



ML Strategies Legislative Update

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ML Strategies 2017 Outlook: Telecommunications

Senate Telecom Package

During the last Congress, a telecom package was more the subject of chatter than consideration. Yet this Congress, it already has strong momentum. Senate Commerce Committee Chairman John Thune (R-SD) is looking to pass a package out of his Committee this month and trying to secure floor time for the bill shortly thereafter. The tentative date of the Committee markup is January 24th. The Committee reportedly will consider twenty bills, around a third of which are expected to relate to telecom. Bills up for consideration likely will be restricted to those that have broad support and are largely non-controversial. Below are summaries of six telecom bills that are strong candidates to make the Committee's package.

- **The MOBILE NOW Act (S.19)**. Re-introduced this Congress by Chairman John Thune, S.19 seeks to expand next-generation 5G wireless gigabit broadband service. In service of this goal, it would direct various federal agencies to evaluate spectrum bands for 5G, including high-band millimeter wave frequencies. The bill also contains several provisions aimed at promoting broadband deployment. The Senate Commerce Committee approved a previous version of the MOBILE NOW Act in a markup last May.
- **The Developing Innovation and Growing the Internet of Things (DIGIT) Act (S.88)**. Re-introduced this Congress by Senator Deb Fischer (R-NE), S.88 would establish a working group within the Commerce Department to identify proposals to advance the Internet of Things (IoT), in addition to any Federal regulations, statutes, or grant practices that are inhibiting or could inhibit the development of the IoT. The original version of the bill passed the Senate Commerce Committee in a markup last April.
- **Improving Rural Call Quality and Reliability Act of 2015 (S.96)**. Re-introduced this Congress by Senator Amy Klobuchar (D-MN), S.96 would order the Federal Communications Commission (FCC) to set basic quality standards for providers that transmit voice calls in order to improve call completion. Representative David Young (R-IA) already has re-introduced his companion bill ([H.R. 460](#)) in the House. A previous version of his bill passed the House last September as a part of the Communications Act Update Act of 2016.
- **The Securing Access to Networks in Disasters (SANDy) Act (S.102)**. Re-introduced this Congress by Senator Maria Cantwell (D-WA), S.102 aims to improve the resiliency of the

nation's communications networks during emergencies by increasing coordination between communications providers, utilities, and public safety officials. In the House, Representative Frank Pallone (D-NJ), Ranking Member of the Energy and Commerce (E&C) Committee, re-introduced his companion bill ([H.R.588](#)). In the last Congress, a previous version of this legislation passed the House in June as a standalone measure and in September as one of the eight bills in the Communications Act Update Act of 2016.

- **The Spoofing Prevention Act** ([S.134](#)). Re-introduced this Congress by Senator Bill Nelson (D-FL), the Ranking Member of the Senate Commerce Committee, S.134 would prohibit the transmission of fraudulent caller ID information through texts, certain IP-enabled voice services, and calls originating outside the United States. In the House, Representative Grace Meng (D-NY) already has re-introduced her companion bill ([H.R.423](#)), titled the "Anti-Spoofing Act of 2016," which the House passed in September as a part of the Communications Act Update Act of 2016.
- **Kari's Law Act** ([S.123](#)). Re-introduced this Congress by Senator Amy Klobuchar (D-MN), S.123 would require multi-line telephone systems to have a default configuration that enables users to call to 9-1-1 without dialing additional digits. In the House, Representative Louie Gohmert (R-TX) re-introduced his companion bill ([H.R. 582](#)). A version of this legislation from last Congress passed the House in May as a standalone measure and in September as a part of the Communications Act Update Act of 2016.

Following the markup later this month, the Senate may move more bills – likely including some first introduced in the House – by unanimous consent to reach the President's desk within the first 100 days of his Administration.

Communications Act Rewrite

The Communications Act of 1934 may see some changes in 2017. Interest in updating the law, as Congress last did in 1996, is both bipartisan and bicameral. Many Democrats and Republicans agree that the growth of digital communications, the Internet, and mobile technologies have rendered parts of the statute outdated. A rewrite of the law is a stated priority of Chairman Thune; Representative Greg Walden (R-OR), the Chairman of the House Energy and Commerce (E&C) Committee; and Representative Marsha Blackburn (R-TN), the Chair of the House E&C Subcommittee on Communications and Technology. Democrats have not been as vocal about their views on a potential rewrite. Yet some have said Congress should consider revisiting the law's language on cybersecurity and consumer protection. The open question is to what extent Republicans will seek Democratic buy-in. The answer to that question will ultimately affect the design – and prospects – of any rewrite legislation.

Prior to Election Day, congressional Republicans pushed FCC process reform to try to clip the wings of the Democratic majority on the Commission. However, now that their party will control the FCC, process reform may move to the backburner. In fact, if congressional Republicans think process reform would hamstring the current FCC, it may be off the table altogether. Alternatively, Republicans may take the long view and try to curb the authority of the FCC under a future administration by slipping process reform into a rewrite of the Communications Act. Should they pursue this route, they may borrow text from the Federal Communications Commission Process Reform Act ([H.R. 290](#)). Introduced this Congress by Chairman Walden, H.R. 290 would require the FCC to change some of its procedures in order to increase the Commission's transparency, efficiency, and accountability. Some of the changes the FCC would have to make include establishing minimum comment periods for rulemaking proceedings and conduct cost-benefit

analyses of all proposed rules. Last Congress, a scaled-back version of this bill passed the House as part of the Communications Act Update Act of 2016, but it did not come up for a vote in the Senate. Senator Heller did however file a companion bill last Congress and sought consideration of it during a Senate Commerce Committee markup.

In addition to H.R. 290, two others bills related to the FCC could find their way into a rewrite of the Communications Act:

- **The Federal Communications Commission Reauthorization Act.** Introduced last Congress by Chairman John Thune, this bill would reauthorize the Commission for FY2017-FY2018. The Senate Commerce Committee passed the bill during a markup last April.
- **The Federal Communications Commission Consolidated Reporting Act (S.174).** Filed this Congress by Senator Dean Heller (R-NV), S. 174 would order the FCC to compose a biennial report for Congress on the state of competition in the markets for voice, video, and data services, as well as on the availability of high-speed and high-quality telecommunications services. Last Congress, Representative Steve Scalise (R-LA) offered similar legislation in the House. That bill passed the House as a standalone measure in February of 2015 and in September as a part of the Communications Act Update Act of 2016.
- **The Federal Communications Commission Consolidated Reporting Act.** This legislation, summarized earlier in the section on the Senate Telecom Package, may appear in a rewrite of the Communications Act, should it not make the cut for the Senate's telecom package.

Net Neutrality

This year, Congress may consider a rewrite of the FCC's Open Internet order, a set of rules that treat broadband Internet providers (ISPs) as public utilities and establish standards designed to ensure an open Internet. Republican FCC Commissioners Ajit Pai and Michael O'Rielly have pledged to repeal the rules, but some Republicans in Congress want to go a step further and amend the sections of the Communications Act on which the rules were based. A rewrite likely would preserve bans on blocking, throttling, and paid prioritization but explicitly allow some forms of zero rating. However, it probably would repeal the Open Internet order's reclassification of ISPs as common carrier utilities and prohibit the FCC from regulating ISPs under Title II of the Communications Act. Republicans are looking to pursue this issue early, with Representative Blackburn tackling it first at the subcommittee level.

Privacy

A week before the election, the FCC passed rules requiring ISPs to obtain permission from subscribers before collecting and disseminating customer data. Congress may seek to amend the sections of the Communications Act referenced in these rules or invoke the Congressional Review Act (CRA) to repeal the rules wholesale. The CRA grants Congress the power to negate any regulations finalized during the last sixty days of a presidency – a window of time during which the FCC voted on its privacy rulemaking. Action on items flagged for consideration under the CRA may start as early as January 24th, and privacy rules likely will be in the mix as discussion about them continues among Republican leadership.

Lifeline

House Republicans have voted in the past to impose a budget cap on the FCC's Lifeline Program and end mobile voice and Internet subsidies for Lifeline recipients. These changes never went anywhere due to the threat of a filibuster in the Senate and a veto by President Obama. However,

now they have strong odds of passage. Some conservatives, particularly in the House, would like to go further and abolish the program. Yet due to support for Lifeline among rural members, efforts to scale back the program are probably more likely. Republicans might also consider repealing the FCC's Lifeline Order through a CRA vehicle. However, that approach could open the door to legal challenges over whether the order falls into the sixty-day window when the CRA applies.

The Telephone Consumer Protection Act

While the FCC awaits a ruling from the DC Circuit on the challenge to its 2015 TCPA order, Congress may update the landmark law through a rewrite of the Communications Act. As we have noted in our monthly TCPA [digests](#), the changes that have the best chances of becoming law are those that bolster the law's protections for consumers and reduce its ambiguity for the business community. One such change is an amendment introduced last year by Senator Steve Daines (R-SD) to permit companies that have compliance systems monitoring their independent third-party vendors or service providers to cite these programs as an affirmative compliance defense. Interest in this proposal is growing in the Senate and could also be ripe for consideration in the House, where Chairs Walden and Blackburn have both expressed interest in modernizing the TCPA.

Congressional Committee Changes

The two congressional committees that have oversight over telecommunications – the Senate Commerce Committee and the House Energy and Commerce (E&C) Committee – have seen some changes in their ranks. The Senate Commerce Committee gained eight new members: Senators Tammy Duckworth (D-IL), Todd Young (R-IN), Maggie Hassan (D-NH), Catherine Cortez Masto (D-NV), James Inhofe (R-OK), Mike Lee (R-UT), Tammy Baldwin (D-WI), and Shelley Moore Capito (R-WV). In addition, it lost five members: Senators Marco Rubio (R-FL), Claire McCaskill (D-MO), Steve Daines (R-MT), and Joe Manchin (D-WV) and former Senator Kelly Ayotte (R-NH). While committee membership changed significantly, committee leadership did not: Senators John Thune (R-SD) and Bill Nelson (D-FL) are still chairman and ranking member of the full Committee and Senators Roger Wicker (R-MS) and Brian Schatz (D-HI) are chairman and ranking member of the Subcommittee on Communications, Technology, Innovation and the Internet.

As noted above, in the House, Representative Greg Walden (R-OR) has succeeded Representative Fred Upton (R-MI) as chairman of the House E&C Committee. Representative Marsha Blackburn (R-TN) has taken over for Walden as chair of the Subcommittee on Communications and Technology, and Representative Bob Latta (R-OR) has replaced Representative Michael Burgess (R-TX) as chairman of the Subcommittee on Digital Commerce and Consumer Protection (formerly the Subcommittee on Commerce, Manufacturing, and Trade). On the Democratic side, Representative Michael Doyle (D-PA) has succeeded Representative Anna Eshoo (D-CA) as the ranking member of the E&C Subcommittee on Communications and Technology. In addition, Rep. Jan Schakowsky will remain ranking member of the Subcommittee on Digital Commerce and Consumer Protection.

The E&C Committee has seven new members: Representatives Mimi Walters (R-CA), Raul Ruiz (D-CA), Scott Peters (D-CA), Buddy Carter (R-GA), Debbie Dingell (D-MI), Tim Walberg (R-MI), and Ryan Costello (R-PA). These members replaced Representative John Yarmuth (D-KY) and former Representatives Lois Capps (D-CA), Ed Whitfield (R-KY), Renee Ellmers (R-NC), and Joe Pitts (R-PA). Representative Mike Pompeo (R-KS) will also leave the Committee should the Senate confirm him as director of the Central Intelligence Agency (CIA).

Cabinet Nominations

The Senate Commerce Committee held a hearing on January 11th to consider the nomination of Transportation Secretary-designate Elaine Chao. The Commerce Committee is tentatively

scheduled to vote on her nomination on January 18th. If Chao receives a green light from the Committee, then the full Senate likely will confirm her to her designated post on Inauguration Day.

The Committee had originally scheduled a nomination hearing for Commerce Secretary-designate Wilbur Ross on January 12th. Yet it has since postponed the hearing to the 18th to allow a full review of the paperwork that Ross submitted to the Office of Government Ethics. Chairman Thune would like the Committee to report out Ross' nomination in time for the Senate to confirm the financier on Inauguration Day (as was the initial plan). However, due to the hearing delay, Ross may have to wait until after Trump takes office before he comes up for a vote.

The Committee is looking to hold a hearing for Deputy Commerce Secretary-designate Todd Ricketts in the first week of February. It plans to consider Ricketts' nomination thereafter in a package of other nominations to posts in executive departments. To wrap up the first 100 days of this Congress, it is then expected to consider nominations to positions at independent agencies.

Agency Changes

Due to Donald Trump's election, Republican commissioners will assume a majority on both the Federal Communications Commission (FCC) and on the Federal Trade Commission (FTC) as well. Come January 20th, Republicans will have a 2-1 majority on the FCC. Chairman Tom Wheeler already has announced that he will leave by then, and Republican Commissioner Ajit Pai is poised to take over as acting chairman. Democratic Commissioner Jessica Rosenworcel has been bumped from the Commission because the Senate never voted to grant her a second term before the end of the last Congress. The Rosenworcel saga may not be over though, as she may end up regaining her post. On January 4th, President Obama re-nominated her to a second term, and Chairman Thune expressed some openness to holding a floor vote to confirm her.

Trump may appoint Pai to a full term as chairman. If he does not, those thought to be in contention for the chairmanship, along with the third Republican seat on the Commission, include Brandt Hershman, Majority Floor Leader in the Indiana State Senate; Bryan Tramont, Wilkinson Baker Knauer's managing partner; David Redl, counsel on the House Energy and Commerce (E&C) Committee; David Quinalty, policy director of the E&C Subcommittee on Communications and Technology; and Jeffrey Eisenach, an American Enterprise Institute visiting scholar (who currently is leading Trump's transition of the FCC). These same names are also floated as possible candidates for Administrator of National Telecommunications and Information Administration (NTIA).

The FTC already has two vacancies and will soon have a third now that Chair Edith Ramirez plans to resign from her post on February 10th. The leading candidates rumored on the shortlist for chair are Commissioner Maureen Ohlhausen, former Commissioner Joshua Wright (who currently is heading Trump's transition of the FTC), and Utah Attorney General Sean Reyes.

As noted earlier, the Senate is not expected to act on lower-level agency nominations until after it considers candidates for cabinet-level positions.

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