

July 22, 2015

The Honorable Thad Cochran
Chairman, Senate Committee on Appropriations
Room S128 – The Capitol
Washington, DC 20510

The Honorable Barbara Mikulski
Ranking Member
Senate Committee on Appropriations
Room S128 - The Capitol
Washington, DC 20510

Dear Chairman Cochran and Ranking Member Mikulski:

Today, the Senate Appropriations Financial Services subcommittee voted out its FY2016 Financial Services and General Government Appropriations bill - without having introduced language prior to the vote. This funding bill was concocted in the crevices of the Senate halls, in hushed voices, and emerges now replete with bad riders that take aim at a variety of vital consumer protections across the board.

Tomorrow, this committee now entertains the notion of making these provisions law - an exercise problematic for several reasons. As a general matter, it can be dangerous to use funding bills to push through special interest policy provisions. But this bill specifically takes aim at the Federal Communications Commission's ability to do its job at a time when that job has never been more vital to the health of our economy and our democracy. We therefore urge the members of the Senate Appropriations Committee to recognize the danger this bill visits upon both general process and to substantive policy.

The telecommunications policy space is very active right now. Many different issues, ranging from spectrum, to broadband competition, to video programming costs, are being considered in Congress and at the FCC. Public Knowledge understands that different members of Congress, in good faith, might come to different conclusions about various issues.

Procedurally, though, all should agree that setting technical public policy questions through broadly crafted riders on appropriations bills is not good process, and unlikely to lead to good policy. Attempts to selectively defund certain agency actions can lead to unintended consequences and hamstringing the agency's attempts to carry out its central public interest mission.

Substantively, we take particular issue with two riders that deliberately undermine the FCC's ability to do its job. First, the bill grandfathers in any and all joint sales agreements (JSAs) from recent FCC JSA rules changes. The effect of this provision is to bless egregious collusion between competitors on how they sell advertising. It keeps prices high for advertisers, while consumers end up footing the bill.

Such joint service agreements harm localism. This provision makes allegedly unique "local" broadcasters more homogenous within a market and between markets. The harms occur in ways that can be difficult to see at first - a slow rot of local content in turn makes way for the increasing consolidation and homogenization. But the harms are there.

We have rules against this right now, and for good reason. But this rider's language would *permanently* grandfather in existing contracts. This is similar to an ad hoc antitrust exemption, but because it's a Communications Act issue this basic fact gets muddled. We can live with a grace period to allow people to back out of contracts and find new ways of operating. But this is too far.

And make no mistake - broadcasters won't stop here. They may want to jointly negotiate over cable retransmission consent next. To be sure - any conceivable positive effects from this rider will be gleaned by the companies alone, and no one else.

We also take issue with the rate regulation rider - an overly broad prohibition on the FCC's ability to address a wide variety of pricing manipulation that harms the open Internet and its users. Some believe that the rider is consistent with the Commission's decision to specifically decline retail rate regulation in its Open Internet rule. But where that decision was narrowly tailored towards "rate regulation" in the form of tariffing, this rider is written so broadly as to tie the agency's hands on a slew of other abuses. It is not harmful rate regulation for the Commission to prevent gatekeeper ISPs from levying new tolls on every website in the world; to stop consumers from losing access to popular websites due to interconnection disputes between network providers; to limit new innovative services through anticompetitive data caps; or to protect consumers from downright fraudulent or below-the-line fees. Such protections can help maintain the open Internet consumers have come to expect. Yet preventing the FCC from even raising questions about such practices is exactly what this provision is designed to do.

The harmful riders in the bill before the Committee today serve as a striking demonstration of broadly constructed language that can result in serious consequences in technical policy areas. **We therefore urge you to vote against this bill, and also to support any amendments that would at least strip these harmful provisions.**

Sincerely,



Christopher Lewis
Vice President for Government Affairs
Public Knowledge