



September 15, 2020

TO: Republican Members, Committee on Energy and Commerce

FROM: Committee Republican Staff

RE: Hearing on “Accountability and Oversight of the Federal Communications Commission.”

I. INTRODUCTION

The Committee on Energy and Commerce will hold a virtual hearing on Thursday, September 17, 2020 at 10:00 a.m. The hearing is entitled “Promises Made, Promises Kept: Connecting Americans for Future Generations.”

II. WITNESS

- The Honorable Ajit Pai, Chairman, Federal Communications Commission;
- The Honorable Michael O’Rielly, Commissioner, Federal Communications Commission;
- The Honorable Brendan Carr, Commissioner, Federal Communications Commission;
- The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission; and,
- The Honorable Geoffrey Starks, Commissioner, Federal Communications Commission.

III. BACKGROUND AND DISCUSSION

The Federal Communications Commission (FCC) is an independent agency established pursuant to the Communications Act of 1934 (the Act) to regulate interstate and international communications by radio, television, wire, satellite, and cable. The agency is comprised of five Commissioners, appointed by the President and confirmed by the Senate.¹ The agency currently has approximately 1,450 full time employees.²

In March 2018, Congress reauthorized the FCC for the first time since 1990, authorizing \$333,118,000 for fiscal year 2019 and \$339,610,000 for fiscal year 2020 to carry out the functions of the agency.³ This reauthorization effort was included in RAY BAUM’S Act, Division P of the Consolidated Appropriations Act for Fiscal Year 2018 (FY18) (P.L. 115-141).

¹ Communications Act of 1934, 47 U.S.C. §154.

² See, FY 2020 Budget. Available at: <https://docs.fcc.gov/public/attachments/DOC-356607A2.pdf>

³ P.L. 115-141.

A. Selected Issues

1. Public Safety

One of the core statutory functions of the FCC is to promote public safety through the use of wire and radio communication.⁴ As part of this mission, the FCC plays an important role in making sure broadcasters and emergency alerting technologies effectively warn the public of impending emergencies as well as assisting in the recovery of communications networks following disasters.

Emergency Alert System

The Emergency Alert System (EAS) is the nation's primary alerting system to warn the public of impending emergencies. The system currently requires broadcasters, cable television systems, wireless cable systems, satellite digital audio radio service providers, and direct broadcast satellite (DBS) providers to provide communications capability to allow the President to address the American public during a national emergency.⁵ In its more familiar form, EAS is used to distribute emergency alerts issued by state and local governments and weather alerts issued by the National Weather Service (NWS). The Federal Emergency Management Administration (FEMA), in partnership with the FCC and National Oceanic and Atmospheric Administration (NOAA), is responsible for operating and maintaining EAS at the federal level.

There are two general delivery mechanisms that the FCC oversees in cooperation with FEMA to deliver these warnings: 1) EAS, a broadcast-based national public warning system for the delivery of alerts; and 2) Wireless Emergency Alerts (WEA), a system for the delivery of emergency alerts to mobile devices.⁶ In 2016, the FCC modernized WEA.⁷ In that order, the FCC increased the maximum alert message length from 90 to 360 characters; created a new alert message classification for "Public Safety Messages"; required participating providers to support embedded references (i.e., URLs and phone numbers); required participating providers to support transmission of Spanish-language alert messages; and required participating providers to narrow their geographic targeting (geo-targeting) of alert messages.

In July 2018, the FCC further improved the reliability of EAS. In an order adopted on July 12, 2018, the FCC established procedures for authorized state and local officials to conduct "live code" tests of the Emergency Alert System to help train officials and the public about how

⁴ Communications Act of 1934, 47 U.S.C. §154.

⁵ Originally conceived at a time "when over-the-air broadcasting was the best-available technology for widely disseminating emergency alerts[.]," the inclusion of cable services, digital radio and DBS reflect upgrades in response to changing consumer consumption patterns and innovations in technology. See, *Emergency Alerting, Capabilities Have Improved, but Additional Guidance and Testing Are Needed*, United States Government Accountability Office, GAO-13-375, April 2013. Available at: <https://www.gao.gov/assets/660/654136.pdf>.

⁶ See, "In the Matter of Wireless Emergency Alerts, Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System," Notice of Proposed Order and Further Notice of Proposed Rulemaking (PS Docket No. 15-91; PS Docket No. 15-94) Adopted Sep. 29, 2016. Available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-127A1.pdf.

⁷ *Id.*

to respond to actual alerts.⁸ The order also allows for authorized public service announcements to educate further the public while establishing safeguards to help prevent false alerts and account for any such false alerts. The FCC, in coordination with FEMA, hosted an emergency alerting webinar on July 25, 2018, to share these important updates with broadcasters, multichannel video programming distributors, wireless service providers, state and local emergency managers, and other emergency alert and warning stakeholders.⁹

9-1-1 and Next Generation 9-1-1

Congress and the FCC, in cooperation with the National Telecommunications and Information Administration (NTIA), have been working to improve 9-1-1 and Enhanced 9-1-1 (E911) services and facilitate the transition to Next Generation 9-1-1 (NG911). In July 2020, the Commission implemented enhanced 9-1-1 rules requiring wireless providers to transmit information on the location of wireless 9-1-1 calls to 9-1-1 call centers.¹⁰ These rules establish deadlines for providers to implement location accuracy benchmarks for a caller's location, such as street addresses, apartment numbers, and coordinate-based vertical ("z-axis") location. Furthermore, the Commission mandated that nationwide providers deploy z-axis technology by April 2025 and non-nationwide providers by April 2026. The Commission also ordered that wireless providers, beginning in January 2022, provide dispatchable location with wireless 9-1-1 calls when it is technically feasible and cost-effective to do so.

Funding for 9-1-1 service is primarily handled at the state and local level, generally through monthly line item charges on wireline and wireless bills. In 2017, \$2.94 billion was collected by states through these charges.¹¹ Unfortunately, a number of states have diverted these funds for other purposes. According to the FCC, over \$284 million, or approximately 9.7 percent of the total collected, was diverted for purposes other than 9-1-1.¹² Furthermore, the primary authority over public-safety answering point (PSAP) lies with state and local authorities. Some states require the use of legacy network elements that are not included in NG911 architectures. These barriers, among others, demonstrate that increased funding alone will not ensure the transition to nationwide NG911. To help end diversion of 9-1-1 fees, Rep. Greg Walden (OR) introduced H.R. 5928, the FIRST RESPONDER Act, which would require the FCC to clarify acceptable expenditures for 9-1-1 equipment and services. The FIRST RESPONDER Act would also establish an interagency strike force to study administrative, jurisdictional, or other barriers to ending the diversion of 9-1-1 fees, as well as consider whether creating criminal penalties would prevent diversion by a state or taxing jurisdiction. Provisions

⁸ See, "Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System," Report and Order and Further Notice of Proposed Rulemaking (PS Docket Nos. 15-94; 15-91) Adopted Jul. 12, 2018. Available at: <https://www.fcc.gov/document/fcc-promotes-emergency-alert-reliability-0>.

⁹ See, <https://docs.fcc.gov/public/attachments/DA-18-722A1.doc>

¹⁰ See, "Wireless E911 Location Accuracy Requirements," Sixth Report and Order and Order on Reconsideration. (PS Docket No. 07-114) Adopted Jul. 16, 2020. Available at: <https://docs.fcc.gov/public/attachments/FCC-20-98A1.pdf>.

¹¹ See, Federal Communications Commission Report, "Tenth Annual Report to Congress, On State Collection and Distribution of 911 and Enhanced 911 Fees and Charges," Dec. 17, 2018, at 2. Available at: <https://www.fcc.gov/files/10thannual911feereporttocongresspdf>

¹² *Id.*

from H.R. 5928 were included in H.R. 451, which the Energy and Commerce Committee favorably reported to the House by voice vote on July 15, 2020.

National Suicide Prevention Hotline

On July 16, 2020, the Commission adopted rules to establish 9-8-8 as the new, nationwide, 3-digit phone number for Americans to connect with a suicide prevention or mental health crisis counselor.¹³ These rules require providers of voice service to route all 9-8-8 calls to the existing National Suicide Prevention Lifeline by July 16, 2022. On July 15, 2020, the Committee favorably reported H.R. 4194, the National Suicide Hotline Designation Act to the House by voice vote.

Sharing Communications Outage Information

In February 2020, the Commission proposed a framework to share detailed communications outage information, including from the National Outbreak Reporting System (NORS) and Disaster Information Reporting System (DIRS), with state and federal agencies with a need to know.¹⁴ Information would be aggregated and anonymized and shared amongst participating agencies. Sharing of this information would improve the situational awareness of first responders and enhance the speed with which they respond to outages affecting their communities. H.R. 5918, the Emergency Reporting Act, was introduced by Rep. Doris Matsui (CA) and would require the FCC to hold a field hearing and issue a preliminary and final report when DIRS is activated for more than seven days. The bill would also require the FCC to adopt rules requiring the timely notification of disruptions to the 9-1-1 system by service providers. The Committee favorably reported the bill to the House by voice vote on July 15, 2020.

2. Mapping and Deploying Broadband Infrastructure

Another core part of the FCC's mission is to ensure universal consumer access to reasonably comparable communications services at reasonably comparable rates, otherwise known as universal service.¹⁵ The FCC manages the Universal Service Fund (USF) through the Universal Service Administrative Company (USAC), a non-profit corporation designated by the FCC to administer nearly \$10 billion in USF funding through four different programs: 1) High-Cost, 2) Rural Health Care (RHC), 3) E-Rate (schools and libraries), and 4) Lifeline.

To help close the digital divide in rural areas, in January 2020, the FCC established a \$20.4 billion Rural Digital Opportunity Fund to expand deployment of fixed broadband in rural

¹³ See, "Implementation of the National Suicide Hotline Improvement Act of 2018," Report and Order. (WC Docket No. 18-336) Adopted Jul. 16, 2020. Available at: <https://docs.fcc.gov/public/attachments/FCC-20-100A1.pdf>.

¹⁴ See, "Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications," Second Further Notice of Proposed Rulemaking. (PS Docket No. 15-80) Adopted Feb. 28, 2020. Available at: <https://docs.fcc.gov/public/attachments/FCC-20-20A1.pdf>.

¹⁵ 47 U.S.C. 254(b)

areas.¹⁶ Funds to support the deployment of such networks will be distributed through a ten-year, multi-round reverse auction that is scheduled to begin October 22, 2020.¹⁷

In addition to modernizing the funding that supports broadband in remote and high cost areas, Congress and the FCC have acted recently to remove barriers to broadband deployment for both wireline and wireless infrastructure. From 2017 to 2018, the FCC eliminated barriers to next-generation wireline networks and services by streamlining discontinuances to encourage providers to deploy faster networks while maintaining protections for consumers.¹⁸

To advance wireless infrastructure, particularly in speeding the transition to 5G services, the FCC clarified treatment of small cell deployments and, among other things, excluded small wireless facilities deployed on non-Tribal lands from National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) review.¹⁹ In addition, the FCC proposed updating its over the air reception devices (OTARD) rules in April 2019 to facilitate the deployment of fixed wireless technologies.²⁰

In June 2020, the Commission clarified and sought comment on its rules regarding state and local government review of modifications to existing wireless infrastructure, expediting equipment upgrades necessary to deploy next-generation networks. In this declaratory ruling, the Commission clarified its 2014 rules on when the 60-day shot clock for local rules begins and how proposed modifications (height increases, equipment cabinet additions, and impact on concealment elements and aesthetics conditions) affect eligibility for streamlined review under section 6409(a).²¹ The Ruling also clarified that FCC applicants do not need to submit environmental assessments based only on potential impacts to historic properties when the parties have entered into an agreement to mitigate effects on those properties. The Commission adopted a Notice of Proposed Rulemaking seeking comment on proposed rule changes on excavations or deployment outside the boundaries of an existing tower site and the effects of such activities on streamlined review eligibility under section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012.²²

¹⁶ See, “In the Matter of Rural Digital Opportunity Fund,” Report and Order (WC Docket Nos. 19-126; 10-90) Adopted Jan. 30, 2020. Available at: <https://docs.fcc.gov/public/attachments/FCC-20-5A1.pdf>.

¹⁷ *Id.*

¹⁸ See, “In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Deployment,” Second Report and Order (WC Docket No. 17-84) Adopted Jun. 7, 2018. Available at: <https://docs.fcc.gov/public/attachments/FCC-18-74A1.docx>

¹⁹ See, “In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment,” Second Report and Order (WT Docket No. 17-79) Adopted Mar. 22, 2018. Available at: <https://docs.fcc.gov/public/attachments/FCC-18-30A1.docx>

²⁰ See, “In the Matter of Updating the Commission’s Rules for over-the-air reception devices,” Notice of Proposed Rulemaking. (WT Docket No. 19-71). Adopted Apr. 12, 2019. Available at: <https://docs.fcc.gov/public/attachments/FCC-19-36A1.pdf>.

²¹ See, “In the Matter of Implementation of State and Local Governments’ Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012”. Declaratory Ruling and Notice of Proposed Rulemaking (WT Docket No. 19-250) Adopted Jun. 9, 2020. Available at: <https://docs.fcc.gov/public/attachments/FCC-20-75A1.pdf>.

²² 47 U.S.C. 1455(a)

Mapping of broadband availability data continues to be a bipartisan, bicameral concern. Congress appropriated \$15 million to NTIA in total for fiscal years 2018 and 2019 to build a national broadband map for federal agencies to use when making broadband funding awards. NTIA recently announced that a pilot map has been completed.²³ Since then, NTIA has added 22 states to its broadband map. On March 23, 2020, Congress enacted the Broadband DATA Act, which requires the FCC to issue new rules to require the collection and dissemination of granular broadband availability data, and to establish a process to verify the accuracy of such data, among other things.²⁴ As a result, the FCC adopted new rules to improve the collection of broadband availability data through the Digital Opportunity Data Collection to better identify connectivity gaps across the country, and, in turn, help close the digital divide.²⁵ Specifically, the new rules require that fixed and mobile providers submit standardized broadband availability maps and develop a common dataset of homes and businesses for future deployment of fixed broadband, over which providers' availability maps can be overlaid.²⁶

3. Securing the Supply Chain

On March 12, 2020, the Secure and Trusted Communications Networks Act of 2019 was signed into law by President Donald J. Trump.²⁷ The law prohibits a recipient of the USF from purchasing, obtaining, or maintaining any equipment or services from companies posing a national security threat, and requires the FCC to publish a list of "covered communications equipment or services" within one year that pose such a threat. The law also establishes a reimbursement program to reimburse certain eligible communications providers for replacing covered communications equipment or services. Currently, this reimbursement program remains unfunded.

In June 2020, the Commission's Public Safety and Homeland Security Bureau formally designated Huawei Technologies Company, ZTE Corporation, and their respective parents, affiliates, and subsidiaries "covered companies" for purposes its November 2019 ban. In July 2020, the Commission began integrating the Secure and Trusted Communications Networks Act into its existing supply chain rulemaking. As a result, no money from the USF may be used to purchase, obtain, or maintain any equipment or services from companies posing a national security threat to communications networks or the communications supply chain, including Huawei, ZTE, and all their related companies.²⁸

²³ See, <https://www.ntia.doc.gov/blog/2019/ntia-releases-new-broadband-availability-map-pilot-policymakers>

²⁴ 47 U.S.C. 641, et seq.

²⁵ See, "In the Matter of Establishing the Digital Opportunity Data Collection," Second Report and Order and Third Further Notice of Proposed Rulemaking. (WC Docket No. 19-195) Adopted Jul. 16, 2020. Available at: <https://docs.fcc.gov/public/attachments/FCC-20-94A1.pdf>.

²⁶ *Id.*

²⁷ 47 U.S.C. 1601, et seq.

²⁸ See, "In the Matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs," Declaratory Ruling and Second Further Notice of Proposed Rulemaking. (WC Docket No. 18-89) Adopted Jul. 16, 2020. Available at: <https://docs.fcc.gov/public/attachments/FCC-20-99A1.pdf>.

4. Spectrum

Congress and the FCC have worked to make additional spectrum available and expand opportunities for next-generation wireless services in low, mid, and high-band spectrum. Beyond examining specific bands for modernization, the Commission has also implemented section 616 of RAY BAUM'S Act and examined how to partition and disaggregate licenses, allowing smaller carriers to build out in places where licensees might not reach.²⁹

In the low-band spectrum, the FCC took action to make 6 MHz of spectrum available in the 900 MHz band for the deployment of mobile broadband for critical technologies and services such as the electric grid.³⁰ In response to the COVID-19 Pandemic, the FCC has also made additional spectrum available through the use of Special Temporary Authorizations for some wireless carriers to use 600 MHz spectrum.

In the mid-band Spectrum, the FCC adopted a Report and Order to use more intensively and efficiently the 2.5 GHz band for terrestrial mobile wireless.³¹ While this spectrum previously had a freeze on new applications since 1993 (with two exceptions), the FCC recognized the pent-up demand to access the spectrum, and the Order included an opportunity for Tribal nations to apply for new licenses.³² The Commission provided an unprecedented 180 day window that was extended for an additional, 30-day window which expired on September 2, 2020.³³ As a result of the extraordinary time afforded by this window and the technical assistance offered by the FCC, 400 Tribal Nations were able to apply for 2.5 GHz licenses. In September 2019, the FCC approved several Spectrum Access System (SAS) administrators in the Citizens Broadband Radio Service (CBRS) Band, marking the launch of commercial deployment in the 3.5 GHz spectrum.³⁴ On August 25, 2020, the FCC concluded Auction 105 of the CBRS spectrum, awarding a record-setting 20,625 licenses to 288 winning bidders, raising over \$4.5 billion dollars for the Treasury.³⁵ In February 2020, the Commission adopted new rules for a public auction of 280 MHz of C-Band spectrum (3700 - 4200 MHz), reserving 20

²⁹ See, "In the Matter of Partitioning, Disaggregation, and Leasing of Spectrum," Notice of Proposed Rulemaking. (WT Docket No. 19-38) Adopted Mar. 15, 2019. Available at: <https://docs.fcc.gov/public/attachments/FCC-19-22A1.pdf>.

³⁰ See, "In the Matter of Review of the Commission's Rules Governing the 896-901/935-940 MHz Band," Report and Order, Order of Proposed Modification, and Orders." (WT Docket No. 17-200) Adopted May 13, 2020. Available at: <https://docs.fcc.gov/public/attachments/FCC-20-67A1.pdf>.

³¹ See, "In the Matter of Transforming the 2.5 GHz band," Report and Order, Adopted Jul. 10, 2019. (WT Docket No. 18-120). Available at: <https://docs.fcc.gov/public/attachments/FCC-19-62A1.pdf>.

³² *Id.*

³³ See, "FCC Extends 2.5 GHz Tribal Priority Window." Available At: <https://docs.fcc.gov/public/attachments/DOC-365880A1.pdf>

³⁴ See, "Wireless Telecommunications Bureau and Office of Engineering and Technology Approve Five Spectrum Access System Administrators to Begin Initial Commercial Deployments in the 3.5 GHz Band," Public Notice (GN Docket No. 15-319) Rel. Sep. 16, 2019. Available at: <https://docs.fcc.gov/public/attachments/DA-19-915A1.pdf>

³⁵ See, "Auction of Priority Access Licenses in the 3550-3650 Band Closes," Public Notice (AU Docket No. 19-244) Rel. Sep. 2, 2020. Available at: <https://docs.fcc.gov/public/attachments/DA-20-1009A1.pdf>.

MHz as a guard band.³⁶ Currently, C-Band is used by satellite operators largely to deliver video content to broadcast and MVPD head-ends across the country. Existing satellite operations will be repacked into the 4.0-4.2 GHz band. C-Band spectrum is the largest contiguous block of mid-band spectrum, and it has been globally harmonized for terrestrial mobile wireless for use in 5G.³⁷ The FCC has announced the auction of C-Band spectrum will begin December 8, 2020.³⁸

The Commission has also focused on expanding access to unlicensed spectrum. On April 23, 2020, the Commission opened the 6 GHz band to unlicensed use by issuing an order making available 1,200 MHz of spectrum (5.925—7.125 GHz).³⁹ Incumbents in the 6 GHz band include fixed microwave services used by public safety, utilities, and carriers, as well as auxiliary broadcast uses in certain cases. Incumbents will now share the spectrum with new unlicensed devices under rules designed both to protect incumbents and enable the new unlicensed operations. Opening up this spectrum for new unlicensed uses will play a major role in the expansion of the Internet of Things and will enable Wi-Fi 6, which will be over two-and-a-half times faster than the current standard. Currently, the multistakeholder group established in the *Order* is working to implement the Automated Frequency Control (AFC) mechanism.

Additionally, the FCC recently participated in the World Radio Conference-19 (WRC-19), a treaty-level conference hosted by the International Telecommunication Union (ITU), under the auspices of the United Nations. The World Radio Conference, held every four years, offers an opportunity to harmonize globally spectrum allocated for certain uses, as well as appropriate protection limits. In preparation for these conferences, the FCC has an advisory committee that helps to establish and provide recommendations to the U.S. delegation head to inform the United States' unified position. At WRC-19, several U.S. positions were ultimately accepted.

5. Combatting Robocalls

The FCC, with support from Congress, has focused consumer protection efforts on combatting unlawful robocalls and malicious caller ID spoofing. RAY BAUM'S Act included H.R. 423, the Anti-Spoofing Act of 2017, which prohibits spoofing calls or texts originating outside the U.S. The bill required the FCC issue a rule and work with the Federal Trade Commission (FTC) to educate consumers on identifying spoofed calls, and directed the Government Accountability Office (GAO) to conduct a study on fraudulent, misleading, or inaccurate caller ID information. The FCC has also proposed and implemented a variety of policy initiatives to combat these unwanted, illegal calls. In June 2019, the FCC issued a declaratory ruling to allow telecommunications carriers to block some robocalls before making it

³⁶ See, "In the Matter of Expanding Flexible Use of the 3.7 to 4.2 GHz Band," Report and Order and Order of Proposed Modification (GN Docket No. 18-122) Adopted Feb. 28, 2020. Available at: <https://docs.fcc.gov/public/attachments/FCC-20-22A1.pdf>.

³⁷ See, <https://spectrum.ieee.org/telecom/wireless/3gpp-release-15-overview> (LTE Bands including 3.3-4.2 GHz)

³⁸ See, "Auction of Flexible-Use Service Licenses in the 3.7-3.98 GHz Band," Public Notice (AU Docket No. 20-25) Rel. Aug. 7, 2020. Available at: <https://docs.fcc.gov/public/attachments/FCC-20-110A1.pdf>.

³⁹ See, "In the Matter of Unlicensed Use of the 6 GHz Band," Report and Order and Further Notice of Proposed Rulemaking (ET Docket No. 18-295) Adopted Apr. 23, 2020. Available at: <https://docs.fcc.gov/public/attachments/FCC-20-51A1.pdf>.

to consumers' phones.⁴⁰ In March 2018, the FCC sought comment on ways to reduce unwanted calls to reassigned numbers through the creation of a database.⁴¹

The private sector has also worked to solve the problem by developing a set of procedures to authenticate caller ID information associated with telephone calls and assign these calls a secure, encrypted certificate—known as STIR/SHAKEN. The FCC recently accepted these recommendations, allowing the establishment of an industry-developed call authentication system.⁴² In addition to these efforts, the U.S. Court of Appeals for the District of Columbia recently found in *ACA International v. FCC* that aspects of the Commission's most recent interpretation of the Telephone Consumer Protection Act (TCPA) in 2015 were arbitrary and capricious.⁴³ Following *ACA International*, the FCC's Consumer and Governmental Affairs Bureau sought public comment in a Public Notice related to interpretation and implementation of the TCPA.⁴⁴ Both public and private sector entities have asked the FCC to clarify the aspects of its 2015 interpretation that were struck down by the court, including reviewing the definition of an automatic dialer and how businesses should treat reassigned numbers.⁴⁵ Furthering these important policy initiatives, on June 9, 2020, the FCC issued a \$225 million dollar fine against a Texas-based telemarketing operation.⁴⁶ This was the largest fine ever imposed by the FCC and is part of the over \$200 million in enforcement actions that the FCC has taken against telemarketers for apparent illegal caller ID spoofing. In response to the increasing problem of unlawful robocalls, and to help the FCC further combat these robocalls, President Donald J. Trump signed the TRACED Act into law on December 30, 2019.⁴⁷

In July 2020, the Supreme Court upheld the federal ban on robocalls to cellphones under the Telephone Consumer Protection Act (TCPA), but struck down the 2015 amendment that exempted government-debt collectors.⁴⁸ The Court ruled that the exemption for government debt collection was content-based and unconstitutionally favored the speech of government debt collectors over others. Rather than invalidate TCPA completely, the Court saved the robocall ban by severing the amendment that exempted the government-debt collectors so that all robocallers would be treated equally.

⁴⁰ See, "In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls," Declaratory Ruling and Third Notice of Proposed Rulemaking, (CG Docket No.17-59) Adopted Jun. 6, 2019. Available at:

<https://docs.fcc.gov/public/attachments/FCC-19-51A1.pdf>

⁴¹ See, "In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls," Second Notice of Proposed Rulemaking (CG Docket No. 17-59) Adopted Mar. 22, 2018. Available at:

<https://docs.fcc.gov/public/attachments/FCC-18-31A1.docx>

⁴² See, "Chairman Pai Welcomes Call Authentication Recommendations from the North American Numbering Council." Available at: <https://docs.fcc.gov/public/attachments/DOC-350690A1.docx>

⁴³ *ACA Int'l, et al. v. FCC*, 885 F.3d 687 (D.C. Cir. 2018) (affirming in part and vacating in part *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015)).

⁴⁴ 47 U.S.C. § 227. The Commission's implementing rules are codified at 47 CFR § 64.1200.

⁴⁵ See, https://mckinley.house.gov/UploadedFiles/7.10.2018_Final_TCPA_letter_to_FCC_Chairman_Pai.pdf

⁴⁶ See, "FCC Proposes Record \$225 Million Fine for Massive Spoofed Robocall Campaign Selling Health Insurance." Available at: <https://docs.fcc.gov/public/attachments/DOC-364824A1.pdf>

⁴⁷ P.L. 116-105

⁴⁸ See, *Barr v. Association of Political Consultants, Inc.*, Supreme Court of the United States, July 6, 2020. Available at: https://www.supremecourt.gov/opinions/19pdf/19-631_2d93.pdf.

6. Media Regulations

As the media landscape changes, the FCC has acted to remove outdated media regulations. In 2017, Chairman Pai committed to review outdated media rules applicable to television and radio broadcasters, cable operators, and satellite television providers.⁴⁹ Since then, the FCC has taken steps to modernize a variety of regulations. Among those actions, the FCC has eliminated several restrictions on media ownership,⁵⁰ repealed a rule requiring a radio and television broadcast station to maintain a main studio location in or near its community of license,⁵¹ removed rules requiring certain broadcast and cable entities to maintain paper copies of FCC rules,⁵² and reduced broadcaster reporting obligations relating to the provision of ancillary or supplementary services.⁵³ On August 6, 2020, the FCC eliminated the radio duplication rule for FM and AM stations.⁵⁴ The rule previously placed limitations on the ability of FM or AM radio broadcast stations from airing the same content on commonly owned stations. These proposals are offered as actions designed to reflect the modern communications marketplace as previous regimes did not anticipate the rise of social media networks and over-the-top (OTT) streaming services.

On September 23, 2019, the Third Circuit Court, in *Prometheus Radio Project v. FCC*, vacated and remanded the “bulk of [the FCC’s] actions in this area over the last three years.”⁵⁵ On November 13, 2019, Judge Ambro released a statement denying the Commission’s petition for rehearing *en banc*.

7. Network Performance During COVID

On December 14, 2017, the Commission enacted strong consumer protections for broadband Internet access service while ending the public-utility style regulation of the Internet

⁴⁹ See, “Commission Launches Modernization of Media Regulations Initiative. Available at: <https://docs.fcc.gov/public/attachments/FCC-17-58A1.docx>

⁵⁰ See, “2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,” Order on Reconsideration and Notice of Proposed Rulemaking. (MB Docket Nos. 14-50; 09-182; 07-294; 04.256; 17-289) Adopted Nov. 16, 2017. Available at: <https://docs.fcc.gov/public/attachments/FCC-17-156A1.pdf>

⁵¹ See, “In the Matter of Elimination of Main Studio Rule,” Report and Order (MB Docket No. 17-106) Adopted Oct. 24, 2017. Available at: <https://docs.fcc.gov/public/attachments/FCC-17-137A1.docx>

⁵² See, “In the Matter of Amendment of Parts 74, 76 and 78 of the Commission’s Rules Regarding Maintenance of Copies of FCC Rules,” Report and Order (MB Docket Nos. 17-231; 17-105) Adopted Feb. 20, 2018. Available at: <https://docs.fcc.gov/public/attachments/FCC-18-16A1.docx>

⁵³ See, “In the Matter of Amendment of Section 73.624(g) of the Commission’s Rules Regarding Submission of FCC Form 2100, Schedule G, Used to Report TV Stations’ Ancillary or Supplementary Services,” Report and Order (MB Docket Nos. 17-264; 17-105) Adopted Apr. 12, 2018. Available at: <https://docs.fcc.gov/public/attachments/FCC-18-41A1.docx>

⁵⁴ See, “In the Matter of Amendment of Section 73.3556 of the Commission’s Rules Regarding Duplication of Programming on Commonly Owned Radio Stations,” Report and Order (MB Docket Nos. 19-310; 17-105) Adopted Aug. 6, 2020. Available at: <https://docs.fcc.gov/public/attachments/FCC-20-109A1.pdf>

⁵⁵ *Prometheus Radio Project v. FCC*, United States Court of Appeals for the Third Circuit, September 23, 2019, at pg. 10. Available at: <http://www2.ca3.uscourts.gov/opinarch/171107p.pdf>

through its *Restoring Internet Freedom Order*.⁵⁶ At that time, Commission Democrats dissented from the Order, saying the Order gave broadband providers “the power to block websites, throttle services, and censor online content. They will have the right to discriminate and favor the internet traffic of those companies with whom they have pay-for-play arrangements...”⁵⁷ In fact, House Democrats stated that “This action [would] undermine the free and open Internet and hand its control over to a few powerful corporate interests.”⁵⁸

Yet nearly three years later, the Internet has endured the largest stress test in its history: the COVID-19 pandemic. When more Americans are working from home, learning from home, streaming content, and relying on the Internet for telehealth services, the networks in the United States surpassed the network performance of its international counterparts, largely in part due to a regulatory framework that promotes competition and investment.⁵⁹ We saw this trend coming: one year after the *Restoring Internet Freedom Order*, average Internet speeds were already up 28 percent.⁶⁰ Thanks to action taken by the Republican-led FCC, communications providers invest billions of dollars annually into their networks and were able to respond quickly to the traffic increase that resulted from the COVID-19 pandemic.⁶¹

IV. STAFF CONTACTS

Please contact Kate O’Connor or Evan Viau of the Republican Committee staff at (202) 225-3641 if you have questions about the hearing.

⁵⁶ See, “In the Matter of Restoring Internet Freedom,” Declaratory Ruling, Report and Order, and Order (WC Docket No. 17-108) Adopted Dec. 14, 2017. Available at: <https://docs.fcc.gov/public/attachments/FCC-17-166A1.pdf>

⁵⁷ See, “Dissenting Statement of Commissioner Jessica Rosenworcel,” Restoring Internet Freedom Order (WC Docket No. 17-108) Available at: <https://docs.fcc.gov/public/attachments/FCC-17-166A6.pdf>

⁵⁸ See, <https://pallone.house.gov/press-release/pallone-fcc-net-neutrality-vote>

⁵⁹ See, <https://www.ctia.org/news/report-how-wireless-kept-americans-connected-during-covid-19>

⁶⁰ See, <https://www.washingtonexaminer.com/news/average-internet-speed-up-one-year-after-net-neutrality-repeal>

⁶¹ See, <https://www.fcc.gov/companies-have-gone-above-and-beyond-call-keep-americans-connected-during-pandemic>