels of illegal pirate activity. Thus, the FCC will be obligated to seek out and eliminate the interference, and not simply wait for the interference to occur and then try to find the illegal operator. This will significantly diminish the risk to aviation.

Finally, Florida, New Jersey and New York have made pirate operation illegal under state law. Other states, such as Massachusetts, are looking legislation. The PIRATE Act recognizes state laws as an important enforcement tool.

Taken together these new enforcement tools will ensure that the number of illegal pirate stations declines. The deterrent effect provided by the legislation will serve as a preventative measure, significantly reducing the number of illegal pirate operators.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

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April 9, 2018

Mr. Robert Gessner
President
MCTV
P.O. Box 1000
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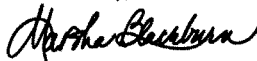
Dear Mr. Gessner:

Thank you for appearing before the Subcommittee on Communications and Technology on Thursday, March 22, 2018, to testify at the hearing entitled "Legislative Hearing on Four 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. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, April 23, 2018. Your responses should be mailed to Evan Viau, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Evan.Viau@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Marsha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member, Subcommittee on Communications and Technology

Attachment

Robert Gessner's Response to the Questions for the Record
April 23, 2018

Attachment—Additional Questions for the Record

The Honorable Marsha Blackburn

- 1. On March 22, 2018, the FCC passed a Wireless Infrastructure Streamlining Order that provides exemptions from certain environmental and historical reviews. How useful is this effort to closing the digital divide?**

- a. To what degree are the FCC's efforts and this Subcommittee's efforts on streamlined infrastructure complimentary?**

A: MCTV and most other American Cable Association members do not provide licensed wireless service, and so the FCC's Wireless Infrastructure Streamlining Order is less relevant for us. That said, this decision marks another step toward providing incentives for providers to accelerate their network investments and deployments so they can provide advanced broadband services to all Americans. We applaud these actions by the FCC, as well as the many pieces of "infrastructure" legislation that your Subcommittee is considering. Building networks is expensive, and efforts to remove or reduce barriers will not only expedite our builds but enable us to extend our networks into unserved areas, closing the digital divide.

The Honorable John Shimkus

- 1. Some of your competitors have offices here in DC with hallways full of lawyers to handle FCC regulation. On the other hand, I know that some of ACA's member companies are very small, some of them run with just a handful of employees. Can you expand on the burdens your companies face in navigating and complying with FCC regulation?**

A: You are absolutely right – ACA's membership largely consists of very small companies largely serving smaller communities. For example, ACA members only have seven percent of the video market share in your state of Illinois. More generally, as I indicated in my testimony, over eighty percent of ACA's 700-plus member companies serve fewer than 5,000 subscribers and around half serve fewer than 1,000 subscribers. These are company-wide figures. In many instances, ACA members operate individual systems that have only a few hundred subscribers each.

With a small number of customers, ACA member companies are "lean and mean" – half have fewer than 10 employees. ACA's members do not have the ability to have a team of in-house lawyers or to even spend significant sums on outside legal counsel. They do not have Washington offices. With every new proposed regulation, an ACA member must determine whether its limited resources would be better spent seeking regulatory relief where they feel it is merited, but the outcome is uncertain and costly to pursue, or to

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maintain and upgrade their facilities and services. And without larger operators' ability to spread their costs over a vastly larger base of customers, the cost of regulation for ACA members can be significant and onerous.

The Honorable Robert E. Latta

1. **Ranking Member Doyle suggested that SERRO would open a "huge regulatory hole" at the FCC. Moreover, in response to a question from Ranking Member Doyle, Ms. Morris testified that SERRO presented a "high risk of harm" to all types of entities, including consumers and small businesses. How do you respond to these comments?**

A: While I appreciate the need to be concerned about the impact of any legislation on consumers and small businesses and any unintended consequences, I believe the concerns raised by Ranking Member Doyle and Ms. Morris are not intended by the language in SERRO and would support ensuring that is actually the case.

SERRO's objective is simply to reduce the administrative and related costs that currently deter small entities from seeking regulatory relief to which they would otherwise be entitled. That is something that everyone should support. Furthermore, SERRO does not lower the bar for deciding whether relief is appropriate – the FCC will still have to determine whether there is "good cause" to relieve a small entity, typically on a temporary basis, of specific regulatory obligations whose costs or burdens outweigh the benefits to the public.

2. **According to Representative Eshoo, SERRO is a "Trojan Horse" whose true intent is to "waive everything" so that small companies don't have to play by the rules. You obviously disagree. What in SERRO prevents it from becoming a vehicle that disenfranchises small entities' customers of larger companies?**

A: SERRO is a modest bill that has been carefully crafted not to alter the existing standard of protection for consumers. It is simply designed to make it easier for small entities to deal with the regulatory procedures involved in seeking waivers or exemptions that they may be entitled to receive.

I understand Rep. Eshoo's concerns might have merit if SERRO changed the test by which the FCC decides whether a waiver, exemption or delay of its rules is appropriate. That standard, known as the "good cause" test, requires a particularized determination that the public interest would be better served by relieving a regulated entity from a particular regulatory obligation than by requiring immediate and strict compliance. But SERRO does not change the "good cause" standard. SERRO will not result in a small entity getting regulatory relief to which it would not have been entitled before SERRO was enacted. Depending on the FCC's assessment of the facts before it in a waiver proceeding or in a triennial review proceeding, a small entity might get the relief it desires or it might be denied that relief. A small entity with ten employees might get

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April 23, 2018

relief while a small entity with 1,000 employees might not. However, because of SERRO, in both instances, the small entity will have had the playing field leveled vis-à-vis larger entities that do not face the same obstacles to seeking relief. In other words, contrary to what some members and Ms. Morris have suggested, SERRO does not preordain the outcome of a small entity's request for relief or otherwise put a small entity's customers at greater risk than a large entity's customers.

And because SERRO focuses on reducing a small entity's costs, its enactment will produce benefits for consumers. Large companies with their own legal departments and sizable budgets for legal and engineering advice can spread the cost of the filings they make at the FCC so that it is barely noticeable to their customers. But small entities do not have that ability. Even where the cost of compliance clearly outweighs the benefits to consumers, small entities have to determine whether they – and their customers – can afford the cost of seeking relief. Streamlined waiver processes, routine triennial reviews under the good faith test, and automatic deferral of certain rules will make it more likely that an entity that can make the showing needed to get relief is able to do so.

3. In responding to a question from Representative Engel, Ms. Morris asserted there already are “sufficient avenues” for the needs of small entities for regulatory relief to be “accommodated.” Isn’t she right?

A: She is correct that there are avenues, such as case-by-case waiver requests, by which small entities can seek regulatory relief. But those “avenues” are actually blocked for most small entities that lack the resources and expertise to use them. Ms. Morris expressed support for “surgical solutions” to specific problems. That is exactly what SERRO presents: a narrowly drawn set of solutions to the barriers that prevent small entities from seeking and obtaining regulatory relief to which they are entitled under the existing “good cause” standard. These solutions include streamlined procedures for seeking case-by-case waivers, a triennial review that will relieve small entities from having to make case-by-case filings, and an automatic deferral of certain rules for small entities.

4. Ms. Morris testified that SERRO’s definition of a “small entity” was vague and overly inclusive – statements that were echoed by Ranking Member Doyle, Representative Pallone, and Representative Eshoo. For example, Ranking Member Doyle indicated that SERRO would apply to companies with over \$1 billion in revenue and Representative Pallone stated that it was his understanding that SERRO would give relief to companies with as many as 6.5 million subscribers. Are these accurate descriptions of the types of entities that would be covered by SERRO?

A: No. SERRO carefully defines a small entity by reference to existing statutory and regulatory definitions found in the Small Business Act, Regulatory Flexibility Act, and the FCC’s rules. Those definitions are clear and precise and, to my knowledge, have never been interpreted to cover large service providers with billions in revenue or millions of subscribers. Today’s communications marketplace is characterized by very

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large companies and small companies – there is not much left in the middle. For example, the largest telephone and cable companies each have tens of thousands of employees, annual revenues in the tens of billions of dollars and millions of subscribers. In the wireless industry, the four largest companies control over 98.5 percent of the market. The remaining companies in these industry sectors almost all fall well below the standards that are incorporated into SERRO and that have long been accepted as appropriate measures for defining a small entity: 1500 or fewer employees, \$38.5 million or less in annual revenues, or less than two percent of the subscribers to a service nationwide.

- 5. What is your reaction to Ms. Morris' contention, echoed by Representative McNerney, that by requiring the FCC to review its rules every three years to determine whether there is good cause to modify or repeal particular requirements as applied to some or all small entities would complicate the regulatory process and result in more legal challenges to the FCC's decisions?**

A: There is no reason for SERRO to result in more litigation. The standard for relief – “good cause” – is not changing. The definition of a small entity is based on existing standards that are familiar to both the FCC and industry.

The Honorable Adam Kinzinger

- 1. In your testimony, you describe the need for the FCC to provide regulatory relief to small telecommunications companies that cannot reasonably be expected to comply with expansive rules. Would you say that the customer base for the majority of these small companies is largely rural populations?**

A: While I am more intimately familiar with ACA's membership, my knowledge of the communities where ACA's members provide service suggests that the customer base for all smaller telecommunications companies tends to be more rural than the customer base of the larger companies. For example, 28 percent of the US population lives in small cities and rural areas; however, 42 percent of the people in the service areas of ACA's members live in these areas. Furthermore, the areas served by ACA's members are significantly less densely populated than the areas served by larger companies. The average population density for the four largest cable television operators (i.e., Comcast, Charter, Cox, and Altice) is more than 709 persons per mile. ACA's member companies operate in areas with an average population density of under 150. The mostly rural character of the areas served by ACA also is reflected in the size of the other businesses operating in these communities: In ACA territories with a population density of under 1,000 people per square mile, nearly 90 percent of the businesses have fewer than 10 employees.

Information published by the FCC as part of its regulatory flexibility analyses confirms that the situation in most other sectors of the telecommunications industry is similar to that found in cable: most consumers are served by a few large, often national, companies

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that concentrate on urban and densely populated suburban areas, while hundreds of much smaller companies focused on providing service to rural and exurban customers.

The Honorable Kurt Schrader

1. Do you think that your members require less regulatory oversight – and your customers require less protection – than larger businesses and their customers?

A: In some instances, small entities do not require the same level of regulatory oversight as large businesses because small entities do not have the ability or incentive to create the harm that a regulation is intended to address. But more importantly, SERRO itself does not guarantee small entities a lower level of regulatory oversight. It merely reduces the burdens that might otherwise prevent a small entity from seeking regulatory relief that they are likely to merit under existing law. The cost of seeking relief is the same for a small entity as for a large one. But on a per customer basis, the cost is much higher for small entities, which can make it infeasible to pursue relief. SERRO merely would give small operators the “opportunity” to obtain regulatory relief that large entities already have. It would not make it more likely that the requested relief is granted.

2. Ms. Morris and several members are quite concerned that SERRO will harm consumers. Why are those concerns unwarranted?

A: Most importantly, SERRO does not change any standard of protection for consumers. It does not alter the “good cause” standard nor do we intend for it to do so in any way. Furthermore, small entities rarely lack scale to create market power issues that are often the root of many policies. That is why we are often aligned with the concerns of consumers when it comes to issues of mergers and other issues of concentration of market power. In addition, in many of our markets, small entities provide a competitive check on larger companies. Resources that these small entities have to devote to the legal and administrative costs of obtaining waivers or other forms of regulatory relief are resources not available to upgrade and improve the services offered by these small companies.

3. Ms. Morris and several members were particularly critical of the automatic one-year deferral provision in SERRO. How will that provision benefit small entities and their customers?

A: The costs of regulatory compliance are, on a per-subscriber basis, much higher for small entities than large ones. For example, large entities can purchase the equipment needed to comply with new technical mandates in volume at a lower per-device cost than small entities. Indeed, small entities often cannot get the necessary equipment at any price, because manufacturers commit their limited supplies to the larger companies ahead of small entities. Deferring compliance not only will ensure the equipment is available, but it is likely that the cost will come down. Deferral also can reduce the need for a case-by-case waiver request for a delay or exemption. Other benefits include the greater certainty

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that comes with having waited a year to see if the rules are reconsidered or otherwise modified and the ability to take advantage of the compliance plans implemented by larger operators who have greater resources for determining exactly what is required by a new rule. That said, we appreciate her concerns and are willing to work with the Committee to address that issue.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

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April 9, 2018

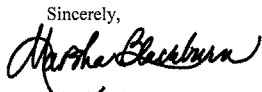
Mr. John H. Madigan, Jr.
Vice President and Chief Public Policy Officer
American Foundation for Suicide Prevention
440 First Street, N.W.; Suite 300
Washington, DC 20001

Dear Mr. Madigan:

Thank you for appearing before the Subcommittee on Communications and Technology on Thursday, March 22, 2018, to testify at the hearing entitled "Legislative Hearing on Four 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. To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, April 23, 2018. Your responses should be mailed to Evan Viau, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Evan.Viau@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Marsha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member, Subcommittee on Communications and Technology

Attachment

**U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Communications and Technology
Hearing Entitled “Legislative Hearing on 4 Telecommunications Bills”**

Responses to Questions for the Record of Mr. John H. Madigan Jr.

The Honorable Marsha Blackburn

1. As I mentioned in my opening statement, suicide is the 10th leading cause of death in Tennessee, where over two times as many people die by suicide annually than by homicide. On average, one person dies by suicide every 8 hours in the state. That’s simply devastating. It would be incredibly impactful if we could play even a small part in saving lives simply by creating a dedicated 3-digit number. Can you talk more about how a suicide hotline will help?

The current National Suicide Prevention Lifeline (1-800-273-8255) provides free and confidential support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week, across the United States. By increasing the access to lifesaving resources for vulnerable individuals, the National Suicide Prevention Hotline significantly reduces emotional distress and suicidality in callers. The use of the hotline has more than tripled since 2010, with 2 million calls answered last year alone. Lifeline standards, trainings and practices of its national network of local call centers are designed to effectively de-escalate persons in suicidal crises, reduce risk for callers in crisis and ensure that they receive the most appropriate, least invasive care that supports their health, safety and well-being. SAMHSA-funded evaluations indicate that Lifeline member centers are effectively de-escalating persons in suicidal crisis whom might otherwise be diverted to emergency services. Abbreviated dialing codes are easier to remember, faster to dial, and with nearly 12 million Americans experiencing suicidal thoughts annually, increased access to quality crisis services will save lives.

The Honorable Adam Kinzinger

1. In recent months, I’ve had a number of meetings with community health centers in my district in Illinois. They tell me they’re seeing a big increase in demand for mental health care and behavioral health services. It’s safe to say that in many rural communities, there is an inadequate amount of health services, that is especially so with respect to mental health. Healthcare providers are trying to bridge the gaps in mental health care services. But addressing the lack of these services in rural America is a long-term challenge that will need to be confronted with a multi-pronged approach – including the use of technology and telemedicine.

- a. Have you seen evidence that an improved National Suicide Hotline will help rural populations?
- b. How would this approach benefit districts like mine?

A National Suicide Hotline, just like the National Suicide Prevention Lifeline, will reduce the burden on emergency rooms, police, emergency responders, and behavioral healthcare providers who often step in during escalated emotional crises. When these resources are stretched thin – as is the case in many rural areas – the Lifeline's local crisis centers provide a safety net. Many 911 centers report a high volume of non-suicidal callers with mental health issues that would more effectively and efficiently be assisted on a mental health hotline, and nearly half of the Lifeline's highest-risk callers are professionally and effectively de-escalated without utilizing emergency services.

