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**BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
OF THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE**

“CONNECTING AMERICA: OVERSIGHT OF THE FCC”

MARCH 31, 2022

Chairman Doyle, Ranking Member Latta, and distinguished members of the Subcommittee, thank you for the invitation to testify. It is an honor to appear before you today.

The issues that this Subcommittee and the FCC focus on have never been more important. Over the last two years in particular, Americans experienced in an unprecedented way the power and opportunity provided by an affordable, high-speed connection as they turned to the Internet for everything from educating their kids and working remotely to accessing high-quality telehealth services. And this has galvanized support for investing the resources necessary to end the digital divide that still persists in too many parts of the country. So I welcome the opportunity to address these issues, and more, today.

I.

At the FCC, we have been busy delivering on Congress’s priorities. From increasing choice and competition in the broadband market to standing up the largest set of affordability programs in FCC history, from expanding access to vital telehealth services to freeing up additional spectrum for high-speed offerings, my FCC colleagues and I have been working together to advance commonsense policies that are making a difference in the lives of everyday Americans. I want to take a moment to highlight a few of those here.

On the competition front, the FCC has been enacting policies that will give Americans more choice for their broadband dollars. To highlight just one example, my colleagues and I voted to unleash greater competition for families living in apartments, public housing, and other multiple dwelling units—environments that account for nearly one out of every three people in this country. We did so by putting an end to contractual shenanigans that only operated to deny consumers access to competitive providers.

On spectrum, the FCC has also taken action. Last year, for instance, we worked together to stand up and complete a successful auction of 100 MHz of spectrum in the 3.45 GHz band. On this score, I want to commend Chairwoman Rosenworcel in particular for establishing rules that allow providers to operate in this spectrum at 5G power levels, which will prove key to connecting more Americans.

On telehealth, the FCC has been helping to extend the life-saving benefits of this technology, including to low-income Americans and veterans. Indeed, over the last two years, we have voted to award about \$550 million to frontline health care providers through our Connected Care Pilot Program and COVID-19 Telehealth Program. I have been fortunate to see the benefits of these initiatives firsthand. Since 2018, I’ve had the privilege of visiting 48 different health care facilities across 24 states. Almost every provider I’ve visited—from Miami to Anchorage—shared a similar message about the spike we are seeing in telehealth and how the FCC’s initiatives are helping meet this demand.

The FCC has also been busy taking bipartisan actions that address the affordability portion of the digital divide. Indeed, in the last 13 months, the FCC has worked together to stand up an unprecedented

\$24 billion in various low-income programs. In February 2021, we built off of Congress’s bipartisan decision in the Consolidated Appropriations Act to enact a \$3.2 billion Emergency Broadband Benefit Program (EBB). In May 2021, we voted to create a \$7.2 billion Emergency Connectivity Fund (ECF) that was funded by Congress in the March 2021 American Rescue Plan (ARPA). By working together, we improved the FCC’s approach to ECF by making sure that the agency would award funding on a prospective, forward-looking basis first. This decision ensured that ECF funds could be used to connect students that were still stuck on the wrong side of the digital divide. We also took steps to ensure that rural students and homeschooled students would receive a fair shot at receiving ECF funds. Most recently, in January 2022, we voted in a bipartisan manner to establish the \$14.2 billion Affordable Connectivity Program.

The FCC has also come together to further secure our communications networks from entities that threaten our national security. We are doing so on multiple fronts. For one, over the past 5 months, we have revoked the domestic and international Section 214 authority of four carriers—China Telecom Americas, China Unicom Americas, Pacific Networks, and ComNet—based on serious national security concerns. For another, the Commission opened a proceeding last year at my urging to address a loophole that allows entities like Huawei to continue to install equipment into U.S. networks even after they have been determined to pose an unacceptable risk to our national security. Thanks to strong leadership from Representatives Steve Scalise and Anna Eshoo—who spearheaded the work to pass the Secure Equipment Act—the FCC now has additional authorities to close this loophole. I look forward to reaching a final determination on this soon.

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At the same time, there is more the FCC can be doing to extend America’s leadership. That is why I have put forward a series of additional ideas on spectrum, infrastructure, and national security that are ripe for action.

On spectrum, I set out a calendar that would ensure that the FCC stays on track—that is, that we match the pace and cadence of the Commission’s prior work on spectrum. After all, doing so is key to bridging the digital divide, expanding economic opportunity, and driving job growth and investment. In that spectrum calendar, which I offered up in a speech one year ago this month, I identified several actions that I thought we could get done in 2021. For one, we could authorize very low power devices to operate in the 6 GHz band and also allow client-to-client device communications in that band. For another, we could seek comment on increasing the power levels for CBRS operations in the 3.5 GHz band. For still another, we could start a proceeding to look at updating the rules that apply to unlicensed operations in the mid-band swath of spectrum known as U-NII-2C—perhaps even permitting very low power operations there. And in 2022 and beyond, we could then shift to the Lower 3 GHz band and several additional spectrum bands that I identified. I also made the point then that we should begin working with Congress on extending the Commission’s spectrum auction authority.

On the infrastructure front, there is also more the FCC can do. To start, one of the most important steps that the FCC can take is to complete our work on accurate, updated maps. Getting those maps done is going to be key to ensuring that we properly target the billions of dollars in federal funds that are now available for broadband. Next, I have called for the Commission to continue the prior FCC’s work to accelerate Internet builds. For instance, I argued that the FCC should make sure that our cost sharing rules for pole replacements are not inhibiting Internet builds, particularly in unserved areas. I am pleased to report that earlier this month the FCC adopted a notice that seeks comment on doing just that.

To build on a connectivity agenda, I recently called on the FCC to look at streamlining the rules of the road for fiber and other high-speed wired deployments. We previously took steps to ensure that the

fees charged for placing small wireless facilities in rights of way do not effectively prohibit buildout. I believe that we should explore similar action for the deployment of other, wired infrastructure to ensure that the funding being made available by Congress and the FCC goes towards connecting families.

And just this month, I encouraged Congress to take a closer look at the delays and costs imposed by municipal and cooperative utilities when providers seek to attach to poles owned by those entities. There is a strong argument that the FCC does not have authority to address issues specific to those poles under Section 224. However, Congress could revisit the exemption that exists in Section 224 for those entities so that the FCC can ensure deployment by providers is streamlined, regardless of the type of pole they are attaching to.

Members of this Committee have also put forward a series of smart steps that can be taken to streamline and accelerate infrastructure builds. Indeed, I applaud the package of 28 bills in the Boosting Broadband Connectivity Agenda, as well as the recently unveiled bipartisan efforts to modernize the FCC rules governing the processing of applications for low-earth orbit satellites—a set of rules that have not kept up with the pace of change. As Republican Leader Cathy McMorris Rodgers knows from spending time nearly 200 feet in the air with a tower crew in Spokane, infrastructure work is already hard enough and we don't need outdated regulations making it even more difficult.

Apart from further streamlining and accelerating infrastructure builds, the FCC must also ensure that our nation's communications infrastructure continues to function during disasters. Last Congress, I met with Representative Eshoo about the challenges that come with maintaining connectivity during the wildfires that have been plaguing the Golden State and many other parts of the country. Since that time, I have witnessed firsthand the tragedies of several additional recent disasters and the incredible work of our public safety community to protect Americans during those emergencies. Last August, I spent some time on the ground in California with part of the team of nearly 6,000 firefighters working the Dixie Fire—the largest single fire in state history. I also traveled to Louisiana with Chairwoman Rosenworcel last year in the wake of Hurricane Ida to hear directly from community leaders, public safety officials, and communications providers. During both of these visits, my experiences on the ground drove home the need to ensure that families—and the public safety community—stay connected when disaster strikes. That is why I support changes that would improve upon the existing wireless resiliency framework, which has been in place without change since 2016.

On the national security front, there is more work to be done too. As I outlined in a statement earlier this month, the federal government should take action along at least four lines to address the threats posed by Communist China. One, the FCC needs to keep our Covered List up to date—and the FCC took some targeted actions along these lines just last week. Two, the FCC must act quickly to bring our proceeding on the Secure Equipment Act to a vote. Three, the FCC should build on our actions in the Section 214 context by opening a new proceeding to examine whether we should prohibit regulated carriers from directly interconnecting with entities that have been deemed a national security risk, even if those entities are operating in a manner that does not require a Section 214 authorization. I believe this would address a potential end-run that entities may be making to avoid the repercussions of having their Section 214 authorizations revoked. And four, the FCC should publish a list of every entity with an FCC license or authorization that is owned or controlled by Communist China. I would imagine that this is a fairly lengthy list. And this action would help ensure that a range of stakeholders can provide any relevant information or perspectives about national security threats that these entities may pose.

II.

Outside the four walls of the FCC, there are some emerging trends in telecom policy that concern me. These headwinds will only make it more difficult for all of us to deliver on our shared goal of eliminating the digital divide.

I will start with the effort by Executive Branch agencies to deviate from the clear, statutory process that Congress established for regulating our nation's airwaves. Congress long ago determined that an independent, expert agency—the FCC—makes the final call on rules governing wireless spectrum like the C-Band. It placed this authority outside of the Executive Branch for a reason. It did not want these technical decisions to be made in a haphazard manner or based on misinformation and short-term, political interests. The FCC has an unbroken record of making these technical decisions in the public interest exactly as Congress intended—based on sound science and the accumulation of real-world experience. As a result, America has led the world with safe, robust networks.

On C-Band, Executive Branch agencies turned Congress's decision aside and broke from this tried-and-true process at the eleventh hour. They replaced the FCC's rules, which were developed through a public rulemaking process, with ones dictated behind closed doors by politicians inside the Executive Branch. This runs directly contrary to the process Congress established. It is no surprise that this chaotic approach resulted in 5G infrastructure laying fallow and cancelled flights.

This is not to say that the Department of Transportation's conduct broke new ground. It is part of a dysfunctional trend among certain Executive Branch agencies that disagree with the process that Congress established for reaching sound decisions about spectrum policy and for adjudicating concerns about harmful interference. We have seen similar conduct when it comes to FCC decisions in the L Band, 5.9 GHz, 24 GHz, and other spectrum bands.

This trend presents a threat to America's 5G leadership that extends beyond the C-Band sites that are sitting dark today. Indeed, Chairman Doyle and Ranking Member Latta penned an op-ed earlier this month that made similar points. So I think it falls to all of us at the Commission and in Congress to stand up for the statutory process and for the FCC's sound decision-making. Otherwise, we are only inviting Executive Branch agencies to engage in additional actions that will undermine America's 5G leadership.

Turning from spectrum to the billions of broadband infrastructure dollars that Congress has appropriated over the past two years, I am very concerned that the federal government is failing to put appropriate guardrails in place. And this is unacceptable given both the magnitude of dollars at issue and the unique opportunity these funds provide for connecting American families. In fact, by my count, about \$800 billion has been appropriated by Congress or budgeted by agencies for infrastructure programs over the past two years alone that could be used on efforts to bridge the digital divide. Those funds are spread across a range of different agencies—including the FCC, Department of Agriculture, Department of Treasury, Department of Education, and Department of Commerce—and over an assortment of various programs. I see a number of problems.

First, there is a worrying lack of coordination across these various agencies and their respective programs. While Congress enacted the Broadband Interagency Coordination Act in 2020, which requires the execution of an interagency agreement between the FCC, NTIA, and Agriculture Department regarding the distribution of federal broadband funds, the agreement does not cover all of the agencies with broadband funds nor does it cover all of the broadband funds within the agencies that it does cover. For example, neither the Department of Education nor the Treasury Department, each with hundreds of billions of dollars at their disposal, are covered by this agreement. The agencies' apparent lack of coordination is compounded by the fact that they are relying on differing and sometimes divergent

standards both in terms of identifying areas eligible for funding and the types of networks that qualify for support.

Second, I am concerned by an apparent lack of adequate tracking, measurement, and accountability standards. For example, last July, I wrote letters to each of the Executive Branch agencies listed above, and I asked them to identify the steps they were taking to track and monitor the broadband initiatives that they were funding. Their responses—or in some cases lack thereof—did not inspire confidence. One Department wrote back that, at least at the time of their response, “it is not possible to identify a specific amount that exclusively went to broadband initiatives,” let alone, I assume, monitor the progress being made towards achieving eligible broadband goals.

Third, many of the policies guiding the expenditure of these broadband dollars are poised to leave rural communities and unconnected Americans behind. Take, for example, the final rules that the Treasury Department adopted earlier this year that govern the expenditure of \$350 billion in ARPA funds. Rather than directing those dollars to the rural and other communities without any Internet infrastructure today, the Administration gives the green light for recipients to spend those funds on overbuilding existing, high-speed networks in communities that already have multiple broadband providers. I am already hearing about jurisdictions that are poised to do just. This misguided action would only deepen the digital divide in this country.

It gets worse. The Treasury rules allow these billions of dollars to be spent based on bad data. It does this by authorizing recipients to determine whether an area lacks access to high-speed Internet service by relying on informal interviews and reports—however inaccurate those may be—rather than the broadband maps that the federal government has been funding and standing up. Thankfully, it is not too late to correct course. The state, local, and Tribal governments that receive ARPA funding will have the power to direct these dollars to those communities that have been left behind, rather than those that already benefit from high-speed Internet services today. I hope they do so. Congress can also help here. In the Infrastructure Investment and Jobs Act (IIJA), Congress ensured that IIJA funds would flow first to *unserved* areas, using the FCC’s forthcoming broadband maps as a guide. While that IIJA provision does not apply to Treasury’s ARPA funds, Congress should consider passing a new law that requires ARPA expenditures to track the IIJA’s prioritization scheme.

Fourth, I am concerned that we are going to see record-setting levels of waste, fraud, and abuse. Many Members here can recall that, after the 2008 recession, Congress appropriated a then-unprecedented \$7.2 billion for broadband in the American Recovery and Reinvestment Act of 2009. As the U.S. Government Accountability Office found in multiple reports examining that initiative, failures in program design, reporting, and coordination resulted in significant waste and an inability to verify the impact of federal funds on broadband availability and subscribership. Given the magnitude of current funding and the pressing need to connect more Americans, it is even more important that we ensure that these funds are spent wisely and that their impact is carefully measured.

But we are already seeing some worrying signs that may just be the tip of the iceberg. For instance, the FCC’s Office of the Inspector General (OIG) issued a report last November regarding one of the FCC’s new initiatives. The OIG report uncovered what appears to be an egregious and near nationwide scheme in which broadband providers or sales agents were falsely claiming that a household has a student that attends a qualifying low-income school. In just one example, the report identifies a low-income school in Florida that was designated by providers as the school supporting the enrollment of 1,884 households, even though there are no more than 200 students that attend the school. As we continue to make funding available through our programs, we need to give OIG the tools it needs to do its job to prevent against this type of abuse.

All of these challenges are going to be compounded by supply chain and workforce shortages that remain to be solved. The recently enacted Telecommunications Skilled Workforce Act, championed by Representatives Tim Walberg and Yvette Clarke, will help address the workforce shortage in the long run. But in the near term, supply chain and workforce issues only underscore the need to prevent overbuilding and eliminate waste, fraud, and abuse.

III.

I also want to commend the Committee Members that are working to hold Big Tech accountable. In particular, Leader McMorris Rodgers has laid out a comprehensive package of bills under the Big Tech Accountability Framework that would end Big Tech's abusive practices while promoting free speech on the Internet.

These are common sense actions. Today, a handful of corporations with state-like influence shape everything from the information we consume to the places we shop. These corporate behemoths are not merely exercising market power; they are abusing dominant positions. They are not simply prevailing in the free market; they are taking advantage of a landscape that has been skewed—in many cases by the government—to favor their business models over those of their competitors. Indeed, it is hard to imagine another industry where a greater gap exists between power and accountability. That is why we need to take action across several fronts.

First, Congress should overhaul Section 230. When the federal government conferred special benefits on Internet companies in the 1990s, it did so, as Section 230 states, “to preserve the vibrant and competitive free market that presently exists.” Yet today, as Justice Thomas has made clear, courts have construed Section 230 broadly to confer sweeping immunity on some of the largest companies in the world that is found nowhere in the text of the statute. They have done so in a way that nullifies the limits Congress placed on the types of actions that Internet companies can take while continuing to benefit from Section 230. Congress should address this by ensuring that Internet companies no longer have carte blanche to censor speech while maintaining their Section 230 protections. Legislation from Leader McMorris Rodgers and Representative Jim Jordan aims to do just this. But an overhaul of Section 230 alone is not going to be enough, as evidenced by the broader set of reforms included in the Framework.

Second, Congress should require Big Tech to start abiding by basic tenets of transparency. Today, Big Tech offers a black box. After Google manipulates search results, a small business can see its web traffic drop precipitously overnight for no apparent reason, potentially flipping its outlook from black to red. On Twitter, social media posts are left up or taken down, accounts suspended or permanently banned, without any apparent consistency. Out of the blue, YouTube can demonetize someone who risked their capital and invested their labor to build an online business.

At the FCC, we require broadband providers to comply with a transparency rule that can provide a good baseline for Big Tech. Under the FCC's rule, broadband providers must provide detailed disclosures about practices that would shape Internet traffic—from blocking to prioritizing or discriminating against content. Any violations of those disclosures are enforced by the Federal Trade Commission. Congress could take a similar approach to Big Tech. It could require these digital distribution networks to provide greater specificity regarding their terms of service and it could hold them accountable by prohibiting actions that are inconsistent with those plain and particular terms. This would ensure that all Internet users, from entrepreneurs to small businesses to ordinary consumers, have the information they need to make informed choices. And within this framework, Big Tech should be required to offer a transparent appeals process that allows for the challenging of pretextual takedowns or other actions that violate clear rules of the road.

Third, Congress should apply antidiscrimination provisions to Big Tech. The Supreme Court has written that “assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment.” Indeed, Congress as well as state governments have long and lawfully applied certain antidiscrimination obligations to corporations, including in appropriate cases where those laws regulate a corporation’s decision about what speech to carry.

Fourth, Congress should adopt rules that empower consumers. Section 230 itself codifies “user control” as an express policy goal, and it encourages Internet platforms to provide tools that will “empower” users to engage in their own content moderation. So, as Congress takes up reforms, it should do so mindful of how we can return power to Internet users over their online experiences. One idea on this front is to empower consumers to choose their own content filters.

In all of this, Congress can make certain points clear. For instance, it could focus legislation on dominant, general use social media or digital distribution platforms, rather than specialized ones. This could include excluding comment sections to publications, specialized message boards, or communities within larger platforms that self-moderate. Similarly, Congress could legislate in a way that does not require any platform to host illegal content, child pornography, terrorist speech, indecent, profane, or similar categories of speech that Congress has previously carved out.

Big Tech has avoided accountability in several additional ways too. One of them concerns the FCC’s roughly \$9 billion Universal Service Fund (USF). This initiative provides the support necessary to subsidize the agency’s affordable Internet and rural connectivity programs. The FCC obtains this funding through a line-item charge that carriers add to consumers monthly bills for traditional telecom service and similar offerings. And while Big Tech derives tremendous value from the federal government’s USF investments—using those USF-supported networks to deliver their products—they have avoided paying a fair share into the program. On top of that, the FCC’s current funding mechanism has been on an unsustainable path. To put the FCC’s USF program on fair and stable footing, Congress should require Big Tech companies to start contributing an equitable amount.

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In closing, I want to thank you again Chairman Doyle, Ranking Member Latta, and Members of the Subcommittee for holding this hearing and for the opportunity to testify. I look forward to continuing to work with the Subcommittee to advance our many shared priorities. I welcome the chance to answer your questions.