

FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2020

TUESDAY, MAY 7, 2019

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

The subcommittee met at 2:30 p.m., in room SD-138, Dirksen Senate Office Building, Hon. John Kennedy (Chairman) presiding.
Present: Senators Kennedy, Moran, Boozman, Daines, Lankford, Coons, Manchin, and Van Hollen.

FEDERAL COMMUNICATIONS COMMISSION AND FEDERAL TRADE COMMISSION

OPENING STATEMENT OF SENATOR JOHN KENNEDY

Senator KENNEDY. All right, folks. The subcommittee will come to order.

We are going to hear today about the fiscal year 2020 budget requests for the FCC and the FTC. We have with us today our two chairmen; from the FCC, Chairman Ajit Pai, who has served as chairman since January of 2017. He was previously a commissioner on the Federal Communications Commission. He is a proud graduate of Harvard and Chicago Law. We also have from the Federal Trade Commission, Chairman Joseph Simons. He has been chairman since May of 2018. He was previously a partner at the law firm of Paul, Weiss, where undoubtedly he made more money. He was co-chair of the firm's Antitrust Group, and he is a graduate of Cornell and Georgetown Law.

Let me say a few words, and then I will call on my colleague Senator Coons.

As indicated today, we are convening the first hearing for the Financial Services and General Government Subcommittee for fiscal year 2020.

I would like to welcome my colleague Senator Coons and all the Members of the subcommittee, and I am very pleased to be working with them.

I look forward to us taking a collaborative approach to these hearings and to our fiscal year 2020 appropriations bill. Our subcommittee may be small dollar-wise, but we are mighty. And we are committed to saving taxpayer money and spending what we spend wisely.

The programs and agencies funded by this subcommittee, I do not need to tell our two chairmen, play an important role in supporting the American economy, ensuring a fair and efficient system of justice, and promoting private-sector growth.

The FTC is a critically important agency, and is the Nation's top cop on the consumer beat. We want to make sure it is using its resources as efficiently as possible. I do not mean to suggest that you are not, but that is what our questions will be directed toward.

The FTC requests \$312.3 million in fiscal year 2020, which is an increase of \$2.6 million, to fulfill its mission of protecting consumers and promoting competition.

We are eager to hear about the new initiatives in the FTC's Bureau of Competition and Bureau of Consumer Protection. We are also anxious to hear about your new task force to monitor competition and technology markets and your efforts to ensure consumer privacy. Welcome, Mr. Chairman.

Today we will also talk with our chairman at the FCC about his agency's efforts to expand the deployment of rural broadband, to improve public safety, and to protect consumers. The President's budget proposes \$335.7 million for operating expenses at the FCC for fiscal year 2020.

The FCC has also identified four strategic goals for fiscal year 2020. Those include closing the digital divide, promoting innovation in the market for communication services, protecting consumer and public safety, and of course, improving FCC regulatory processes. I am looking forward to hearing how our friends at the FCC plan to execute these goals under their requested budget authority.

I am also looking forward to hearing about the FCC's plan to win America's race to 5G through its ongoing and planned spectrum auctions, while simultaneously protecting rural communities and incumbent officeholders.

I want to thank both of you again for appearing this morning.

Before I ask the Ranking Member, Senator Coons, to give his remarks, I just want to say an additional word that occurred to me as I was walking over here today. It is really directed to all of us, particularly to our friends at the FCC.

So-called "net neutrality" is critically important to the American people, and many reasonable people have different points of view on what we ought to do.

The problem is that regardless of what one thinks about the correct course with respect to net neutrality, we need to pick a course and stick to it because it is very, very hard for people and consumers to comply with changing rules. It is very hard when we have the policy bouncing around like a ping-pong ball.

This is just one person's opinion, but it is really time for Congress to act. We need to roll up our sleeves. I think we have more in common than we do not. We need to stop passing the buck, and we need to pass a net neutrality bill.

With that, I will call on my colleague and esteemed Ranking Member, Senator Coons.

STATEMENT OF SENATOR CHRISTOPHER A. COONS

Senator COONS. Thank you, Chairman Kennedy, for convening this hearing today, for that opening statement, and for the first

hearing in this Congress in which you will be the Chairman of the FSGG subcommittee. I look forward to working with you. I enjoyed a great working relationship with your predecessor, Senator Lankford, and my staff and I are very excited to begin this year's appropriation process.

I also want to welcome our witnesses, Chairman Pai and Chairman Simons. Both of you testified before this subcommittee last year. We have stayed in touch, and it is very good to see both of you back here today to review your fiscal year 2020 budget request.

Chairman Pai, I am, as you know, concerned you are requesting a cut in funding.

As your agency also takes the lead in making sure the United States is the global leader in 5G technology, I look forward to discussing whether that makes sense.

Chairman Simons, you are requesting an increase of less than 1 percent, at the same time we are counting on the FTC to protect every American's privacy in the Internet age. I am going to ask whether that is realistic, given the increasing cost of litigation and expert witnesses.

Chairman Pai, Chairman Simons, each of your agencies plays a central role in protecting Americans' privacy, as the Chairman referenced. These personal devices we all carry around with us everywhere allow us to connect and talk with loved ones and find the fastest route from A to B. You can even apparently buy a car, a home, anything on your smartphone these days.

But they also tell companies an awful lot about us. So I am interested to learn, Chairman Pai, what steps the FCC has taken to address the sale of consumers' location on their phones.

And, Chairman Simons, there are reports the FTC will soon level its largest ever fine in a case dealing with consumer privacy, and I want to hear how your current enforcement authorities are working or not and what additional authorities you may seek.

I could not agree more with the Chairman's comments about net neutrality. I think we have had a several-year-long fight back and forth. It is time for us to sort it out and to legislate responsibly.

On broadband, for our connected devices to work well, every home, no matter how rural, must be connected to the communications and IT systems that now drive our economy and our way of life. I hear about connectivity issues in the more rural areas of my home State. Yes, a State as small as Delaware does still have rural areas in Kent and Sussex Counties that struggle with reliable access.

The FCC oversees the multibillion-dollar universal service fund, which expands access to vital communications, including remote health care access for systems across the country. I want to know what you think we should be doing to make sure that all American communities have access to broadband.

Chairman, I know you are addressing this issue, but it has not been fixed yet, and I want to talk with you about it further.

Last, let me just mention robocalls. Americans receive—I did not believe this number when it was first given to me—5 billion robocalls a month. That is more than double the number of calls received just 2 years ago. That means someone in this room is going to get a robocall during this hearing, and I want to under-

stand, frankly, what you are doing about this and whether you have sufficient resources and authorities to address that problem adequately.

We have got lots to talk about, so let me stop talking, Mr. Chairman, and let us get on with this first hearing of this Congress for fiscal year 2020.

Thank you.

Senator KENNEDY. All right. Thank you, Senator.

Chairman Pai, I will now invite you to make your opening remarks.

STATEMENT OF HON. AJIT PAI, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Chairman PAI. Thank you, Mr. Chairman.

Chairman Kennedy, Ranking Member Coons, Members of the subcommittee, thank you for inviting me to present the FCC's fiscal year 2020 budget request, and I wanted to extend a personal thanks to each of you for taking time out of your busy schedules to meet with me personally about these important issues.

Mr. Chairman, as you recognized, our requested spending level is \$335,660,000, derived from regulatory fees for regular FCC operations, with an auction spend cap of \$132,538,680.

But, first, I would like to thank you for providing us with generous funding in the omnibus as well as permission to complete internal reorganizations to advance agency reform efforts.

Additional auction funds are supporting Congress' expansion of the TV Broadcaster Relocation Fund to reimburse low-power television, TV translator, and FM radio stations for costs that are related to the post-Incentive Auction repack.

We also appreciate your authorization to create the Office of Economics and Analytics at the FCC. We are making great strides, expanding and deepening the use of economic analysis in our decisionmaking.

Our budget proposal for near year for regular operations is slightly below what we received for fiscal year 2019, and our auction cap is only adjusted upward for inflation. So our FTE level will stay the same.

What will those 1,448 FTEs be doing? Well, in my written testimony, I discussed important agency priorities, such as 5G and public safety, but I would like to focus my oral remarks this afternoon on rural broadband deployment.

The FCC's top priority is to close the digital divide. I have personally seen how the lack of broadband can affect rural communities in particular, from a bayou outside of Hammond, Louisiana, to the mountains of Capon Springs, West Virginia.

I have seen how the business case for deployment too often does not exist without Federal help, and that is why the FCC has been pursuing an aggressive agenda to expand high-speed Internet access across rural America.

For example, through our groundbreaking Connect America Fund Phase II reverse auction, we are awarding about \$1.5 billion to connect over 713,000 homes and small businesses nationwide with fixed broadband. This will make a big difference in these communities.

Earlier this year, when I was in Seaford, Delaware, I visited officials from Bloosurf, a broadband provider that will use FCC-directed funds to connect over 5,000 unserved locations in Sussex County, Delaware, and the Eastern Shore of Maryland.

And just last week, I met with representatives of electric co-operatives from States including Oklahoma, Alabama, Arkansas, and Oregon.

Our funding will allow these electric co-ops to deliver gigabit fiber to previously unserved rural areas, enabling things like telemedicine and precision agriculture, while strengthening rural communities.

Last December, we also reformed our Alternative Connect America Cost model, or A-CAM program. Specifically, we offered many small rural carriers more funding in return for deploying faster broadband to more rural locations.

As a result of these offers, we announced last month that an additional 106,000 rural homes and small businesses will get faster broadband. That is a 31 percent increase in the number of locations receiving broadband of at least 25/3 megabit-per-second speeds through the A-CAM program, and the increase is much larger in many States, like 105 percent in Montana and 92 percent in my home State of Kansas.

We have also begun requiring that small rural carriers that still rely on the FCC's legacy mechanism provide faster broadband to more rural locations.

Under the previous administration's rules, these carriers were only required to provide 10/1 service to about 115,000 locations. Under our new rules, these same carriers will have to provide at least 25/3 broadband to more than 600,000 locations.

At the same time, we initiated a second round of A-CAM offers to these carriers. If all accept, they will have to provide 25/3 service to at least 1.1 million new locations, including over 38,000 in Oklahoma, 34,000 in Kansas, 29,000 in Montana, and 27,000 in Arkansas.

Of course, we need to do more just to close the digital divide, and that is why, among other things, I intend in the coming year to establish a Rural Digital Opportunity fund.

Currently, the FCC directs substantial amounts of money each year to larger carriers to deploy 10/1 broadband service to many rural homes and businesses under a program adopted during the prior administration. This program is in many States, including Louisiana, but in my view, 10/1 service is not good enough for rural America. So I intend to replace this program with a Rural Digital Opportunity Fund. This fund will distribute over \$20 billion through a reverse auction to deploy gigabit-speed broadband to up to 4 million homes and businesses.

We are taking many other steps to promote rural broadband deployment, from reducing regulatory barriers to fiber deployment to increasing funding for our rural health care program to enable telemedicine.

I do not have enough time to discuss all of them now. So let me conclude simply by thanking our staff for the hard work they do each and every day and thank you for the resources you give us to help meet the public interest.

I look forward to answering your questions and working with you and your staff in the time to come to promote the public interest. Thank you, Mr. Chairman.
[The statement follows:]

PREPARED STATEMENT OF HON. AJIT PAI

Chairman Kennedy, Ranking Member Coons, and Members of the Financial Services and General Government Subcommittee, thank you for inviting me here to present the Federal Communications Commission's Fiscal Year 2020 Budget Request. The Commission's Office of Management and Budget-designated spending level for fiscal year 2020 is \$335,660,000, derived exclusively from regulatory fees for regular FCC operations, and an auction spending cap of \$132,538,680.

But before I discuss the Commission's plans for the next fiscal year, I want to take this opportunity to thank this subcommittee for its support during the prior year. We greatly appreciate your decision to provide us with funds above the fiscal year 2019 request, as well as your permission to complete internal reorganizations to advance agency reform efforts.

Let me highlight a few positive impacts of this subcommittee's decisions.

First, you increased auction funding by more than \$17 million. The funds provided by this subcommittee have enabled us to meet our statutory deadline to complete our rulemaking to implement changes to the TV Broadcaster Relocation Fund and provide money to reimburse low-power television, TV translator, and FM radio stations impacted by the post-Incentive Auction spectrum repack. They have also helped us establish a dedicated call center and launch a public education campaign to assist consumers impacted by the relocation of broadcast stations. And they have funded monthly reports to subcommittee staff on our progress with respect to the repack.

Second, you authorized two agency reorganization initiatives to help the Commission better carry out its mission. You approved the creation of the Office of Economics and Analytics, which brought together economists who were previously scattered throughout the Commission. The Office is already having a positive impact on the Commission's work, and going forward, I am confident that it will allow us to continue expanding and deepening the use of economic analysis in the Commission's decision-making. This subcommittee also permitted us to transfer the audit and enforcement responsibilities associated with our Equal Employment Opportunity rules from the Media Bureau to the Enforcement Bureau. This reorganization, which took place earlier this year, was supported by many civil rights organizations and will help us to more effectively enforce these rules.

Third, you gave us nearly \$6 million above our general request for fiscal year 2019, which is supporting a broad range of Commission efforts essential to our core mission. The FCC greatly appreciates your decision to return our funding to \$339,000,000 in fiscal year 2019. This amount means a great deal to a small agency and aids our efforts to expand the deployment of rural broadband, improve public safety, foster technological innovation, protect consumers, and modernize our information technology.

Turning to the future, I'd like to discuss some of the Commission's most important priorities for next year—priorities that the funds requested in this budget submission are critical to advancing.

First, we will continue our work to secure our Nation's leadership in 5G, the next generation of wireless connectivity. 5G networks will be 100 times faster than today's networks, maybe even more. They will have lag times that are a tenth of what they are today. And they'll have much more capacity, being able to connect as many as one million devices per square kilometer.

Our work on 5G will open the door to new services and applications that will grow our economy and improve our standard of living. Smart transportation networks will link connected cars—reducing traffic, preventing accidents, and limiting pollution. Ubiquitous wireless sensors will enable healthcare professionals to remotely monitor your health and transmit data to your doctor before problems become emergencies. Connected devices will empower farms to apply precision agriculture. And there will be more innovations that we can't even conceive of today.

These breakthroughs will boost our economy. One study pegs 5G's potential at 3 million new jobs, \$275 billion in private investment, and \$500 billion in new economic growth.

To realize this potential, we've developed a comprehensive strategy that will "Facilitate America's Superiority in 5G Technology"; it's called the "5G FAST" plan. It has three key components: (1) pushing more spectrum into the marketplace; (2) pro-

moting the deployment of wireless infrastructure; and (3) modernizing outdated regulations. In my testimony today, I'd like to concentrate on the first prong, spectrum.

The applications and services of tomorrow will require much more bandwidth. They cannot be developed and deployed without spectrum. This critical resource represents the lifeblood of the communications industry—and with it, the future of our economy. That's why the FCC must continue its work to aggressively make more spectrum available for commercial use.

In my testimony to this subcommittee last year, I said that the FCC would hold two high-band spectrum auctions during fiscal year 2019: one for the 28 GHz band and another for the 24 GHz band. And I noted that conducting these auctions successfully and promptly would be important to U.S. leadership in 5G.

I am pleased to report that we have done what I said we would do. Our 28 GHz auction began last November and concluded this January. All in all, bidders won 2,965 licenses, and the auction raised \$702,572,410 in gross bids for the U.S. Treasury. Our 24 GHz auction began in March. The clock phase of this auction ended in April, and the assignment phase is currently taking place. Gross bids so far have more than doubled from the amount raised in the 28 GHz auction, to just short of \$2 billion.

While these auctions are significant accomplishments, the FCC cannot and will not rest on our laurels. Instead, we will continue to free up spectrum for commercial use. Starting on December 10, we will hold the largest auction in Commission history—we expect the upper 37 GHz, 39 GHz, and 47 GHz bands will release 3.4 gigahertz of spectrum into the commercial marketplace. During the next fiscal year, we also intend to auction mid-band spectrum in the 3.5 GHz band. We will continue our work to make additional mid-band spectrum bands available for flexible use, including in the 2.5 GHz and 3.7–4.2 GHz bands.

All in all, these auctions will free up for the commercial marketplace over 5 gigahertz of spectrum for flexible use. For context, that's more spectrum than is currently used for mobile broadband by all mobile broadband providers in the United States combined.

As part of our balanced spectrum strategy, we have also been working to make more spectrum available for unlicensed use. Earlier this year, for example, we allocated over 21 gigahertz of spectrum above 95 GHz for unlicensed operations. And we are continuing our effort to open up a large amount of unlicensed spectrum in the 6 GHz band, proposing to safeguard incumbents with innovative technologies and sharing techniques that will make sure we get the most use of this limited, essential resource.

The second priority I'd like to address involves our continuing efforts to close the digital divide. Closing the digital divide has been my top priority since becoming chairman. That's why last year, the Commission took a variety of steps to better enable the private sector to deploy broadband infrastructure. For example, we made it easier and cheaper for competitive providers to attach fiber to utility poles through a groundbreaking reform called "one-touch make ready."

Of course, there are some areas where the business case for broadband deployment just won't exist—no matter how much red tape we cut. These are typically rural areas with sparser populations and lower incomes. The FCC manages programs to connect these rural communities through what is called the Universal Service Fund (USF). And we've been aggressively taking action to maximize the USF's impact—to stretch scarce dollars as far as we can.

Last year, we finished a landmark reverse auction called Connect America Fund Phase II. Through this novel approach, we're awarding about \$1.5 billion to connect over 713,000 homes and businesses nationwide. Before the auction, we identified parts of our country that were unserved by broadband. This was so that we could target funding to leverage—not displace—private capital expenditures. We didn't want to fund overbuilding. We also made sure the auction was open to providers of all types, including rural telecom companies, cable, fixed wireless, and satellite companies, as well as electric utilities. This ensured that there would be plenty of competition.

The outcome of the auction was a tremendous success. We distributed funding much more efficiently thanks in part to intermodal, competitive bidding, saving \$3.5 billion from the \$5 billion price we initially thought would be required to connect these unserved areas. We also ensured that 99.7 percent of the winning bids would provide consumers with service of at least 25/3 Mbps. And we set a level playing field that enabled a variety of entities, from fixed wireless to electric utilities, to win.

Moreover, last December, we implemented reforms to the FCC's Alternative Connect America Cost Model (A-CAM). As a result, a total of 186 small, rural carriers participating in the A-CAM program have now accepted \$65.7 million in additional

annual support over the next decade to provide 106,000 more rural homes and small businesses with 25/3 Mbps broadband service. This represents a 31.8 percent increase in the number of locations that will have high-quality service available through the FCC's A-CAM program. And the increase is much larger in many States, such as 105.4 percent in Montana and 92.4 percent in my home State of Kansas.

In December, for the first time we also began requiring that small, rural carriers that continue to rely on the Commission's legacy, cost-based support mechanism provide 25/3 Mbps broadband service to specific numbers of rural homes and small businesses in their service areas. Under the prior administration's rules, these carriers were only required to provide 10/1 Mbps service to 115,441 locations; under our new rules, these same carriers will have to provide 25/3 Mbps broadband to at least 600,535 locations. At the same time, we also initiated a second round of A-CAM offers of fixed, model-based support for a term of 10 years to these carriers, in exchange for building out 25/3 Mbps broadband to all fully-funded locations in their service areas. If all legacy-reliant carriers accept the new A-CAM offers, they will be required to provide 25/3 Mbps service to at least 1,126,082 locations.

Last year, we took other steps through the Fund to help close the digital divide as well. For example, we increased the annual cap on rural healthcare program spending by nearly 43 percent, to \$571 million per year for that funding year—the first increase in the program's funding level since it was established in the 1990s. These additional funds will help to provide critical connectivity to rural healthcare institutions.

And we plan to continue our emphasis on closing the digital divide. Later this year, for example, we will begin a rulemaking to establish a \$20.4 billion Rural Digital Opportunity Fund. Applying lessons learned from the Connect America Fund Phase II reverse auction, this program will spur the deployment of high-speed broadband networks across more of rural America over the next decade, bringing greater economic opportunities to America's heartland. Service providers that win funding in the reverse auction will deploy needed infrastructure to provide up to gigabit-speed broadband in the parts of the country most in need of connectivity. I'm excited about this program—it will be the FCC's single biggest step yet to close the digital divide and will connect up to four million rural homes and small businesses to high-speed broadband networks.

Of course, it is important that we spend USF funds wisely and eliminate waste, fraud, and abuse in these programs. That's why last month, we sent you a reorganization plan to create a Fraud Division within the Enforcement Bureau. I am pleased that this proposal was unanimously endorsed by the Commission and cleared by the Office of Management and Budget. This reform will embed a permanent effort to combat USF fraud within the structure of the Enforcement Bureau.

Our third priority is to continue fulfilling our important mission to protect public safety. Last year, for example, we took important steps to improve Wireless Emergency Alerts, which play a critical role in notifying Americans when emergencies strike.

In February, I visited the Orleans Parish Communications District, which is the 911 call-handling and dispatch center for the Crescent City. And in March, I traveled to New Jersey and Delaware and visited 911 call centers. These interactions underscored to me the importance of supporting those who work every day to help their fellow Americans in their time of need. During the last fiscal year, we began work to implement laws passed by Congress to improve 911 calling. For example, we proposed rules to implement Kari's Law. Kari's Law requires multi-line telephone systems—which commonly serve hotels, office buildings, and campuses—to enable users to dial 911 directly. And it also contains a notification requirement so that when a 911 call is made in these settings, a front desk or security office will be alerted to facilitate building entry by first responders. We have proposed rules to help first responders locate wireless 911 callers in multi-story buildings. In the coming year, the Commission intends to take further steps to improve 911 calling. Among other things, I believe that we will be able to take final action to add a vertical, or "z-axis" metric to our location accuracy rules and finalize rules implementing Kari's Law.

Our work in this area also extends to national security and involves our review of foreign companies that seek to do business in the United States. Later this week, at our May open meeting, the Commission will act to promote secure communications—a long-standing FCC priority. In 2011, China Mobile USA, which is ultimately owned by the Chinese Government, applied to the Commission seeking to provide international telecommunications services in the United States. Consistent with agency policy, we solicited the views of the relevant Federal agencies on whether the application raised national security, law enforcement, or related concerns.

After a lengthy review of the application and in consultation with the U.S. intelligence community, in 2018, the executive branch agencies recommended that the FCC deny China Mobile USA's application due to substantial national security and law enforcement concerns that cannot be resolved through an agreement with the company (called "voluntary mitigation"). Notably, this is the first time the executive branch has ever recommended that the FCC deny an application due to national security concerns. Based on this recommendation and the full public record in this proceeding, I have determined that approving this application would not serve the public interest. At our May meeting, the Commission therefore will vote on an order that would deny China Mobile USA's application.

Going forward, we will continue to use our statutory authority to protect the people and overall security of United States. That includes following through with our proposal to ban the use of money from the FCC's Universal Service Fund from being used by recipients to procure equipment or services from companies that pose a national security threat to our communications networks or the communications supply chain.

* * *

I would like to conclude by highlighting the FCC's most important resource: our staff. Day in and day out, they come to work ready and eager to advance the public interest. Whether they are working to expand broadband deployment, combat robocalls, promote wireless innovation, protect public safety, or address consumer complaints, they serve the American people with skill and dedication, and I am honored to have them as colleagues. The funds that you provide to our Commission enable them to do their jobs, and for that I am very grateful.

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

Senator KENNEDY. Thank you, Mr. Chairman.
Chairman Simons.

STATEMENT OF HON. JOSEPH J. SIMONS, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. SIMONS. Chairman Kennedy, Ranking Member Coons, and distinguished Members of the subcommittee, I am pleased and honored to appear before you today to testify about the Commission's fiscal year 2020 appropriations request and to do so along with my friend, Chairman Pai.

The FTC is an independent agency with a broad mission to protect consumers and maintain competition in most sectors of the economy, ranging from oil and industrial chemicals to high technology and consumer goods and lots in between.

The FTC has a long history of bipartisanship and cooperation, and we work very hard to maintain that tradition.

We fulfill our mission using three critical tools. First and foremost, the FTC pursues a vigorous and effective law enforcement program, and the impact of its work is significant. Our competition enforcement program is critically important to maintain in competitive markets across the country. Vigorous competition results in lower prices, high quality goods and services, and innovative new products and services.

Our consumer protection enforcement program stops unfair and deceptive practices in the marketplace, everything from fraud to deceptive advertising to robocalls to problematic privacy and data security practices.

Second, we pursue a policy and research agenda to improve agency decisionmaking. Last fall, for example, the Commission began its Hearing on Competition and Consumer Protection in the 21st Century. These public hearings are exploring whether broad-based changes in the economy, evolving business practices, new tech-

nology, or international developments might require adjustments to competition and consumer protection law, enforcement priorities, and policies.

The formal hearings will conclude shortly, and we expect to produce several reports by the end of the year. We also engage in advocacy by promoting competition principles and comments to State lawmakers and regulators, and we host initiatives like PrivacyCon, which explores cutting-edge research on privacy and security topics.

Third, the FTC provides important consumer education and business guidance to encourage, inform consumer choices and compliance with the law. For example, the Commission has created a series of educational materials for older Americans. These include a series of materials that give details on scams that affect seniors, blogs to help identify these scams, and materials to empower older adults to educate others, like our Pass It On campaign.

We also work to provide companies with resources on a variety of issues that affect businesses. For example, our Cybersecurity for Small Business campaign, a joint effort with NIST, the SBA, and DHS, includes a dozen need-to-know topics like ransomware, phishing, and tech support scams.

In fiscal year 2019, the FTC's enacted budget is \$309.7 million, and for fiscal year 2020, the FTC is requesting \$312.3 million. The additional \$2.6 million is requested for expert witnesses and IT modernization. Expert witnesses are an increasing need in light of the growing number of complex investigations and litigation in both competition and consumer protection matters.

We also require additional resources to modernize our IT infrastructure, which includes moving critical applications from our aging on-premises data center to the cloud, including critical litigation software support.

We are committed to using our resources efficiently to protect consumers and promote 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 I look forward to answering your questions.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF HON. JOSEPH J. SIMONS

I. INTRODUCTION

Chairman Kennedy, 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 2020 appropriations request and its work to protect consumers and promote competition.¹

The FTC is an independent agency with three main bureaus: the Bureau of Consumer Protection ("BCP"); the Bureau of Competition ("BC"); and the Bureau of Economics ("BE"), which supports both BCP and BC. The FTC is the only Federal agency with a broad mission to both protect consumers and maintain competition in most sectors of the economy. Its jurisdiction includes privacy and data security, con-

¹ 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 any other Commissioner.

sumer fraud, mergers and acquisitions, and anticompetitive tactics by pharmaceutical and other companies. We enforce the law across a range of sectors, including healthcare, high technology, and emerging industries. The FTC has a long history of bipartisanship and cooperation, and we work hard to maintain it.

The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act,² 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 other responsibilities under more than 75 laws.³ The Commission pursues a vigorous and effective law enforcement program, and the impact of its work is significant. Its competition enforcement program is critically important to maintaining competitive markets across the country: vigorous competition results in lower prices, higher quality goods and services, and innovative and beneficial new products and services.

The FTC also investigates and prosecutes those engaging in unfair or deceptive acts or practices, and seeks to do so without impeding lawful business activity. The agency has a varied toolkit to advance its mission. For example, the Commission collects consumer complaints from the public and maintains one of the most extensive consumer protection complaint databases, Consumer Sentinel. The FTC and other Federal, State, and local law enforcement agencies use these complaints in their law enforcement and policy efforts. The FTC also has rulemaking authority. In addition to the FTC's Magnuson-Moss rulemaking authority, Congress has given the agency discrete rulemaking authority under the Administrative Procedure Act ("APA") over specific topics. The agency regularly analyzes its rules, including seeking public feedback, to ensure their continued efficacy. The FTC also educates consumers and businesses to encourage informed consumer choices, compliance with the law, and public understanding of the competitive process.

To complement these enforcement and public education efforts, the FTC pursues a consumer protection and competition policy and research agenda to improve agency decision-making, and engages in advocacy and education initiatives. Last fall, the Commission began its *Hearings on Competition and Consumer Protection in the 21st Century*.⁴ This extensive series of public hearings is exploring whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection law, enforcement priorities, and policy. To date, we have heard from more than 350 panelists and received more than 850 public comments. The formal hearings will conclude shortly, and we will be accepting public comments through at least the end of June. These hearings underscore the unique role that the FTC plays in the development of sound competition and consumer protection policy.

This testimony provides a brief overview of the FTC's budget and resources. It also discusses 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 discusses the Commission's international efforts to protect consumers and promote competition.

II. BUDGET AND RESOURCES

In fiscal year 2019, the FTC's enacted budget is \$309.7 million and 1,140 FTEs. For fiscal year 2020, the FTC is requesting \$312.3 million and 1,140 FTEs. The additional \$2.6 million requested is for expert witnesses and IT modernization. Expert witness contracts are an increasing need in light of the growing number 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 that we need to support our cases. For example, in competition cases, we require experts to opine on complex issues including: proper product and geographic market definitions; anticompetitive effects resulting from a merger or anticompetitive conduct; efficacy of economic models used to evaluate various antitrust issues; and potential efficiencies associated with any merger or challenged business practice. 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 calculating appropriate monetary relief. It is critical that the FTC have suffi-

² 15 U.S.C. § 41 *et seq.*

³ See <https://www.ftc.gov/enforcement/statutes>.

⁴ FTC, *Hearings on Competition and Consumer Protection in the 21st Century*, <https://www.ftc.gov/policy/hearings-competition-consumer-protection>; see also FTC Press Release, *FTC Announces Hearings On Competition and Consumer Protection in the 21st Century* (June 20, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>.

cient resources to support expert work in litigation, particularly in cases against large, well-financed defendants.

In addition to the growing need for experts, the agency also requires additional resources to modernize our IT infrastructure. In support of the IT modernization program, the FTC requests funding to update the Commission's portfolio of direct mission applications, as outlined in the agency's Information Resources Management ("IRM") Strategic Plan.⁵ These applications support operations that are necessary for the successful execution of the FTC's mission, such as the Hart-Scott-Rodino ("HSR") Premerger Filing Program and the collection and management of consumer redress funds. The requested funding would support the development of a roadmap for modernization of all direct mission applications and the initial migration of those currently managed in FTC's on-premise data center to cloud platforms. The funding would also be used to improve productivity through process re-engineering and increased integration with other technology and systems used by FTC staff and the public.

In addition to the technology benefits, these additional resources would dramatically improve our business operations. Notably, many of the agency's processes still involve manual paperwork and employee intervention to complete an activity. For example, the current HSR premerger filing process requires a significant amount of time-consuming manual input from the public, FTC employees, and other Federal agencies. The HSR premerger filing process starts when a merging party submits a hard copy of the HSR form, called an HSR filing, to the FTC and Department of Justice ("DOJ"). The entire filing, including attachments, often runs to hundreds of pages. After receiving the HSR filing, FTC staff must manually enter the information provided in the filing into the premerger software. After all this information is inputted manually, the software tracks the status of the filing through the review process. A modernized version of the premerger software would allow filers to submit premerger filings online and track the filing through the entire premerger review process. This would significantly decrease the burden on filers by allowing them to submit filings online and would eliminate the manual steps taken by the FTC and other Federal agencies. Projects such as the digitalization of the HSR Premerger Filing would also directly support FTC's compliance with the recently enacted 21st Century IDEA Act.

The FTC's budget request assumes that total offsetting collections from HSR filing fees and Do Not Call fees will provide the FTC with \$151 million in fiscal year 2020. As a result, in order to meet the requested \$312.3 million amount in fiscal year 2020, an estimated \$161.3 million in direct appropriations would be required.

The agency continues to use its resources effectively and efficiently on behalf of American consumers. When possible, the agency collects money to return to harmed consumers.

During fiscal year 2018 alone, the agency disbursed \$601 million to claimants, third party administrators, and the Treasury. The agency returned over \$83 million in redress to consumers and deposited over \$10 million into the U.S. Treasury, reflecting collections in both consumer protection and competition matters. Additionally, Commission actions required defendants to self-administer refund programs worth more than \$1.6 billion during fiscal year 2018.

The agency estimates how much money it has saved consumers through law enforcement in comparison to the FTC's costs. In recent years, the agency saved consumers on average \$38.90 for every \$1 of resources devoted to the consumer protection program; \$50.16 for every \$1 of resources devoted to the merger program; and \$40.12 for every \$1 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 and deceptive practices in the marketplace, including fraud. We do this by, among other things, pursuing law enforcement actions to stop and deter unlawful practices, and educating consumers and businesses about their rights and responsibilities. The FTC's enforcement and education efforts include working closely with Federal, State, international, and private sector partners on joint initiatives. Among other issues, the FTC works to protect privacy and data security, helps ensure that advertising claims to consumers are truthful and

⁵ FTC Information Resource Management (IRM) Strategic Plan, for fiscal year 2019–2022. The IRM provides strategic direction for the use of IT resources that support the agency's evolving mission and business needs.

not misleading, addresses fraud across most sectors of the economy, and combats illegal robocalls.

The FTC's law enforcement orders prohibit defendants from engaging in further illegal activity, impose other compliance obligations, and in some cases, ban defendants from engaging in certain conduct altogether. Where appropriate, the FTC collects money to return to harmed consumers. During fiscal year 2018, Commission actions resulted in over \$1.6 billion being returned to consumers. Specifically, the Commission returned more than \$83.3 million in redress to consumers, and the FTC resolved matters—including in the *Volkswagen*,⁶ *Amazon*,⁷ and *NetSpend*⁸ matters—that required defendants to self-administer consumer refund programs worth more than \$1.6 billion. The FTC also collected civil penalties worth more than \$2.4 million and forwarded an additional \$8.5 million to the U.S. Treasury in fiscal year 2018.

A. Protecting Consumer Privacy and Data Security

Since the enactment of the Fair Credit Reporting Act (“FCRA”)⁹ in 1970, the FTC has served as the chief Federal agency charged with protecting consumer privacy. With the development of the Internet as a commercial medium in the 1990s, the FTC expanded its focus on privacy to reflect the growing collection, use, and sharing of consumer data in the commercial marketplace.

The Commission's primary source of legal authority in the privacy and data security space is Section 5 of the FTC Act, which prohibits deceptive or unfair commercial practices.¹⁰ Under Section 5 and other authorities granted by Congress, the FTC has aggressively pursued privacy and data security cases in myriad areas, including children's privacy, financial privacy, health privacy, and the Internet of Things.¹¹ To date, the Commission has brought more than 65 cases alleging that companies failed to implement reasonable data security safeguards, and more than 60 general privacy cases.¹²

Section 5, however, is not without its limitations. For example, Section 5 does not allow the Commission to seek civil penalties for the first offense. It also excludes non-profits and common carriers from the Commission's authority, even when the acts or practices of these market participants have serious implications for consumer privacy and data security. To better equip the Commission to meet its statutory mission to protect consumers, we urge Congress to enact privacy and data security legislation, enforceable by the FTC, which grants the agency civil penalty authority, targeted APA rulemaking authority, and jurisdiction over non-profits and common carriers.¹³

While the Commission believes new authority could be very beneficial for American consumers, we will continue to use every tool currently at our disposal to address consumer harm. For example, the Commission protects children's privacy online by enforcing the Children's Online Privacy Protection Act (COPPA). We recently alleged that Unixiz, doing business as i-Dressup.com, violated the COPPA Rule by failing to obtain parental consent prior to collecting personal information from chil-

⁶*FTC v. Volkswagen Group of America, Inc.*, No. 3:15-md-02672-CRB (N.D. Cal. May 17, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/162-3006/volkswagen-group-america-inc>.

⁷*FTC v. Amazon.com, Inc.*, No. 2:14-cv-01038 (W.D. Wash. Apr. 4, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/122-3238/amazoncom-inc>.

⁸*FTC v. NetSpend Corp.*, No. 1:16-cv-04203-AT (N.D. Ga. Apr. 10, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/netspend-corporation>.

⁹ 15 U.S.C. § 1681. Among other things, the FCRA prohibits the unauthorized disclosure of sensitive data used for credit, employment, and other decisions.

¹⁰ 15 U.S.C. § 45. The Commission also enforces sector-specific statutes containing privacy and data security provisions, such as the Gramm-Leach-Bliley Act (“GLB Act”), Public Law No. 106-102, 113 Stat. 1338 (1999) (codified as amended in scattered sections of 12 and 15 U.S.C.), and the Children's Online Privacy Protection Act (“COPPA”), 15 U.S.C. §§ 6501–6506.

¹¹ See, e.g., FTC, PRIVACY & DATA SECURITY UPDATE: 2018 (March 2019), <https://www.ftc.gov/system/files/documents/reports/privacy-data-security-update-2018/2018-privacy-data-security-report-508.pdf>.

¹²*Id.*

¹³ Commissioner Phillips supports congressional efforts to consider consumer data privacy legislation. He believes legislation should be based on harms that Congress agrees warrant a remedy, and that tools like penalties and rulemaking should be calibrated carefully to address those harms. Commissioner Phillips believes Congress should also give appropriate consideration to the trade-offs involved in new regulation, and, with regard to rulemaking, reserve to itself fundamental value judgments appropriately made by the legislature. Finally, Commissioner Phillips believes data security legislation is a critical step Congress should also take to protect consumer privacy.

dren, as well as failing to protect children's personal information.¹⁴ The FTC's complaint also alleged that the company stored and transmitted users' personal information in plain text, failed to implement an intrusion detection and prevention system, and failed to monitor for potential security incidents. As a result, a hacker accessed the personal information of approximately 2.1 million users, including 245,000 users under the age of 13. And in March, the FTC announced a settlement with the operators of the popular video social networking app Musical.ly, now known as Tik Tok, for COPPA violations.¹⁵ The FTC alleged that the company collected children's personal information online without first obtaining parental consent. Because COPPA allows the Commission to seek civil penalties for its violations, the defendants agreed to pay a \$5.7 million dollar civil penalty, the largest ever obtained by the Commission in a COPPA case.

Further examples of data security enforcement include the Commission's settlement with Uber Technologies over the company's alleged failure to reasonably secure sensitive consumer data stored in the cloud.¹⁶ 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. During the pendency of that investigation, Uber suffered a second, larger breach of drivers' and riders' data in October-November 2016, and failed to disclose that breach to consumers or the FTC for more than a year, despite being the subject of an ongoing FTC investigation of its data security practices during that time. Among other things, the final order prohibits Uber from misrepresenting how it monitors internal access to consumers' personal information and the extent to which it protects personal information, with the threat of strong civil penalties if it fails to comply.¹⁷ And in May 2018, the Commission resolved allegations that PayPal's Venmo peer-to-peer payment service misled consumers about their ability to control the privacy of their Venmo transactions and the extent to which their financial accounts were protected by "bank grade security systems."¹⁸

Just this past month, the Commission settled with an online rewards website, Clixsense.com, for its alleged failure to take appropriate steps to secure consumers' data.¹⁹ The FTC alleged that the company's inadequate security—including its storage of personal information in plain text and its failure to perform vulnerability and penetration testing—allowed hackers to gain access to the company's network through a browser extension downloaded by the company. These failures resulted in hackers gaining access to personal information regarding 6.6 million consumers, over 500,000 of whom were U.S. consumers.

In addition to its enforcement efforts in the privacy and data security areas, the Commission seeks to improve agency decisionmaking through its policy initiatives. Last fall, for example, the Commission held four days of panels that specifically addressed consumer privacy and data security.²⁰ The Commission also announced its fourth PrivacyCon, which will take place on June 27, an annual event that explores evolving privacy and data security research.²¹

The Commission also is empowered to conduct industry studies related to privacy and data security under Section 6(b) of the FTC Act.²² In March, we issued 6(b) or-

¹⁴ *U.S. v. Unixiz, Inc. d/b/a i-Dressup.com et al.*, No. 5:19-cv-02222 (N.D. Cal. Apr. 24, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3002/unixiz-inc-doing-business-i-dressupcom>.

¹⁵ *U.S. v. Musical.ly, et al.*, No. 2:19-cv-1439 (C.D. Ca. Mar. 27, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3004/musically-inc>.

¹⁶ See FTC Press Release, *Federal Trade Commission Gives Final Approval to Settlement with Uber* (Oct. 26, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/Federal-trade-commission-gives-final-approval-settlement-uber>.

¹⁷ As discussed above, because the FTC does not have civil penalty authority under Section 5, it could not require Uber to pay a civil penalty in the first instance.

¹⁸ *PayPal, Inc.*, No. C-4651 (May 24, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3102/paypal-inc-matter>.

¹⁹ *James V. Grago, Jr. also d/b/a ClixSense.com*, Matter No. 1723003 (Apr. 24, 2019) (proposed consent order), <https://www.ftc.gov/enforcement/cases-proceedings/172-3003/james-v-grago-jr-doing-business-clixsensecom>.

²⁰ See FTC Press Release, *FTC Announces Sessions on Consumer Privacy and Data Security as Part of Its Hearings on Competition and Consumer Protection in the 21st Century* (Oct. 26, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/ftc-announces-sessions-consumer-privacy-data-security-part-its>.

²¹ See FTC Press Release, *FTC Announces PrivacyCon 2019 and Calls for Presentations* (Oct. 24, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/ftc-announces-privacycon-2019-calls-presentations>.

²² 15 U.S.C. § 46(b).

ders to several Internet service providers to evaluate their privacy practices.²³ As we have done in the past, we will use the information we learn from this study to better inform our policy and enforcement work.

The Commission continues to work closely with our law enforcement partners in the European Union (“EU”) and its member States to ensure the success of the EU-U.S. Privacy Shield framework. Under the EU’s General Data Protection Regulation (“GDPR”), companies are required to meet certain data protection requirements in order to transfer consumer data from the EU to other jurisdictions. Privacy Shield—a voluntary mechanism that companies can use to comply with the GDPR when transferring data from Europe to the United States and which facilitates billions of dollars in transatlantic data flows—is enforced by the FTC with respect to those participants under its jurisdiction.²⁴

Last fall, for example, the Commission announced settlements with four companies that we alleged had falsely claimed Privacy Shield certification.²⁵ And in September 2018, Chairman Simons, along with the Secretary of Commerce and our European counterparts, participated in the second annual review of the Privacy Shield framework, culminating in a European Commission recommendation for continued FTC enforcement in the Privacy Shield area.²⁶ Our Privacy Shield approach is built on four pillars: referrals from the Department of Commerce; priority consideration of referrals from the European Union; checking for Privacy Shield violations as part of every privacy investigation; and proactive monitoring of Privacy Shield participants.

Finally, many of the FTC’s privacy and data security investigations and cases involve complex facts and technologies and well-financed defendants, often requiring outside experts, which can be costly. It is critical that the FTC have sufficient resources to support its investigative and litigation needs, including expert work, particularly as demands for enforcement in this area continue to grow.

B. Protecting Consumers from Fraud

Fighting fraud is a major focus of the FTC’s law enforcement efforts. 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. In 2018, imposter scams became the top consumer fraud complaint, in part due to the rise in reports about government imposter scams.²⁷ Fraudsters falsely claiming to be government agents (including the Social Security Administration, IRS and even the FTC), family members, or well-known tech companies contact consumers. These fraudsters pressure them to send money, often via cash-like payment methods, such as gift cards or money transfers, or trick them into providing personal information. Many of these scams target older Americans.

In response to the rise in imposter complaints, the FTC has filed multiple cases against defendants who deceptively pose as the government or well-known tech companies. For example, the FTC recently brought two actions against defendants for falsely claiming affiliations with the Federal Government. The Commission charged Sunkey Publishing with using copycat military recruitment websites to trick consumers seeking military careers into providing their personal information; according to the complaint, Sunkey then sold the information to post-secondary schools as part of its lead generation business.²⁸ The Commission’s action against American Immigration Center stopped an alleged scheme using deceptive websites and advertising that falsely implied an affiliation with the U.S. Citizenship and Immigration Serv-

²³ See FTC Press Release, *FTC Seeks to Examine the Privacy Practices of Broadband Providers* (Mar. 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-seeks-examine-privacy-practices-broadband-providers>.

²⁴ See www.privacyshield.gov and www.ftc.gov/tips-advice/business-center/privacy-and-security/privacy-shield. Companies can also join a Swiss-U.S. Privacy Shield for transfers from Switzerland.

²⁵ See FTC Press Release, *FTC Reaches Settlements with Four Companies That Falsely Claimed Participation in the EU-U.S. Privacy Shield* (Sept. 27, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-reaches-settlements-four-companies-falsely-claimed>.

²⁶ See *Report from the Commission to the European Parliament and the Council on the Second Annual Review of the Functioning of the EU-U.S. Privacy Shield*, COM (2018) 860 final, https://ec.europa.eu/info/sites/info/files/report_on_the_second_annual_review_of_the_eu-us_privacy_shield_2018.pdf.

²⁷ FTC Press Release, *Imposter Scams Top Complaints Made to FTC in 2018* (Feb. 28, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/imposter-scams-top-complaints-made-ftc-2018>.

²⁸ FTC Press Release, *FTC, FTC Takes Action against the Operators of Copycat Military Websites* (Sept. 6, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites>.

ices to dupe legal residents trying to renew their green cards or apply for naturalization.²⁹

The Commission also helps older Americans protect themselves from fraud. Last month, the FTC joined Federal, State, and international law enforcement partners in announcing a nationwide and international crackdown on elder fraud schemes with a particular focus on technical support scams. Technical support scams dupe consumers into believing their computers are infected with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs. As part of that initiative, the FTC filed suit against technical support operator Elite IT Partners,³⁰ developed new consumer education materials to help consumers avoid falling victim to these scams,³¹ and released new complaint data that illustrates the disproportionate effect these scams have on older adults.³²

Over the last year, the FTC has targeted business opportunity scams, filing numerous actions against defendants who promise consumers a legitimate opportunity to earn money if consumers will pay for defendants' "coaching" services. In reality, the "coaching" services provide no value to consumers and are typically nothing more than a handful of training videos and documents with generic information. In Digital Altitude, the Commission brought an action against defendants who allegedly defrauded consumers out of millions of dollars—some paying more than \$50,000—by promising of individualized coaching on how to run an online business.³³ The Commission also brought separate actions against defendants in FBA Stores³⁴ and, with the Attorney General of Minnesota, against defendants in Sellers Playbook³⁵ based on allegations that the defendants falsely claimed they could teach consumers "the secrets for making money on Amazon." The Commission's actions shut down three large operations that resulted in over \$100 million in losses to consumers.

The Commission's fraud cases also extend to sprawling international scams. The Commission charged the defendants in MOBE—competitors of Digital Altitude—for running an international coaching scam that the FTC alleged took more than \$300 million from thousands of American consumers.³⁶ The Commission also recently filed an action against defendants in Sanctuary Belize, a massive land sale scam that allegedly bilked over \$100 million from consumers, largely retirees. According to the complaint, recidivist Andris Pukke perpetrated an international scheme selling lots in a development in remote southern Belize with promises that he never intended to keep. The FTC shut down the enterprise by obtaining a temporary restraining order and preliminary injunction, and continues to litigate the matter.³⁷

The FTC frequently works with other law enforcement agencies to tackle widespread fraud. In July 2018, the FTC launched "Operation Donate with Honor," a coordinated effort to target fraudulent and deceptive fundraising for military and veterans' causes that has resulted in over 100 law enforcement actions.³⁸ As part

²⁹ FTC Press Release, *American Immigration Center Settles with FTC on Government Imposter Allegations* (Oct. 16, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/american-immigration-center-settles-ftc-government-imposter>. The court entered the Stipulated Order for Permanent Injunction and Monetary Judgment against the defendants on December 7, 2018.

³⁰ FTC Press Release, *FTC Halts Tech Support Scam as Part of Major Initiative Focused on Older Adults Hit Hardest by These Scams* (Mar. 7, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-halts-tech-support-scam-part-major-initiative-focused-older>.

³¹ See *How to Spot, Avoid and Report Tech Support Scams*, <https://www.consumer.ftc.gov/articles/how-spot-avoid-and-report-tech-support-scams>.

³² See FTC Consumer Protection Data Spotlight, *Older Adults Hardest Hit by Tech Support Scams* (Mar. 7, 2019), <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/03/older-adults-hardest-hit-tech-support-scams>.

³³ FTC Press Release, *FTC Obtains Court Order Halting Business Coaching Scheme* (Feb. 8, 2018), <https://www.ftc.gov/news-events/press-releases/2018/02/ftc-obtains-court-order-halting-business-coaching-scheme>.

³⁴ FTC Press Release, *FTC Action Halts a Large Deceptive Business Opportunity Scheme* (Mar. 23, 2018), <https://www.ftc.gov/news-events/press-releases/2018/03/ftc-action-halts-large-deceptive-business-opportunity-scheme>.

³⁵ FTC Press Release, *FTC and State of Minnesota Halt Sellers Playbook's Get Rich Scheme* (Aug. 6, 2018), <https://www.ftc.gov/news-events/press-releases/2018/08/ftc-state-minnesota-halt-sellers-playbooks-get-rich-scheme>.

³⁶ FTC Press Release, *FTC Action Halts MOBE, a Massive Internet Business Coaching Scheme* (June 11, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-action-halts-mobe-massive-internet-business-coaching-scheme>.

³⁷ FTC Press Release, *At FTC's Request, Court Halts Massive "Sanctuary Belize" Real Estate Investment Scam* (Nov. 8, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/ftcs-request-court-halts-massive-sanctuary-belize-real-estate>.

³⁸ FTC Press Release, *Operation Donate with Honor: Law Enforcers Unite to Challenge Deceptive Fundraising* (Jul. 19, 2018), <https://www.ftc.gov/news-events/blogs/business-blog/2018/07/>

of that initiative, the FTC has announced four cases with several State Attorneys General to shut down sham charity operations that were using consumers' generous donations for private benefits and spent very little of the donated funds on the charitable programs.³⁹

The FTC strives to stay ahead of scammers by analyzing Sentinel complaints to help raise public awareness about fraud. In October 2018, the FTC launched its *Consumer Protection Data Spotlight* series to alert law enforcers, industry, and the public about growing threats and important patterns identified in Sentinel data. The *Spotlight* explores data over time, showing how scammers change tactics and catch consumers off guard.⁴⁰ In addition, the FTC is making Sentinel data more accessible to State and local governments, the media, academics, and the public-at-large by publishing interactive dashboards that enable people to see what kind of fraud is affecting their State or large metropolitan area.⁴¹

C. Truthfulness in National Advertising

Ensuring that advertising is truthful and not misleading has long been one of the FTC's core missions. It allows consumers to make well-informed decisions about how to best use their resources and promotes the efficient functioning of market forces by encouraging the dissemination of accurate information.

For example, 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.⁴² We have challenged bogus claims that treatments could cure, treat, or mitigate various serious diseases and ailments, including those affecting children and older consumers.⁴³ We have brought law enforcement actions against advertisers and ad agencies who allegedly used native advertising—commercial advertising masquerading as editorial content—to deceptively sell health products such as mosquito repellants during the Zika virus outbreak and cognitive improvement supplements.⁴⁴ The Commission also has sued companies that claimed, allegedly without scientific evidence, that using their products could alleviate the symptoms

operation-donate-honor-law-enforcers-unite-challenge. This initiative included 54 Attorneys General from all 50 States, the District of Columbia, American Samoa, Guam, and Puerto Rico, and 16 State agencies that oversee charities.

³⁹*FTC & State of Missouri v. Disabled Police and Sheriffs Foundation, Inc., et al.*, No. 4:19-cv-00667 (E.D. Mo. Mar. 28, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3128/disabled-police-sheriffs-foundation-inc>; *FTC & State of Florida Office of the Attorney General v. American Veterans Foundation, Inc., et al.*, No. 8:18-cv-00744 (M.D. Fla. Mar. 28, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3163/american-veterans-foundation-inc>; *FTC et al. v. Help the Vets, Inc., et al.*, No. 6:18-cv-1153-Orl-41KRS (M.D. Fla. July 19, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3159/help-vets-inc>; *FTC v. Travis Deloy Peterson*, No. 4:18-00049-DN (D. Utah July 16, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/182-3049/veterans-america>.

⁴⁰The first *Spotlight* identified a sharp rise in gift cards—particularly iTunes and Google Play cards—as a payment method for scams. See FTC Consumer Protection Data Spotlight, *Scammers Increasingly Demand Payment by Gift Card* (Oct. 2018), <https://www.ftc.gov/news-events/blogs/data-spotlight/2018/10/scammers-increasingly-demand-payment-gift-card>. Most recently, the Spotlight pointed to the dramatic increase in reports about imposters passing themselves off as Social Security Administration officials, which is happening just as reports about IRS imposter scams are waning. See FTC Consumer Protection Data Spotlight, *Growing Wave of Social Security Imposters Overtakes IRS Scam* (Apr. 2019), <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/04/growing-wave-social-security-imposters-overtakes-irs-scam>.

⁴¹See generally FTC, *FTC Consumer Sentinel Network* (Apr. 8, 2019), <https://public.tableau.com/profile/Federal.trade.commission>.

⁴²See, e.g., *Telomerase Activation Sci., Inc. et al.*, No. C-4644 (Apr. 19, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/142-3103/telomerase-activation-sciences-inc-noel-thomas-patton-matter>; *FTC v. Health Research Labs., Inc.*, No. 2:17-cv-00467 (D. Maine Nov. 30, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/152-3021/health-research-laboratories-llc>.

⁴³See, e.g., *FTC v. Regenerative Med. Grp., Inc.*, No. 8:18-cv-01838 (C.D. Cal. filed Oct. 12, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3062/regenerative-medical-group-inc>; *A&O Enters., Inc.*, No. C-4670 (Feb. 21, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3016/ao-enterprises-doing-business-iv-bars-aaron-k-roberts-matter>.

⁴⁴See, e.g., *FTC v. Glob. Cmty. Innovations LLC*, No. 5:19-CV-00788 (N.D. Ohio Apr. 10, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/162-3135/global-community-innovations-llc-et-al-genix>; *Creaxion Corp.*, No. C-4668 (Feb. 8, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3066/creaxion-corp>; *Inside Publ'ns, LLC*, No. C-4669 (Feb. 8, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3067/inside-publications-llc>.

of opioid withdrawal and increase the likelihood of overcoming opioid dependency.⁴⁵ The Commission obtained an order barring a marketer from making deceptive claims about its products' ability to mitigate the side effects of cancer treatments.⁴⁶ And we have issued joint warning letters with the Food and Drug Administration to marketers who claim their dietary supplements and cannabidiol ("CBD") products treat or prevent serious diseases, including Alzheimer's disease and cancer.⁴⁷

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.⁴⁸

D. Illegal Robocalls

Illegal robocalls also remain a significant consumer protection problem and one of consumers' top complaints to the FTC. These calls disturb consumers' privacy, and frequently use fraud and deception to pitch goods and services, leading to significant economic harm. In fiscal year 2018, the FTC received more than 5.7 million complaints about unwanted calls, including 3.7 million complaints about robocalls.⁴⁹ The FTC has used all the tools at its disposal to fight these illegal calls, including 141 enforcement actions to date.⁵⁰

The FTC's most recent law enforcement crackdown stopped four separate robocall operations.⁵¹ For example, in *FTC v. Christiano*, the FTC obtained a \$1.35 million civil penalty and a ban on providing an autodialer to anyone engaged in telemarketing against two technology companies and their owner for knowingly providing the tools that unlawful telemarketers used to blast out billions of illegal robocalls.⁵² In another case from the recent crackdown,⁵³ the FTC sued a recidivist robocaller and his partners for allegedly running a Google rankings scam that used robocalls to reach their victims and bombarded individuals who did not own busi-

⁴⁵ *FTC v. Catlin Enters., Inc.*, No. 1:17-cv-403 (W.D. Tex. May 17, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/1623204/catlin-enterprises-inc>. In addition, in conjunction with the FDA, the FTC issued letters to companies that appeared to be making questionable claims in order to sell addiction or withdrawal remedies. See FTC Press Release, *FTC, FDA Warn Companies about Marketing and Selling Opioid Cessation Products* (Jan. 24, 2018), <https://www.ftc.gov/news-events/press-releases/2018/01/ftc-fda-warn-companies-about-marketing-selling-opioid-cessation>.

⁴⁶ *FTC v. CellMark Biopharm*, No. 2:18-cv-00014-JES-CM (M.D. Fla. Jan. 12, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3134/cellmark-biopharma-derek-e-vest>.

⁴⁷ See FTC Press Release, *FTC Joins FDA in Sending Warning Letters to Companies Advertising and Selling Products Containing Cannabidiol (CBD) Claiming to Treat Alzheimer's, Cancer, and Other Diseases* (Apr. 2, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-joins-fda-sending-warning-letters-companies-advertising-ftc-press-release-ftc-and-fda-send-warning-letters-to-companies-selling-dietary-supplements-claiming-to-treat-alzheimer-s-disease-and-remediate-or-cure-other-serious-illnesses-such-as-parkinson-s-heart-disease-and-cancer> (Feb. 11, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/ftc-fda-send-warning-letters-companies-selling-dietary>.

⁴⁸ FTC Consumer Blog, *Treatments and Cures*, <https://www.consumer.ftc.gov/topics/treatments-cures>.

⁴⁹ See *Do Not Call Registry Data Book 2018: Complaint Figures for FY 2018*, <https://www.ftc.gov/reports/national-do-not-call-registry-data-book-fiscal-year-2018>.

⁵⁰ See FTC Robocall Initiatives, <https://www.consumer.ftc.gov/features/feature-0025-robocalls>. 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 enforcement actions seeking civil penalties, restitution for victims of telemarketing scams, and disgorgement of ill-gotten gains against 444 corporations and 358 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. See *Enforcement of the Do Not Call Registry*, <https://www.ftc.gov/news-events/media-resources/do-not-call-registry/enforcement>. In August 2017, 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. *U.S. et al. v. Dish Network, L.L.C.*, No. 309-cv-03073-JES-CHE (C.D. Ill. Aug. 10, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/052-3167/dish-network-llc-united-states-america-federal-trade>.

⁵¹ See FTC Press Release, *FTC Crackdown Stops Operations Responsible for Billions of Illegal Robocalls* (Mar. 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-crackdown-stops-operations-responsible-billions-illegal>.

⁵² *FTC v. James Christiano et al.*, No. 8:18-cv-00936 (C.D. Cal. June 5, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3124/james-christiano-et-al-netdotsolutions-inc>.

⁵³ *FTC v. Pointbreak Media LLC et al.*, No. 18-cv-61017 (S.D. Fla. May 23, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3182/pointbreak-media-llc-0>.

nesses with the same robocalls.⁵⁴ In April, a court granted the FTC's motion for summary judgment, banning him and one of his co-defendants from all telemarketing and imposing a \$3.3 million judgment.

Despite the FTC's vigorous law enforcement program, technological advances continue to permit bad actors to place millions or even billions of calls, often from abroad, at very low cost, and in ways that are difficult to trace. This phenomenon continues to infuriate consumers and challenge enforcers. 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, from 2013 to 2015, the FTC led four public challenges to incentivize innovators to help tackle the unlawful robocalls that plague consumers.⁵⁵ 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. Consumers can access information about potential solutions available to them on the FTC's website.⁵⁶ The telecommunications industry has also developed a new framework, SHAKEN/STIR, which is designed to limit illegitimate number spoofing and reduce illegal robocalls.

The FTC continues to engage with industry stakeholders and supports the industry initiative to authenticate caller ID numbers. The FTC also regularly works with its State, Federal, and international partners to combat illegal robocalls.⁵⁷

For many years, the Commission has recommended eliminating the common carrier exemption. The exemption is outdated and no longer makes sense in today's marketplace where the lines between telecommunications and other services are increasingly blurred. It impedes the FTC's work tackling illegal robocalls and more broadly circumscribes other enforcement initiatives. For example, a carrier that places, or assists and facilitates, illegal telemarketing might argue that it is beyond the Commission's reach because of the common carrier exemption. Likewise, the exemption may frustrate the Commission's ability to obtain complete relief for consumers when there are multiple parties, some of whom are common carriers. It also may pose difficulties when a company engages in deceptive or unfair practices involving a mix of common carrier and non-common carrier activities. Finally, litigation has been complicated by entities that attempt to use their purported status as common carriers to shield themselves from FTC enforcement.⁵⁸

E. Consumer and Business 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

⁵⁴ Previously, in 2017, the FTC settled claims with Ramsey for illegal robocalls and calls to numbers listed on the National Do Not Call Registry. See *FTC v. Ramsey et al.*, No. 9:17-cv-80032 (S.D. Fla. Jan. 13, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/132-3254/justin-ramsey>.

⁵⁵ The first challenge, in 2013, called upon the public to develop a consumer-facing solution to block illegal robocalls. One of the winners, "NomoRobo," was on the market within 6 months after being selected by the FTC. NomoRobo, which reports blocking over 600 million calls to date, is being offered directly to consumers by a number of telecommunications providers and is available as an app on iPhones. See FTC Press Release, *FTC Announces Robocall Challenge Winners* (Apr. 2, 2013), <https://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners>; see also FTC Press Release, *FTC Awards \$25,000 Top Cash Prize for Contest-Winning Mobile App That Blocks Illegal Robocalls* (Aug. 17, 2015), <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-awards-25000-top-cash-prize-contest-winning-mobile-app-blocks>; FTC Press Release, *FTC Announces Winners of "Zapping Rachel" Robocall Contest* (Aug. 28, 2014), <https://www.ftc.gov/news-events/press-releases/2014/08/ftc-announces-winners-zapping-rachel-robocall-contest>.

⁵⁶ See <https://www.consumer.ftc.gov/features/how-stop-unwanted-calls>.

⁵⁷ See, e.g., FTC Press Release, *FTC and FCC to Host Joint Policy Forum on Illegal Robocalls* (Mar. 22, 2018), www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-host-joint-policy-forum-illegal-robocalls; FTC Press Release, *FTC and FCC Seek Exhibitors for an Expo Featuring Technologies to Block Illegal Robocalls* (Mar. 7, 2018), www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-seek-exhibitors-expo-featuring-technologies-block-illegal; Memorandum of Understanding Among Public Authorities of the Unsolicited Communications Enforcement Network Pertaining to Unlawful Telecommunications and SPAM (May 2016), <https://www.ftc.gov/policy/cooperation-agreements/international-unlawful-telecommunications-spam-enforcement-cooperation>; FTC Press Release, *FTC Signs Memorandum of Understanding With Canadian Agency To Strengthen Cooperation on Do Not Call, Spam Enforcement* (Mar. 24, 2016), <https://www.ftc.gov/news-events/press-releases/2016/03/ftc-signs-memorandum-understanding-canadian-agency-strengthen>.

⁵⁸ See, e.g., Answer and Affirmative Defenses of Defendant Pacific Telecom Communications Group at 9, 17–20, Dkt. 19, *FTC et al. v. Caribbean Cruise Line et al.*, No. 0:15-cv-60423 (S.D. Fla. June 2, 2015), <https://www.ftc.gov/enforcement/cases-proceedings/122-3196-x150028/caribbean-cruise-line-inc>.

programs reach tens of millions of people each year through the FTC’s website, the media, and partner organizations that disseminate consumer information on the agency’s behalf. The FTC delivers actionable, practical, plain-language guidance on dozens of issues, and updates its consumer education materials whenever it has new information to share.

The FTC disseminates these tips through articles, blog posts, infographics, videos, social media, and education campaigns. For example, in response to the enactment of the Economic Growth, Regulatory Relief, and Consumer Protection Act,⁵⁹ which allows consumers nationwide to freeze their credit and place year-long fraud alerts for free, the Commission helped consumers take advantage of the new protections by: updating IdentityTheft.gov; revising its identity theft publications; and providing blogs, webinars, and podcasts in collaboration with a wide range of partners.⁶⁰

The FTC also tailors its guidance to serve specific audiences, including older adults.⁶¹ A recent FTC report to Congress details how older adults experience scams,⁶² and a series of FTC Data Spotlights gives further details on scams that affect older adults⁶³ and helps educate consumers.⁶⁴

The Commission also works to provide companies with resources on a variety of issues that affect businesses. For example, our “Cybersecurity for Small Business” campaign, a joint effort with the National Institute of Standards and Technology, the Small Business Administration, and the Department of Homeland Security, includes a dozen need-to-know topics as well as fact sheets, videos, and other materials.⁶⁵

IV. COMPETITION MISSION

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

One of the agencies’ principal responsibilities is to prevent mergers that may substantially lessen competition. Under U.S. law, parties to certain mergers and acquisitions must file premerger notification with the FTC and DOJ and observe the statutorily prescribed waiting period before consummating their transactions. Premerger filings under the HSR Act have generally increased steadily since fiscal year 2013. Last year, for the second year in a row, we received just over 2,000 HSR filings.⁶⁶

Most reported transactions do not raise significant competitive concerns, and the agencies clear those non-problematic transactions expeditiously. But when the evidence suggests that a proposed merger likely would be anticompetitive, the Commission does not hesitate to intervene. In fiscal year 2018, the Commission took enforcement actions against 22 different mergers, most of which were resolved through a consent decree. We also challenged five mergers in court: Federal courts granted preliminary injunctions in two cases;⁶⁷ the parties abandoned their plans in the

⁵⁹ Public Law No: 115–174.

⁶⁰ See, e.g., FTC Press Release, *Starting Today, New Federal Law Allows Consumers to Place Free Credit Freezes and Yearlong Fraud Alerts* (Sept. 21, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/starting-today-new-law-allows-consumers-place-free-credit-freezes>.

⁶¹ See www.ftc.gov/PassItOn and www.ftc.gov/Pasalo. The campaign has distributed more than 10.6 million print publications since its creation, including 1.1 million so far in fiscal year 2019.

⁶² FTC Report, *Protecting Older Consumers: 2017–2018* (Oct. 2018), <https://www.ftc.gov/reports/protecting-older-consumers-2017-2018-report-congress-Federal-trade-commission>.

⁶³ See, e.g., FTC Consumer Protection Data Spotlight, *Older Adults Hardest Hit by Tech Support Scams* (Mar. 7, 2019), <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/03/older-adults-hardest-hit-tech-support-scams>.

⁶⁴ See, e.g., FTC Consumer Blog, *How to Spot, Avoid, and Report Tech Support Scams* (Feb. 2019), <https://www.consumer.ftc.gov/articles/how-spot-avoid-and-report-tech-support-scams> and <https://www.consumidor.ftc.gov/articulos/como-detectar-evitar-y-reportar-las-estafas-de-soporte-tecnico>.

⁶⁵ See *Cybersecurity Resources for Your Small Business* (Oct. 18, 2018), <https://www.ftc.gov/news-events/blogs/business-blog/2018/10/cybersecurity-resources-your-small-business>. These materials will soon be available in Spanish.

⁶⁶ The agencies received 2,111 HSR filings in fiscal year 2018, a slight increase from fiscal year 2017, where we received 2,052. Apart from the last 2 years, the last time annual HSR notification filings exceeded 2,000 was back 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, <https://www.ftc.gov/policy/reports/policy-reports/annual-competition-reports>.

⁶⁷ See, *FTC v. Tronox Ltd.*, 332 F. Supp. 3d 187 (D.D.C. 2018), (granting preliminary injunction); *FTC v. Wilh. Wilhelmsen Holding ASA*, 341 F. Supp. 3d 27 (D.D.C. 2018) (granting preliminary injunction). The agency also won a full administrative trial on the merits in the *Tronox* matter before an administrative law judge, before the parties ultimately settled with the agency.

face of our court challenge in two cases;⁶⁸ and a ruling is currently pending in the fifth matter.⁶⁹

Over the past year, the Commission has continued its decades-long efforts to fight anti-competitive conduct in the pharmaceuticals and healthcare industries, where rising costs continue to burden American consumers. For over twenty years, the Commission has prioritized ending anticompetitive reverse payment patent agreements 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.*,⁷⁰ 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,⁷¹ and other manufacturers, including the remaining *Actavis* defendants,⁷² have agreed to abandon the practice.⁷³ In administrative litigation, the Commission ruled in March of this year that Impax had engaged in an illegal reverse payment agreement designed to block consumers' access to a lower-cost generic version of the branded drug, Opana ER.⁷⁴ In addition, the Commission has challenged other anti-competitive conduct by drug manufacturers. Last month, the Commission filed a complaint against the health information company Surescripts, alleging that it employed illegal vertical and horizontal restraints to maintain its monopolies over two electronic prescribing, or "e-prescribing," markets (routing and eligibility).⁷⁵ Additionally, a Federal court recently ruled that AbbVie Inc. used sham litigation illegally to maintain its monopoly over the testosterone replacement drug Androgel, and ordered \$493.7 million in monetary relief to consumers who were overcharged for Androgel as a result of AbbVie's conduct.⁷⁶

The Commission also maintains a robust program to identify and stop anti-competitive conduct. This year, in administrative litigation of the *1-800 Contacts* matter, the Commission ruled that agreements among competitors to limit the scope of their Internet advertising were unlawful.⁷⁷ The agency also successfully argued and won an important procedural victory in the U.S. Court of Appeals for the Fifth Circuit, defeating an effort by the Louisiana Real Estate Appraisers Board to obtain interlocutory review of the agency's determination that the State-action doctrine did

FTC Press Release, *FTC Requires Divestitures by Tronox and Cristal, Suppliers of Widely Used White Pigment, Settling Litigation over Proposed Merger* (Apr. 10, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-requires-divestitures-tronox-cristal-suppliers-widely-used>.

⁶⁸J.M. Smuckers and Conagra abandoned their planned combination after the FTC filed suit in March 2018. CDK abandoned its plan to purchase Auto-Mate after the Commission initiated litigation in March 2018.

⁶⁹The agency formally challenged the consummated merger of Otto Bock and Freedom Innovations in fiscal year 2018. Litigation before an administrative law judge concluded last fall, and the agency is currently awaiting a ruling.

⁷⁰570 U.S. 756 (2013).

⁷¹FTC 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), <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-settlement-cephalon-pay-delay-case-ensures-12-billion-ill>.

⁷²On February 28, 2019, after over 10 years of litigation, the Commission reached a settlement with the final remaining defendant in the *Actavis* case. FTC Press Release, *Last Remaining Defendant Settles FTC Suit that Led to Landmark Supreme Court Ruling on Drug Company "Reverse Payments"* (Feb. 28, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/last-remaining-defendant-settles-ftc-suit-led-landmark-supreme>.

⁷³FTC Press Release, *FTC Enters Global Settlement to Resolve Reverse-Payment Charges against Teva* (Feb. 19, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/ftc-enters-global-settlement-resolve-reverse-payment-charges>; Joint Motion for Entry of Stipulated Order for Permanent Injunction, *FTC v. Allergan plc*, No. 17-cv-00312 (N.D. Cal. Jan. 23, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/allergan-plc-watson-laboratories-inc-et-al>; Stipulated Order for Permanent Injunction, *FTC v. Teikoku Pharma USA, Inc.*, No. 16-cv-01440 (E.D. Pa. Mar. 30, 2016), <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/endo-pharmaceuticals-impax-labs>.

⁷⁴FTC Press Release, *FTC Concludes that Impax Entered into Illegal Pay-for-Delay Agreement* (Mar. 29, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-concludes-impax-entered-illegal-pay-delay-agreement>.

⁷⁵FTC Press Release, *FTC Charges Surescripts with Illegal Monopolization of E-Prescription Markets* (Apr. 24, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-charges-surescripts-illegal-monopolization-e-prescription>.

⁷⁶*FTC v. AbbVie Inc.*, 329 F. Supp. 3d 98 (E.D. Pa. 2018); Statement of FTC Chairman Joe Simons Regarding Federal Court Ruling in *FTC v. AbbVie* (June 29, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/statement-ftc-chairman-joe-simons-regarding-federal-court-ruling>.

⁷⁷*In re 1-800 Contacts, Inc.*, Dkt. No. 9372 (Nov. 14, 2018), https://www.ftc.gov/system/files/documents/cases/docket_no_9372_opinion_of_the_commission_redacted_public_version.pdf. This matter is currently on appeal to the U.S. Court of Appeals for the Second Circuit.

not apply to its conduct.⁷⁸ The agency also has several other conduct matters in active litigation.⁷⁹

The Commission also continues to focus its attention on high technology markets. In an effort to more closely monitor developments in the technology sector, the FTC's Bureau of Competition recently announced the creation of a Technology Task Force dedicated to monitoring competition in U.S. technology markets.⁸⁰ The Task Force will include attorneys from the Bureau of Competition with expertise in complex product and service markets and ecosystems, including markets for online advertising, social networking, mobile operating systems and apps, and platforms, and will be supported by a Technology Fellow who will provide important technical assistance for investigations. The Task Force will examine industry practices, conduct law enforcement investigations, and coordinate and consult with staff throughout the FTC on technology-related matters, including prospective merger reviews and reviews of consummated technology mergers.

In addition to competition enforcement, the FTC promotes competition principles in advocacy comments to State lawmakers and regulators, as well as to its sister Federal agencies,⁸¹ and in *amicus* briefs filed in Federal courts considering important areas of antitrust law.⁸² The Commission benefits from critical self-examination, examining prior merger enforcement decisions to assess their impact on competition and consumers, and we intend to expand this effort going forward. Similarly, through the series of hearings described above, the Commission is devoting significant resources to refresh and, if warranted, renew its thinking on a wide range of cutting-edge competition issues.⁸³

V. INTERNATIONAL COOPERATION

The FTC also engages in significant international work to support its domestic enforcement programs. During the last fiscal year, the FTC cooperated in 43 investigations, cases, and enforcement projects with foreign consumer, privacy, and criminal enforcement agencies. To sustain this level of cooperation, the agency often works through global enforcement networks, such as the International Consumer Protection and Enforcement Network, the Global Privacy Enforcement Network, the Unsolicited Communications Enforcement Network, and the International Mass Marketing Fraud Working Group. The FTC also works directly with foreign counterparts on enforcement issues.⁸⁴

International enforcement cooperation also is critical for the FTC's competition program. With the expansion of global trade and the operation of many companies across national borders, the FTC and DOJ increasingly engage with foreign antitrust agencies to ensure close collaboration on cross-border cases and convergence toward sound competition policies and procedures.⁸⁵ The FTC effectively coordinates reviews of multijurisdictional mergers and continues to work with its international counterparts to achieve consistent outcomes in cases of possible 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 multilateral competition organization projects and initia-

⁷⁸ *La. Real Estate Appraisers Bd. v. FTC*, 917 F.3d 389 (5th Cir. 2019).

⁷⁹ 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), <https://www.ftc.gov/enforcement/cases-proceedings/141-0199/qualcomm-inc>; *In re Benco Dental Supply et al.*, Dkt. 9379 (Feb. 12, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/151-0190/bencoscheinpatterson-matter>.

⁸⁰ FTC Press Release, *FTC's Bureau of Competition Launches Task Force to Monitor Technology Markets* (Feb. 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/ftcs-bureau-competition-launches-task-force-monitor-technology>.

⁸¹ See generally <https://www.ftc.gov/policy/advocacy>.

⁸² *Amicus* briefs are posted at <https://www.ftc.gov/policy/advocacy/amicus-briefs>.

⁸³ See Prepared Remarks of Chairman Simons Announcing the Competition and Consumer Protection Hearings (June 20, 2018), https://www.ftc.gov/system/files/documents/public_statements/1385308/prepared_remarks_of_joe_simons_announcing_the_hearings_6-20-18_0.pdf.

⁸⁴ For example, the FTC has conducted several trainings and roundtables in the United States and India to help develop the capacity of Indian law enforcement to address tech support and other impostor scams such as the impersonation of IRS and Social Security officials. To address these continued threats, the FTC will convene a fourth annual roundtable in June, in partnership with the U.S.-India Business Council, on combatting Indian call center fraud. U.S.-India Business Council, *4th Annual Round Table on Stepping Up to Stop Indian Call Center Fraud*, <https://www.usibc.com/event/4th-annual-round-table-on-stepping-up-to-stop-indian-call-center-fraud>.

⁸⁵ 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.

tives. The FTC also works with other agencies within the U.S. Government to advance consistent competition enforcement policies, practices, and procedures in other parts of the world.⁸⁶

The U.S. SAFE WEB Act is key to much of the agency's international work, especially on consumer protection and privacy matters.⁸⁷ Passed in 2006 and renewed in 2012, the Act strengthens the FTC's ability to work on cases with an international dimension. It allows the FTC to share evidence and provide investigative assistance to foreign authorities in cases involving spam, spyware, misleading health and safety claims, privacy violations and data security breaches, and telemarketing fraud. In many cases, the foreign agencies investigated conduct that directly harmed U.S. consumers; in others, the FTC's action led to reciprocal assistance. The Act also has bolstered the agency's authority to engage in enhanced enforcement cooperation with foreign counterparts, including through memoranda of understanding, international agreements, staff exchanges, and other mechanisms.

The U.S. SAFE WEB Act has been a remarkable success. The Act enabled the FTC to respond to more than 130 SAFE WEB information sharing requests from more than 30 foreign enforcement agencies. It allowed the FTC to issue more than 115 civil investigative demands in more than 50 investigations on behalf of foreign agencies, both civil and criminal. The Commission has also used this authority to file suit in Federal court to obtain judicial assistance for one of its closest law enforcement partners, the Canadian Competition Bureau.⁸⁸

The FTC's foreign law enforcement partners similarly have assisted FTC enforcement actions. For example, the FTC worked directly with U.K. and Canadian authorities to halt Next-Gen Inc., a sweepstakes scam.⁸⁹ The FTC relied on key information sharing provisions of the U.S. SAFE WEB Act to facilitate cooperation with its U.K. partner and, last month, the defendants forfeited \$30 million in cash and assets to settle the FTC's charges. In the privacy arena, the FTC used key provisions of the U.S. SAFE WEB Act to collaborate successfully with the Office of the Privacy Commissioner of Canada in its COPPA case against V-Tech, the FTC's first case involving Internet-connected toys.⁹⁰ The FTC also brought several significant enforcement actions in the past year relying on the SAFE WEB Act's provisions that allow the FTC to reach foreign conduct that has a "reasonably foreseeable" effect on U.S. consumers, or that involves "material conduct" in the United States, as the basis for challenging practices involving foreign defendants.⁹¹

The Act also underpins the FTC's ability to participate in cross-border cooperation arrangements. This includes data transfer mechanisms such as the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework, as well as the APEC Cross-Border Privacy Rules System, designed to protect privacy and data flows in the Asia-Pacific region. Many U.S. companies use these mechanisms to carry out cross-border data flows consistent with strong privacy protections. The

⁸⁶For example, the Commission works through the U.S. 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.

⁸⁷Undertaking Spam, Spyware, and Fraud Enforcement With Enforcers Beyond Borders Act (U.S. SAFE WEB Act), Public Law No. 109-455, 120 Stat. 3372, extended by Public Law No. 112-203, 126 Stat. 1484 (amending 15 U.S.C. §§41 et seq.). Certain provisions, such as the secondment program for foreign officials described below, also apply to the FTC's competition work.

⁸⁸See Remarks by John Pecman, Commissioner of Competition [Canada] at International Privacy Enforcement Meeting (June 4, 2015), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03957.html>.

⁸⁹FTC Press Release, *Operators of Sweepstakes Scam Will Forfeit \$30 Million to Settle FTC Charges* (Mar. 7, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/operators-sweepstakes-scam-will-forfeit-30-million-settle-ftc>.

⁹⁰*U.S. v. VTech Electronics Ltd., et al.*, No. 1:18-cv-00114 (N.D. Ill. Jan. 8, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3032/vtech-electronics-limited>.

⁹¹See, e.g., FTC Press Release, *Court Temporarily Halts International Operation that Allegedly Deceived Consumers through False Claims of "Free Trial" Offers and Imposed Unauthorized Continuity Plans* (Nov. 28, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/court-temporarily-halts-international-operation-allegedly>; FTC Press Release, *At FTC's Request, Court Halts Massive "Sanctuary Belize" Real Estate Investment Scam* (Nov. 8, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/ftcs-request-court-halts-massive-sanctuary-belize-real-estate>; FTC Press Release, *FTC Halts Online Marketers Responsible for Deceptive "Free Trial" Offers* (July 3, 2018), <https://www.ftc.gov/news-events/press-releases/2018/07/ftc-halts-online-marketers-responsible-deceptive-free-trial>; FTC Press Release, *FTC Action Halts MOBE, a Massive Internet Business Coaching Scheme* (June 11, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-action-halts-mobe-massive-Internet-business-coaching-scheme>.

SAFE WEB Act also provides the FTC with key powers helping to carry out enhanced cooperation with important partners.⁹²

The SAFE WEB Act's provision authorizing staff exchanges also yields tremendous benefits. Using the Act, the FTC established an International Fellows program that has enabled the agency to host over 120 officials of foreign competition, consumer protection, and data privacy agencies to work alongside FTC staff on enforcement matters, subject to confidentiality protections, over the past dozen years. Foreign counterparts continue to seek exchanges with us, as the Fellows incorporate their learning from the FTC into the work of their home agencies, strengthening their capacity as well as our cooperative relationships with those counterparts.

The Act sunsets in 2020. The Commission strongly urges Congress to reauthorize this critical authority and eliminate the sunset provision. Just as Congress permanently granted the Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission similar enforcement powers decades ago, and provided the Consumer Product Safety Commission with permanent authority to share information with its foreign counterparts, we ask Congress to repeal the Act's sunset provision and make the SAFE WEB Act's cooperation tools a permanent part of the FTC Act.

VI. CONCLUSION

The FTC remains committed to marshalling its resources efficiently in order to effectively protect consumers and promote 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 KENNEDY. Thank you, Mr. Chairman.

We will now move to 5-minute periods of questions.

Chairman Simons, I want to start with you. Let us start with the topic of antitrust.

FTC ANTITRUST

Some of our social media companies are no longer companies—they are countries. They are huge, and they got that way by buying their competition. Under at least one point of view traditional antitrust analysis, that is okay because they have not put pressure on pricing because their services are free.

Another point of view is that, well, there are other ways to hurt a consumer than raising prices. I want to know what the position of the FTC is. I know you have appointed a committee, a task force. What is your task force doing? When is it going to finish, and what is the position of the FTC going to be on these antitrust issues?

Mr. SIMONS. Thank you, Senator.

I am going to start with the Technology Task Force. This is created in the Bureau of Competition, and it is not temporary. So it is basically creating like another division that we already have, a litigating division in the Bureau of Competition. Its mission is to focus on companies in the high-tech sector, particularly digital platforms.

Senator KENNEDY. Right.

Mr. SIMONS. All right. And so it is looking at exactly the things that you just described. It is going to be looking at the transactions that they are engaging in. It is going to be looking at the conduct

⁹² FTC Press Release, *FTC Signs Memorandum of Understanding with United Kingdom's Competition and Markets Authority to Strengthen Consumer Protection Enforcement Cooperation* (Mar. 25, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-signs-memorandum-understanding-united-kingdoms-competition>. The MOU streamlines sharing investigative information and complaint data, simplifies requests for investigative assistance, aids joint law enforcement investigations, and provides strong confidentiality and data safeguards.

that they are engaging in, aside from the transactions, and we are looking for——

Senator KENNEDY. Excuse me for interrupting, Mr. Chairman, but I have got other questions.

Do you know when the task force is going to complete its work and the FTC will have a policy with respect to antitrust?

Mr. SIMONS. So the Task Force is ongoing. It is like a law enforcement effort. So, hopefully, it is going to bring—we expect them to bring cases, and those cases can just continue.

Senator KENNEDY. When?

Mr. SIMONS. When what?

Senator KENNEDY. When do you think you will bring cases? When will we know what your policy is?

Mr. SIMONS. Oh. So the policy is irrespective of the Technology Task Force. Our policy is to stop anticompetitive conduct and anticompetitive mergers that either result in price increases, reductions in product quality, which would include privacy, and reductions in innovation. That is the basic concept.

Senator KENNEDY. Have you brought any cases reflecting that point of view?

Mr. SIMONS. Sure. We brought one last week involving the health care sector in a high-tech platform called Surescripts. This is e-prescribing. It connects the pharmacy benefit managers (PBMs) to the doctors and the doctors to the pharmacies.

CONSUMER CREDIT RATING AGENCIES

Senator KENNEDY. Let me shift gears to consumer credit rating agencies.

Our rating agencies form a very useful function. They gather information about each of us. Can we agree, however, that when the rating agencies have information that is inaccurate, they could do a better job of making it easier for a consumer to change that information? Could they not?

Mr. SIMONS. Well, certainly, it is very important that the information they have be accurate.

Senator KENNEDY. But have you ever had a situation where it was not accurate and you——

Mr. SIMONS. Yes. In fact, we brought a case against a company called RealPage, which is a background screening company, and they were using an algorithm to match up data to people's criminal records. And they were not doing a very good job of it.

So we brought a case and got them to change their algorithm and also to pay monetary relief of \$3 million.

Senator KENNEDY. But what I am talking about is a situation where the rating agencies have information on you, for example, and they just got it wrong.

Mr. SIMONS. You know, this is an example. That is what happened. They had it wrong.

Senator KENNEDY. But I am talking about a procedure where, short of having the FTC go bring a case, a consumer can call the rating agency and correct the information. What can we do to encourage the rating agency to fix it, as opposed to saying “we do not care, because we do not have to”?

Mr. SIMONS. Well, the statute requires them to fix it and have dispute procedures in place.

Senator KENNEDY. I know.

Mr. SIMONS. So if they are not doing that, then that would be a violation of the statute, and that is something that we would correct. We would try to correct.

Senator KENNEDY. In the meantime, the consumers have to wait and put up with the bad information about him or her?

What I am asking is, Can you visit with our credit rating agencies——

Mr. SIMONS. Yes.

Senator KENNEDY [continuing]. And try to have them set up a system that looks like somebody designed it on purpose, so that consumers can say, “Hey, you got my information wrong. Please fix it”——

Mr. SIMONS. Yes. One of the——

Senator KENNEDY [continuing]. And then they will do it as opposed to saying, “You do not pay our fees. Business guys pay our fees. So call somebody who cares”?

Mr. SIMONS. Right. I mean, one of the things we are doing is we are talking to the Consumer Financial Protection Bureau (CFPB), and considering a workshop that will address exactly these issues.

Senator KENNEDY. Okay.

Senator Coons.

ROBOCALLS

Senator COONS. Thank you, Mr. Chairman.

To both of you, about robocalls, Americans receive more than 5 million robocalls a month, and as best I know, virtually every American would like it to stop.

You, Chairman Pai, have encouraged phone companies to implement a new technology. I think it is called SHAKEN/STIR, which alerts a consumer to spoofing, to changing the caller ID to a number other than the actual calling number. Have the phone companies listened to your advice so far and deployed this technology?

Chairman PAI. Thank you for the question, Senator.

Generally speaking, they have, and we have posted the responses to my demand from last fall and earlier this spring that they adopt Call Authentication this year, with the penalty being if they do not, the FCC will intervene regulatorily to make sure that they do.

So there have been a number of announcements from various companies, the top 14 in particular, talking about some of their efforts in this regard. In addition to that, we have also been encouraging them to empower themselves to block calls that are obviously spoofed.

We have been creating a reassigned numbers database to allow legitimate callers to determine whether a number has been reassigned.

We have been working with foreign governments to make sure that we share information when we see the calls are coming from a particular country, and just last week, actually, we put out a consumer advisory about the one-ring scam in which a call comes from, say, Mauritania or Sierra Leone, and it only rings once. And it is tempting some consumers to call back, and it essentially oper-

ates like a 900 number. You get all these fees per minute if you call back.

There is a very good example of the collaboration between Chairman Simon's agency and mine. We direct them to the FTC if they want to file a complaint. We urge them not to answer the calls. We want to empower consumers with information, and we want companies here to get rid of "the scourge of civilization," as former Senator Fritz Hollings once called it.

Senator COONS. Well, we can continue that work in his memory.

Does the FCC have a dedicated unit focused on this, and do you feel like you have the scope and reach of authorities that you need to continue the work you describe?

Chairman PAI. The answer to the first question, Senator, is yes. We have the Telecommunications Consumer Division within our Enforcement Bureau, the primary focus of which is tackling this problem.

In addition, I know that Members of Congress and Members of this body of both the parties are looking at legislation like the TRACED Act, which I support.

We want additional tools to help tackle this problem, and I think the TRACED Act in particular is a step in the right direction.

Senator COONS. Chairman Simons, what is the FTC doing as part of this, and what comments might you have on the scope and reach of your current authorities and whether they are sufficient?

Mr. SIMONS. Thank you, Senator.

So we continue to sue people who engage in robocalls. We had four at least, I think, in the past year, but as you know, a lot of those calls come from overseas and places where—they are kind of like boiler room operations which when you shut one of them down, they just reopen someplace up right next door, down the block, or even in another country.

So one of the things we would really very much like is to get authority to go after common carriers, which we do not have right now.

Our sense is we could have a material impact, particularly for the foreign robocallers. They have to have an entry point into the U.S. telephone network system, and their call characteristics are quite distinct. You should be able to find them, and my understanding is that there are carriers who actually cater to this type of traffic. So we could go after them and stop them from carrying the robocalls if we could get authority to cover the common carriers.

Senator COONS. I would welcome the chance to work with you on that. Are you aware of legislation that specifically addresses that? I am not.

Mr. SIMONS. I think there is some legislation that has been introduced very early on.

Senator COONS. Okay.

Mr. SIMONS. Very early days for that.

But, yes, I would very much appreciate any help we could get on that.

Senator COONS. Thank you, Mr. Chairman.

Chairman Pai, I am glad you are taking active measures to make sure that we are a leader in 5G technology deployment in the United States.

As your plan notes, to successfully deploy 5G, we are going to need more spectrum. In particular, there is a band, the C-Band, that may well be vital to this, and my understanding is some of the current users have suggested they be allowed to sell the rights to wireless companies.

This would result in a significant windfall profit to those users who did not have to pay to get that spectrum in the first place.

Do you have a rough estimate about how much money such an auction might generate or sale, and why not have the FCC auction off parts of the C-Band itself? What delay might it cause? What sort of revenue might it generate to the Treasury, and would you need any authorities to be able to do that?

Chairman PAI. I appreciate the question, Senator.

In our Notice of Proposed Rulemaking on this issue, we teed up all of the different options, and our goal here was pretty simple: to solicit public input across the board on what the appropriate course for the FCC would be.

In addition to that, we have been soliciting targeted input on some of the authority questions. For example, last week, we issued a series of questions about the legal ramifications of a particular course of action because the last thing we want to do, of course, is to make a decision that we believe is in the best interest of the American people but then be stuck in the courts for a long time.

So there are many different factors here that we are trying to balance. One of them, of course, is time. As you mentioned, 5G leadership is a top priority for America, not just in terms of national competitiveness, but in terms of the innovation and investment that will happen on our shores if we get it right on 5G. That is one factor. The quicker we can get the spectrum to market for 5G, the more effective it will be.

Another consideration is some of the incumbent users or customers of this band, and so we want to see, to the extent that they have concerns, to what extent we can accommodate those concerns.

Another one which you highlighted as well is just making sure that for Members of Congress especially that the amount of revenue that will be raised, could be raised from this spectrum. In that regard, I do not have a verified internal estimate of how much could be raised, but with mid-band spectrum, we have a number of initiatives under way. And there has been a lot of chatter in the private sector about how much it could raise.

Mid-band is in that sweet spot, it has good propagation characteristics in terms of coverage and as well as throughputs in terms of capacity, and so that is one of the reasons why this band in particular is very highly prized.

Senator COONS. But it could be tens of billions of dollars; is that correct?

Chairman PAI. I have seen estimates along those lines. I do not have any independent way to verify those estimates.

Senator COONS. Thank you. I look forward to continuing to work on 5G and other issues.

Thank you, Mr. Chairman.

Senator KENNEDY. Thank you, Senator Coons.

Before I call on Senator Moran, give us the names, Chairman Simons, of those carriers that work closely with the robocallers that make it easier for the robocallers to do business.

Mr. SIMONS. I do not have those, but I can get them.

Senator KENNEDY. Would you?

Mr. SIMONS. Sure.

Senator KENNEDY. Can you get them to me?

Mr. SIMONS. Yes.

Senator KENNEDY. I will put it on my Facebook page.

Mr. SIMONS. Okay.

[Laughter.]

Mr. SIMONS. Well——

Senator KENNEDY. These are carriers that make it—these are American companies that make it easier for the robocalls.

Mr. SIMONS. Yes. So this is a—these are probably small carriers, and so I do not have a list. We would have to develop the list.

Senator KENNEDY. Can you get me a list?

Mr. SIMONS. I would have to check with my staff, but assuming these——

Senator KENNEDY. Well, we ought to tell people who they are.

Mr. SIMONS. No, I agree. But because we do not have authority over them now, we have not looked in detail at who they are.

Senator KENNEDY. Okay.

Senator Moran.

FTC'S AUTHORITY

Senator MORAN. Chairman Kennedy, thank you. I join Ranking Member in welcoming you to your chairmanship and look forward to working with you.

Let me start with you, Chairman Simons. FTC's current Section 5 authority and other specific enforcement authorities that you have, does the FTC currently have the financial and staffing resources to effectively enforce against harmful data collection and processing practices? So what resources, if any, additional do you need for your current responsibilities?

Mr. SIMONS. Right. So the first thing I would point out would be we lack civil penalty authority. So we can go into court under 13(b) and try to get monetary relief, but usually, with data security cases, it is very hard to prove a specific harm, that a specific breach resulted in a specific harm to any consumer.

So the ability to get significant monetary relief is quite limited under our current authority, and our sense is that it would be much better if we had civil penalties because that way we could create an effective deterrent and cause people to think more carefully about their data security practices and protect consumers' data.

Senator MORAN. So, in answer to my question, you are asking for a legislative endeavor——

Mr. SIMONS. Yes.

Senator MORAN [continuing]. Not necessarily something from this appropriations subcommittee?

Mr. SIMONS. Right, yes. We would like to get civil penalty authority. We would like to get targeted rulemaking, and we would like to get jurisdiction over nonprofits and common carriers.

Senator MORAN. As you know, I chair the Commerce Subcommittee that deals with these topics, so I appreciate you reminding me of that.

Let me ask you. If that subcommittee or the full Commerce Committee, those that are working on data privacy legislation are successful—and I am teamed up with a handful of Senators, and I think that I remain optimistic that we will be able to deal legislatively with data privacy. So if Congress were to enact a Federal privacy law to provide the FTC with those improved authorities, how would you expect your resource needs at the FTC to change?

Mr. SIMONS. I think they would go up significantly. One point of comparison would be if you look at the UK Data Protection Authority, which has jurisdiction to enforce the General Data Protection Regulation (GDPR), which is a much more extensive privacy law than what we enforce now, they have—this is just the UK—they have over 500 people doing that job.

Even the Irish Authority has, I think 140. We have about 40.

Senator MORAN. A dramatic difference.

We had the Irish Authority in front of our full committee last week.

Mr. SIMONS. Yes.

Senator MORAN. As perhaps an aside, but something I want to say to you, Mr. Chairman, when we had you and all the remaining commissioners in front of our subcommittee, I want to tell you how impressed I was with every member of the Commission, and it was good to see the capabilities but also the evidence of working together to find solutions to problems. I am very grateful and appreciative for what I saw.

Mr. SIMONS. Thank you so much. We deeply appreciate that.

FCC MAPS

Senator MORAN. Chairman Pai, let me turn to you in a conversation that you and I have had ever since you showed me mobility maps. I remain concerned with the effectiveness of the Form 477 data collection process, and that is important. We talk about the resources in this committee. We would talk about the FCC and the Universal Service Fund. It also matters over at USDA and Rural Development and those dollars.

I want to make certain that if we are going to spend the amount of money that you have to spend and that the Department of Agriculture has to spend that it goes where it needs to go to provide broadband service for all Americans.

I joined—in fact, I led a letter that you will receive from the Kansas Congressional Delegation regarding our concerns about the 477 data collection process.

Do you have any suggestions how the FCC plans to improve the maps? I know there is an effort afoot to determine whether carriers violated rules. Is there something that is taking place between now and that determination to improve the quality and accuracy?

Chairman PAI. Yes, Senator, is the short answer.

With respect to fixed broadband, right after I got into office, we started a comprehensive rethink of the Form 477 process, maps where fixed broadband is and importantly where it is not.

We are now engaging with staff—and I expect the staff will come to me with some recommendations—on how to make sure that this information is both accurate and more granular, so we understand, for example, where broadband within a census block is as opposed to simply understanding whether a census block has a single household covered in that block.

On the mobility side with respect to wireless broadband, we do have the Mobility Fund Phase II, as you and I have discussed before, and here, thanks in part to Senator Manchin's advocacy, we determined that we believe that one or more carriers may have submitted inaccurate data.

I referred immediately that matter to the Enforcement Bureau for investigation. I anticipate that the staff will come back to me with some reports on that investigation at some point in the near future, and at that point, we will determine how to proceed with respect to the Mobility Fund II program.

But overall, I share, 100 percent, your concern, and the concern of other Members of the committee, that we need to have accurate mapping data in order to make sure that this scarce Federal funding is being distributed to close the digital divide, not to overbuild or—

Senator MORAN. Part of the FCC's conclusion as to how to improve the data has been to encourage an appeal process, and hundreds of folks across Kansas went out and attempted to do that—the Kansas Farm Bureau, others—in trying to determine whether or not the maps were accurate.

What have you learned from that process of that information being provided to the FCC? Does it validate the maps, or does it indicate there remains problems?

Chairman PAI. I think the challenge process has been illuminating. It has illustrated that in many cases, consumers and small businesses—farmers out there, for example—have been able to pinpoint that some of these mapping statistics are inaccurate, and that has been enormously helpful.

In the context of our Form 477 proceeding, that is one of the reasons why, among other solutions, we are looking at crowdsourcing as a way of getting information aside from the carriers themselves so that we get the consumer experience reflected in our records as well as the Form 477 data itself.

Senator MORAN. Mr. Chairman, earlier in the day, you were kind enough to suggest you would come join me in Kansas. Maybe you and I can go out and take the device together. We can travel Kansas. I can show you some of the places where my cell coverage gets dropped every time I am there. It would be a great opportunity for us, you and I, to go experience the confirmation process to make improvements.

Chairman PAI. Well, Senator, it is a great State. Some would say the greatest State. I would always be pleased to go back home.

Senator MORAN. I was very offended by the Chairman's suggestion that you were proud of your alma mater. I thought you would be proud of your State.

[Laughter.]

Senator KENNEDY. Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman.

I want to associate myself with the Chairman's comments earlier on about credit rating agencies. Big problem.

Thank you both for being here.

5G

Chairman Pai, on 5G, you stated U.S. leadership in 5G is a national imperative for economic growth and competitiveness. I agree. Would you also agree it is a strategic imperative globally at this point in time?

Chairman PAI. Yes, sir.

Senator VAN HOLLEN. And would you agree that we are falling behind? I would just call your attention to a Washington Examiner article, just April 10: State Department admits U.S. cannot compete with China's 5G. You were at a National Security conference, I think, in Prague, in the Czech Republic recently talking about the risks of Huawei and the Chinese system.

Do you believe that deployment of a Huawei system would pose a privacy risk and even a security risk here in the United States and to our allies?

Chairman PAI. I appreciate the question, Senator. I have been spending a lot of time thinking about this issue, working with colleagues across the executive branch and with Members of Congress.

I think the short answer is that the FCC believes—we have not announced any proposal along these lines—that the deployment of equipment or services by companies that receive Federal funds from us that present a national security threat to the United States is unacceptable. We cannot assume that risk.

We want to think about security with respect to next-generation networks at the front end as opposed to worrying about it as an afterthought once it is too late, and that is one of the messages I was privileged to help share with some of our allies in Prague. And as a result of those conversations, over 31 nations agreed with the United States and the Prague proposals to think about the security of these ICT networks.

Now, with respect to the other part of your question, I do not believe in terms of development and deployment of these technologies, the United States is falling behind. For example, Cisco's VNI report earlier this year pointed out that North America would have twice as many 5G connections by 2022 as Asia. The ABI Research Group said specifically the United States will win the race to 5G in the short term and—

Senator VAN HOLLEN. Let me—Chairman Pai, I mean, you have been following what has happened in Europe, right?

Chairman PAI. Yes.

Senator VAN HOLLEN. I mean, both in the UK, France, Germany, our National Security officials have been there warning people about the risks to their users about deploying Huawei.

Right now, it does not appear that we are winning that battle in the sense that I do not think any of them to date have said, "We

are going to rip out what we already have from Huawei. It is too expensive.”

So I do have a question here because your predecessor, Chairman Wheeler, talked about this. This was a national priority. How is it that we got ourselves as a country in a position where we do not have one of the major suppliers with respect to at least the radio phase of this? I mean, you have got Ericsson. You have got the Finnish company. But then you have got Huawei. How did this happen, and what do we need to do now to make sure we do not fall behind going forward?

Chairman PAI. It is a great question, Senator. I think there are some long-term economic trends that made it very difficult for some of the suppliers to remain in business.

I think one of the other challenges, to be frank, is the fact that the Chinese government picks national champions in this space, subsidizes them in many cases, and those subsidies allow some of their domestic champions to compete when it comes to developing—

Senator VAN HOLLEN. No, I think that is a big issue.

You know, we were a little bit ahead of the curve when we talked about semiconductors. As an industry, the U.S. Government was part of that. I know there is a lot of emphasis on always relying on the private sector. It is obviously a creative force, but some of these essential technologies require a national strategic focus. So I just want to continue that conversation.

NON-COMPETE CLAUSES

Chairman Simons, a question about non-compete clauses. I am very concerned with the growth of non-complete clauses. It goes beyond non-compete causes for engineers and physicians. We are talking about fast food workers. We are talking about hair stylists. In fact, the Treasury Department estimates that 30 million American workers are now bound by non-compete clauses, including minimum wage sandwich makers, camp counselors.

So you got a letter recently from Senator Blumenthal and many of us on this. I saw your response. I appreciate your expressed concern. My question is, what are you going to do about it? Does the FTC, in your view, have the authority to do a rulemaking in here to put an end to this nonsense where someone making sandwiches is theoretically bound by a non-compete clause? And then if they want to contest it, they have got mandatory arbitration on the other side. So what are you going to do about this?

Mr. SIMONS. So I share your concern, absolutely, particularly with respect to the—

Senator VAN HOLLEN. I mean beyond the concern. I just want to know exactly what you are going to do.

Mr. SIMONS. Yes. Well, here is what we are doing right now. I am having the Bureau of Economics do a review of the economic evidence that these types of clauses over the full range, whether it is on the low end of the pay scale or the high end of the pay scale, to see what impacts there are that we can find already proven in the economic literature. So that is the first step.

So that comes back and shows that we already have the basis for a rulemaking. Then that is something we will be pushing for.

On the other hand, if the economic evidence is not sufficient to justify a rulemaking, then I think what we are going to try to do is develop the evidence.

Senator VAN HOLLEN. What is your estimate timeline here in terms of the end of that analysis and decision on rulemaking?

Mr. SIMONS. So the literature review should be done pretty quickly. I would think a matter of months. If it turns out that there is a good basis for a rulemaking, then I think that could happen within months of that.

On the other hand, if there is not the economic evidence that would support such a rule, then we would have to develop it ourselves, and that would take considerably longer.

Senator VAN HOLLEN. Thank you.

Senator KENNEDY. Senator Lankford.

Senator LANKFORD. Mr. Chairman, thank you.

Gentlemen, thanks for being here as well. We have got a lot to be able to cover, as you can tell, a lot of issues here.

I jump into one that is especially important I think for the FCC, and that is this issue about contraband cell phones that we have got to be able to resolve that are in our prisons.

In Oklahoma, we had 7,500 contraband cell phones that were picked up just last year. We have individuals in prison running their gangs, calling out hits, executions that are occurring, selling drugs, reaching out to children, that are pedophiles within our prisons. It is a serious issue, and it is an issue currently the Federal law prohibits the FCC from engaging on the issue of trying to be able to allow a waiver for prisons to be able to jam those cell phone devices.

This is something that this subcommittee and Congress requested a report from FCC on that was due April the 15th. That I understand there was a delay waiting on another report coming in and trying to get a study on this. We need to get this issue resolved in law and what direction that we are going to head on it.

Where is that report from the FCC? When do you expect it to come to us?

Chairman PAI. Thank you for the question, Senator, and for your longstanding advocacy on this issue, an issue where I share your great concern. It is a real public safety menace and one that I have been focused on for a while.

We are analyzing the recent report on which our own report is dependent. We will get it to you as soon as we can. My understanding is our staff is looking at that right now, and I hope to be able to deliver it to you—

Senator LANKFORD. So is that a month away? Is it 6 months away? Is it 6 hours away?

Chairman PAI. Much closer to 1 month than 6 months.

Senator LANKFORD. Okay. Thank you.

AUTOMATED CALLS

Let us talk about some of the automated calls coming from overseas that Chairman Simons has already brought up as well. We have automated calls coming in extremely large numbers, coming from overseas, that they have a digital signature that can be iden-

tified coming in. That is why American carriers are able to identify those and to be able to filter those out.

What would prohibit us at this point from blocking automated calls from coming from overseas? And so if there is an automated call coming at all, it would have to originate in the United States, and then Americans could filter that if they chose to, but blocking it just at our borders. Would there be a reason we would not do that?

Chairman PAI. From a legal perspective, do you mean, or as a policy matter?

Senator LANKFORD. As a policy matter.

Chairman PAI. I think part of the problem is the technology has evolved to the point where it is very difficult to distinguish where this traffic is coming from. That is part of the reason why the private sector has led a Traceback Group that we rely upon often to try to figure out when we see some of these calls that are masked, spoofed especially, they seem to be coming from the United States.

We try to track the origin of those, and then one of the things I have done is worked with some of my counterparts, the chairman of the Indian FCC equivalent, for example, so we can share information when we see that some of these calls are coming from dedicated call centers that exist for no reason other than to robocall American consumers.

That is an effort where we think the Call Authentication Framework and some of these other tools that we have been trying to develop in consultation with the private sector will prove worthwhile, but it is getting to the point where we need to be able to track down these phone calls and stop them at their source as opposed to trying to track them down after the call is placed.

Senator LANKFORD. If there is a legislative need that you have that says, "I can only go this far," then I have a block on legislation, we need to know it obviously. Jerry Moran and his leadership in the authorizing committee, we need to be able to identify that so we can keep moving on this to be able to get this resolved.

We have spoken briefly about the Mobility Fund Phase II and the testing as well. I know that you are actively pursuing the issue of trying to get the maps correct. I appreciate that you are doing that. That is exceptionally important to any of us that have rural areas in our State, which I do obviously, and large areas where there is no coverage. I am trying to resolve that.

I do want to identify, though, on the broadband portion of this. There have been some questions on the performance standards testing and the requirements for the speed testing and the equipment and how intrusive that is to the consumer. Is this something that can be resolved, as in the process of being resolved now, so the consumer is not affected in this process of getting a testing?

Chairman PAI. We are examining that issue, Senator.

There is a pending petition for reconsideration that had been filed by the representative of the rural telephone carriers, and one of the things that we are examining, is there a way to tweak this requirement to minimize the burden on some of these smaller carriers who should be spending this money, the scarce funding, to build out broadband as opposed to some of the testing.

Senator LANKFORD. Do you have a timeframe on that?

Chairman PAI. We do not have a particular timeframe. We are scheduled to sit down with our staff at some point in the near future and figure it out, but we are much closer to the end of that process. The petition has been pending for a while, and we hope to act very soon.

Senator LANKFORD. We look forward to that and that getting resolved, and that would be very helpful for a lot of folks as they are doing investment.

CHINA MOBILE

Last question I want to be able to bounce off of you is this issue of China Mobile.

Chairman PAI. Yes.

Senator LANKFORD. You denied an application for China Mobile. It has been pending out there for a long time. I believe that is the first time that there has been a denial like that. Is there anything that we need to know that we are trying to address not only from what Senator Van Hollen was bringing up about Huawei that we are all extremely familiar with, that China Mobile and its American subsidiary is now blocked out of the United States?

Chairman PAI. Senator, hopefully the FCC will vote on Thursday to agree with my proposal to ban China Mobile from entering the U.S. market.

In addition to that, the supply chain proceeding that I mentioned to Senator Van Hollen is outstanding. We hope to be able to resolve that.

There are a number of other issues that I would be happy to discuss with you in a different setting involving some of the threats that we are seeing to security.

But what I will say is that I do believe that certain Chinese suppliers, such as Huawei, do indeed present a threat to the United States, either on their own or because of Chinese domestic law.

For example, China's national intelligence law explicitly requires any individual or entity that is subject to that law to comply with the request from the intelligence services. That is a problem because especially when you are talking about 5G networks that are deployed in one country and could be managed by software that is resident in another country, that presents some security risks, I think, and those risks to me are unacceptable when it comes to the deployment of 5G networks on our shores.

Senator LANKFORD. Right. Thank you.

Thank you, Mr. Chairman.

Senator KENNEDY. You bet.

Senator MANCHIN.

Senator MANCHIN. Thank you, Mr. Chairman, and thank you, Mr. Pai and Mr. Simons, for being here.

Chairman Pai, I think last year, I was the only one Member of Congress to formally and successfully challenge the Federal broadband, as you know.

You recognize I just—we are fighting it all over, and we knew the maps had been wrong from day one.

FCC'S MOBILITY FUND

The problem I am concerned with is the amount of time it is taking. You have put everything on hold, Mobility II Fund. That is \$4.5 billion.

Little States and rural areas of any State is dependent on connectivity.

Also, we brought to you, basically, the cost in certain areas. It is much costlier in the mountainous areas of West Virginia to build out the infrastructure that would be in the flatlands of our neighboring friends, and we wanted to make sure that was in the consideration of that.

The time elements as far as deploying these funds, what time table are you all on? And I am not being critical, except that you just do not know how desperate it is. We cannot keep people. Businesses cannot function. Nothing happens.

Chairman PAI. I could not appreciate that more, Senator.

As I mentioned in my opening statement, when I visited Capon Springs—and I visited with a small business owner who is consistently losing business because after folks are enjoying the beautiful outdoors of West Virginia in the evenings, they want to plug in and watch Netflix or some other service, and they cannot do it. So that is starting to cost him. That is just one example from one business in one town.

We want to make sure that these funds are getting distributed to close that digital divide, and that is why with respect to the Mobility Fund, we want to try to resolve those enforcement investigations of the carrier or carriers that submitted inaccurate data, so then we can figure out how to right-size the Mobility Fund Phase II.

Senator MANCHIN. Here is what I am concerned about. If the feedback, the public feedback, is not built into the whole review process and then if you are going to wait until you think you have corrected the whole problem, it is going to be—I do not know how long it is going to be until we do this.

Cannot you when you correct the maps, the maps are corrected—the lights are crazy here, I know.

Chairman PAI. Yes, sir.

Senator MANCHIN. You think they are bad on your side. You ought to try them on our side.

[Laughter.]

Senator MANCHIN. Anyway, as you correct—and the maps have been corrected and we commend—to a State, and basically, the app—you know, we have apps, and we can go around, which we have done. And we contest and we showed it. Your people accepted that as factual. We appreciate that.

But as we correct them, cannot we start when the need is there, start releasing some of the funds?

Chairman PAI. I think part of the concern we have, Senator, is to make sure that to the extent that a carrier or carriers submitted inaccurate data, if we proceed before we figure out the inaccuracies in the map and how to correct them, then we run the risk that you have highlighted before, which is that we might be directing funding to a part of the country that already has service. And so we

want to make sure we get that part of it right and then make the determination with respect to how to proceed on Phase II.

Senator MANCHIN. But the public feedback mechanism has to be in a 477.

Chairman PAI. On the fixed side, yes. And that is where in the——

Senator MANCHIN. It is not there now.

Chairman PAI. Right.

So, in the context of the 477 proceeding, we are thinking about incorporating crowdsourcing or other types of consumer-led information.

Senator MANCHIN. Because these apps, basically they can submit to you off their phone and show you the app that basically shows they are not covered——

Chairman PAI. Right.

Senator MANCHIN [continuing]. Or the coverage is less than what the providers are showing.

Chairman PAI. And with respect to the 477 process, that is one of the things we are hoping to wrap up in the near term as well. We have been working very much with the private sector on different solutions to try to figure out where broadband is and unfortunately where it is not.

Senator MANCHIN. Sir, again, I want to comment on basically the amount of time we have had in getting response back from your office. So any of your staff that is here, I am being constructively critical that we do not get response as quick as we should, and I will give you a few examples.

It was last August. We invited you to West Virginia to see some of the unique challenges, okay? We still have not had a response on that. That was last August about you coming and trying to—we are only 3 hours. We are an hour and a half away. We are not that far.

Chairman PAI. Yes.

Senator MANCHIN. We will drive you, okay?

In December, I had to put a hold on Commissioner Carr's nomination, as you recall, until we could get basically a thorough, expeditious review on the Mobility Fund to include terrain factor. We got that moving. It took us holding him up.

So, without the hearing today, I do not know when we could have gotten a response on the February letter, and we got a response a couple days ago.

If you are having trouble with the staff or you need resources for your staff to be able to do the job and get back with Congress, we have to answer every weekend we go home, and they are on—it does not change. They do not have connectivity. They are honest, and they want to know when it is going to happen. We have been telling them about the Mobility broadband fund, rural broadband, and they are tickled to death with it. Now they do not believe it. They do not believe it is going to happen.

So I am just saying whatever it takes on that to Congress and the congressional inquiries, it is a matter of us communicating, and if we do not hear from you all, we have no way to communicate.

Chairman PAI. I appreciate it, Senator. Your concern, we will look to rectify that, and part of the reason why when you requested

a waiver to be able to participate in the challenge process, I personally told our staff, "Let us make sure we do what we can to allow the Senator to participate."

Senator MANCHIN. Well, just communicate with us. Just call us back, you know, whatever. Just to hear from you would be great.

Mr. Simons, very quickly, because my time is up, on the Committee on Foreign Investment in the United States (CFIUS), you know about, of course, CFIUS.

Mr. SIMONS. Yes, I know what CFIUS is, but we do not really participate—

Senator MANCHIN. You have nothing in that whatsoever?

Mr. SIMONS. No.

Senator MANCHIN. Have you identified basically things as far as the different building blocks that we have, a manufacturer that affects our economy that could be detrimental if CFIUS review is not pertaining to those? And I am using butane, propane, everything that we have in the white gasses that are coming out of the New Marcellus and Utica Shale.

Mr. SIMONS. I am sorry, Senator. That is in not our jurisdiction.

Senator MANCHIN. That is not in our bailiwick?

Mr. SIMONS. Right. Sorry.

Senator MANCHIN. Well, I wish it was. We need help there. They are trying to drain every ounce of energy we have out of our country and take it and monopolize it. China is awful about what they are trying to do.

Thank you, Mr. Chairman.

Senator KENNEDY. Senator Boozman.

Senator BOOZMAN. Thank you, Mr. Chairman, and congratulations on being Chair of the subcommittee. I know that you and Senator Coons will work together very closely. This subcommittee has a great track record of working together, not only as the chair and Ranking Member, but also the staffs, so lots of good things that we can get done in this particular subcommittee.

RURAL NETWORKS

Chairman Pai, as one of the co-chairs of the Senate Broadband Caucus, I want to echo Senator Manchin's concerns with the mapping.

We have lots of areas in Arkansas, and you do not live too far from Arkansas, back in the old days, but simply, we have situations where it is marked to serve and it is simply not anywhere close to being served. So we would appreciate all of your help in moving forward and trying to get that corrected. It is so, so very important.

We have got lots of different entities now that are moving into the space to try and provide service. Last year, Congress made what some have called a "down payment" on investing in rural infrastructure by creating the \$600 billion Reconnect Program to be administered by USDA Rural Services, and an additional \$550 million was added in the fiscal year 2019 omnibus.

I guess the question is, with all of the work being done on the networks, how are we coordinating that? How are we making sure that it is spent in an efficient way, that there is not duplication of effort?

Chairman PAI. Thank you for the question, Senator.

We have been working closely with the U.S. Department of Agriculture and with other stakeholders to make sure that the Federal funding that you have allocated is not going to duplicate efforts that another agency might be supporting, but we do work very closely with them, and ultimately, whether through legislation or through those agency-to-agency efforts, we will make sure that this taxpayer funding is devoted just once to close that digital divide.

Senator BOOZMAN. Right. In regard to the shape files that are being provided, USDA, FCC, you are collecting the broadband information. If it were in the same format, could that help facilitate coordination between the agency and USDA to target funding to avoid overbuilding?

Chairman PAI. That is one of the issues that we are examining in the context of our Form 477 proceeding, what is the best way to proceed with respect to mapping. One sector of the industry has advanced the idea of shape files as a way of skinning that cat, so to speak. Another sector has proposed a different methodology. We are engaging with all of those stakeholders. From our perspective at least, we want to make sure that we do what we can as soon as we can to get a more accurate sense of broadband availability. So we look forward to keeping you informed.

Senator BOOZMAN. I would appreciate that.

It does seem like it would make sense if we could have a standard.

Chairman PAI. Exactly. We want to operate on the basis of common facts, both at FCC and at USDA, I think.

Senator BOOZMAN. The other thing is I would like to second Senator Lankford's concern with the prisons. We are in a situation now where the cell phones run anywhere from \$500 to \$1,000. It is a very corrupting influence in that regard.

There was an article I think over the weekend or last week about soldiers, prisoners playing like they were females or whatever and trapping soldiers, blackmailing them, things like that.

I think in Arkansas, there were 1,600 that were apprehended, and it is difficult because then you have got to try all those people. And that relies on the county prosecutor right there, so again, just all kinds of problems. So anything that you could do to push that forward would be greatly appreciate, or if you need additional authorities or whatever, be sure and let us know so that we can be helpful in that regard.

Chairman PAI. Thank you, Senator. You have got my commitment. I have personally visited maximum security facilities in Georgia, minimum security facilities in Massachusetts, and everything in between, voluntarily I would add, and one of the things they have made clear is that in many cases, these cell phones are the most valuable currency to a prisoner, more valuable than drugs or anything else.

CONTACT LENS RULE

Senator BOOZMAN. Chairman Simons, recently, your contact lens release, you are working hard on that. There is some concern that the paper trail regarding prescription providers, prescription release, there is concern that there is—you know, if you can do it on

that end, why not do it to the online sellers and have them have a paper trail also?

Right now, we could get our cell phones out and punch up prescription contact lenses, and you would find a bunch of people that were selling without prescriptions. Do you have any comment about that?

Mr. SIMONS. Yes, Senator. Thank you for the question.

So we are looking at changes to the rule that would tighten up what some people would refer to as loopholes in terms of passive verification. So this is where the seller needs to call or otherwise contact the prescriber and get the prescription validated, and so there is reported instances or incidents in the record which are described as doing it in a very kind of—almost a hidden way, and so we are trying to bolster that and close those loopholes, make sure that the sellers actually have the prescription and that the prescription is valid and accurate and they do not change the brand without the consumer's consent.

Senator BOOZMAN. Thank you, Mr. Chairman.

And we will submit some more questions regarding that, so appreciate it. Thank you.

Mr. SIMONS. Thank you.

Senator KENNEDY. Senator Daines.

Senator DAINES. Thank you, Chairman Kennedy, Ranking Member Coons.

Senator KENNEDY. Welcome to the discotheque.

[Laughter.]

Senator KENNEDY. I expect John Travolta to walk in.

[Laughter.]

Senator DAINES. I will walk out, sir, if he comes in 1970s clothes.

I want to thank Chairman Pai and Chairman Simons for coming today.

5G

Chairman Pai, always good to see you, and I wanted to chat a bit about 5G mid-band spectrum.

I am very concerned and fear the U.S. is falling behind on the race to 5G, and we simply cannot let that happen in this race with China.

The 5G economy is going to lead to a breakthrough in jobs, information, connectivity; however, other countries are making four times more mid-band spectrum available in the next few years compared to the United States.

Mid-band spectrum will be a key component to make 5G a reality, especially in places like Montana. We need to stop just talking about 5G and actually take some action and see some real solutions. An important part of this is the 3.5 gigahertz band, which I want to thank you for working with me on that last year.

Could you update me on the timeframe for that auction so we can get that spectrum deployed?

Chairman PAI. I appreciate that question, Senator, and for your leadership on this band in particular, which as I was mentioning earlier in response to a question is sort of in the sweet spot, so to speak, when it comes to 5G innovation.

We believe the auction will proceed in 2020. So, in less than a year, we will be able to hold that auction, and in the meantime, we have been working with some of our other Federal partners on things like the environmental sensing capabilities to make sure that deployments can occur as quickly as possible.

Senator DAINES. Another piece of mid-band spectrum certainly is C-Band.

Chairman PAI. Yes.

Senator DAINES. Currently, our broadcasters, our cable companies use portions of this band to provide content to rural Montana, but it is also prime 5G spectrum. How do we balance the current and future uses in this band as we move forward?

Chairman PAI. That is the \$64,000 question, and there are a number of different complicated interests from a policy perspective. Additionally, there are some legal complications as well.

With respect to the latter, we just issued a request for public comment on some of the legal questions that we need to be able to sort through in order to proceed on the band.

With respect to the policy question, there are a number of different tradeoffs. One of them is time. As often mentioned by the panel, there is considered to be a race to 5G in some quarters, and in order to lead in 5G, we need to make more spectrum and mid-band spectrum in particular available.

That is one of the reasons why we have been thinking about in the C-Band proceeding, how important a priority is it to be able to move quicker, even if that means that we proceed with something other than an auction.

On the other hand, we also have some incumbent customers who are relying on that band, as you mentioned, especially for the delivery of video programming in places like rural Montana. How do we accommodate the concerns of folks like that? And that is one of the issues we have been sorting through.

A number of other different complicated questions in terms of timing and the like, but ultimately, we want to be able to find a solution that allows us to promote 5G leadership, especially in mid-band spectrum, while also accommodating some of the concerns that have been expressed.

Senator DAINES. How optimistic are you that you can find that solution?

Chairman PAI. I am fairly optimistic. This is, without question, one of the more complicated issues I have confronted at the FCC. There is no question about it. There's a number of different industries, a number of different legal questions. It is very, very complicated, but nonetheless, I am optimistic that we will be able to find a solution that threads the needle, advances the ball in terms of the public interest.

ROBOCALLS

Senator DAINES. I want to shift gears and talk about robocalls. Chairman Simons, Chairman Pai, Montanans are being inundated by illegal robocalls every day, and they are frustrated. In fact, I have got my phone here with me.

Mr. Chairman, if I happen to get a robocall, would you allow me to put it on speakerphone so we could all hear it, if it happens?

Senator KENNEDY. Please.

Senator DAINES. So I have got RoboKiller app on my phone. If I happen to get a robocaller, I am going to put it on speakerphone here. I get so many of them. It would not surprise me if one happened during my line of questioning.

What is worse is these bad actors are spoofing numbers. They look just like they are from our neighbors, from our friends, from our family. Montanans are fed up with the lack of action being taken right here, and thankfully, with my support, Congress is finally taking action with this bipartisan TRACED Act.

My question is this. I will start with Chairman Simons. Can you commit to work with me to do whatever is necessary to put a stop to these illegal robocalls?

Mr. SIMONS. Absolutely.

Senator DAINES. Chairman Pai, same question to you.

Chairman PAI. Yes, sir.

Senator DAINES. And when do you think we can do that?

Chairman PAI. Soon, hopefully. I would defer to you on the timing of the TRACED Act, but—

Senator DAINES. Assuming we pass the legislation that enables that, as you have seen the text, how long will it take us? How long will it take you all to implement that and get that done?

Chairman PAI. Certain tools, we could implement immediately. For example, it would make it easier for us to go after some of these robocallers in terms of extending the statute of limitations. That is not something that requires, as I understand it, anyway, a full notice and comment rulemaking. But I think we could move very quickly.

Senator DAINES. Okay. Thank you.

Thank you, Mr. Chairman.

Senator KENNEDY. Thank you, Senator.

I have got a few more questions, and I welcome my colleagues joining now as well.

Let me go back to the robocalls. Did I understand you to say, Chairman Simons, that in order for these foreign robocallers to do what they do, they have to have the cooperation of our carriers?

Mr. SIMONS. That is my understanding.

Senator KENNEDY. And there are certain carriers that facilitate their conduct?

Mr. SIMONS. Yes. Our understanding is that there are certain carriers that cater to this type of traffic.

Senator KENNEDY. And do we know who those carriers are?

Mr. SIMONS. I would have to talk to my staff about whether they know any specific carrier, but—

Senator KENNEDY. Is that under your jurisdiction—

Mr. SIMONS. Yes.

Senator KENNEDY [continuing]. Or is that under FCC?

Mr. SIMONS. We know. I am told we know who those carriers are.

Senator KENNEDY. We know.

Mr. SIMONS. My staff says we do.

Senator KENNEDY. Okay.

Mr. SIMONS. Okay.

Senator KENNEDY. So why are we not punishing them the rest of their natural lives?

Mr. SIMONS. Well, we would love to, but we do not have jurisdiction over them because they are common carriers, and our authority does not allow us to go after common carriers.

Senator KENNEDY. Who has jurisdiction over them?

Chairman PAI. That would be the FCC.

Senator KENNEDY. Why is the FCC not punishing them the rest of their natural lives?

Chairman PAI. Well, we would be happy to look at the particular investigation that Chairman Simons—

Mr. SIMONS. Promoted.

Chairman PAI [continuing]. Is referring to.

Senator KENNEDY. Well, it seems to me it is real simple. The American people are being inundated with these calls. Many of them are coming from foreign countries. Even if they are coming from the United States, they are not any more pleasant. In order for them to do it, they have to use carriers in the United States. These carriers are helping them do it for money, and you can stop them.

Chairman PAI. Absolutely. And that is one of the reasons why we have demanded that the phone companies implement call authentication, that digital fingerprint for every single phone call. So you have a validation before you even look at the phone to know that that phone call is coming from a legitimate source.

Senator KENNEDY. But I guess what I am saying is while we dither around in the Senate trying to decide whether to pass a bill, we should let you go after the carriers. I mean, they have got to be violating some rule.

Chairman PAI. I would be happy to take a look at the facts.

Senator KENNEDY. Would you look at the facts and get back to us in a week?

Chairman PAI. Happy to do that.

Senator KENNEDY. I mean, this is a serious problem, Mr. Chairman, as you know.

Chairman PAI. Absolutely.

Senator KENNEDY. And I would like a list of the carriers. I do not want to deny anybody due process or be unfair to anybody, but if you know who they are, I would like to know who they are too, okay?

WIRELESS SPECTRUM

Let me talk about spectrum. Bandwidth. What is the proper term? Spectrum?

Chairman PAI. Spectrum is commonly used.

Senator KENNEDY. Okay. We cannot achieve 5G without spectrum, right?

Chairman PAI. Correct.

Senator KENNEDY. You do not have enough spectrum, do you?

Chairman PAI. For the commercial side, that is correct, sir.

Senator KENNEDY. Some Federal Government agencies have some of this spectrum, do not they?

Chairman PAI. Yes, sir.

Senator KENNEDY. Do all those agencies need the spectrum that they are hoarding? You do not have to answer that. I think all the

agencies do not need the spectrum that they are hoarding. Some of them do; some of them do not. Some of them could share.

Chairman PAI. Right.

Senator KENNEDY. Could we get the President to issue an executive order saying, "Share your spectrum. We would like to get to 5G sometime this millennium"?

Chairman PAI. Senator that is obviously a decision the White House would have to make.

What I can tell you is that we are always urging our Federal partners to either relinquish or share spectrum because technology has advanced to the point where we can have a win-win, and we have worked very cooperatively with some entities like the Department of Defense. Others have been a little more challenging, but at the end of the day, if as the President himself has said that 5G is a national priority that American leadership on this is a priority for everybody, we need to make sure that we have a spectrum supply that is ready to meet that challenge.

Senator KENNEDY. Well, I mean, if the agency needs it, that is one thing, but if it is just a question of, "well, we do not need it, but we are not giving it up", or "we could share it, but we will not", we need to give them a little incentive. And I will talk to the White House about that. If I cannot convince them, Senator Van Hollen can.

[Laughter.]

Senator KENNEDY. Let me ask you just one other thing. Let me see where my notes are here.

FCC AUCTION

Oh. When you allocate the spectrum, Mr. Chairman, are you doing private sales?

Chairman PAI. Secondary market transactions, we encourage because we believe that that is the best way ultimately to get the spectrum to its highest valued use, but we also auction spectrum. So we are in the middle of a spectrum auction right now.

Senator KENNEDY. How do you know you are getting a better deal for the American taxpayer in a private sale versus an auction if you do not hold the auction?

Chairman PAI. So one of the things we have found over the years is that if we decide to prohibit those secondary market transactions, over time, it will take a lot longer to allocate that spectrum to its highest-valued use. And that is part of the reason why for the last quarter century, we have been encouraging the secondary market transactions. That speed to market is one of the factors that has allowed the FCC to promote U.S. leadership on 4G, and one of the questions with respect to 5G is should we encourage the secondary market there as well.

Senator KENNEDY. Well, why cannot we redesign the system so that we achieve speed while maximizing the price? An auction is going to get you a better price than a private sale, is it not?

Chairman PAI. It depends. I think the auction would certainly raise revenue for the Treasury, which is, of course, one of the major considerations that underlayed our authority in the first place back in 1993.

One of the questions has been, does that auction process end up taking longer than a secondary market? If you have an asset and I want it, should you just be able to sell it to me directly as opposed to having a third party administer the transition of that asset?

Senator KENNEDY. Can you make recommendations to us on the laws we need to change to allow you to achieve maximum revenue and do it quickly?

Chairman PAI. We would be happy to.

Senator KENNEDY. Get me that information.

Chairman PAI. We would be happy to, Mr. Chairman.

Senator KENNEDY. Senator Coons.

Senator COONS. Thank you, Mr. Chairman.

Let me follow up on some issues that we touched on earlier.

First, Chairman Pai, there were widespread reports that mobile carriers were selling customers' precise location data without their knowledge or consent. You have a colleague on the Commission—I think it is Commissioner Rosenworcel—who is concerned this practice may not have stopped and sent letters to each of the major mobile carriers asking them about it. Do you share her concerns, and is the FCC examining this sale of real-time location information?

Chairman PAI. Senator, I do share the concerns that have been expressed, and that is why when we first got reports about this practice, I immediately directed our Enforcement Bureau to initiate an investigation into any and all carriers that might be engaging in the practice.

Senator COONS. Well, thank you. I hope you will follow that up further.

PRIVACY

On privacy, Chairman Simons, the FTC has some authority to regulate and protect consumers' privacy. As I mentioned, there is news reports—you do not need to comment—that you are close to announcing a record action against a particular company.

While that is encouraging, I am concerned you could be doing much more in the data privacy protection area.

Are there other recent examples of the FTC using its current authority to protect a customer's privacy, and what risks remain outside your authority that we should address?

I think in this hearing, you so far mentioned the ability to oppose civil penalties for first-time violations and authority over nonprofits and common carriers. Did I roughly get that right?

Mr. SIMONS. Yes.

Senator COONS. Are there examples you would like to point us to of your active use of your existing authorities to protect the data privacy of—

Mr. SIMONS. Yes. So we just had I think in the last week two cases. One was a Children's Online Privacy Protection Act (COPPA) case, and the other was a data security case. These involved about 8 million consumers, and one of them was facilitating contact between adults and—stranger adults and children. So we stopped that.

I think it is important to understand what our privacy authorization is currently, and basically, we have the statute that is 100 years old or more, a hundred and, whatever it is, five. And back then, when the Congress passed that statute, they had no idea that these privacy issues would come up, obviously.

So I give a lot of credit to my predecessors at the Commission for coming up with our privacy program and building it out of a statute that was not designed for it.

So what we have done is it primarily covers situations where the company has a deception about what its privacy policy is, and then we bring a case under our deception authority to remedy that, or in instances where there is something that looks more akin to a privacy tort, like invasion of privacy or something like that, we bring that under our fairness count.

So we do not have the authority—so that and we have it in a few statutes like the Fair Credit Reporting Act (FCRA) and the Children’s Online Privacy Protection Act (COPPA), where we have specific authority in the privacy and data security area, but that is the limit of our authority.

People all the time ask me, “Why do not you do something like GDPR?” Well, we do not have the authority to do that. Our authority is actually quite limited, and that is one of the reasons we are encouraging the Congress to consider privacy legislation.

Senator COONS. Senator Moran referenced there is a working group on Commerce about this. There is also a group of us on Judiciary that are beginning to engage in this. Senator Flake and I in the last Congress held a number of roundtables with industry and advocacy representatives to look at GDPR, to look now at the California State law, and then to begin to come to some common understanding about what might be inappropriate Federal legislative standard.

I am concerned about the FTC having the resources, the ability, the scope to actually effectively implement something that we might put in.

I think if I remember correctly, you said earlier, you have 40 personnel dedicated to this, whereas the UK has 500.

Mr. SIMONS. Right.

Senator COONS. I want to make sure that we stay in close communication about your potential increase in resource needs should we be successful in legislating around this.

MERGERS INVOLVING PHARMACEUTICALS/GENERAL PHARMACEUTICAL ANTITRUST

Let me ask a last question. There was a hearing earlier today on the Judiciary Committee about prescription drug prices. My understanding is the FTC does have and use authority in terms of pay-for-delay activities, unfair market practices that lead to unreasonably high prescription drug prices.

What else does the FTC do in terms of pharmaceutical marketing or pricing, and what more could you do if you had additional authorities or resources?

Mr. SIMONS. So the things we do, we focus on—of course, the first thing we do is we are looking out for anticompetitive mergers that involve pharmaceuticals. We are looking for the pay-for-delay

cases. We are looking for the sham litigation cases, and we are looking for—there is one more—exclusive dealing cases and those types of matters in law enforcement.

We are also engaged in—we are monitoring prices. There is a CMS survey of the prices that pharmacies pay, and so we are monitoring that to see if there are any price spikes, in which case we look to investigate what those are and see if there is an enforcement action that is appropriate.

Senator COONS. Thank you. Thank you for your testimony, and I look forward to working with both of you in the year ahead.

Thank you, Mr. Chairman.

Senator KENNEDY. Senator Moran.

Senator MORAN. Chairman, thank you.

FAKE TECH SUPPORT

Chairman Simons, I have heard from Kansas companies about criminals who are buying words on search engines that make their fake tech support websites show up at the top of the list—

Mr. SIMONS. Yes.

Senator MORAN [continuing]. When someone searches for a tech product support. These criminals run, I assume, complex organizations and are able to trick someone into thinking they are talking to the tech company's product support and then convince the consumer to provide remote access to their computers.

They infect their computers with virus, charge them hundreds of dollars to remove the virus, sometimes accessing their bank accounts as well.

Do you have any recommendations for me or this subcommittee as to what can be done to prevent consumers from falling victim?

Mr. SIMONS. Yes. I think one of the things that we focus on quite a bit is consumer outreach, so education, consumer education to alert them to the fact that these things are occurring and to watch out for them and try to avoid them.

Then, of course, we prosecute them when we find them.

Senator MORAN. How successful have you been in finding and prosecuting?

Mr. SIMONS. I think we have—we have had our fair amount of success, I think. I could get you more information on that.

Senator MORAN. I can see myself being in that circumstance.

Mr. SIMONS. Oh, yes. It happened to my wife.

Senator MORAN. So you have an advocate in the household for a fix.

Mr. SIMONS. Oh, yes. That and robocalls.

Senator MORAN. Very good. She reflects my constituency as well.

Chairman Pai, you and I talked a little bit earlier today. Tell me what you see the FCC's role—what leadership can you provide in helping Kansans and Americans, particularly rural, but those with disabilities, veterans and others, in regard to telehealth.

Chairman PAI. Thank you for the question, Senator.

This is a major area of interest for me and for the Commission. We have a rural health care program that subsidizes the connectivity needs of hospitals and other health care facilities to the extent that they are providing rural telemedicine and telehealth services.

Under my leadership, for the first time ever, since the 1990s, since this program was created, we increased the budget for that program, 43 percent, up to \$571 million for the previous year, and it is adjusted for inflation.

Going forward, one of the things we are exploring is setting up a connected care pilot program, essentially allowing health care services to follow patients outside of the hospital, using wireless connectivity for example, to monitor their vital signs, so that health care professionals can intervene sooner.

There are many different regulatory and legislative solutions to help broaden the promise of telemedicine. For example, I have talked about the need for Congress or some other entity to address the issue of State licensing of medical professionals. I have been to a whole bunch of rural health care facilities where they say, "We have got a rural community in need just across the State border, but we cannot provide those telemedicine services because of those licensing barriers."

I have worked with the CMS Administrator, who is broadening the range of telemedicine services that can be reimbursed, and in addition to that, I have been working very closely with the Veterans Affairs Department.

One of the things that Congress wisely did last year was to break down those licensing barriers for VA facilities, and I have visited now—I believe it is five VA facilities from Boise, Idaho, to Providence, Rhode Island. And they are doing some cutting-edge work on telemedicine, especially on the area of veterans who have mental health needs, for example, that is gaining massive results, and that is the kind of thing we love to see translated over to the civilian side.

I would love to work with you on it because, as you know better than most, in a lot of these rural communities, there is no alternative. There is no doctor living in your community. You might have to drive an hour or two, if not more, to see somebody, and that is not an option for many, many people. If you have a child that is sick, you have to take time off work and incur all those costs as well.

RURAL BROADBAND/FTC PRIVACY

We think that broadband's promise is great in rural America and especially when it comes to telemedicine.

Senator MORAN. Chairman Pai, thank you very much, thanks for your leadership on this issue. It is a challenge across the country.

Chairman PAI. I appreciate it.

Senator MORAN. Chairman, thank you.

Senator KENNEDY. Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman.

Chairman Simons, I do want to take this opportunity to thank you and your team for participating in a number of the consumer protection forums that we have had in the State of Maryland. I teamed up with our State Attorney General, Brian Frosh, and as you suggested, it is one of the best attended gatherings that we have, where we go over all the scams that are perpetrated against consumers or constituents. So I want to thank your team for that.

Let me follow up on some of the efforts to protect privacy. Coincidentally, in the Banking Committee today, as Senator Kennedy knows, we also had a hearing with respect to what the Europeans are doing in the JDPR and the California law be given the number of financial information, personal information that is collected.

But I want to go back to broadband consumer privacy because back in the previous administration, the FCC had adopted the Broadband Consumer Privacy Rules. Those were then rescinded. They were subject to a CRA here in Congress.

I think many people believed—and maybe even Chairman Pai shares this view—that we could deal with that in the FTC forum.

So my question is, given that—this was an opt-in, opt-out. I mean, everyone is talking about it now, but that is what that protection was for back then. Can you now, using your existing authority, even before we move forward with broader legislation, at least with respect to some of these target areas like that rule, the broadband consumer privacy rules—can you move forward on your own authority in this area?

Mr. SIMONS. I do not believe so.

Senator VAN HOLLEN. Okay.

Mr. SIMONS. We need your help.

Senator VAN HOLLEN. And, Chairman Pai, I thought at one point you suggested that maybe the FTC could move forward in this area when you overturn the regulation.

Chairman PAI. I do agree, Senator. I have consistently said the consumers should have a uniform expectation of privacy. They do not care whether it is a network operator or a Silicon Valley tech giant that holds their information. They want that information to be protected, and that is part of the reason why I think that a uniform level of regulation is something that we would welcome—well, I do not want to speak for Chairman Simons, but certainly, I think consumers would benefit if Congress spoke with a unified—

Senator VAN HOLLEN. Well, that regulation, I mean, I am right, am I not, that that was overturned by you and the Commission?

Chairman PAI. Well, that FCC decision in 2016 only applied to Internet service providers, not to edge providers like Google and the—

Senator VAN HOLLEN. Right. And so your argument was that it was not within your jurisdiction?

Chairman PAI. No. My argument was that there should be a consistent level of regulation, that consumers have that uniform expectation of privacy, and that the FTC—

Senator VAN HOLLEN. Okay. So even though we were protecting lots of people, unless we protected everybody, you were going to be against it; is that it?

Chairman PAI. No, no. In fact, one of the things I pointed out in my dissent back in 2016 was that it was asymmetric regulation. That Silicon Valley companies that sought every kind of information that you had were being left unregulated completely, whereas Internet service providers were being singled out for asymmetric regulation. I think events over the last couple of years, if anything, have proven that—

Senator VAN HOLLEN. That is no doubt we need—there is no doubt. I think there is a consensus here that we need protection

for consumers. I am not sure about the argument about eliminating protections for some as we wait to get protections for everybody, but we will debate that.

And your answer is you do not have the authority in the FTC to move forward in this area?

Mr. SIMONS. Well, we do not have the authority to pass the same rule that the FCC passed.

Senator VAN HOLLEN. Okay. But you can look at some of these other areas. I will follow up.

5G

Let me ask you, Chairman Pai. I want to get back to 5G for a minute because obviously we want to accelerate the deployment of 5G here in the United States, and as I indicated, we are going to have to sort of review how we got so far behind in some parts of 5G here in the United States.

But we also want to make sure that we protect the security of 5G going forward because it is going to be, as I understand it, connected to everything, the Internet of Things. So we want to make sure that malign actors cannot breach the cybersecurity of these systems.

As I recall back in November 2017, the Obama administration had proposed some regulations to deal with the cybersecurity concerns on 5G. You thought that might be too burdensome, and so we have dispensed with those.

So my question now is, what is your plan specifically to make sure that as we move forward in 5G that we also make sure that we do it right from the start? Because obviously, to the extent that we get it right from the start, we will not have a whole lot of problems. We will have less problems with security going forward. What are your specific plans?

Chairman PAI. Thank you for the question, Senator.

We are working very extensively with our Federal partners. For example, the Cybersecurity and Infrastructure Security Agency at the Department of Homeland Security has primary jurisdiction over this issue, and we work regularly with Chris Krebs, the head of that agency.

Along with that, I have been working extensively with a lot of other Federal partners. You referenced earlier the Prague conference, for example. I mean, there we had not just me, but representatives from the National Security Council, the Department of State, the Department of Commerce, and other agencies working together to make sure the security of the ICT networks was something that we recognized.

In addition to that, we have been working with the privacy sector to make sure that some of these technical standards for 5G are being developed, that those security protocols are incorporated into the standards. So as I was mentioning earlier, this is not something where we just go ahead and build it as quickly as we can and then maybe a year or two later wonder, "Oh, maybe we should do something on security."

We want security to come in at the front end, and so we have been engaging in those conversations as well.

Senator VAN HOLLEN. Are there going to be any standards that are required as best practices in this area?

Chairman PAI. That is one of the things we are developing, and so it might not be the sort of formal FCC regulations that might have been proposed in the past because, as I said, the DHS has the primary jurisdiction over this, but what we can say is we have been urging industry, all stakeholders, to think about the security of these 5G networks at the front end. And that is a message that has been very well received.

Senator VAN HOLLEN. All right. I look forward to continuing the conversation because it seems to me we want some uniform rules of the road so that people know that every carrier, every 5G provider has built into it important security protections.

Chairman PAI. And I think that supply chain proceeding that I mentioned earlier also serves a very important signaling function. If the FCC proposes to ban the use of this Federal funding from being used on equipment or services that come from companies that present a national security threat, I think that obviously sends a signal to our domestic companies.

We want to take security seriously. We are not going to use this funding for any purpose that might compromise national security. Even from a business perspective, it may make sense in some circumstances.

Senator VAN HOLLEN. Got it. If I could, Mr. Chairman.

So I understand you have the authority with respect to the public funds. If you thought that there was a component, a carrier, U.S. carrier was going to be put in their phone that you thought could compromise the system, do you have the authority at the FCC right now to say do not do that?

Chairman PAI. To the extent it is accepting Federal funds?

Senator VAN HOLLEN. No. Without Federal funds.

Chairman PAI. Generally speaking, that is one of the issues that we are exploring. Our jurisdiction is not as clear as it would be in the case of Federal funding that is being expended.

Senator VAN HOLLEN. Right. I understand that. Maybe we can follow up on that as well.

Chairman PAI. I would be happy to do that.

Senator VAN HOLLEN. Thanks.

Senator KENNEDY. Senator Daines.

Senator DAINES. Thank you, Chairman Kennedy.

DRUG PRICING

Chairman Simons, our current drug pricing system is full of convoluted and opaque practices, and those are probably the kind words I could use today.

As Montanans continue to struggle to afford the medications they rely on, I believe we need a better understanding of how the drug supply chain works today in order to protect patients and, importantly, lower costs. That is why I introduced a bill with Chairman Grassley last week that would require the FTC to study the role of the middle man, the pharmacy benefit managers, in this drug supply chain.

It is my understanding the last time the FTC examined PBM practices was back in 2005.

Chairman Simons, don't you think it is long overdue for our Nation's consumer protection agency to examine whether the pharmacy middle men are actually focused on driving down costs for patients, because I think about rebates and so forth, instead of lining the pockets of their own industry?

Mr. SIMONS. Thank you for that question, Senator. I am not sure I will take all the characterizations so strongly.

But we are very concerned. We are focused on looking at how the PBMs are behaving. We were trying to do merger retrospectives for those and some without success so far, but we are also monitoring this sector of the health care industry very carefully, and we are looking for problems that we can attack with law enforcement.

Senator DAINES. Do I have your commitment to work with me on this piece of legislation?

Mr. SIMONS. Sure. I would be happy to be as helpful as I can in any way possible.

Senator DAINES. I spent 13 years in the consumer products world once upon a time, this difference between a list price and net price.

Mr. SIMONS. Yes.

Senator DAINES. And I am very curious. These rebates, over \$170 billion of rebates go back in the system, and I would be very curious to see how much of that actually gets to the consumer to look at in terms of these opaque practices right now in the system.

Mr. SIMONS. Right.

EMERGENCY BROADCAST SYSTEM

Senator DAINES. Chairman Pai, last week, I introduced the bipartisan PIRATE Act. Pirate broadcasters hurt not only Montana's legitimate radio broadcasters, but can affect our emergency broadcast system as well as air traffic control communications.

Could you discuss some of the problems you have with cracking down on these bad actors?

Chairman PAI. Yes. Thank you for the question, Senator.

One of the problems is that it is somewhat like Whack-A-Mole. If you shut them down in one location, they may move to another location, and that is why one of the FCC's strategies in this area has been to go after not just the pirates themselves, but those who may be giving them assistance.

For example, one of our most significant enforcement actions to date on this issue under my leadership has been going after some individuals who essentially harbored a pirate, made their home and other facilities available to this individual to do pirate broadcast. That is one of the things that we have found that has been a problem.

I look forward to working with you on your legislation, and we welcome any tools that might be able to help us attack this problem. It is a major problem for the licensed broadcasters who are looking to do the right thing.

Senator DAINES. Thanks, Chairman Pai.

Another one of my priorities—and this is for you, Chairman Pai—has been making sure that Federal dollars for broadband and wireless connectivity are directed to unserved, rural areas instead of overbuilding existing networks.

I know you grew up in rural Kansas. Part of this can be solved by better communication between the USDA and the FCC. Part of it can be resolved with stricter overbuilding rules. I believe both of these have been improved with recent legislation that I have been a champion of, but there is another component that needs to be addressed, and that is better information and better mapping.

Many of my colleagues have discussed this at length, and there are a number of possible solutions, including partnerships, crowdsource data, shape files. I want to make sure we get the best data possible while also protecting the privacy of Montanans.

Could you provide an update on the FCC actions and what you might see as possible solutions?

Chairman PAI. I appreciate the question, Senator, and the entire premise of our Mobility Fund Phase II was exactly what you enunciated at the beginning of your question, which is that we do not want to subsidize a competitor in a part of the country that already has service.

Meanwhile, there are many swaths of Montana, Kansas, other States, that do not have any service at all, and that was the entire premise when we started in January and February of 2017.

With respect to the mapping issues, on the fixed side we have an ongoing Form 477 proceeding, which is examining, among other solutions, the shape files proposal that you mentioned. We hope to be able to get some recommendations from our staff on how to proceed with the Form 477 updates relatively soon. We essentially want to make that more granular so that they are more meaningful to us and more meaningful to you as well.

On the Mobility Fund side, we have the ongoing enforcement investigation into a carrier or carriers that may have submitted inaccurate data. I expect that our staff is going to come to me relatively soon with a recommendation there as well, and we can determine what appropriate action to take with respect to the investigation and how to proceed with the overall Mobility Fund program.

Senator DAINES. Thank you, Chairman Pai.

Senator KENNEDY. Okay. Gentlemen, thank you. I want to close with this. Number one, I will now say another word about net neutrality. Unlike the last Congress, we have a little more flexibility now because the CRA is no longer an option. This is just one person's opinion, but I wanted to get this on the record. In my judgment, the debate that preceded the partisan vote in the House revealed some major flaws in Title II that could set our rural communities back, and we talked about the importance of our rural communities today.

I think the debate revealed that these flaws could unnecessarily stifle development—we do not want that—along with innovation. And it could also undermine broadband investment and competition in small towns across this country, including but not limited to Louisiana.

The stakes are very high. I do not need to tell you that, Mr. Chairman. The Senate needs to come up with a new bipartisan bill, and I am calling on you to help us do that. That bill needs to reflect some of the challenges that we face. We need to protect consumers in it, and we need to protect rural communities and give them broader access to broadband and innovative competition.

Number two, if you work for the FCC or FTC and you are in the audience, raise your hand.

[Show of hands.]

Senator KENNEDY. Thank you for your good work.

Number three, thank you, Mr. Chairman.

ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions, the hearing record will remain open until next Tuesday 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 JOHN KENNEDY

Question. I'm concerned about the fraud, waste, and abuse in some of the Universal Service Fund programs, specifically, the Lifeline program. Last month (April), the FCC's Office of Inspector General issued an advisory and said "Fraud remains a serious problem for the Lifeline program." This advisory also reminded us that just last year, the Office of Inspector General published an audit report which estimated the number of improper Lifeline payments at more than \$330 million in fiscal year 2017 alone. What reforms is the FCC engaged in and implementing to tackle these improper payments? Does the Office of Investigations have the right amount of resources to tackle this job, including having enough criminal investigators?

Answer. I share your concerns about waste, fraud, and abuse in the Lifeline program, and am aware of the problems cited in the FCC's Office of Inspector General's April 16, 2019 advisory letter. If Lifeline is going to be an effective tool for bridging the digital divide, we must ensure that every dollar spent in the program is spent well.

Your subcommittee took an important step in assisting us to achieve this goal and address USF fraud issues by approving, per your July 11, 2019 letter, the FCC's creation of a Fraud Division within our Enforcement Bureau. The newly organized division will be comprised of attorneys and investigators with financial crimes experience to enhance and make permanent the FCC's ability to identify fraudulent schemes that have resulted in improper disbursements or other fraud on the government. By identifying these often-sophisticated schemes, the FCC can craft effective and efficient enforcement responses. I will certainly keep you apprised should the agency determine that the resources available to this division are insufficient for the task involved.

Even before the designation of our new Fraud Division, we aggressively addressed problems in the Lifeline program. For instance, in 2017, the Commission settled five Lifeline improper payment investigations. Under the terms of the relevant consent decrees, these five entities are operating under a compliance plan and have made a total contribution of \$2,355,000 to the United States Treasury. And in October 2018, we released a \$63 million Notice of Apparent Liability against a Lifeline provider for apparently willfully and repeatedly violating the Commission's rules governing the Lifeline program.

We have also implemented a number of important administrative changes that will help reduce Lifeline program fraud and improper payments. Rolling out the National Verifier is critical to reducing the unacceptably high rate of improper payments in the program. The National Verifier has launched in 37 States and territories as well as the District of Columbia. Commission staff and USAC are working diligently to meet the December 2019 nationwide rollout deadline established by the 2016 Lifeline Order.

The National Verifier represents an important step in ensuring that unscrupulous providers do not enroll ineligible consumers in the program, but it is not enough. USAC has therefore implemented several safeguards at my direction to mitigate waste, fraud and abuse and reduce improper payments in the Lifeline program. USAC now regularly reviews program subscribership to identify and remove: (1) subscribers who list a home address that is also used by an excessive number of other subscribers; (2) deceased subscribers; and (3) subscribers who are otherwise no longer eligible for the program. Since USAC started this process in the fourth quarter of 2017, it has identified over \$2.1 million to be recovered from providers

and removed over 141,000 ineligible subscribers from the program. Also, in late 2017 and early 2018, USAC made several important changes to its reimbursement system to prevent Lifeline providers from claiming more funding than they are entitled to. Audits are another important piece of improving accountability, and at my direction, USAC is conducting for the first time forensic audits of several Lifeline providers to assess compliance with program rules.

We are also working with the Inspector General's Office to address structural weaknesses in Lifeline that will not be fixed by the National Verifier. For example, at my direction, USAC is developing a new database that will allow it to account for and monitor the registration activity of carrier representatives responsible for enrolling consumers in the program. This database will help USAC and the FCC identify conduct by sales agents and employees who may be attempting to defraud the program.

The bottom line is that the FCC shares your concern and will always aim to prevent and, as appropriate, prosecute those who seek to or do in fact defraud the Universal Service Fund.

Question. Chairman Pai you recently laid out a plan to create a new \$20.4 billion Rural Digital Opportunity Fund to extend high-speed broadband in rural America. How many individuals currently lack access to broadband in their homes? Can you provide more details about the Rural Digital Opportunity Fund and how you plan to repurpose Universal Service Funds?

Answer. Bridging the digital divide has been my top priority since becoming Chairman in 2017. In that time, we've focused on removing barriers to infrastructure, promoting competition, and providing efficient, effective support for rural broadband expansion through our Universal Service Fund programs. As a result of those efforts, the digital divide has narrowed substantially, and more Americans than ever before have access to high-speed broadband. The number of Americans in census blocks wholly lacking at least 25 Mbps/3 Mbps service dropped from 26.1 million at the end of 2016 to 21.3 million at the end of 2017, a decrease of more than 18 percent.

But more work remains to close the digital divide. That's why I circulated a proposal for the FCC's August Open Meeting to establish the Rural Digital Opportunity Fund, a modernized approach for connecting the hardest-to-serve corners of our country. Building on the success of the CAF Phase II auction, the Rural Digital Opportunity Fund would, as you observed, provide \$20.4 billion over 10 years to support up to gigabit service to millions of unserved Americans through a competitive auction. This will ensure that the most unserved Americans will be covered for the lowest cost possible. The Commission adopted the Notice of Proposed Rulemaking addressing the Rural Digital Opportunity Fund on August 1.

Question. Last summer, the FCC announced that it was going to take action to address immediate and long-term funding shortages in the Rural Health Care Program. When can we expect that you will take action in a way that gives assurance to providers that they can rely on the program to help get services to rural places in the lower 48 States? If that action is already taking place, please provide the subcommittee with an enumerated list of what is being done.

Answer. As you know, the FCC's Rural Health Care (RHC) Program helps healthcare providers afford the connectivity that they need to better serve patients. We have taken several steps to extend the program's impact to those who may not otherwise have access to high-quality healthcare. For instance, we adopted the first increase to the program's budget in a generation. Specifically, in a June 2018 Order, the Commission increased the annual RHC Program funding cap by 43 percent, to \$571 million, starting with fiscal year 2017; adjusted the RHC Program funding cap for inflation, starting in fiscal year 2018; and established a process to carry-forward unused funds from past funding years for use in future funding years. Thanks to these measures, no rural healthcare providers seeking support from the Rural Health Care Program were capped in fiscal year 2018.

In order to promote the efficient distribution of limited RHC Program funds, and increase transparency and predictability for Program participants, the Commission adopted a Report and Order at the FCC's August Open Meeting which reformed RHC Program rules. The Report and Order (1) reformed the distribution of RHC funding to promote efficiency and reduced aspects of the Telecommunications (Telecom) Program that encourage waste, fraud, and abuse; (2) streamlined and simplified the calculations of the discounted rates that healthcare providers pay for communications services and the amount of support received from the program; (3) directed the Program Administrator to create a database of rates that healthcare providers could use to quickly and easily determine the amount of support they can receive from the Program; (4) targeted funding to the most rural areas and those facing shortages of healthcare providers and ensured that eligible rural healthcare

providers continue to benefit from program funding in the event that demand for the Program exceeds its funding cap; (5) simplified the application process for Program participants and provided more clarity regarding Program procedures; and (6) directed the Program Administrator to take a variety of actions to increase transparency in the Program and ensure that all applicants receive complete and timely information to help inform their decisions regarding eligible services and purchases.

Question. When can we expect to see substantive amounts—versus piecemeal amounts—of 2018 Rural Health Care Program monies being released to those States that are in need?

Answer. The Commission has taken steps to ensure that all funding requests seeking support from the Rural Health Care (RHC) Program for services delivered in fiscal year 2018 are funded to their full eligible amounts and are issued as quickly as possible. *First*, pursuant to the measures adopted by the June 2018 RHC Funding Cap Order, the RHC Program funding cap for fiscal year 2018 was approximately \$581 million (as opposed to \$400 million when I came into office). *Second*, in October 2018, I announced that all single-year 2018 funding requests would be funded to their full eligible amounts, and the Program Administrator began processing and issuing those funding decisions shortly after. *Third*, on May 14, 2019, the Commission adopted an Order providing full funding for multi-year and upfront payment funding requests for services delivered in fiscal year 2018. Because the total amount of multi-year and upfront demand exceeded the \$150 million funding cap on such requests within the Healthcare Connect Fund, absent action by the Commission, USAC would have been required to pro-rate this funding.

To avoid significant reductions in support, the Commission suspended its pro-ration rule for fiscal year 2018 and directed USAC to process the fiscal year 2018 portion of multi-year commitment requests as single-year funding requests and treat the underlying multi-year contracts as evergreen. That action ensured that the healthcare providers that submitted the request received the full funding they needed for their fiscal year 2018 services and created a path for them to seek the remaining funding requested in subsequent funding years without having to rebid the contracts. Taken together, these decisions ensured that the healthcare providers could continue to obtain the critical telecommunications and advanced services needed for the delivery of healthcare services to their rural communities.

Question. Regarding the 6 GHz proceeding, the FCC told me in a recent letter that the FCC believes an automated frequency control (AFC) system will prevent interference to utilities and other critical infrastructure. I've been told by energy companies in my State that this technology has not been proven. Has the FCC actually tested this technology and can you vouch that it will work? If not, will you test this system prior to taking final action?

Answer. I've consistently stated that the FCC will ensure that it will protect incumbent systems in the 6 GHz band from harmful interference. To that end, the NPRM proposes an automated frequency control system for the 5.925–6.425 GHz and 6.525–6.875 GHz sub-bands to identify frequencies on which unlicensed devices could operate without causing harmful interference to fixed point-to-point microwave receivers. The Commission has employed automated systems previously to enable sharing of spectrum such as in the TV White Spaces and Citizens Broadband Radio Service. To be sure, this is a complicated proceeding, with the record having only recently closed, so the Commission will conduct a thorough review of the record prior to making any final decision.

Question. Regarding the 6 GHz proceeding, energy companies in my State have told me that if there is even a threat to disruption of their communications networks, they will need to consider relocating to another band, which could cost tens of millions. That is assuming it is even feasible to relocate, which is not a given. In the 90s, the FCC compensated utilities when they were forced into the 6 GHz band. I have significant concerns asking Louisiana energy customers to pay for this effort. Since this action may force incumbents out of this band, will you support compensating those who need to relocate to ensure the safety and reliability of the electric grid?

Answer. As mentioned above, the Commission will ensure that it will protect incumbent systems in the 6 GHz band from harmful interference. Indeed, it has proposed and is considering rules to ensure interference will not occur. Accordingly, the NPRM does not propose to relocate energy companies to other spectrum bands, and they are not expected to incur any costs under the proposed rules.

Question. In Louisiana, the FCC's broadband maps show that a number of communities remain unserved, especially in rural areas. Even worse, the current maps overstate coverage, meaning that many more residents lack broadband, but we don't even know where they are. I believe the FCC should take immediate steps to update its broadband maps with more detailed service area information to identify and spur

deployment, through private investment or subsidies like the Rural Digital Opportunity Fund you've announced. Chairman Pai, will you prioritize completing the FCC's proceeding to update its broadband data and maps?

Answer. I agree that obtaining and using updated and accurate broadband deployment data is critical to accomplishing the goal of making broadband available to all Americans, regardless of where they live. We need to understand where broadband is available and where it is not to target our efforts and direct funding to areas that are most in need.

That is why the Commission began a top-to-bottom review of our deployment data collection to ensure that broadband data will be more precise, granular, and ultimately useful to the Commission and the public. Along those lines, the Commission adopted a Report and Order on August 1 to create the Digital Opportunity Data Collection, an all-new approach to mapping that would yield more granular and more accurate broadband maps. That Report and Order also provides for regular updates of the filed data to ensure that the maps we rely on are current. I'm also proposing that we verify those maps through crowdsourcing—feedback directly from the public. These updated maps will be used to focus funding to expand broadband through future initiatives such as the second phase of the proposed Rural Digital Opportunity Fund (RDOF).

Question. Chairman Pai, I commend your focus on fostering a regulatory environment that encourages ongoing private investment, including in rural America. One issue that has come to my attention is that communities in some parts of the country are imposing additional franchise requirements and fees above and beyond what's allowed under Federal law. I'm concerned that these extra fees will discourage broadband deployment in rural areas that are already more costly to serve or make service more expensive for rural residents. Do you share these concerns?

Answer. I do. And the Commission adopted rules on August 1 to address this issue. As you know, the Communications Act limits franchise fees to 5 percent of cable revenues and defines "franchise fee" to include "any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such." 47 U.S.C. § 542(g)(1). In *Montgomery County, Md. et al. v. FCC*, the U.S. Court of Appeals for the Sixth Circuit held that the terms "tax" and "assessment" were broad enough to encompass nonmonetary exactions—such as cable-related, in-kind contributions. 863 F.3d 485, 490–91 (6th Cir. 2017). But the court held that just because the statutory definition of "franchise fee" *could* include such nonmonetary contributions did not necessarily mean that it *did* include them, and it remanded the issue to the Commission for further consideration. *See id.* at 491–92.

In response to this remand, the Commission unanimously issued its *Second Further Notice of Proposed Rulemaking* to consider the scope of the congressionally-mandated statutory limit on franchise fees. The Commission developed a voluminous record in response to this notice, including numerous submissions from local franchising authorities, providers of public, educational, or governmental (PEG) programming, and cable operators.

And on August 1, the Commission reached the following conclusions. *First*, concluded that cable-related, "in-kind" contributions required by a cable franchising agreement are franchise fees subject to the statutory 5 percent cap on franchise fees set forth in section 622 of the Communications Act, with limited exceptions, including an exemption for certain capital costs related to PEG channels. *Second*, it found that under the Communications Act, local franchise authorities may not regulate the provision of most non-cable services, including broadband Internet access service, offered over a cable system by an incumbent cable operator. *Third*, it found that the Act preempts any State or local regulation of a cable operator's non-cable services that would impose obligations on franchised cable operators beyond what Title VI of the Communications Act allows. *Finally*, it found that Commission requirements that concern local franchise authority regulation of cable operators should apply to State-level franchising actions and State regulations that impose requirements on local franchising.

This approach, while grounded in legal interpretation of the Communications Act, would have a very real practical impact: freeing up capital that could then be used to build, extend, and/or maintain high-speed broadband networks. This would be particularly helpful in rural areas which, as you observe, are too often unserved or underserved.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

Question. You have claimed that, following the repeal of net neutrality protections, there would be a boom in private investment. During your last appearance before the subcommittee, I asked you to provide specific data to show exactly how this would benefit unserved rural communities in Vermont. At the time, you declined to provide that information. Now that net neutrality has been repealed for more than a full year, I expect that you will be able to provide my constituents in Vermont with evidence showing exactly how much this supposed boom in private investment in broadband networks has benefitted them.

—How many unserved Vermonters have gained access to service due solely to private investment, excluding investments made as part of government programs like the Connect America Fund?

—How many Vermonters have seen their broadband bill reduced compared to their December 2017 bill?

Answer. Our deregulatory approach, including the restoration of the bipartisan, light-touch approach to Internet regulation reflected in the *Restoring Internet Freedom Order*, has helped increase broadband infrastructure investment in the United States and close the digital divide.

In 2018, for example, fiber was deployed to more new homes in the United States than any year ever. Investment in broadband networks increased by \$3 billion, the second straight year of increased investment, which followed 2 years of declining investment at the end of the prior administration. And the number of wireless small cells in the United States deployed more than quadrupled in 2018. Turning to Vermont, I would refer to a letter written to you from Dr. Michel Guité, the Chairman and CEO of Vermont Telephone and VTel Wireless (“VTel”), on May 25, 2018. In that letter, Dr. Guité wrote: “As far as net neutrality is concerned, . . . I can assure that regulating broadband like legacy telephone service would not create any incentives for VTel to invest in its broadband network. In fact, it would have precisely the opposite effect.” He continued, “[y]ou asked Chairman Pai to give tangible examples of investment in rural broadband as a result of recent FCC policies. I can tell you that, just days ago, VTel committed \$4 million to purchase equipment and services from Ericsson to upgrade its 4G LTE core to enable voice roaming and Wi-Fi calling to all our Vermont rural subscribers and to simultaneously begin rolling out faster mobile broadband that will start our transition to 5G. This commitment represents VTel’s largest single technology investment since the capital invested in connection with VTel’s ARRA awards, and one of the largest in the history of our company.” He further stated that “[t]he FCC under Chairman Pai’s leadership has created a positive regulatory climate to make such investments,” and concluded, “VTel is quite optimistic about the future, and the current FCC is a significant reason for our optimism.” For your convenience, I have attached to this answer a copy of the letter from Dr. Guité.

Despite the positive strides we have seen over the last two-and-a-half years, our work to close the digital divide is not complete. This will remain our top priority as we continue our efforts to help deliver the benefits of broadband to all Americans.



May 25, 2018

Senator Patrick Leahy
437 Russell Senate Building
United States Senate
Washington, DC 20510

Dear Senator Leahy,

I hope this note finds you and Marcela well.

I feel compelled to write after seeing a video clip of your questions to FCC Chairman Ajit Pai during the recent Senate Appropriations Subcommittee hearing. While I understand your interest in seeking to quantify the effects of the FCC's policies on broadband investment and deployment – no easy task to be sure – I can offer the experiences of Vermont Telephone and VTel Wireless (collectively, VTel), which Chairman Pai mentioned in his testimony, as a testament to the positive impacts of the current FCC's regulatory policies.

As you know, VTel was the first company to offer Internet access in Vermont. We were first in Vermont with GigE to homes. We built America's first 100% 4G LTE wireless broadband network, integrating voice and data while also supporting E911. We routinely post some of the fastest Internet speeds and highest customer satisfaction ratings in the State.

Each year, VTel must invest to operate and grow its wireline and mobile broadband networks. The FCC under Chairman Pai's leadership has created a positive regulatory climate for VTel to make such investments. For example, the FCC has taken steps to reduce regulatory barriers to the installation of cell towers and smaller cell sites. These policies encouraged VTel to commit to build a new cell tower in March 2018, which will improve wireless broadband service to Whitingham, Vermont. Similarly, in April 2018, VTel turned up three new 500 Mbps microwave paths to boost wireless backhaul to Wardsboro and Dover, Vermont.

Later this year, the FCC will conduct its Connect America Fund Phase II reverse auction in which VTel seeks to participate. If successful in that auction, VTel will be able to use auction funds to help subsidize the cost of extending the reach of its networks to deploy higher speed broadband and voice services in additional rural areas of Vermont that are otherwise uneconomic for most wired and wireless carriers to serve. Importantly, there are relatively few areas in rural

Vermont where broadband service is not currently available, primarily because of the federal American Recovery and Reinvestment Act of 2009 (ARRA), pursuant to which VTel received awards allowing the company to deploy state-of-the art wireline and mobile broadband networks where such deployment would not otherwise be possible.

Chairman Pai's FCC also has eliminated the overhang associated with a number of heavy-handed regulatory initiatives launched by the FCC under then Chairman Wheeler, such as regulating competitive business data services and imposing onerous service discontinuance rules. These initiatives frustrated the deployment of IP technologies and required that VTel spend significant sums on regulatory lawyers and personnel to ensure compliance – sums that would be unavailable to VTel to invest in its broadband network and services.

As far as net neutrality is concerned, which was a subject of your questioning of Chairman Pai, VTel is committed to an open Internet. However, whatever your views on the need for or wisdom of net neutrality rules, I can assure that regulating broadband like legacy telephone service would not create any incentives for VTel to invest in its broadband network. In fact, it would have precisely the opposite effect.

You asked Chairman Pai to give tangible examples of investment into rural broadband as a result of recent FCC policies. I can tell you that, just days ago, VTel committed \$4 million to purchase equipment and services from Ericsson to upgrade its 4G LTE core to enable voice roaming and Wi-Fi calling to all our Vermont rural subscribers and to simultaneously begin rolling out faster mobile broadband that will start our transition to 5G. This commitment represents VTel's largest single technology investment since the capital invested in connection with VTel's ARRA awards, and one of the largest in the history of our company.

There is never enough capital, and the challenges of competing against larger and more established companies in rural Vermont remain enormous. However, VTel is quite optimistic about the future, and the current FCC is a significant reason for our optimism.

I hope it is clear this note is sent with the deepest respect I have long held for you personally, and for your decades of commitment to the development of rural Vermont broadband. If you would like to discuss any of these matters, it would be a pleasure to come to Washington at your convenience.

Sincerely,



Dr. Michel Guité
Chairman and CEO

QUESTIONS SUBMITTED BY SENATOR JERRY MORAN

Question. Your testimony indicated that the FCC was “applying lessons learned from the Connect America Fund Phase II reverse auction” in establishing the recently announced \$20.4 billion Rural Digital Opportunity Fund. Would you please describe what these “lessons” are? How will the FCC propose to account for them in the rulemaking setting up the fund?

Answer. Among the lessons learned from the CAF Phase II auction—lessons we hope to apply in the context of the Rural Digital Opportunity Fund—are that the mechanism of a reverse auction, with the intramodal competition that mechanism allows, is a much more efficient system for distributing funding. Similarly, “weighting” CAF Phase II bids so that proposals to offer higher-speed, lower-latency services were given a leg-up over lower-speed, higher-latency bids proved to be successful, which over 99 percent of households to be covered in that auction served with speeds of at least 25/3 Mbps, most served with speeds of at least 100 Mbps, and many served with gigabit speeds.

Question. I support the FCC’s efforts to verify that broadband network supported by the Universal Service Fund (USF) are meeting program requirements through their performance testing proposal. However, testing protocols need to be structured reasonably while taking into account the technical, administrative, and financial challenges posed to small carriers reliant on USF support. Please provide an update on the FCC’s work to implement these performance testing requirement. Are there currently testing solutions available for USF participants that would not require customers installing new equipment in their homes?

—Also, what is the expected timeline for implementation?

Answer. As you note, performance measures are critical to ensuring that consumers receive the level of service that providers have committed to deploy thanks in part to universal service high-cost support. Under an order the FCC adopted in July 2018, carriers subject to performance measures were required to begin testing in the third and fourth quarters of 2019 and report these results with an accompanying certification by July 1, 2020.

However, in order to implement the testing regime, the Commission needs to develop a mechanism for collecting the testing data and obtain Paperwork Reduction Act (PRA) approval. In addition, several petitions for reconsideration and applications for review were filed regarding the July 2018 order. In light of the issues raised in these filings, the need for additional technical development of the interfaces required, and the requirement for PRA approval, the Wireline Competition Bureau issued a public notice on May 20, 2019 delaying the requirement to begin testing and reporting of speed and latency results until the first quarter of 2020. The July 2018 order gives service providers the flexibility to use software solutions. However, one issue raised in the various filings was that testing solutions that can use existing customer premise equipment, such as cable modems and gateways, was not widely available. Since that time, some service providers and software vendors have told the Commission that these software solutions are increasingly available for many service providers. Commission staff are reviewing these filings and will continue to work to ensure that performance testing measures accommodate service providers of all sizes and capabilities.

Question. Your testimony covered the creation of the Office of Economics and Analytics. Would you please describe the FCC’s plans to “expand and deepen” the use of economic analysis in its upcoming decisionmaking?

—In terms of rulemakings and auctions, what does coordination between the Office of Economics and Analytics and the other Bureaus and Offices look like? What are the resource-based needs of these coordination efforts?

Answer. The FCC officially launched the Office of Economics and Analytics (OEA) in December 2018 after receiving approval for the reorganization from your subcommittee. Among its primary goals, OEA is elevating rigorous, objective economic analysis throughout the FCC in order to better inform policymaking.

Generally speaking, OEA provides input to the FCC’s Bureaus and Offices on all matters with significant economic content through all stages of the rulemaking process. For example, OEA contributes to options memos, prepares questions for NPRMs, and conducts economic analysis for an Order. In accordance with the rules the Commission adopted when it established OEA, the Economic Analysis Division (EAD) within OEA performs an independent economic review of all Commission-level rulemakings. EAD also reviews other Commission-level items and lends its expertise and suggestions as appropriate. As of July 1, 2019, EAD had reviewed over 150 Commission-level items, including proceedings from every Bureau within the FCC. The extent of the economic review in these cases typically depends on the estimated economic impact of the action. Items with over \$100 million in estimated an-

nual effect on the economy must receive a rigorous economically-grounded cost-benefit analysis. To date, two items have crossed this threshold.

Similarly, Auctions Division attorneys and economists coordinate with the relevant Bureaus early in the rulemaking process. Auctions staff meet with Bureaus as soon as an auction or competitive bidding process is contemplated to provide expertise on designing and implementing efficient competitive bidding. The Auctions Division and other OEA economists are deeply involved in the design and implementation of auctions, including creating the legal documents, producing intricate auction timelines, providing contractor oversight, and conducting and closing of an auction. The coordination efforts take place through meetings, emails, and planning documents.

OEA also provides economic support, as needed, for other types of work produced by the Bureaus and Offices, such as merger review and enforcement actions. The level of analytic support ranges from answering discrete economic questions posed by FCC staff, to embedding economic experts throughout a proceeding. At the start of Commission-level proceedings, OEA and the relevant Bureau/Office meet to jointly define work product and responsibilities, develop a communications plan, discuss timing and prioritization, and determine the necessary review processes. Every Bureau and Office has a designated person in the OEA front office for coordination of this process. Most of OEA's economic and analytic work is concentrated in EAD and the Industry Analysis Division.

OEA also is responsible for designing and implementing FCC auctions; developing and implementing consistent and effective agency-wide data, collections, practices, and policies; and conducting long-term economic and analytical research related to communications policies to inform future rule-makings. Centralizing the FCC's economic functions into one office has contributed to a culture in which economists and others focused on economic functions work and collaborate effectively to perform independent economic analysis that informs the Commission's policymaking decisions. In addition, OEA has issued two economic white papers in the past 6 months—the first two whitepapers that the FCC has issued since 2012.

No additional resources were requested for coordination within the Agency at this time.

Question. Last Congress, I was successful in enacting the FCC CIO Parity Act, which 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. Given the CIO's subject matter expertise, prioritizing the replacement of costly and vulnerable legacy IT systems would be accounted for in this critical decisionmaking. Did the agency's CIO have a significant role in the development of the President's fiscal year 2020 budget request?

—Were any specific “legacy” IT systems prioritized for replacement as a result?

Answer. Thank you for your leadership in elevating the Chief Information Officer's (CIO) role within all agencies. At the FCC, our CIO is an essential and valued member of the Office of Managing Director team and has significant responsibility for developing Information Technology (IT) planning, budgeting and office hiring. The CIO had a significant role in the development of the President's fiscal year 2020 budget request.

The current acting CIO and his predecessor have focused all available resources on following through with the replacement of legacy systems and modernization of our systems. The Commission's fiscal year 2020 Budget CJ, at pages 19–21, provides the current focus on IT modernization. Importantly, IT system upgrades and replacement account for the entire new investments section of our request at \$3.19 million.

The CIO and FCC IT Team have worked closely with the Commission's Bureau and Office leadership to prioritize modernization efforts in the areas that will benefit most from replacement of the legacy systems. Specific IT systems prioritized for replacement include: Integrated Spectrum Auction System (ISAS), International Bureau Filing System (IBFS), Universal Licensing System (ULS), Disaster Information Reporting System (DIRS), and the OET Frequency Assignment Coordination System (OFACS).

Question. Your testimony acknowledges the importance of making more spectrum available for unlicensed operations. Would you please describe the role that innovative technologies and sharing techniques play in increasing spectrum access for unlicensed operations?

—As the Chairman of the CJS Appropriations Subcommittee, I remain interested in the research and development taking place at the Institute for Telecommunication Sciences, the primary engineering arm of NTIA. Does the work taking place at the Institute assist the FCC with its decisionmaking around unlicensed operations?

Answer. Unlicensed devices typically share spectrum with other services on a non-interference basis. The Commission has adopted provisions to enable unlicensed devices to share spectrum using advanced sharing techniques to prevent harmful interference to incumbent services. For example, unlicensed devices were provided access to the TV White Spaces and the Citizens Broadband Radio Service (CBRS) by developing data bases of protected operations that would be avoided by the unlicensed devices. We have worked closely with the Institute of Telecommunication Sciences (ITS) in testing the CBRS data bases and we have a long history of working collaboratively with ITS on advanced spectrum sharing techniques for both licensed and unlicensed services.

QUESTIONS SUBMITTED BY SENATOR JOHN BOOZMAN

Question. When can we expect to see substantive amounts—versus piecemeal amounts—of 2018 Rural Health Care Program monies being released to those States that are in need?

Answer. The Commission has taken steps to ensure that all funding requests seeking support from the Rural Health Care (RHC) Program for services delivered in fiscal year 2018 are funded to their full eligible amounts and are issued as quickly as possible. *First*, pursuant to the measures adopted by the June 2018 RHC Funding Cap Order, the RHC Program funding cap for fiscal year 2018 was approximately \$581 million (as opposed to \$400 million when I came into office). *Second*, in October 2018, I announced that all single-year 2018 funding requests would be funded to their full eligible amounts, and the Program Administrator began processing and issuing those funding decisions shortly after. *Third*, on May 14, 2019, the Commission adopted an Order providing full funding for multi-year and upfront payment funding requests for services delivered in fiscal year 2018. Because the total amount of multi-year and upfront demand exceeded the \$150 million funding cap on such requests within the Healthcare Connect Fund, absent action by the Commission, USAC would have been required to pro-rate this funding.

To avoid significant reductions in support, the Commission suspended its pro-ration rule for fiscal year 2018 and directed USAC to process the fiscal year 2018 portion of multi-year commitment requests as single-year funding requests and treat the underlying multi-year contracts as evergreen. That action ensured that the healthcare providers that submitted the request received the full funding they needed for their fiscal year 2018 services and created a path for them to seek the remaining funding requested in subsequent funding years without having to rebid the contracts. Taken together, these actions ensured that the healthcare providers could continue to obtain the critical telecommunications and advanced services needed for the delivery of healthcare services to their rural communities.

Question. Last summer, the FCC announced that it was going to take action to address immediate and long-term funding shortages in the Rural Health Care Program. When can we expect that you will take action in a way that gives assurance to providers that they can rely on the program to help get services to rural places in the lower 48 States? If that action is already taking place, please provide the subcommittee with an enumerated list of what is being done.

Answer. The Rural Health Care (RHC) Program helps healthcare providers afford the connectivity that they need to better serve patients, and we have taken several actions to address a significant increase for Program funds in recent years, as well as to make the distribution of funds more efficient and equitable. For instance, in a June 2018 Order, the Commission increased the annual RHC Program funding cap by 43 percent, to \$571 million, starting with fiscal year 2017, adjusted the RHC Program funding cap for inflation, starting in fiscal year 2018 and established a process to carry-forward unused funds from past funding years for use in future funding years. Thanks to these measures, no rural healthcare providers seeking support from the Rural Health Care Program were capped in fiscal year 2018.

With an eye on the future, and in order to promote the efficient distribution of limited RHC Program funds and increase transparency and predictability for Program participants, the Commission adopted a Report and Order at the FCC's August Open Meeting to reform RHC Program rules. The Report and Order (1) reformed the distribution of RHC funding to promote efficiency and reduced incentives in the Telecommunications (Telecom) Program that encourage waste, fraud, and abuse; (2) streamlined and simplified the calculations of way the discounted rates that healthcare providers pay for communications services and the amount of support received from the Program; (3) directed the Program Administrator to create a database of rates that healthcare providers could use to quickly and easily determine the amount of support they can receive from the Program; (4) targeted funding

to the most rural areas and those facing shortages of healthcare providers and ensured that eligible rural healthcare providers continue to benefit from Program funding in the event that demand for the Program exceeds its funding cap; (5) simplified the application process for Program participants and provide more clarity regarding Program procedures; and (6) directed the Program Administrator to take a variety of actions to increase transparency in the Program and ensured that all applicants receive complete and timely information to help inform their decisions regarding eligible services and purchases.

QUESTIONS SUBMITTED BY SENATOR STEVE DAINES

Question. I recently wrote a letter to the Commission along with my colleague, Sen. Johnson, regarding TV White Spaces technology and the need for the Commission finalize two outstanding rules. Thank you for taking action and providing certainty on those rules. There are still more issues to be resolved (such as enabling connected school buses and advancing IoT like precision agriculture). Can you give me an update on the outstanding rules regarding TV White Space and are you able to conclude those issues by the end of the year?

Answer. I appreciate your ongoing interest in the Commission's TV White Spaces rules. As you are aware, earlier this year, the Commission adopted several revisions to its white spaces rules. These revisions improved the white space database unlicensed users rely on when accessing unused spectrum in the TV bands and modified technical rules to permit use of higher antennas in rural areas to enable greater coverage when providing broadband services.

On May 3, 2019, Microsoft filed a petition for rulemaking requesting that the Commission further modify the rules for white space devices. Specifically, it requested that the Commission provide additional technical modifications to its rules to permit: (1) higher antenna power limits and heights for certain unlicensed devices; (2) more intensive use of unused spectrum where doing so would not cause harmful interference to licensed users; (3) further adjustments to the rules to support the use of white space channels for narrowband IoT; and (4) unlicensed white space device operations on movable platforms (such as tractors used for precision agriculture or school buses for connected services).

The Commission released a public notice on May 9, 2019, seeking comment on the Microsoft petition. Comments were due on June 10, 2019, and reply comments were due on June 25, 2019. Sixteen parties filed comments and three parties filed reply comments. The comments were generally supportive, although some parties, such as wireless microphone manufacturers and broadcasters, expressed certain concerns.

At this stage, our staff is reviewing the comments carefully. We will move forward once we have properly considered all of the comments and addressed the issues raised by the stakeholders.

Question. Now more than ever, kids and parents deserve a safe place to access educational and entertainment content. There have been rules governing traditional media markets regarding advertising during children's program for decades, but little if anything when they are online. It has become imperative that we update our privacy laws to ensure our children's safety, which is why I introduced the SAFE KIDS Act that prevents websites used primarily for preK-12 purposes from collecting or using student data. I believe that it is important that we modernize children's television advertising rules to balance current trends while maintaining a safe space for children to watch educational and entertainment programs. Chairman Pai, will you commit to working with all stakeholders to modernize children's television advertising rules?

Answer. As a general matter, I support modernizing our rules, within statutory constraints, to reflect today's market and technology. I am willing to work with all stakeholders to explore whether changes to the children's television advertising rules make sense.

Question. The IP Caption Telephone Service (IP CTS) has enabled the hard of hearing community, and specifically certain veterans, to be more independent and integrate into the workforce. It is my understanding that the FCC is currently undergoing updates to the program and I want to make sure that any updates are balanced, well informed and broadly supported by the affected community. I believe that any updates should not result in an inferior service, specifically in regards to the automated speech recognition and access to equipment. Chairman Pai, will you commit to do additional studies on any proposed updates and work with all affected groups to ensure any existing concerns are addressed?

Answer. I agree that IP CTS is a critical service for individuals with hearing loss. The vast majority of captioned telephone services already rely on automated speech

recognition (ASR). However, those services previously have required the interposition of a communications assistant between the caller and the speech recognition software to “revoice” a caller’s words. This interposition slows transcription, reduces the privacy of calls for callers, and increases the costs of IP CTS.

That’s why the Commission took steps to modernize IP CTS in June 2018 by authorizing the use of ASR without a communications assistant. We found that ASR has become a viable alternative with its improvements in accuracy, speed, and privacy—especially compared to services that require the interposition of a communications assistant. And the Commission found that consumers will continue to be able to select a provider based on quality of service and available methods, as ASR will not be the sole means of offering IP CTS.

Additionally, I want to stress that nothing regarding our reforms allows substandard service: Providers using ASR must continue to meet the Commission’s minimum Telecommunications Relay Service standards and report data to the Commission to help us determine if further measures are necessary.

QUESTIONS SUBMITTED BY SENATOR JOE MANCHIN, III

PUBLIC FEEDBACK MECHANISM

Question. As long as we continue to rely solely on carrier-reported Form 477 data to tell us where there is and isn’t coverage of fixed and mobile broadband, we will never have a complete picture that accurately depicts the real-world experiences of Americans.

—Will a “public feedback mechanism” be considered within the ongoing Form 477 proceeding?

—Do you need new legislative authorities to consider and implement a “public feedback mechanism” or could you do that already?

Answer. I agree that using updated and accurate broadband deployment data is critical to accomplishing the goal of making broadband available to all Americans, regardless of where they live. We need to understand where broadband is available and where it is not to target our efforts and direct funding to areas that are most in need. That is why the Commission began a top-to-bottom review of our deployment data collection to ensure that broadband data will be more precise, granular, and ultimately useful to the Commission and the public.

The Commission voted affirmatively on August 1 on a Report and Order I circulated which would yield more granular and more accurate broadband maps. It also provides for regular updates of the filed data to ensure that the maps we rely on are current. Consistent with our current authorities, the Report and Order also enables third-party verification through crowdsourcing—feedback directly from the public.

MOBILITY FUND PHASE II

Question. It has been exactly 5 months since your agency put a hold on Mobility Fund Phase II. My State desperately needs this funding.

—Do you have any idea when you plan to move forward with it?

—Do you believe we will have to start this entire process over again?

Answer. In December 2018, the Commission launched an investigation into whether one or more major carriers violated the MF–II reverse auction mapping rules and submitted incorrect coverage maps. The Commission has suspended the next step of the challenge process—the opening of a response window—pending the conclusion of this investigation, which we are actively working on. I expect Commission staff will be able to wrap up their investigation in the near term.

RURAL DIGITAL OPPORTUNITY FUND

Question. Last month as part of your “5G Fast Plan”, you announced the establishment of a \$20.4 billion fund designated for rural broadband investment called the Rural Digital Opportunity Fund. While this announcement signals a positive step forward in bridging the digital divide, unless we fix our broadband coverage maps and ensure this new program has a dedicated amount set aside for places with mountainous terrain, I am concerned West Virginia will not see a dime of this funding.

—I understand that your agency just opened a new docket for the Rural Digital Opportunity Fund so it will take some time to go through the regulatory process at the FCC but how do you envision this proposal will help my State and when do you think it will begin?

—Can you commit to including a terrain factor or set aside within this program so that places like West Virginia have a fair shot at this funding when it is made available?

Answer. On August 1, the Commission adopted a Notice of Proposed Rulemaking proposing to establish the Rural Digital Opportunity Fund (RDOF). This modernized approach for connecting the hardest-to-serve corners of our country will be the biggest step yet the Commission has taken to close the digital divide, including the gaps I've seen for myself in West Virginia.

Building on the success of the CAF Phase II auction, the RDOF would provide more than \$20 billion to support up to gigabit service to millions of unserved Americans through a competitive auction. This will ensure that the most unserved Americans will be covered for the lowest cost possible. The RDOF would target support to areas that lack access to fixed voice and 25/3 Mbps broadband and would be implemented through a two-phase approach.

Phase I would allocate support to wholly unserved census blocks and Phase II would allocate support to unserved locations in partially unserved census blocks, along with areas not won in Phase I. The RDOF NPRM proposes to use the Connect America Cost Model to set reserve prices (as the Commission did with the CAF II auction). The model accounts for variations in cost due to terrain and soil conditions and are reflected in the reserve price.

In addition, to encourage the deployment of higher speed services and recognizing that terrestrial fixed networks may serve as a backbone for 5G deployments, the weights proposed for different performance tiers in the RDOF NPRM favor gigabit-speed, low latency services.

Our aim is to commence Phase I of the auction next year.

REMOTE AREAS FUND

Question. You have stated that your agency plans to move forward with the Remote Areas Fund no later than 1 year after the commencement of the Connect America Fund II Auction which occurred in July of last year.

—July is only a few short months away, are you still planning to move forward with the Remote Areas Fund?

—Can you identify which areas in my State are likely to be eligible for this funding?

Answer. The item adopted at the FCC's August Open Meeting proposing to establish the Rural Digital Opportunity Fund (RDOF) seeks comment on a budget of at least \$20.4 billion over the next decade to support up to gigabit service to millions of unserved Americans through a competitive auction. As in the CAF Phase II auction, we propose to include both high-cost locations and extremely-high cost locations in the RDOF auction. Most of the areas that did not receive winning bids in the CAF Phase II auction were high-cost areas, and not extremely high-cost ones. Because it would be inefficient to conduct a separate Remote Areas Fund (RAF) auction for so few locations, we propose to make the areas from the CAF Phase II auction that did not attract bids, which could have been part of the RAF, eligible for the RDOF auction, and to make available the amount of funding the Commission once envisioned for the RAF (at least \$100 million per year) part of the RDOF budget.

N11 SUICIDE HOTLINE FOR VETERANS

Question. The National Suicide Hotline Improvement Act of 2018 (Public Law 115–233), which was signed into law on August 18th, 2018, requires the Federal Communications Commission, in consultation with the Secretary of the Veterans Affairs, to complete a study on the effectiveness of an N11 dialing code for Veterans in crisis no later than August 2019.

—What is your most recent update on the progress of the aforementioned feasibility study for establishing an N11 dialing code for Veterans in crisis?

—What is your timeline for completion of this study?

—What outreach efforts have you conducted to date and planned in the future to ensure that a representative sample of Veterans, providers, and other relevant stakeholders have a voice in this process?

—What has the Secretary of Veterans Affairs provided you to complete this study? Please provide any documentation from the VA that has contributed to this study?

—What is the earliest date that you could implement a three-digit dialing number for Veterans in crisis?

Answer. As you note, the Act directs the Commission to coordinate with the Department of Veterans Affairs (VA), as well as the Department of Health and Human

Services' Substance Abuse and Mental Health Services Administration (SAMHSA), and the North American Numbering Council (NANC) in conducting a study examining the feasibility of designating a simple, easy-to-remember, three-digit dialing code to be used for a national suicide prevention and mental health crisis hotline system.

The Commission's Wireline Competition Bureau issued two Public Notices seeking input from interested stakeholders on the issues that we must address in the study and the report required by the statute. In accordance with the statute, the Commission is also working closely with the VA, as well as SAMHSA, and the NANC as we carefully examine this important issue. The VA and SAMHSA conducted studies and provided reports to the Commission in early February 2019, and the NANC submitted its report in May.

Commission staff is reviewing these reports, as well as comments filed by interested parties in the record, including veterans and family members of veterans. I personally have met with various stakeholders, including Utah Congressman Chris Stewart, the Trevor Project, and the American Foundation for Suicide Prevention, to hear their views.

We will submit our report to Congress by the statutory deadline of August 14, 2019. Consistent with Congress' directive, the report will recommend whether a particular three-digit dialing code should be used for a nationwide suicide prevention and mental health crisis system. Before implementing any such recommendation, we would seek public input through a notice and comment proceeding. Interested parties, including veterans and veterans' organizations, would be invited to fully participate in that proceeding. Per your request, I've attached the VA Report to this response.

**U.S. Department of Veterans Affairs
Veterans Health Administration**



**Public Law 115-233
August 14, 2018
H.R. 2345**

"National Suicide Hotline Improvement Act of 2018"

Table of Contents

Executive Summary:	3
Introduction & Background	3
VCL Mission and Description	4
Relationship with SAMHSA / V!brant.....	5
VCL Call Flow Process.....	6
VCL Quality Assurance Plan	7
VCL's Ability to Respond to Veterans.....	11
Oversight and Accreditation	14
Community Outreach and Engagement	15

National Suicide Hotline Improvement

Executive Summary:

On August 14, 2018, President Trump signed into law the National Suicide Hotline Improvement (Public Law (P.L.)115-233). The legislation requires the Federal Communications Commission to study the feasibility of designating a simple, easy-to-remember dialing code to be used for a national suicide prevention and mental health crisis hotline system. The study must be completed in coordination with the Assistant Secretary for Mental Health and Substance Use at the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Secretary of Veterans Affairs (VA). The VA must submit a report to the Commission on how well the National Suicide Prevention Lifeline and the Veterans Crisis Line (VCL) is working to address the needs of veterans. If the Commission recommends that a dialing code should be used upon receiving the initial reports from the Assistant Secretary for Mental Health and Substance Use and the Secretary of Veterans Affairs, the report shall include logistics, recommendations and estimated cost of designating the dialing code. The report shall also include a cost-benefit analysis comparing the dialing code with the National Suicide Prevention Lifeline and other recommendations for improving the Lifeline in general (e.g. public education and awareness, improved infrastructure and operations). The VCL has set quality and service metrics that are inline with, meet or exceed standards of the National Emergency Numbers Association, accrediting bodies in facility and crisis management, and those collected by organizations such as the National Suicide Prevention Lifeline and its crisis centers. The VCL has expanded the ability to respond to Veterans needs by increasing the amount of call centers and responders, drastically lowering the amount of calls unable to be answered by the primary system, decreasing the time to respond once received, and decreasing the rate of calls abandoned. A robust quality management system is in place to ensure fidelity to all policies and procedures across services provided by the VCL and identify opportunities for continued service improvement.

Introduction & Background:

On August 14, 2018, President Trump signed into law the National Suicide Hotline Improvement (Public Law (P.L.)115-233). The legislation requires the Federal Communications Commission to study the feasibility of designating a simple, easy-to-remember dialing code to be used for a national suicide prevention and mental health crisis hotline system. The study must be completed in coordination with the Assistant Secretary for Mental Health and Substance Use and the Secretary of Veterans Affairs (VA). The VA must submit a report to the Commission on how well the National Suicide Prevention Lifeline and the Veterans Crisis Line (VCL) is working to address the needs of veterans. If the Commission recommends that a dialing code should be used upon receiving the initial reports from the Assistant Secretary for Mental Health and Substance Use and the Secretary of Veterans Affairs, the report shall also include

logistics, recommendations and estimated cost of designating the dialing code. The report shall also include a cost-benefit analysis comparing the dialing code with the National Suicide Prevention Lifeline and other recommendations for improving the Lifeline in general (e.g. public education and awareness, improved infrastructure and operations).

VCL Mission and Description

The mission of the Veterans Crisis Line (VCL) is to provide 24/7, world-class suicide prevention and crisis intervention services to Veterans, Service members, and their family members. The VCL will provide supportive, timely, high quality crisis intervention services and connect Service Members, Veterans and their families to the services of their choice to ensure that they never struggle alone. The VCL can be reached via phone by dialing 1-800-273-8255 and pressing option 1, via text at 838255, and via online chat by visiting www.veteranscrisisline.net. Caring and qualified responders are standing by to help, 24/7/365. To ensure care coordination, the VCL collaborates with a network of over 400 Suicide Prevention Coordinators (SPCs), located at VA facilities across the nation. Upon completion of a call to VCL, an electronic consult may be submitted to the location nearest to the Veteran. The Veteran's local SPC will respond to this consult within 24 business hours; In FY2018, approximately 95% of SPC Consults have been responded to within one business day and closed within 3 business days.

The VCL is comprised of 3 linked call centers in Canandaigua, New York, Atlanta, Georgia, and Topeka, Kansas. The call center in Canandaigua, New York was established in 2007 and consists of more than 340 employees. All three core services (phone, chat and text) are provided from this location. The call center in Atlanta, Georgia was established in 2016 and consists of more than 360 employees. The call center in Topeka, Kansas was established in 2018 and has more than 80 employees. Currently both call centers in Kansas and Georgia provide phone services, with plans for future expansion into chat and text.

Since its launch in 2007, the Veterans Crisis Line has answered more than 3.8 million calls and initiated the dispatch of emergency services to callers in imminent crisis nearly 112,000 times. Since launching chat in 2009 and text services in November 2011, the VCL has answered more than 439,000 chats and nearly 108,000 texts. Staff have forwarded more than 640,000 referrals to local VA Suicide Prevention Coordinators on behalf of Veterans to ensure continuity of care with Veterans local VA providers.

High level monitoring/KPIs:

The VCL monitors performance via the Executive Leadership Council (ELC), consisting of boards focusing on Quality, Employee Experience, Customer Experience, Business Operations, and Partnerships, with Key Performance Indicators (KPIs) identified and tracked for each. Utilizing the Quadruple Aim, VCL monitors Access (Demand, Call

typing, rollover, abandonment, average speed to answer, and service level), Quality (Silent Monitoring results, Responder Dashboards, and Effectiveness), Cost (Vacancy percentage, agent utilization, leave, and overtime trends), and Experience (All Employee Survey results, Wellness, Caller feedback, and Average Handle time). Quadruple Aim data is reported monthly through the ELC.

Press 7:

VCL is continuing to expand access to meet the needs of Veterans and Service members in crisis, including full implementation of an automatic transfer function that directly connects Veterans who call their local VA Medical Center (VAMC) to VCL by pressing a single digit (7) during the initial automated phone greeting. Currently, this feature is available at all VAMCs and more than 85% of all Community Based Outpatient Clinics.

Relationship with SAMHSA / V!brant:

When the Veterans Crisis Line first started in 2007, the mission was to ensure Veterans in crisis would call and reach the VA directly through an internal crisis hotline. One way to accomplish this was to build off of the other federally supported crisis hotline, the existing National Suicide Prevention Lifeline number, 1-800-273-TALK (8255). This was beneficial because the phone system/structure was already in place, the number was well advertised, and it ensured that all individuals in the United States had one unified number to reach care. This allowed Veterans to immediately contact the VCL because the 1-800 number states, "if you are a Veteran, press 1" within the first 20 to 30 seconds of the call. This also allowed for cross promotion and access between the Veteran Crisis Line and the National Suicide Prevention Lifeline Crisis Centers. The 1-800-273-8255 number is federally funded by SAMHSA and currently operated through a cooperative agreement with V!brant Emotional Health. Since that time, the VCL has advertised the number on buses, bridges, billboards, and in public service announcements. The VCL has also been double branded as the Military Crisis Line for our Active Duty Service members.

In order to ensure this level of enhanced suicide prevention and crisis intervention services for all Veterans, Service members and their families, the VHA and SAMHSA entered in to an Inter-Agency Agreement (IAA). The purposes of this IAA are to ensure Veterans, Service members and their families have continuous access to the VCL through the 1800-273-TALK(8255) press 1 option and to work to prevent suicide deaths and attempts among Veterans, Service members and their families, including those that are not receiving Veterans Health Administration (VHA) care. The IAA also promotes innovation and fosters the spread of clinical and public health best practices for

preventing suicidal behavior among Veterans, Service members and their families, whether they receive care within the VHA or in community settings, and stipulates SAMHSA and the VCL regularly share data collection processes and analysis of information collected, including a focus on why Veteran callers do not press option 1 to be connected to the VCL.

The VCL also maintains a contract with Vibrant Emotional Health to ensure back-up coverage for the VCL calls that are unable to be answered at the VCL's three locations. This contract allows for an additional layer of security if there are catastrophic events, technical or call demand issues causing difficulty for the VCL network to respond. A Veteran amendment is written into the contract that provides any Lifeline centers that sign the amendment a \$1,000 stipend. The Centers agree to ask each caller if they are a Veteran and, after an assessment, if they would like to be warm transferred to the VCL. Vibrant provides a report to the VCL on the amount of veterans that are interacted with based on the veteran stipend.

VCL Call Flow Process

The Veterans Crisis Line's current call flow has evolved over the years, primarily in response to the need to be proactive in providing the most accessible access to care for Veterans, Service members and their families.

There are 3 primary paths of entry into the VCL:

- a. By dialing 800-273-TALK (8255) and Press 1
- b. By calling any VA Medical Center and/or currently 85% of all Community Based Outpatient Centers (CBOCs) and Press 7
- c. Receive a direct warm transfer from another agency/department

Calls are routed to the Responder who has been available for the longest period of time among the three sites; if no Responders become available after 237 seconds, the call will route to the contracted backup center, Lines for Life. If those calls are not answered by Lines for Life within 120 seconds, they then get routed to a high priority queue back at the VCL. If the high priority call is not answered in 3 rings, the call is moved into the main VCL call center traffic. It should be noted that the contingent routing described is very rarely, if ever, implemented in full, but remains a necessary and viable option to assure all calls get answered.

VCL Quality Assurance Plan

In accordance with the mission of the VCL and a critical component of the Quadruple Aim, Quality of Service is essential in providing world-class care to those the VA is serving. The VCL collects and reviews metrics for all phone calls, including those that are answered at the back-up crisis center. The VCL has developed key performance indicators (KPIs), which allow the organization to track and trend performance, including performance at the contracted back-up call center. These indicators are included in the Quality Assurance Plan with performance targets and are consistent with universal standards established by the [National Emergency Number Association \(NENA\)](#). These data are used to identify any areas needing improvement and forecast scheduling/staffing requirements. The Quality Assurance Activities, along with the KPIs and targets are as follows:

Quality Assurance Activities

Metrics for Answering Phones

The VCL collects and reviews metrics for all phone calls, including those that are answered at the back-up crisis center. These data are used to identify any areas needing improvement and forecast scheduling/staffing requirements.

Key Performance Indicator	Definition	Current Status	Target
Inbound volume	Total Calls Offered at all VCL locations	Reviewed daily, reported monthly	No Target
Telephone Inbound Service Level	Calls Answered within 20 seconds / Total Calls Answered	Currently meeting target; Reviewed daily, reported monthly	95% answered within 20 seconds
Abandonment Rate	% of inbound calls abandoned after being offered to either VCL location	Currently meeting target; Reviewed daily, reported monthly	5% or less

Metrics for Answering Chat

Metrics for VCL Chat mirror those reported for phone calls with the exception of rollovers as VCL Chat does not have back-up.

Key Performance Indicator	Definition	Current Status	Target
Chat Inbound Volume	Total chats offered	Reviewed and reported monthly	No Target
Chat Service Level	Time spent from time chat request is received until chat is answered by a responder	Currently meeting target; Reviewed and reported monthly	95% answered within 20 seconds

Metrics for Answering Text

Metrics for text mirror those reported for VCL Chat.

Key Performance Indicator	Definition	Current Status	Target
Text Inbound Volume	Total texts offered	Reviewed and reported monthly	No Target
Text Service Level	Time spent from time text request is received until text is answered by a responder	Currently meeting target; Reviewed and reported monthly	Target 95% answered within 45 seconds

Back-up Center Performance

If the performance of the back-up center does not meet the terms and conditions of the contract, the Contracting Officer has the authority to enact any contractual remedies set forth in the Federal Acquisition Regulations such as a letter of concern, cure notice, and termination for default.

Key Performance Indicator	Definition	Current Status	Target
Calls Presented (Back-up Center)	Number of calls routinely offered to back-up center during staffed hours	Reported and Reviewed weekly	0
Telephone Inbound Service Level (Back-up Center)	Number of calls within 20 seconds/Number of calls presented to the back-up center during staffed hours	Reported and Reviewed weekly	95% answered within 20 seconds
Abandonment Rate (Back-up Center)	% of all calls presented to the back-up center that are abandoned during staffed hours	Weekly/Monthly	5% or less

Clinical Indicators of Population Acuity

VCL monitors the percentage of contacts that result in dispatch of emergency services or facility transport plan (FTP). The former indicates that the caller or someone else was in imminent danger and unable to stay safe on their own, necessitating immediate intervention. An FTP is conducted when the risk to the caller or the person they are calling about is acute, but the individual can self-transport or be transported by a trusted other.

Key Performance Indicator	Definition	Current Status	Target
Total Emergency Dispatch Requests Initiated	Number of calls handled resulting in dispatch of emergency services	Reviewed and reported monthly	No target
Total Facility Transport Plans (FTP) Initiated	Number of calls handled resulting in a facility transportation plan (FTP) for urgent care	Reviewed and reported monthly	No target
Referrals (Consults)	Total Number of Referrals to SPCs	Reviewed and reported monthly	No target

Customer Satisfaction

Another key measure of meeting Veteran needs comes directly from the Veteran themselves. Call responders know firsthand the difference made for Veterans through the work accomplished on the VCL. However, the VCL needed to quantify the construct for continued quality improvement and external stakeholder awareness. The VCL created the End of Call Satisfaction Question, primarily designed to record the level of a satisfaction a Caller reports.

To assess customer satisfaction, VCL phone responders ask near the end of the call: "If you were in crisis, would you call VCL again?" Originally this measure was reviewed only for Veteran callers; VCL added a metric to review satisfaction of third-party callers as well, since they are also part of VCL's population of service. For FY2018, over 95% of those that responded to the survey question stated they would call the VCL again for help.

Key Performance Indicator	Definition	Current Status	Target
Customer Satisfaction – Veteran/Service Member	Percentage of Callers with Yes response to following question at end of call, "If you were in crisis, would you call VCL again?" Denominator for the measure is defined as total answered calls where caller is identified as	Currently meeting target; Reviewed and reported monthly	95%

	a Veteran and at the conclusion of the call, a Routine consult is generated. Denominator will be discounted for calls where the caller: 1) refused to answer, 2) terminated the call, OR 3) asking the question was not clinically appropriate.		
Customer Satisfaction – 3 rd party	Percentage of Callers who called out of concern for a Veteran or Service Member with Yes response to following question at end of call, "If you were in crisis, would you call VCL again?" Denominator is the same as above.	Currently meeting target; Reviewed and reported monthly	95%

Quality of Phone Services Provided

VCL enhanced quality monitoring of phone calls with the implementation of a dedicated team of staff who monitor calls around the clock. Calls are assessed for use of listening skills, complete and thorough lethality assessment, degree of collaborative problem-solving, and resources or referral provided. In the rare circumstance that the responder did not adequately assist in mitigating identified risk, that call is rated "Unsuccessful" overall; the responder receives off-line retraining and must successfully pass monitors of 3 crisis-related calls before returning to independent practice. Eight monitored items are designated as critical for the success of a call. If any of these items are rated unsuccessful, the entire monitor is scored "Opportunities for Improvement." There are 25 non-critical items, including items rating adherence to documentation standards; if 5 or more non-critical items are missed, the monitor is rated "Opportunities for Improvement," even in the absence of missed critical items. This method of scoring statistically inflates the rate of monitors with "Opportunities for Improvement," however; the critical nature of crisis prevention and intervention service demands excellence.

Key Performance Indicator	Definition	Current Status	Target
Silent Monitoring (Calls)	Percent of monitored calls that meet silent monitoring expectations to reduce suicidal risk to the caller	Currently meeting target; Reviewed and reported monthly	99%

Complaint Tracking

VCL tracks complaints via an email template submitted by any VCL staff member who learns of a complaint about VCL services.

Key Performance Indicator	Definition	Current Status	Target
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Service Complaints	Number of complaints determined to be founded after investigation that relate to provision of quality service by VCL staff	Currently meeting target, Reviewed and reported monthly	10 or less
Technology Complaints	Number of complaints determined to be founded after investigation that relate to errors in phone routing, inability to access service, wait time, etc.	Currently meeting target; Reviewed and reported monthly	10 or less

Access to Services

VCL has partnered with local VA Office of Information and Technology (OI&T) staff to conduct testing of access to VCL services: phone, online chat, and text. OI&T staff conduct tests around the clock and record any difficulties experienced on a standardized tracking sheet.

Key Performance Indicator	Definition	Current Status	Target
Line Testing – Phone	Percent of tests on the Phone Product Line that were successful. (Successful Tests/Total Tests)	Currently meeting target, Reviewed and reported monthly	100%
Line Testing – Text	Percent of tests on the Text Product Line that were successful. (Successful Tests/Total Tests)	Currently meeting target, Reviewed and reported monthly	100%
Line Testing – Chat	Percent of tests on the Chat Product Line that were successful. (Successful Tests/Total Tests)	Currently meeting target, Reviewed and reported monthly	100%

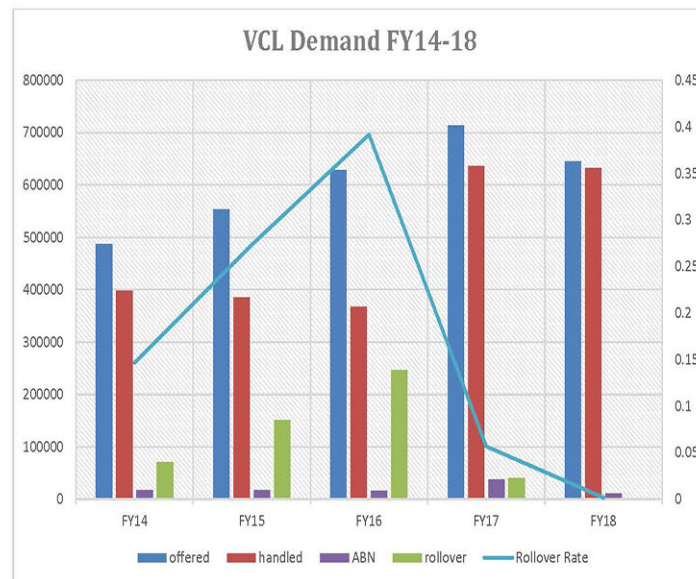
VCL's Ability to Respond to Veterans

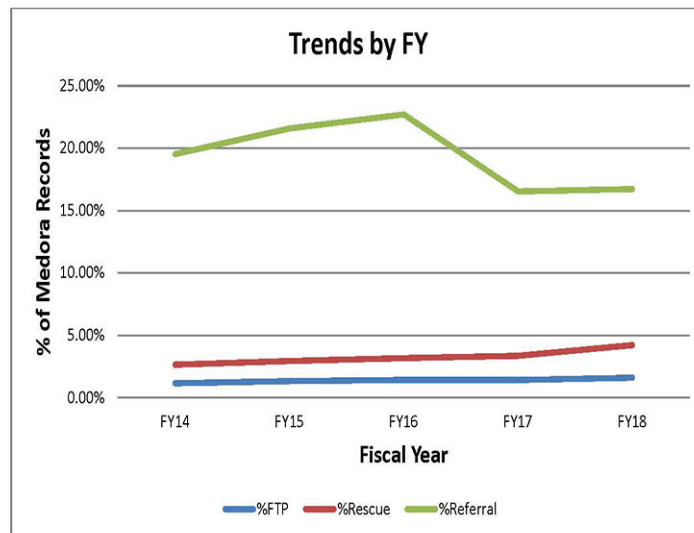
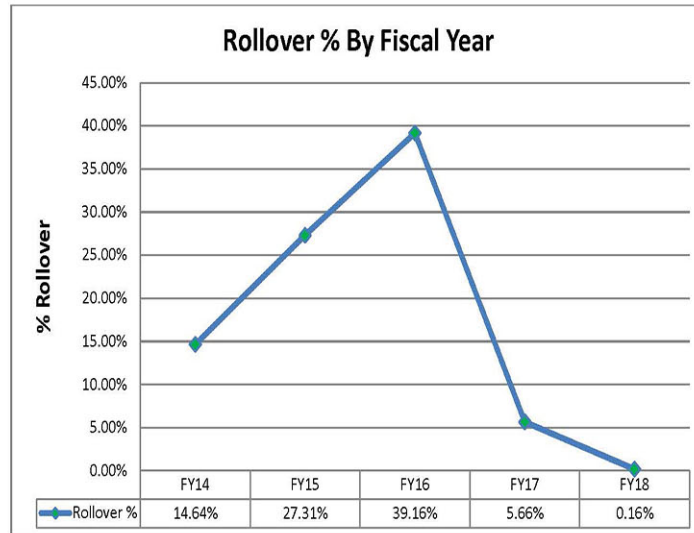
Since the 2016 expansion of the VCL crisis call centers, the VCL's ability to respond to demand has significantly increased. Calls are no longer routinely routed to the contracted back-up center due to inability to respond. In fact, the rollover rate went from 39.16% of calls offered in FY2016 to 0.16% of calls offered in FY2018. This is significant as the FY call volume to the VCL has increased since 2016. For additional reference, a five year comparison was included (Figure A) to demonstrate select demand and performance outcomes. Focusing on FY2018, several of the critical metrics that define the VCL's ability to respond to the needs of Veterans are as follows:

- 1) Amount of incoming offered calls to the VCL- 644,684
- 2) Amount of incoming calls answered by VCL- 632,682
- 3) The service level (calls answered within 20 seconds vs calls offered)- 98.05%

- 4) The abandonment percentage (ABN)- (amount of calls that disconnected >5 seconds before being responded to)- 1.70%
- 5) Total rollover calls to the backup center- 1056
- 6) Rollover rate vs calls offered- 0.16%
- 7) Average speed to answer- 8.22 seconds
- 8) The amount of referrals sent to a Suicide Prevention Coordinator- 116,033
- 9) The amount of requests for emergency dispatch of services where a caller was deemed to need immediate intervention- 29,252

Figure A: 5 Year Comparison Charts





Oversight and Accreditation

The VCL has received extensive internal and external review regarding policies, procedures and outcomes. Internally, these have come through the aforementioned Quality, Training, KPI, etc processes. VCL has also received review through the Office of the Inspector General (OIG), the Government Accountability Office (GAO) and through the accrediting bodies listed below (Figure B). VCL was successful in fully implementing corrective actions for seven OIG recommendations on Report No 14-03540-123 between February 2016 and July 2017. The VCL also fully implemented corrective actions for 16 OIG recommendations on Report No 16-03985-181 between March 2017 and March 2018. This resulted in a closure memorandum being issued for the report 14-03540-123 on August 16, 2017 and report 16-03985-181 on April 13, 2018. Recommendations focused on areas involving VCL operations, quality, and collaboration.

Figure B: Oversight and Accreditation



Community Outreach and Engagement

In order to meet the needs of Veterans, the VCL conducts outreach into the community through several different methods. These include regular outreach events conducted by field-based Suicide Prevention Coordinators and by VCL staff members. Last year alone, VA's Suicide Prevention Coordinators participated in over 20,000 outreach events reaching approximately 2 million individuals. At all of these events VCL contact information was provided through written materials as well as promotional items (cards, bracelets, bandanas, etc.). Many of these events also included training for community members in Operation S.A.V.E training, a gatekeeper training in suicide prevention. In addition, VCL staff also participate in outreach events through the Speakers Bureau where they bring a similar message to that of SPC's to the communities surrounding the 3 Call Center sites. This enhanced education allows for both broad messaging of VCL services and individual interaction.

In addition to the outreach events, VA also actively promotes VCL through it's inclusion of VCL contact information on various VA websites and many public service media campaigns. VA has also expanded its suicide prevention work with many community partners who now promote VCL through inclusion of contact information on their own websites and promotional materials.

EBS SPECTRUM

Question. On April 30th, 57 rural operators across 22 States including West Virginia filed a letter to the FCC stating that Educational Broadband Service (EBS) is critical to their ability to build out broadband networks in the rural areas they serve. They stated support for your plan to give educational entities the first priority to apply for an EBS license and enter into a lease with these rural operators.

—Are you still planning to give educational entities first priority to obtain an EBS license and allowing educators the chance to partner with rural operators?

Answer. On July 10, 2019, the Commission adopted a Report and Order that establishes a plan to leverage this vital mid-band spectrum both to provide wireless broadband, including 5G, and to help close the digital divide across rural America. The Report and Order does not adopt the proposal in the NPRM of providing a priority window for educational entities, as the Commission concluded that making the unassigned EBS spectrum available for flexible use is the best way to facilitate the rapid deployment of wireless broadband services, including 5G, to the public. We were informed in part by experience; today, this valuable public resource of 2.5 GHz spectrum is dramatically underused, especially west of the Mississippi River. And the overwhelming number of EBS licensees do not provide services themselves but rather lease spectrum to wireless carriers. The funds they accrue may not necessarily benefit schoolchildren. Indeed, as Commissioner Carr mentioned when the item was adopted, “In the course of examining the 2.5 GHz licenses at issue in this order, I discovered that many of these national organizations are using this valuable public spectrum that they got for free for activities far removed from kids and schools. . . . I am glad my colleagues agreed to include language in today’s decision that directs the Enforcement Bureau and the Wireless Telecommunications Bureau to review these existing license holders for compliance with our rules and other applicable laws.”

5G IN RURAL AMERICA

Question. You recently unveiled your “5G Fast Plan” and while this new technology has the potential to yield significant economic benefits, expand consumer services and ignite innovation beyond our wildest dreams, I am concerned that much like the 3G and 4G technologies that have come before it, rural States like mine will not see this new 5G technology deployed to their area.

—How do we ensure rural Americans are not left behind and will have access to this new technology?

Answer. Bridging the digital divide is the top priority for the Commission, and we are working in many ways to ensure that we meet our statutory directive to make available, so far as possible, communications services in rural America.

That ethos extends to 5G. 5G-based technologies, both fixed and mobile wireless, will play a major role in connecting rural Americans. One of the most critical steps that the FCC can take is to approve the T-Mobile/Sprint transaction. Right now, Sprint has tremendous mid-band spectrum resources. But the record before the FCC makes clear that the company standing alone does not have the capability to deploy 5G in this spectrum throughout large parts of rural America. On the other hand, if the T-Mobile/Sprint transaction is approved, the combined company has committed to the FCC that they will deploy mid-band 5G to 88 percent of our Nation’s population, including two-third of rural Americans. And there would be significant financial penalties if these commitments were not met.

Another way to ensure that rural Americans benefit from these technologies is to get more spectrum into the commercial marketplace—whether high-band spectrum (like 24 GHz), mid-band spectrum (like 2.5 GHz), or low-band spectrum (like 1675 MHz). Yet another way is to ensure that regulatory barriers to infrastructure deployment are low. This means streamlining the process for deploying small cells. This means ensuring that fiber deployment in rural areas is as appealing a prospect as possible to private sector companies. And this means that the FCC’s Universal Service Fund—particularly its Rural Digital Opportunity Fund initiative, which will devote over \$20 billion toward high-speed rural connectivity—helps support wireline networks critical for rural backhaul. I recognize that the business case for deployment in rural America is often difficult, if not impossible, to build. That’s why I’m committed to modernizing our rules, and supporting legislative efforts to help us to do the same—the harder our rules make it to deploy 5G in rural areas, the less likely rural Americans will benefit from the faster speeds, lower latency, and next-generation services 5G could offer.

ROBO-CALLS

Question. Do you believe opening a robocall enforcement division within the FCC could be a viable step toward combating the scourge of unwanted robocalls?

Answer. The Commission's Enforcement Bureau already has a division focused on robocalls. It's called the Telecommunications Consumers Division. It aggressively enforces the Telephone Consumer Protection Act and the Truth in Caller ID Act, and is responsible for over \$200 million in fines against robocallers and Caller ID spoofers since 2017.

QUESTIONS SUBMITTED BY SENATOR CHRIS VAN HOLLEN

Question. Congress granted local and State governments the ability to require cable operators to provide monetary franchise fees, and public, educational, and government (PEG) access channels. In a recent proceeding, the FCC proposed permitting cable operators to determine the fair market value of PEG channels and deduct the value of these PEG channels, as well as any broadband and video services provided to schools and senior discounts, from the monetary franchise fee payments.¹ In his accompanying statement, Commissioner O'Rielly states that current law is "vastly anachronistic," and seems to suggest that the FCC should update regulations to reflect the current marketplace, and that Congress may then follow his lead, stating "some of these actions may require alterations of law, but doing so would provide a pathway for Congress to consider the same, if it was so inclined."²

If you adopt this proposal, I am told the estimated losses in franchise fees in Maryland communities could be as high as 70 percent and runs into the tens of millions of dollars. No less than 32 Members of Congress—14 Senators, including my colleague Senator Cardin, and 18 members of the House have voiced their objections to this proposal that upends more than 35 years of cable franchise rules and relations.

- Due to the strong opposition against this rule, will the Commission consider tabling this proceeding?
- Will you include a cost benefit analysis in this rulemaking that weights the impact this will have on local communities versus the marginal benefit to cable providers?
- Do you have evidence in the record that demonstrates that changing the interpretation of the law will have a positive impact on broadband deployment, particularly in rural areas?

Answer. On August 1, the Commission adopted an item to resolve the pending rulemaking and to faithfully implement the law that Congress has set forth. As you know, the pending proceeding is a direct result of a 2017 remand by the U.S. Court of Appeals for the Sixth Circuit in *Montgomery County, Md., et al v. FCC*. As a result of the remand, the Commission was obligated to take another look at how to interpret the definition of "franchise fees" in Section 622 of the Communications Act (47 U.S.C. § 542). Specifically, the court directed the Commission to review how non-monetary ("in-kind") contributions, such as those related to PEG channels, fit within the statutory definition.

The Commission has a duty to implement the statute, and that is what it did on August 1. The relevant statute defines a "franchise fee" to include "*any* tax, fee, or assessment of *any kind*."³ It then sets forth two exceptions to that definition related to PEG channels. For franchises in effect back in 1984, when the statute was passed, there is a broad exemption for "payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support or the use of, public, educational, or government access facilities."⁴ But for franchises granted later, the exemption is much narrower, covering only "capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities."⁵

This legal framework tells us two things. First, given these specific exemptions, the 5 percent cap (and associated franchise fee definition) does not include a general exemption from cable-related, in-kind contributions. Congress could have—but did not—create one. And the specific exemptions would be unnecessary if there were

¹ *In re Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992* (September 25, 2018)(FCC 18–131) ("Cable In-Kind/Offset FNPRM").

² *Id.* at page 37.

³ 47 U.S.C. § 542(g)(1) (emphasis added).

⁴ 47 U.S.C. § 542(g)(2)(B).

⁵ 47 U.S.C. § 542(g)(2)(C).

such a general exemption. The Supreme Court has made clear that it is “reluctan[t] to treat statutory terms as surplusage’ in any setting.”⁶ We took the same approach.

Second, with respect to post-1984 franchises, capital costs are the only PEG costs that are exempt from the definition of franchise fees. The broader exemption by its plain terms only applies to franchises in existence back in 1984. Congress was therefore aware of the distinction between existing and post-1984 franchises when it established these exemptions, and the Commission does not have the authority to rewrite the statute to expand the narrower, post-1984 one. Congress, on the other hand, is free to do so.

From a policy perspective, I believe that the steps we took on August 1 are good for American consumers. That’s because costs imposed by LFAs through in-kind contributions and fees imposed on broadband Internet access service get passed on to consumers. Evidence in the record suggests that every dollar paid in fees beyond the statutory cap is a dollar that cannot and will not be invested in upgrading and expanding networks. For example, comments in the record from small and mid-sized cable operators indicate that requests for in-kind contributions from local franchising authorities have a direct impact on their ability to invest in broadband deployment. *See Ex Parte from Small and Mid-Sized Cable Operators*, MB Docket No. 05-311 (Feb. 4, 2019). This discourages the deployment of new services like faster home broadband or better Wi-Fi or Internet of Things networks.

Question. In 2017, the FCC eliminated requirements put in place under the Obama administration that wireless companies acquiring spectrum likely to be used for 5G networks (called millimeter wave spectrum) have cybersecurity plans to ensure the security of communications over their networks that use public airwaves. Hackers of any company or entity that is beholden to foreign governments are always improving their ability to break into our digital infrastructure. Yet the computer systems running our satellites haven’t kept up, making them prime targets for an attack. This makes our space assets a massive vulnerability—and it could get much worse if we’re not careful. This past weekend, SpaceX won approval from the Federal Communications Commission to increase the number of low-flying satellites as part of its Starlink project so that they can provide faster Internet access to the world. Unfortunately, access will be faster for both legitimate users and hackers alike. The FCC does not require applicants to publicly demonstrate how they will secure these satellites or the Internet they plan to provide. SpaceX, like other private space companies, has shared virtually no information about its cybersecurity efforts or plans. This is extremely troubling considering the potential harm caused by a satellite being hacked. As experts have pointed out, the most mundane outcome is that the satellite will no longer function, but the other extreme is for an attacker to break into a satellite and take over any thrusters (which SpaceX has insisted its satellites will have) and then propel the satellite into critical infrastructure and military satellites in other orbits. In other words, attackers could possibly use the hacked satellite as a kinetic weapon.

—Chairman Pai, with FCC eliminating these rules, what are your alternative plans to address these huge risks of hackers and malicious entities from gaining power, access, and control inside our telecommunications networks?

—What specific measures is the FCC taking go address ensure these systems are secure?

Answer. Threats to the Nation’s communications infrastructure have been a long-standing concern for U.S. Government officials. The Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) has the lead role for overseeing the cybersecurity of our Nation’s communications networks. The FCC generally and I personally have supported CISA’s efforts in this area. Among other things, the Commission serves as a member of the Department of Homeland Security’s Information and Communications Technology Supply Chain Risk Management Task Force. It also participates in interagency meetings regarding the implementation of May 2019 Executive Order on Securing the Information and Communications Technology and Services Supply Chain.

In addition, we have acted within the scope of our authority to advance the important values of security. For example, last year the Commission sought comment on whether to require encryption for telemetry, tracking, and command communications for satellites with propulsion capabilities. In a separate item last year, the Commission also proposed to prohibit universal service funding from being used to purchase equipment or services from any company that poses a threat to the national security of our communications networks or the communications supply chain. Most recently, in May 2019, the Commission denied China Mobile USA’s ap-

⁶*Duncan v. Walker*, 533 U.S. 167, 174 (2001), quoting *Babbitt v. Sweet Home Chapter, Communities for Great Ore.*, 515 U.S. 687, 698 (1995).

plication to provide telecommunications services between the United States and foreign destinations.

In addition, I have interacted with numerous foreign government counterparts to express the views of the United States Government with respect to the security of communications networks. For instance, this past May, I was part of the United States delegation to an international conference on 5G network security hosted by the Czech Republic, where there was a broad consensus that the “security of 5G networks is crucial for national security, economic security and other national interests and global stability.” And earlier this month, at the 7th Congreso Latinoamericano de Telecomunicaciones in Argentina, I reminded the attendees that, “when making decisions that affect 5G security, we need to remember that the implications are wide-ranging. 5G will affect our militaries, our industries, our critical infrastructure, and much more.”

Question. Chairman Pai, in April you released a public notice proposing a rechartering of the Communications Security, Reliability, and Interoperability Council or CSRIC (pronounced CIZRIC). Currently the CSRIC provides recommendations to the FCC to ensure, among other things, optimal security and reliability of communications systems, including telecommunications, media, and public safety. However, it is unclear what CSRIC’s mission will be under this reorganization.

—Please indicate where you will make 5G security and cybersecurity a priority for CSRIC and what standards for such cybersecurity, if any, they will be asked to apply.

Answer. The Commission received recommendations from CSRIC VI on 5G security in its September and December 2018 reports, and 5G security will remain a top priority for CSRIC VII. I have directed CSRIC VII to address issues related to 5G security, with a focus on managing security risk in the transition to 5G and in emerging 5G implementations. More information about CSRIC VII is available on the CSRIC VII website: <https://www.fcc.gov/about-fcc/advisory-committees/communications-security-reliability-and-interoperability-council-vii>.

QUESTIONS SUBMITTED TO HON. JOSEPH J. SIMONS

QUESTIONS SUBMITTED BY SENATOR JERRY MORAN

Question. Your testimony highlighted the FTC’s increasing need for expert witnesses in the complex investigations and litigation for both competition and consumer protection matters. Would you please expand upon the distinct uses of expert witnesses between the agency’s competition cases and consumer protection cases?

—Specific to the FTC’s consumer protection efforts related to data privacy and security, would you please describe the resource needs for expert witnesses related to these efforts?

—What additional value do these experts bring beyond that of the FTC staff, inclusive of its technologists, investigators, and lawyers?

Answer. Thank you for your attention to this important issue. Our expert witness engagements are complex, which we would like to explain to the subcommittee. In general, the Commission employs experts outside the agency to support its litigation matters when necessary. In antitrust litigation in particular, expert economic testimony has become an essential component of helping the adjudicator assess the facts and apply the law. Sometimes, economists from the Bureau of Economics prepare to testify as an expert witness, either in an administrative proceeding or in Federal court. But preparing to testify is a time-consuming endeavor that limits that economist’s availability to work on other investigations or enforcement actions. Choosing to employ an outside economic expert is a resource decision made in matters that appear to be heading toward litigation. Of course, the agency often relies on outside experts other than economists when it lacks specific in-house expertise.

Given some significant differences between competition and consumer protection cases, this response breaks out information separately for each of our two enforcement missions.

Competition Cases

A variety of factors such as the type of case and the complexity of the industry in which the parties under investigation operate can affect the amount of time and the financial and human resources required to litigate competition cases. Moreover, as companies generate and store more data, that adds to what FTC staff must review and process in order to conduct relevant economic analyses. In short, competition litigation can be resource intensive, and those constraints are only growing over time.

External experts, however, provide critical support in helping the agency meet the resource constraints that we face in litigating competition cases. Outside testifying experts and their support staff provide the significant back-end support needed to review and process voluminous datasets and conduct empirical analyses at the rapid pace required in many fast-moving litigation matters. That is particularly true in merger litigation cases where outside parties dictate the volume, nature, and timing of their deals thus compelling agency staff to move quickly to build a case. Testifying experts also often bring litigation experience and subject matter expertise to our competition cases.

But, despite the critical role that outside experts play in our litigation work, the large size and growth in expert costs present another set of challenges to the Commission. When a competition case goes to litigation (versus settlement or closing), expert witness costs typically increase exponentially and may lead to millions of dollars in additional expert fees. Even very small changes in the total number of competition cases per year can have a dramatic impact on the agency's overall spending on expert fees.

Unfortunately, the agency has a limited ability to control this primary driver of our expert costs. The Commission votes out a complaint when it has reason to believe that a competition enforcement action is in the public interest. But, after the vote, the course of litigation (and possible settlement) is determined in large part by the defendants and, of course, the judge or judges. Among other factors, defendants may choose to retain one or more experts of their own, which can affect our expert strategy.

In general, we have observed that the kinds of experts qualified for this kind of work are becoming more expensive. In an increasingly data-rich world, each case requires more of an expert's time, and significant support resources to process data and increasingly large volumes of documents. Our expert budget is depleted not only by higher prices per hour worked, but also by the need for experts to spend more time preparing for each case, and the need for more support resources to manage each case.

On the competition side, we have determined that the range of total expert costs for cases that are fully litigated (meaning a preliminary injunction, administrative hearing on the merits or both) in the last 5 years is \$583,100–\$6.90 million.

The remaining, requested data points for our competition cases are as follows:

Fiscal Year	Expert Spending *
2008	\$3.05 million
2009	\$3.40 million
2010	\$3.16 million
2011	\$2.97 million
2012	\$2.09 million
2013	\$2.98 million
2014	\$4.84 million
2015	\$10.03 million
2016	\$12.21 million
2017	\$11.46 million
2018	\$15.80 million

* Some years' expenditures may change due to ongoing work.

To date, the Commission has managed allocated funds to pay the expert witness fees needed to pursue vigorous competition enforcement on behalf of consumers. We are, however, increasingly concerned with our ability to continue to do so.

Consumer Protection Cases

Many of the expert challenges identified above—such as the increased amounts of data, fast-paced nature of litigation, and time-consuming nature of expert work—apply equally in our consumer protection cases. Evolving technologies also continue to increase the complexity of our privacy and data security investigations and litigations.

The Commission currently employs five technologists, three of whom work full time on privacy and security matters. These technologists provide expert assistance on privacy and security cases, for example, by helping attorneys draft discovery requests, participating in meetings with opposing parties and assisting staff in better understanding technical issues, and reviewing pleadings for technical accuracy.

However, additional resources for expert witnesses in these cases continue to be a critical area of need for our agency. Although we have requested additional resources hire new staff technologists, we will need to supplement those technologists

with outside consulting and testifying experts, who can address specific issues in cases as they arise. Indeed, in privacy and data security litigation, it is almost always necessary to have third-party testifying experts not employed by the agency. For example, in past cases we have hired external experts to testify on such matters as (1) whether a company's security practices were reasonable; (2) actual and likely harms resulting from data breaches and identity theft; and (3) the operation of peer-to-peer networks.

Average expert cost per case: Between fiscal year 2016 and fiscal year 2018, the Commission filed an average of 71 consumer protection cases (mostly in Federal court) per year, spending approximately \$30,000 per case on expert witness contracts. The Commission uses experts in approximately 44 consumer protection matters per year, spending an average of approximately \$49,000 on expert witness contracts in each of those cases.

Total yearly expert costs: Between fiscal year 2016 and fiscal year 2018, the Commission spent approximately \$2.16 million on expert witness contracts for consumer protection cases per year, and is on track to obligate \$2.28 million during fiscal year 2019.

Expert spending over past 10 years: The Commission's expert spending on consumer protection cases has remained steady over the past 10 years. In fiscal year 2008, the Commission expended approximately \$2.07 million on expert contracts in consumer protection cases, and is on track to obligate \$2.28 million during fiscal year 2019.

Question. As for the IT modernization efforts of the FTC, I found the current Hart-Scott-Rodino Premerger Filing Process example that you cited in your testimony to be particularly troubling. Was the FTC's Chief Information Officer (CIO) consulted in the development of the FTC's fiscal year 2020 budget request? Are other IT modernization projects included in the request?

Answer. The FTC is pursuing a multi-year modernization program to update its IT and the underlying support in terms of contracting, security, and governance. The agency has already implemented a Blanket Purchase Agreement ("BPA") to update its IT services, including those in support of HSR. Use of the BPA has already led to updates in the agency's security architecture necessary to support modernization of HSR practices. Through the Digital Roadmap activities directed by the 21st Century Integrated Digital Experience Act (IDEA), the agency will evaluate several analytic platforms to improve the user experience for practitioners who submit filings to the FTC—including HSR filings. Each of these efforts has been led by the CIO or one of his delegated staff.

Question. In January, I joined Senator Casey in introducing the Stop Senior Scams Act, which would ensure retailers, financial institutions and wire transfer companies have the resources to train employees to help stop financial frauds and scams on seniors. Specifically, the bill would create a Federal advisory council at the FTC to develop educational materials for companies from these specific industries to use to train employees on how to identify and stop financial scams at the point of sale. Based on my conversations with consumer advocates and industry representatives, education and awareness remains one of the key tools in preventing fraudulent practices in the first place. Do you agree that effective training of employees to identify consumer fraud and stop it would be valuable to consumers?

Answer. I fully agree that training employees to identify and stop fraud is critically important. Consumer education is a vital tool in preventing consumer harm, and the Commission tailors its educational materials and messages for specific audiences, such as older adults, small businesses, and parents. Commission staff have spoken with many companies about their training programs and efforts to minimize fraud through store signage, employee training, and technology that creates speed bumps or triggers inquiries at the check-out counter when certain transactions are conducted (e.g., large denomination purchases for gift cards). We also hear of individual store employees who successfully assist customers to prevent a scam.¹

Question. In March, the FTC utilized its Section 6(b) authorities from the FTC Act to issue orders to seven U.S. Internet broadband providers and related entities seeking information about the companies' privacy policies, procedures, and practices. The FTC has conducted similar examinations in the past including their 2014 report on data brokers. Does the FTC plan to initiate additional 6(b) special reports related to consumer data privacy in other industries or sectors? Do these special reports require significant resources?

Answer. The Commission frequently uses its authority under Section 6(b) of the FTC Act, which allows it to conduct industry-wide studies. In the past few years

¹ FTC Consumer Blog, *Scam Spotted thanks to a Clever Store Clerk* (Jan. 18, 2018), <https://www.consumer.ftc.gov/blog/2018/01/scam-spotted-thanks-clever-store-clerk>.

alone, we have studied the practices of data brokers and mobile device manufacturers and, as you mention, we are undertaking a study of Internet service providers. These types of studies are best suited to areas in which we can make apples-to-apples comparisons across a range of companies. We are considering further 6(b) studies in other industries.

Question. As you are aware, enactment of the Better Online Ticket Sales (BOTS) Act in 2016 provided the FTC and State attorneys general authority to treat any “circumvention of a security measure, access control system, or other technological measures” (including online bots) to surpass ticket purchasing limits as an “unfair or deceptive practice” under the FTC Act. Since the enactment of this law, has the FTC taken any enforcement actions against bad actors utilizing “online bots” to harm consumers?

—If not, why? Are there resource issues that are preventing the FTC from enforcing under this authority?

Answer. To date, the FTC has not taken any action under the BOTS Act. While I cannot comment on whether any non-public investigations are or are not underway, as a general matter capturing the use of bots in any context, and identifying the individuals or companies operating ticket bots, can be extremely complex and time consuming.

The FTC continues to engage with primary ticket sellers, ticket resellers, foreign agencies, and State attorneys general about strategies for stopping bots. Most recently, we held a public workshop concerning ticket bots and other consumer protection issues related to the online event-ticket marketplace.²

QUESTIONS SUBMITTED BY SENATOR JOHN BOOZMAN

REGARDING THE CONTACT LENS RULE

Question. What evidence does the Commission have from official Congressional proceedings during consideration of the Fairness to Contact Lens Consumers Act that indicates Congressional intent to include automated telephone calls in the Act’s definition of direct communication?

Answer. With respect to official Congressional proceedings during consideration of the Fairness to Contact Lens Consumers Act, there is relatively little in the evidentiary record that explicitly discusses or implicates automated telephone calls. There is evidence that the American Optometric Association informed members of Congress that contact lens sellers were using “automated phone calls” to verify prescriptions, and that optometrists viewed such calls as a significant cause for concern.³ However, Congress did not expressly exclude the use of automated technology for verification purposes in the FCLCA, and did not otherwise include the phrase “automated telephone call,” instead defining the term “direct communication” to include “communication by telephone, facsimile, or electronic mail,” and noting that this list is “not exclusive.”⁴

Following enactment of the FCLCA, the Commission, in 2004, issued the Contact Lens Rule, and echoed the language of the FCLCA for its definition of “direct communication” as meaning “completed communication by telephone, facsimile, or electronic mail.”⁵ The Commission further explained, in its Statement of Basis and Purpose, “The Act expressly authorizes sellers to send verification requests by telephone, which is commonly understood to include automated telephone systems. It would thus seem to be contrary to Congressional intent to prohibit the use of this technology.”⁶ The Commission has always emphasized, however, that automated telephone systems must fully comply with all applicable Rule requirements in order for the verification request to be valid. For example, telephone requests—whether automated or spoken by a live person—must be delivered at a volume or cadence capable of being understood by a reasonable person.⁷

² FTC, *Online Event Tickets Workshop* (June 11, 2019), <https://www.ftc.gov/news-events/events-calendar/2019/03/online-event-tickets-workshop>.

³ See “Fairness to Contact Lens Consumers Act: Hearing Before the Subcomm. on Commerce, Trade, and Consumer Protection of the H. Comm. on Energy and Commerce,” 108th Cong. 1 (2003) (statements of J. Pat Cummings, American Optometric Association, discussing what he viewed as problematic automated verification messages, and noting that such messages can be “difficult, if not impossible for doctors to respond to”).

⁴ H.R. Rep. No. 108–318, at 10 (2003). The Committee Report also noted, “It is the intent of the Committee that ‘direct communication’ means a message has been both sent and received.”

⁵ Contact Lens Rule, 69 Fed. Reg. 40,509 (July 2, 2004) (codified at 16 C.F.R. 315).

⁶ *Id.* at 40,489.

⁷ *Id.* (stating “direct communication by telephone would require reaching and speaking with the intended recipient, or clearly leaving a voice message on the telephone answering machine”);

The Commission has reiterated its view on the use of automated telephone verifications under the FCLCA and CLR on several occasions since 2004. Most recently, in the May 28, 2019 Supplemental Notice of Proposed Rulemaking (“SNPRM”), the Commission proposed several changes to improve the passive verification process and make automated telephone verifications more effective. The Commission proposed that sellers who use automated telephone verification messages would have to: (1) record the entire call and preserve the complete recording; (2) begin the call by identifying it as a prescription verification request made in accordance with the Contact Lens Rule; (3) deliver the verification message in a slow and deliberate manner and at a reasonably understandable volume; and (4) make the message repeatable at the prescriber’s option. This amendment is intended to enable prescribers to better fulfill their role as protectors of patients’ eye health since prescribers cannot correct or police invalid, inaccurate, and expired prescriptions if they cannot comprehend a seller’s verification request.

Question. Please describe the Commission’s test-buy activities and other methods used to ensure compliance with the Rule.

Answer. The Commission monitors the marketplace by engaging in its own review of the practices of contact lens sellers and by receiving complaints. The Commission also works collaboratively with the FDA in its monitoring of contact lens sellers. When staff determines it is appropriate, it purchases contact lenses through the use of undercover accounts. The Commission recently announced an enforcement action against a contact lens seller challenging the sale of contact lenses without a valid prescription. The order banned the defendant from selling contact lenses and imposed a \$575,000 civil penalty.⁸ The Commission has also sent warning letters to sellers, including letters to ten contact lens sellers in 2016.⁹ We will continue to monitor the marketplace, taking action against violations as appropriate.

Question. Please provide information on what percentages of verifications are filled through the following methods: fax, electronic means, personal live calls, or automated calls.

Answer. The Commission does not have information on the specific percentages of verifications that occur by the various permissible means. Through discussions with industry, the Commission knows that the preferred method varies by seller.

Question. How many sellers does the Commission audit annually for verification compliance? How many have been the recipient of some form of enforcement action?

Answer. The Commission does not conduct annual audits of sellers or prescribers for compliance with the verification process. The Commission investigates sellers and prescribers based on complaints received and through Internet surveillance. Since the Rule’s passage, the Commission has taken law enforcement action against eleven contact lens sellers who violated the Rule by, *inter alia*, failing to properly verify prescriptions.¹⁰

Our settlement orders have provided injunctive relief that, among other things, prohibited the defendants from: selling contact lenses without obtaining a prescription from a consumer; selling contact lenses without verifying prescriptions by communicating directly with the prescriber; and failing to maintain records of prescriptions and verifications. In addition, the Commission has sent numerous warning letters to both sellers and prescribers who potentially violated the Rule.

Question. Does the Commission track the effectiveness of the verification process for stopping expired prescriptions from being filled? If so, how many expired prescriptions are filled each year in the United States? How many are not filled?

see also FTC Facts for Business, *Complying with the Contact Lens Rule* (2005), <https://www.ftc.gov/tips-advice/business-center/guidance/complying-contact-lens-rule> (“Automated telephone verification messages must be delivered in a volume and cadence that a reasonable person can understand” and “[a] request delivered by an automated telephone system doesn’t comply with the Rule if: it isn’t delivered in a volume and cadence that a reasonable person can understand; it contains incomplete verification information; or it requires the prescriber’s office to provide an immediate response.”).

⁸ *U.S. v. Lawrence L. Duskin*, No. 1:18-cv-07359 (N.D. Cal. Dec. 6, 2018).

⁹ See FTC Press Release, *FTC Issues Warning Letters Regarding the Agency’s Contact Lens Rule* (Apr. 7, 2016), <https://www.ftc.gov/news-events/press-releases/2016/04/ftc-issues-warning-letters-regarding-agencys-contact-lens-rule>.

¹⁰ *U.S. v. Lawrence L. Duskin*, No. 1:18-cv-07359 (N.D. Cal. Dec. 6, 2018); *U.S. v. Gene Kim*, No. 1:11-cv-05723 (E.D.N.Y. Feb. 7, 2012); *U.S. v. Royal Tronics, Inc.*, No. 0:11-cv-62491 (S.D. Fla. Jan. 27, 2012); *U.S. v. Thy Xuan Ho*, No. 1:11-cv-03419 (D. Minn. Dec. 27, 2011); *U.S. v. Gothic Lens, LLC*, No. 1:11-cv-00159 (N.D. Ga. Feb. 3, 2011); *U.S. v. Jakeshop, LLC*, No. 1:11-cv-11221 (D. Mass. Nov. 29, 2011); *U.S. v. Contact Lens Heaven, Inc.*, No. 0:08-cv-61713 (S.D. Fla. Dec. 3, 2008); *U.S. v. Chapin N. Wright, II*, No. 1:08-cv-11793 (D. Mass. Oct. 31, 2008); *U.S. v. BeWild, Inc.*, No. 2:07-cv-04896 (E.D.N.Y. Dec. 3, 2007); *U.S. v. Pretty Eyes, LLC*, No. 1:07-cv-02462 (D. Colo. Nov. 28, 2007); *U.S. v. Walsh Optical, Inc.*, No. 2:06-cv-03591 (D.N.J. Aug. 30, 2006).

Answer. The Commission does not have specific data on the effectiveness of the verification process in stopping the filling of expired prescriptions. However, the Commission investigates sellers based on complaints received for, among other things, selling lenses on expired prescriptions, and will take action as appropriate.

QUESTIONS SUBMITTED BY SENATOR RICHARD J. DURBIN

Question. I frequently get robocalls myself—just a few months ago, I received a scam call from someone claiming to be part of the Social Security Administration. Chairman Simons, what more can the FTC be doing to educate consumers about scams—including Social Security scams and calls purporting to be from the Internal Revenue Service? What resources would allow the FTC to more effectively pursue these bad actors scamming Americans out of billions of dollars every year?

Answer. Because we have seen an alarming growth in the number of reports about government imposters—largely driven by Social Security Administration imposter scams—the FTC is engaged in a concerted effort to bring attention to government imposter scams. Earlier this month, the FTC published a Data Spotlight to highlight the top government imposter scams that are reported to the FTC and to identify tactics these fraudsters use to scare consumers and get their money.¹¹ Along with it, we released an interactive infographic, which enables people to find the top government imposter for any year since 2014, and for any of those, the aggregate dollar losses reported, the median individual dollar losses reported, and the number of people who reported losing money.¹² These are just the latest in a series of FTC data publications, with the goal to educate the public more broadly about the tactics such scammers employ so consumers can recognize a scam call, hang up, and avoid losing money.

On the enforcement side, the FTC is working with other Federal agencies to identify where these calls are coming from and to develop strategies for combating such fraud. In late June, the FTC convened its fourth India Call Center roundtable to enable industry and law enforcement personnel to share information and collaborate on strategies to stop these government imposter calls.¹³

As discussed more fully in the Commission's written testimony, Congress should eliminate the outdated common carrier exemption, which impedes our ability to tackle illegal robocalls, among other enforcement initiatives. For example, removing the common carrier exemption would allow the FTC to reach carriers that assist and facilitate illegal telemarketing and obtain complete relief for consumers when there are multiple parties to a scheme.

QUESTIONS SUBMITTED BY SENATOR JOE MANCHIN, III

ENSURING PRIVACY AFTER DELETING SOCIAL MEDIA

Question. I believe that the pictures and videos that you take belong to you. Even if you post them on a social media site they should still belong to you, and you should be able to choose to remove them.

In November of 2011, your agency found that social networking sites, like Facebook, were allowing third parties to access photos or videos that a user had uploaded and had been stored by the site, even after the user had deleted his or her account.

- Are social media platforms still allowing access to data even after a user has deleted his or her account?
- Can users retrieve their data that has already been shared to third parties?
- What can Congress do to ensure these companies are not using, disclosing, or in any way monetizing the content that a user has requested be removed?

Answer. As background, the FTC Act prohibits companies from making deceptive statements about consumers' ability to delete information from their accounts. For example, in 2012, the Commission alleged that Facebook had made deceptive statements about users' ability to delete content, and required in its 2012 consent agree-

¹¹FTC Consumer Protection Data Spotlight, *Government imposter scams top the list of reported frauds* (July 1, 2019), <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/07/government-imposter-scams-top-list-reported-frauds>.

¹²*Explore Government Imposter Scams* (June 26, 2019), <https://public.tableau.com/profile/Federal.trade.commission#!/vizhome/GovernmentImposter/Infographic>. These resources are also available by accessing www.ftc.gov/data.

¹³See U.S.-India Business Council & FTC, *4th Annual Round Table on Stepping Up to Stop Indian Call Center Fraud* (June 20, 2019), <https://www.usibc.com/event/4th-annual-round-table-on-stepping-up-to-stop-indian-call-center-fraud/>.

ment that Facebook block third parties from accessing content that users thought they had deleted. In the new order just announced on July 24, Facebook is now also required to remove such deleted content from its servers.

In the absence of deception, the FTC Act generally does not prohibit social media platforms or other companies from accessing user data after a user has deleted his or her account. In some instances, this may be a good thing. For example, consumers may change their mind about deletion and prefer not to have to re-create their entire social media profile. Deleted information may be needed for law enforcement purposes, such as locating missing or exploited children. At the same time, the right to access, correct, and delete serves an important privacy purpose. To the extent Congress considers developing privacy legislation that requires social media platforms or other companies to provide access, correction, or deletion rights to consumers, I would urge Congress to balance these considerations.

DECEPTIVE TREATMENT PRACTICES FOR OPIOIDS AND OTHER DRUGS

Question. On multiple occasions, the Federal Trade Commission and the U.S. Food and Drug Administration have worked together to issue warning letters to marketers and distributors for illegally marketing products with unproven claims about their ability to help treat opioid addiction. Last year, in July 2018, FTC Commissioner Rohit Chopra wrote a letter to Congress about widespread abuse in the drug treatment industry.

—Do you need new legislative authorities to address and combat this behavior?

Answer. Congress recently provided the Commission with additional authority to address the deceptive marketing of drug treatment products and services. In October 2018, the President signed into law the “Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act,” or the “SUPPORT for Patients and Communities Act.” The Act makes it unlawful to engage in an unfair or deceptive act or practice with respect to any substance use disorder treatment service or substance use disorder treatment product, and authorizes the FTC to enforce violations and obtain civil penalties. In light of this newly-obtained authority, we do not believe that additional legislative action is needed at this time.

OPIOID SALES OVER THE INTERNET

Question. FTC’s efforts to investigate deceptive advertising and marketing practices in the opioid treatment industry are commendable. In April 2019, FDA Commissioner Gottlieb identified the rise in illegal sales of opioids over the Internet as a critical public health concern and major focus attention of the FDA. Since 2017, the FDA has identified more than 450 websites illegally offering opioids for sale. Major social media sites have repeatedly been identified as hosting ads, posts, and other messages directing users toward drug sales. Many of these ads are driven by algorithms and it can take days and weeks for social media companies to identify and take them down. Tech companies have been warned about illegal drug sales on their platforms for years, but these companies have resisted taking practical steps to find and remove opioid-related listings.

—While the DEA has jurisdiction over illegal sales, the FTC works to protect and educate consumers. What actions are you taking to protect consumers from deceptive or illegal ads on social media?

Answer. The FDA has primary jurisdiction over the advertising of all prescription drugs, including opioids, under an FDA–FTC Memorandum of Understanding. However, with regard to advertising in general, the Commission evaluates advertising on social media under the same standards as it does advertising in traditional media and devotes substantial resources to addressing social media and influencer marketing.

For example, the FTC recently issued joint warning letters with the FDA to four marketers of flavored e-liquid products whose products were promoted by influencers on social media sites including Facebook, Instagram, and Twitter.¹⁴ These letters reminded the marketers that their advertisements must disclose material health or safety risks of the promoted product, as well as any material connections (such as monetary payments) between the marketer and influencers promoting the products.

¹⁴ See FTC Press Release, *FTC and FDA Send Warning Letters to Companies Selling Flavored E-Liquids About Social Media Endorsements without Health Warnings* (June 7, 2019), <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-fda-send-warning-letters-companies-selling-flavored-e-liquids>.

Similarly, in other recently-announced actions, we have targeted advertising that included promotion through social media.¹⁵

SUBCOMMITTEE RECESS

Senator KENNEDY. The committee meeting is adjourned.

[Whereupon, at 4:09 p.m., Tuesday, May 7, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

¹⁵See, e.g., Warning letter from FDA and FTC to TEK Naturals (Feb. 5, 2019), https://www.ftc.gov/system/files/attachments/press-releases/ftc-fda-send-warning-letters-companies-selling-dietary-supplements-claiming-treat-alzheimers-disease/tek_naturals_warning_letter_wl_565026.pdf (regarding products claimed to treat conditions including Alzheimer's and Parkinson's disease, that were marketed online, including through Facebook, Instagram, and Twitter); FTC Press Release, *PR Firm and Publisher Settle FTC Allegations They Misrepresented Product Endorsements as Independent Opinions, Commercial Advertising as Editorial Content* (Nov. 13, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/pr-firm-publisher-settle-ftc-allegations-they-misrepresented> (insect repellent promoted by celebrity athlete endorsers on social media).