



July 9, 2024

The Honorable Robert Latta  
Chair  
Subcommittee on  
Communications and Technology  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Doris Matsui  
Ranking Member  
Subcommittee on  
Communications and Technology  
U.S. House of Representatives  
Washington, DC 20515

Dear Chair Latta and Ranking Member Matsui:

The U.S. Chamber of Commerce (“Chamber”) respectfully submits the following statement for the record for the House Energy and Commerce’s Subcommittee on Communications and Technology hearing titled “*Budget Hearing with the Federal Communications Commission.*” We appreciate the Subcommittee’s continued oversight of the Federal Communications Commission (“FCC”) to ensure they remain focused on closing the digital divide while maintaining American leadership in communications and connectivity.

America’s communications networks and platforms have an essential role in connecting Americans and are revolutionizing how people are informed, work, learn, seek medical care, and communicate with friends and family. The private sector also plays a critical role in keeping the “digital lights” on for the economy by investing tens of billions into communications infrastructure and employing millions of Americans.

However, the Chamber is concerned the FCC’s aggressive regulatory agenda will hinder broadband access for millions of Americans, raise consumer prices, and exceed the FCC’s legal authority. Instead, the FCC and lawmakers should focus on closing the digital divide through sensible broadband infrastructure investments and restart the Affordable Connectivity Program to ensure millions of Americans can remain online.

## I. Digital Discrimination Order

In November 2023, the FCC finalized its *Digital Discrimination Order*, (“rule”) which was mandated by the Infrastructure Investment and Jobs Act to address alleged discrimination in the broadband marketplace and to ensure equal access to broadband

with respect to income level, race, and religion.<sup>1</sup> The FCC, however, adopted an expansive reading of the statute that imposes a burdensome disparate impact standard, where businesses and local governments can be held liable for legitimate broadband deployment access decisions even if they do not intend to discriminate. Moreover, the rule covers nearly every business practice pertinent to broadband access, ranging from customer service to pricing. The rule applies to internet service providers, as well as any entity that facilitates access to broadband, such as local governments, landlords, or construction companies.

The Chamber strongly opposes this rule. We believe it contradicts Congressional intent and is based upon a fundamental misinterpretation of the statute. In particular, the scope of the FCC’s “digital discrimination” rule and inclusion of a disparate impact standard vastly exceed the FCC’s statutory authority and the U.S. Supreme Court’s guardrails for disparate impact liability.<sup>2</sup> Consequently, the Chamber along with several parties filed lawsuits challenging the rule this Spring, which is pending in the Eighth Circuit Court of Appeals.<sup>3</sup>

## II. Title II Reclassification Order

On April 25<sup>th</sup>, the FCC voted to reinstate Title II reclassification (“Order”) on the broadband marketplace.<sup>4</sup> Reclassification imposes a 1930s-era public utility framework intended to regulate legacy telephone networks, in a competitive and rapidly innovating sector. The Order allows the FCC to exercise extensive powers to micromanage a broadband provider’s business practices. We are concerned that regulatory forbearances allowed under Title II could change from administration to administration, leading to instability and uncertainty in the broadband market. The Title II framework creates significant uncertainty as to what other provisions a future FCC may impose. In the past, when the FCC opted for Title II reclassification, investment in broadband networks slowed without any intervening major negative economic event.<sup>5</sup> If the FCC’s

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<sup>1</sup> *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Report and Order, FCC 23-100 (rel. Nov. 20, 2023) (Digital Discrimination Order).

<sup>2</sup> Brief for Industry Petitioners at 23, *Minnesota Telecom Alliance et al. v FCC*, No. 24-1179 (8th Cir. April 24, 2024).

<sup>3</sup> Press Release, Chamber of Com. of the U.S., U.S. Chamber Sues FCC Over Overreaching, Unlawful, and Counterproductive Broadband Rule (Jan. 30, 2024), <https://www.uschamber.com/technology/broadband/u-s-chamber-sues-fcc-over-overreaching-unlawful-and-counterproductive-broadband-rule>.

<sup>4</sup> David Shepardson, Net Neutrality Rules Restored by US Agency, Reversing Trump, REUTERS (April 25, 2024), <https://www.reuters.com/technology/us-agency-vote-restore-net-neutrality-rules-2024-04-25/>.

<sup>5</sup> See Phoenix Center for Advanced Legal & Economic Public Policy Studies, Comment Letter on the Notice of Proposed Rulemaking In the Matter of Safeguarding and Securing the Open Internet, WC Docket No. 23-320 (filed Dec. 14, 2023).

Title II Order stands, it risks adversely impacting the ability of the private sector and government broadband deployment programs to successfully close the digital divide.

### III. FCC's Newest Attempts to Micromanage the Private Sector

The FCC has also pursued other regulatory projects to micromanage the communications marketplace.

First, the FCC issued a Notice of Proposed Rulemaking (“NPRM”) to ban cable operators and direct satellite broadcast providers from charging early termination fees (“ETFs”) and billing cycle fees (“BCFs”).<sup>6</sup> The FCC lacks legal authority to prohibit these practices and its attempts to regulate rates violate the Cable Act.<sup>7</sup> Also, the NPRM’s underlying policy justification to prohibit these pricing practices is flawed. Such pricing practices benefit all consumers by creating lower average costs per consumer and allowing providers to offer variable price and benefits packages based on consumer needs.

Second, Chairwoman Rosenworcel announced the circulation of a proposal to prohibit bulk billing arrangements for communications services in multi-tenant environments, such as condos, public housing, and apartments.<sup>8</sup> Previously, the FCC’s record has found that bulk billing benefits consumers through lower prices and keeping communities connected. Moreover, the prohibition interferes with the ability of building owners and homeowners’ associations to negotiate and contract with internet service providers on the best arrangement for tenants and homeowners. The Chamber expresses deep concern with the direction of the NPRM and believes it should be withdrawn.

### IV. Conclusion

The Chamber appreciates the Subcommittee’s continued oversight of the FCC. We look forward to working with Congress to provide for a regulatory environment that encourages innovation and investment, rather than price controls and micromanagement of the private sector.

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<sup>6</sup> Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices, Notice of Proposed Rulemaking, MB Docket No. 23-405 (rel. Dec. 14, 2023).

<sup>7</sup> Chamber of Com. of the U.S., Comment Letter on the Notice of Proposed Rulemaking In the Matter of Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices, MB Docket No. 23-405 (filed Mar. 4, 2024).

<sup>8</sup> Press Release, Chairwoman Jessica Rosenworcel, FCC Chairwoman Announces Push to Lower Broadband Costs & Increase Choice for Families Living in Apartment Buildings (Mar. 5, 2024), <https://docs.fcc.gov/public/attachments/DOC-400915A1.pdf>.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long horizontal flourish.

Tom Quaadman  
Executive Vice President  
Chamber Technology Engagement Center  
U.S. Chamber of Commerce

cc: Members of the Subcommittee on Communications and Technology