



## MEMORANDUM

To: Members, Energy and Commerce Committee  
From: Majority Staff  
Re: Communications and Technology Subcommittee Hearing

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### I. INTRODUCTION

On Tuesday, July 9, 2024, at 10:00 a.m. (ET), the Subcommittee on Communications and Technology will hold a hearing in 2123 Rayburn House Office Building. The hearing title is “The Fiscal Year 2025 Federal Communications Commission Agency Budget.”

### II. WITNESSES

- The Honorable Jessica Rosenworcel, Chairwoman, Federal Communications Commission
- The Honorable Brendan Carr, Commissioner, Federal Communications Commission
- The Honorable Geoffrey Starks, Commissioner, Federal Communications Commission
- The Honorable Nathan Simington, Commissioner, Federal Communications Commission
- The Honorable Anna Gomez, Commissioner, Federal Communications Commission

### III. BACKGROUND

The Federal Communications Commission (FCC) is an independent agency established pursuant to the Communications Act of 1934 to regulate interstate and international communications by radio, television, wire, satellite, and cable. Congress last reauthorized the FCC in 2018, authorizing \$333 million for fiscal year (FY) 2019 and \$339 million for FY2020.<sup>1</sup> The FCC currently employs approximately 1,600 full-time equivalents (FTE)<sup>2</sup> and was permitted to collect \$390,192,000 in offsetting regulatory fees for FY2024.<sup>3</sup> For FY2025, the FCC is requesting \$448,075,000 in budget authority from regulatory fee offsetting collections, representing a 14.8 percent increase from FY2024 funding levels.<sup>4</sup> The House Appropriations Committee, Subcommittee on Financial Services and General Government passed an appropriations bill for FY2025 that would permit the FCC to collect \$416,112,000 in offsetting collections, representing an increase of \$25.92M.<sup>5</sup>

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<sup>1</sup> Consolidated Appropriations Act, 2018, P.L. 115-141, div. P, tit. I, § 101 (2018).

<sup>2</sup> *2025 Budget Estimates to Congress*, Federal Communications Commission (Mar. 2024), <https://docs.fcc.gov/public/attachments/DOC-401057A1.pdf>.

<sup>3</sup> Further Consolidated Appropriations Act, 2024, P.L. 118-47, div. B, tit. V (2024), <https://www.congress.gov/bill/118th-congress/house-bill/2882/text>.

<sup>4</sup> *2025 Budget Estimates to Congress*, *supra* note 2.

<sup>5</sup> <https://docs.house.gov/meetings/AP/AP23/20240605/117405/BILLS-118-SC-AP-FY2025-FServices-FY25FSGGSubcommitteeMark.pdf>

## IV. SELECTED ISSUES

### 1. Net Neutrality (Title II Reclassification)

The FCC’s regulatory classification of broadband has been strenuously debated over the past decade. The FCC first classified broadband internet service as an interstate information service in 2002, meaning it would be regulated under the “light-touch” framework of Title I of the Communications Act of 1934.<sup>6</sup> This changed in 2015, when the FCC adopted, on a party-line vote, the *Open Internet Order*,<sup>7</sup> reclassifying broadband as a telecommunications service under Title II, which imposes utility-style regulations on internet services and was originally enacted during the Great Depression to address telephone monopolies.<sup>8</sup>

In 2017, the FCC approved the *Restoring Internet Freedom Order*, which reversed the *Open Internet Order*, reinstating Title I’s “light touch” regulatory approach to broadband, while also enacting strong consumer protections.<sup>9</sup> Since then, investment in broadband networks has reached record highs,<sup>10</sup> giving consumers faster speeds and lower prices, even during the COVID-19 pandemic when network traffic reached unprecedented levels.<sup>11</sup>

On April 25, the FCC approved the *Safeguarding and Securing the Open Internet Order*, which reclassifies broadband as a Title II telecommunications service and adopts net neutrality rules.<sup>12</sup> This proposal matches the 2015 *Open Internet Order*. In October, Energy and Commerce Committee Republicans sent a letter to the FCC opposing this effort.<sup>13</sup>

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<sup>6</sup> See *Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4802, para. 7 (2002).

<sup>7</sup> *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, 30 FCC Rcd 5601 (2015).

<sup>8</sup> See, e.g., *id.* (dissenting statement of Commissioner Ajit Pai) (“Imposing on competitive broadband companies the rules designed to constrain Cornelius Vanderbilt’s railroad empire or the continent-spanning Bell telephone monopoly will do nothing but raise the costs of doing business.”).

<sup>9</sup> *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Order, Report and Order, 33 FCC Rcd 311 (2017).

<sup>10</sup> USTelecom – The Broadband Association, 2022 Broadband Capex Report (Sept. 8, 2023), <https://ustelecom.org/wp-content/uploads/2023/09/2022-Broadband-Capex-Report-final.pdf>.

<sup>11</sup> Arthur Menko, Business Planning, Inc., USTelecom 2023 Broadband Pricing Index, <https://ustelecom.org/wp-content/uploads/2023/10/USTelecom-2023-BPI-Report-final.pdf> (last accessed Oct. 16, 2023); Jason Shevik, Broadband Pricing Changes: 2016 to 2022, BroadbandNow (May 5, 2023), <https://broadbandnow.com/internet/broadband-pricing-changes>; see also Randolph J. May, Net Neutrality Redux: A Fight Over First Principles, Real Clear Markets, (Oct. 16, 2023), [https://www.realclearmarkets.com/articles/2023/10/16/net\\_neutrality\\_redux\\_a\\_fight\\_over\\_first\\_principles\\_986000.html](https://www.realclearmarkets.com/articles/2023/10/16/net_neutrality_redux_a_fight_over_first_principles_986000.html).

<sup>12</sup> *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320 et al, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, FCC \_\_\_\_-\_\_\_\_ (rel. Apr. XX, 2024).

<sup>13</sup> Letter from Cathy McMorris Rodgers, Chair, H. Comm. on Energy & Commerce, et al, to The Hon. Jessica Rosenworcel, Chairwoman, FCC (Oct. 17, 2023), [https://d1dth6e84htgma.cloudfront.net/FINAL\\_Letter\\_to\\_FCC\\_re\\_Title\\_II\\_Reclassification\\_5308bd2f7e.pdf](https://d1dth6e84htgma.cloudfront.net/FINAL_Letter_to_FCC_re_Title_II_Reclassification_5308bd2f7e.pdf).

## 2. Digital Discrimination

Section 60506 of the Infrastructure Investment and Jobs Act (IIJA) directed the FCC to “adopt final rules to facilitate equal access to broadband...including preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin.”<sup>14</sup> On November 15, 2023, the FCC adopted final rules on digital discrimination,<sup>15</sup> which included a broad disparate impact standard for violations and attempts to regulate practices and industries outside of the FCC’s jurisdiction. This year, several lawsuits have been filed against the FCC challenging these rules.<sup>16</sup>

## 3. Universal Service Fund

The FCC’s Universal Service Fund (USF) program is a user-fee based support program that subsidizes broadband and telephone services in high-cost, typically rural, areas (High-Cost Program), for low-income households (Lifeline Program), in schools and libraries (E-Rate Program), and at rural health-care facilities (Rural Health Care Program).<sup>17</sup>

In 2020, the FCC approved rules creating a 5G Fund, which would auction up to \$9 billion in USF support to carriers to deploy 5G-capable networks in rural America.<sup>18</sup> In 2023, the FCC approved a Further Notice of Proposed Rulemaking (NPRM) seeking to refresh the record and continue the implementation of the 5G Fund,<sup>19</sup> and in March, Chairwoman Rosenworcel circulated a final report and order among the Commissioners.<sup>20</sup>

The future of the USF has come into question in light of new broadband programs. Chair Latta and Ranking Member Matsui are part of the bipartisan, bicameral USF Working Group, which is discussing legislation to reform the USF.<sup>21</sup>

The USF is also the subject of litigation. Consumers’ Research, an advocacy organization, filed lawsuits in the United States Court of Appeals for the Fifth Circuit,<sup>22</sup> Sixth

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<sup>14</sup> Infrastructure Investment and Jobs Act, P.L. 117-58, div. F, tit. I § 60506(b) (2021) (IIJA).

<sup>15</sup> *Preventing Digital Discrimination in Broadband Internet Access*, GN Docket No. 22-69, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-100 (rel. Nov. 20, 2023), <https://docs.fcc.gov/public/attachments/FCC-23-100A1.pdf>.

<sup>16</sup> Jericho Casper, *Wireless Trade Groups File Suit Against FCC Digital Discrimination Order*, BroadbandBreakfast (Mar. 1, 2024), <https://broadbandbreakfast.com/wireless-trade-groups-file-suit-against-fcc-digital-discrimination-order/>; see also David Shepardson, *US Chamber sues to block FCC digital discrimination rule*, Reuters (Jan. 30, 2024), <https://www.reuters.com/legal/us-chamber-sues-block-biden-administration-digital-discrimination-rule-2024-01-30/>.

<sup>17</sup> Universal Service, FCC (accessed Oct. 30, 2023), <https://www.fcc.gov/general/universal-service>.

<sup>18</sup> *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174 (2020), <https://docs.fcc.gov/public/attachments/FCC-20-150A1.pdf>.

<sup>19</sup> *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Further Notice of Proposed Rulemaking, FCC 23-74 (rel. Sept. 22, 2023), <https://docs.fcc.gov/public/attachments/FCC-23-74A1.pdf>.

<sup>20</sup> Press Release, Chairwoman Rosenworcel Calls on Agency to Move Ahead with Rural Wireless Broadband Plan, FCC (Mar. 20, 2024), <https://docs.fcc.gov/public/attachments/DOC-401369A1.pdf>.

<sup>21</sup> Press Release, Latta, Matsui Join Bicameral Effort to Evaluate Universal Service Fund, Congressman Bob Latta (Sept. 21, 2023), <https://latta.house.gov/news/documentsingle.aspx?DocumentID=404070>.

<sup>22</sup> *Consumers’ Rsch. v. FCC*, No. 22-60008 (5th Cir. Filed Jan. 5, 2022).

Circuit,<sup>23</sup> and Eleventh Circuit,<sup>24</sup> arguing that the Congress' delegation of authority to the FCC to provide universal service violates the nondelegation doctrine, and that the FCC cannot rely on a private company (the Universal Service Administrative Company) to administer the USF. The Sixth Circuit ruled in favor of the FCC,<sup>25</sup> as did the Fifth Circuit initially,<sup>26</sup> before vacating the decision to hear the case *en banc*.

#### 4. Affordable Connectivity Program

The Consolidated Appropriations Act, 2021 established a temporary \$3.2 billion Emergency Broadband Benefit (EBB) program at the FCC, which provided a \$50 broadband subsidy to low-income households and those economically impacted by the Covid-19 pandemic.<sup>27</sup> The IIJA extended the program and renamed it the Affordable Connectivity Program (ACP).<sup>28</sup> Congress changed certain program requirements to expand eligibility, reduced the subsidy to \$30 per month, and appropriated an additional \$14.2 billion dollars for the ACP. There were over 23,269,550 households enrolled in ACP, with claims of \$600-700 million per month.<sup>29</sup> The program ran out of money on May 31, 2024.

#### 5. Spectrum

One of the most heavily utilized mechanisms for making spectrum available for commercial use is spectrum auctions. The FCC's authority to conduct auctions expired on March 9, 2023. The Committee unanimously passed H.R. 3565, the Spectrum Auction Reauthorization Act of 2023, which would extend auction authority until September 30, 2026, and direct proceeds from future auctions to fund Committee priorities.<sup>30</sup>

#### 6. Media Issues

On December 26, 2023, the FCC released the Report and Order in the 2018 Quadrennial Review as mandated by the U.S. Court of Appeals for the D.C. Circuit.<sup>31</sup> The FCC made no major changes to the Local Radio Ownership Rule and retained the Dual Network Rule.<sup>32</sup>

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<sup>23</sup> *Consumers' Rsch. v. FCC*, No. 21-3886 (6th Cir. filed Sept. 30, 2021).

<sup>24</sup> *Consumers' Rsch. v. FCC*, No. 22-13315 (11th Cir. filed Oct. 3, 2022).

<sup>25</sup> *Consumers' Rsch. v. FCC*, No. 21-3886 (6th Cir. May 4, 2023), <https://www.opn.ca6.uscourts.gov/opinions.pdf/23a0093p-06.pdf>.

<sup>26</sup> *Consumers' Rsch. v. FCC*, 63 F.4th 441 (5th Cir. 2023).

<sup>27</sup> Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904 (2020).

<sup>28</sup> IIJA, div. F tit. V § 60501 et seq.

<sup>29</sup> Universal Serv. Admin. Co., ACP Enrollment and Claims Tracker,

<https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/#total-enrolled>

<sup>30</sup> Spectrum Auction Reauthorization Act of 2023, H.R. 3565, 118th Cong. (2023),

<https://www.congress.gov/bill/118th-congress/house-bill/3565?q=%7B%22search%22%3A%22H.R.+3565%22%7D&s=4&r=1>.

<sup>31</sup> 2018 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, Docket No. 18-349, Notice of Proposed Rulemaking, FCC 23-117 (rel. Dec. 26, 2023), <https://docs.fcc.gov/public/attachments/FCC-23-117A1.pdf>

<sup>32</sup> *Id.*

On January 17, 2024, the FCC released a NPRM that would require cable operators and direct broadcast satellite providers to give their subscribers rebates when those subscribers are subject to programming blackouts caused by failed retransmission consent or carriage renegotiation.<sup>33</sup>

## 7. Satellite Communications Licensing

The FCC established the Space Bureau on April 10, 2023.<sup>34</sup> In January, the FCC released an order on updated guidance on rules regarding orbital debris mitigation.<sup>35</sup> On February 16, 2024, the FCC released a NPRM on In-Space Servicing, Assembly, and Manufacturing Licenses.<sup>36</sup> On March 13, 2024, the FCC opened a proceeding on space and earth station regulatory fees.<sup>37</sup>

## 8. Artificial Intelligence (AI) in Political Ads

On May 22, Chairwoman Rosenworcel announced that she is circulating a proposal to require disclosure of the use of AI-generated content in political radio and TV ads.<sup>38</sup> As this proposal addresses disclosures surrounding political communications, the Chairman of the Federal Elections Commission (FEC) argues that this action falls within the exclusive jurisdiction of the FEC, thus the FCC lacks the legal authority to adopt it.<sup>39</sup>

## V. KEY QUESTIONS

- Despite the successful performance of broadband networks in the United States, why is the FCC imposing heavy-handed regulations on broadband providers?
- How does the FCC plan to enforce its new digital discrimination rules?

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<sup>33</sup> *Reporting Requirements for Commercial Television Broadcast Station Blackout*, Docket No. 23-427, Notice of Proposed Rulemaking, FCC 23-115 (rel. Dec. 21, 2023), <https://docs.fcc.gov/public/attachments/FCC-24-2A1.pdf>

<sup>34</sup> *Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, Order, FCC 23-1 (rel. Jan. 9, 2023), <https://docs.fcc.gov/public/attachments/FCC-23-1A1.pdf>.

<sup>35</sup> *In the Matter of Mitigation of Orbital Debris in the New Space Age*, IB Docket No. 18-313, Order on Reconsideration, FCC 24-6 (rel. Jan. 26, 2024), <https://docs.fcc.gov/public/attachments/FCC-24-6A1.pdf>.

<sup>36</sup> *In the Matter of Space Innovation Facilitating Capabilities for In-space Servicing, Assembly, and Manufacturing*, IB Docket No. 22-271 & IB Docket No. 22-272, Notice of Proposed Rulemaking, FCC 24-21 (rel. Feb. 16, 2024), <https://docs.fcc.gov/public/attachments/FCC-24-21A1.pdf>

<sup>37</sup> *In the Matter of Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024 & Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024*, MD Docket No. 24-85 & MD Docket No. 24-86, Notice of Proposed Rulemaking, FCC 24-31 (rel. Mar. 13, 2024), <https://docs.fcc.gov/public/attachments/FCC-24-31A1.pdf>.

<sup>38</sup> Press Release, Chairwoman Rosenworcel Unveils First Step in New AI Transparency Effort to Disclose AI-Generated Content in Political Ads on TV and Radio, Federal Communications Commission (May 22, 2024), <https://docs.fcc.gov/public/attachments/DOC-402740A1.pdf>.

<sup>39</sup> Letter from the Hon. Sean J. Cooksey, Chairman, FEC, to the Hon. Jessica Rosenworcel, Chairwoman, FCC (Jun. 3, 2024), [https://www.documentcloud.org/documents/24726342-cooksey-fcc?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=pro\\_policy\\_tech\\_subs&stream=top](https://www.documentcloud.org/documents/24726342-cooksey-fcc?utm_source=newsletter&utm_medium=email&utm_campaign=pro_policy_tech_subs&stream=top)

- How does the FCC expect its heavy-handed regulations on broadband service providers to impact the success of Federal funding programs to expand broadband infrastructure across the United States?

## **VI. STAFF CONTACTS**

If you have any questions regarding this hearing, please contact Kate O'Connor, Slate Herman, Giulia Leganski, or John Lin of the Committee Staff at (202) 225-3641.