

**STATEMENT OF
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COMMITTEE ON APPROPRIATIONS
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Good morning, Chairman Kennedy, Ranking Member Coons, and Members of the Subcommittee. Thank you for the opportunity to appear before you today.

I believe the future belongs to the connected. No matter who you are or where you live, you need access to communications technologies to have a fair shot at 21st century success. That's why it's never been more important to have a strong Federal Communications Commission acting in the public interest.

Nevertheless, I believe the budget request before you proposes to underfund the FCC. At a time when the agency is already struggling to fulfill its core responsibilities under the Communications Act, and when it is on the cusp of significant new work directed by Congress, the FCC has requested a budget of \$343,070,000—an amount that when inflation is taken into account leaves the agency with less, not more. In addition, it proposes to maintain one of the lowest staffing levels in the FCC's history. We request nearly a thousand fewer FTEs than the agency had at its peak in 1995. Since then, the U.S. population has grown by 24 percent, our national GDP has nearly doubled, and our jurisdiction has expanded to cover one-sixth of the nation's economy. But our size has not kept pace with all this activity.

This choice is irresponsible because according to the most recent Federal Viewpoint Survey more than one-third of the FCC's staff report they do not have the resources they need to do their jobs. I look forward to discussing with you my ideas for how the FCC can start to reverse this trend. But first I'd like to take this opportunity to address a specific proceeding that could use your help too—one that cuts directly to the heart of this agency's mission.

You see, throughout the course of our history, there have been opportunities big and small to sway the course of United States spectrum policy. For the most part, both Congress and this agency have a proud tradition of rising to the challenge. Decades ago we took the academic ideas of Ronald Coase and ushered in a new era of spectrum auctions. Since then, this agency has delivered immense value to the American people. We held more than 90 auctions, issued more than 50,000 licenses, and raised over \$116 billion for the United States Treasury.

More recently, we blazed a trail for two-sided incentive auctions with the first-of-its-kind repurposing of broadcast spectrum. Today this effort is regarded as a resounding success—because we reoriented ourselves from what was to what could be. Instead of just solving the spectrum problems of a few companies, we took the revenues we raised in the incentive auction and built the nation's first interoperable public safety network for first responders.

Last month, the FCC tackled another frontier with the repurposing of C-band spectrum for 5G service. It may be among the most challenging slices of spectrum the FCC has ever taken up. It has unique features that were not on congressional radar when this agency was given authority to repurpose spectrum.

But rather than working with Congress to find a way forward, this time we try to solve the problem the wrong way. There are three things that are fundamentally flawed with the FCC's plan.

First, the FCC's decision is wrong on the law. Section 309(j) of the Communications Act requires that all deposits the FCC may require to bid in an auction, as well as proceeds from the use of an auction, are deposited in the United States Treasury. The FCC tries to run around this requirement by suggesting it can create a third category of auction-related payments that are neither deposits nor proceeds. But by doing so, the FCC is reducing revenues that statutorily must go to the Treasury and undermining congressional power of the purse. Indeed, if we accept the FCC's argument here, it is hard to imagine any limitation on the agency's ability to require payments for any purpose that even loosely can be connected to some spectrum-related goal as a condition of auction participation—and that simply cannot be the case. Moreover, if this precedent is allowed to stand, every spectrum clearing effort at the agency going forward will be reduced to “let's make a deal.”

Second, the FCC's decision is wrong on the economics. The amount of the FCC's acceleration payment is plucked out of thin air. Comb through the FCC's decision and you will not find a rational basis for it. It's not the result of data-driven decision-making. We don't try to square it with the court's finding in *Teledesic LLC v. FCC* that any voluntary incentive payment must be proportionate to the cost of providing replacement facilities. At best, it's back-of-the-envelope math. It looks a lot like an effort to justify backroom deals and promised payoffs. That's not the kind of decision a federal agency should be making. That's a question more appropriately answered by Congress or the markets.

Third, the FCC's decision is wrong on policy. The FCC substitutes its will for the will of Congress. By acting unilaterally the agency is not only exceeding its authority under the law, it is denying the legislative branch the ability to produce a statute that gets us where we want to go on 5G and mid-band spectrum. It also denies us all the ability to take the funds from the auction of these public airwaves and put them to broader public purpose than those contemplated in the existing statute.

Working with Congress we can use the billions of dollars in revenues this auction could raise to do the very infrastructure projects this country so desperately needs.

We could start with using this auction as a vehicle for Congress to repeal the provision in the Middle Class Tax Relief and Job Creation Act that requires the FCC to auction off T-band spectrum one year from now. This auction will jeopardize the communications of police and fire officials in New York, Philadelphia, Pittsburgh, Washington, Chicago, Dallas, Houston, Los Angeles, San Francisco, Boston, and Miami. We should be looking for every implement in our

policy toolkit to help prevent this public safety mess, including support from the revenues associated with this spectrum auction.

Next, we could use the billions of dollars raised in auction revenue to do other big things. We could do audacious things. We could fund a new initiative to help with rural broadband. We could fund the nation's transition to next-generation 911, which is sorely needed and would benefit public safety in every state. Or we could use some of the revenues to seed a Homework Gap Trust Fund to help our nation's students stuck in the digital divide. It could support wi-fi hotspots for loan in every school library—and virtually eliminate the Homework Gap overnight.

Our C-band proceeding is important, but it is not the only place where the agency owes more to Americans than it has been able to deliver. So let me finish by highlighting a few other issues that deserve your attention: universal service, consumer protection, public safety, and competition.

Universal Service

Our high-cost universal service program is how we ensure that all Americans have access to broadband. But these resources are finite. We need to be responsible stewards to stretch these dollars as far as possible and deliver on the promise of broadband opportunity for all. This should be our north star.

Yet it's no secret that the FCC's broadband maps, which help us decide where to spend universal service funds, are inaccurate. Right now, if a single subscriber in a census block is identified as having broadband, we conclude broadband is available throughout. That's not right. It masks so many people who are unserved and erroneously suggests our broadband mission has been accomplished where we still have work to do. According to the FCC's flawed data, roughly 21 million Americans do not have access to high-speed internet service. But one independent study has found that as many as 162 million people across the country do not use internet service at broadband speeds.

Nonetheless, last month the agency decided to move ahead with a plan to spend the vast majority of our universal service funds for the next ten years—\$16 billion!—without first doing anything to improve our maps, survey service accurately, or fix the data disaster we have about the state of service today. That means if your home is marked as served by the FCC's maps today and it is not, then for the next decade you are on your own. Good luck. It means millions of Americans will slip deeper into the digital divide.

This is a mistake. The agency tasked with ensuring that every American is connected should know with precision where connectivity is and where it is not. We should finish the important work of fixing our maps *before* we blindly spend money based on what we all can agree is faulty data. We need maps before money and data before deployment. Anything else just does not add up.

Consumer Protection

Robocalls are the number one complaint this agency receives. At the start of this Administration, Americans were receiving roughly 2 billion robocalls a month. The number now routinely reaches between 5 and 6 billion each month. But in a recent response to Congress, the FCC stated it has just twelve staff dedicated primarily to robocall enforcement. Cobbling together time from other staff bumps that number up by four or five. That's it.

That's not enough to keep pace with this growing problem. While the FCC has made news over a few big fines, our enforcement actions don't seem to be stemming the tide of these unwanted and intrusive calls. On average, it takes this agency 649 days to complete one robocall enforcement action from start to finish. In that time over 100 billion new robocalls might be placed. Our efforts are like trying to empty the ocean with a teaspoon.

Thanks to your efforts, Congress approved the TRACED Act late last year, giving the FCC new tools and expanded enforcement authority to combat robocalls. This was welcome. Consistent with the requirements of the TRACED Act, the FCC announced last week that it will move ahead to require call authentication—after first proposing to do so more than three years ago. But there's a lot more work to do. The many proceedings that are required under the new law will demand resources and effective oversight. I hope that we are up to the task.

Public Safety

Communications technologies are essential when the unthinkable occurs. But on too many recent occasions when disaster has struck, our communications have failed. The evidence is all around us, in season after season of hurricanes in the south and wildfires out west. And the names stay with us—Maria, Irma, Harvey, Michael, Camp, Woolsey, Kincade—long after the water has receded, the flames have done their damage, and the communities affected begin the hard slog of repairing and replacing so much essential infrastructure.

It has been over two years since the Government Accountability Office released a report criticizing the agency for its failure to promote network resiliency and urging it to do more. In response, we have issued four public notices seeking comment on changes. It's time to stop kicking this can down the road. We need enforceable rules on network resiliency before the next disaster strikes.

Relatedly, the FCC has a lot more to do and needs to move a lot faster when it comes to cybersecurity and specifically securing 5G networks and supply chains. If you spin through this budget request, we don't commit any resources to tackling this growing problem. Moreover, our present efforts to remove and replace insecure equipment are not bold enough. Here's what we can do to fix that.

First, we need an approach to supply chain security that considers how we can build secure networks that can withstand insecure equipment abroad—because no network stands by itself. So I believe the FCC should explore opportunities to unlock and diversify communications by supporting efforts with open radio access networks, or open RAN. This idea

has garnered support from staff of the Department of Homeland Security, the Department of Commerce, the Department of State, and now my colleagues at the FCC. In fact, the FCC has proposed a workshop next month to discuss open RAN. That's good. Now we need to take it a step further and incorporate open RAN testbeds in our ongoing efforts to authorize city-wide 5G innovation zones, which exist today in New York and Salt Lake City. Doing this now will help ensure that this technology develops here, on our shores.

Second, with the advent of 5G we are going to see billions and billions of new connected devices. To ensure that this growing Internet of Things is secure, the FCC should use its equipment authorization process creatively and encourage all device manufacturers to build security into new products. But less than one percent of our budget is set aside for new technology for our Office of Engineering and Technology that could help with this effort.

Competition

Competition benefits consumers. It is the reason why the United States has birthed some of the most dynamic companies in the world. But last year the FCC gave short shrift to competition by giving its blessing to the largest wireless merger in our nation's history. Now, despite this agency's assurances to the contrary, we are already seeing press reports about layoffs and I fear consumers could see price increases next.

I objected to this transaction because I think it harmed competition. But now that this merger is underway, it is on the FCC to ensure that consumers are not saddled with the consequences. That means the agency needs to carefully monitor wholesale access, enforce price commitments, and oversee network builds. But real questions remain about the FCC's willingness to do this work. In the year before last, the FCC let another company off the hook for new, competitive broadband networks that it agreed to deploy to get approval for its merger. So I hope we are up to the task this time around. Because when it comes to holding companies accountable for their pre-merger promises, I fear this FCC will look the other way.

Consumers deserve better than this. With communications technologies touching every aspect of our lives, the FCC should be doing less to bless transactions like this and more to expand competition and the benefits it brings, like lower prices and greater innovation.

Finally, I think it's time for the FCC to talk about coronavirus disruption and how technology can help. Nationwide we are going to explore the expansion of telework, telehealth, and tele-education. In the process, we are going to expose hard truths about the digital divide. The FCC should be convening broadband providers right now to prepare. It should be identifying how it can use its universal service powers to support connected care for quarantined patients and wi-fi hotspots for loan for students whose schools have shut and classes have migrated online.

Chairman Kennedy, Ranking Member Coons, and Members of the Subcommittee, thank you once again for holding this hearing. When the FCC is appropriately funded and focused, there is a lot we can do to harness the power of communications technology for good. We can improve access to scarce resources, streamline the delivery of important services, improve

quality of life, and grow the economy. And we can make sure that the United States leads in the next generation of wireless technology just like it did in the last. Thank you for providing me with the opportunity to offer my views. I look forward to any questions you may have and to working with you and your staff in the days ahead.