

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Delete, Delete, Delete

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GN Docket No. 25-133

Relating to the
Public Notice
Issued March 12, 2025

Reply Comments of
Electronic Privacy Information Center

April 28, 2025

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Comments

I. Introduction

The Electronic Privacy Information Center (EPIC)¹ offers this reply comment in response to Chair Carr’s Public Notice² and the comments that followed.³ We observe first that the Notice was not adopted by vote of the Federal Communications Commission (FCC or Commission) or by agency staff under identified delegated authority. Accordingly, it cannot be considered a Notice of Proposed Rulemaking. Any steps the Commission might take in response to commenters’ filings must be undertaken pursuant to FCC rules and the Administrative Procedure Act (APA) if they are to carry the force of law.⁴ And if the Commission does take such action, it cannot divert from Congressionally-mandated protections and procedures—for example, 47

¹ The Electronic Privacy Information Center (EPIC) is a non-profit public interest research center in Washington, D.C., established in 1994 to protect privacy, freedom of expression, and democratic values in the information age. EPIC routinely participates in FCC proceedings and in federal courts as amicus curiae concerning the privacy and security of consumer data. *See, e.g.*, Br. for EPIC et al. as Amici Curiae in Support of FCC’s Forfeiture Orders, *Verizon Communications Inc. v. FCC et al.*, 24-1733 (2d Cir. Jan. 24, 2025), available at <https://epic.org/documents/verizon-v-fcc-and-usa-cpni-location-enforcement/>; Comment of EPIC and Public Knowledge, *in re Supporting Survivors of Domestic and Sexual Violence*, WC 22-238 at 11 (May 23, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/105242630421222>.

² Public Notice, *In re: Delete, Delete, Delete*, GN Dkt. No. 25-133 (Rel. Mar. 12, 2025), <https://docs.fcc.gov/public/attachments/DA-25-219A1.pdf>.

³ *See, e.g.*, Comments of Citizens Against Government Waste (Apr. 11, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/1041106549743>; Comments of ACA Connects (Apr. 11, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/10411614902430>; Comments of WISPA – The Association for Broadband Without Boundaries (Apr. 11, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/104111661931041> [hereinafter “WISPA Comments”]; Comments of CTIA (Apr. 11, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/10411175703423>; Comments of Competitive Carriers Association (Apr. 11, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/104111584929344> [hereinafter “CCA Comments”]; Comments of U.S. Small Business Administration Office of Advocacy (Apr. 11, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/104120111728314> [hereinafter “US SBA Comments”].

⁴ Other commenters have offered similar observations, *see, e.g.*, Comments of TechFreedom at 3-13 (Apr. 11, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/104111580520766>.

U.S.C. § 222—even if consumers are offered less stringent protections under other regulatory regimes. We further note that post-*Loper Bright Enterprises v. Raimondo*,⁵ the FCC should expect that it will be challenged on its authority to redefine or reinterpret statutory terms, especially where its interpretations conflict with the plain text of the relevant statute or legislative history. Moreover, regulatory changes that amount to merely “deleting” existing regulations serve to privilege companies that never expended the resources on full compliance in the first place, which would have negative consequences for the agency and the industries it regulates.

II. Congress Tasked the Commission with Protecting the Data of Americans, Both as Function of Subscriber Privacy and Communications Network Integrity

Congress created the FCC nearly a century ago to regulate interstate and foreign commerce in communication by wire and radio, with adequate facilities at reasonable charges, for purposes including: the national defense, promoting safety of life and property, and effective execution of this mission through centralization of authority in a single federal agency.⁶ Nearly 30 years ago, in the first major overhaul of its organic statute in six decades,⁷ Congress clarified that this mission included promoting competition and reducing regulation, both to secure lower prices and higher quality services for American telecommunications consumers and to encourage the rapid deployment of new telecommunications technologies.⁸ Notably, this overhaul explicitly

⁵ *Loper Bright Ent. v. Raimondo*, 144 S. Ct. 2244 (2024).

⁶ In 1934, as enacted through 47 U.S.C. § 151.

⁷ “Telecommunications Act of 1996”, <https://www.fcc.gov/general/telecommunications-act-1996> (last visited Apr. 25, 2025) (“The Telecommunications Act of 1996 is the first major overhaul of telecommunications law in almost 62 years.”).

⁸ 110 Stat. 56, P. Law 104-104 (Feb. 8, 1996), <https://www.congress.gov/104/statute/STATUTE-110/STATUTE-110-Pg56.pdf>.

included imposing new obligations and corresponding regulations on providers to safeguard the privacy of their subscribers.⁹

While the Federal Trade Commission is responsible for the data privacy and security of American consumers generally, Congress prohibited the FTC from reaching common carriers¹⁰ because Congress had already granted a different agency jurisdiction over common carriers: the FCC. For the FCC to water down its protections to that of another agency would be to disregard the structure deliberately created by Congress giving heightened protections to the integrity of America's communications networks—including the privacy of the communications travelling along those networks. This includes regulations that protect consumers from data breaches,¹¹ that safeguard the privacy of communications data, including precise location data and emergency communications data,¹² and that equip consumers to understand the communications technology they are consuming.¹³ Sadly, we have already seen what happens when the FCC falls short in its

⁹ See Section 702 of the Telecommunications Act of 1996, codified into law at 47 U.S.C. § 222.

¹⁰ 15 U.S.C. § 45(a)(2), *but see* Lesley Fair, *En banc Court of Appeals rules in FTC's favor on common carrier issue* (Feb. 28, 2018), <https://www.ftc.gov/business-guidance/blog/2018/02/en-banc-court-appeals-rules-ftcs-favor-common-carrier-issue>.

¹¹ See, e.g., 47 C.F.R. § 64.2011, § 64.5111; 47 C.F.R. § 12 (proposed).

¹² See, e.g., Report and Order, *in re: Supporting Survivors of Domestic and Sexual Violence, Lifeline Link Up Reform Modernization, Affordable Connectivity Program*, WC Dkt. Nos. 22-238, 11-42, 21-450 at ¶ 3 (Rel. Nov. 16, 2023), <https://docs.fcc.gov/public/attachments/FCC-23-96A1.pdf>; Report and Order, *in re: Location-Based Routing for Wireless 911 Calls*, PS Dkt. No. 18-64 at ¶¶ 102-03 (Rel. Jan. 26, 2024), <https://docs.fcc.gov/public/attachments/FCC-24-4A1.pdf>.

¹³ See, e.g., Report and Order and Further Notice of Proposed Rulemaking, *In re: Cybersecurity Labeling for Internet of Things*, PS Dkt. No. 23-239, FCC 24-26 (Mar. 25, 2024), <https://www.fcc.gov/document/fcc-adopts-rules-iot-cybersecurity-labeling-program>; 47 C.F.R. § 8.2; Notice of Proposed Rulemaking, *In re: Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, MB Dkt. No. 24-211 (Rel. July 25, 2024), <https://docs.fcc.gov/public/attachments/FCC-24-74A1.pdf>.

charge,¹⁴ including a recent warning by our country’s national security apparatus that our own networks can no longer be trusted.¹⁵

We hope that despite the title of this proceeding, Chair Carr will prioritize restoring the integrity of America’s communications infrastructure over removing regulations merely for the sake of deregulation. As then-Commissioners Carr and Simington noted last year,¹⁶ Congress created the FCC as an independent agency. It should exercise the sound, impartial judgment of one.

III. Commenters Are Wrong to Propose That the Agency Not Only Remove Existing Regulations, But Also Sabotage Its Own Ability to Enforce Current and Future Regulations

EPIC opposes efforts to eliminate reporting that advances the transparency and accountability of marketplace actors;¹⁷ to add procedural steps which serve only to protect

¹⁴ See, e.g., Reply Comments of EPIC et al., *in re: Data Breach Reporting Requirements*, WC Dkt. No. 22-21 (Mar. 24, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/1032465071814>; Joseph Cox, “I Gave a Bounty Hunter \$300. Then He Located Our Phone.” Motherboard (Jan. 8, 2019), <https://www.vice.com/en/article/nepxbz/i-gave-a-bounty-hunter-300-dollars-located-phone-microbilt-zumigo-tmobile>.

¹⁵ See, e.g., Zak Doffman, *FBI Warns iPhone and Android Users—Stop Sending Texts*, Forbes (Dec. 6, 2024), <https://www.forbes.com/sites/zakdoffman/2024/12/06/fbi-warns-iphone-and-android-users-stop-sending-texts/>; Kevin Collier, U.S. officials urge Americans to use encrypted apps amid unprecedented cyberattack, NBC News (Dec. 3, 2024 4:01pm ET), <https://www.nbcnews.com/tech/security/us-officials-urge-americans-use-encrypted-apps-cyberattack-rcna182694>.

¹⁶ See, e.g., Brendan Carr and Nathan Simington, *The First Amendment Does Not Prohibit The Government From Addressing Big Tech Censorship*, Yale Journal on Regulation (Jan. 11, 2024), <https://www.yalejreg.com/nc/the-first-amendment-does-not-prohibit-the-government-from-addressing-big-tech-censorship-by-brendan-carr-and-nathan-simington/> (“We base our analysis on our experience as Commissioners of the Federal Communications Commission (FCC), *an independent agency* charged by Congress with promoting a vibrant and diverse media ecosystem consistent with the First Amendment.”) (*emphasis added*).

¹⁷ See, e.g., US SBA Comments at 15; CCA Comments at 26; Comments of NTCA – The Rural Broadband Association at 18, 21 (Apr. 11, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/1041182708297>; Comments of Red Spectrum at 3 (Apr. 11, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/1041166913418>; Comments of AT&T at 16-19 (Apr. 11, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/1041110509194>.

negligent or otherwise non-compliant companies from rightful enforcement of established rules, especially where the rest of the marketplace has already incurred costs to adhere to those rules;¹⁸ to disregard procedure in repealing protective rules;¹⁹ to generally hinder the agency's ability to investigate misconduct;²⁰ and to otherwise do away with the FCC's investigative and enforcement authorities.²¹ While EPIC favors greater clarity about what market actors' obligations are and recognizes the value of streamlined compliance reporting, these cannot come at the expense of fundamental protections for consumers and our nation's communications infrastructure—especially not where Congress has expressly centralized the authority to regulate these very issues within a single, independent agency.

IV. Conclusion

EPIC opposes and intends to challenge any attempt to move forward on the above-referenced deregulatory proposals (or other similar proposals), which would represent a dangerous departure from the agency's Congressional mandate to protect the privacy and integrity of American's data and communications networks.

Respectfully submitted, April 28, 2025.

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¹⁸ See, e.g., Comments of AT&T at 16-19.

¹⁹ See, e.g., Comments of Digital Progress Institute at 8 (Apr. 11, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/10411196348064>.

²⁰ See, e.g., Comments of AT&T at 17-18.

²¹ Some changes *may* be necessary in light of *SEC. v. Jarkesy*, 603 U.S. 109 (2024), but not nearly to the extent that commenters have proposed.