Documents for the record – Oversight of the Federal Communications Commission

Majority

1. A June 20, 2023, letter to Chair Latta and Ranking Member Matsui from NAFCU regarding the Oversight of the FCC Hearing.
2. A June 21, 2023, statement from American Television Alliance regarding the Oversight of the FCC Hearing.
3. A June 202, 2023, letter from ACA International to Chair Latta and Ranking Member Matsui regarding the Oversight of the FCC Hearing.

Minority

4. A July 21, 2023, letter from Education Superhighway to Chair Latta and Ranking Member Matsui regarding the Oversight of the FCC Hearing.
5. A May 10, 2023, letter from The Leadership Conference to Financial Services and Appropriations leadership regarding ACP.
6. A June 20, 2023, blog post from Common sense regarding ACP.
7. A June 20, 2023, letter to President Biden from Senators regarding ACP.
8. A letter from Public Knowledge to the Wireless Telecommunications Bureau regarding the Commission's failure to issue licenses to T-Mobile.

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National Association of Federally-Insured Credit Unions

June 20, 2023

The Honorable Robert Latta Chairman Committee on Energy & Commerce Subcommittee on Communications and Technology U.S. House of Representatives Washington, DC 20515	The Honorable Doris Matsui Ranking Member Committee on Energy & Commerce Subcommittee on Communications and Technology U.S. House of Representatives Washington, DC 20515

Re: Tomorrow's Hearing, "Oversight of the Federal Communications Commission"

Dear Chairman Latta and Ranking Member Matsui:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's Federal Communications Commission (FCC) oversight hearing. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 137 million consumers with personal and small business financial service products. We appreciate the opportunity to share our views as the Subcommittee exercises its oversight authority over the FCC.

NAFCU supports the FCC's rules aimed at targeting illegal and fraudulent robocalls. The FCC should, however, find ways to tailor its regulations to focus on bad actors instead of sweeping in good actors like credit unions in broadly written regulations. As community-based, member-owned financial institutions, credit unions play no part in illegal communications and are not the type of entity the Telephone Consumer Protection Act (TCPA) was intended to target. Over the years, the FCC has created a regulatory labyrinth that has enriched plaintiffs' attorneys and hurt credit unions attempting to make legitimate and useful informational calls. Credit unions deserve relief so that they may contact their members about important information regarding their accounts without a high risk of frivolous lawsuits.

A prime example is the FCC's recent proposed rule regarding robocalls and robotexts that would restrict a credit union's ability to obtain a consumer's single consent for multiple uses. This proposal could prevent important communications such as "fraud alerts" from reaching a credit union member. As such, there needs to be a reasonably fast remediation timeline when call carriers accidentally block legitimate texts. Additionally, credit union member "opt-ins" to robotexts should be interpreted to give both the credit union and their relevant service provider partners authority to robotext members. Finally, consumers are able to provide their consent through mobile applications, over the phone, or in writing, so the FCC should display or otherwise provide the list of entities the consumer is giving consent to for each of these avenues.

We thank you for the opportunity to share our concerns while the Subcommittee exercises its oversight authority. Should you have any questions or require any additional information, please contact me or Chad Adams, NAFCU's Senior Director of Legislative Affairs, at (703) 842-2265 or cadams@nafcu.org.

Sincerely,

Brad Thaler

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Subcommittee on Communications and Technology

AMERICAN TELEVISION ALLIANCE STATEMENT FOR THE RECORD

U.S. House of Representatives
Energy & Commerce Committee
Communications & Technology Subcommittee
Oversight Hearing of the Federal Communications Commission
June 21, 2023

The American Television Alliance includes cable operators, satellite TV providers, telco video companies, independent programmers, and consumer groups. We want to provide the House Energy & Commerce Committee our perspective on some of the important issues related to the Federal Communications Commission.

1. Standard General/TEGNA.

ATVA's membership includes companies with a substantial record of participation in FCC merger proceedings. Regarding the merger of Standard General and TEGNA, ATVA's members agree that the FCC's public interest analysis and focus on consumer pricing was squarely within its authority and consistent with long standing precedent. Standard General and its allies in the broadcast industry are wrong to suggest otherwise.

Every merger applicant understands that, under the Communications Act, the FCC must examine whether the proposed merger serves the public interest. For decades, that analysis has included whether the transaction will cause anticompetitive retail price increases. Here, the FCC raised concerns that the parties engineered the transaction to increase the price paid for TEGNA's stations. This is exactly the sort of thing that the FCC looks at, and there is nothing unusual or improper about what it did here.

2. Ownership, Loopholes, and Sidecars.

The FCC's ownership rules generally prohibit a single entity from owning two or more of the top-four rated television stations in a single market. These rules make sense from our perspective—if one broadcaster owns, say, CBS and NBC in New York, it will be able to charge more than if the stations were owned separately.

Unfortunately, several loopholes permit broadcasters to evade these rules. One, the "multicast loophole," permits a broadcaster to put multiple network *feeds* (say, CBS and NBC) on a single station. Another, the "low power" loophole, says low power stations don't count for the ownership rules. We have identified at least 110 markets in which broadcasters use one or both of these loopholes.

Equally bad is the use of "sharing arrangements" to violate the ownership rules. For years, broadcasters have entered into such arrangements under which, for example, one station might sell some advertising for a second station. More recently, however, broadcasters have used such agreements in a manner far beyond their intended scope. Hypothetically, the FOX affiliate in Albany, for example, might sign multiple sharing agreements with the Albany ABC affiliate—

permitting it to manage essentially all aspects of the ABC affiliate's operations. The FOX affiliate cannot *nominally* own the ABC affiliate, but the sharing agreements accomplish much the same thing. Stations like the ABC affiliate are known in the industry as "sidecars." Sidecars have become yet another way around the ownership rules for broadcasters.

We think the local ownership rules are important. We also think that, if the FCC is going to have rules, it should prevent wholesale evasion of those rules. We have thus urged the FCC to eliminate its loopholes and prevent the use of sidecars.

3. Retransmission Consent.

Retransmission consent has been a mess for a long time. From the consumer's perspective, however, things are worse than ever.

The latest FCC *Communications Marketplace Report* found that the average subscriber pays more than $200 per year for so-called "free" broadcast television, representing an increase of more than 20% over the previous year. In fact, since 2013, retransmission consent fees have increased, on average, more than 30% annually. The FCC reports that "in 2021, fees per subscriber were more than eight times their 2013 value."

On top of this, broadcasters have blacked out consumers' access to these "free" stations more than 1,800 times since 2010.

In 2014, Congress directed the FCC to reconsider its "good faith" negotiation rules to help bring some sanity to retransmission consent negotiations. Then-Chairman Wheeler paused that proceeding, concluding that new *specific* rules about good faith would be less effective than the current *general* standard. The proceeding is now closed.

Chairwoman Rosenworcel told Congress that she is eager to work with it to prevent consumers from being caught in the middle of retransmission consent disputes.[1] We too are eager to help. It is long past time for Congress to address retransmission consent abuses.

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[1] Additional Questions for the Record, Subcommittee on Communications and Technology, Hearing on "Connecting America: Oversight of the FCC," responses of Chairwoman Rosenworcel (March 31, 2022) *available at* https://docs.house.gov/meetings/IF/IF16/20220331/114545/HHRG-117-IF16-Wstate-RosenworcelJ-20220331-SD001.pdf

June 20, 2023

Chairman Bob Latta
House Energy and Commerce Committee
Communications and Technology
Subcommittee
Washington, D.C. 20510

Ranking Member Doris Matsui
House Energy and Commerce Committee
Communications and Technology
Subcommittee
Washington, D.C. 20510

Dear Chairman Latta and Ranking Member Matsui:

On behalf of ACA International, the Association of Credit and Collection Professionals ("ACA"), I am writing regarding the House Energy and Commerce Subcommittee on Communications and Technology Hearing, "Oversight of the Federal Communications Commission."

ACA represents approximately 1,700 members, including credit grantors, third party collection agencies, asset buyers, attorneys, and vendor affiliates, in an industry that employs more than 125,000 people worldwide. Most ACA member debt collection companies, however, are small businesses. The debt collection workforce is ethnically diverse and 70% of employees are women.

Background about ACA International
ACA members play a critical role in protecting consumers and providing liquidity to lenders. ACA members work with consumers to resolve their debts, which in turn saves every American household, on average, more than $700, year after year. The accounts receivable management ("ARM") industry is instrumental in keeping America's credit-based economy functioning with access to credit at the lowest possible cost. For example, in 2018 the ARM industry returned over $90 billion to creditors for goods and services they had provided to their customers. And in turn, the ARM industry's collections benefit all consumers by lowering the costs of goods and services—especially when rising prices are impacting consumers' quality of life throughout the country.

ACA members also follow comprehensive compliance policies, are diligent about employing strong compliance management systems, and have high ethical standards to ensure consumers are treated fairly and the wide range of federal and state laws that govern collections are followed. The Association contributes to this end goal by providing timely industry-sponsored education as well as compliance certifications. In short, ACA members are committed to assisting consumers as they work together to resolve their financial obligations, all in accord with the Collector's Pledge that all consumers are treated with dignity and respect.

ACA members support the Federal Communications Commission's ("FCC" or "Commission") efforts to target illegal scam calls and text messages. Illegal fraudsters should be eliminated from the marketplace. However, certain FCC policies have done little to stop bad actors who do not care about the law, and instead have resulted in limiting legitimate informational calls that consumers need. ACA supported the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act ("TRACED Act") because of its efforts to target bad actors harming consumers. However, carriers and the FCC have not kept up with their end of the bargain in this important law. Instead of providing clear standards for transparency and redress options when calls and texts from legitimate businesses are blocked, the FCC has allowed for opaque and incomplete standards that result in carriers continuing to block needed calls with information consumers must know about their finances, health care or other topics. We ask that Congress consider the following concerns:

FCC's Work on Text Message Blocking

This spring, the FCC proposed (1) to require terminating mobile wireless providers to investigate and potentially block texts from a sender after they are on notice from the Commission that the sender is transmitting suspected illegal texts, (2) to apply the National "Do Not Call" Registry's restrictions to text messages, and (3) to restrict the ability of entities to obtain a consumer's single consent and use that consent as the basis for multiple callers to place marketing calls to the consumer.

The Commission should not impede the completion of text messages sent by legitimate businesses to their customers and other consumers. To protect text messages from legitimate companies, the Commission should require mobile wireless providers to notify the sender immediately when the provider has blocked the sender's text message and to resolve disputes no longer than six hours after receiving the dispute. ACA and a large group of other stakeholders outlined actions (available here (PDF)) the FCC can take to protect legitimate callers and consumers.

A sender of text messages can only take action to dispute an erroneous block if they know that their text message has been blocked. Unfortunately, the FCC's erroneous thinking in this area and in its Report and Order inaccurately stated that carriers are "already providing adequate notice when they block texts." The Commission should require immediate notification of blocking.

Call Blocking Activity

In May, the FCC issued another call blocking order and further notice for combatting illegal robocalls. The FCC unfortunately has missed the mark on requiring carriers to put effective processes in place to ensure call blocking comes with transparency and redress options for callers, which Congress required in the TRACED Act. A large group of impacted callers has outlined several concerns as they work towards seeking appropriate redress.[1]

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[1]

Congressional Discussions

Last week, Ranking Member Frank Pallone, Jr. (D-N.J.) issued a statement, "denouncing the ongoing epidemic of abusive robocalls practices," which he says have been exacerbated by the Supreme Court's ruling in *Facebook, Inc*. v. *Duguid*, which interpreted the Telephone Consumer Protection Act's ("TCPA") definition of "autodialer" or "ATDS." The Supreme Court correctly found that to qualify as an ATDS under the TCPA, a device must have the capacity to either store a telephone number using a random or sequential number generator or produce a telephone number using a random or sequential number generator. In other words, equipment that can store or dial telephone numbers without using a random or sequential number generator does not qualify as an ATDS under the TCPA.[2] While the plaintiffs' bar surely regrets the clarity that the 9-0 decision from the Supreme Court provided on this issue, it is an important development for a host of businesses making informational calls with much needed information for consumers. It has also decreased class action litigation under the TCPA.[3]

Fraudulent calls aimed to harm consumers should be limited. However, the wide variety of financial services calls that consumers need about account updates, information about stolen credit cards, and other critical financial information should be supported by Congress.

We understand the serious problems that fraudulent nuisance calls present for consumers, and it is important to consider public policy objectives to limit these calls. However, the truth is that illegal scam artists do not care about the law and as evidenced in recent years, do not pay fines even when presented with them. More should be done to address this issue without laws or regulations that in an overreaction actually stop legitimate calls and texts with needed information for consumers.

Thank you for your attention to the concerns of the ARM industry. Please let me know if you have any questions.

Scott Purcell
Chief Executive Officer
ACA International

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[2] In April 2021, the U.S. Supreme Court issued a 9-0 decision in *e your browser tools to copy the text, then click Close. Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, finding that many lower courts were improperly interpreting what types of technology were considered an ATDS. The Supreme Court justices were clear that Congress drafted the TCPA to address abusive telemarketing, not to punish legitimate business callers.

[3] WebRecon Stats Dec '22 & Year in Review, available at https://webrecon.com/webrecon-stats-dec-22-year-in-review/?utm_source=ActiveCampaign&utm_medium=email&utm_content=WebRecon+Stats+Dec++22+%26+Year+in+Review&utm_campaign=Dec+2022+Newsletter&vgo_ee=AqSuxCM3%2B72kAO9%2FZXuiVzpLB9tk6tN1Fm%2BmFY3WWOeL8u0%2BWBCfKIYwvb2riYN9. (noting that For the full year 2022, FDCPA (-31.3%) and TCPA (-10.8%) were both down significantly over 2021).

July 21, 2023

The Honorable Bob Latta, Chairman
Committee on Energy and Commerce
Subcommittee on Communications and Technology
United States House of Representatives
2123 Rayburn House Office Building
Washington, DC 20515

The Honorable Doris Matsui
Ranking Member
Committee on Energy and Commerce
Subcommittee on Communications and Technology
U.S. House of Representatives
2123 Rayburn House Office Building
Washington, DC 20515

RE: Oversight of the Federal Communications Commission

Dear Chair Latta, Ranking Member Matsui, and Members of the Subcommittee on Communications and Technology:

On behalf of EducationSuperHighway (ESH), a national nonprofit with the mission to close the digital divide for the 17 million households that have access to the internet but cannot afford to connect, I thank the Committee for the opportunity to share our views on the oversight hearing of the Federal Communications Commission (FCC) on June 21, 2023.

EducationSuperHighway focuses on America's most unconnected communities, where more than 25% of people do not have internet. From 2012-2020, EducationSuperHighway led the effort that closed the classroom connectivity gap, successfully connecting 99.3% of schools to high-speed broadband. In recent years, our organization has been focused on closing the broadband affordability gap, including working with the FCC, states, and local trusted institutions to overcome the awareness, trust, and enrollment challenges that have limited enrollment in the Affordable Connectivity Program (ACP).

After decades of public and private investment in broadband infrastructure, *affordability is now the number one barrier to closing the digital divide.* Nearly two-thirds of the 28.2 million unconnected households have access to a home broadband connection but are offline primarily because they cannot afford to connect. This broadband affordability gap is present in every state and impacts virtually every community in America - urban, suburban, and rural - and disproportionately impacts Black and Latinx households, households living on tribal lands, veterans, the elderly, and low-income families. Ensuring these communities can afford broadband connectivity is essential to economic mobility, education, and access to resources.

As this Committee is well aware, the COVID-19 pandemic changed everything and created a national conversation on the importance of closing the broadband affordability gap and, ultimately, the digital divide in communities across the country. The pandemic exposed the consequences of being on the wrong side of the digital divide and made it clear that without a home broadband connection, many households are shut out of economic security and opportunity. The need for home broadband connections existed before the COVID-19 pandemic and has continued past stay-at-home orders. Without high-speed internet at home, Americans cannot send their children to school, work remotely, access healthcare, enroll in job training, access critical government services, or participate in the digital economy. The internet is no longer a luxury; it is a necessity in the daily lives of every American.

In 2021, Congress recognized this simple truth by creating the ACP to help households afford the broadband they need for success in the 21st century. The FCC Chair moved quickly to carry out Congress' affordable broadband legislation, implementing both the Emergency Broadband Benefit (EBB) and the Affordable Connectivity Program. Unfortunately, the $14.2 billion Congress allocated for the ACP is projected to run out by the middle of 2024 - long before the digital divide is closed. **EducationSuperHighway urges the Federal Communications Commission to continue its successful collaboration with national organizations and local trusted institutions to increase adoption of the Affordable Connectivity Program (ACP), and requests that Congress approve additional funding to extend the program past 2024.**

Since going into effect, the ACP has reached more than 18 million households and saved American consumers $500 million per month. Furthermore, there are households in all 50 states and U.S. territories that currently rely on the ACP, showcasing the nationwide need for this program. The Affordable Connectivity Program also enjoys broad bipartisan support among Americans. In fact, 28 governors[1], including Idaho, Illinois, Michigan, Minnesota, New Hampshire, New Jersey, Ohio, Tennessee, Texas, and Utah, have made public statements on the importance of the ACP in their efforts to address the broadband needs of their constituents.

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[1] No Home Left Offline, *Governors In 28 States Have Already Made Affordable Connectivity Program Adoption A Priority,* available *at https://www.educationsuperhighway.org/no-home-left-offline/governors/*

EducationSuperHighway has also partnered with 19 states to mobilize local government leaders and community-based organizations and launch statewide ACP Act Now awareness campaigns.

Likewise, in March of this year, the FCC announced grant awards as part of the ACP Outreach Grant Program, which will invest more than $60 million in grant funding to states and trusted institutions that will work to increase awareness and enrollment in the program. The success of the Outreach Grant program and the work of grantees will be put at risk if the ACP is allowed to lapse in just a few months.

Funding provided through ACP is also critical to the success of Congress's historic investment in making broadband accessible and affordable for all. The $42.45 billion Broadband Equity, Access, and Deployment (BEAD) program was created by Congress through the Infrastructure, Investment, and Jobs Act (IIJA) to expand high-speed internet access by funding planning, infrastructure deployment, and adoption programs. The National Telecommunications and Information Administration (NTIA) will soon announce BEAD funding allocations that will fund the deployment of broadband infrastructure in communities across the country, especially in rural areas that have lacked meaningful access to date. The existence of the ACP is inextricably linked to the success of the BEAD program as states develop their required 5-year action plans and create BEAD-funded procurement opportunities. It is also a critical incentive as Internet Service Providers (ISPs) evaluate whether to participate in infrastructure deployment opportunities that will begin next year. The Digital Equity Act (DEA) also allocates $2.75 billion for ACP adoption efforts, including awareness and enrollment support for unconnected households. This combination of this unprecedented funding represents the largest ever federal infrastructure investment dedicated to connecting those on the wrong side of the digital divide and makes the FCC's work administering the ACP a strategic part of the success of our nation's efforts to remove the barriers that keep millions of unconnected households offline.

Initial funding for the ACP has served as a lifeline for millions of consumers around the country, but if funding is allowed to run out in early 2024, millions more will be left without assistance and without the ability to connect to affordable broadband access. The pandemic shined a light on the absolute necessity of broadband access in everyday life, and the ACP has become a critical tool for ensuring households can get and stay online. Now is the time for the ACP to transition from a pandemic benefit program focused on keeping people on-line to a permanent program, with a sustainable funding solution, focused on closing the digital divide for those who cannot afford a home broadband connection. Without additional funding, millions of

Americans will be stuck in the inequitable digital divide and are at risk of being further left behind. Consumers who have already benefited from the program would face devastation in regard to their jobs, healthcare, and educational opportunities if the ACP is not made permanent and they lose access to their service due to affordability. **EducationSuperHighway urges Congress to prioritize additional funding for the ACP and bolster the FCC's ongoing efforts to connect Americans to affordable broadband service.**

If you have any questions about the issues raised in this letter, please contact Adeyinka Ogunlegan, Vice President of Government Affairs & Policy, at adeyinka@educationsuperhighway.org and Abbey Roudebush, Director, Government Affairs & Policy, at abbey@educationsuperhighway.org

Thank you for your consideration,

Evan Marwell
Founder/CEO
EducationSuperHighway

cc: Members of the Subcommittee on Communications and Technology

The Leadership Conference
on Civil and Human Rights

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May 10, 2023

The Honorable Patty Murray
Chair
Senate Appropriations Committee
U.S. Senate
Washington, DC 20510

The Honorable Kay Granger
Chair
House Committee on Appropriations
U.S. House of Representatives
Washington, DC 20510

The Honorable Chris Van Hollen
Chair
Subcommittee on Financial Services and General Government
U.S. Senate
Washington, DC 20510

The Honorable Steve Womack
Chair
Subcommittee on Financial Services and General Government
U.S. House of Representatives
Washington, DC 20510

Dear Chair Murray, Chair Van Hollen, Chair Granger, and Chair Womack,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the rights of all persons in the United States, and the 165 undersigned civil society organizations, municipal governments, and other interested groups, we write to request robust additional funding for the Affordable Connectivity Program (ACP).

Today, the ACP's current rate of expenditure is roughly $500 million per month. Based on this and projected growth, funding for the ACP could be exhausted by Q2 of next year, if not sooner.[1] Without adequate and sustained funding, millions of vulnerable Americans currently relying on the program would see their internet bill jump or be disconnected entirely, and Congress' bipartisan $42 billion investment in broadband deployment will not meet the goal of universal broadband deployment and adoption.

Broadband access at home is universally recognized as a necessity. It is the essential infrastructure of the 21st century, and the signers of this letter are committed to ensuring that all communities, particularly those who are underserved, gain and continue to have access to affordable, reliable, and high-quality advanced communications services. Lack of high-speed internet access among low-income people, communities of color, and other underserved

[1] "ACP Enrollment and Claims Tracker," Universal Service Administrative Company (last accessed Apr. 14, 2023), https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/#total-enrolled.

communities is of particular concern, and the ACP has proven critical in getting households in these communities online.

The last three years demonstrate that broadband internet service is indispensable for employment, education, health care, commerce, community building, civic engagement, and government services. The high cost of service, however, prevents access for countless households across the United States.[2]

Thanks to Congress' action, the ACP now helps more than 17 million households in America afford broadband internet, with enrollment continuing to increase steadily.[3] These households collectively save more than $500 million per month on internet expenses,[4] while the program drives economic growth, higher incomes, and lower unemployment.[5] The ACP is currently improving telehealth access for more than 3 million low-income seniors and 400,000 veterans, expanding access to education for more than 3 million students, and providing more economic opportunities to more than 1 million federal housing residents.[6] Broadband strengthens communities by creating immediate and long-lasting economic benefits and provides economic improvements for everyone — from rural areas that then become more attractive to businesses and workers, to cities facing aging and inadequate broadband infrastructure. For example, one study demonstrated the employment effects of subsidized broadband resulted in just over $2,200 of benefits per household through increased labor force participation.[7]

Failure to extend the ACP with new funding could result in the biggest loss of internet connectivity ever. Without action from Congress this year, millions of households could immediately lose service.[8] In addition, the loss of ACP would reduce the efficacy of Congress' groundbreaking $42 billion investment in the Broadband Equity, Access, and Deployment (BEAD) Program. A recent study concluded that the

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[2] Anna Read, "How Can the United States Address Broadband Affordability," Pew (Apr. 29, 2022), https://www.pewtrusts.org/en/research-and-analysis/articles/2022/04/29/how-can-the-united-states-address-broadband-affordability; Dr. Hernan Galperin, Annual Survey on Broadband Adoption 2021, California Emerging Technology Fund and University of Southern California (Mar. 2021), https://www.cetfund.org/wp-content/uploads/2021/03/Annual_Survey_2021_CETF_USC_Final_Summary_Report_CETF_A.pdf; "No Home Left Offline: Bridging the Broadband Affordability Gap," Education SuperHighway (2022), https://www.educationsuperhighway.org/wp-content/uploads/No-Home-Left-Offline-Report_EducationSuperHighway2021.pdf.

[3] "ACP Enrollment and Claims Tracker," Universal Service Administrative Company (last accessed Apr. 14, 2023), https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/#total-enrolled.

[4] "Fact Sheet: Biden-Harris Administration Announces New Actions to Lower High-Speed Internet Costs," The White House (Mar. 15, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/15/fact-sheet-biden-harris-administration-announces-new-actions-to-lower-high-speed-internet-costs/.

[5] Adie Tomer, Lara Fishbane, Angela Siefer, and Bill Callahan, "Digital Prosperity: How Broadband Can Deliver Health and Equity to All Communities," Brookings (Feb 27, 2020), https://www.brookings.edu/research/digital-prosperity-how-broadband-can-deliver-health-and-equity-to-all-communities/.

[6] "ACP Enrollment and Claims Tracker," Universal Service Administrative Company (last accessed Apr. 14, 2023), https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/#total-enrolled.

[7] George W. Zuo, 2021. "Wired and Hired: Employment Effects of Subsidized Broadband Internet for Low-Income Americans," 13 American Economic Journal: Economic Policy 447 (Aug. 2021).

[8] Blair Levin, "Washington May Be About to Take a Giant Step Backward in Closing the Digital Divide," Brookings (Mar. 13, 2023), https://www.brookings.edu/blog/the-avenue/2023/03/13/washington-may-be-about-to-take-a-giant-step-backward-in-closing-the-digital-divide/.

The Leadership Conference

ACP reduces the size of the subsidy needed to incentivize broadband deployment in rural areas by 25 percent.[9] ACP makes BEAD program dollars go farther. Sustained funding is critical as broadband companies and others consider the level of public and private investment needed to fulfill Congress' goal of universal affordable broadband deployment and adoption.

Thank you for the work you have done already to make high-speed internet affordable and accessible across the country and for your attention to the critical concerns we have raised here. If you have any questions about the issues raised in this letter, please feel free to contact Anita Banerji, senior director of the media/tech program, at banerji@civilrights.org, or Jonathan Walter, media/tech policy counsel, at walter@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
#OaklandUndivided
18 Million Rising
Advocates for Basic Legal Equality
AHIMA Foundation
All4Ed
Alliance for Community Media
Alliance for Digital Equity (Western Massachusetts)
Alternate ROOTS
American Association of People with Disabilities
American Civil Liberties Union
American Federation of Teachers
American Library Association
Americans for Democratic Action (ADA)
Asian Americans Advancing Justice – AAJC
Asian and Pacific Islander American Vote (APIAVote)
Asian Health Services
Austin Free-Net
Autistic Self-Advocacy Network
Baltimore County Public Library
Baltimore Digital Equity Coalition
Baystate Health
Benefits Data Trust
Benton Institute for Broadband & Society
Bitwise Impact

[9] Kelsey Clark, et al., "Closing the Digital Divide Benefits Everyone, Not Just the Disconnected: An Analysis of How Universal Connectivity Benefits Education, Health Care, Government Services, and Employment," Common Sense Media (2022), https://www.commonsensemedia.org/research/closing-the-digital-divide-benefits-everyone-not-just-the-unconnected.

Black Women's Roundtable
BoomTown
Byte Back
CanCode Communities
Center for Changing Lives
Center for Rural Strategies
City of Chicago
City of Cleveland
City of Philadelphia
City of San Antonio
City of San Jose
Civic Nation
Clearinghouse on Women's Issues
Coalition on Human Needs
Color of Change
Common Cause
Common Cause Delaware
Common Cause Georgia
Common Cause MN
Common Cause New Mexico
Common Sense Media
Communications Workers of America
Community Tech Netowrk
Compudopt
Computers 2 Kids
Connect Your Community Institute
Cuyahoga County
Demand Progress
DigitalC
Duluth Public Access Community Television
East Baton Rouge Parish Library
EducationSuperHighway
Electronic Frontier Foundation
Empowering Pacific Islander Communities
Energy Outreach Colorado
EveryLibrary Institutre NFP
EveryoneOn
Fair Count
Florida Nonprofit Alliance
Florida Philanthropic Network
Frederick County Health Care Coalition
Free Press Action
Fully Equipped 4 Life Training Solutions

GWI, Inc
HALOS
Hispanic Federation
Houston Information Technology Services
Human-I-T
IBSA, Inc
Impact Fund
Institute for Local Self-Reliance
Japanese American Citizens League
JustLeadership USA
Kansas Office of Broadband Development
Labor Council for Latin American Advancement
League of Women Voters of the United States
LifeLong Medical Care
Link Oregon (Oregon Fiber Partnership)
Lit Communities Broadband, Inc.
Local Inititiatives Support Corporation
Long Beach Gray Panthers
Low Income Utility Advocacy Project
Lummi Indian Business Council
MACS 2030 – Minnesotans for the American Community Survey and 2030 Census
MakeIT Haverhill
MALDEF (Mexican American Legal Defense and Educational Fund)
Marconi Society
Massachusetts Law Reform Institute
Media Alliance
MediaJustice
Multicultural Media, Telecom and Internet Council (MMTC)
NAACP
National Action Network
National Association of Councils on Developmental Disabilities
National Association of Counties
National Association of Elementary School Principals
National Association of Housing Cooperatives
National Association of Telecommunications Officers and Advisors (NATOA)
National Black Justice Coalition
National Center for Lesbian Rights (NCLR)
National Coalition on Black Civic Participation
National Consumer Law Center, on behalf of its low-income clients
National Consumers League
National Digital Equity Center
National Digital Inclusion Alliance
National Disability Rights Network (NDRN)

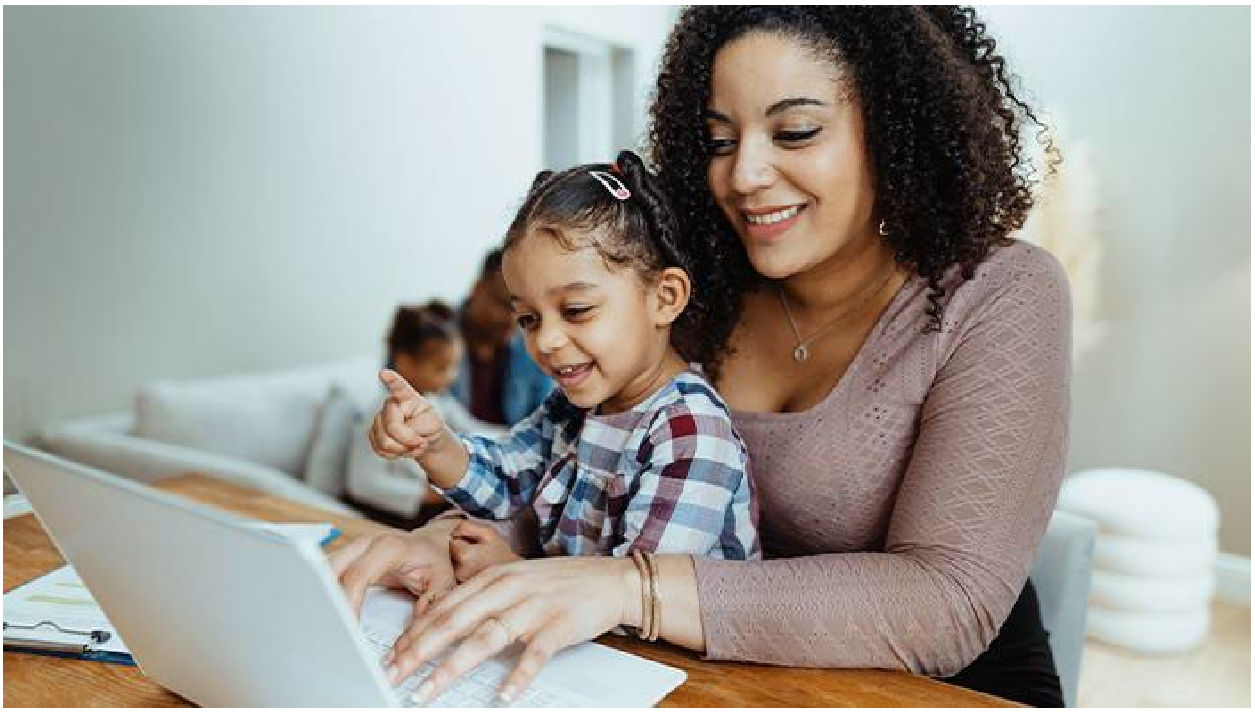
National Fair Housing Alliance
National Hispanic Media Coalition
National Organization for Women
National Skills Coalition
National Urban League
National Women's Law Center
NETWORK Lobby for Catholic Social Justice
New America's Open Technology Institute
Next Century Cities
NTEN
Open MIC
Oregon State University Extension Services
Parents as Teachers
Partners Bridging the Digital Divide
PCs for People
Pennsylvania Utility Law Project
PFLAG National
Public Knowledge
Pullman Public Schools
Right Here, Right Now Project
ROC United
Schools, Health & Libraries Broadband (SHLB) Coalition
SETDA
Sikh American Legal Defense and Education Fund (SALDEF)
Sojourners
Sonoma County Library
Southeast Community Development Corporation
Stewards of Affordable Housing for the Future
SUNY #EmTech
Tech Goes Home
Technology Learning Collaborative
The ARC of the United States
The Charleston Metro Chamber of Commerce
The Children's Agenda
The Children's Partnership
The Education Trust
The Greelining Institute
The Public Utility Law Project of NY
The STEM Alliance
Tricounty Cradle to Career Collaborative
TURN – The Utility Reform Network
UnidosUS
United Church of Christ Media Justice Ministry

United Steelworkers
Universal LLC
US Ignite
Valley Vision
Virginia Citizens Consumer Council
Virginia Society for Technology in Education
VOICES for Alabama’s Children
Volunteers of America National Services
Westchester Library
Women Employed
YISD

CC: The Honorable Susan Collins, Vice Chair, Senate Appropriations Committee
The Honorable Bill Hagerty, Ranking Member, Subcommittee on Financial Services and General Government
The Honorable Rosa DeLauro, Ranking Member, House Committee on Appropriations
The Honorable Steny Hoyer, Ranking Member, Subcommittee on Financial Services and General Government

How Successful Is the Affordable Connectivity Program?

The ACP has connected millions of families and communities to high-speed internet, and it needs to be extended.



Across the country, states are making critical decisions about how to leverage $80 billion in federal broadband infrastructure funding from the Infrastructure Investment and Jobs Act (IIJA) and the American Rescue Plan (ARP). With the right planning, these funds could ensure that high-speed internet service will finally reach every single home and business in the country, which has been one of Common Sense Media's top priorities for years. However, careful planning and community outreach are essential to using these funds effectively, as is the Affordable Connectivity Program (ACP)—the most successful program the country has ever enacted to help struggling families afford high-speed internet.

We know that for a lower-income family in the digital divide, just having access to a broadband network is not enough to ensure that they can subscribe. The ACP is an essential tool because it addresses the number one reason people aren't online—they're unable to afford internet service. In fact, offline households are often only able to pay $10, yet the median cost of an internet plan is $74.99 per month.

The ACP helps lower-income households by subsidizing the cost of an internet service plan as well as devices, like laptops or tablets. In fact, the program is overwhelmingly popular, and uptake is exceeding even the highest expectations. Our analysis shows it's popular in cities, suburbs, and rural areas. It's popular with Democrats, Republicans, and independents. In short, the ACP is helping people everywhere, no matter where they live or how they vote.

Here are five facts about the impact the ACP is having on families across the country:

- Roughly 50 million households qualify for the subsidy. That's nearly 40% of the country.
- Over 18.5 million households are currently enrolled. That's more than 14% of the country.
- In 2023, ACP enrollment grew by over half a million every month, or at a rate of 3.5% per month.
- Majorities in both parties support the ACP: Sixty-four percent of Republicans and 95% of Democrats.
- The ACP's success is bipartisan. Forty-six percent of enrollees live in Republican congressional districts, and 50% live in Democratic congressional districts.

The benefit of the ACP also reaches well beyond eligible households.
Our research found that connecting families has a significant positive impact on education, health care, government services, and even workforce development. When more households are connected to high-speed internet, outcomes can improve in each of these sectors. For example, when students remain unconnected, our research found an estimated loss of $33 billion dollars in GDP annually. By connecting students, the country could avoid this loss.

A recent analysis by Cigna noted that telemedicine access lowered the cost of care by up to $141 per visit. The same analysis found that telemedicine increased the number of entry points into the health care system as well as improved outcomes. With more families connected, telemedicine could be an option for more people, both patients and providers. Connectivity also increases employment rates and earnings, creating more than $2,200 in economic benefit for lower-income households.

Both new and established providers need certainty that ACP will remain in place as they decide whether to participate in the biggest new broadband infrastructure program, the Broadband Equity, Access, and Deployment (BEAD) Program, and determine how ambitious they can be in their proposals.

Our recent analysis found that the existence of ACP led to an estimated 25% reduction in the per household subsidy needed to incentivize providers in rural areas. ACP is the linchpin that will turn the IIJA's massive once-in-a-generation investment in broadband from a program that is just about building networks to one that is helping our most vulnerable communities connect to the benefits of the digital economy.

At Common Sense, we have worked hard to get to where we are today, and we are determined to see this job through. To close the digital divide once and for all, we need to continue funding a robust ACP.

https://www.commonsensemedia.org/kids-action/articles/how-successful-is-the-affordable-connectivity-program

ROGER F. WICKER
MISSISSIPPI

ARMED SERVICES
COMMERCE, SCIENCE, AND TRANSPORTATION
ENVIRONMENT AND PUBLIC WORKS
RULES AND ADMINISTRATION
COMMISSION ON SECURITY
AND COOPERATION IN EUROPE

United States Senate

WASHINGTON, DC 20510

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www.wicker.senate.gov

June 20, 2023

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. President:

We write regarding the Affordable Connectivity Program, an important tool in our efforts to close the digital divide. The Infrastructure Investment and Jobs Act provided significant funding for the Affordable Connectivity Program, which has already enabled 18 million Americans to access the high-speed broadband services they need. However, given the current rate of enrollment, projections indicate that the funding for the Affordable Connectivity Program could be exhausted as early as the first quarter of 2024. Therefore, we urge the White House to repurpose a portion of unobligated emergency COVID relief funds to ensure the continuity of funding for this program, while we explore alternative sustainable funding mechanisms and updated parameters.

As you are aware, the Broadband Equity, Access, and Deployment (BEAD) Program and the Capital Projects Fund are contributing billions toward the expansion of broadband services to connect high-cost and hard-to-reach areas. These programs operate hand-in-glove with the Affordable Connectivity Program to achieve the goal of universal broadband so that all Americans have access to the modern commerce, educational and healthcare opportunities that broadband enables. As expanded networks become operational, the significance of the Affordable Connectivity Program will become even more important as it ensures our constituents can benefit from these historic investments in connectivity.

Again, we encourage the White House to repurpose a portion of unobligated emergency COVID relief funds to make certain the Affordable Connectivity Program remains on solid financial footing, ensuring our constituents and communities can access crucial broadband services.

Sincerely,

Roger F. Wicker
United States Senator

Mike Crapo
United States Senator

Kevin Cramer
United States Senator

Thom Tillis
United States Senator

Shelley Moore Capito
United States Senator

J.D. Vance
United States Senator

James Risch
United States Senator

Todd Young
United States Senator

Public Knowledge

Joel Taubenblatt
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
45 L St. NE
Washington, DC 20554

Re: Transforming the 2,5 GHz Band
WT Docket No. 18-120

Dear Chief Taubenblatt:

Public Knowledge writes to express concern over the Commission's failure to issue licenses to T-Mobile that it won in Auction 108. As always when licenses are at issue, this is not simply a matter that impacts a single company. Licenses are issued to serve the community of license, and delay in issuing licenses denies those communities important services. Here, as the Commission is well aware, the 2.5 GHz band serves as the anchor for T-Mobile's 5G network and the 2.5 GHz licenses auctioned in Auction 108 fill critical holes in T-Mobile's 5G coverage. Delays in issuing these licenses therefore delay the deployment of important 5G services in small markets and in rural America.[1] In urban areas, the delay in issuing these licenses undermines T-Mobile's broadband fixed wireless access offering[2] – which has provided a genuine potential competitor to cable providers.[3]

We therefore ask the Commission to issue a Public Notice, either in this docket or in a new permit-but-disclose proceeding, to publicly state whether it has in fact concluded that it does not have authority to issue the licenses at issue, to explain its reasoning, and to take comment on its legal conclusion. We also ask the Commission to consider alternatives, such as issuing special

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[1] *See* Monica Alleven, "T-Mobile Tackles the Hard Part About 5G Mid-Band Deployment," Fierce Wireless (April 28, 2023). Available at: https://www.fiercewireless.com/5g/t-mobile-tackles-hard-part-about-5g-mid-band-build

[2] *See* Paul Gallant, "T-Mobile and 2.5 GHz: Delayed Licenses May Benefit Wireless & Cable Competitors," TD Cowen Washington Research Group (May 4, 2023).

[3] *See* Patience Haggin and Will Feuer, "Cable Companies and Mobile Carriers Battle Over Fixed Wireless Internet," Wall St. Journal (April 26, 2023). Available at: https://www.wsj.com/articles/cable-companies-mobile-carriers-battle-fixed-wireless-7dd189d7

temporary authority (STA) for T-Mobile to begin operation in the areas of license[4] until Congress restores the Commission's auction authority or the Commission concludes it has authority to issue the remaining Auction 108 licenses. To the extent the Commission believes that STAs or other pathways are also foreclosed, the Commission should publicly explain its reasoning and solicit comments on alternate interpretations of the statute.

Such a public notice will serve several valuable purposes. First and foremost, it will make clear to members of Congress that its failure to reauthorize auctions is not harmless. Every day that Congress delays is another day Congress denies rural America 5G and undermines potential broadband competition in urban markets. Congress must understand that it is not that the Commission chooses not to issue these licenses, but that the Commission genuinely (although Public Knowledge believes erroneously) believes that it ***cannot*** issue these licenses until Congress acts.

Second, the public notice will assist the Commission in this novel situation to properly analyze the statute. To assist the Commission, Public Knowledge provides its own theory of statutory authority as an appendix to this letter. This theory differs in some particulars from that of T-Mobile, and public comment on these different theories may invite new interpretations of the statute that will enhance the Commission's own legal analysis.

Finally, a Public Notice will provide important transparency and allow all parties to have reasonable expectations. The Commission has made no official statement, requiring the public to rely on reports in the press,[5] public statements by T-Mobile,[6] and recent filings by DISH,[7]

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[4] T-Mobile applied for STAs to cover the areas of license on March 23, 20223. *See* Gallant *supra* n.2.

[5] *See*, *e.g.*, Dan Mayer, "T-Mobile U.S. Pleads With FCC for Spectrum Access to Boost 5G Coverage," SDXCentral (April 10, 2023). Available at: https://www.sdxcentral.com/articles/analysis/t-mobile-us-pleads-for-spectrum-access-to-boost-5g-coverage/2023/04/

[6] Neville Ray, President of Technology, T-Mobile, "More 5G for More Americans," T-Mobile Blog (April 6, 2023). Available at: https://www.t-mobile.com/news/network/more-5g-for-more-americans?norewrite=UUapUeUpU1009621

[7] *See* Letter of Jeffery H. Blum, Executive Vice President External and Legislative Affairs, DISH, to Wireless Telecommunications Bureau, Re: Application for Special Temporary Authorities, **Inbox – 1.931,** Market Based STAs, May 2, 2023.

T-Mobile[8] and 4 former FCC General Counsels.[9] On a matter this momentous, the public deserves to hear directly from the Commission. A Public Notice will set reasonable expectations for the public and impacted stakeholders. Will T-Mobile receive the licenses it needs to expand its service in rural America and small markets, or not? Will T-Mobile have the capacity to enhance its competing FWA offering, or not? A Public Notice will provide necessary information and transparency on this important matter.

Sincerely,

Harold Feld
Senior Vice President
Public Knowledge
1818 N St NW
Suite 410
Washington, DC 20036
(202) 559-1044
hfeld@publicknowledge.org

[8] *See* Letter of Kathleen Ham, Senior Vice President Government Affairs, T-Mobile, to Marlene Dortch, Secretary, Federal Communications Commission, Re: ULS Application File Nos. 0010206629 and 0010475575 (April 28, 2023).
[9] Letter of Samuel L. Feder, Thomas M. Johnson, Jr., Howard J Symons, and Christopher J. Wright to P. Michele Ellison, General Counsel, Federal Communications Commission, March 23, 2023.

APPENDIX
LEGAL ANALYSIS OF COMMISSION AUTHORITY TO GRANT OUTSTANDING AUCTION 108 LICENSES OR STAs

Without an explicit statement from the Commission of its reasoning, it is difficult to discern how to frame the argument. Based solely on T-Mobile's filings, it appears that the Commission has two concerns. First, that granting the licenses would violate the plain language of Section 309(j)(11). While this argument is plausible, it is unclear why this language would apply to T-Mobile's request for STAs. Second, the Commission apparently worries that processing the licenses would violate the Anti-Deficiency Act. In the absence of a clear explanation of the Commission's reasoning, it is extremely difficult to see why this should be the case.

Section 309(j)(11) Does Not Apply to Issuing Licenses, But to Selecting Between Conflicting Applications for Licenses.

Section 309(j)(11) states:

> (11)TERMINATION
> The authority of the Commission ***to grant a license or permit under this subsection*** shall expire March 9, 2023, except that, with respect to the electromagnetic spectrum identified under section 1004(a) of the Spectrum Pipeline Act of 2015, such authority shall expire on September 30, 2025, and with respect to the electromagnetic spectrum identified under section 90008(b)(2)(A)(ii) of the Infrastructure Investment and Jobs Act, such authority shall expire on the date that is 7 years after November 15, 2021. (Emphasis added)

There are two ways to interpret the language "to grant a license or permit under this subsection." The first is to understand that this language refers to the process of *selecting* a licensee. The second means the literal granting of the license after using an auction to select a licensee. While the former comports with both precedent and the structure of the Act, the later does not. Nor does the broader reading make logical sense in light of the purpose of auctions or traditional canons of statutory construction.

It has been well established since virtually the dawn of Communications Act that the source of Commission authority to grant licenses lies not in Section 309, but in Section 307(a). In *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940), the Supreme Court cited Section 307(a) as the source of Commission licensing authority. "Section 307(a) of the Communications Act directs that the Commission . . . shall grant the applicant therefor a station license provided by this Act." at 473 (cleaned up). *See also National Broadcasting Co. v. United States*, 319 U.S. 190, 230

(1943) ("Subject to the limitations defined in the Act, the Commission is required to grant a station license to any applicant 'if the public interest, convenience or necessity will be served thereby.' § 307(a)") (Murphy, J. dissenting). Indeed, *Sanders Bros* does not even mention Section 309. The conclusion that the source of the Commission's licensing authority resides in Section 307(a) is further buttressed by the title of the relevant Section: "Section 307 Licenses. (a) Grant of licenses." 47 U.S.C. § 307(a).

This also logically follows from the interplay of Section 307 with Sections 308[10] and 309.[11] Section 308, "Requirements for License," describes the requirements for an application for any license (for example, that a license application must be in writing[12] and that such applications must conform to any rules or requirements the Commission may establish by regulation.[13] Section 309, "Application for License," describes what factors the Commision must consider when granting a license under Section 307. *See NBC v. US*, 318 U.S. at 215 (citing generally to Sections 307, 308 and 309 for source of the public interest standard in consideration of granting licenses).

In other words, the Act works like this: Under Section 307, the Commission must grant a license if it finds doing so will serve the public interest. The application must conform to the requirements of Section 308. Once the Commission receives an application that conforms to Section 308, it determines whether or not to grant the application and under the criteria established by Section 309 and what the actual license must contain. Thus, Section 309(a) establishes that the Commission must "examine" the application and may consider "any other factors the Commission shall notice" in making its public interest determination. Sections 309(b)-(e) set out the timing of license grants and renewals, who may contest an application, and the nature of hearings on license applications. Section 309(f) describes when the Commission may bypass the procedures of Sections 309(b)-(e) and grant a Special Temporary Authority.[14] Section 309(g) allows the Commission to establish classifications of applications "to effectuate the purposes of this section" (i.e., the grant of applications that serve the public interest). Section 309(h) describes the actual contents of the license and the rights conferred as a consequence of the license.

It is in this context that the Commission must understand Section 309(j), and therefore 309(j)(11). Section 309(j) introduced a new criteria for determining whether grant of a license under Section 307(a) serves the public interest when presented with multiple applications for the same license. Auctions are a method of *selection*, under the theory that market mechanisms such as auctions will place the license in the hands of those best able and most eager to provide

[10] 47 U.S.C.§ 308.
[11] 47 U.S.C. § 309.
[12] 47 U.S.C. § 308(a).
[13] 47 U.S.C. § 308(b).
[14] As discussed in greater detail below, an application for an STA is a separate application for a "license" as defined by 47 U.S.C. § 153(49).

service.[15] If it were otherwise, the Commission would have no power to grant licenses that meet the statutory exceptions, *see* 47 U.S.C. § 309(j)(2), or grant licenses with only a single applicant.[16] The termination of authority under Section 309(j)(11) must therefore be read as prohibiting the use of auctions as a selection method, not as authority to grant the license after the selection is made.

Because the Commission has not issued a public notice to explaining its reasoning, it is unclear whether the Commission's long standing view that auction revenues may be used to pay the costs associated with issuing licenses post-auction under Section 309(j)(8)(B) influences the analysis of the extent of Section 309(j)(11). But nothing in this analysis should alter the Commission's long standing view. Section 30((j)(8)(B) allows the Commission to use revenues to "develop and implement the program required by this subsection." Notably, the statute uses the phrase "the program required by this subsection" (i.e., as a means of selection) rather than referring to the grant of a license or permit under this subsection. The actual grant of the license is necessary to "implement" the selection regardless of the statutory authority to grant licenses.

In addition to the general structure of the statute and long established precedent, the Commission should consider why Congress would sunset the Commission's authority to select licensees via auction and whether that purpose would include denying winning bidders the licenses after an auction is already finished and the payments received. To address the elephant in the room, Congress sunsets the auction authority in order to increase the available auction revenue from FCC auctions as an offset against spending. Were Congress to make the FCC's authority permanent, it would provide only a single score in that one bill. By contrast, requiring reauthorization allows the Congressional Budget Office to score the anticipated auction revenue every time Congress reauthorizes spectrum auctions for the duration authorized. Setting aside the merits of allowing funny accounting tricks to drive spectrum policy, there is no reason to believe Congress intended to deny winning bidders their licenses as a consequence of CBO's peculiar method of scoring and the desire to create revenue on paper to offset expenses.

But even setting this unspoken consideration aside and assuming Congress had other reasons to sunset the FCC's spectrum auction authority, none of the possible reasons Congress might have (such as a desire to reconsider the wisdom of auctioning licenses in favor of a return to comparative hearings) would mandate withholding authority to distribute licenses *after* the conclusion of the auction and the receipt of all money owed. Such an outcome would be extremely disruptive, leaving the Commission, the winning bidders, and the public in limbo for an indefinite period. It is much more reasonable to assume that Congress intended the authority to conduct auctions to sunset, without any impact on the Commission's Section 307(a) authority to actually grant the licenses if an auction were already concluded. The Commission should

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[15] *FCC v. Nextwave Personal Communications, Inc.*, 200 F.3d 43, 51-52 (2nd Cir. 1999).
[16] *See* Public Notice, Wireless Telecommunications Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window, WT Docket No. 18-210, 35 FCC Rcd 308 ¶ 26 (2020).

disfavor an interpretation that would lead to such a disruptive and absurd result where a more sensible explanation is available.

Finally, two canons of statutory interpretation favor the interpretation presented here. Interpreting Section 309 as the source of the Commission's licensing authority would render Section 307(a) a nullity. Such an interpretation is to be disfavored when it is possible to give effect to every statute in a manner consistent with the statutory language, structure and intent. Reading Section 307(a) as the source of the Commission's licensing authority, while reading Section 309 (and thus 309(j)) as the method of determining whether to grant the license and to whom, avoids reading Section 307(a) out of the Communications Act. Furthermore, if the Commission were to read Section 309(j)(11) as displacing the original licensing authority of Section 307(a), it would amount to an implied repeal of Section 307(a). As with interpretations that produce absurd results and interpretations that render statutory provisions superfluous, interpretations that create implied repeals are disfavored when an alternative explanation consistent with the statutory context is available.

To conclude, the most logical reading of Section 309(j)(11) consistent with past precedent, the structure of of the statute, and general canons of statutory interpretation is to read the prohibition of using "this subsection" to "grant any license or permit" following the sunset date is that the Commission is prohibited from using auctions as a method of selecting licensees as part of the process of granting a license under Section 307(a). But if the Commission has *already* selected the licensee via auction, the role of "this subsection" (309(j)) is complete. All that is left is the actual issuance of the license under Section 307(a).

Special Temporary Authority Is a Separate License Application That Falls Outside Section via 309(j).

In light of the Commission's apparent conclusion that Section 309(j)(11) prevents it from issuing the outstanding 2.5 GHz licenses from Auction 108, T-Mobile has applied for STAs to begin service until the Congress restores the Commission's auction authority or the Commission reevaluates its conclusion. Because the Commission has issued no Public Notice explaining its reasoning, or Order denying the requested STAs, it is impossible to determine whether the failure to grant the requested STAs reflects a conclusion by the Commission that Section 309(j)(11) also prohibits issuing an STA to cover the same area of license, whether the Commission does not believe that T-Mobile has satisfied the requirements of Section 309(f),[17] or some unrelated reason. While Public Knowledge cannot address either of the last two reasons, Public Knowledge provides this analysis as to whether Section 309(j)(11) has any relevance to application of an STA under Section 309(f). For the reasons explained below, Section 309(j)(11) should have no impact on T-Mobile's separate applications for STAs.

[17] 47 U.S.C. § 309(f).

Section 309(f) states:

> When an application subject to subsection (b) has been filed, the Commission, notwithstanding the requirements of such subsection, may, if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such temporary operations for a period not exceeding 180 days, and upon making like findings may extend such temporary authorization for additional periods not to exceed 180 days.

The sticking point would appear to be the phrase "if the grant of such application is otherwise authorized by law." While hampered by the lack of any explanation of the Commission's reasoning, it would appear to be as follows: T-Mobile's application for licenses in the 2.5 GHz band (the long-form licenses submitted following Auction 108) is no longer "otherwise authorized by law." Therefore, the Commission cannot grant STAs in this case pursuant to Section 309(f). Again, assuming this is the Commission's reasoning, it misinterprets the structure of the Communications Act.

A grant of Special Temporary Authority is a license as defined by Section 153(49).[18] An STA is an "instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission." As explained above, it therefore originates in Section 307(a) and is granted subject to the selection criteria provided by Section 309 after an applicant provides an application in conformance with Section 308. While the application must be the sort of application generally subject to Section 309(b) (as required by the words "when an application subject to subsection (b) has been filed), Section 309(f) provides for an expedited process to provide a license of limited duration in circumstances that the Commission deems satisfy the requirements of 309(f). Or, in other words, it is the application for the STA, not any associated application, that must be "subject to subsection (b)" and therefore fall into the classification of licenses provided for in 309(b).

This interpretation is required by the Commission's action in authorizing STAs in situations where no other application is pending. For example, the Commission authorized WISPs to file STAs for outdoor use of the 5.9 GHz pending resolution of the Further Notice of Proposed

[18] 47 U.S.C. § 153(49).

Rulemaking in ET Docket No. 19-138.[19] Because outdoor operation in the band is generally prohibited under the existing rules, there is no independent application for license "otherwise authorized by law" associated with the grant of STAs in the band. The only application "otherwise authorized by law" is the application for the STA itself.[20]

Similarly, any application for an STA by T-Mobile to provide CMRS common carrier service (and associated broadband service) is itself the application covered by Section 309(j)(b). Regardless of the Commission's conclusion with regard to whether the pending "long-from" 2.5 GHz license applications for the licenses won in Auction 108 are "otherwise authorized by law," there can be no doubt that licenses not distributed by auction are still grantable by law. The Commission is therefore free (indeed, required) to consider these license applications for STAs under its general licensing authority and, if it determines that the applications for STAs meet the requirements of Sections 309(a) and 309(f), should grant them.

It Is Not Clear Why the Anti-Deficiency Act Should Apply.

Again, without a written statement from the Commission explaining its reasoning, it is difficult to see why the Anti-Deficiency Act should apply. T-Mobile has already paid for its licenses, so there is no question of receiving money outside of a mechanism authorized by statute. While Section 309(j)(8)(B) instructs the Commission to retain sufficient funds from auction revenues for "developing and implementing the program required by this subsection," Section 309(j)(8)(B) states that these funds "are authorized to remain available until expended." If the Commission concludes that Section 309(j)(11) does not prevent it from issuing the remaining Auction 108 licenses (under any theory), then Section 309(j)(8)(B) funds should be accessible to "implement the program" of using auctions to distribute licenses assigned under the licensing authority of Section 307(a).

Alternatively, nothing prevents the Commission from spending money provided under its general appropriations to issue licenses. Congress provides the FCC with a general appropriation, rather than dictating specific allocations for specific purposes. Nor does Section 309(j)(8(B) limit the Commission exclusively to retained auction revenues to pay the expenses related to "developing and implementing" Auction 108. It does require the Commission to use those funds when they are available (by using the word "shall"). But recognizing that the funds may not be available,

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[19] *See* In re Use of the 5.850-5.925 GHz Band, *First Report and Order, Further Notice of Proposed Rulemaking, and Order of Proposed Modification*, 35 FCC Rcd 13440 at ¶ 86 (2020).
[20] Because broadband access service is no longer classified as a common carrier service, the class of service provided by WISPs is no longer explicitly listed in Section 309(b). Section 309(b)(2)(F) allows the Commission to add additional classes by rule – which it did by authorizing STAs on a non-interfering basis and subject to Commission coordination with federal users.

Congress did not expressly prohibit the Commission from using other funds when these funds are not available.

Congress provides the FCC with a general appropriation, rather than dictating specific allocations for specific purposes. It would therefore not violate any specific allocation for the Commission to issue either the license or the STAs as part of the general duties of WTB. If the Commission regards the auction funds as "unavailable" at this time, it can therefore use its general budget without violating the Anti-Deficiency Act.

Conclusion

The delay in issuing the remaining Auction 108 licenses has significant consequences for the public. These 2.5 GHz licenses will fill holes in T-Mobiles 5G network, allowing T-Mobile to provide 5G in rural areas and small markets. In more populated urban areas, the licenses will enhance T-Mobile's FWA offering, bringing the potential for increased broadband competition. The Commission should therefore act expeditiously to grant the remaining Auction 108 licenses.

If the Commission believes it cannot grant the licenses, the Commission should issue a Public Notice explaining its reasoning and allowing the public to comment. This will make it clear to Congress that their ongoing, continuing failure to reauthorize the Commission's auction authority has real world consequences. It deprives rural America and small markets of needed expanded 5G coverage, and undermines broadband competition. Additionally, the responses the Commission will receive in response to a Public Notice will provide valuable research and perspectives that may help the Commission reevaluate its current conclusion that Section 309(j)(11) prevents it from issuing the remaining Auction 108 licenses.