COMMITTEE ON
ENERGY & COMMERCE
CHAIRMAN FRANK PALLONE, JR.

MEMORANDUM

October 4, 2021

To: Subcommittee on Communications and Technology Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Legislative Hearing on "Strengthening Our Communications Networks to Meet the Needs of Consumers"

On **Wednesday, October 6, 2021, at 12 p.m. (EDT), in the John D. Dingell Room, 2123 of the Rayburn House Office Building, and via Cisco Webex online video conferencing**, the Subcommittee on Communications and Technology will hold a legislative hearing entitled, "Strengthening Our Communications Networks to Meet the Needs of Consumers."

I. BACKGROUND

There has been a dramatic increase in internet usage by consumers, from 52 percent of U.S. adults in 2000 to 93 percent in 2021.[1] The internet has become an essential infrastructure, used by consumers for myriad applications and purposes—from telehealth to remote work; education to entertainment; staying in touch with loved ones to e-commerce.[2] As the digital transformation of industries and services continues, Americans are likely to be more reliant on the internet or other communications platforms for their everyday needs.[3] This hearing will examine 12 legislative proposals that, in different ways, seek to promote access to communications.

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[1] Pew Research Center, *Internet/Broadband Fact Sheet* (Apr. 7, 2021) (www.pewresearch.org/internet/fact-sheet/internet-broadband/).

[2] Adie Tomer, et al., *Digital Prosperity: How Broadband Can Deliver Health and Equity to All Communities* (Feb. 27, 2020) (www.brookings.edu/research/digital-prosperity-how-broadband-can-deliver-health-and-equity-to-all-communities/).

[3] *Pandemic Speeds Americans' Embrace of Digital Commerce*, Wall Street Journal (Nov. 15, 2020) (www.wsj.com/articles/pandemic-speeds-americans-embrace-of-digital-commerce-11605436200).

A. The Universal Service Fund and the Anti-Deficiency Act

As part of the Telecommunications Act of 1996, Congress directed the Federal Communications Commission (FCC) to administer the Universal Service Fund (USF).[4] In administering the USF, Congress required the FCC to honor the principle that "consumers 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."[5] Congress also required the FCC to create specific programs to support connectivity at schools and libraries and rural health care facilities.[6] Congress stipulated that the FCC must administer this fund with money raised through mandatory contributions made by telecommunications providers.[7]

The Antideficiency Act (ADA), among other things, prohibits an officer or employee of the federal government from obligating or expending funds in advance of the appropriation of such funds.[8] With guidance from the Office of Management and Budget, the FCC determined in 2004 that the ADA's limitations applied to the FCC's spending from the USF.[9] This conclusion, and the resulting limitations placed on the FCC's use of the USF, caused disruptions in the USF's schools and libraries program.[10] In response, Congress began exempting the USF from application of the ADA to ensure that the other USF programs would not face a similar uncertainty.[11]

B. Maternal Mortality and Broadband

The maternal mortality rate in the United States continues to rise each year, with over 700 deaths of U.S. women as recently as 2019.[12] The issue is particularly acute for Black women, as the rate of mortality for Black women is 2.5 that of white women, and 3.5 that of Hispanic women.[13] While no causal link between broadband access and maternal mortality has been

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[4] 47 U.S.C. § 254.

[5] 47 U.S.C. § 254(b)(3).

[6] 47 U.S.C. § 254(h).

[7] 47 U.S.C. § 254(d).

[8] 13 U.S.C. § 1341.

[9] Congressional Research Service, *Universal Service Fund: Background and Options for Reform* (Oct. 25, 2011).

[10] *Id*.

[11] *Id*.

[12] National Center for Health Statistics, *Maternal Mortality Rates in the United States, 2019*, (Apr. 2021) (www.cdc.gov/nchs/data/hestat/maternal-mortality-2021/E-Stat-Maternal-Mortality-Rates-H.pdf).

[13] *Id*.

proven, some speculate that such a link may exist.[14]

C. Communications Service in Confinement Facilities

For incarcerated people, regular contact with family members lowers the rates of recidivism after release.[15] Unless there has been some state or federal intervention, incarcerated people and their families, however, generally are only able to use communications services at rates that are dramatically higher than that of the general populace.[16] Several factors contribute to this disparity, for example, incarcerated people and their families generally have only one option for phone service because confinement facilities generally grant exclusive rights to service providers.[17] Additionally, some facilities award contracts to service providers based, in part, on the percentage of revenue these providers will share with the confinement facility. These arrangements provide an incentive for the bidding communications providers to charge incarcerated people or their families high rates to make up for the percentage of revenue shared with the confinement facility.[18] The FCC has the authority to cap the interstate rates charged by providers serving prisons or jails, and has done so on a bipartisan basis.[19] Congress has not, however, explicitly granted the FCC the authority to regulate the intrastate rates charged by prison phone providers.[20]

D. Spectrum

One critical element for modern wireless networks is mid-band spectrum.[21] Congress, recently required the FCC to auction the 3.45-3.55 GHz band.[22] The FCC has already made some mid-band spectrum available in the C-Band, the Citizens Broadband Radio Service, and the 2.5

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[14] *Pregnancy-Related Deaths Are Up. Could Broadband Help?*, Gov Tech (Feb. 26, 2020) (govtech.com/health/pregnancy-related-deaths-are-up-could-broadband-help.html).

[15] Federal Communications Commission, *Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking in the Matter of Rates for Interstate Inmate Calling Services*, at ¶ 7 (May 24, 2021) (docs.fcc.gov/public/attachments/FCC-21-60A1.pdf).

[16] *The High Cost of Phone Calls in Prisons Generates $1.4 Billion A Year, Disproportionately Driving Women and People of Color Into Debt*, Business Insider (June 30, 2021) (www.businessinsider.com/high-cost-prison-communications-driving-debt-racial-wealth-gap-2021-6).

[17] *See* note 15.

[18] *See* note 16.

[19] *See* note 15; 47 U.S.C. § 276.

[20] *GlobalTel*Link v. FCC*, 866 F.3d 397, 409-12 (D.C. Cir. 2017).

[21] Federal Communications Commission, America's 5G Future, (fcc.gov/5G) (last visited Oct. 2, 2021).

[22] *Consolidated Appropriations Act*, 2021, Pub. L. No. 116-260, Division FF, Title IX, § 905.

GHz Band.[23] Currently, across the 3 GHz range, the federal government has yet to make spectrum available in the 3.1 to 3.45 GHz band.

E. Persons with Disability and 9-1-1 Service

At least one locality through its 9-1-1 system has created a features whereby individual homes that include persons with disability can register with the relevant 9-1-1 emergency communications center.[24] The intent of such temporary caution note is to provide first responders with additional information to help facilitate their response to a home that includes a person with a disability.

F. Broadband on Federal Lands

The use of federal land is viewed by some as a way to lessen the cost of broadband deployment as the federal government may be inclined to charge lower rates for allowing access to its property in the hopes of spurting deployment.[25] Additionally, a large percentage of land within the United States is owned by the federal government and in many instances siting on federal land may be the only way to deployment broadband in some areas.[26]

G. Siting Wireless Infrastructure

5G wireless systems may in some instances require the use of distributed antenna systems (DAS) or small cell antennas to provide the incumbent improvements in capacity or latency.[27] Because individual DAS antennas and small cells do not provide nearly the coverage of a more traditional wireless antenna, it is necessary to deploy a large number to achieve the same seamless coverage.[28] In an effort to speed 5G buildout, the FCC in 2018 preempted some local government control of siting such systems.[29] The FCC's preemption was challenged by local

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[23] *See* note 21.

[24] The ISAAC Foundation, ISAAC Alert (theisaacfoundation.configio.com/page/programsisaacalert) (accessed Oct. 2, 2021).

[25] *See e.g.*, 47 U.S.C. § 1455.

[26] Congressional Research Service, *Federal Land Ownership: Overview and Data* (Feb. 21, 2020).

[27] Federal Communications Commission, *Notice of Proposed Rulemaking* Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies at ¶ 2 (Sept. 26, 2013) (docs.fcc.gov/public/attachments/FCC-13-122A1.pdf).

[28] *Id*.

[29] Federal Communications Commission, *Declaratory Ruling and Third Report and Order in the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* (Sept. 27, 2018) (docs.fcc.gov/public/attachments/FCC-18-133A1.pdf).

governments before the Ninth Circuit Court of Appeals and was generally upheld.[30]

H. Section 331 of the Communications Act of 1934

The D.C. Circuit Court of Appeals has held that "Congress enacted section 331(a) [in 1982] to solve a specific problem existing at the time of its passage—the lack of a commercial [Very High Frequency] VHF station in New Jersey."[31] After passage of the law, the FCC granted the petition of a station—WOR-TV—to move from New York to New Jersey.[32] When the United States transitioned from analog to digital television broadcasting in 2009, that station (now called WWOR-TV) transitioned to an ultra-high frequency station because VHF is poorly suited for digital broadcasting.[33] Because of the larger transition, New Jersey and Delaware had no VHF stations.[34] The FCC subsequently assigned new VHF channels in both Delaware and New Jersey.[35]

In 2018, the FCC denied several petitioners challenge of the license renewal of WWOR-TV arguing among other things that it provided limited new coverage of events in New Jersey, despite its use of Section 331 to move from New York to New Jersey.[36]

II. LEGISLATION

A. H.R. 1042, the "Protecting Critical Infrastructure Act"

H.R. 1042, the "Protecting Critical Infrastructure Act", introduced by Rep. Bucshon (R-IN), amends the Communications Act of 1934 to impose an enhanced penalty on anyone who willfully or maliciously destroys any communications facility. The penalty carries with it a two-year prison sentence with no option for probation.

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[30] *City of Portland v. FCC*, 969 F.3d 1020 (9th Cir. 2020).

[31] *PMCM TV LLC v. FCC*, No 11–1330, Slip Op. (D.C. Cir 2012).

[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] Federal Communications Commission, *Report and Order in the Matter of Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments Television Broadcast Stations. (Seaford, Delaware*) (Apr. 28, 2010) (apps.fcc.gov/edocs_public/attachmatch/DA-10-698A1.pdf); Federal communications Commission, *Report and Order in the Matter of Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments Television Broadcast Stations. (Atlantic City, New Jersey)* (Mar. 17, 2010) (docs.fcc.gov/public/attachments/DA-10-447A1.pdf).

[36] Federal Communications Commission, *Memorandum Opinion and Order In the Matter of Fox Television Stations, Inc.* (July 12, 2018) (docs.fcc.gov/public/attachments/FCC-18-97A1.pdf).

B. H.R. 1046, the "Federal Broadband Deployment in Unsevered Areas Act"

H.R. 1046, the "Federal Broadband Deployment in Unserved Areas Act", introduced by Rep. Curtis (R-UT), requires the FCC to provide broadband availability data to the Departments of Agriculture, Commerce, and the Interior. The bill also establishes an interagency working group to facilitate data sharing using interoperable information technology systems. It further requires the FCC, the Secretaries of Agriculture, Commerce, and the Interior to complete an assessment of the ability of users to locate communications facilities in certain unserved areas and whether the relevant agency prioritized siting requests on relevant unserved land.

C. H.R. 1049, the "Expediting Federal Broadband Deployment Reviews Act"

H.R. 1049, the "Expediting Federal Broadband Deployment Reviews Act", introduced by Rep. Duncan (R-SC), would direct the NTIA to establish and lead an interagency strike force to help prioritize reviews by the Departments of Agriculture and the Interior for requests to deploy and authorize broadband communications uses and facilities on federal land.

D. H.R. 1058, the "Wireless Resiliency and Flexible Investment Act"

H.R. 1058, the "Wireless Resiliency and Flexible Investment Act," introduced by Rep. Kinzinger (R-IL), requires a state or local government to approve an application to modify certain existing communications infrastructure, including infrastructure that would improve resiliency, within 60 days, or the request would be deemed approved on the day after the 60-day period ends.

E. H.R. 1218, the "Data Mapping to Save Moms' Lives Act"

H.R. 1218, the "Data Mapping to Save Moms' Lives Act", introduced by Reps. Butterfield (D-NC), Bilirakis (R-FL), and Blunt Rochester (D-DE), requires the FCC to integrate data related to maternal health outcomes into the agency's broadband data maps, with consultation from the Centers for Disease Control and Prevention. It also requires the Government Accountability Office (GAO) to study and submit to Congress a report regarding the effectiveness of internet connectivity in reducing maternal morbidity rates.

F. H.R. 2489, the "Martha Wright Prison Phone Justice Act"

H.R. 2489, the "Martha Wright Prison Phone Justice Act", introduced by Rep. Rush (D-IL), amends the Communications Act of 1934 to ensure reasonable interstate charges for telecommunication and advanced communications services in confinement facilities. This legislation would direct the FCC to issue rules, within 18 months of its enactment, setting maximum rates and charges that a provider of confinement facility communications may charge for such services and would require a biennial review to assure such rates remain just and reasonable.

G. H.R. 2501, the "Spectrum Coordination Act"

H.R. 2501, the "Spectrum Coordination Act", introduced by Rep. Bilirakis (R-FL), would require the National Telecommunications and Information Administration (NTIA) and the FCC to update the memorandum of understanding on spectrum coordination entered into in January 2003.

H. H.R. 4208, the "Section 331 Obligation Clarification Act"

H.R. 4208, the "Section 331 Obligation Clarification Act", introduced by Reps. Pascrell (D-NJ), Sires (D-NJ), and Van Drew (R-NJ), amends Section 331 of the Communications Act of 1934 to allow the FCC to reallocate a licensee's high frequency (VHF) or ultra-high frequency (UHF) commercial broadcast station to a State where there is currently no commercial VHF or UHF station. A licensee that is reallocated pursuant to Section 331 will be required to broadcast at least 14 hours of local programming per week. This legislation would also require the licensee to maintain a studio within the community it serves and file regular programming disclosures with the FCC. Lastly, the bill would require the GAO to submit a report to Congress that examines the process by which the FCC renews broadcast television licenses.

I. H.R. 5028, the "Information Sharing And Advanced Communications Alerting Act or ISACC Alerting Act"

H.R. 5028, the "ISACC Alerting Act", introduced by Reps. Rodgers (R-WA) and Dingell (D-MI), directs the technical advisory council at the FCC, in consultation with disability advocates, State 9-1-1 administrators, and other public safety officials, to issue a report regarding any standards, protocols, or procedures necessary to implement a 9-1-1 disability alerting system, among other things.

J. H.R. 5058, the "Broadband Incentives for Communities Act"

H.R. 5058, the "Broadband Incentives for Communities Act", introduced by Rep. Fletcher (D-TX), directs the NTIA to establish a competitive grant program to assist local governments in providing efficient review and approval of zoning and permitting applications for the deployment of broadband infrastructure.

K. H.R. 5378, the "Spectrum Innovation Act of 2021"

H.R. 5378, the "Spectrum Innovation Act of 2021", introduced by Reps. Doyle (D-PA) and Matsui (D-CA), establishes a process for making at least 200 megahertz of spectrum available for auction in the 3.1 – 3.45 GHz band. The legislation authorizes the Office of Management and Budget to transfer funds from the Spectrum Relocation Fund to Federal entities that submit plans for making the entire 3.1 – 3.45 GHz band available for non-Federal use, shared use, or a combination of the two. The Secretary of Commerce is required to submit a report to the President, the FCC, and Congress not later than 2 years after enactment identifying not less than 200 megahertz of frequencies for auction. The legislation also requires that not later than seven years after enactment, the FCC commence an auction of the frequencies

identified by the Secretary of Commerce. Further, those entities that appear on the FCC's listing of covered equipment or services posing national security risks are prohibited from participating in the auction.

The legislation further requires that a portion of the band be made available for opportunistic use so long as that use does not infringe on the rights of licensees. The legislation would also require that the President make a determination that the licensed or opportunistic use of the band does not compromise the primary mission of any Federal entity operating in the band.

The bill would also extend the auction window for spectrum made available under the Spectrum Pipeline Act for two additional years.

Finally, the legislation would supersede any law relating specifically to the disposition of the 3.1 – 3.45 GHz band if that law was enacted between September 24, 2021 and January 1, 2022.

L. H.R. 5400, the "Preventing Disruptions to Universal Service Funds Act"

H.R. 5400, the "Preventing Disruptions to the Universal Service Funds Act", introduced by Reps. Hayes (D-CT) and Veasey (D-TX), exempts the Universal Service Fund programs from Antideficiency Act provisions until December 31, 2024.

III. WITNESSES

The following witnesses have been invited to testify:

The Honorable John Fogle
Council Member, City of Loveland Colorado
National League of Cities Information Technology and Communications Committee

Cheryl A. Leanza
Policy Advisor
United Church of Christ, Office of Communications, Inc.

Tim Donovan
SVP, Legislative Affairs
Competitive Carriers Association

Todd Brandenburg
President and CEO
PocketiNet