

ML Strategies 2018 Outlook: Telecommunications

January 04, 2018 | |

Even though Congress spent much of last year focused on a number of bigger-picture priorities including healthcare, tax reform, and appropriations, lawmakers also developed a number of telecom-related bills. Recently, lawmakers passed a Foreign Intelligence Surveillance Act (FISA) extension, as part of the December stopgap-spending bill, but Congress will need to pass a more long-term reauthorization of the legislation in January. Another hot topic on the Hill going into 2018 is net neutrality following the FCC's December vote that repealed the 2015 Open Internet Order. Looking ahead, lawmakers will have a full plate deciding on whether to develop net neutrality legislation, and marking up a number of spectrum and infrastructure bills in the House Energy and Commerce Committee and the Senate Commerce Committee.

FISA Reauthorization

On December 21, the House and Senate approved a temporary renewal of the Foreign Intelligence Surveillance Act (FISA) as part of the stopgap-spending bill. Congress will need to pass a more long-term reauthorization of FISA in January. Prior to the December agreement, Congress faced irreconcilable differences between three different versions of the legislation.

Section 702 of the law allows the National Security Agency (NSA) under a special court order to collect and analyze emails and other digital communications of foreigners living overseas. However, the agency also collects data on a number of people in the U.S., which it can later search without a warrant.

Many Republicans, especially members of the House Freedom Caucus, strongly objected to an extension of the surveillance law without restrictions on when the FBI and intelligence agencies can access data on Americans. Apart from the surveillance extension, there are two versions of the reauthorization legislation, one approved by the House Judiciary Committee and another by the Senate Intelligence Committee. Both government funding and the FISA extension will expire on January 19. Currently, the House is scheduled to vote on a long-term extension of FISA on Thursday, January 11. Disagreements still remain among lawmakers regarding what kinds of warrants should or should not be required for officials seeking access to the content of Americans' communications collected under Section 702 of FISA.

Future of Net Neutrality

On December 14, the FCC held its December Open Meeting where they considered a ruling that would restore the classification of broadband internet access as an "information service" (under Title I) and repeal the 2015 Open Internet Order that prevented internet service providers from blocking, throttling, or paid prioritization. The item was adopted by a vote of 3-2 along party lines with Democrat Commissioners Mignon Clyburn and Jessica Rosenworcel voicing their strong opposition.

Chairman of the Senate Commerce Committee, John Thune (R-S.D.), has indicated he will propose a version of net neutrality legislation and Rep. Marsha Blackburn (R-TN) has proposed the Open Internet Preservation Act ([H.R. 4682](#)). Her bill would reinstate rules that ban internet service providers from blocking and throttling web traffic, **but it does** not prevent paid prioritization deals nor classify BIAS as a Title II service.

Many Republicans are advocates of addressing net neutrality via legislation so that the issue does not get ping-ponged by the FCC with each new chair or administration. While Democrats have voiced their opposition to these proposals, saying the bills do not go far enough, and are unlikely to support bills that focus exclusively on blocking and throttling, rather than including paid prioritization. Currently, Blackburn's bill has 21 cosponsors, all Republicans. Meanwhile, the House Energy and Commerce Committee is planning a hearing on paid

prioritization, but no date for the hearing has been announced yet. While it is unclear who may testify at the hearing, discussion will focus around balancing protection of consumers on the one hand with encouraging innovation and incentivizing investment on the other.

Senator Ed Markey (D-Mass.) and Rep. Mike Doyle (D-Pa.) have announced they are planning to file a Congressional Review Act (CRA) resolution of disapproval to undo the FCC's rescission of its 2015 net neutrality rules. Sen. Markey has said he's one co-sponsor away from the 30 required to discharge his CRA resolution from Committee, forcing a floor vote. Although Congress cannot act until 20 calendar days

after the FCC's net neutrality repeal is sent to Congress, it only has 60 days of session after transmission to Congress to pass the legislation. In the Senate, a simple majority can pass a CRA. Republicans currently hold a majority of 51-49. If Congress does pass a CRA, President Trump will veto the CRA.

Broadband Deployment Reforms

Throughout 2017, cable and wireless companies worked to include rights-of-way reforms as part of a broader infrastructure plan and in stand-alone legislative proposals, such as the SPEED Act, MOBILE NOW, and the Thune/Schatz and Heller/Manchin discussion drafts. These bills generally target regulatory barriers and hurdles to broadband deployment that telecom companies face when gaining access to Federal, State and local rights-of-way. Specifically, the Thune/Schatz discussion draft would make much-needed clarifications to the cable franchising process, would allow cost-based access to the rights-of-way for wireless facilities, require state and local governments to act on applications for wireless facilities within a specified timeline, and would establish a list of prohibited grounds on which those applications could be denied. Meanwhile the Rural Broadband Deployment Streamlining Act (**S. 1363**), sponsored by Sens. Heller and Manchin, would focus on speeding up the deployment of broadband infrastructure on Federal property and modifies the process of Federal government review of applications.

During the summer of 2017, President Trump traveled to Iowa and spoke of the need for internet connectivity in rural America. His August 15 Executive Order on Infrastructure aims to speed up these approvals as well, and is being considered in Congress as a possible basis for additional, legislative reforms. In mid-December, the Trump Administration released its National Security Strategy. Included in the strategy is a policy statement on telecom, which stated, "we will improve America's digital infrastructure by deploying a secure 5G Internet capability nationwide. These improvements will increase national competitiveness, benefit the environment, and improve our quality of life." We have heard that President Trump plans to talk about the importance of broadband infrastructure in his State of the Union this January.

Ever since assuming the leadership last January, FCC Chairman Ajit Pai said his top priority at the FCC would be closing the digital divide between those who have access to broadband and those who do not. Republican Commissioner Michael Carr is also taking the lead on actions the FCC can take to spur wireless deployment. Recently, David Redl was confirmed by the Senate to be administrator of the National Telecommunications and Information Administration (NTIA). Grace Koh has also been working at the White House since February 2017 as special assistant to the president for technology, telecom and cybersecurity policy. Both David and Grace worked on broadband deployment issues when at the House and are well poised to lead on these issues.

Spectrum

In the New Year, lawmakers are expected to continue working on a number of spectrum bills in order to open up more spectrum for commercial use. Senators Maggie Hassan (D-N.H.) and Cory Gardner (R-CO) introduced the AIRWAVES Act (**S. 1682**) which encourages the government to free up government-held spectrum for

commercial and unlicensed use. Staffers are hopeful that the Senate Commerce Committee will hold a markup on the legislation early in 2018.

In 2017, the Senate also passed the MOBILE Now Act (**S. 19**), which encouraged the FCC in coordination with the NTIA to free up federal spectrum for commercial wireless broadband services. The House Energy and Commerce Committee previously said they would not hold any markups on Senate legislation until David Redl's

confirmation cleared the Senate. Now that Redl has been confirmed, Senate staffers are hopeful that spectrum bills will be marked up in 2018.

At the FCC, the agency voted in 2017 to make more high-frequency spectrum available for use in 5G and Chairman Pai has said he wants even more spectrum for the technology in the first half of 2018. However the prospects for any airwaves auctions in 2018 are uncertain. Pai has testified that the FCC's is unable to hold auctions due to the agency being unable to deposit up-front payments for the auctions in banks.

In June 2017, Chairman of the Senate Commerce Committee John Thune (R-S.D.) sent a letter to the FCC urging action to open mid-band spectrum for both licensed and unlicensed networks. As a result, the FCC opened a Notice of Inquiry (NOI) requesting public comments on how mid-band spectrum could be shared between licensed and unlicensed users. The FCC received over 250 comments on the proceeding and we have heard that the FCC is likely to proceed with a Notice of Proposed Rulemaking (NPRM) in Q1 or Q2 of 2018.

Internet of Things (IoT)/Cybersecurity

The House Energy and Commerce Committee and the Senate Commerce, Science and Transportation Committee has held multiple hearings exploring cybersecurity concerns and the challenges the tech industry faces. According to a 2016 report, 42 percent of small businesses suffered a cyberattack of some kind. Many times these attacks cost businesses more than \$5,000 to investigate and recover.

The National Institute of Standards and Technology (NIST) has developed valuable guidance to aid businesses in securing their networks, including the Cybersecurity Framework for Critical Infrastructure and the Small Business Information Security guide. However, many small businesses don't have the time or resources to figure out how to adopt these guidelines to their needs and implement them. In early 2018, NIST is expected to issue new guidelines on the purchase, deployment and protection of Internet-connected devices early in 2018.

Recently, Rep. Daniel Webster (R-Fla.) and Rep. Dan Lipinski (D-Ill.) introduced [H.R. 2105](#), the NIST Small Business Cybersecurity Act, which directs NIST to create clear guidelines, tools, best practices and methodologies specifically for small businesses. In early October, the House passed the NIST Small Business Cybersecurity Act and the Senate passed a companion bill, S. 770, the MAIN STREET Cybersecurity Act in September.

Cybersecurity is also closely related to IoT devices, a technology that can be found in many industries, including precision agriculture, building management, healthcare, energy and transportation. Looking ahead, the IoT industry expects there to be over 20 billion IoT devices in use by 2020. This growing industry has garnered increased Congressional interest in an effort to ensure consumer protection and combat security abuses. This Congress, the House Energy and Commerce Committee and the Senate Commerce, Science and Transportation Committee have held eight hearings exploring cybersecurity and the challenges the tech industry faces. These hearings have led to a variety of bills relating to cybersecurity.

In August 2017, the Senate passed the DIGIT Act ([S. 88](#)), which would require the FCC to seek public comment on Internet of Things (IoT) spectrum needs and regulatory barriers and establish a working group at the Department of Commerce to provide recommendations to Congress on IoT. The bill is still awaiting consideration by the House Energy and Commerce Committee. We have heard the Committee could consider the bill in the first half of 2018.

Another leading bill is The Internet of Things (IoT) Cybersecurity Improvement Act ([S. 1691](#)), which would require that devices purchased by U.S. Government agencies meet certain minimum security requirements. The bill would require vendors of Internet-connected devices purchased by the federal government ensure their devices are patchable, rely on industry standard protocols, do not use hard-coded passwords, and do not contain any known security vulnerabilities. While the bill is applicable only to federal government procurement of IoT devices, if enacted it could establish a baseline for IoT product security capabilities and practices.

We are told that bill cosponsors and their staff are in discussion with the Senate Homeland Security and Governmental Affairs Committee (HSGAC) about next steps. However, movement is not likely until 2018 and a hearing would be likely in early 2018.

Authors