FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN RE: DELETE, DELETE, DELETE	)	GN Docket No. 25-133

REPLY COMMENTS OF
THE FREE STATE FOUNDATION[1]

I. Introduction and Summary

These reply comments are submitted in response to the Commission's Public Notice seeking public input on rules that should be repealed or modified to alleviate unnecessary regulatory burdens. The Free State Foundation's (FSF) initial comments focused on outdated rules that are no longer necessary or impede video market competition.[2] These reply comments address regulations for the broadband Internet and voice services markets that should be repealed or modified because they are beyond the Commission's statutory authority or contravene constitutional dictates, or because, as a matter of policy, in today's marketplace they are no longer necessary and are burdensome and costly.

The digital broadband-centric competitive communications marketplace is drastically different than the analog legacy telephony marketplace that prevailed when the Telecommunications Act of 1996 and many of its implementing regulations were adopted. And yet many of those rules, and even many rules pre-dating the 1996 Act, remain on the books.

[1] These reply comments express the views of Randolph J. May, President of the Free State Foundation, and Seth L. Cooper, Senior Fellow and Director of Policy Studies. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is a nonpartisan, non-profit free market-oriented think tank.

[2] *See* Comments of the Free State Foundation, IN RE: DELETE, DELETE, DELETE, Docket GN 25-133 (April 11, 2025), at: https://freestatefoundation.org/wp-content/uploads/2025/04/FSF-Comments-DELETE-DELETE-DELETE-041125.pdf.

These old rules, including restrictions that impede retirement of analog-era facilities and otherwise inhibit building out next-generation broadband networks while providing no benefit to consumers, should be deleted or modified to reduce compliance costs and spur innovation and investment.

Moreover, consistent with the Supreme Court's direction in its 2024 *Loper Bright Enterprises v. Raimondo* decision, the Commission should delete or modify Biden FCC regulations relating to broadband Internet access services that are contrary to the best reading of the law, or which are unjustifiable in light of competitive market conditions and lack of any existing consumer harm. In particular, the Commission should delete public utility regulation of broadband services imposed by the now-vacated 2024 *Title II Order*. In *MCP No. 185* (2025). The Court of Appeals for the Sixth Circuit concluded that broadband Internet services are best understood as lightly regulated "information services" under Title I of the Act and not "telecommunications services" under Title II. Such public utility regulation discourages network innovation and investment, with no benefit to consumers.

Again, consistent with the Supreme Court's direction in *Loper Bright*, the Commission also should delete or modify the Biden FCC's Digital Discrimination rules that are based on unintentional disparate impact. The best reading of the Infrastructure Investment and Jobs Act is that it prohibits only intentional discrimination. Also, the record does not demonstrate any digital discrimination problem. The Biden FCC's rules would subject broadband providers to investigations without any evidence of harm and impose compliance and uncertainty costs that necessarily would be recouped through higher prices for consumers or lower investment.

Furthermore, the Biden FCC's decisions to spend tens of millions of taxpayer dollars for WiFi on school buses and locations other than libraries, schools, and classrooms exceed the

agency's authority under Section 254(h) of the Communications Act. Such subsidies also raise concerns about lack of educational efficacy and enabling unsupervised child Internet access. These orders should be rescinded.

Furthermore, the Free State Foundation agrees with commenters that the Commission should close outright, or subject to a streamlined review process, several open proceedings in which the Biden FCC proposed or considered imposing new regulations on competitive broadband services. The Commission should close the Broadband Data Cap proceeding. "Data caps" are a form of usage-based pricing that are common in our economy and may benefit lower-income consumers who are lighter users and choose less costly plans than would be available under mandated unlimited data offerings. Bans on "data cap" plans are forms of rate regulation that undermine market freedom to set prices, thereby chilling investment. The Commission also should close the Broadband Label proceeding, provided the agency is satisfied that its label rules conform to statutory and First Amendment concerns about consumers' point-of-sale experience and preventing deception.

The Commission should consider closing all other agency proceedings that were opened before January 2025. Under a streamlined review process, each proceeding should be closed, unless the Commission determines that there is record evidence of a problem warranting targeted agency action and such action is within the agency's authority and would benefit the public. Proceedings involving mandates set by Congress, judicial remand, or Executive Branch requests could be exempted.

Among other unjustifiable or harmful rules, the Commission should delete or modify its 2020 "Effective Measures" rule for combatting unwanted robocalls. When the rule was adopted, it emphasized "flexibility" by voice providers in preventing significant volumes of illegal calls.

But the FCC's February 2025 Telnyx Notice of Apparent Liability effectively turned the rule into a strict liability standard. Deletion or modification is required to eliminate regulatory uncertainty and to remedy the lack of fair notice which raises due process concerns under the Fifth Amendment. This is true as well for any other regulations which do not provide fair notice of what conduct would be considered to be violative of the rules.

The Free State Foundation also agrees with commenters that have identified common carrier and other legacy voice regulations that ought to be closely reviewed for elimination or modification, including rules regarding record keeping, tariffs, specific Bell company requirements, network discontinuance, and unbundling. Rules that inhibit the retirement of legacy analog networks where consumers have available other comparable (or better) alternatives are especially suspect and ripe for elimination. Aside from other rationales supporting deletion, for such reviews, as we have recommended many times in the past, the Commission could rely on deregulatory rebuttable evidentiary presumptions. Consistent with the FCC's Section 10's forbearance and Section 11 periodic review directives for easing regulatory burdens, the Commission could adopt procedural rules providing that, absent clear and convincing evidence to the contrary, enforcement of such regulation shall be presumed not necessary to ensure that service charges or practices are not unreasonable or unreasonably discriminatory or necessary for the protection of competition or consumers, and consistent with the public interest. Such procedural rules would not be outcome-determinative, but they would furnish rebuttable evidentiary presumptions that match today's competitive market realities.

By acting decisively to delete or modify rules that are inconsistent with the best reading of the relevant statutory provisions or with constitutional dictates, or which are no longer necessary or otherwise harmful, the Commission can help promote pro-innovation, pro-

investment, and pro-competitive conditions in the communications marketplace that will benefit American consumers.

II. Delete Unlawful, Unjustified, and Harmful Biden FCC Regulations for Broadband Services

In the face of competitive conditions in the communications marketplace, including for broadband and voice services, the Biden FCC imposed regulations on those services and asserted agency powers contrary to the best reading of the Communications Act. The Commission should therefore delete or at least modify those rules, including the following:

Delete public utility regulation of broadband services imposed by the now-vacated 2024 *Title II Order*. The Sixth Circuit's January 2, 2025, decision in *MCP No. 185* set aside the FCC's order that imposed a public utility regulatory regime on broadband.[3] The court concluded that broadband Internet services are best understood as lightly regulated "information services" under Title I of the Act and not "telecommunications services" under Title II. One of the 21st century's most flagrant government power grabs, the Biden FCC's ill-fated public utility regulation of broadband services is unwise, unnecessary, and unjustified from a policy perspective.[4] The now-vacated rule would restrict or potentially restrict, under a "catch-all" standard with vague and unknowable factors, pricing arrangements such as usage-based and "free data" plans.[5] A rule based on a "catch all" standard that is unknowable in advance is inconsistent with constitutional due process requirements. And such restrictions discourage

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[3] *See Ohio Telecommunications Association v. FCC* (In re MCP No. 185), 124 F.4th 993 (6th Cir. 2025).
[4] 47 C.F.R. §§ 8.1-8.6, 20.3. *See also* Comments of the Free State Foundation, Safeguarding and Securing the Open Internet, WC Docket No. 23-320 (December 14, 2023), at: https://freestatefoundation.org/wp-content/uploads/2023/12/FSF-Comments-Safeguarding-and-Securing-the-Open-Internet-121423.pdf; Reply Comments of the Free State Foundation, Safeguarding and Securing the Open Internet, WC Docket No. 23-320 (January 17, 2024), at: https://freestatefoundation.org/wp-content/uploads/2024/01/FSF-Reply-Comments-Safeguarding-and-Securing-the-Open-Internet-011724.pdf.
[5] *See* Seth L. Cooper, "The FCC's New Title II Order Allows Harmful Rate Regulation," *Perspectives from FSF Scholars*, Vol. 19, No. 19 (May 21, 2024), at: https://freestatefoundation.org/wp-content/uploads/2024/05/The-FCCs-New-Title-II-Order-Allows-Harmful-Rate-Regulation-052124-1.pdf.

innovation and investment in broadband infrastructure and services that would benefit Americans. The Commission should delete the rules.

Delete or modify onerous unlawful Digital Discrimination rules based on unintentional disparate impact. The Biden FCC's rules impose an unintentional disparate impact liability standard for digital discrimination of access that is not supported by the Infrastructure Investment and Jobs Act.[6] The best reading of the Act is that it applies only to intentional discrimination, as the statute lacks telltale language for when Congress authorizes the imposition of disparate impact liability.[7] The sweeping scope of the rules also likely violates the Supreme Court's major questions doctrine.[8]

Additionally, the Commission's record does not demonstrate any existing problem of digital discrimination, and its proposal to impose new requirements on ISPs and increase bureaucracy would not materially benefit consumers. If enforced, those rules would subject broadband providers to wide-ranging investigations without any evidence of causing or intending harm and impose significant compliance costs that likely would be recouped from paying subscribers in the form of higher prices. Also, imposing liability for unintended differences in broadband access outcomes would create uncertain legal risks for broadband providers and reduce investments in service deployments to unserved and underserved Americans.

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[6] 47 C.F.R. §§ 16.1-16.7.

[7] *See* Comments of the Free State Foundation, Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, GN Docket No. 22-69 (February 21, 2023), at: https://freestatefoundation.org/wp-content/uploads/2023/02/FSF-Comments-%E2%80%93-Prevention-and-Elimination-of-Digital-Discrimination-022123.pdf; Randolph J. May, "The FCC's Digital Discrimination Order: An Overreach in Pursuit of a Worthy Goal," *Perspectives from FSF Scholars*, Vol. 18, No. 51 (November 28, 2023), at: https://freestatefoundation.org/wp-content/uploads/2023/11/The-FCCs-Digital-Discrimination-Order-An-Overreach-in-Pursuit-of-a-Worthy-Goal-112723.pdf.

[8] *See* Reply Comments of the Free State Foundation, Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, GN Docket No. 22-69 (April 20, 2023), at: https://freestatefoundation.org/wp-content/uploads/2023/04/FSF-Reply-Comments-%E2%80%93-Prevention-and-Elimination-of-Digital-Discrimination-042023.pdf.

Instead of imposing further rules as proposed by the Biden FCC,[9] the Commission should delete its disparate impact liability rules or modify them to address only intentional discrimination, consistent with the best reading of the law and the requirements of *Loper Bright Enterprises v. Raimondo*.[10]

Delete or modify rules to eliminate subsidies for WiFi on school buses. The Biden FCC's decision to spend tens of millions of taxpayer dollars from the E-Rate program for WiFi on school buses most likely is unlawful because it exceeds the agency's statutory authority.[11] Section 254(h) of the Communications Act authorizes Universal Service subsidy support for telecommunications services to or for "schools," "classrooms," and "libraries."[12] But school buses are not schools, libraries, or classrooms. And electronic devices such as WiFi equipment are not telecommunications services. Aside from likely contravening the best reading of the statute and the requirements of *Loper Bright*, such subsidies also raise serious concerns about the lack of educational efficacy as well as enabling children to access the Internet without parental or other adult supervision.

Delete or modify rules to eliminate subsidies for WiFi hotspots at off-campus locations. The Biden FCC's decision to adopt rules to spend tens of millions of taxpayer dollars from the E-Rate program for "off-premises" WiFi hotspots most likely is unlawful because it

[9] See Comments of the Free State Foundation, Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, GN Docket No. 22-69 (March 4, 2024), at: https://freestatefoundation.org/wp-content/uploads/2024/03/FSF-Comments-on-FNPRM-Prevention-and-Elimination-of-Digital-Discrimination-030424.pdf.
[10] 144 S.Ct. 2244 (2024).
[11]. Modernizing the E-Rate Program for Schools and Libraries, WC Docket No. 13-184, Declarator Ruling (released October 25, 2023). *See also* "Randolph J. May and Seth L. Cooper," FCC's School Bus Wi-Fi Subsidy Lacks Statutory Support," *Perspectives from FSF Scholars*, Vol. 19, No. 4 (February 1, 2024), at: https://freestatefoundation.org/wp-content/uploads/2024/07/FCCs-School-Bus-Wi-Fi-Subsidy-Lacks-Statutory-Support-020124.pdf.
[12] 47 U.S.C. §§ 254(h)(1)(B), -(2)(A).

exceeds the agency's statutory authority.[13] Section 254(h) of the Communications Act authorizes Universal Service subsidy support for telecommunications services to or for "schools," "classrooms," and "libraries." Subsidies for Wi-Fi use away from those specific types of locations – potentially anywhere in the world – are not included in the statute. And aside from contravening the statute, such subsidies also raise serious concerns about the lack of educational efficacy as well as enabling children to access the Internet without parental or other adult supervision.

III. Close Biden FCC Proceedings and Other Proceedings in Which Burdensome Regulations Were Proposed or Considered

Additionally, the Biden FCC opened several proceedings with the apparent intent to impose further regulations that ought to be closed, including the following:

Close the Broadband Data Cap proceeding. By opening its Broadband Data Cap proceeding, and issuing a Notice of Inquiry, the Biden FCC signaled an intent to impose government mandates prohibiting or restricting broadband service plans with "data caps." Such mandates would be misguided and most likely result in unintended negative consequences for broadband investment as well as consumer welfare. "Data caps" are simply a form of usage-sensitive pricing that are common in our economy for the provision of services where the amount of usage ultimately is related to cost incurrence.[14] As the Commission recognized in its 2010 Title II Order, usage-sensitive pricing may be especially beneficial to lower-income consumers

[13] 47 C.F.R. §§ 54.500, -.502(3), -.504; 47 C.F.R. §§ 54.513, -.516(e)-(g).

[14] *See* Randolph J. May, "Don't Initiate a Data Cap Inquiry," *Perspectives from FSF Scholars*, Vol. 18 No. 24, (June 22, 2023), at: https://freestatefoundation.org/wp-content/uploads/2023/06/Dont-Initiate-a-Data-Cap-Inquiry-062223.pdf; Comments of the Free State Foundation, Data Caps in Consumer Broadband Plans, WC Docket No. 23-199 (November 14, 2024), at: https://freestatefoundation.org/wp-content/uploads/2024/11/FSF-Comments-Data-Caps-in-Consumer-Broadband-Plans-111424.pdf; Reply Comments of the Free State Foundation, Data Caps in Consumer Broadband Plans, WC Docket No. 23-199 (December 2, 2024), at: https://freestatefoundation.org/wp-content/uploads/2024/12/FSF-Reply-Comments-%E2%80%93-Data-Caps-in-Consumer-Broadband-Plans-120224.pdf.

who are lighter users to the extent that they choose less costly plans than otherwise would be available under mandated "one size fits all" unlimited data offerings. Moreover, "data cap" plans are, in effect, pricing tiers. Government bans or restrictions on "data cap" plans are an investment-chilling form of *ex post* rate regulation that undermines the freedom of ISPs to set prices to recover the costs of building and operating their networks in the manner they choose.

Review Broadband Label Rules for elimination or modification and close the proceeding. In its Broadband Labels proceeding, the Biden FCC imposed certain rules regarding broadband labels pursuant to the Infrastructure Investment and Jobs Act, and it subsequently issued a further notice of proposed rulemaking to impose additional restrictions.[15] But the scope of those requirements is limited by the Act's directive that the labels shall be those "as described in" a 2016 Notice and may include modifications limited to lessons learned since 2016 regarding consumers' point-of-sale experience.[16] The First Amendment free speech rights of broadband providers in describing their commercial services also are implicated by any restrictions that go beyond government interests in preventing deceptions of consumers at the point of sale. Accordingly, the Commission should review its broadband label rules to ensure they comply with the best reading of the statute and the First Amendment and delete or modify its rules to become less burdensome and more flexible.[17] And instead of adopting further regulation, the Commission should conclude its review of existing rules by closing the proceeding.

Close or conduct streamline reviews for closing all other proceedings opened before 2025. Besides closing the Broadband Labels and Data Caps proceedings, the Commission should

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[15] *See* Empowering Broadband Consumers Through Transparency, CCG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking (released November 17, 2022).
[16] Infrastructure Investment and Jobs Act of 2021, § 60504(b)(1).
[17] For further background, *see* Andrew Long, "Broadband 'Nutrition Labels' Should Stick To a Strict Statutory Diet," *Perspectives from FSF Scholars*, Vol. 17, No. 17 (April 5, 2022), at: https://freestatefoundation.org/wp-content/uploads/2022/04/Broadband-Nutrition-Labels-Should-Stick-to-a-Strict-Statutory-Diet-040122-Final-from-AL.pdf.

consider closing all other agency proceedings that were opened before January 2025 or adopting internal streamlined review processes before closing them. Under a streamlined process, each proceeding under fast-track review should be closed, unless the Commission determines – within, say, 60 days from the commencement of the review – that there is an identified problem warranting targeted agency action and an identified course of action within the agency's jurisdiction that would actually address such problem and confer net public benefit over costs. The Commission could exempt from its streamlined review process specifically identified proceedings involving certain unique circumstances, such as the Commission responding to specific deadlines or ongoing affirmative mandates set by Congress, judicial remand, or specific requests by the Executive Branch.

The Commission should, for instance, consider closing or undertaking a fast-track review before closing the following proceedings identified by commenters in this proceeding[18]:

- Expanded NORS/DIRS reporting proceeding (PS Docket Nos. 21-346, 15-80; ET Docket No. 04-35).
- Remaining Proposals from Alerting Paradigm/ Multilingual EAS proceeding (PS Docket Nos. 15-94 and 15-19).
- Safe Connections proceeding (WC Docket No. 22-238).
- Submarine Cable proceeding (OI Docket No. 24-253).
- Real-Time Text Obligations for Wireline Providers proceeding (CG Docket No. 16-145, GN Docket No. 15-178).
- Network Security proceeding (PS Docket 22-329).

IV. Delete or Modify the "Effective Measures" Rule and Other Rules That Do Not Provide Fair Notice

The Commission's "Effective Measures" rule requires a voice service provider to: "Take affirmative, effective measures to prevent new and renewing customers from using its network to originate illegal calls, including knowing its customers and exercising due diligence in ensuring

[18] *See, e.g.*, Comments of CTIA, GN Docket No. 25-133, at A1-A23; Comments of NCTA, GN Docket No. 25-133, at Appendix 1-13.

that its services are not used to originate illegal traffic."[19] When it was adopted in the *Fourth Call Blocking Order* (2020), the Commission stated that the Effective Measures rule incorporates "flexibility" by voice providers in preventing significant volumes of illegal calls – rather than rigid requirements and a demand for stopping all illegal calls. The order stated: "We make clear that we do not expect perfection; particularly clever bad actors may, for a time, evade detection" and "[i]f the voice service provider takes [contractual remedy or additional mitigation] steps and does not originate a significant amount of illegal traffic, it satisfies the rules we adopt today."[20]

However, the Commission's Telnyx Notice of Apparent Liability (NAL), adopted on February 4, 2025, in proposing a $4.5 million fine, effectively changed the Effective Measures rule from a standard with built-in flexibility to a strict liability standard.[21] The Telnyx NAL thus appears to have used the Effective Measures rule as an occasion of "regulation by enforcement" – whereby an agency imposes new requirements on regulated entities in enforcement proceedings rather than through generally applicable rulemakings with public participation that ensure regulated entities have the ability to know and follow the law. Aside from the problem of unfair surprise posed by the Telnyx NAL, the rule's new apparent strict liability standard is potentially sweeping in scope and severity. The Commission should eliminate the Effective Measures rule or modify it to restore it to its original and less burdensome standard that incorporates voice provider flexibility in preventing origination of unlawful robocalls.

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[19] 47 C.F.R. § 64.1200(n)(3).
[20] Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, Fourth Report and Order (released December 30, 2020), at ¶¶ 30, 36.
[21] In the Matter of Telnyx LLC, File No. EB-TCD-24-00037170, NAL/Acct. No.: 202432170009, FRN: 0018998724, Notice of Apparent Liability for Forfeiture ("NAL") (released February 4, 2025). *See also* Seth L. Cooper, "The FCC's Proposed Forfeiture Against Telnyx Raises Serious Rule of Law Concerns," *Perspectives from FSF Scholars*, Vol. 20, No. 15 (March 12, 2025), at: https://freestatefoundation.org/wp-content/uploads/2025/03/The-FCCs-Proposed-Forfeiture-Against-Telnyx-Raises-Serious-Rule-of-Law-Concerns-031225.pdf.

V. Delete Other Unnecessary or Harmful Rules

The Free State Foundation agrees with other commenters who have identified numerous rules that are already outdated or involve unnecessary certifications or other requirements and ought to be deleted,[22] including the following:

Rules	Citation	Reason for deletion or modification
Annual geographic rate averaging certification	47 C.F.R. § 64.1900	Unnecessary
Rules for broadcast incentive auction	47 C.F.R. § 1.2105(c)(6)	Auction completed. Regulation outdated, no longer necessary
Broadband data collection certification	47 C.F.R. § 1.7004(d), 47 C.F.R. § 1.7006(e)(6), -(e)(7)(iii),-(f)(6), and –(f)(7).	Unnecessary
Separations for in-region commercial mobile radio services (CMRS)	47 C.F.R. § 20.20	Rule sunset in 2002. Regulation outdated, no longer necessary
Quarterly Payphone Reports	47 C.F.R. § 64.1310	Unnecessary
Network change notifications	47 C.F.R. § 51.325-335	Subject to Commission waiver that ought to be made permanent
Section 706 report data collection regarding adoption and affordability	Uncodified requirements pursuant to 47 U.S.C. § 1302(b)	Adoption and affordability concerns exceed the scope of the best reading of the statute
National Emergency Address Database ("NEAD") Plans and Reports	47 C.F.R. §§ 9.10(i)(1)(iii), -(4)(ii),4(iii)	Outdated and duplicative of other reporting requirements
Network Discontinuance Printed Publication Notices	47 C.F.R. 6390	Outdated and unnecessary

[22] *See, e.g.*, Comments of CTIA, GN Docket No. 25-133, at A1-A23; Comments of NCTA, GN Docket No. 25-133, at Appendix 1-13; Comments of USTelecom, GN Docket No. 25-133, at 18-21.

VI. Closely Review of Legacy Voice Regulations and Reduce Them

The Free State Foundation agrees with commenters such as CTIA and USTelecom that the Commission should conduct a close review of common carrier and related legacy voice regulation, including those contained in Chapter 1, Subchapter B of the agency's rules, and identify specific rules for elimination or modification to make them less burdensome.[23] These regulations, involving matters such as the preservation of common carrier records, tariffs, Bell operating company-specific requirements, interstate rate of return procedural requirements, Computer Inquiry requirements, stand-alone long-distance equal access requirements, as well as network discontinuance and the vestiges of unbundling rules.[24] Rules that inhibit the retirement of legacy analog networks where consumers have available other comparable (or better) alternatives are especially suspect and ripe for elimination.

In conducting its regulatory review, aside from other rationales supporting deletion of these rules, as we have urged many times in the past, the Commission could employ rebuttable evidentiary presumptions that facilitate the non-enforcement and repeal of obsolete or ill-conceived regulations.[25] Those presumptions should be directed towards supporting and accelerating meaningful deregulatory efforts at the Commission. For instance, the Commission should adopt a procedural rule to guide the exercise of its Section 10's forbearance authority: "In making forbearance determinations, absent clear and convincing evidence to the contrary, the

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[23] *See, e.g.*, Comments of CTIA, GN Docket No. 25-133, at A1-A23; Comments of USTelecom, GN Docket No. 25-133, at 18-21.

[24] *See, e.g.*, comments identifying common carrier and legacy voice regulations cited in note 23, *supra*; Comments of Verizon, GN No. 25-133, at 14-15.

[25] Randolph J. May, "Reprise: The FCC Should Employ Rebuttable Presumptions to Reduce Unnecessary Regulation," *Perspectives from FSF Scholars*, Vol. 20, No. 14 (March 10, 2025), at: https://freestatefoundation.org/wp-content/uploads/2025/03/Reprise-The-FCC-Should-Employ-Rebuttable-Presumptions-to-Reduce-Unnecessary-Regulations-031025.pdf; Randolph J. May and Seth L. Cooper, "D.C. Circuit Ruling Supports FCC's Use of Deregulatory Presumptions," *Perspectives from FSF Scholars*, Vol. 12, No. 24 (July 27, 2017), at: https://freestatefoundation.org/wp-content/uploads/2019/10/D.C.-Circuit-Ruling-Supports-FCC%E2%80%99s-Use-of-Deregulatory-Presumptions-072717.pdf.

Commission shall presume that enforcement of such regulation or provision is not necessary to ensure that a telecommunications carrier's charges or practices are not unreasonable or unreasonably discriminatory or necessary for the protection of consumers and is consistent with the public interest." The Commission could adopt a similar rule in exercising its Section 11 retrospective regulatory review authority: "Absent clear and convincing evidence to the contrary, the Commission shall presume that regulations under review are no longer necessary in the public interest as a result of meaningful competition among providers of such service."

These proposed procedural rules are consistent with the statutory criteria for deciding whether to grant regulatory relief under Sections 10 and 11. They would not be outcome-determinative, but they would establish rebuttable evidentiary presumptions that match today's widely accepted market realities and which would further the Commission's initiative for identifying unnecessary regulatory burdens for deletion or modification.

VII. Conclusion

For the foregoing reasons, the Commission should act in accordance with the views expressed herein.

Respectfully submitted,

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