

**FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2019**

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**THURSDAY, MAY 17, 2018**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 10:05 a.m., in room SD-138, Dirksen Senate Office Building, Hon. James Lankford (Chairman) presiding.

Present: Senators Lankford, Daines, Coons, Leahy, Manchin, and Van Hollen.

**FEDERAL COMMUNICATIONS COMMISSION**

**STATEMENT OF HON. AJIT PAI, CHAIRMAN**

OPENING STATEMENT OF SENATOR JAMES LANKFORD

Senator LANKFORD. Good morning, everyone. Glad you're here. Subcommittee will come to order.

Before I proceed, I do want to be able to say this is the first of our hearings on this Senate Subcommittee on Appropriations.

I do want to be able to greet my colleague, Senator Coons, and say publicly how pleased I am to be able to work with you. You have been the Ranking Member here before, and now a new Chairman is stepping in during it. So, you'll have some mercy on us as we try to transition on this.

Senator COONS. Absolutely.

Senator LANKFORD. This hearing marks the first of our fiscal year 2019 budget hearings together for the agencies under the jurisdiction of the Financial Services and General Government Subcommittee. I look forward to collaborating with our Ranking Member and the entire committee on the fiscal year 2019 bill, and to partner together for these hearings to conduct oversight for these agencies to ensure they're operating effectively and spending resources responsibly.

Today, we have with us the Chairman for the Federal Communications Commission, Ajit Pai, and the Chairman of the Federal Trade Commission, Joseph Simons. Thank you both for being here today.

This hearing is very timely, considering the recent debate in the Senate dealing with the open Internet, which we'll discuss, I'm sure, during this hearing time.

Since the Internet was developed, the market and consumers have driven innovation and expansion, which has caused the Internet to thrive in a relatively regulation-free or low-regulation environment. I look forward to a thoughtful discussion of the steps the FCC and the FTC will take to preserve an open and accountable and accessible Internet in a manner that promotes new investment, encourages innovation, and protects consumers.

The FCC requests \$333 million for its operating budget in fiscal year 2019. While this funding is provided through regulatory fees rather than taxpayer dollars, the use of these funds are subject to appropriations, and we have the responsibility to ensure they are spent wisely.

The FCC has identified four strategic goals for fiscal year 2019, including closing the digital divide, promoting innovation in the market for communications services, protecting consumer and public safety, and improving FCC regulatory processes. Those are laudable goals, and I believe that we all share those goals. I look forward to hearing how the FCC plans to execute these goals using the requested budget authority.

I also look forward to hearing about the FCC's Lifeline reforms. Oklahoma, as you know, receives the second-largest allocation of Lifeline funds, which totals more than \$128 million. There are areas of fraud in that program we have discussed before. And just because it's my State doesn't mean we don't need to be accountable to being able to resolve those issues. I am glad to be able to help you as we help the Nation be more efficient in our funding.

The FTC requests \$309.7 million to fulfill its mission of protecting consumers and promoting competition. Of particular interest today is how the FTC is fulfilling its mission to prevent anti-competitive mergers and other anticompetitive business practices in the marketplace. Consolidation can fuel economic growth through the achievement of synergies and economies of scale, but it can also have unintended and negative consequences for consumers.

Chairman Simons, you were sworn in earlier this month. Is this your first hearing on the Hill, so far?

Mr. SIMONS. This is my first appearance, yes.

Senator LANKFORD. Well, welcome.

Mr. SIMONS. Thank you.

Senator LANKFORD. Chris Coons and I will try to have mercy on you in the first round, but, after the first one, it's just merciless from here on out.

[Laughter.]

Mr. SIMONS. I'll appreciate that.

Senator LANKFORD. Okay. We do appreciate you here. I think you've been in this chair 3 weeks, 4 weeks—what has it been?

Mr. SIMONS. Since May 1.

Senator LANKFORD. Okay. So, not even a couple of weeks, here, at this point. We look forward to hearing your vision for the FTC as you walk into this new role, and how your agency will protect consumers and police anticompetitive behavior without unduly burdening legitimate business activity.

Again, thank you both for appearing this morning.

I now turn to my colleague and friend, Ranking Member Senator Coons, for his opening remarks.

STATEMENT OF SENATOR CHRISTOPHER A. COONS

Senator COONS. Thank you very much, Chairman Lankford, for convening this hearing today. This is the first hearing for the FSGG Subcommittee this year, your first as Chairman. And I very much look forward to working with you and your staff. I think we can, together, find very constructive ways that we can work in this year's appropriations process and moving forward to make sure that we are protecting consumers, spending funds appropriately, and advancing Federal missions.

I'd like to welcome our witnesses, Chairman Pai and Chairman Simons. As Chairman Lankford just referenced, I want to especially thank you, Chairman Simons, for appearing today, since you've been on the job so briefly. We have two new Chairmen, and hopefully we'll find a constructive path together forward.

You know, both the FCC and FTC have key consumer protection missions, and I want to focus briefly on a few of those.

Yesterday, the Senate voted to restore the FCC's previous net neutrality rule. I voted with the majority. That rule has been challenged in the courts and has been the subject of a great deal of controversy. I think it is important to have a free and open Internet, but one that also values innovation and investment, and protects consumers. There's four key principles necessary to maintain that fair and open Internet: no blocking or throttling, no paid prioritization, and full transparency. And if we can find a way together to chart a path that accomplishes those goals, I think we will find a way to keep the things that all Americans value about the Internet—access to sites that we choose, and giving equal access while still promoting innovation and investment. And I look forward to a discussion with you, Chairman Pai, about these key issues around net neutrality today.

We have also seen, from the recent Facebook and Cambridge Analytica controversy, that companies can use big-data analytics to infer very sensitive and complex information about individuals, and then target them with ads that can be successful and manipulative. I don't know that any of us yet know enough about the full potential of the intersection of artificial intelligence and big data to give informed consent for the use of our data by consumers, but, Chairman Simons, I want to talk with you today about how the FTC might be involved in addressing this issue, and how Internet privacy and consumer protection in that context may be a piece of your challenge, going forward. Whether data-based targeting of this type can ever be so manipulative that it is unfair for Section 5 purposes is one of the things I hope we'll have a conversation about today.

Last, about access for consumers, from business to academics to government, access to the Internet's no longer optional for success in the 21st century. Not only is it important that every student in America have access to state-of-the-art tools to power their education, but every home or small business, no matter how rural, should be connected to the vital communications and information systems that drive our economy and our way of life. The FCC over-

sees the \$10 billion Universal Service Fund, which helps expand access to vital communications systems across the country. Some might think of Oklahoma as significantly more rural than Delaware, but there are areas in both of our States where access to broadband is a pressing concern. The FCC has worked, over the past few years, to modernize the fund to include broadband access in addition to voice service while reducing waste. And I hope that closing the digital divide will continue to be one of the FCC's top priorities under your leadership. And I hope to work together with the Chairman to make sure that, in rural portions of my State, in Kent and Sussex Counties, as well as rural portions of his State, and all of America will have access to the broadband that we need to be successful in this century.

I look forward to discussing these and other issues with our two Chairmen today. Thank you for coming before us and for sharing your perspectives on the FCC and FTC funding requirements and program goals for fiscal year 2019.

And, in closing, again, Mr. Chairman, thank you for the chance to work together as friends and colleagues.

Senator LANKFORD. Chairman Pai, I would invite you to present your testimony now.

#### SUMMARY STATEMENT OF HON. AJIT PAI

Mr. PAI. Chairman Lankford, Ranking Member Coons, and Members of the subcommittee, thank you for holding this hearing. And, Senator Coons, I hope you, in particular, are on the mend. It is an honor to present the FCC's fiscal year 2019 budget request. And it is a privilege to appear alongside my distinguished counterpart from the Federal Trade Commission, Chairman Joe Simons.

We, at the FCC, will use the requested funds to achieve our critical strategic goals. Number one, closing the digital divide. Number two, promoting innovation. Number three, protecting consumers and promoting public safety. And four, reforming the FCC's processes.

In fiscal year 2018, we received \$322 million, a reduction of about 5 percent from 2017, minus the headquarters relocation funds. Now, to put that number in perspective in inflation-adjusted terms, our appropriation has declined by over 17 percent since fiscal year 2009. These reductions have required the FCC to operate more efficiently. Since I became Chairman in January of 2017, we have done just that, cutting costs and accomplishing more with less money. For example, we have saved a lot of money by closing a warehouse where we processed our mail and, instead, contracting with a vendor that performs this task for many other governmental agencies. And, by the end of fiscal year 2018, we project that the Commission's full-time equivalent (FTE) account will have declined over 10 percent in just 2 years.

Now, in light of this, our fiscal year 2019 budget request proposes to freeze our FTE account rather than reduce it again. I believe that further reductions in staffing next year would compromise the FCC's ability to accomplish its mission, particularly given the many additional responsibilities that Congress assigned us in the recent omnibus bill. Pursuant to this legislation, we must revise our application and regulatory fee schedules, amend caller

ID spoofing rules, complete a proceeding on 911 call location accuracy, use the Connect2Health tool to create a map overlaying opioid drug abuse with broadband access, and coordinate with the National Telecommunications and Information Administration (NTIA) in its use of \$7.5 million in infrastructure funds for broadband mapping. We've also been tasked with writing reports for Congress on a variety of topics.

In our budget request, we are asking for \$8.5 million in one-time information technology, or IT, investments. I know that this subcommittee has long supported critical IT upgrades, and I want to thank Senator Moran, in particular, for his legislative work on improving the Federal Government's IT capabilities. Many of our IT systems and applications are quite old, and it is becoming harder to keep them running. And that is why we are seeking funding to shift from outdated legacy systems and applications towards cloud-based solutions. Taking this step will save money in the long run. It will improve resiliency, it will reduce cybersecurity vulnerabilities, and it will enhance the services that we provide to those we regulate and to the American people.

Now, these IT investments are the main reason why we are requesting a slight bump in appropriations for our regular operations in fiscal year 2019 from \$322 million to \$333 million. But, even with this modest increase, our fiscal year 2019 spending level would be identical to the amount authorized in the fiscal year 2018 omnibus and below our fiscal year 2017 appropriation.

Next year will be busy when it comes to auctions, and our funding needs will reflect an increased workload. In addition to pre-existing complications—complicated auctions work critical to American leadership in 5G, the fiscal year 2018 omnibus requires us to develop rules this year for incentive auction repack funds for low-power television stations, TV translators, and FM radio stations. We also must decide how to allocate money for consumer outreach related to the repack. Now, Congress directed us to stand up these new programs, and considers them essential to the overall success of the incentive auction process. And we are ready to carry out this mandate.

But, based on our experience with the full-power TV repack fund, we expect that this work will be extremely resource and labor intensive. As a result, we will need an upward adjustment to our fiscal year 2019 auction cap request of \$112 million for new administrative costs. The level originally had been projected to increase only slightly above the fiscal year 2018 level of \$111 million, which, itself, was already a 5-percent drop from fiscal year 2017.

And, by the way, the billion dollars that you appropriated for fiscal years 2018 and 2019 for the incentive auction repack is already having an important impact. Just last month, we enabled full-power television broadcasters to get access to up to 92.5 percent of their estimated costs. And this boost will make it easier for stations to move ahead with proposed auction construction.

Finally, despite our budget planning, unforeseen problems and disasters can upend our best efforts. For instance, during this fiscal year, we have had to use every tool in our toolbox to help people on the ground in hurricane-stricken regions, like Puerto Rico and the U.S. Virgin Islands, to get communications networks up and

running, including using Universal Service money and experimental licenses. And we're not done yet. The FCC just adopted my proposal for the Uniendo a Puerto Rico Fund and a Connect USVI Fund. My plan extends more short-term assistance in the aftermaths of Hurricanes Irma and Maria, and longer-term support for expanding broadband access throughout the islands.

In short, we have accomplished a great deal in the past year, and we will have a full plate next year. It's the appropriation that you provide, along with hard work of the Commission's dedicated and talented staff, that makes this possible.

Chairman Lankford, Ranking Member Coons, Members of the subcommittee, thank you once again for holding this hearing. I look forward to a fruitful exchange and to working with you and your staffs in the time to come.

[The statement follows:]

PREPARED STATEMENT OF HON. AJIT PAI

Chairman Lankford, Ranking Member Coons, and Members of the Appropriations Subcommittee on Financial Services and General Government (FSGG), thank you for inviting me here to present the Federal Communications Commission's (FCC) fiscal year 2019 budget request. The Commission's submission provides a spending level of \$333,118,000, derived from regulatory fees for regular FCC operations, and an auction spending cap of \$112,734,000. At this stage, however, we note the need for an upward adjustment to the auction spending cap to enable the Commission to meet the fiscal year 2018 Consolidated Appropriations Act (Omnibus) requirement to establish new programs related to the post-incentive auction transition.

The Commission's fiscally responsible request will provide the resources necessary to advance the FCC's critical strategic goals: (1) closing the digital divide; (2) promoting innovation; (3) protecting consumers and public safety; and (4) reforming the FCC's processes.

In particular, the FCC will continue to focus on expanding high-speed broadband access throughout the United States and bringing what I call "digital opportunity" to every American. We will continue to remove regulatory obstacles that unnecessarily slow down broadband deployment and make it more expensive. And we will continue to modernize our Universal Service Fund (USF) programs so that we get the most broadband bang for the buck. With respect to USF, we are moving forward this July with the nearly \$2 billion Connect America Fund Phase II reverse auction to expand fixed broadband service to unserved regions, and are targeting 2019 for the \$4.5 billion Mobility Fund Phase II reverse auction that will deliver 4G LTE access to many more Americans.

As you are aware, the Commission received an appropriation of \$322,035,000 in the Omnibus. This number represented a reduction of approximately 5 percent from our fiscal year 2017 appropriation, minus the directed funding for our headquarters relocation. To put our budget in perspective, in real, inflation-adjusted terms, the FCC's appropriation has declined by over 17 percent since fiscal year 2009.

These reductions have required the Commission to operate more efficiently. Since I became Chairman in January 2017, we have done just that, initiating management improvements to cut costs and accomplishing more with less money. For example, we have saved a significant amount of money by closing a warehouse where we processed our mail, and instead contracting with a vendor that performs this task for many government agencies. We also are reducing our workforce in fiscal year 2018 to comply with OMB Memo 17-22, the Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce. We value our workforce and recognize the importance of employee morale to the Commission's operations, so we are combining regular attrition with voluntary personnel actions to achieve these levels. By the end of fiscal year 2018, we project that the Commission's full-time equivalent (FTE) count will have declined over 10 percent in 2 years. In light of this, our fiscal year 2019 budget request proposes to freeze our FTE count rather than reduce it again—because further reductions in staffing would compromise the Commission's ability to accomplish its mission.

The need to stabilize our FTE count is especially important given the many additional responsibilities Congress assigned the FCC in the fiscal year 2018 Omnibus. The FCC-related sections of the Omnibus and accompanying Explanatory Statement

require the Commission to revise its application and regulatory fee schedules, amend its Caller ID spoofing rules, complete a proceeding on 911 call location accuracy, use the Connect2Health tool to create a map that overlays opioid drug abuse with the degree of broadband access in an area, and coordinate with NTIA in its use of \$7.5 million in infrastructure funds for broadband mapping. We also have a broad range of reporting requirements on several Commission objectives, including rural call completion, veterans' broadband access, broadband coverage in Indian Country, modernizing the high-cost Universal Service Fund program, and information technology (IT) modernization efforts. And under the MOBILE NOW section of the Omnibus, we are required to move forward with freeing up additional low-, mid-, and high-band spectrum for 5G services, along with new spectrum for unlicensed use. Timely meeting these obligations requires us to maintain and enhance the human resources we currently have.

As part of our efforts to improve the Commission's workforce, we are following through with establishing an Honors Engineering Program this year to recruit recent engineering graduates. As the technologies that we regulate become more complex, it is important for us to bolster the ranks of engineers at the Commission. Sophisticated technical analysis is at least as important as the legal analysis that supports our decisions. In the past, we have not replenished our engineering resources. Now, we will, with a program that will stand alongside our Honors Attorney Program.

Additionally, a thorough review of our staffing and organization led us to determine that we must strengthen the role of economics and data analysis at the Commission so that our decisions are driven by evidence and produce benefits that outweigh their costs. Accordingly, the Commission is in the process of creating the Office of Economics and Analytics to coordinate the contributions of economists and data professionals throughout the FCC. Right now, attorneys have a seat at the policymaking table through the Office of General Counsel and engineers have a seat through the Office of Engineering and Technology. The Office of Economics and Analytics will give economists their rightful seat, too.

To maximize the benefits of improved organization and recruitment, we need to provide our workforce with the information technology tools necessary to effectuate our mission. The Omnibus Explanatory Statement's IT reporting requirement and the reauthorization language elevating the FCC's Chief Information Officer's status highlight Congress' desire to ensure that the FCC has the resources necessary to modernize its IT systems and applications. I recognize that this issue has been of interest to this subcommittee and that Senator Moran has been at the forefront of legislative efforts to ensure that agencies devote enough resources to IT modernization efforts.

We likewise consider our IT upgrades to be an essential operations improvement. Many of our systems and applications are quite old, and it is becoming increasingly difficult to keep them operational. But by moving away from outdated legacy systems and applications toward cloud-based solutions, we will save money, improve resiliency, reduce cybersecurity vulnerabilities, and enhance the services we provide to those we regulate and the American people. The Commission's budget request of \$8,535,200 for one-time IT investments—a request which was developed in close coordination with the Commission's Acting Chief Information Officer—shows our commitment to your directives while at the same time representing a modest investment that should pay dividends in the long run.

The IT investments also are the main reason why we are requesting a slight bump up in appropriations for our regular operations in fiscal year 2019, from \$322,035,000 to \$333,118,000. Importantly, this fiscal year 2019 spending level is identical to the amount authorized in Division P of the fiscal year 2018 Omnibus.

Our auctions program, which has been so successful in driving economic growth while directing billions of dollars into the Treasury, is projected in the fiscal year 2019 request to increase spending slightly to \$112,734,000 from the fiscal year 2018 level of \$111,150,000. The current fiscal year saw a 5 percent drop from the fiscal year 2017 high of \$117 million. The upcoming fiscal year will be a busy one on the auctions front. For example, we intend to hold at least two high-band spectrum auctions—one for the 28 GHz band and another for the 24 GHz band. Conducting these auctions successfully and promptly will be critical to American leadership in 5G, the next generation of wireless technology. At a minimum, in fiscal year 2019 we also will be engaged in preparations to auction additional high-band spectrum as well as mid-band spectrum in the 3.5 GHz band.

With the auction funds we are requesting, we will also continue the critical work of facilitating the post-Incentive Auction repack. The Financial Services and General Government section of the Omnibus provided up to one billion dollars in funding to complete the repacking process, in increments of \$600,000,000 and \$400,000,000

in fiscal year 2018 and fiscal year 2019, respectively. Thank you for this critical funding. First and foremost, the funds will be used by the Commission's Incentive Auction Task Force to reimburse the relocation costs of full-power television stations. Second, the appropriated funds will be used to provide funding for low-power television stations, TV translators, and FM radio stations that incur costs resulting from the repack, as well as money for consumer outreach related to the repack.

Just last month, the funds you appropriated allowed the Commission to increase the allocations available to full-power television broadcasters so that they have access to up to 92.5 percent of their estimated costs. This further allocation permits broadcasters to execute their post-auction construction, prevents undue financial burdens, and minimizes the likelihood that we will need to claw back funds moving forward. Importantly, noncommercial stations associated with State college systems that faced problems with local anti-deficiency statutes should now be able to maintain their licenses and have the funds on hand to finance the repack.

The fiscal year 2018 Omnibus provisions related to the incentive auction repack will add significantly to our workload during fiscal year 2019. We are now tasked with developing a rulemaking and overseeing the distribution of funds for three new programs, at least two of which—LPTV/translator repacking costs and repack-associated FM radio station costs—will involve significant data analysis, new information technology assets, and staffing. We have evaluated the costs and recognize that the auction cap will need to be adjusted upward, but I believe that Congress has given us a clear directive to follow through with these programs. Given the complexity of developing the prior analysis for the full-power stations and the sheer number of stations likely to seek funding under these new programs, we know that this effort will be resource-intensive. We look forward to working with your staff to provide them with all essential information related to these costs.

Finally, it is important to note that despite our planning and hard work in developing a budget, sometimes unforeseen problems and disasters can render the best budget difficult to manage. For example, when hurricanes wreaked havoc last year on the people of Puerto Rico, the U.S. Virgin Islands, Texas, and Florida, we deployed staff to the field and I personally travelled to Puerto Rico twice. We also took a wide variety of actions to assist with recovery and restoration efforts, from accelerating telecommunications carriers' universal service funding to approving experimental licenses for broadband access, and we continue to work toward the complete restoration of communications services.

We are using every tool in our toolbox to help people on the ground and get communications networks up and running as soon as possible. Last week, the Commission approved my proposal to provide additional funding through a Uniendo a Puerto Rico Fund (Bringing Puerto Rico Together Fund) and a Connect USVI Fund. Each fund will provide additional short-term assistance for restoring communications networks in the aftermath of Hurricanes Irma and Maria and longer-term support for expanding broadband access throughout the islands.

Although our agency did not receive disaster funds, our staff devoted all available resources to help deal with these catastrophes. That dedication reflects how I see our agency: nimble, focused, and imbued with a can-do attitude when it comes to new challenges within our mandate. It might be dealing with hurricane recovery on one day, illegal robocalls the next, and a false missile alert in Hawaii the day after that. We do not have an easy mission, and sometimes we will disagree on the methods for seeing it through. But I'm proud of the staff at the Commission for its commitment to serving the American people and promoting the public interest.

Thank you for this opportunity to discuss the FCC's budget proposal. I will be pleased to answer any questions that you may have.

Senator LANKFORD. Thank you.  
Chairman Simons.

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## FEDERAL TRADE COMMISSION

### STATEMENT OF HON. JOSEPH SIMONS, CHAIRMAN

Mr. SIMONS. Chairman Lankford, Ranking Member Coons, and Members of the subcommittee, I am honored to appear before you today for the first time as Chairman of the Federal Trade Commission, and also honored that I get to do it with Chairman Pai. Thank you for the opportunity to testify about the Commission's

fiscal year 2019 appropriations request and its work to protect consumers and promote competition.

In fiscal year 2018, the FTC's enacted budget is \$306.3 million, with 1140 full-time equivalents (FTEs). For fiscal year 2019, the FTC is requesting \$309.7 million and the same 1140 FTEs. The FTC is a highly productive and effective independent agency, and it uses its funds efficiently and effectively. The Commission has a broad dual mission, to protect consumers and to maintain competition.

And this is a historic time at the FTC. Four commissioners have joined the agency in the past 2 weeks, including myself. We look forward to continuing the agency's longstanding tradition of bipartisanship, collegiality, and cooperation. And we are proud of our track record. And we will continue to utilize our resources effectively on behalf of U.S. consumers. For example, in fiscal year 2017, we estimate that the agency saved consumers over \$3.7 billion through its competition enforcement efforts and over \$1.29 billion through its consumer protection enforcement efforts.

Let me go into a little more detail about how we carry out our dual mission. On the consumer protection side, fighting fraud is a major focus. The Commission's antifraud program stops some of the most egregious scams and steps in to protect the most vulnerable U.S. consumers. We also leverage our resources to educate consumers about these scams.

Illegal robocalls remain a significant consumer protection problem, and we are using every tool at our disposal to combat them. A Federal district court recently imposed a \$280 million penalty in the FTC's case against Dish Network, but technological developments have led to a huge increase in illegal calls, despite aggressive law enforcement. And that is why the FTC has taken steps to spur technological-based solutions in the marketplace, such as sponsoring public challenges to incentivize innovators to develop creative solutions to the robocall issue. And we look forward to working with our partners, especially including Chairman Pai at the FCC, to better combat illegal robocalls.

Consumer privacy and data security enforcement continues to be a very top priority, including our ongoing nonpublic investigations of Facebook's privacy practices and the Equifax data breach. With respect to data security, the Commission has brought more than 60 cases alleging that the companies failed to implement reasonable safeguards to protect consumer data. But, we should do more. And that's why I support additional data security legislation that would strengthen the FTC's existing authority. And I look forward to working with Congress on this important issue.

On the competition side, the Commission seeks to promote competition through vigorous law enforcement, a robust policy and research agenda, and international cooperation. The FTC enforces U.S. antitrust laws in many sectors that directly affect consumers and their pocketbooks, such as healthcare, consumer products and services, technology, manufacturing, and energy. The FTC is well aware of concerns about the size and reach of large technology companies and their growing importance in consumers' daily lives. The Commission will continue to scrutinize tech mergers and conduct by tech firms to ensure not only that consumers benefit from their

innovative products, but also that competition thrives in this dynamic and highly influential sector.

Going forward, I plan to think critically and deliberately about the Commission's near- and long-term enforcement and policy agenda. Today, I am announcing that the Commission will hold a series of public hearings, beginning later this year, covering issues of substantial relevance to both of our core missions. For example, one of our first hearings will focus on competition and consumer protection implications of the FCC's Restoring Internet Freedom Order. We intend to invite all relevant stakeholders and allow the public to provide comments to the Commission so that we may hear a broad and diverse range of viewpoints.

In closing, the FTC remains committed to maximizing its resources to enhance its effectiveness in protecting consumers and promoting competition, anticipating and responding to changes in the marketplace, and meeting current and future challenges.

Thank you for the opportunity to share my views with the subcommittee. And I look forward to your questions.

[The statement follows:]

PREPARED STATEMENT OF HON. JOSEPH SIMONS

#### I. INTRODUCTION

Chairman Lankford, Ranking Member Coons, and Members of the subcommittee, I am Joe Simons, Chairman of the Federal Trade Commission ("FTC" or "Commission"), and I am pleased to appear before you today to testify about the Commission's fiscal year 2019 appropriations request and its work to protect consumers and promote competition.<sup>1</sup>

The FTC is a highly productive and effective independent agency comprised of three bureaus: the Bureau of Consumer Protection ("BCP"), the Bureau of Competition ("BC"), and the Bureau of Economics, which supports both BCP and BC. It is the only Federal agency with a broad mission to both protect consumers and maintain competition in most sectors of the economy. Its jurisdiction ranges from privacy and data security, to mergers and acquisitions, to anticompetitive tactics by pharmaceutical companies, to high-technology and emerging industries. This is an historic time at the Commission; four new Commissioners joined the agency in the past 2 weeks, including myself. We look forward to continuing to work cooperatively in a bipartisan manner.

The FTC is primarily a civil law enforcement agency that investigates and prosecutes those engaging in unfair or deceptive acts or practices or unfair methods of competition, and seeks to do so without impeding legitimate business activity.<sup>2</sup> The FTC also educates consumers and businesses to encourage informed consumer choices, compliance with the law, and public understanding of the competitive process. Through its research, advocacy, education, and policy work, the FTC seeks to promote an honest and competitive marketplace and works with foreign counterparts to harmonize competition and consumer protection laws across the globe.

The Commission pursues a vigorous and effective law enforcement program, and the impact of its work is significant. The Commission has an experienced and talented staff executing this work, but it needs the resources to support their efforts. This testimony provides a description of the agency's current budget, its budget request for fiscal year 2019, and the basis for the increase in its request. This testimony also provides a short overview of the FTC's work to protect U.S. consumers and competition, including highlights of some of the agency's major recent activities and initiatives. It also identifies certain challenges that affect the Commission's ability to protect U.S. consumers and competition to the full extent of our authority.

<sup>1</sup>This written statement presents the views of the Federal Trade Commission. My oral statement and responses to questions are my own and do not necessarily reflect the views of the Commission or of any other Commissioner.

<sup>2</sup>The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, and enforces a wide variety of other laws ranging from the Clayton Act to the Fair Credit Reporting Act. In total, the Commission has enforcement or administrative responsibilities under more than 70 laws. See <http://www.ftc.gov/ogc/stats.shtm>.

## II. BUDGET AND RESOURCES

In fiscal year 2018, the FTC's enacted budget is \$306.3 million and 1,140 FTEs. For fiscal year 2019, the FTC is requesting \$309.7 million and 1,140 FTEs. The additional \$3.4 million requested is for expert witnesses, a growing need in light of increased numbers of complex investigations and litigation in both competition and consumer protection matters. As a result, we face significantly higher costs to obtain the kinds of outside experts often needed to support our cases. For example, in competition cases we require experts to opine on such issues as the proper definition of product and geographic markets, the likelihood of entry by new competitors, and appropriate models to weigh merger efficiencies against potential competitive harm. Consumer protection cases often require experts to opine on scientific, data security and privacy, and advertising issues. Experts also are sometimes called upon to assist with proving appropriate monetary relief. It is critical that the FTC have sufficient resources to support expert work in litigation, particularly in cases against large, well-financed defendants.

The FTC's budget request assumes that total offsetting collections from Hart-Scott-Rodino Act (HSR) filing fees and Do Not Call fees will provide the FTC with \$140.4 million in fiscal year 2019, so that an estimated \$169.3 million in direct appropriations would be needed to provide the FTC with the requested amount of \$309.7 million in fiscal year 2019.

The FTC seeks to maximize its budget and uses its no-year money flexibility to manage it, but substantially increased expert costs are limiting the agency's ability to meet critical IT modernization and other investments necessary to continue to optimize operations.

The agency continues to utilize its resources effectively on behalf of American consumers. When possible, the agency collects money to return to harmed consumers. During fiscal year 2017 alone, the agency returned over \$543 million in redress to consumers and deposited \$94 million into the U.S. Treasury, reflecting collections in both consumer protection and competition matters. In addition, in fiscal year 2017, FTC orders in the *Volkswagen*,<sup>3</sup> *Amazon*,<sup>4</sup> and *Net Spend*<sup>5</sup> matters required defendants to self-administer consumer refund programs worth more than \$11.5 billion.

Each year, the agency estimates how much money it has saved consumers through law enforcement, in comparison to the FTC's costs. The FTC estimates that in fiscal year 2017 the agency saved consumers over \$3.7 billion through its competition enforcement efforts and over \$1.29 billion through its consumer protection enforcement actions.<sup>6</sup> During fiscal year 2017, the agency saved consumers over 12 times the amount of resources devoted to the consumer protection program; over 55 times the amount of resources devoted to the merger program; and more than 39 times the amount of resources devoted to the nonmerger antitrust enforcement program.

## III. CONSUMER PROTECTION MISSION

As the Nation's primary consumer protection agency, the FTC has a broad mandate to protect consumers from unfair, deceptive, and fraudulent practices in the marketplace. It does this by, among other things, pursuing law enforcement actions to stop unlawful practices, and educating consumers and businesses about their rights and responsibilities, respectively. The FTC targets its enforcement and education efforts to achieve maximum impact, which includes working closely with Federal, State, international, and private sector partners on joint initiatives. The agency also convenes workshops with various stakeholders to examine emerging consumer protection issues and releases reports on a variety of consumer protection topics. The Commission's structure, research capacity, and committed staff enable the FTC to continue to meet its mandate of protecting consumers and competition in an ever-changing marketplace. Among other issues, the FTC addresses fraud across most sectors of the economy, protects privacy and data security, and helps

<sup>3</sup>*FTC v. Volkswagen Group of America, Inc.*, No. 3:15-md-02672-CRB (N.D. Cal. May 17, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3006/volkswagen-group-america-inc>.

<sup>4</sup>*FTC v. Amazon.com, Inc.*, No. 2:14-cv-01038 (W.D. Wash. Apr. 4, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3238/amazoncom-inc>.

<sup>5</sup>*FTC v. NetSpend Corporation*, No. 1:16-cv-04203-AT (N.D. Ga. Apr. 10, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/netspend-corporation>.

<sup>6</sup>FTC Report, *Agency Financial Report for Fiscal Year 2017*, at 45 (Nov. 16, 2017) available at <https://www.ftc.gov/reports/agency-financial-report-fy2017>.

ensure that advertising claims to consumers are truthful and not misleading. Below we list some recent significant examples of the agency’s work.

#### A. *Protecting Consumers from Fraud*

A major focus of the FTC’s law enforcement is fighting fraud. The Commission’s anti-fraud program tracks down and stops some of the most egregious scams that prey on U.S. consumers—often, the most vulnerable consumers who can least afford to lose money. Below are a few examples of the variety of frauds that the Commission has recently pursued, and ways that the Commission leverages its limited resources to do so effectively.

##### 1. *Imposter Scams*

Reports about imposter scams have been on the rise over the past few years, and many of these scams target seniors.<sup>7</sup> Fraudsters falsely claiming to be government agents (including the IRS and even the FTC), family members, or well-known tech companies contact consumers and pressure them to send money, often via cash-like payment methods.

For example, during the past year, the FTC joined Federal, State, and international law enforcement partners in announcing “Operation Tech Trap,” a nationwide and international crackdown on tech support scams that trick consumers into believing their computers are infected with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs.<sup>8</sup> The FTC brought actions to shut down these deceptive operations and also developed consumer education materials to help consumers avoid falling victim to tech support scams in the first place.<sup>9</sup>

##### 2. *Emerging Frauds*

The FTC strives to stay ahead of scammers who are always on the lookout for new ways to market old schemes. For example, there has been an increase in deceptive money-making frauds involving cryptocurrencies—digital assets that use cryptography to secure or verify transactions. The Commission has worked to educate consumers about cryptocurrencies and hold fraudsters accountable. In March, the FTC halted the operations of Bitcoin Funding Team, which allegedly falsely promised that participants could earn large returns by enrolling in money-making schemes and paying with cryptocurrency.<sup>10</sup> On June 25, the FTC will host a workshop to explore how scammers are exploiting public interest in cryptocurrencies like bitcoin and Litecoin, and to discuss ways to empower and protect consumers against this growing threat of exploitation.<sup>11</sup>

##### 3. *Illegal Robocalls*

Illegal robocalls remain a significant consumer protection problem because they repeatedly disturb consumers’ privacy and frequently use fraud and deception to pitch goods and services, leading to significant economic harm. In fiscal year 2017, the FTC received more than 4.5 million robocall complaints.<sup>12</sup> The FTC is using every tool at its disposal to fight these illegal calls.<sup>13</sup> Technological advances, however, have allowed bad actors to place millions or even billions of calls, often from

<sup>7</sup> FTC Fiscal Year 2019 Congressional Budget Justification, available at <https://www.ftc.gov/reports/fy-2019-congressional-budget-justification>.

<sup>8</sup> Press Release, *FTC and Federal, State and International Partners Announce Major Crackdown on Tech Support Scams* (May 12, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/05/ftc-federal-state-international-partners-announce-major-crackdown>. “Operation Tech Trap” is just one example of a law enforcement “sweep”—coordinated, simultaneous effects. Another example of a recent sweep is “Game of Loans,” the first coordinated Federal/State law enforcement initiative targeting deceptive student loan debt relief scams. Press Release, *FTC, State Law Enforcement Partners Announce Nationwide Crackdown on Student Loan Debt Relief Scams* (Oct. 13, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/10/ftc-state-law-enforcement-partners-announce-nationwide-crackdown>.

<sup>9</sup> FTC Guidance, *Tech Support Scams* (July 2017), available at <https://www.consumer.ftc.gov/articles/0346-tech-support-scams#How>.

<sup>10</sup> *FTC v. Thomas Dluca, et al. (Bitcoin Funding Team)* No. 0:18-cv-60379-KMM (S.D.N.Y. Mar. 16, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3107/federal-trade-commission-v-thomas-dluca-et-al-bitcoin-funding>.

<sup>11</sup> FTC Workshop, *Cryptocurrency Workshop* (Apr. 30, 2018), available at <https://www.ftc.gov/news-events/events-calendar/2018/06/decrypting-cryptocurrency-scams>.

<sup>12</sup> Total unwanted-call complaints for fiscal year 2017, including both robocall complaints and complaints about live calls from consumers whose phone numbers are registered on the Do Not Call Registry, exceeded 7 million. See *Do Not Call Registry Data Book 2017: Complaint Figures for Fiscal Year 2017*, available at <https://www.ftc.gov/reports/national-do-not-call-registry-data-book-fiscal-year-2017>.

<sup>13</sup> See FTC Robocall Initiatives, available at <https://www.consumer.ftc.gov/features/feature-0025-robocalls>.

abroad, at very low costs, and in ways that are difficult to trace. This continues to infuriate consumers and challenge enforcers.

Since establishing the Do Not Call Registry in 2003, the Commission has fought vigorously to protect consumers' privacy from unwanted calls. Indeed, since the Commission began enforcing the Do Not Call provisions of the Telemarketing Sales Rule ("TSR") in 2004, the Commission has brought 135 enforcement actions seeking civil penalties,<sup>14</sup> restitution for victims of telemarketing scams, and disgorgement of ill-gotten gains against 439 corporations and 356 individuals. As a result of the 125 cases resolved thus far, the Commission has collected over \$121 million in equitable monetary relief and civil penalties.<sup>15</sup> Recently, the FTC and its law enforcement partners achieved an historic win in a long-running fight against unwanted calls when a Federal district court in Illinois issued an order imposing a \$280 million penalty against Dish Network—the largest penalty ever issued in a Do Not Call case.<sup>16</sup>

Part of the huge uptick in illegal calls, including robocalls, is attributable to relatively recent technological developments that facilitate telemarketing without requiring a significant capital investment in specialized hardware and labor.<sup>17</sup> Today, robocallers benefit from automated dialing technology, inexpensive international and long distance calling rates, and the ability to move internationally and employ cheap labor. The result: law-breaking telemarketers can place robocalls for a fraction of one cent per minute. Moreover, technological changes have also affected the marketplace by enabling telemarketers to conceal their identities when they place calls.

Recognizing that law enforcement, while critical, is not enough to solve the problem of illegal calls, the FTC has taken steps to spur the marketplace to develop technological solutions. For instance, the FTC led four public challenges to incentivize innovators to help tackle the unlawful robocalls that plague consumers.<sup>18</sup> The FTC's challenges contributed to a shift in the development and availability of technological solutions in this area, particularly call-blocking and call-filtering products.

In addition, the FTC regularly works with its State, Federal, and international partners to combat illegal robocalls. For example, this spring the FTC and Federal Communications Commission co-hosted a Joint Policy Forum on Illegal Robocalls to discuss the regulatory and enforcement challenges posed by illegal robocalls, as well as a public technology expo featuring new technologies, devices, and applications to minimize or eliminate the number of illegal robocalls consumers receive.<sup>19</sup>

<sup>14</sup>As is true of all TSR violations, telemarketers who violate the Do Not Call provisions are subject to civil penalties of more than \$40,000 per violation. 15 U.S.C. § 45(m)(1)(A); 16 C.F.R. § 1.98(d).

<sup>15</sup>See Enforcement of the Do Not Call Registry available at <https://www.ftc.gov/news-events/media-resources/do-not-call-registry/enforcement>.

<sup>16</sup>*U.S. et al. v. Dish Network, L.L.C.*, No. 309-cv-03073-JES-CHE (C.D. Ill. Aug. 10, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/052-3167/dish-network-llc-united-states-america-federal-trade>. The *Dish* litigation began in 2009 when the Department of Justice brought an action on behalf of the FTC with the States of California, Illinois, North Carolina, and Ohio alleging millions of violations of the Telemarketing Sales Rule, the Telephone Consumer Protection Act ("TCPA"), and various State Do Not Call laws by making tens of millions of calls—often robocalls—to telephone numbers on the Do Not Call Registry.

<sup>17</sup>FTC Workshop, *Robocalls: All the Rage* (Oct. 18, 2012), available at <https://www.ftc.gov/news-events/events-calendar/2012/10/robocalls-all-rage-ftc-summit>. A transcript of the workshop is available at [https://www.ftc.gov/sites/default/files/documents/public\\_events/robocalls-all-rage-ftc-summit/robocallsummittranscript.pdf](https://www.ftc.gov/sites/default/files/documents/public_events/robocalls-all-rage-ftc-summit/robocallsummittranscript.pdf).

<sup>18</sup>The first challenge, in 2013, called upon the public to develop a consumer-facing solution to blocks illegal robocalls. One of the winners, "NomoRobo," was on the market within 6 months after being named one of the winners. To date, "NomoRobo," which reports blocking over 600 million calls, is being offered directly to consumers by a number of telecommunications providers and is available as an app on iPhones. See Press Release, *FTC Announces Robocall Challenge Winners* (Apr. 2, 2013), available at <https://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners>; see also Press Release, *FTC Awards \$25,000 Top Cash Prize for Contest-Winning Mobile App That Blocks Illegal Robocalls* (Aug. 17, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-awards-25000-top-cash-prize-contest-winning-mobile-app-blocks>; Press Release, *FTC Announces Winners of "Zapping Rachel" Robocall Contest* (Aug. 28, 2014), available at <https://www.ftc.gov/news-events/press-releases/2014/08/ftc-announces-winners-zapping-rachel-robocall-contest>; Press Release, *FTC Announces Robocall Challenge Winners* (Apr. 2, 2013), available at <https://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners>.

<sup>19</sup>See Press Release, *FTC and FCC to Host Joint Policy Forum on Illegal Robocalls* (Mar. 22, 2018), available at [www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-host-joint-policy-forum-illegal-robocalls](http://www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-host-joint-policy-forum-illegal-robocalls); Press Release, *FTC and FCC Seek Exhibitors for an Expo Featuring*

### B. Protecting Consumer Privacy and Data Security

The FTC has unparalleled experience in consumer privacy enforcement. The Commission has used its core enforcement authority—Section 5 of the FTC Act—to take action against companies engaged in unfair or deceptive practices involving the privacy and security of consumers’ information.<sup>20</sup> The FTC also enforces sector-specific statutes that protect certain health,<sup>21</sup> credit,<sup>22</sup> financial,<sup>23</sup> and children’s information.<sup>24</sup>

Some of the FTC’s privacy enforcement priorities include financial privacy, children’s privacy, health privacy, the Internet of Things, and data security. Ongoing work includes investigations of Facebook’s privacy practices<sup>25</sup> and the Equifax data breach. These kinds of large and complex investigations underscore the need for resources. In January, the Commission issued its annual report summarizing its privacy and data security work in 2017.<sup>26</sup> Below are a few highlights of the Commission’s recent work.

Financial privacy has long been an area of particular emphasis for the FTC. For example, the FTC alleged that online tax preparation service TaxSlayer violated the Gramm-Leach-Bliley Act’s Safeguards Rule by, among other things, failing to implement adequate risk-based authentication measures and failing to require consumers to choose strong passwords.<sup>27</sup> The FTC alleged that malicious hackers were able to gain full access to nearly 9,000 TaxSlayer accounts between October 2015 and December 2015 and use that information to engage in tax identity theft, which allowed them to obtain tax refunds by filing fraudulent tax returns.

The Commission also takes seriously its commitment to protect children’s privacy, which continues to be a focus of the FTC’s enforcement efforts. In the Commission’s first children’s privacy case involving Internet-connected toys, the FTC announced a settlement with electronic toy manufacturer VTech Electronics for violations of the Children’s Online Privacy Protection Rule, including a civil penalty of \$650,000.<sup>28</sup> The FTC alleged that the company collected children’s personal information online without first obtaining parental consent, and failed to take reasonable steps to secure the data it collected.<sup>29</sup>

The FTC has also continued to focus on privacy and data security involving the Internet of Things. For example, last year Vizio, one of the world’s largest manufacturers and sellers of Internet-connected smart televisions, agreed to pay \$2.2 million to settle charges that it installed software on its televisions to collect the viewing data of 11 million consumers without the consumers’ knowledge or consent.<sup>30</sup> Additionally, the FTC co-hosted with the National Highway Traffic Safety Administration a workshop on privacy and security issues posed by automated and connected motor vehicles.<sup>31</sup>

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*Technologies to Block Illegal Robocalls* (Mar. 7, 2018) available at [www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-look-for-exhibitors-expo-featuring-technologies-block-illegal](http://www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-look-for-exhibitors-expo-featuring-technologies-block-illegal).

<sup>20</sup> 15 U.S.C. § 45(a).

<sup>21</sup> 16 C.F.R. Part 318.

<sup>22</sup> 15 U.S.C. §§ 1681–1681x.

<sup>23</sup> 16 C.F.R. Part 314, implementing 15 U.S.C. § 6801(b).

<sup>24</sup> 15 U.S.C. §§ 6501–6506; see also 16 C.F.R. Part 312.

<sup>25</sup> Statement by the Acting Director of FTC’s Bureau of Consumer Protection Regarding Reported Concerns about Facebook Privacy Practices (Mar. 26, 2018), available at <https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection>.

<sup>26</sup> FTC Report, *Privacy & Data Security Update: 2017* (Jan. 2018), available at <https://www.ftc.gov/reports/privacy-data-security-pdate-2017-overview-commissions-enforcement-policy-initiatives> (hereinafter “2017 Privacy & Security Update”).

<sup>27</sup> *TaxSlayer, LLC*, No. C-4626 (Nov. 8, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3063/taxslayer>.

<sup>28</sup> *U.S. v. VTech Electronics Ltd. et al.*, No. 1:18-cv-00114 (N.D. Ill. Jan. 8, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3032/vtech-electronics-limited>. See also *U.S. v. Prime Sites, Inc. also d/b/a Explore Talent*, No. 2:18-cv-00199 (D. Nev. Feb. 12, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3218/prime-sites-inc-explore-talent>.

<sup>29</sup> In addition to law enforcement, the FTC also undertakes policy initiatives, such as its recent workshop co-hosted with the Department of Education on educational technology and student privacy. See *Student Privacy and Ed Tech* (Dec. 1, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/12/student-privacy-ed-tech>.

<sup>30</sup> *VIZIO, INC. and VIZIO Inscape Services, LLC*, No. 2:17-cv-00758 (D.N.J. Feb. 6, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3024/vizio-inc-vizio-inscape-services-llc>.

<sup>31</sup> FTC Workshop, *Connected Cars: Privacy, Security Issues Related to Connected, Automated Vehicles* (June 28, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/06/connected-cars-privacy-security-issues-related-connected>.

Data security continues to be a crucial part of the FTC's privacy work. To date, the Commission has brought more than 60 cases alleging that companies failed to implement reasonable safeguards for the consumer data they maintain.<sup>32</sup> For example, the Commission recently announced an expanded settlement with ride-sharing platform company Uber Technologies related to allegations that the company failed to reasonably secure sensitive consumer data stored in the cloud.<sup>33</sup> As a result, an intruder accessed personal information about Uber customers and drivers, including more than 25 million names and email addresses, 22 million names and mobile phone numbers, and 600,000 names and driver's license numbers. The FTC also reached a settlement with one of the world's largest computer manufacturers, Lenovo, related to allegations that the company pre-loaded software onto some of its laptops that compromised security protections in order to deliver ads to consumers.<sup>34</sup>

As the United States' leading privacy enforcement agency, the Commission is committed to the success of the EU-U.S. Privacy Shield framework, a critical tool for protecting privacy and enabling cross-border data flows. We have brought enforcement actions to enforce it and will continue to do so when participants fail to meet their legal obligations. The Commission will continue to work with other agencies in the U.S. Government and with our partners in Europe to ensure businesses and consumers can continue to benefit from the Privacy Shield.

The Commission is aware that Congress has long considered whether to adopt comprehensive data security legislation. The agency stands ready, willing and able to work with Congress on that issue.

Finally, the Commission supports its vital enforcement work with privacy and security research. For example, in February, the FTC held its third annual PrivacyCon, a conference examining cutting-edge research and trends in protecting consumer privacy and security.<sup>35</sup> The FTC also held a conference to examine how identity theft has evolved over the last decade and what we can do to address the challenges it poses.<sup>36</sup> And in December, the Commission held a workshop to examine consumer injury in the context of privacy and data security.<sup>37</sup>

### C. Truthfulness in National Advertising

Ensuring that advertising is truthful and not misleading has always been one of the FTC's core missions because it allows consumers to make the best use of their resources and allows companies to compete on a level playing field. Below are a few recent examples of the Commission's work in this area.

This past year, the agency has continued to bring cases challenging false and unsubstantiated health claims, including those targeting older consumers, consumers affected by the opioid crisis, and consumers with serious medical conditions. The Commission has brought cases challenging products that claim to improve memory and ward off cognitive decline, relieve joint pain and arthritis symptoms, and even reverse aging.<sup>38</sup> The Commission also has sued companies that allegedly claimed, without scientific evidence, that using their products could alleviate the symptoms

<sup>32</sup>2017 Privacy & Security Update, *supra* n.26.

<sup>33</sup>*Uber Technologies, Inc.*, Matter No. 1523054 (Apr. 11, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3054/uber-technologies-inc>. Following the announcement of last year's original proposed settlement, the Commission learned that Uber had failed to disclose a significant breach of consumer data that occurred in 2016—in the midst of the FTC's investigation that led to the August 2017 settlement announcement. Due to Uber's misconduct related to the 2016 breach, Uber will be subject to additional requirements. Among other things, the revised settlement could subject Uber to civil penalties if it fails to notify the FTC of certain future incidents involving unauthorized access of consumer information.

<sup>34</sup>*Lenovo, Inc.*, No. C-4636 (Jan. 2, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3134/lenovo-inc>.

<sup>35</sup>This year's event focused on the economics of privacy including how to quantify the harms that result from companies' failure to secure consumer information, and how to balance the costs and benefits of privacy-protective technologies and practices. FTC Workshop, *PrivacyCon 2018* (Feb. 28, 2018), available at <https://www.ftc.gov/news-events/events-calendar/2018/02/privacycon-2018>.

<sup>36</sup>FTC Workshop, *Identity Theft: Planning for the Future* (May 24, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/05/planning-future-conference-about-identity-theft>.

<sup>37</sup>FTC Workshop, *Informational Injury* (Dec. 12, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/12/informational-injury-workshop>.

<sup>38</sup>*See, e.g., FTC and State of Maine v. Health Research Laboratories, Inc.*, No. 2:17-cv-00467 (D. Maine Nov. 30, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3021/health-research-laboratories-llc>; *Telomerase Activation Sciences, Inc. and Noel Thomas Patton*, No. C-4644 (Apr. 19, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3103/telomerase-activation-sciences-inc-noel-thomas-patton-matter>.

of opioid withdrawal and increase the likelihood of overcoming opioid dependency.<sup>39</sup> Finally, the Commission recently barred a marketer from making deceptive claims about its products' ability to mitigate the side effects of cancer treatments.<sup>40</sup>

When consumers with serious health concerns fall victim to unsupported health claims, they may put their health at risk by avoiding proven therapies and treatments. Through consumer education, including the FTC's advisories, the agency urges consumers to check with a medical professional before starting any treatment or product to treat serious medical conditions.<sup>41</sup>

#### *D. Consumer Education and Outreach*

Public outreach and education is another critical element of the FTC's efforts to fulfill its consumer protection mission. The Commission's education and outreach programs reach tens of millions of people each year through our website, the media, and partner organizations that disseminate consumer information on the agency's behalf. The FTC delivers actionable, practical, plain language materials on dozens of issues, and updates its consumer education whenever it has new information to share. The FTC disseminates these tips through articles, blog posts, social media, infographics, videos, audio, and campaigns such as "Pass It On"—an innovative means of arming older consumers with information about scams that they can "pass on" to their friends and family.<sup>42</sup>

### IV. COMPETITION MISSION

The Commission seeks to promote competition through vigorous law enforcement, a robust policy and research agenda, and international cooperation and coordination.

#### *A. Enforcement*

The FTC enforces U.S. antitrust law in many sectors that directly affect consumers and their pocketbooks, such as healthcare, consumer products and services, technology, manufacturing, and energy. The Commission shares Federal antitrust enforcement responsibilities with the Antitrust Division of the U.S. Department of Justice.

One of the agencies' principal responsibilities is to prevent mergers that may substantially lessen competition. Under U.S. law, parties to certain large mergers and acquisitions must file premerger notification and wait for government review. Over the past five fiscal years, premerger filings under the Hart-Scott-Rodino Act have increased more than 50 percent; in the most recent fiscal year, the antitrust agencies received over 2000 HSR filings for the first time since 2007.<sup>43</sup> The vast majority of reported transactions do not raise competitive concerns, and the agencies clear those transactions expeditiously. However, when the evidence gives the Commission reason to believe that a proposed merger would likely be anticompetitive, the Commission has intervened. Since the beginning of fiscal year 2016, the Commission has challenged 45 mergers after the evidence showed that they would likely be anticompetitive.<sup>44</sup> Although many of these cases are resolved via divestiture settlements, in the last year alone, the Commission voted to initiate litigation to block seven mergers, each of which has required a significant commitment of resources to prosecute. Three of those challenges ended successfully when the parties abandoned the transaction after the Commission initiated litigation.<sup>45</sup> The four other

<sup>39</sup> *FTC v. Catlin Enterprises, Inc.*, No. 1:17-cv-403 (W.D. Tex. May, 17, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/1623204/catlin-enterprises-inc>. In addition, in conjunction with the FDA, the FTC recently issued letters to companies that appeared to be making questionable claims to sell addiction or withdrawal remedies. *FTC and U.S. FDA Opioid Warning Letters* (Jan. 24, 2018), available at <https://www.ftc.gov/ftc-fda-opioid-warning-letters>.

<sup>40</sup> *FTC v. CellMark Biopharma and Derek E. Vest*, No. 2:18-cv-00014-JES-CM (M.D. Fla. Jan. 12, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3134/cellmark-biopharma-derek-e-vest>.

<sup>41</sup> FTC Consumer Blog, *Treatments and Cures*, at <https://www.consumer.ftc.gov/topics/treatments-cures>.

<sup>42</sup> See Pass It On, [www.consumer.ftc.gov/features/feature-0030-pass-it-on#identity-theft](http://www.consumer.ftc.gov/features/feature-0030-pass-it-on#identity-theft).

<sup>43</sup> In fiscal year 2017, the agencies received notice of 2,052 transactions, compared with 1,326 in fiscal year 2013 and 2,201 in fiscal year 2007. For historical information about HSR filings and U.S. merger enforcement, see the joint FTC/DOJ Hart-Scott-Rodino annual reports, available at <https://www.ftc.gov/policy/reports/policy-reports/annual-competition-reports>.

<sup>44</sup> During the same time period, the Antitrust Division challenged an additional 43 mergers.

<sup>45</sup> *FTC v. DraftKings, Inc.*, No. 17-cv-01195 (D.D.C. Jun. 19, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/161-0174/draftkings-fanduel-ftc-state-california-district-columbia-v>; Press Release, *FTC Challenges Proposed Acquisition of Conagra's Wesson Cooking Oil Brand by Crisco owner, J.M. Smucker Co.*, (Mar. 5, 2018), available at <https://www.ftc.gov/news-events/press-releases/2018/03/ftc-challenges-proposed-acquisition-conagras>.

merger cases are still being litigated.<sup>46</sup> In addition, Walgreens substantially restructured its proposed acquisition of Rite Aid after the Commission raised concerns about the original transaction during an extensive review.<sup>47</sup>

The Commission also maintains a robust program to identify and stop anti-competitive conduct, and it currently has a number of cases in active litigation.<sup>48</sup> For over twenty years and on a bipartisan basis, the Commission has prioritized ending anticompetitive reverse-payment patent settlements in which a brand-name drug firm pays its potential generic rival to delay entering the market with a lower cost generic product. Following the U.S. Supreme Court's 2013 decision in *FTC v. Actavis, Inc.*,<sup>49</sup> the Commission is in a much stronger position to protect consumers. Since that ruling, the FTC obtained a landmark \$1.2 billion settlement in its litigation involving the sleep disorder drug, Provigil,<sup>50</sup> and other manufacturers have agreed to abandon the practice.<sup>51</sup> In addition, the Commission has challenged other anticompetitive conduct by drug manufacturers, such as abuse of government process through sham litigation or repetitive regulatory filings intended to slow the approval of competitive drugs.<sup>52</sup> The Commission also obtained a stipulated injunction in which Mallinckrodt ARD Inc., agreed to pay \$100 million and divest assets to settle charges that it had illegally acquired the rights to develop a drug that threatened its monopoly in the U.S. market for a specialty drug used to treat a rare seizure disorder afflicting infants.<sup>53</sup>

The Commission also follows closely activity in the high-technology sector. From smart appliances and smart cars to mobile devices and search platforms, the widespread use of technology and data is not only changing the way we live, but also the way firms operate. While many of these changes offer consumer benefits, they also raise complex and sometimes novel competition issues. Given the important role that technology companies play in the American economy, it is critical that the Commission—in furthering its mission of protecting consumers and fostering competition—understand their developing technologies and scrutinize their conduct to ensure that they abide by the same rules of competitive markets that apply to any company.

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wesson-cooking-oil; *In re CDK Global & Auto/Mate*, Dkt. 9382 (Mar. 20, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/171-0156/cdk-global-automate-matter>.

<sup>46</sup> *FTC v. Sanford Health, et al.*, No. 1:17-cv-00133 (W.D.N.D. Jun. 23, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/171-0019/sanford-health-ftc-state-north-dakota-v>; *In re Tronox Ltd.*, Dkt. 9377 (Dec. 5, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcrystal-usa>; *In re Otto Bock HealthCare North America, Inc.*, Dkt. 9378 (Dec. 20, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/171-0231/otto-bock-healthcarefreedom-innovations>; *FTC v. Wilhelmsen et al.*, No. 1:18-cv-00414 (D.D.C. Feb. 23, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/171-0161/wilhelm-wilhelmsen-et-al-ftc-v>.

<sup>47</sup> See Statement of Acting Chairman Maureen K. Ohlhausen in Walgreens Boots Alliance/Rite Aid, (Sept. 19, 2017), available at <https://www.ftc.gov/public-statements/2017/09/statement-acting-chairman-maureen-k-ohlhausen-walgreens-boots-alliancerite>.

<sup>48</sup> In addition to the cases involving pharmaceutical firms discussed *infra*, pending litigation alleging anticompetitive conduct includes *FTC v. Qualcomm, Inc.*, No. 17-cv-00220 (N.D. Cal. Jan. 17, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/141-0199/qualcomm-inc>; *In re 1-800 Contacts, Inc.*, Dkt. 9372 (Aug. 8, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/141-0200/1-800-contacts-inc-matter>; *In re Louisiana Real Estate Appraisers Board*, Dkt. 9374 (May 31, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/161-0068/louisiana-real-estate-appraisers-board>; and *In re Benco Dental Supply et al.*, Dkt. 9379 (Feb. 12, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0190/bencoscheinpatterson-matter>.

<sup>49</sup> *FTC v. Actavis, Inc.*, 570 U.S. 756 (2013).

<sup>50</sup> Press Release, *FTC Settlement of Cephalon Pay for Delay Case Ensures \$1.2 Billion in Ill-Gotten Gains Relinquished; Refunds Will Go To Purchasers Affected by Anticompetitive Tactics* (May 28, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-settlement-cephalon-pay-delay-case-ensures-12-billion-ill>.

<sup>51</sup> Joint Motion for Entry of Stipulated Order for Permanent Injunction, *FTC v. Allergan plc*, No. 17-cv-00312 (N.D. Cal. Jan. 23, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/allergan-plc-watson-laboratories-inc-et-al>, and Stipulated Order for Permanent Injunction, *FTC v. Teikoku Pharma USA, Inc.*, No. 16-cv-01440 (E.D. Pa. Mar. 30, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/endo-pharmaceuticals-impax-labs>.

<sup>52</sup> *FTC v. Abbvie Inc.*, No. 14-cv-5151 (E.D. Pa. Sept. 8, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/121-0028/abbvie-inc-et-al>; *FTC v. Shire ViroPharma Inc.*, No. 17-cv-131(D. Del. Feb. 7, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/121-0062/shire-viropharma>.

<sup>53</sup> Stipulated Order for Permanent Injunction and Equitable Monetary Relief, *FTC v. Mallinckrodt ARD Inc.*, No. 1:17-cv-00120 (D.D.C. Jan. 30, 2017).

### B. Policy and Research

To complement our enforcement efforts, the FTC pursues a robust competition policy and research agenda to improve agency decisionmaking, and engages in competition advocacy and education initiatives. The FTC promotes competition principles in advocacy comments to State lawmakers and regulators as well as our sister Federal agencies. The FTC also organizes public workshops and issues reports on important topics, such as a recent workshop on prescription drug distribution practices,<sup>54</sup> several workshops concerning occupational licensing reform,<sup>55</sup> and an upcoming event on competition among residential real estate brokers.<sup>56</sup> Last year, the Commission concluded a comprehensive review of its merger remedies to evaluate the effectiveness of the Commission's orders issued between 2006 and 2012, and made public its findings.<sup>57</sup> Examining prior enforcement efforts to assess their impact on competition and consumers is critical to formulating an effective and efficient antitrust enforcement program, and the Commission will continue these self-assessment efforts in order to deploy our resources where they can do the most good.

### C. International Engagement and Collaboration

With the expansion of global trade and the operation of many companies across national borders, the FTC and the Antitrust Division of the U.S. Department of Justice increasingly engage with foreign antitrust agencies to ensure close collaboration on cross-border cases and convergence toward sound competition policies and procedures.<sup>58</sup> The FTC effectively coordinates reviews of multijurisdictional mergers and continues to work with its international counterparts to achieve consistent outcomes in cases of possible unilateral anticompetitive conduct. The U.S. antitrust agencies facilitate dialogue and promote convergence through multiple channels, including through strong bilateral relations with foreign competition agencies, and an active role in multilateral competition organization projects and initiatives. When appropriate, we also work with other agencies within the U.S. Government to advance consistent competition enforcement policies, practices, and procedures in other parts of the world.<sup>59</sup>

## V. CONCLUSION

The FTC remains committed to maximizing its resources to enhance its effectiveness in protecting consumers and promoting competition, to anticipate and respond to changes in the marketplace, and to meet current and future challenges. We look forward to continuing to work with the subcommittee and Congress, and we would be happy to answer your questions.

Senator LANKFORD. Thank you.

We'll go to a time of questioning. I do want to remind Members that we have an 11:15 vote, and so I'm going to watch the clock pretty carefully. We're going to go through as many rounds as we have time for, but I'll be attentive to make sure as many people get in their questions before the 11:15 time.

Chairman Pai, let me ask you a little bit about the IT modernization that you're working through right now. Give me the specifics on it, what you're trying to do. Are you dealing with legacy issues

<sup>54</sup> FTC Workshop, *Understanding Competition in Prescription Drug Markets: Entry and Supply Chain Dynamics* (Nov. 8, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/11/understanding-competition-prescription-drug-markets-entry-supply>.

<sup>55</sup> See, e.g., Press Release, *FTC Announces Second Economic Liberty Public Roundtable* (Sept. 11, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/09/ftc-announces-second-economic-liberty-public-roundtable>.

<sup>56</sup> FTC Workshop, *What's New in Residential Real Estate Brokerage Competition* (Jun. 5, 2018), available at <https://www.ftc.gov/news-events/events-calendar/2018/04/whats-new-residential-real-estate-brokerage-competition-ftc-doj>.

<sup>57</sup> FTC Staff Report, *The FTC's Merger Remedies 2006–2012: A Report of the Bureaus of Competition and Economics* (2017), available at [https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100\\_ftc\\_merger\\_remedies\\_2006-2012.pdf](https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100_ftc_merger_remedies_2006-2012.pdf).

<sup>58</sup> In competition matters, the FTC also seeks to collaborate with the State attorneys general to maximize results and use of limited resources in the enforcement of the U.S. antitrust laws.

<sup>59</sup> For example, we work through the United States Government's interagency processes to ensure that competition-related issues that also implicate broader U.S. policy interests, such as the protection of intellectual property and non-discrimination, are addressed in a coordinated and effective manner.

that won't be an issue in the future? Is this moving beyond where you are? Help us understand that a little better.

Mr. PAI. Thank you for the question, Chairman Lankford. We are requesting an increase of approximately \$8 million to upgrade our IT systems. Those upgrades consist of, basically, two different buckets. One is systems, I guess you would say, and the other is applications.

One example of the systems that we are looking to upgrade involves the Disaster Information Reporting System—or DIRS. This has been critical during hurricane season, for example, to allow the Commission and the public and the Congress to know where the outages might happen if a hurricane or other natural disaster comes through. That system is in need of upgrade, and that's what some of the funding will go to.

#### BROADBAND FORM 477

An example of the application that we are looking to upgrade involves broadband form 477. This is the information that we get to the FCC that allows us to know where the digital divide is existing and where it is not. And to be able to upgrade the user interface in order to make it more user friendly and more responsive to us is going to be critical.

So, those are the kinds of IT upgrades that might involve an upfront investment. But, in the long run, there will be a big payoff, we believe, in terms of saving the Congress money and in providing benefits to the public.

Senator LANKFORD. Okay. Let me get some clarifying questions in here, as well, on the Restoring Internet Freedom Order, which takes effect on June 11, 2018. At this point, what do you think is the FCC's role, going forward, dealing with the Order?

#### TRANSPARENCY

Mr. PAI. Senator, I think the decision that we have made is that the best approach is the light-tough approach that started with the Clinton administration in 1996 and that extended until 2015. And we had a decision to make based on the facts and the record. We decided to institute an enhanced transparency requirement along with Federal Trade Commission enforcement to protect the core values that I believe in and that I completely agree with Senator Coons on. We want a free and open Internet, and we want the incentive to innovate and to invest, going forward.

Senator LANKFORD. Transparency has been a major piece, and there's been multiple lawsuits that have gone for several years dealing with the FCC, making sure that they have that authority to deal with the transparency aspect. What do you think that transparency looks like in the days ahead dealing with Internet service providers or content providers, edge providers?

Mr. PAI. So, our rules with respect to transparency only extend to Internet service providers. We don't have authority over edge providers, like some of the companies that the Federal Trade Commission might regulate. But, with respect to Internet service providers, we have been very clear that they have to disclose any manner of business practices that are outlined in our order. If they do

not do that, it is an FCC violation, and we will pursue it aggressively.

Senator LANKFORD. Chairman Simons, dealing with this issue on restoring Internet freedom, obviously the authority comes back to FTC, where it was in the past, up until 2015. Does the FTC have what it needs to be able to protect both the consumers and deal with inappropriate trade practices in the days ahead dealing with Internet service providers?

#### RESOURCES AND AUTHORITY

Mr. SIMONS. Senator, thank you for the question. I believe we do have the resources and the capability, but we are conducting an inventory at the present just to make sure and confirm that that is the case. I've also talked to Chairman Pai, who confirms for me that, to the extent we need additional resources, particularly technical resources, that he is willing and able to help us.

Senator LANKFORD. Dealing with transparency issues for the edge providers, for the content providers, do you have what you need, as far as regulatory authority?

Mr. SIMONS. I think we can—we're in the same position we were in 2015.

Senator LANKFORD. Right.

Mr. SIMONS. So, to that extent, yes. However, as I mentioned in my oral remarks, I think it might—we want to take a close look at whether we need additional authority in the privacy and data security area, particularly as regards to our ability to get remedial relief.

Senator LANKFORD. Okay. But, that's on the content providers, the edge providers, not the Internet service providers.

Mr. SIMONS. It would be on both.

Senator LANKFORD. On both? Okay. Terrific.

Mr. SIMONS. Yes.

Senator LANKFORD. I want to be able to drill down on that a little bit.

I'm going to recognize Senator Coons for his questions, and be able to keep going, but I want to come back and be able to follow up on that, as well.

Senator COONS. Thank you, Chairman Lankford.

Let me sort of follow up on that, if I might.

#### NET NEUTRALITY

Chairman Simons, would you agree that paid prioritization, blocking, throttling, practices by Internet Service Providers (ISPs) that may advantage or disadvantage access to particular parts of the Internet could be seen as unfair practices?

Mr. SIMONS. Under the right circumstances, yes.

Senator COONS. And so, are you confident that the FTC, should you end up in the place where you are the principal provider of a guarantee of a free and open Internet, you feel you have the authorities you need to do that? And, if not, you'll come back to us and seek legislation that would clarify exactly what the regulatory framework needs to be?

## UNFAIRNESS AUTHORITY

Mr. SIMONS. Yes, absolutely, sir.

Senator COONS. Given a hearing that we had yesterday on the Judiciary Committee about Cambridge Analytica and Facebook, I'm increasingly concerned that the average consumer doesn't really understand the scope and the potential reach of personally identifying information of remarkable complexity and breadth for them to be able to give meaningful consent. And, in recent years, the Commission has successfully used its Section 5 unfairness authority to require companies both to take reasonable cybersecurity measures to protect consumers' personal information, but also, I think, could do more in order to protect consumers to ensure that they have a knowing engagement in the use of their personally identifying information.

Tell me, if you would, about how the Commission has used its unfairness authority to protect consumer privacy and whether you think, going forward, the FTC might make greater use of that unfairness authority to protect consumers and their privacy.

Mr. SIMONS. So, we've brought a bunch of cases involving consumer privacy. There's a VTech case involving toys interconnection. There's a VIZIO case involving television. There is a TaxSlayer case involving tax returns. So, we're active in this area. This is a priority for us. And I'm working with the staff to make sure it remains a priority.

Senator COONS. Well, I look forward to remaining in contact with you, because I think most Americans aren't aware of the scope of the data breaches that are happening with regularity and of the breadth and depth of personally identifying information that is now being routinely mined in order to, you know, target advertising to them, which, in some ways, is positive—

Mr. SIMONS. Yes.

Senator COONS [continuing]. Or that might be unreasonably manipulative. So, I think we have some important work to do together on that.

## MEDIA OWNERSHIP

Chairman Pai, if I might, the FCC's current media ownership rules limit any broadcaster from reaching, if I understand correctly, more than 39 percent of the country, to ensure independence and variety. But, the FCC is moving to reinstate the UHF discount, which has an impact on these requirements and is also considering a merger between Sinclair and Tribune, which, if approved, could create a massive broadcast group with access to more than 72 percent of all U.S. households, dwarfing all other current media owners. Do you believe the 39-percent limit should still be in place? And my understanding is that the UHF discount is currently being reviewed by the D.C. Circuit. Will you wait for a decision by the D.C. Circuit before proceeding?

Mr. PAI. Senator, thanks for the question. Two different components to the answer.

So, with respect to what I think the national cap should be, that is the subject of a pending proceeding. We are still receiving inputs, and we haven't yet made a determination, one way or the other.

And this has obviously been the subject of some litigation and consideration of the Commission for—

Senator COONS. Some controversy.

Mr. PAI [continuing]. For many years.

With respect to the merger, itself, and how it might interplay with that proceeding, I can't forecast. The transaction itself has been on hold—the shot clock, as it's called, has been on hold since approximately January 14 of 2018. And so, we don't have any pre—we don't have any determination as to what that timeframe might be for restarting it and how it might interplay with this pending proceeding.

Senator COONS. So, what are the factors the FCC should consider when reviewing it? And I don't think I got a clear answer to whether you'd proceed without a decision by the D.C. Circuit with—

Mr. PAI. Oh, I'm sorry. Yes, I forgot the D.C. Circuit decision. So, there, too, we haven't—we have to make a decision based on the facts that are in front of us. We don't know if and when the D.C. Circuit is going to rule in the near term, and so it's difficult to forecast how we should make a decision based on what the D.C. Circuit might do. But, you know, forecasting from an oral argument, as you know, is—always involves some uncertainties.

And the next question was with the factors that we would—

Senator COONS. Yes.

Mr. PAI [continuing]. Consider with respect to the merger to the proceeding.

Senator COONS. The merger, in terms of concentration. And, you know, one critically impacts the other. If the UHF rule is allowed to apply to this particular merger, then there might be an outcome that I think allows greater concentration than I, at least, would be comfortable with, not being an FCC Commissioner, myself.

Mr. PAI. I think you've done fairly well, Senator, for yourself.

But, I think, with respect to the factors that we would consider, I would refer back to the original answer I gave when I was a nominee on November 30, 2011, before this body. We take the facts that are before us, we apply the law faithfully, and we determine whether the consummation of that transaction would be in the public interest. And so, some of the concerns that you and other Members have outlined are some of the things that we have to take into account.

At the end of the day, the public interest is served with a vibrant, competitive broadcasting business, and that is the polestar that we abide by.

Senator COONS. Well, I hope competitiveness and consumer interests end up remaining the polestar.

Thank you very much, Chairman Pai.

Mr. PAI. Absolutely.

Senator COONS. Thank you, Chairman.

Senator LANKFORD. Senator Daines.

Senator DAINES. Thank you, Chairman Lankford, Ranking Member Coons, for holding this hearing. And congratulations on your new chairmanship, there, Mr. Chairman. When I grow up, I want to be you.

Senator LANKFORD. Yes, sure.

Senator DAINES. I want to thank Chairman Pai and Chairman Simons for coming here today, and congratulate Chairman Simons for your recent confirmation. I truly look forward to working with both of you regarding the concerns on Montana. I would love to have you both back out in the State. I know Chairman Pai has been out there before.

#### 5G WIRELESS NETWORKS

Chairman Pai, I recently returned from leading a congressional delegation to China. I lead a delegation there every year. I spent 5 years working there with Proctor & Gamble, back in the 1990s. I fear that we are losing the race to 5G. The United States led, and we won, the race to 4G, but I am concerned that we are falling behind.

One of the big obstacles is access to spectrum. China has the ability to set aside large swaths of prime spectrum, while the United States has difficulty opening up even modest amounts of prime 5G spectrum. My question is, What is the Commission doing to deal with this very important issue and ensure the United States remains the worldwide leader?

Mr. PAI. Senator, thank you for the question and for your advocacy in favor of U.S. leadership in 5G. That is a goal that I share. We want the U.S. to be the haven of innovation and investment when it comes to 5G, just as it was for 4G. But, other countries, as you've seen in your travels, have seen the success that we have in 4G; they want to claim that for themselves in the next generation.

So, here are some of the things that the FCC is doing to maintain U.S. leadership in 5G. First, we have scheduled 5G spectrum auctions. We're going to conduct the 28 gigahertz auction in November, followed immediately by the 24 gigahertz auction. Just yesterday, I announced, and today I will be publishing, my plan to get additional spectrum out into the commercial marketplace, looking at the lower 37 gigahertz band, for example, where we would resolve some issues and set up a band plan and explore different sharing protocols.

Additionally, we are—I'm proposing to my colleagues, and, if they agree, we will, in fact, make available more spectrum in the 26 and 42 gigahertz bands. And so, we are taking action there to make sure that more flexible wireless-use spectrum is made available. We are moving as quickly as we can on the spectrum front to make sure that we set the stage, so to speak, so that innovators and entrepreneurs can take advantage of it.

#### RURAL BROADBAND

The infrastructure piece is also critical, though. The 5G networks of the future are going to look very different from the 4G networks, with macro cell-site towers and the like. So, the unspoken part of the 5G equation, I think, is that infrastructure policy needs to be modernized, as well, to make sure that small cells, for example, face streamlined regulatory reviews and that getting more fiber in the ground, especially in rural areas, is something that—

Senator DAINES. Yes, and that's on the rural side of it, particularly in the 3-and-a-half-gigahertz spectrum.

Mr. PAI. Right.

Senator DAINES. That's very important to rural communities. We want them—don't want them overlooked.

What's the status of that Notice of Proposed Rulemaking (NPRM)? And can you commit to working with all stakeholders to make sure that rural areas, like rural Montana, are not left behind?

Mr. PAI. Absolutely, Senator. And I've seen some of those rural areas in your State, and I understand how important it is for them to have wireless service. I have delegated the leadership on this issue to Commissioner O'Reilly. I understand that he's meeting actively with stakeholders. I, myself, can commit to you that I'd be willing to work with you and any other stakeholders who might be interested in making sure that this 3-dot-5 gigahertz spectrum is used for the benefit—

Senator DAINES. Yes. And the stakes, again, are so high. I—just looking—I think—I fear complacency right now in the United States regarding the challenges of China and their innovation ecosystem. I started the morning, here, a couple of weeks ago in Shanghai, went to grab a cup of coffee at Starbucks, the largest Starbucks in the world. They're opening up one new Starbucks every 15 hours in China. I tried to pay with some Chinese Renminbi (RMB). They looked at me, like, "Why are you using cash?" I said, "Well, I could use a credit card." "Why are you using a credit card?" It's cashless, it's credit-cardless, it's all done on the phone, here—

Mr. PAI. Exactly.

Senator DAINES [continuing]. With Chinese apps Alipay and WeChat, so forth.

Chairman Pai, I believe it's important we prioritize our unserved areas before upgrading areas that already have access. There are many communities in Montana that still lack any access to broadband. And I believe that we should use the limited amount of Federal money that we have, such as Rural Utilities Service (RUS) and Universal Service Fund (USF) funds, to build out broadband to these unserved communities. Do you agree that we should limit wasting taxpayer dollars overbuilding networks and, instead, use those funds for our unserved communities?

Mr. PAI. I absolutely agree with you, Senator. I think it's not just Congress's expectation, but it's the American public's expectation, that we will stretch these scarce Federal funds as far as possible. And that means not overbuilding. If there is private investment in an area, or where the Government is already subsidizing one competitor, we need to be able to target the unserved areas, the parts of Montana and the country that are off the grid, on the wrong side of the digital divide, to make sure as many Americans as possible get access.

Senator DAINES. Thank you.

#### CHILDREN'S PRIVACY

Chairman Simons, I recently introduced the bipartisan Safe Kids Act, which would ensure that our children's privacy is protected. Unfortunately, we've seen an increase in online platforms misusing our personal information and breaking the trust of the American

people. Do you agree that children's privacy is a unique issue and that we should have added protections online to keep our kids safe?

Mr. SIMONS. I do, sir. I do. Absolutely, Senator.

Senator DAINES. Mr. Chairman, I'm out of time. Thank you.

Senator LANKFORD. Thank you.

Mr. Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman. And congratulations, Mr. Chairman, on taking over the chairmanship of this subcommittee.

Welcome, to both of you.

And I want to start by associating myself with the comments of the Ranking Member, Senator Coons, both with respect to net neutrality. As you know very well, we had a vote in the House yesterday, 52 to 47, overturning the rule—here in the Senate. That will go to the House. And, you know, we're hoping the House follows the Senate lead. We're going to have to agree to disagree with you on that. I also agree with Senator Coons about the concerns on consolidation of media ownership.

#### RURAL BROADBAND

My questions really relate to broadband deployment in rural areas. The FCC has its annual 706 broadband deployment report. You and the Commission have been considering looking at mobile and, sort of, fixed terrestrial as just one category, which, in my view, would ignore the important distinctions. Congressman Andy Harris and I wrote to you about this. And I want to thank you for deciding, in the end, to go ahead with continuing to look at both mobile and fixed terrestrial separately. I think, when it comes to things like telemedicine, public schools, and other schools, there are really important differences.

So, can you tell us today that, for the remainder of your tenure, you will continue to provide that sort of distinct reporting for mobile and fixed terrestrial?

Mr. PAI. Thank you, Senator, for the question. I think Congress has charged us with annually taking a look, under Section 706, of whether advanced telecommunications capability is being advanced throughout the country. And so, that requires a contemporaneous look at the evidence from that year. And so, I can't forecast into the future, but what I can say is that we always have our eye on making sure that broadband, both mobile and fixed, gets into all parts of the country. And that's why our lead proposal—

Senator VAN HOLLEN. And I assume, from the decision you made this year, that you recognize the important distinction, in terms of the capabilities provided, mobile versus fixed terrestrial—

Mr. PAI. Without question, Senator. That's why our lead proposal was—

Senator VAN HOLLEN. Yes.

Mr. PAI [continuing]. To maintain that 25-megabit standard to—

Senator VAN HOLLEN. Yes.

Mr. PAI [continuing]. Look at fixed broadband. But, we want to understand how consumers use mobile broadband so that—you know, for example, in our mobile policies, we're making sure that we keep up with where consumers want the mobile Internet to be.

Senator VAN HOLLEN. Got it.  
Rural healthcare program.

Mr. PAI. Yes.

Senator VAN HOLLEN. As you know, in 2016, I think we hit the first year where the \$400 million cap was exceeded. There was more demand than the \$400 million would provide. I believe—well, I don't—a big, large group of bipartisan—a group of Senators wrote to you, just within the last couple of weeks—

Mr. PAI. Yes.

#### TELEMEDICINE

Senator VAN HOLLEN [continuing]. Asking for you to raise the cap. So, my question to you is, Do you agree that we need to raise the cap in order to meet the telemedicine and other needs in these rural areas?

Mr. PAI. Senator, while I can't say exactly what the number should be, I can say that I do support increasing the program. I think that this is one of the critical programs within the Universal Service Fund, and it's often one that gets overlooked, even though telemedicine, as you point out, is a game changer, especially in some of these rural communities. I was, just a few weeks ago, in Scottsville, Kentucky, and I saw how telemedicine, for the first time, is allowing kids in Allen County schools to see an expert at Vanderbilt University's Children's Hospital; whereas, previously, there's not a single pediatrician in the entire county. That is significant, and that is something that the rural healthcare program that we administer should try to support.

Senator VAN HOLLEN. Great. Because in Maryland, University of Maryland Medical System, for example, as hospitals on the Eastern Shore and those kind of telemedicine services are essential. And this shortfall as a result of the cap is really compromising their ability to provide those services.

Mr. PAI. If I can make one quick plug.

Senator VAN HOLLEN. Sure.

Mr. PAI. So, we can, obviously, increase the amount of the cap. One of the things that we can't do is take—make any tweaks to interstate licensing, especially in a State like Maryland, which, of course, borders other States. One of the things I've heard from telemedicine practitioners is that that—those barriers in terms of State-by-State licensing—

Senator VAN HOLLEN. Yes.

Mr. PAI [continuing]. Are holding telemedicine back.

Senator VAN HOLLEN. That's—

Mr. PAI. That's something that Congress—

Senator VAN HOLLEN [continuing]. Good to know. No, we'll follow that. And do you have the budget authority to do—if you raise the cap, you already have the budget authority to do this, right?

Mr. PAI. Correct. Yes, we do.

Senator VAN HOLLEN. Okay.

Mr. PAI. Yes.

#### PAY FOR DELAY SCHEMES

Senator VAN HOLLEN. Chairman Simons, a quick—pay-for-delay. This came up in your confirmation hearing. I think Senator

Klobuchar asked you about it. Do you agree that these pay-to-play schemes, where you have a brand-name pharmaceutical essentially paying off a generic, is anticompetitive and anticonsumer?

Mr. SIMONS. Well, they certainly can be. And the FTC has a long history of enforcement matters involving these pay-for-delay schemes, even before I was at the FTC the last time—so, that was in 2001 to 2003. And that priority for us has continued up to the present.

Senator VAN HOLLEN. So, yes, and I appreciate that. I know you bring cases. But, I also know you asked the—a previous FTC asked the court for the authority to just sort of say these are, on their face—

Mr. SIMONS. Oh.

Senator VAN HOLLEN. So, we're going to have—we have legislation. Will you work with Senator Klobuchar and I and others to pass legislation to just put an end to this practice?

Mr. SIMONS. I'm certainly happy to work with you, absolutely.

Senator VAN HOLLEN. Okay. And I have some other questions, I guess I'll submit for the record—

Senator LANKFORD. Go ahead—

Senator VAN HOLLEN [continuing]. Regarding—

Senator LANKFORD. No, you need to stay in, because myself and the Ranking Member are going to do some follow-on questions, as well—

Senator VAN HOLLEN. Okay, great.

Senator LANKFORD [continuing]. But, if you want to—

Senator VAN HOLLEN. Thank you. I appreciate that.

#### DATA BREACHES

The other question has to do with data security and breaches. We just saw this huge Equifax breach. I know that Equifax had been under, I think, a 5-year consent order. I don't know exactly what you called it.

Mr. SIMONS. Facebook, right?

Senator VAN HOLLEN. No—

Mr. SIMONS. Facebook has been under a—

Senator VAN HOLLEN. I think Equifax had been, as well—

Mr. SIMONS. Oh, yes.

Senator VAN HOLLEN [continuing]. Because of their sale of some mortgage data that violated the rules.

Anyway, my question to you is that—what are you doing to get to the bottom of these incredible data breaches, which, in the case of Equifax, reportedly compromised the personal information of over 143 million Americans? My understanding is, you don't have supervisory authority, you only have, sort of, enforcement authority. Is that right?

Mr. SIMONS. That's right. The Consumer Financial Protection Bureau (CFPB) has supervisory authority.

Senator VAN HOLLEN. Is there a way that you can step up—especially in the case of Equifax, where you have a 5-year agreement, and the breach happened in March of last year, during the pendency of that agreement—can you use that as a mechanism to get under the hood and figure out what's happening?

Mr. SIMONS. Yes. For an existing order, we have the ability to go in and make sure that they are complying. So, there's an obligation, as a general matter in our existing orders, that the companies make available to us the ability to come in, talk to us, and provide information that we need to make sure that they are complying with the order.

Senator VAN HOLLEN. And are—in terms of the Equifax data breach, are you investigating that? Are you looking into that?

Mr. SIMONS. Yes. There is a—I mean, we've publicly announced that there is a major ongoing investigation into that breach, yes.

Senator VAN HOLLEN. All right.

Mr. SIMONS. So, we're heavily focused on that.

Senator VAN HOLLEN. Thank you.

Thank you, Mr. Chairman.

Senator LANKFORD. I want to recognize the Vice Chairman of the full committee, Senator Leahy.

Senator LEAHY. Well, thank you very much, Mr. Chairman.

And it is interesting. It was commented at the last hearing I was at, that was going on in the Appropriations Committee. Senator Shelby and I are trying to make the Committee work, and we have a whole lot of Committee meetings going on at once, so I apologize for coming in late.

#### NET NEUTRALITY

But, Chairman Pai, I did want to come here, because I disagree with many of the decisions you've made at the FCC. I also am concerned about the tone you've adopted. I think you've shown contempt for the public through your decisions. You ignored the overwhelming public support—I mean, I've never seen such overwhelming public support—for net neutrality. You've gone against the will of Congress by seeking to undermine media ownership rules. You've engaged in blatantly partisan activity. You mock those who disagree with you in what I think are ill-advised attempts at what you may think is humor.

Too many people in the administration sometimes forget they serve all Americans, not just one person. And perhaps appearances at partisan political events and posting insulting videos with alt-right activists will ingratiate you to President Trump, but I think we have to remember, Democrats, Republicans, everybody else, we serve a higher call, and that's the American people.

So, you have repeatedly stated that repealing net neutrality will lead to more investment by ISPs, particularly in rural parts of the country. The office has gone so far as to assert as fact that repeal will bring more service to underserved Americans while at the same time lowering the cost of their monthly bill.

I hope you can provide Vermonters, in a largely rural State, who overwhelmingly support net neutrality, with some specific data to show exactly how this new investment you claim will take place will benefit them. Because I've held hearings there with people from large businesses and small businesses, all of whom support net neutrality.

So, let me ask you this question. Within 1 year of repeal, how many currently underserved or unserved Vermonters will gain access to service due solely to private investment? Within 1 year.

Mr. PAI. Senator, we can't forecast what the specific number will be, but we know the number will be higher than—who have access, in part because of our ConnectAmerica Fund auction, the Mobility Fund auction, and the other steps we are taking—

Senator LEAHY. Higher by what percent? Five percent? Ten percent? Fifty percent? What?

Mr. PAI. It's difficult to say, Senator, but we have seen an uptick in last year alone. There has been preliminary evidence that there has been a substantial increase in capital expenditures. We hope that trend continues for Vermonters and folks around the country.

Senator LEAHY. Last year, in Vermont?

Mr. PAI. In 2017, around the country, on an aggregate national basis.

Senator LEAHY. But not in Vermont.

Mr. PAI. We don't have that specific data, but I'd be happy to work with you on it.

Senator LEAHY. How—within 1 year of repeal, how many Vermonters will have seen their broadband bill reduced, relative to what they are currently paying?

Mr. PAI. There, too, Senator, we can't forecast with precision, of course, where the state of the world might be, but the general trend, we think, is going to be better, faster, cheaper broadband, in part because we're introducing more competition and access.

Senator LEAHY. Okay. Then, as a general thing, nationwide, what percentage—

Mr. PAI. There, too, we can't—

Senator LEAHY [continuing]. Would be reduced?

Mr. PAI [continuing]. Give you a specific number, but I can tell you that we will see more competition nationwide, and not just from the traditional wireline companies that most people know. I've approved, under my leadership, the first net—non-geostationary satellite companies, getting more fixed wireless companies, promoting more small wireless companies, like VTel, in places like Vermont, to make sure they get access to the spectrum they need to connect Vermonters.

#### MOBILITY FUND

Senator LEAHY. Well, I mean, these are generalities, but they don't really answer the question. For example, I looked at the eligibility map the FCC put out in advance of the upcoming Mobility Fund auction. Now, I realize that's an initial breakdown of eligible areas, but the map of Vermont's coverage doesn't even pass the laugh test. I was born in Vermont. I know the State. Now, do you agree that the data underlying your maps has serious flaws that need to be corrected?

Mr. PAI. Oh, Senator, there's no question that we want the map to be robust, but that, to do so, we need to have a challenge process to identify flaws in the map. And that's why we've invited States and localities, the Farm Bureau, in Kansas, for example, others, to challenge it, to make sure we get an accurate picture of—

Senator LEAHY. Well, have you ever been to Vermont?

Mr. PAI. I have, yes.

Senator LEAHY. Have you ever tried to make a phone call, driving around in rural areas?

Mr. PAI. It's been a while. I'm sure I tried, at some point. But, I have certainly done it in many parts of the country where you get few, if any, bars on your phone.

Senator LEAHY. Well, I think the map you have may undercut the number of unserved households by nearly 20,000 people. Now, that may not seem like a lot in some places. In our State, that is a lot of people. I—

Mr. PAI. Absolutely.

Senator LEAHY. I can't—and I realize my time is up, but, Mr. Chairman, I just cannot tell you the concerns I have in the—people coming up to me in the grocery store or on the street and everything else in Vermont, Republicans and Democrats alike, who are really concerned about your chairmanship and your unresponsiveness to the public comments you've gotten on this issue.

Thank you, Mr. Chairman.

#### BROADBAND MOBILE ACCESS/MOBILITY FUND

Senator LANKFORD. Chairman Pai, let me follow up on the Mobility Fund II and the map that's out there and the challenge process. We want to be able to dive into that a little bit, as well. Because, Vice Chairman Leahy was talking about it in Vermont. In Oklahoma, there are sections that I can look at on the map, as well, that I know full well there's no cell service there, and certainly not broadband mobile access in those areas. Help me understand this—the challenge process, as I understand it, a company that wants to challenge and says, “No, this is an unserved area,” can challenge it. They're going to have to pay for the process to be able to go through and evaluate it on their own to bring the data. And then there'll be a bidding for that area then. And, of course, they're now bidding against other companies who didn't pay for the challenge, but now that's open. So, literally, the company that's challenging it seems to be disadvantaged in the bidding process, as well, because they've already invested money, and their competitors haven't invested money in it. Am I tracking that correctly or not tracking that correctly?

Mr. PAI. Well, Senator, so there are some nuances here that I should mention. So, one is, of course, to step back for a second, we started with a bespoke data collection. If we had started with the data collection that we had when I came into office, then essentially every carrier could just say, “Well, we cover the entire State of Oklahoma.” No one would second-guess it. That's point one, which I think should be mentioned, that we required them to use a similar technical parameter in running predicted coverage. And so, that's why we came up with the map we did.

In addition to that, I instructed the staff to come up with a second map, identify also those areas where there is only one unsubsidized competitor, because that allows companies like the one in your hypothetical to target those areas that are ripe for challenge.

In addition to that, we recognize that some companies, especially the smaller companies or companies that are serving rural areas, may not have the wherewithal to do a full challenge. So, we've empowered State and local governments to be able to challenge, as well.

Additionally, we issued, a few weeks ago, a waiver to the Kansas Farm Bureau, just as one example, that would allow them to challenge. Because, if you think about it, if you're a farmer who is not on a road, you are keenly aware of the fact that there's not as much coverage, but the carrier that could serve that area may not know all the details. And so, the Farm Bureau, I think, is a good way to—

Senator LANKFORD. Okay.

#### MOBILITY FUND

Mr. PAI [continuing]. To leverage that. So, essentially, getting as many people as possible into the arena, so to speak, to tell us where the coverage is not will help us direct Mobility Funds to where coverage should be.

Senator LANKFORD. So, do you think there is enough time for them to be able to do that? That is, by the way, a very good idea for the States, the counties, the Farm Bureaus—

Mr. PAI. Absolutely.

Senator LANKFORD [continuing]. Everybody else to be able to track it. So, my understanding is, is—by the end of this year, they have to have that challenge information in, and that it's a 10-year process, then, after that. Is that—am I tracking that correctly?

Mr. PAI. It's 150-day challenge process. And off the top of my head, I believe it ends in August. I might have that wrong. It started a couple of months ago.

Senator LANKFORD. Yes.

Mr. PAI. In addition to that, the FCC staff is—that is running these auctions, they're doing road shows, so to speak, so they've been in New Hampshire, West Virginia, Mississippi, and we've set up all these forums to make sure that people understand. Additionally, we're doing webinars to get people up to date and informed about these issues. And we want to move as quickly as we can, but we also want to make sure that everybody is fully informed. And that kind of balance is often difficult to strike.

Senator LANKFORD. So, the question will be, is—when you get to that spot, is there a need to be able to extend that out and say, "If we run out of time and we're still getting challenges in, if additional Farm Bureaus step up and say, 'Yeah, I want to be able to step into this, as well,' or additional States or counties are learning through the process and jumping in"—do you think there might be a need to be able to extend the time, to be able to make sure we get it all in?

Mr. PAI. I believe we do have some flexibility, in terms of how far—an extension of time. I will say, however, we also don't want to delay the Mobility Fund auction too late, because we have a window for doing it, considering some of the other auctions we're holding. So, we—there's some give in the system, but—

Senator LANKFORD. No, I get it. Because, again, in areas where the challenges are resolved, they're not wanting a delay, they're wanting service.

Mr. PAI. Exactly.

Senator LANKFORD. They're wanting to be able to get it moving. That makes complete sense, and I get that.

Mr. PAI. Yes.

Senator LANKFORD. Okay. Well, great.

Senator Coons, do you have additional questions, as well?

Senator COONS. On that specific issue, if I might.

#### BROADBAND ACCESS

Crowd sourcing, I thought, had played a role, early on, in making sure that broadband access mapping was adequate. Is there a role for crowd sourcing in making sure that there are current validated maps that are more accurate?

Mr. PAI. Absolutely, Senator. The best—the FCC analog to crowd sourcing in this context is the app that we have set up. Anybody can download the app for free. And, essentially, when you click on the app, you can then do a test, a speed test, to determine between 6:00 a.m. and 12:00 a.m. whether you have coverage in your particular area. Once you complete the test, then that information is essentially uploaded, and then the FCC can aggregate it and determine, okay, these five consumers, 30 miles outside of Wilmington, didn't have coverage at this particular time. We know, okay, this is an area that there might be a problem. That is, essentially, the way, in addition to the challenges I described to Senator Lankford.

Senator COONS. How broadly has that app been used? Because I've found that a fascinating—when I first heard about it, I thought that was a fascinating application—

Mr. PAI. Yes.

Senator COONS [continuing]. Of crowd sourcing to use just average citizens to field test what providers are saying is their access levels.

Mr. PAI. I can get back to you.

[The information follows:]

#### BACKGROUND ON THE FCC SPEED TEST APP FOR IPHONE EXPANDS OPTIONS FOR MOBILE BROADBAND PERFORMANCE INFORMATION

The blog releasing the system can be found at this link: <https://www.fcc.gov/news-events/blog/2014/02/25/fcc-speed-test-app-iphone-expands-options-mobile-broadband-performance>.

The FCC released the android app in late 2013 and the IOS version early the following year.

Over 200,000 people downloaded the app, but as the app is anonymized, it is difficult to say how many individuals ran tests.

We developed the app to protect privacy and worked with members of the FTC and ISPs on our privacy policy.

The android app runs autonomously and therefore generates more information than the IOS app which must be initiated by the end user. This is a constraint of the IOS operating system.

We have recorded many millions of tests with the assistance of volunteers.

The app is currently given a 4/5 stars on the Google Play store. We hope to release a newer version later this year or early next year.

Mr. PAI. I don't know the specific numbers on how many have downloaded the app and how many have used it, but I do know that it's being used actively. Our own staff has said that, additionally, carriers—smaller carriers have been using it to institute their own challenge evidence.

Senator COONS. Interesting.

## ROBOCALLS

If I might, Chairman Simons, on robocalls, I think all Americans are fed up with robocalls. As I was trying to get some sleep, just last night, I got a 10:00 p.m. call that seemed to be from my home State, home exchange. And so, I answered it and was greeted with a delightful solicitation.

[Laughter.]

Senator COONS. I didn't listen long enough, but it sounded like it was going to be for a cruise, maybe for a timeshare. You know, I commend you for the work that the FTC's done, that you've done in this area, and I understand that evolving technologies by robocallers make this job difficult. An appeals court recently overruled a portion of the FTC's recent rule in this area. Will that decision have an impact on the FTC's ability to move forward? And how do you see the path forward on appropriately allowing access to folks who want who want to solicit for business while protecting Americans' privacy?

Mr. SIMONS. So, I think the—so, let me say that I think the case you're talking about involved a part of our authority, and left most of it untouched, but I'd want to—I would need to talk to the staff in more detail to have a better understanding of that.

In terms of going forward—so, I think what it is, is—I think it's really a technological solution that needs to be had in order to stop the calls that you get and I get. And my wife is just all over me about this, believe me, so this is front and center in my mind.

Senator COONS. Your number-one constituent.

Mr. SIMONS. Yes.

[Laughter.]

Mr. SIMONS. And my most important constituent, exactly.

So, I think, though, that what's important here is that there's got to be some kind of a technological solution. So, that's why we encouraged or sponsored this contest, with prize money, for innovators to develop technological solutions. And there are some on the market, and they're working fairly well. They're generally with—applicable to cellphones, the mobile phones. But—so, that's the type of thing. And I know that Chairman Pai, who could, I'm sure, discuss this in a lot more—with a lot more knowledge than I could, is looking at the technological solutions on his side. And we are talking to him about those, as well.

Senator COONS. Chairman Pai.

Mr. PAI. Senator, I share your frustration and Chairman Simons' wife's frustration. I seem to be either the luckiest person on Earth, given how many Marriott vacations I've won, or I'm getting robocalled like crazy.

So, we are taking a number of steps in order to tackle this problem. On the front end, so to speak, we recently approved an industry-led standard to develop a call-authentication standard, essentially a digital fingerprint for every phone number, so that when you get that number on your phone, even if it's not programmed in, you can know this is a genuine number that's assigned to a genuine person who's entitled to use it.

Secondly, we have also empowered carriers to block numbers that are spoofed, in some cases, that are clearly invalid or have not been assigned to an actual human person.

Additionally, we are taking steps to make sure that we establish a reassigned numbers database so that, if a legitimate business—the local pharmacy or school or whatever—wants to call you, and your number has, unbeknownst to them, been reassigned, they can consult that database so that they don't bother the new recipient of that number with anything—with a call that they don't want.

On the back end, so to speak, we've been very aggressive in terms of enforcement. Just a few weeks ago, we imposed the largest fine in the FCC's history, \$120 million, against a Florida robocaller who unleashed 96 million robocalls in the last 3 months of 2016. We have other enforcement actions in the pipeline, which I can't necessarily speak about, for obvious reasons.

And I personally have raised this issue with some of my counterparts. I've had a very fruitful discussion with the Chairman of India's Telecommunications Regulatory Authority, or TRAI, and I said, "Look, a lot of cases, the—our law enforcement authority in the U.S. extends no further than our borders. We know that some call centers are located in your country. Could you please help us, sharing resources to be able to tackle this problem?" He and others have been very cooperative, and hopefully we can begin to tackle this problem into the time to come.

And I know Congress has been very supportive, as well, with legislative fixes. For example, to extend certain statutes of limitations that make it very difficult to prosecute some of the bad actors. And if that's something of interest, we would love to work with you on it. Time is not on the side of consumers, who are just getting sick of these calls.

Senator COONS. That is a genuine interest, and I would appreciate a chance to hear from and work with both of you on this.

Three more questions, if I might, Mr. Chairman, and then I'm—

I'd be interested, Chairman Pai, just in hearing about the 911 call location accuracy proceeding that the FCC needs to compete—complete—where it is, what it is, what challenges might remain.

#### EMERGENCY CALLS

Mr. PAI. So, this is a critical part of the 911 system, as you know. The most important thing we hear from public safety when they get a 911 call is to understand, "Where are you?" And location accuracy, especially as calls become wireless, as some 70 to 80 percent of the typical call center will field—of the calls going into a call center will be wireless now. So, we want to make sure that location accuracy is robust as possible. I believe, by August of 2018, the industry is due to come back to us with a consensus plan on what the location accuracy standards will be. We will then evaluate those plans, determine whether they are sufficient. And we are always going to be encouraging companies to be more forward-thinking.

Although it doesn't necessarily relate to location accuracy, I will also emphasize that we have made steps to make sure that wireless emergency alerts are more targeted, that they are as robust as

possible so that we don't blanket the entire State of Delaware, for example, with an alert that probably should be located similar—just in Dover. And that's another thing that we want, to make sure that our public safety communications are localized so that people get information that's relevant to them.

Senator COONS. That transitions nicely to my next question. I was interested in the hurricane recovery work you mentioned in your—

Mr. PAI. Yes.

Senator COONS [continuing]. Prepared Statement, the Connect USVIA Fund and a Uniendo a Puerto Rico Fund.

Mr. PAI. Yes.

Senator COONS. I'd be interested in hearing about that. My—having visited both Puerto Rico and the Virgin Islands, you know, connectivity was not terrific before the hurricanes. You know, these communities have suffered dramatically. I think our response to the hurricane impact in Puerto Rico, it was woefully behind. I'd be interested in hearing more about what FCC is doing to invest, and noted that, without receiving specific hurricane funds, FCC professionals engaged and were proactively involved in restoring telecommunications to the island. I'd be interested in hearing more about that.

Mr. PAI. Thank you for this question, Senator. I personally visited Puerto Rico in November. I again went to Puerto Rico and the Virgin Islands in March. I have spoken repeatedly to Governor Roseo of Puerto Rico and the—spoken to the telecommunications authority there, and many, many other stakeholders. I've stood in the muck of Utuado, a small rural town in western Puerto Rico, and I've seen utility poles that were snapped like matchsticks, fiber that is laying on the ground, decrepit, and people who are struggling to get energy back in some of their communities.

That has imbued me and our agency with a sense of mission. We have never forgotten the people of Puerto Rico or the Virgin Islands, and I'm pleased to report, as I said in my opening statement, that we have adopted, although not yet released—hopefully, that'll happen soon—my plan to extend \$954 million of relief to the people of those two territories. This will involve short-term relief to make sure that wired and wireless networks get up and running, but we also want to tackle some of the long-term problems.

#### EMERGENCY SERVICE

As you pointed out, the infrastructure there had some issues before Hurricanes Irma and Maria. Our goal is not simply to restore those networks to where they were, but essentially to make them future-proof so that, as we enter the next hurricane season, which starts only 2 weeks from now, they can take advantage of next-generation technologies in a much more sustainable way.

There are other issues that we have been doing, too. We have approved experimental licenses, for example, to Google for Project Loon to be able to beam Internet access without having to have fixed infrastructure on the land, like a fiber line. Other things that we've done, as well, to extend deadlines for carriers so that they don't have to worry about filling out FCC paperwork, they can focus on connecting people, as well. And there are other issues in-

volving healthcare institutions and healthcare—and educational institutions, be happy to work with you on.

But, I can tell you that this has been front and center for me from the day Irma made landfall, and we'd be happy to keep you apprised as things develop, about our progress.

Senator COONS. Well, that's great work. Thank you. And I'd look forward to hearing more about it.

#### NET NEUTRALITY

Let me just close with a general—a series of questions for both of you, since I think the average American is unclear about where net-neutrality-related regulation actually falls. What's the path forward, how is this going to happen in a way that matters for them? Would each of you say that you agree that Americans should have reasonable access to the same high-quality Internet services and that the Government has a role to ensure that Internet service providers can't slow down certain content or block certain websites or effectively create fast or slow lanes?

Mr. PAI. Absolutely, yes.

Mr. SIMONS. Yes, I would agree with that, certainly to the extent that it's caused by anticompetitive conduct.

Senator COONS. And are you committed to working together in a responsible, consultative way to make sure that we can guarantee to all Americans that there isn't anticompetitive conduct by ISPs or by edge providers that would lead to the sorts of activities—throttling or paid prioritization lanes or a lack of transparency—that would genuinely affect their ability to access the Internet in the way they've become used to?

Mr. SIMONS. Yes, Senator.

Mr. PAI. Yes, Senator. And, as Chairman Simons has pointed out, we have a memorandum of understanding that formalizes that relationship. And I've personally spoken with Chairman Simons about this issue.

Senator COONS. I look forward to working with both of you to make sure that net neutrality is a reality for the average American. I don't think most of my constituents have followed the details of the very lengthy back-and-forth, in terms of which agency ends up exactly with the regulatory responsibility. I think it falls on us, in Congress, to work in a responsible and a measured and bipartisan way, and with you, as the regulators, to make sure that the experience of the average American is unchanged, going forward.

Thank you very much, to both of you.

Mr. SIMONS. Thank you, Senator.

Senator LANKFORD. Thank you. And I would share that most people that I talk to on net neutrality, they assume, because FCC is not going to do any more, that no one will, and they don't realize that FTC will then take this on. And then the FTC had it, 2015 and before, all the way back to when Al Gore invented the Internet, all the way back to the start.

[Laughter.]

Senator LANKFORD. So, just a little fun there. Yes. I know. I know. He's a smart guy.

I have a series of questions I want to be able to bounce off of you, as well.

#### CONTACT LENS RULE

For Chairman Simons, this is an area that's been discussed for a long time. It's the wonderful contact-lens rule that's out there that has hung on for so long and has increased in complexity, and there's a lot of competition. Forty million users of contact lenses all raise their hand at some point and say, "Hey, we want to make this as simple as possible," and there are thousands of different providers. Give us an update where things are and how we can make sure that whatever is in force has the least amount of burden possible on both the consumer and on optometrists.

Mr. SIMONS. Yes, thank you, Senator.

So, the rule is currently under review. We've taken a large number of comments in April. The staff is going through the comments and preparing a recommendation, which I don't know the timing on. I have to check with them on that. But, hopefully very soon.

Senator LANKFORD. Is the comment period closed at this point, so comments are all in?

Mr. SIMONS. I believe that's true.

Senator LANKFORD. Okay.

Mr. SIMONS. I believe that's true. And so, I completely agree with you that we don't want to do anything that puts an undue burden on providers or physicians and, in the end, comes back to actually bite the consumer. On the other hand, we want to make sure that there is effective and efficient compliance with the rule.

Senator LANKFORD. Right. Okay. And would expect that to be finalized, or at least the ruling to come out, when?

Mr. SIMONS. I'd have to check and get back to you.

[The information follows:]

The Federal Trade Commission (FTC) received thousands of public comments on its proposed amendment to the Contact Lens Rule after the conclusion of the comment period on January 30, 2017, and thousands more in response to the public workshop the FTC held in March 2018. Accordingly, FTC staff is reviewing the additional comments and intends to make a recommendation to the Commission by the beginning of 2019.

Senator LANKFORD. Okay, that's fine. Then we'll follow up from that one.

Tell me about—you had a request for an increase in your budget, based on expert—

Mr. SIMONS. Yes.

Senator LANKFORD [continuing]. Witnesses.

Mr. SIMONS. Yes.

Senator LANKFORD. Tell us a little bit about that and why—I read, in your written testimony, some of the details on that—help us understand why this is an increasing issue.

#### EXPERT WITNESSES

Mr. SIMONS. Sure. So, the Federal Trade Commission is experiencing a very, very high level of litigation. We have—it's not like we have a big blip in enforcement matters, but we have a big blip in matters that actually go to litigation. And, in addition to that, the litigation is more complex—has become more complex over

time, which requires more expert testimony, more expert analysis, and that drives up—that’s what’s driving up the costs.

Senator LANKFORD. Okay. Would you expect that this is a cost needed this year, the next year, or do you anticipate this is a sudden rush of a large number of cases with increased complexity, and so it’s a 1- or 2-year bump?

Mr. SIMONS. That’s a good question. It really depends on whether our increased litigation is going to have a deterrent effect and cause future companies to maybe be more willing to settle.

Senator LANKFORD. Okay.

Mr. SIMONS. So, I think companies, over the recent past, have been interested in litigating and challenging our ability there. And so, it depends on the extent to which we end up having to go to litigation in—going out into the future.

Senator LANKFORD. Okay, thank you.

I do want to associate myself with everything that Senator Coons said about robocalls. Both of your entities have a role in that, in helping determine, how do we actually solve that? The Do Not Call List provided a great deal of joy for most Americans, and then now the robocalls are all attacking their systems. And so, I understand that completely, that this is an issue that we have to be able to resolve, long term.

Let me move on, as well, to talk about pharmacy benefit managers.

Mr. SIMONS. Yes.

#### PHARMACY BENEFIT MANAGERS

Senator LANKFORD. This has been an issue with both the mergers. Several insurance companies have now purchased pharmacies to be able to acquire the pharmacy benefit manager in the middle. That is pushing people, especially in rural areas that used to use an independent pharmacy in a rural area, now the cost increases for that, because their insurance company owns a pharmacy company in another town, and now they’re being pushed to say, “You’ve either got to mail order or go over there,” to make it much more difficult for the consumer. Tell me how that is going right now with the discussions on mergers and with oversight on anti-competitive issues.

Mr. SIMONS. Right. So, as you know, there is—there are—is an existing merger that’s being reviewed by the Justice Department.

Senator LANKFORD. Right.

Mr. SIMONS. And so, I don’t want to comment on that, other than to say that we’re really not involved, as a general matter, although, if the Justice Department asks us, we would provide some of our expertise to them, because the FTC has a lot of expertise with respect to the pharmacy business.

In terms of the PBMs and the concentration issue, that’s one of the things I mentioned actually during my confirmation, that I’m interested—my confirmation hearings—that I’m interested in exploring. We want to do some retrospectives. We want to see if, in fact, the calls we made previously were the right calls. And we also want to look forward from that time to see if, in fact, there are things going on that we need to address.

Senator LANKFORD. I think during the national conversation with the Epipen, a lot of people learned for the first time what a pharmacy benefit manager makes and how this works in the system, and were a little shocked at the process. And that has been a much larger conversation that's been an ongoing dialogue in Congress for a while, but it is becoming more of a public conversation now.

Mr. SIMONS. Yes. Yes. That whole process is a little opaque, and we need to—I think it would be helpful to shine a little light on it.

Senator LANKFORD. Would be helpful.

Chairman Pai, let me come back to a conversation you and I have had for several years now about Lifeline and about access, whether that be tribal access, where we gain access to individuals that are in the Lifeline program. Those who should be in the Lifeline program, versus those who should not, that we're not getting good documentation for. We don't have good followup, we have a popup tent showing on a street corner, providing free cellphones, but they're not actually checking information, there's not a fixed setting there, historically. Where are we now on dealing with Lifeline to make sure that we maintain the program, but we also maintain its validity? And then, where do you see the next step for it?

#### LIFELINE REFORMS

Mr. PAI. Senator, we are moving forward on some of our Lifeline reforms. For example, with respect to areas of interest to Oklahoma, we have made sure that we target the funding for Enhanced Lifeline, Tribal funding, to areas that are non-metropolitan. So, for example, the metropolitan area of Tulsa, which is one of the top 15 markets in the United States, has relatively robust communications competition and services the low prices. But, we want to make sure that Lifeline funding is more targeted to the rural areas of Oklahoma, to folks who are on the wrong side of the digital divide.

Also, we want to make sure that we enhance the incentive of facilities-based providers to build out networks in those areas, especially rural and Tribal areas. That is where I think the long-term benefit could be had, and that's where I think Lifeline funding could be extremely useful.

We're also stepping up the national verifier and working with the Universal Service Administrative Company to make sure that the—that electronic tool is up and running as soon as possible, in six States by the end of the year. And we're taking other steps, as well, to make sure that every dollar that's spent in this program goes to somebody who is in need, as opposed to a company that's looking to fleece the system.

Senator LANKFORD. Right. So, the verifier has been an ongoing conversation for several years at this point. Six States by the end of the year. Where does it go from there, and what's the speed of use?

Mr. PAI. Hopefully, assuming the first six States go well, we will be able to ramp up very quickly. And, in 2019, hopefully we'll be able to add more States to that tally.

Senator LANKFORD. Okay.

## CONTRABAND CELLPHONES

Let me talk about something, again, you and I have talked about before, and that is contraband cellphones in correctional facilities. You and I have both discussed this face to face, and have exchanged letters on this back and forth. We've talked to the communications industry, as well, about it. There are some ongoing meetings about this, but this is a very serious issue of contraband cellphones getting into correctional facilities and then literally running criminal organizations from inside of the prisons. So, where are we on this? Catch me up on all the different dialogues, because there seems to be a lot of task-force working for quite a few years now in different forms. When do we move from task force to implementation?

Mr. PAI. Absolutely, Senator. And when I first raised this issue a couple of years ago, I was shocked at the problem. And I think the average American would be shocked to know how widespread this problem is and what the public safety threats to it can be.

So, in February, I convened a meeting with all of the stakeholders—wireless companies, correctional officials, solutions providers, State and local officials, and me personally there—for an entire afternoon, hashing out a lot of the issues that needed to be hashed out.

One of the outgrowths of that was that there is now a working group consisting of the wireless industry and correctional officials. They met on April 30, and they narrowed down a lot of the issues, agreed to certain protocols for things like testing of microjamming, essentially jamming within a very tiny area—geographic area within a prison. Some of that testing hopefully will move forward.

Additionally, I have personally been working with, and my staff has been working with, the Department of Justice, because, in many cases, under the law as it stands, the Department of Justice is the one that has to authorize States to engage in certain jamming and other trials and the like. And that process is moving forward quickly.

So, it's a frustrating issue. I know that progress is never as quick as we want it to be. Every day, or every month, it seems like there's a new story about somebody using a contraband cellphone for violent crimes or even for scams, as you—

Senator LANKFORD. Right.

Mr. PAI [continuing]. Pointed out.

Senator LANKFORD. Or for—

Mr. PAI. We want to—

Senator LANKFORD [continuing]. Or for stalking someone that—they stalked someone outside of the prison, they're imprisoned, and they're still stalking them inside the prison.

Mr. PAI. Absolutely. I've been to a maximum security facility in Georgia, where the officials told me that, in many cases, the prisoners know about a transfer to that prison or from that prison before the officials do, because they are all keeping in touch on cellphones.

Senator LANKFORD. So, give me a best guess on time, on when we're trying to actually move to implementation on some of these areas. And, by the way, there's great mercy from this dialogue—

from this dais, how long things take. If anyone knows they take way too long, it would be Members of Congress working through the process. But, help us understand the process now. When will we start to actually implement putting tests in place and being able to distribute this? And is there something you need from us, legislatively?

Mr. PAI. So, as to the first, we have put that question to the working group. We obviously can't fiat that they will come to a consensus solution, but we have encouraged them to try to come to that solution as quickly as possible. And we're grateful, following from the April 30 meeting, they agreed to certain things, in terms of the trials on microjamming and the like. Be happy to get some more particulars to you, if that would be useful to you and the Members of the subcommittee.

[The information follows:]

Testing Results can be found at:

<https://www.justice.gov/opa/pr/bureau-prisons-tests-micro-jamming-technology-federal-prison-prevent-contraband-cell-phones>.

FCC Response to the issue:

"We are pleased that industry and corrections officials came together today to agree on actionable steps to find a solution to the use of illegal cellphones in prisons, which is a major threat to the safety of correctional facility employees, other inmates, and the public. The FCC has relentlessly pushed to identify new technology solutions to legally address this urgent problem, including convening the first working group meeting this year of state correctional agencies, public safety officials and the wireless industry."

The Cellular Telecommunications Industry Association & Association of State Correctional Administrators released a joint statement following the meeting the April Meeting:

"ASCA and CTIA are committed to protecting the public from the dangers posed by contraband cellphones in the hands of prison inmates. We welcome the FCC's continued focus on this problem and today's task force meeting marked the beginning of an important partnership. It's clear there's no easy answer, but ASCA and CTIA launched an initiative today to begin to identify and test solutions in the coming months for stamping out the use of contraband cellphones."

Mr. PAI. With respect to the second, I think there may be additional authority that could be useful in allowing us to tackle this problem in a rifleshot way, so to speak. I'd be happy to work with you on that. Our legislative experts have been thinking about it, as well. It's an area that is extremely frustrating, not least because I don't think the law originally contemplated that you would have these devices that are more valuable than drugs or even gold—

Senator LANKFORD. Right.

Mr. PAI [continuing]. Inside of these prison walls.

Senator LANKFORD. Well, let's—I tell you what we'll do. We'll reach out to your staff and—

Mr. PAI. Okay.

Senator LANKFORD [continuing]. And try to set up a meeting pretty quickly to be able to discuss this and see what legislative solutions might be necessary and what we can do and start to be able to work on. This is not a partisan issue for us, but it's an issue that needs to be resolved, long term and quickly. And if there are areas that we need to be able to step in, we're glad to be able to step in and help engage in that.

## 5G DEPLOYMENT

Let me ask about the 5G deployment, as well. Senator Daines spoke about this also. There is a concern about both the speed of 5G out there, but let me give you two opposite issues and things that rise up. One of them is economic espionage. If the 5G providers are now quietly giving access to someone that may be an economic rival to us, how do we defend against that? So, we don't want to distribute so quickly that we're also not being attentive to economic espionage and availability and access points.

And the second side of that is the health issues. There are some individuals that have raised health concerns on 5G deployment, radiation.

How are you getting information out on both of those to make sure we're not making ourselves vulnerable to economic espionage and we're also being attentive on any health concerns that individuals may have?

Mr. PAI. Thank you, Senator. With respect to the second issue, which I'll tackle first, we are not the health experts when it comes to these issues. We have consulted, of course, with the Federal Food and Drug Administration and with others who are responsible for determining what those standards should be. And we are confident that our standards are ones that are healthy for consumers, going forward.

Second, with respect to the first issue, economic espionage, we have taken action there to make sure that the national—the security aspects of our communications networks are sound. So, for example, with respect to Universal Service funding, recently my colleagues agreed with the proposal that I put on the table to explore restricting Universal Service funding from being spent on companies or from countries that may present a national security threat to the United States, as determined by the intelligence community or Congress. So, that's to be determined in the notice of proposed rulemaking. There may be other steps that we need to take, and we'd be happy to work with other law enforcement or security agencies and the executive branch or with this committee, if it would be helpful.

Senator LANKFORD. Okay, terrific.

Chairman Simons, you and I had spoken earlier about a possible need for legislation. And you also mentioned that in your written testimony, as well, on data security legislation, that it may be needed at some point. Any other clarity that you want to help provide to us, or can we set up a meeting with your team to be able to go through any of those details?

Mr. SIMONS. Yes, happy to set up a meeting. Absolutely.

Senator LANKFORD. Okay. Any other details of that you want to give orally at this point?

## DATA BREACHES

Mr. SIMONS. The only thing I would say, just kind of generally to give you some context, is we're concerned that our authority—our existing authority allows us to get restitution and disgorgement. And in data breach cases, in privacy cases, it's very difficult to prove damage. So, those are—and particularly trace it

to a specific data breach—so, in those cases, civil penalty authority really would be helpful.

Senator LANKFORD. That would be helpful.

Let me hesitate for a moment.

Senator Manchin, you would be up next on questioning. Ready to go? Senator Manchin.

Senator MANCHIN. Thank you, Mr. Chairman.

#### MOBILITY FUND

Chairman Pai, we've had a lot of conversations. And Mobility Fund is my big thing. And you and I have had some conversations. And I know, since 19—and we talked—1935, FDR signed the Rural Electrification Act. I've said this. If you lived in West Virginia in the '30s, you probably didn't—in rural West Virginia—didn't have electricity. You live in rural West Virginia now, in 2018, a lot of times, more than likely you don't have connectivity. And we've got to do something about that.

So, other than visits like the one the FCC is holding in West Virginia tomorrow—you're coming, and I appreciate that very much—what else is the FCC doing to ensure State and local participation in the process that we need in this Mobility Fund? The mapping—are you—I know there's been some adjustments to the maps. Okay. Do you think that has been accurate, as far as what's done to date on our mapping?

Mr. PAI. So, Senator, with respect to the first piece, the State and local, we have made sure that we include State and local entities as part of the challenge process. We're doing aggressive outreach to them, not just in West Virginia, but everywhere from Mississippi to New Hampshire. Our expert staff is going on the ground to make sure that everybody is fully informed. Additionally, they've done a webinar, which has been very well received, not just from governmental entities, but from small carriers and consumers, to educate them about the process.

With respect to the second question, we have made sure that we upgrade the quality of the maps, not just through the challenge process, but also by granting—or by—where was I going with that? Oh, so, with the—oh, gosh, I forgot where I was in my train of thought there.

[Laughter.]

Senator MANCHIN. Let me—

Mr. PAI. Oh, yes, I remember now, sorry. So, the staff has done another run of the maps to make sure that we also produce a secondary map—

Senator MANCHIN. Okay.

Mr. PAI [continuing]. That identifies an area where there is only one unsubsidized competitor, so that is an area that is more likely to be—

Senator MANCHIN. Right now, we're just 3 months away from the deadline, right?

Mr. PAI. As—I believe that's correct—

Senator MANCHIN. Three months, okay.

Mr. PAI [continuing]. Essentially.

Senator MANCHIN. And I'm concerned but—that by the time the State and local government entities can figure out the challenge

process—they're having a hard time with this right now—it's going to be too late. And the money is absolutely critical for this to be done, and needs to be started now. So, I would ask, do you have any data on how many challenges you have received so far?

Mr. PAI. I can't—I don't know the specific number, but I'd be happy to get that to you, if it would be helpful.

[The information follows:]

Mobility Fund Phase II (MFII) will award, via a reverse auction, up to \$4.53 billion to support deployment of 4G LTE mobile service where it is now lacking. This process includes a map of areas presumptively eligible for support, initially published on February 27, 2018 (with updates published on August 1, 2018).

MFII includes a process for challenging the map. This "challenge process" is one part of the Commission's efforts to ensure that limited funds are targeted to areas that lack unsubsidized 4G LTE service. All government entities (including State, local, and Tribal governments) as well as all mobile service providers required to file Form 477 data are eligible to participate in the MF-II challenge process. Such eligible entities may request access to the USAC MF-II Challenge Process Portal at any time via the MF-II Challenge Portal Access Request form, available at [www.fcc.gov/MF2-Challenge-Portal/form](http://www.fcc.gov/MF2-Challenge-Portal/form). Other entities, including individual consumers, organizations, or businesses not otherwise eligible, may participate upon the entity filing and the Commission granting a waiver for good cause shown.

The challenge window initially was designated to remain open for 150 days, until August 27, 2018. On August 3, 2018, the Office of the Chairman circulated for a vote by all commissioners an Order to extend by 90 days the window to file challenges to the eligibility map for the upcoming Mobility Fund Phase II broadband auction.

As of July 31, 2018, a total of 93 entities had access to the Universal Service Administrator Company (USAC) MF-II Challenge Process Portal to participate in the MF-II challenge process. Of these entities, 38 are mobile service providers required to file Form 477 data; 15 are State government entities; 20 are local government entities; 15 are Tribal government entities; and five are other entities that have filed petitions requesting, and have each been granted, a waiver to participate. To date, challengers have submitted data including 1,672,497 speed tests.

Mr. PAI. I know that—

Senator MANCHIN. Very helpful. I don't—

Mr. PAI. Yes. No, I understand your concern. That's part of the reason why—

Senator MANCHIN. We're having that—we're having a meeting in West Virginia tomorrow morning. And I'm going to go back to—and I think—

#### DIGITAL DIVIDE IN RURAL AMERICA

Mr. PAI. Yes.

Senator MANCHIN [continuing]. You all are coming. I appreciate that very much.

Mr. PAI. Yes.

Senator MANCHIN. These are things I think—West Virginia is one of the known—I've been telling most of southern West Virginia, my areas hit the hardest, in some of the most rural areas, the most difficult terrain, that they can expect—because I bet kids can't do homework. You know, when you have parents driving their children to sit in front of the school to do their homework, something's wrong. In 2018, the United States of America, something's wrong. And that's what—that's the reality I'm dealing with. Okay?

So, tomorrow they're going to want to know, Do we have a pathway forward? What's the plan? What's the time element? How much longer do I do without?

Diversification of our economy. I've got 12 counties that aren't participating in 21st-century economy—

Mr. PAI. Right.

Senator MANCHIN [continuing]. Because of this. It's just a horrific challenge we have.

Mr. PAI. I couldn't agree more, Senator. And I—since I became Chair, I've visited 25 States and the U.S. territories, in Puerto Rico and Virgin Islands. I've had many times when I simply see no service or, if I'm lucky, one bar on my phone. I—so, I understand that frustration.

Senator MANCHIN. Yes.

Mr. PAI. We want to correct that. That's why we want to hold this Mobility Fund auction, and as early as possible in 2019, to make sure that we fill those gaps so that we have folks in West Virginia, around the country, don't have to sit there and wonder, "If I have to make a 911 call or have my kids do their homework, you know, will we have connectivity?"

Senator MANCHIN. Okay. Well, and—you know, and—as you know, the net neutrality thing's been a hot item. And—

Mr. PAI. I've heard a little bit about things.

Senator MANCHIN. A little bit about that, yes. And I'm pleased with the vote that we had yesterday. And I know that you might not be as pleased as I am. With that, I still think there's a pathway forward. I think the Internet can be open, and it can be owned by every citizen in this great country of ours. And also, the ability for industry to do what it needs with technology and advancements. I think there's a balance to be had.

I think you've seen now, with the representation, how we voted, that we want to work this out. Okay? But, we're not going to allow it to be owned by anybody that's not the average citizen that can't get on, having the same opportunities everyone should have.

They were talking about that yesterday. I said, I'm worried about just connecting. You're worried about who's going to have it, who's going to control it, but I can't even get people connected to it. That's the big push we have tomorrow.

Mr. PAI. Right.

Senator MANCHIN. So, when you come tomorrow, you can help us through that, and—the high-cost rural areas I'm concerned about. How do y'all intend to address that, when you have a rural area that needs to have connectivity, but the population base is not there to justify any type of return? That's going to be a lot of front-end investment.

Mr. PAI. Two basic tools in the toolbox, Senator. One, of course, is Federal subsidies for the Universal Service Fund, making sure that we target the areas that are off the grid or on the wrong side of the digital divide.

Second tool in the toolbox is modernizing our rules to encourage much more access and competition. So, for example, in parts of West Virginia, where it's very mountainous, the terrain is just prohibitive for laying fiber for hundreds, if not thousands, of miles, you know, throughout all the nooks and crannies of the State, maybe there's another option: fixed wireless or satellite. And so, we've approved the next generation of satellite constellations that

could provide speeds and prices that are comparable to what you would get from a terrestrial provider.

FAIRNESS ACT

We want to think creatively. I personally do not care what technology is brought to bear to connect folks across the country. We want all of them to have a full and fair chance to compete for consumers' attention, and we want people to get connected, because it's not just, as you point, education, it's healthcare, starting a business, precision agriculture. All of these things increasingly depend on connectivity.

Senator MANCHIN. Thank you, Mr. Chairman.

Senator LANKFORD. Thank you.

Gentlemen, thank you both for being here and going through it, not only your preparation for this hearing, but the work that you're doing every single day. We really do appreciate it. The—

Senator COONS. Senator Manchin has one more question, I think.

Senator LANKFORD. Senator Manchin, you have one additional question?

Senator COONS. Senator Manchin.

Senator MANCHIN. I just—I had a discussion the other day—and I'm sorry to take just a few more minutes, but there was a discussion the other day, and people were—we were just talking about, How did our country become so toxicity in the political arena? You know, it's what team you're on and what side you're on, how we can destroy each other. It's just awful. It's not who we are as a country. It's not how we become a country.

So, I started asking questions. And the person who had insight in history—this is a person who served in this body many, many years ago and saw the change when it came. And you know what he said? He said, "FCC, Fairness Act" of the 1980s, I guess, when it was changed. Because, up until that time, we never had one side or the other side, it was both sides, whether it was all the radio shows, television, everything had to be equal. And then the Chairman at that time—I think it's in the 1980s, and I thought—do you have—have you looked into this, or the—have you been asked about that, the Fairness Act, where you would stand? Do you think it would help?

Something's got to be done to save the country. And right now we're destroying each other. And we're all good friends, but we're pushed politically to the brinks of—you know, of engagement that we should never be in, other than trying to work out something for our country.

And I didn't—I did not realize the depths of how things have changed. And he watched it change. He was there up until the FCC—and it was the Chairman that made a decision. It was a rule change. It wasn't legislation. They never could get legislation back after that, once the sides broke up and took their respective positions.

Do you have any comment on that, on the Fairness Act?

Mr. PAI. Senator, I do know Chairman Dennis Patrick, who was the Chairman at the time, as well as Chairman Fowler, who—

Senator MANCHIN. Fowler was—what year was this?

Mr. PAI. This—it was repealed formally in 1987, under Chairman Patrick. And the notice of proposed rulemaking, as I understand it, was introduced under Chairman Fowler earlier. He was Chairman from 1981 and 1987.

I do daresay that I know more than most about the toxicity of the political environment—

Senator MANCHIN. Yes.

Mr. PAI [continuing]. Right now. Without going into details, it is often a rough-and-tumble discourse that is less civil than it perhaps used to be.

Senator MANCHIN. But, I'm saying, when the airwaves—when there was fairness to the airwaves and to the public, they had to give a balanced approach, a balanced—equal time.

Mr. PAI. I guess the difficulty I have, Senator, there is that, while I might agree with the symptom that you're identifying, I'm not sure about the cause, for a variety of different reasons. First, under the First Amendment, there are substantial questions about whether the Government should get involved in mediating that kind of public discourse. And, when it comes to the FCC, in particular, there are issues when the FCC intrudes upon content regulation, deciding, okay, this is too far, or this is not.

Secondly, I think with the onset of the digital era, when you think about it, the Internet is one of the greatest platforms for free expression in history. And, even if the FCC wanted to, and could, under the Constitution, do so, I'm not sure it would be wise to have bureaucrats in Washington sitting in judgment about who is allowed to take a position in the public square.

Senator MANCHIN. I don't think we're asking that. I think, basically, what we're saying is that it worked up until that point in time, and it's gone to heck in a handbasket since.

Mr. PAI. Yes.

Senator MANCHIN. So, if you're looking for results, you're going to find out what the cause is.

Mr. PAI. Yes.

Senator MANCHIN. You have to have an opinion on that. You can't just justify it and say, "Oh, yes, let 'em just rip it away," on the right or the left.

Mr. PAI. Unfortunately, Senator, I'm not sure that there's an FCC-led solution here. This seems to be more of a widespread—

Senator MANCHIN. No, I don't think it is, because you all undid it. The FCC is what caused this problem we have. And if—it's going to be a legislative fix, if there's ever going to be one. And I don't think the will is here for it. That's the shame of it. So, didn't know if you wanted to have—

Mr. PAI. I—

Senator MANCHIN [continuing]. Your opinion heard.

Mr. PAI. Believe me, I share the aspiration for a more civil discourse.

Senator MANCHIN. Yes.

Mr. PAI. And if you can legislate that, I think I and I—

Senator MANCHIN. Be better off.

Mr. PAI [continuing]. The public would be all the better for it.

Senator MANCHIN. Yes.

Senator LANKFORD. I think the best thing we can probably do is model that, rather than legislate that. The hard part would be—all the conversation about fairness doctrine and where that goes is—at some point, somebody has to sit and say that’s a conservative thought or that’s a liberal thought, and so we’ve got to give somebody else equal time. Ultimately, that somebody’s sitting in DC, evaluating every broadcast, determining how many conservative thoughts were said and how many liberal thoughts were said, and trying to be able to provide that balance. And that just gets tough.

Senator MANCHIN. Senator, I’m just—I’m—I just—I was amazed to hear the person’s history and the knowledge that his—this Senator had. You know the Senator I’m talking about. But, there are observations saying somehow the system had some civility to it, and it wasn’t being run out of the FCC.

Senator LANKFORD. Right.

Senator MANCHIN. It was when the FCC interjected itself to change that rule that basic—

Senator LANKFORD. Rolled out.

Senator MANCHIN [continuing]. Kept civility that threw it to a tailspin. That’s it in a nutshell. That was his observation, because he lived it. He lived it, being a legislator before and after this observation.

Senator LANKFORD. Yes.

I do want to thank our witnesses today. Thanks for all the preparation that you’re doing. We’ll continue to be able to follow up on the staff level. We want to be able to maintain a good dialogue. The one thing that can be really very helpful to us is, on the staff-level conversation, when we need additional documents, to be able to have that interplay back and forth. We also want you to hear from us. If there are moments that you think we need additional legislation to be able to resolve this issue, “We’re stuck until we get the legislation,” please know that we are very open to be able to discuss that and to be able to bring all the individuals to bear, not only in appropriations, but obviously the authorizing committees, as well, to be able to sit down and be able to have those conversations. Please don’t assume, “We’re stuck and we can’t do anything,” and that we’re aware that you’re stuck. Please let us know. And so, we can help partner with you. We’re all serving the American people, and we all want to try to get this right.

#### ADDITIONAL COMMITTEE QUESTIONS

If there’s no further questions on this, the—the hearing record will remain open until next Thursday, May 24, for subcommittee Members to submit any statements or questions to the witnesses for the record.

[The following questions were not asked at the hearing, but were submitted to the agencies for response subsequent to the hearing:]

## QUESTIONS SUBMITTED TO HON. AJIT PAI

## QUESTIONS SUBMITTED BY SENATOR CHRISTOPHER A. COONS

*Question.* I welcome the FCC's decision to modernize the 2.5 GHz band, also known as Educational Broadband Services (EBS), which is important for both educational and commercial users. This proceeding creates an opportunity to expand 5G to many more Americans, while also opening up new spectrum for rural broadband deployment. Both are worthy goals. Some schools and EBS licensees have contacted me to express concern about the comment period for this proceeding. The short comment and reply period, along with the fact that it may begin during the middle of the summer, might prevent their participation in the proceeding. Chairman Pai, would you be amenable to extending the comment period in order to ensure all interested parties can participate in the proceeding?

*Answer.* I understand your concerns. That's why on June 21, 2018, the Commission extended the deadline for filing comments in this proceeding by 30 days to August 8, 2018, and to September 7, 2018 for reply comments. We determined that the number, scope, and importance of the questions asked in the 2.5 GHz NPRM warranted an extension of the comment and reply comment deadlines and that this extension would build a more comprehensive record. With this extension, commenters will have a total of 141 days to comment—from when I first released the draft in April through the reply deadline.

As you recognize, this proceeding is an essential step forward in modernizing the 2.5 GHz band. Significant portions of the EBS spectrum in this band currently lie fallow across approximately one-half of the United States, mostly in rural areas. And the 2.5 GHz band is the largest band of contiguous flexible use spectrum below 3 GHz. Moving ahead as expeditiously as possible will make available a scarce public resource that could be used to connect millions of Americans.

*Question.* I am happy to see that the Commission seems to be coalescing around an approach that continues to make spectrum available in the low-, mid- and high-bands. In addition to the 3.5 GHz band, I understand you are considering a plan that could ultimately free up to 40 MHz of additional mid-band frequencies in the L-band. Will you provide me an update on the status of that proceeding?

*Answer.* On May 31, 2018, Ligado filed an amendment to its pending applications seeking changes to the ancillary terrestrial component of its L-band mobile-satellite service networks. In the amendment, Ligado proposes specific measures to protect certified aviation GPS receivers by limiting transmit power in the 1526–1536 MHz band and by observing other conditions. The record on Ligado's latest amendment recently closed. The Commission will be working closely with our Federal partners, led by the National Telecommunications and Information Administration, as we review the record and determine next steps.

*Question.* I am concerned that in the current FCC rulemaking for the Lifeline program, the Commission has proposed to prevent wireless resellers from providing this service. This change could have the effect of removing the existing services of more than 7.5 million low-income households. In Delaware alone, about 27,000 households could lose their service. Why do you believe resellers should not be permitted to provide Lifeline service?

*Answer.* I have not reached any conclusion as to whether resellers should be permitted to participate in the Lifeline program. However, we are looking at this issue because resellers have been the subject of the vast majority of Commission Lifeline investigations for waste, fraud, and abuse. Also, we are examining how the Lifeline program can support investment in broadband networks where they are needed most—in low-income communities in our cities, in rural areas, and on Tribal lands.

*Question.* How does eliminating resellers, a major market participant, promote competition in this space?

*Answer.* This is one of the issues that we are looking at in the pending proceeding. However, I would note that competition to arbitrage the Commission's rules—whether by signing up phantom subscribers, deceased subscribers, or ineligible subscribers—does not benefit consumers. Instead, it penalizes the American people by increasing the universal service taxes they must pay each month. The Commission is still evaluating how to crack down on the waste, fraud, and abuse that has gone on for far too long. But I firmly believe the Lifeline program's goal is—or should be—to empower consumers, not companies. And that will be our lodestar as we move forward to ensure that unscrupulous companies stop abusing this important program.

## QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

*Question.* At the hearing, I asked you to provide data on how your decision to repeal the 2015 net neutrality rules will spur private investment in Vermont, specifically by providing me with detail on how many currently unserved Vermonters will gain service within 1 year of repeal. In your response, you primarily cited Universal Service Fund programs as the reason why more Vermonters would have broadband access next year.

What percentage of new broadband investment in rural America will occur without support from the Universal Service Fund or other government funding sources such as Rural Utilities Service loans or grants?

*Answer.* Repealing the *Title II Order* will lead to more investment throughout the United States, more jobs, and ultimately better, faster, cheaper broadband for consumers, including small businesses. Forcing innovative companies providing 21st century services through a government-controlled bottleneck—one intended for a 20th century telephone monopoly—makes deployment in rural America even harder. Just take the case of VTel, a rural broadband provider in Vermont. VTel wrote to say that “regulating broadband like legacy telephone service would not create any incentives for VTel to invest in its network. In fact, it would have precisely the opposite effect.” The company went on to say that it is now “quite optimistic about the future, and the current FCC is a significant reason for our optimism.” Indeed, VTel recently announced that it has committed \$4 million to upgrade its 4G LTE service and to begin rolling out faster mobile broadband that will start its transition to 5G, the next generation of wireless connectivity. For your convenience, I am attaching VTel’s letter to this response.

To be sure, in some areas the business case for broadband deployment will not be there absent government help. And although the Commission does not track the counterfactual data of how much investment would occur without government funding, I can say that I believe sufficient, predictable support through the Universal Service Fund is essential if we are to close the digital divide. Reducing the costs of deployment—such as by repealing the *Title II Order* and adopting one-touch make-ready rules for pole attachments—will help stretch our scarce universal service dollars farther and bring more rural Americans online.

*Question.* I questioned you about the troubling map the FCC put out for the upcoming Mobility Fund auction. Unfortunately, this isn’t the only flawed FCC broadband map. Independent analysis of the FCC’s fixed broadband map for Vermont indicates that it may undercount the number of unserved households by nearly 20,000. That is a real percentage of the population in a small State like Vermont. I am very concerned about the quality of data the FCC is relying on to develop these maps.

Was any of the data underlying these maps used as part of your analysis in the net neutrality repeal proceeding?

*Answer.* I agree with you that accurate and reliable data is critical to sound decisionmaking and a vital tool in developing policies to close the digital divide, promote competition, and more. The Federal Communications Commission took into account Form 477 data in the *Restoring Internet Freedom Order*—just as the prior Commission relied on such data in the *Title II Order*. However, the Commission did not review that evidence in isolation but in the context of the broader administrative record, and specifically noted concerns raised by stakeholders about how to construe that data. Notably, the Commission found substantial evidence in the record as a whole that Internet service providers had decreased investment following the *Title II Order* and substantial evidence that the Federal Trade Commission, consumers, and market forces could effectively police unreasonable network management practices. In contrast, the record contained a “paucity of concrete evidence” supporting the prior administration’s findings in the *Title II Order* (note that the FCC’s chief economist later referred to that Order as an “economics-free zone”). And to the extent that existing Form 477 data may overstate actual deployment, that only emphasizes the importance of ending public-utility regulation of Internet service providers; we will only close the digital divide by adopting policies that encourage broadband investment, not deter it.

Nonetheless, I agree that we must improve the Form 477 data collection devised by the last administration. That’s why the Commission under my leadership commenced a rulemaking last year to review Form 477 and consider ways to improve the quality, accuracy, and usefulness of the deployment data it collects on fixed and mobile voice and broadband service, as well as examine easing the burden on industry by eliminating unnecessary or erroneous data filing requirements. Currently, Commission staff is reviewing the record of that proceeding, and I look forward to receiving staff recommendations on how to further improve that data collection.

*Question.* I appreciate that the FCC has put in place a challenge process to determine if areas considered served by the Mobility Fund maps have service. Given that most of Vermont is considered served by this map, I am concerned that providers and State officials that may want to conduct challenges will not have ample time to do so. I am also concerned that you are still conducting outreach in the States to explain how the challenge process will work even as the timing on the window for challenges is running.

Why did the FCC open the challenge window before concluding outreach at the State level?

*Answer.* Our Mobility Fund Phase II outreach has been extensive and inclusive. Beginning in October 2017, Commission staff have conducted numerous meetings, webinars, and conference calls with stakeholders from numerous States, and conducted on-site training events and presentations in Texas, Tennessee, New Mexico, Kansas, West Virginia, Maine, New Hampshire, Mississippi, and Washington State. We released a map of areas most susceptible to challenge, that is, those where only one unsubsidized carrier reported offering service, so that challengers could better target their efforts. We also changed the parameters of speed testing for challengers, reducing the number of measurements required to successfully challenge an area. We released the list of qualifying handsets to the public so that local governments could more easily enlist volunteers. We have broadened the number of entities able to participate in the challenge process by granting waivers to everyone from Senator Joe Manchin (D-WV) to the Farm Bureaus of Kansas and Mississippi. In addition, the Mobility Fund Phase II webpage on the Commission's site contains all the processes, data, documents, and education and outreach materials that are available to the public.

We have worked hard to ensure that the challenge process will produce a high-quality map. I nonetheless agree with you that the agency should exercise its discretion to ensure that the process is as robust as possible. That's why I have circulated to my colleagues an order extending the length of the challenge process by 90 days—by lengthening the period during which challenges can be submitted, State and local governments and other challengers will have a significant additional opportunity to conduct tests, which in turn means a more accurate map for carrying out the Mobility Fund Phase II auction.

*Question.* Will you consider extending the time available for challenges to ensure that there is both adequate time to conduct them and adequate understanding of how the process will work?

*Answer.* Yes. I have circulated to my colleagues an order that would do just that.

*Question.* My friend and former Chairman of this Committee, Senator Cochran, sent you a letter on March 29, 2018, explaining the Appropriations Committee's intent in setting a national ownership cap for television broadcasters at 39 percent and its interaction with the now-obsolete UHF discount. I agree with former Chairman Cochran's assertion that the Committee did not intend for the UHF discount to be used as a loophole to the Congressionally-established 39 percent national ownership cap.

Do you agree or disagree with Chairman Cochran's assessment of the Committee's intent that the UHF discount not be used to undermine the 39 percent ownership cap? If not, please explain how Chairman Cochran's assessment was deficient.

*Answer.* The Commission is currently in the midst of a holistic review of that regulation. In addition to asking whether we should eliminate the UHF Discount, we have sought comment on whether the 39 percent cap should be maintained, raised, lowered, or eliminated. I called on the Commission to launch such a holistic review back in 2013 and am pleased that we were able to finally take that step last December. The comment cycle on the national ownership cap Notice of Proposed Rulemaking has now closed, and we are now in the process of reviewing the record. In my view, it is important for the Commission to complete this holistic review of the national ownership cap before weighing in on the merits.

Although our assessment is ongoing, I would note that the prior administration flatly rejected the position that the FCC lacked the legal authority to alter the 39 percent national ownership cap. Indeed, it specifically "conclude[d] that the Commission has the authority to modify the national audience reach cap, including the authority to revise or eliminate the UHF discount." The prior FCC explained: "We find that no statute bars the Commission from revisiting the cap or the UHF discount contained therein in a rulemaking proceeding so long as such a review is conducted separately from a quadrennial review of the broadcast ownership rules pursuant to Section 202(h) of the 1996 Act. The [2004 Consolidated Appropriations Act] simply directed the Commission to revise its rules to reflect a 39 percent national audience reach cap and removed the requirement to review the national ownership cap from the Commission's quadrennial review requirement. It did not impose a statutory na-

tional audience reach cap or prohibit the Commission from evaluating the elements of this rule. Thus, the Commission retains authority under the Communications Act to review any aspect of the national audience reach cap; it simply is not required to do so as part of the quadrennial review.” In the Matter of Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule, Report and Order, 81 Fed. Reg. 89421, para. 21 (2016).

*Question.* A Bloomberg article from April 3, 2018, outlined a series of disturbing employment practices used by Sinclair Broadcast Group to restrict the free movement of its employees to competing broadcast stations. According to the Bloomberg report, some Sinclair employees are subject to forced arbitration clauses as part of their employment contracts. Forced arbitration clauses strip employees of their rights and shield corporations from the consequences of harmful behavior such as discrimination or sexual harassment. Sinclair’s employment contracts are reportedly even more punitive, containing clauses requiring employees to pay back 40 percent of their annual compensation if they leave before the end of the contract term.

Sinclair’s practices not only restrict the rights of its employees, but also serves to stifle competition in the broadcast industry as a whole. Given the unique obligations broadcasters have due to their use of the public airwaves, I am concerned that these practices may violate the public interest.

Will you commit to investigating whether Sinclair’s employment practices violate the public interest as part of your evaluation of this transaction?

*Answer.* Based on a thorough review of the record, I had serious concerns about the Sinclair-Tribune transaction. Given these concerns, I circulated a Hearing Designation Order to commence a hearing before an Administrative Law Judge to determine whether Sinclair affirmatively misrepresented or omitted material facts with the intent to consummate this transaction without fully complying with our broadcast ownership rules. This order was approved unanimously by the Commission and released on July 19, 2018. On August 9, 2018, Tribune withdrew from the transaction, and the next day, Sinclair notified the Commission that it was dismissing with prejudice applications involving the transaction.

#### QUESTIONS SUBMITTED BY SENATOR JERRY MORAN

*Question.* According to the FCC’s 2018 Broadband Deployment Report, the *Title II Order* drastically harmed broadband deployment in the 2 years following its adoption in 2015. Could you please explain the findings of this report?

*Answer.* The 2018 Broadband Deployment Report demonstrates that the pace of both fixed and mobile broadband deployment declined dramatically in the 2 years following the prior 2015 *Title II Order*. From 2012 to 2014, the 2 years preceding the *Title II Order*, fixed terrestrial broadband Internet access was deployed to 29.9 million people who never had it before, including 1 million people on Tribal lands. In the following 2 years, new deployments dropped 55 percent, reaching only 13.5 million people, including only 330,000 people on Tribal lands.

From 2012 to 2014, mobile LTE broadband was newly deployed to 34.2 million people, including 21.5 million rural Americans. In the following 2 years, new mobile deployments dropped 83 percent, reaching only 5.8 million more Americans, including only 2.3 million more rural Americans. And from 2012 to 2014, the number of Americans without access to both fixed terrestrial broadband and mobile broadband fell by more than half—from 72.1 million to 34.5 million. But the pace was nearly three times slower after the adoption of the 2015 *Title II Order*, with only 13.9 million new Americans gaining access to both over the next 2 years.

*Question.* Modernizing the Federal Government’s IT systems needs to remain a top-priority for all agencies. According to the GAO’s High-Risk Series report, the Federal Government annually spends over \$80 billion on information technology (IT), but more than 75 percent of this spending is for “legacy IT”. Earlier this year, I was successful in getting the FCC CIO Parity Act signed into law. This law requires the FCC to ensure that the agency’s Chief Information Officer (CIO) has a significant role in the budgeting, programming, and hiring decisions of the agency, and given the CIO’s subject matter expertise, prioritizing the replacement of costly and vulnerable legacy IT systems would be accounted for in this critical decision-making. Will you please describe the current role of the FCC’s CIO in the agency’s efforts to formulate an effective and targeted budget? What are the FCC’s specific budget priorities related to modernizing its IT systems?

*Answer.* I appreciate your ongoing and substantial commitment to ensuring that the Federal Government has robust and resilient Information Technology (IT) resources. It is essential that CIOs feel empowered to make critical decisions essential to upgrading and modernizing our IT systems. I am pleased to note that our Acting

CIO currently plays an important role in working with our Managing Director and my office to develop our budget and allocate resources.

Our top budget priority related to IT modernization is to end our reliance on outdated legacy systems by moving systems and applications to the cloud. Such efforts not only improve the quality of our IT services, they also decrease expenses in the long run because it is quite expensive to keep many of our legacy systems running.

Consistent with this priority, in our fiscal year 2019 budget request, we have asked for \$8,535,200 for IT modernization and implementation, including \$4,619,000 for shifting systems to the cloud and \$3,666,200 for shifting applications to the cloud. In fact, this request comprises the vast majority of the new spending contained in that budget request. Pages 20–24 of the fiscal year 2019 request provide a complete narrative of changes to our salaries and expenses from the prior fiscal year.

Moreover, it is important to note that we recently received approval for a re-programming that would move de-obligated resources to current IT needs through the end of the fiscal year, improving our security and redesigning our Electronic Comment Filing System.

*Question.* As your written testimony mentions, the recent omnibus appropriations package for fiscal year 2018 included up to one billion dollars in funding to complete the broadcaster “repacking” process following the spectrum incentive auction. This continues to be an issue that I will closely monitor. What types of administrative resources are expected to be needed by the commission, including staffing and IT, to effectively distribute these new allocated funds?

*Answer.* The process for establishing the new funds for LPTV stations, translators, and FM stations is expected to cost more than \$17 million in fiscal year 2019. I am pleased that the administration, the House, and the Senate have recognized these additional costs and so far supported the necessary increase to our auctions cap.

Based on our experience with the initial fund administration costs, our staff developed the following cost analysis:

- Increase in the Number of Eligible Entities:* The new legislation could increase the number of participants in the TV Broadcast Relocation Fund by over 4,000, increasing the number of participants from 1,134 to over 5,000.
- Fund Administrator Cost Increase:* Based on the increase in the number of eligible entities and taking into consideration economies of scale and the possibility that there may be fewer invoices from each participant, the cost of the fund administrator is anticipated to substantially increase. The FCC has estimated a cost increase of a minimum of \$7 million in 2019.
- Cost Catalogue of Eligible Expenses:* The Cost Catalogue of Eligible Expenses must be expanded to include costs for LPTV stations and translators, which are typically substantially lower than those for full power television stations; receivers for translators; and costs for FM stations.
- System Development:* Three major computer systems will need development work to handle the expanded program. All systems must be updated—including thorough testing of the development, system integration and security—prior to the start of cost estimate and/or invoice submission process which is anticipated to be third quarter 2019. The cost is estimated to be approximately \$5 million.
- Compensation and Benefits:* Comp and Benefits for the Incentive Auction Program averaged approximately \$9 million per year from 2014 through 2016. Additional staff time will be needed in financial operations, Media Bureau, Information Technology, Incentive Auction Task Force, Office and Engineering and Technology, and Office of the General Counsel.

Below is a chart outlining these costs:

Expenditure: LPTV/Translators Stations & FM Stations	Fiscal Year 2018	Fiscal Year 2019
<b>Comp and Benefits</b> .....	<b>\$1,000,000</b>	<b>\$5,000,000</b>
Fund Admin .....	\$1,000,000	\$7,000,000
Site Visits .....	\$0	\$0
Internal Controls & Audits .....	\$0	\$500,000
Systems .....	\$1,000,000	\$5,000,000
Cost Catalogue .....	\$300,000	\$0
Outreach—LPTV & Translators .....	\$0	\$50,000
<b>Subtotal</b> .....	<b>\$2,300,000</b>	<b>\$12,550,000</b>
<b>Total</b> .....	<b>\$3,300,000</b>	<b>\$17,550,000</b>

*Question.* As you know, the FCC released an Order and NPRM in March regarding the USF's High Cost Program. The Order restored the Federal support that small, rural broadband providers had seen cut over the past year. However, that money is expected to run out soon, and small carriers will once again face significant cuts when the new fiscal year takes effect on July 1, 2018. I recently signed a letter with over 60 of my Senate colleagues requesting the FCC take action to provide predictable and long-term efficiencies to the program. How does the FCC plan to modernize the High Cost Program to better enable small carriers to offer high quality, affordable broadband to rural Americans?

*Answer.* I'm grateful for your advocacy on this issue and hope you will agree that our reforms in March (which reflect the views you expressed in your letter) were a big win for rural communities that want high-speed Internet access and are served by rate-of-return carriers.

The NPRM seeks comment on ways to improve and simplify the funding system so that rate-of-return carriers receiving have predictable support and the right incentives to efficiently invest in broadband connectivity in the rural areas they serve. We also consider a second offer of model-based support to carriers, as well as how the legacy rate-of-return system might be improved. The public comment and reply period cycle for the NPRM closed on June 25, 2018. Like you, I believe it is a priority to ensure that small carriers can offer high-quality, affordable broadband to rural America. I look forward to working with my colleagues to put forward an order that would do just that before the year is over.

*Question.* Consistent with the direction in my legislation, the RAPID Act, the Commission recently approved a major order streamlining the environmental and historic preservation process for deploying small cells. As I understand it, that order, when the new rules become effective this summer, will significantly expedite the deployment of new facilities needed to support 5G services. I congratulate you on this achievement. What more needs to be done? What are the Commission's next steps?

*Answer.* I appreciate your hard work and attention to this matter and your support for moving ahead to ensure that we facilitate, not frustrate, innovation and investment. Since I established the Broadband Deployment Advisory Committee (BDAC) in January 2017, the Commission has received significant and comprehensive advice on how to accelerate deployment of broadband. We have taken a number of actions designed to accelerate the deployment of next-generation networks and services through streamlining unnecessary rules that raise the cost of infrastructure investment and eliminating other regulatory barriers to deployment.

The Commission's March 22, 2018 Order represents an essential step in this process. While old rules were designed with 200-foot towers in mind, we are now looking at the highly-densified networks of small cells that will be common in the 5G world. By streamlining the environmental and historic preservation process for deploying small cells instead of treating them like larger towers, we will make it substantially easier for carriers to build next-generation wireless networks throughout the United States. That means faster and more reliable wireless services for American consumers and business as well as more wireless innovation, such as novel applications based on the Internet of Things.

More recently, the Commission adopted an order containing the BDAC's proposal for one-touch make-ready with respect to pole attachments. The record suggests this order will substantially speed up broadband deployment while at the same time ensuring that appropriate safeguards are in place to protect existing attachments and worker safety.

*Question.* The recent Omnibus included language directing the Commission to report to Congress by the end of this fiscal year, and annually thereafter, regarding upcoming spectrum auctions and bands that might be made available for commercial use. Do you believe the Commission can meet this objective as well as detail for us the use of the money the Commission retains to administer its spectrum auction activities?

*Answer.* Yes, the Commission is moving ahead to obtain and analyze the data and information required by Division P of the Fiscal Year 2018 Consolidated Appropriations Act, or Omnibus. We expect to meet all deadlines.

*Question.* Is it true that the FCC under your leadership proposed to impose on Sinclair the Commission's largest forfeiture ever for a violation of the Commission's sponsorship rules?

*Answer.* Yes. Last December, the Commission proposed a forfeiture against Sinclair Broadcast Group of over \$13 million for alleged sponsorship identification rule violations. It is the largest fine ever proposed for sponsorship identification rule violations.

*Question.* I welcome the FCC's decision to modernize the 2.5 GHz band, also known as Educational Broadband Services (EBS), which is important for both educational and commercial users. This proceeding creates an opportunity to expand 5G to many more Americans, while also opening up new spectrum for rural broadband deployment. Both are worthy goals. Some schools and EBS licensees have contacted me to express concern about the comment period for this proceeding. The short comment and reply period, along with the fact that it may begin during the middle of the summer, might prevent their participation in the proceeding from educators and teachers who benefit from EBS services. Would you be amenable to extending the comment period in order to ensure all interested parties can participate in the proceeding?

*Answer.* I understand your concerns. That's why on June 21, 2018, the Commission extended the deadline for filing comments in this proceeding by 30 days to August 8, 2018, and to September 7, 2018 for reply comments. We determined that the number, scope, and importance of the questions asked in the 2.5 GHz NPRM warranted an extension of the comment and reply comment deadlines and that this extension would build a more comprehensive record. With this extension, commenters will have a total of 141 days to comment—from when I first released the draft in April through the reply deadline.

As you recognize, this proceeding is an essential step forward in modernizing the 2.5 GHz band. Significant portions of the EBS spectrum in this band currently lie fallow across approximately one-half of the United States, mostly in rural areas. And the 2.5 GHz band is the largest band of contiguous flexible use spectrum below 3 GHz. Moving ahead as expeditiously as possible will make available a scarce public resource that could be used to connect millions of Americans.

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QUESTIONS SUBMITTED BY SENATOR STEVE DAINES

*Question.* Chairman Pai, the FCC recently issued a public notice requiring the registration of existing C Band downlink devices. This registration includes a mandatory filing fee of \$435. Many of our small broadcasters in Montana who provide essential services to our rural communities have owned C Band Downlinks for years. While they are fully appreciative of the FCC's efforts to catalogue these devices and are willing to register them, many are unable to afford the mandatory fee. What can the FCC or congress do to help our smallest broadcasters afford to register devices, which they have legally owned and operated for years?

*Answer.* As you know, increasing the usage of the 3.7–4.2 GHz band will be critical to our Nation's 5G efforts as well as ensuring widespread deployment of high-speed broadband services to rural America. We must make every effort to close the digital divide, and getting the 3.7–4.2 GHz band right is critical to that effort.

Congress established the \$435 application fee that earth stations now are facing when it comes to registering with the Commission. Nonetheless, because I firmly believe that we must be accommodating of those operating in smaller markets, the Commission has taken repeated steps to reduce the costs of registration for small broadcasters and cable operators. That's why Commission staff waived the costly engineering studies normally required of registrants, allowed filers to consolidate their applications to reduce application fees, and doubled the length of time for broadcasters and cable operators to register. Also, the agency may grant fee waivers or deferrals of such fees in specific instances where an applicant demonstrates good cause and the waiver would promote the public interest. I encourage entities unable to afford the mandatory fee to file a waiver request, and the Commission's staff stands ready to assist licensees with this process.

At the same time, we must move forward with the registration process. Without information about existing users, the Commission will have no way to protect rural broadcasters and cable operators that currently use earth stations to access programming. And efforts like this to free up spectrum for more high-speed broadband access throughout our country—and especially in rural America—are critical. I believe that rural consumers in places like Wisdom and St. Ignatius, Montana—each of which I visited earlier this year—have waited long enough for high-speed broadband, and we cannot as a nation afford to lose the race to 5G.

*Question.* Chairman Pai, one of my top priorities has been to expand broadband access to our rural and unserved communities. I know that you share this goal and the FCC has taken many steps to fulfill this mission, including approving new technologies quickly, as they come to market. What are some of the innovative technologies that the FCC sees as the next generation of expanding broadband access to rural Montana?

*Answer.* The Commission takes an all-of-the-above approach when it comes to closing the digital divide. We have provided support to community-based rural telecom companies to build out fiber to unserved areas, encouraged wireless Internet service providers and electric cooperatives to participate in our Connect America Fund Phase II auction, and made it easier for competitive entrants to gain access to utility poles and otherwise install high-capacity fiber. And I'm excited about innovative technologies that could help close the divide even further: under my leadership, the FCC has authorized new constellations of satellites that hold the potential for ubiquitous broadband coverage, has set up the first 5G spectrum auctions (necessary for 5G services, which hold potential to boost access in rural areas), and is studying the results of the experimental license granted to Alphabet for Project Loon, which aimed to use balloons to supply Internet access to Puerto Rico following Hurricane Maria.

*Question.* Chairman Pai, as the commission continues to work on Mobility Fund Phase II, I have heard concerns from rural providers, specifically, in regard to securing VoLTE agreements, who fear that certain changes may hurt their ability to service our most rural areas. Do you commit to continue to work with all stakeholders to ensure that the Mobility Fund Phase II is balanced and effective?

*Answer.* Yes. We have worked to ensure that this process is transparent, balanced, and fair to all parties and provided extensive outreach to assist participants. Importantly, we have adopted a flexible approach, and I recently circulated to my colleagues an order that would extend the challenge process to maximize stakeholder participation.

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QUESTIONS SUBMITTED BY SENATOR CHRIS VAN HOLLEN

*Question.* During the Restoring Internet Access NPRM there were reports that over 2 million comments were submitted using fake or false information. Some comments were fraudulently submitted using the names and addresses of real Americans, some of whom were not alive. Your colleague Commissioner Rosenworcel said half a million of the fake comments originated from Russian email addresses.

Chairman Pai, the FCC's budget request includes an \$8.5 million plus up for IT investments designed to move the old systems into modern day cloud operations. Does this \$8.5 million investment include funding to update the public comment system to ensure that there are no cyber-intrusions in our public filing system?

*Answer.* The FCC recently received approval of a reprogramming request from the Committee to fund the redesign of ECFs, and this redesign will take into account the need to have a secure system.

*Question.* Chairman Pai, last year Montgomery County Executive Leggett and others met with you to request that the FCC complete its RF emissions proceeding that has been open since 2013. During the FSGG hearing, Senator Lankford asked you:

How are you getting information out on [health concerns] and [how are you] also being attentive on any health concerns that individuals may have?

You replied:

We are not the health experts when it comes to these issues. We have consulted of course with the Federal Food and Drug Administration and with others who are responsible for determining what those standards should be. And we are confident that our standards are ones that are healthy for consumers going forward.

When and with whom has the FCC consulted with about Federal RF emissions? Please summarize the results of your consultations with the FDA and any other agencies you have met with and provide the Committee with any analyses or relevant documents the FCC has on this matter.

*Answer.* The RF exposure standards in our rules have been supported by the Federal agencies with health expertise and the standards are similar to those used around the world. These standards protect the general population from any type of transmitter—whether it is 4G, 5G, Wi-Fi, or any other kind of radio transmitter. We are working with the Food and Drug Administration as well as other Federal partners that provide health standards on these issues. Most recently, Dr. Jeffrey Shuren, head of the U.S. Food and Drug Administration's Center for Devices and Radiological Health released an announcement related to this issue: <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm595144.htm>. Among other things, he said, "Based on this current information, we believe the current safety limits for cell phones are acceptable for protecting the public health."

*Question.* You state your “confidence” in the standards. Will you commit to conclude the RF study and release its findings publicly within 6 months?

*Answer.* Because our review process is dependent on the reviews of our Federal partners, I cannot commit to a particular timeline. Nonetheless, I do hope to finish our work in the near term.

*Question.* The 5G rollout promises to connect Americans like never before. Municipalities in Maryland are working with providers to ensure that both rural and urban communities across the State are included and covered.

Do you think cities and counties should be able to negotiate buildout to underserved areas or support for digital inclusion, in exchange for use of public property?

*Answer.* The Commission’s Broadband Deployment Advisory Committee recently and unanimously approved a Municipal Model Code that details what cities and counties should be able to do to facilitate deployment and close the digital divide. Especially important for every level of government is the need to reduce regulatory barriers to deployment and consider providing support to fund buildout where there is no business case. And these initiatives work hand in hand, for every dollar saved through the avoidance of unnecessary regulatory barriers and taxes in our cities is a dollar that can be used to expand access in our rural communities that have been too long left behind.

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QUESTIONS SUBMITTED TO HON. JOSEPH SIMONS

QUESTIONS SUBMITTED BY SENATOR JAMES LANKFORD

CONTACT LENS RULE

*Question.* One thing I very much appreciate about the FTC is that it likes to periodically take a look at its rules to make sure that they are up-to-date, effective, and not overly burdensome. As we briefly discussed at the hearing, I understand that you all are now in the middle of just such a review of the Contact Lens Rule. I understand that the Commission has issued a proposed rule that would require all 50,000 practicing eye doctors in the country to obtain from each of the 40 million or so contact lens wearers signed documents vouching that their eye doctor has followed the law by giving them a copy of their contact lens prescription. The rule would also require that the doctors keep these forms on file for 3 years to aid in any future Federal investigation. According to the FTC’s own figures, its proposed new requirement would add about \$10.5 million in additional costs. Eye doctors have told me that it could cost roughly \$18,000 per doctor, per year to comply. I understand that the FTC has issued a total of 55 warning letters to contact lens prescribers within the last decade and that 2017 Freedom of Information Act data shows that the Commission received 300 or so complaints over the last 5 years out of nearly 200 million prescriptions issued. While I share the Commission’s commitment to ensuring choice and competition in the contact lens market, the current system seems to be working. Is this new broad mandate really necessary? Is there possibly a less burdensome way to ensure maximum doctor compliance? Frankly, it worries me the new costs that we could be saddling on thousands of small businesses in Oklahoma and across the country.

*Answer.* The Contact Lens Rule (Rule) was enacted to implement the requirements of the Fairness to Contact Lens Consumers Act. The statute and the Rule require the automatic release of a contact lens prescription to the patient upon completion of a lens fitting, or at the end of the examination if there is no change in the prescription, in order to facilitate consumers’ ability to shop around for contact lenses. Commenters have cited evidence suggesting that many contact lens consumers are not receiving their prescription as required by the Rule, either because they are not receiving their prescription at all, or because they do not receive it until they request it. Prescriber compliance with the automatic release requirement is critical to maximizing the Rule’s intended competitive benefits.

As part of its regular program to periodically review all its rules and guides, in September 2015 the Commission published a Federal Register notice generally requesting comments on the Rule, its costs and benefits, and the need for any amendments. Six hundred sixty comments were received. Based on review of the comments, the Commission published a Notice of Proposed Rulemaking (NPRM) in December 2016, requesting comment on proposed Rule amendments. The NPRM proposed to amend the Rule to require prescribers to obtain a simple signed acknowledgment after releasing a contact lens prescription to a patient, and to maintain a record of the acknowledgment for 3 years. The NPRM also sought comments on how to streamline the acknowledgment requirement to minimize the costs imposed on

eye doctors. The purpose of the proposed amendment was to enhance both compliance and our ability to enforce the Rule (by providing a record that the prescription was given out). The Commission received over 4,100 comments.

The Commission held a workshop on March 7, 2018 to collect additional information on various Rule-related issues, including the proposal to require the signed acknowledgement. The public comment period closed on April 6, 2018. We received approximately 3,500 comments. Based on the additional information from the workshop and the public comments, staff is considering how best to increase prescriber compliance with the Rule without imposing unnecessary burdens on prescribers.

#### PHARMACY BENEFIT MANAGERS (PBMS)

*Question.* My constituents have expressed numerous concerns regarding the anti-competitive effects of continued consolidation in pharmacy benefits management (PBM) industry, which is dominated by three behemoth healthcare companies that control nearly 80 percent of the market. They have told me that consolidation has reduced patient choice, decreased access to pharmacy services and lead to higher prescription drug costs paid by plan sponsors and consumers. How should the FTC evaluate and address these concerns as it reviews ongoing consolidation in this market? How would you ensure that purported merger efficiencies would be passed on to plan sponsors and consumers? Would you be willing to review consummated mergers in this industry to assess their impact on plan sponsors and consumers?

*Answer.* As you know, scrutiny of competitive issues relating to PBMs is part of the agency's ongoing mission to promote competition in healthcare. The FTC has examined the conduct of PBMs in various contexts, including during merger investigations, and as part of broad-based hearings on healthcare competition. Recently, the FTC hosted a workshop with the FDA to examine pharmaceutical distribution practices, including the role of intermediaries such as PBMs and Group Purchasing Organizations (GPOs). We held the workshop to deepen our understanding of various players in the pharmaceutical industry. In addition to presentations by experts in healthcare policy and economics, we also received over 300 public comments as part of the workshop, which identified additional areas of concern. Materials related to the workshop can be found on the FTC's website.<sup>1</sup>

We understand that there are concerns about PBM concentration and PBM practices. We are committed to bringing enforcement actions against any company, including a PBM, that violates the laws we enforce.

*Question.* The PBMs set the rates retail pharmacies charge insured consumers as well as the reimbursement rates they pay the retail pharmacies with which they compete. Most PBMs own proprietary pharmacies (mail order and/or specialty pharmacies) that compete with retail pharmacies. It is my understanding that many PBMs offer plan designs that either force or incentivize consumers to use their proprietary pharmacies for certain prescriptions. I have also heard that recently one of the largest PBMs, which also owns thousands of retail pharmacies, dramatically cut reimbursement rates to pharmacies and within days sent solicitations to purchase those same stores, acknowledging how difficult it was for the pharmacies to stay in business. How should the FTC assess such apparent conflicts of interest?

*Answer.* The Medicare Modernization Act of 2003 asked the FTC to examine issues that arise when PBMs operate mail-order pharmacies. Specifically, we examined concerns that although insurance plan sponsors rely on PBMs to manage and lower the costs of pharmacy benefits offered by the plans, a PBM might have the incentive to increase costs and generate additional profits by steering business through their own mail-order pharmacy. We collected data and assessed whether a PBM that owns a mail-order pharmacy acts in a manner that maximizes competition and results in lower prescription drug prices for its plan sponsor members.

The 2005 FTC report, sometimes referred to as the PBM Conflict of Interest Study, looked at both claims-level and aggregate data on prices, generic substitution and dispensing rates, savings due to therapeutic drug switches, and repackaging practices. The report concluded that, at that time, there was strong evidence that PBMs' ownership of mail-order pharmacies generally did not disadvantage plan sponsors.<sup>2</sup>

<sup>1</sup> FTC Workshop, *Understanding Competition in Prescription Drug Markets: Entry and Supply Chain Dynamics* (Nov. 8, 2017), <https://www.ftc.gov/news-events/events-calendar/2017/11/understanding-competition-prescription-drug-markets-entry-supply>.

<sup>2</sup> FTC Report, *Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies* (Aug. 2005), [https://www.ftc.gov/sites/default/files/documents/reports/pharmacy-benefit-managers-ownership-mail-order-pharmacies-federal-trade-commission-report/050906pharmbenefitrpt\\_0.pdf](https://www.ftc.gov/sites/default/files/documents/reports/pharmacy-benefit-managers-ownership-mail-order-pharmacies-federal-trade-commission-report/050906pharmbenefitrpt_0.pdf).

As stated above, we are aware of continued concerns with PBM practices, including alleged self-dealing. We are always open to receiving information about these concerns.

*Question.* More and more transactions in the healthcare industry are vertical in nature such as the pending CVS/Aetna and Cigna/Express Scripts mergers. Please explain how you believe the FTC should evaluate these transactions and how it can ensure that plan sponsors and consumers will continue to have competitive choices.

*Answer.* Without commenting on the specific mergers that are currently under review by the Department of Justice, vertical mergers are subject to review under Section 7 of the Clayton Act, which prohibits mergers where the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly. The anti-trust agencies have challenged vertical mergers over concerns that these transactions would give the merged firm the ability and incentive to disfavor unintegrated rivals in upstream or downstream markets, and through such means to harm competition. The Commission recently challenged a vertical merger between Northrup Grumman and Orbital ATK. There, the Commission required Northrup Grumman to supply solid rocket motors on a non-discriminatory basis to unintegrated rivals competing to supply the Department of Defense with integrated missile systems. Without such a remedy, the vertical merger would have permitted the combined firm to raise the price of solid rocket motors to other firms competing for DoD missile contracts and ultimately harm DoD. The FTC has previously challenged vertical mergers involving PBMs. For instance, in the 1999 merger of Merck & Co., Inc. and Medco Health Solutions, the Commission challenged the transaction over concerns that Merck could favor its own drugs on Medco's PBM formulary and as a result increase prices to consumers for certain drugs. (Merck & Co., Inc., 127 F.T.C. 156 (final order issued Feb. 18, 1999)). Where a merger creates a likelihood of harm based on the discriminatory treatment of rivals, structural relief is the strongly preferred approach to prevent that harm.

*Question.* I have concerns with the lack of PBM transparency and its impact on plan sponsors and consumers. This lack of transparency has enabled PBMs to increase profits and market share at the expense of plan sponsors and consumers. Given continued consolidation and the growing negotiation leverage that PBMs command in the market, what role should transparency play to enhance competition and consumer protections?

*Answer.* FTC staff has commented on proposals to increase transparency in healthcare markets. These comments cautioned that not all transparency efforts benefit consumers, and some may actually dampen competition by giving competitors access to competitively sensitive information they would not otherwise have. In general, the FTC staff supports laws (such as those that exist in many States) that increase consumer access to relevant information about healthcare products and services they may buy. However, laws that require the public disclosure of competitively sensitive information, including information related to price and cost, may chill competition by facilitating or increasing the likelihood of unlawful collusion among competitors. In addition, disclosure laws may undermine the effectiveness of selective contracting by health plans, an approach that generally reduces healthcare costs and improves overall value in the delivery of healthcare. The competitive risks are especially great if information is available to competing healthcare providers, especially in highly concentrated markets where competition among providers is already limited.<sup>3</sup>

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#### QUESTIONS SUBMITTED BY SENATOR JOHN BOOZMAN

*Question.* According to the CDC, nearly 1 in 5 contact lens-related eye infections reported to the FDA's Federal database involved a patient who experienced permanent eye damage, including scarred cornea, needed a corneal transplant, or otherwise suffered a reduction in vision. These contact lens-related eye infections can lead to long-lasting eye damage but are often preventable with proper adherence to safe contact lens use and a doctor's oversight. FDA records indicate that from 2005–2015 there were 1,075 incidences of permanent vision loss related to improper contact lens use. Given the risk of permanent vision loss for contact lens wearers, what is the FTC's role in regulating the safe use of medical devices? How does the FTC

<sup>3</sup>See FTC Staff Comment Regarding Amendments to the Minnesota Government Data Practices Act Regarding Health Care Contract Data, Which Would Classify Health Plan Provider Contracts As Public Data (June 2015), <https://www.ftc.gov/policy/advocacy/advocacy-filings/2015/06/ftc-staff-comment-regarding-amendments-minnesota-government>.

work with other health-focused regulators, like the FDA, in determining the effect FTC rulemaking may have on patient safety?

*Answer.* The FTC's role in regulating contact lenses is limited to enforcing and promoting compliance with the Contact Lens Rule, which promotes choice and competition in the contact lens marketplace. The FTC does not directly regulate medical devices such as contact lenses, nor the conditions under which they are prescribed. At the same time, prescriber and seller compliance with the Rule's requirements promotes the safe use of contact lenses. To ensure compliance, the FTC has taken law enforcement action against contact lens sellers who violate the Rule.<sup>4</sup> Our settlement orders provide injunctive relief that, among other things: prohibits the defendants from selling contact lenses without obtaining a prescription from a consumer and without verifying prescriptions by communicating directly with the prescriber; and requires defendants to maintain records of prescriptions and verifications. In addition, the FTC has sent numerous warning letters to both sellers and prescribers that potentially violated the Contact Lens Rule. We will continue to monitor the marketplace and will take action against violations of the Contact Lens Rule as appropriate.

The Commission routinely works with the FDA in this area. For example, in 2011, the FTC and the FDA jointly warned over 200 sellers of contact lenses about their obligations under the Contact Lens Rule. In addition, we have consulted with the FDA on issues relating to safety of contact lenses, and a representative from the FDA spoke at the FTC's March 7, 2018, workshop "The Contact Lens Rule and the Evolving Contact Lens Marketplace." The FTC has also worked with the CDC on its Contact Lens Health campaigns to educate consumers about the Rule; the need for a prescription for all lenses, including non-corrective lenses; and safe wear and care habits. A representative from the CDC also participated in the FTC's March 2018 workshop to address the issue of contact lens safety.

#### QUESTIONS SUBMITTED BY SENATOR STEVE DAINES

*Question.* Chairman Simons, the FTC recently charged a group of bad actors for misleading consumers who were booking hotels online. I want to commend the commission for their actions. This issue is a growing problem that has major consequences on Montana's tourist economy. I have introduced the bipartisan Stop Online Booking Scams Act, which tackles this issue and sets important transparency requirements to protect consumers. Do you share my concerns and would you commit to working with me to stop the proliferation of online booking scams?

*Answer.* I share the underlying concerns about deceptive online travel sites. False or misleading information about hotel booking sites can harm both consumers and competition. Protecting consumers as they use and benefit from new technologies, such as those made available to online shoppers for hotel and other travel services, is a top FTC priority.

We would be happy to work with you on legislation to address online booking fraud. The Commission commented on the legislation you introduced, S. 1164, in its 2017 Report to Congress on the Online Hotel Booking Market.<sup>5</sup> The Report supported the underlying concerns of the legislation, and recommended that the proposed bill be modified to ensure that it does not impose undue burdens on legitimate businesses or unintentionally exclude sites it may intend to cover. The Commission offered similar comments in testimony presented in 2016.<sup>6</sup>

*Question.* Chairman Simons, according to a recent study the world creates 44 exabytes of new data each day. This huge amount of data creates unique challenges for the FTC to help balance innovation, privacy and competition. Further, we are

<sup>4</sup>See, e.g., *U.S. v. Kim*, No. 1:11-cv-05723 (E.D.N.Y. Nov. 28, 2011), <https://www.ftc.gov/enforcement/cases-proceedings/112-3043/buyexclusivenet-gene-kim-us>; *U.S. v. Royal Tronics, Inc.*, No. 0:11-cv-62491 (S.D. Fla. Nov. 28, 2011), <https://www.ftc.gov/enforcement/cases-proceedings/112-3044/royal-tronics-inc-dba-mycandyeyescom-jamil-hindi-us>; *U.S. v. Thy Xuan Ho*, No. 1:11-cv-03419 (D. Minn. Nov. 28, 2011), <https://www.ftc.gov/enforcement/cases-proceedings/112-3042/mycutelenscom-thy-xuan-ho-aka-brandon-lee-us>.

<sup>5</sup>FTC Report, *The Online Hotel Booking Market: A Report to Congress on Recommended Enforcement Actions Against Deceptive Marketers Engaging in the Online Hotel Booking Market and Appropriate Remedies to Apply in this Area* (Aug. 2017), <https://www.ftc.gov/reports/online-hotel-booking-market-federal-trade-commission-report-congress-recommended-enforcement>.

<sup>6</sup>Prepared Statement of the Federal Trade Commission on "Legislative Hearing on 17 FTC Bills" before the Committee on Energy and Commerce, Subcommittee on Commerce, Manufacturing, and Trade, United States House of Representatives (May 24, 2016), [www.ftc.gov/public-statements/2016/05/prepared-statement-federal-trade-commission-legislative-hearing-seventeen](http://www.ftc.gov/public-statements/2016/05/prepared-statement-federal-trade-commission-legislative-hearing-seventeen). The Commission's testimony, among other things, commented on H.R. 4526, which was introduced in 2016 and is virtually identical to S. 1164.

seeing a trend in a select number of companies controlling vast amounts of data and market share. Do you see a need to hire more specialists who focus on big data and big data economics to address these challenges?

*Answer.* I agree that, in today's data-driven marketplace, it is important that the FTC have sufficient technical, policy, and economic expertise to explore the challenges associated with big data. On the technical front, the FTC has an Office of Technology, Research, and Investigation (OTech), composed of investigators, technologists, and lawyers. Among other things, OTech conducts original research on technology and big data related projects.<sup>7</sup> On the policy front, the Commission held a workshop and issued a report in 2016, which discussed potential benefits of big data, highlighted challenges such as lack of transparency, and described how current laws may apply to the use of big data.<sup>8</sup> In addition, the FTC's Bureau of Economics has conducted a host of relevant research, including several reports on the accuracy of data collected by credit bureaus.<sup>9</sup> All of our offices work together to solicit additional original academic research on big data topics, including through our annual PrivacyCon event.<sup>10</sup> This outside research further informs our enforcement and policy efforts.

From a competition perspective, the FTC generally views data as we would any other asset. In some markets, data is the product that is sold to others, such as a database. In other markets, data is a key input to a product or service. The idea that data may have competitive significance or strategic importance is not new. For instance, the FTC has challenged several mergers involving data, applying our standard merger analysis framework.<sup>11</sup> In cases involving data, the FTC often alleges harm to innovation as an anticompetitive effect of the merger.

In terms of hiring, over the past few years, the FTC has hired several lawyers, technologists, and investigators with a technology background. I expect this trend to continue. Expertise and familiarity with big data issues, technology, markets, and economics will certainly be an important factor in hiring decisions.

#### QUESTIONS SUBMITTED BY SENATOR JERRY MORAN

*Question.* Following the FTC's Memorandum of Understanding with the FCC in implementing the recent 2017 Restoring Internet Freedom Order, do you agree that the FTC has the necessary enforcement authorities provided under Section 5 of the FTC Act to protect consumers?

*Answer.* We have authority under Section 5 of the FTC Act to address unfair or deceptive acts or practices, and unfair methods of competition. I intend to use our authority aggressively to address violations of the laws we enforce. If I find that we do not have adequate authority to protect consumers and competition, I will come back to Congress to seek it.

*Question.* How would you describe the IT modernization priorities of the FTC? Are there specific proposals that this committee should be aware of?

*Answer.* The FTC's modernization priorities are contained in an Information Resource Management Plan (IRM) that was approved by the FTC's Information Technology Governance Board, which comprises senior agency officials. The IRM prioritizes IT investments in security, network modernization, and support for cloud based e-discovery services. Roughly half of the FTC's base IT spending already pro-

<sup>7</sup>For example, OTech has produced original research on the practice of cross-device tracking and the tracking of data online. See Justin Brookman et al., *Cross-Device Tracking: Measurement and Disclosures*, PROC. ON PRIVACY ENHANCING TECH. 113, 117–22 (2017), <https://petsymposium.org/2017/papers/issue2/paper29-2017-2-source.pdf>; Dan Salsburg and Tina Yeung, *Tracking the Use of Leaked Consumer data*, May 2017 [https://www.ftc.gov/system/files/documents/public\\_events/987523/ftc-leakeddataresearch-slides.pdf](https://www.ftc.gov/system/files/documents/public_events/987523/ftc-leakeddataresearch-slides.pdf).

<sup>8</sup>FTC Report, *Big Data: A Tool for Inclusion or Exclusion? Understanding the Issues* (Jan. 2016), <https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf>.

<sup>9</sup>See FTC, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (Dec. 2012), <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf>. FTC, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (Jan. 2015), <https://www.ftc.gov/system/files/documents/reports/section-319-fair-accurate-credit-transactions-act-2003-sixth-interim-final-report-federal-trade/150121factareport.pdf>.

<sup>10</sup>See PrivacyCon 2018, <https://www.ftc.gov/news-events/events-calendar/2018/02/privacycon-2018>.

<sup>11</sup>See, e.g., *Reed Elsevier NV*, No. C-4257 (complaint issued Sept. 15, 2008); *FTC v. CCC Holdings, Inc.*, Civ. No. 1:08-CV-02043 (D.D.C. Nov. 26, 2008); *CoreLogic, Inc.*, No. C-4458 (complaint issued Mar. 24, 2014); *CDK Global, Inc.*, Dkt. 9382 (complaint issued Mar. 19, 2018; dismissed Mar. 26, 2018 after parties abandoned merger).

vides modern, cloud-based services to the agency. The FTC is in the midst of a multi-year effort to modernize its remaining legacy IT systems, so the agency can continue to address its need to process ever-increasing volumes of information. Last year, the agency addressed network security concerns when it adopted the use of Personal Identity Verification (PIV) cards by its staff, as well as the use of GSA contract services for network security. More recently, the FTC sponsored a cloud services provider specializing in litigation support services through FedRAMP, to help meet our need for modern document review tools. The FTC also issued a multi-award Blanket Purchase Agreement to support the next phases of our IT modernization efforts.

*Question.* How do FTC enforcement actions that challenge the data security practices of companies impact the commission's ability to protect consumers?

*Answer.* The FTC uses its existing authority under the FTC Act to protect consumers from unfair or deceptive data security practices. To date, the Commission has brought more than 60 cases alleging that companies failed to implement reasonable safeguards for the consumer data they maintain. For example, the Commission recently announced an expanded settlement with ride-sharing platform company Uber Technologies related to allegations that the company failed to reasonably secure sensitive consumer data stored in the cloud. As a result, an intruder allegedly accessed personal information about Uber customers and drivers, including more than 25 million names and email addresses, 22 million names and mobile phone numbers, and 600,000 names and driver's license numbers.<sup>12</sup> The FTC also reached a settlement with one of the world's largest computer manufacturers, Lenovo, related to allegations that the company pre-loaded software onto some of its laptops that compromised security protections in order to deliver ads to consumers.<sup>13</sup>

At the same time, I believe the FTC could use additional tools to protect consumers. For example, under the FTC Act, the FTC does not currently have the authority to seek civil penalties against first-time violators. I support comprehensive data security legislation that would strengthen the FTC's existing data security authority and require companies, in appropriate circumstances, to provide notification to consumers when there is a security breach. Legislation in both areas—data security and breach notification—should give the FTC the ability to seek civil penalties to help deter unlawful conduct, jurisdiction over non-profits and common carriers, and the authority to issue implementing rules under the notice and comment rule-making procedures of the Administrative Procedure Act, 5 U.S.C. § 553. The FTC has long recommended these additional tools on a bipartisan basis, and I urge Congress to enact legislation to give these tools to the agency.

*Question.* Your testimony mentioned the innovative security research that the FTC has promoted through its annual PrivacyCon event and other related workshops. Can you further describe how the agency can facilitate improved data security practices across industries by providing a platform to innovators in the data security field?

*Answer.* The FTC uses three main strategies to facilitate improved data security practices across industries. First, the FTC deters poor data security practices by bringing enforcement actions against companies that engage in unfair or deceptive data security practices. Some examples are discussed above. Second, the FTC provides businesses with a host of guidance. In 2015, we announced our *Start with Security* initiative, in which we set forth ten lessons from our numerous data security enforcement actions.<sup>14</sup> Last year, we provided additional guidance to businesses through our *Stick with Security* initiative, which was based on cases we have brought, cases we have closed, and frequently asked questions we receive from companies.<sup>15</sup>

Finally, the Commission engages in policy discussions, one goal of which is to provide a platform for innovators in the data security field. In addition to PrivacyCon, another example is last year's *IoT Home Inspector Challenge*, a public competition aimed at spurring the development of security update-related IoT tools.<sup>16</sup> The winning contestant developed a tool to enable users with limited technical expertise to

<sup>12</sup> *Uber Technologies, Inc.*, Matter No. 152-3054 (Apr. 2018) (proposed order), <https://www.ftc.gov/enforcement/cases-proceedings/152-3054/uber-technologies-inc>.

<sup>13</sup> *Lenovo, Inc.*, No. C-4636 (Jan. 2018), <https://www.ftc.gov/enforcement/cases-proceedings/152-3134/lenovo-inc>.

<sup>14</sup> FTC Business Guide, *Start with Security: A Guide for Business* (June 2015), <https://www.bulkorder.ftc.gov/system/files/publications/pdf0205-startwithsecurity.pdf>.

<sup>15</sup> FTC Blog Series, *Stick With Security* (Oct. 2017), <https://www.ftc.gov/tips-advice/business-center/guidance/stick-security-business-blog-series>.

<sup>16</sup> See FTC Notice of IoT Home Inspector Challenge, 82 Fed. Reg. 840-47 (Jan. 4, 2017), [https://www.ftc.gov/system/files/documents/federal\\_register\\_notices/2017/01/iot\\_frn\\_pub\\_010417\\_-\\_2016-31731.pdf](https://www.ftc.gov/system/files/documents/federal_register_notices/2017/01/iot_frn_pub_010417_-_2016-31731.pdf).

scan their home Wi-Fi and Bluetooth networks to identify and inventory connected devices in their homes. The tool would flag devices with out-of-date software and other common vulnerabilities and provide instructions to consumers on how to update their devices.<sup>17</sup>

*Question.* In 2016, Congress enacted the Better Online Ticket Sales (BOTS) Act to empower the FTC and State attorneys general to go after people who use computer programs—called “bots”—to seize up large portions of ticket inventories for live events, and re-sell them on the secondary market. As you know, this law seeks to aid our constituents in gaining access quality tickets at face value. However, laws are not effective unless they are enforced. We have provided the FTC with a tool, which we believe should be used rigorously to protect consumers. Can you please provide an update on the commission’s enforcement actions against the use of “bots” since the enactment of the law?

*Answer.* The FTC is committed to enforcing the Better Online Ticket Sales (BOTS) Act. We appreciate this new authority and are looking for appropriate targets. However, the FTC’s investigations are confidential, so we cannot disclose publicly the status of any BOTS Act investigations. Prior to enactment of the BOTS Act, the FTC had taken action in cases that involved other problematic ticket-selling practices. In 2010, the FTC settled allegations that Ticketmaster deceptively directed consumers seeking tickets to its resale site, TicketsNow.<sup>18</sup> In 2014, the FTC settled cases with several ticket resellers, alleging that they used deceptive search engine ads linking to websites designed to look like the official venues.<sup>19</sup>

To advance the aims of the BOTS Act, the FTC has engaged with primary ticket sellers, ticket resellers, foreign agencies, and State attorneys general about strategies for stopping bots. Also, the FTC has published two advisories on the BOTS Act to educate consumers<sup>20</sup> and businesses<sup>21</sup> about their rights and obligations under the Act.

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QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

*Question.* You noted that you are conducting a study of the FTC’s resources to ensure it has what it needs to appropriately oversee the broadband industry following repeal of the FCC’s 2015 net neutrality rules.

—When do you expect to conclude this study?

—When do you expect to share the results with this Committee?

*Answer.* I expect to have an update for the Committee soon and, if necessary, a follow-up request for additional resources.

*Question.* The FCC has traditionally been considered the expert agency for telecommunications matters, which is why I believe it is the correct agency to enforce net neutrality rules. You indicated at the hearing that the FCC may end up lending the FTC expert technical staff to assist it in the enforcement of open Internet principles.

—Why would the FCC need to lend the FTC expert technical staff if the FTC is adequately prepared to step in and enforce open Internet principles?

—How many network engineers and other telecommunications experts does the FTC currently employ?

—How many cases has the FTC brought against ISPs for discriminatory practices such as discrimination of Internet traffic?

*Answer.* The FTC is committed to working with the FCC to prevent unfair, deceptive, or anticompetitive conduct by Internet service providers (ISPs) or edge providers that would harm consumers. I have spoken with Chairman Pai about this issue, and we share this common commitment to protect consumers going forward.

To supplement the FTC’s existing expertise in competition and consumer protection law, we will seek input from FCC staff, when appropriate, to ensure that the

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<sup>17</sup> FTC Press Release, *FTC Announces Winner of its Internet of Things Home Device Security Contest* (July 26, 2017), <https://www.ftc.gov/news-events/press-releases/2017/07/ftc-announces-winner-its-Internet-things-home-device-security>.

<sup>18</sup> See *FTC v. Ticketmaster L.L.C.*, No. 1:10-cv-1093 (N.D. Ill. Feb. 18, 2010), <https://www.ftc.gov/enforcement/cases-proceedings/092-3091/ftc-v-ticketmaster-llc-limited-liability-company-ticketmaster>.

<sup>19</sup> See *FTC v. TicketNetwork, Inc. et al.*, No. 3:14-cv-1046 (D. Conn. Aug. 12, 2014), <https://www.ftc.gov/enforcement/cases-proceedings/132-3203-132-3204-132-3207/ticketnetwork-inc-ryadd-inc-secureboxoffice>.

<sup>20</sup> FTC Consumer Blog, *Battling Ticket Bots* (Aug. 14, 2017), <https://www.consumer.ftc.gov/blog/2017/08/battling-ticket-bots>.

<sup>21</sup> FTC Business Blog, *BOTS Act: That’s The Ticket!* (Apr. 7, 2017), <https://www.ftc.gov/news-events/blogs/business-blog/2017/04/bots-act-thats-ticket>.

FTC can effectively combat unfair or deceptive conduct by ISPs. To that end, in December 2017, the Commission signed a Memorandum of Understanding with the FCC, which provides a framework and a process for sharing information that will help us protect consumers.<sup>22</sup> Each agency has its own legal, technical, and investigative expertise and experience related to ISPs, and the MOU sets out each agency's commitment to the other. For instance, under the MOU, the agencies will discuss potential investigations against ISPs that could arise under each agency's jurisdiction, and coordinate such activities to promote consistency in law enforcement and to prevent duplicative or conflicting actions.

While the FTC brought significant enforcement actions against ISPs for unfair or deceptive conduct prior to the FCC's reclassification of these companies as common carriers, the FTC has not challenged ISP conduct under the antitrust laws recently, although it has reviewed a number of mergers in Internet-related markets. In addition, the FTC has used other tools to monitor conduct by ISPs. For instance, FTC staff studied competition policies that directly affect ISPs in its comprehensive 2007 report, *Broadband Connectivity Competition Policy*.<sup>23</sup>

The FTC has experience and expertise in investigating anticompetitive conduct by technology firms and has brought numerous enforcement actions alleging consumer harm from unilateral conduct.<sup>24</sup> When necessary, in these markets and others, we seek data and information from industry and technical experts. I strongly believe that, going forward, case-specific antitrust enforcement focused on consumer harm will protect consumers from anticompetitive conduct by ISPs and other firms in this fast-paced industry.

*Question.* I am very concerned about the flood of robocalls that consumers are subjected to on a daily basis. I appreciate the work the FTC does to help stem the tide of unwanted and fraudulent calls; however, most Vermonters I speak to worry that not enough is being done. In your testimony, you mentioned the success of the FTC's robocall challenges.

—Can you expand on why you believe these challenges were such a successful tool to crack down on robocalls?

*Answer.* The FTC challenges helped spur development of tools consumers can use to block abusive robocalls. Two winners of FTC public challenges—essentially innovation contests with cash prizes—have developed frequently used call blocking apps: Nomorobo and Robokiller. When the FTC held the first of these challenges in 2012, there were few call blocking apps on the market. Since those public challenges, the number and variety of call blocking apps have grown exponentially. Today, there are hundreds of call blocking apps available on the Android and iPhone platforms, as well as call blocking solutions available for consumers with residential VoIP telephone service.

#### SUBCOMMITTEE RECESS

This subcommittee hearing is adjourned.

[Whereupon, at 11:35 a.m., Thursday, May 17, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

<sup>22</sup> See *Restoring Internet Freedom: FCC–FTC Memorandum of Understanding* (Dec. 2017), <https://www.ftc.gov/policy/cooperation-agreements/restoring-Internet-freedom-fcc-ftc-memorandum-understanding>.

<sup>23</sup> FTC, *Broadband Connectivity Competition Policy Staff Report* 52 (June 2007), <https://www.ftc.gov/reports/broadband-connectivity-competition-policy-staff-report>.

<sup>24</sup> See, e.g. *Dell Computer Corporation*, No. C–3658 (May 20, 1996), <https://www.ftc.gov/enforcement/cases-proceedings/931-0097/dell-computer-corporation>; *In re Rambus, Inc.*, No. 9302 (decision Aug. 2, 2006), *rev'd*, *Rambus Inc. v. Federal Trade Commission*, 522 F.3d 456, 468 (D.C. Cir. 2008), <https://www.ftc.gov/enforcement/cases-proceedings/011-0017/rambus-inc-matter>; *Union Oil Co. of Cal.*, No. 9305 (Aug. 2, 2005), <https://www.ftc.gov/enforcement/cases-proceedings/0110214/union-oil-company-california-matter>; *Negotiated Data Solutions LLC*, No. C–4234 (Sept. 23, 2008), <https://www.ftc.gov/enforcement/cases-proceedings/051-0094/negotiated-data-solutions-llc-matter>; *Intel Corporation*, No. 9341 (Nov. 2, 2010), <https://www.ftc.gov/enforcement/cases-proceedings/061-0247/intel-corporation-matter>; *Victrix plc*, No. C-4586 (Jul. 30, 2016), <https://www.ftc.gov/enforcement/cases-proceedings/141-0042/victrix-plc-et-al-matter>; *FTC v. Qualcomm* No. 5:17-cv-00220 (N.D. Cal. Jan. 17, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/141-0199/qualcomm-inc>.