Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Delete, Delete, Delete	)	GN Docket No. 25-133
	)	

REPLY COMMENTS OF PUBLIC KNOWLEDGE

SUMMARY

Public Knowledge submits these Reply Comments in response to Chairman Brendan Carr's attempt to deregulate the communications sector without process, against well-established law, and contrary to the public's best interests. Public Knowledge explains how the Chairman's actions are undermining the independence of the Federal Communications Commission ("FCC" or "Commission"), analyzes the insufficient legal basis for this Public Notice, demands that any further action in accordance with this proceeding complies with the law, and prioritizes some important policy areas and public interests that are at the core of the Commission's mission of which must not be jeopardized in any part by this proceeding.

Public Knowledge urges the FCC to terminate this unlawful proceeding and follow the appropriate steps, as outlined by law, if it seeks to delete, delete, delete some of the very rules that protect the public the most. The Commission must remember its core constituency – the public, **not** the President. Chairman Carr's dangerous and politically motivated actions could compromise the independence of an agency, expand the digital divide, and subvert the well-established public interest standard of the FCC.

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I. Introduction

This Public Notice, if nothing else, is peculiar. It blurs the line separating an "independent" agency from Executive control, lacks adherence to longstanding practice and procedure, and represents a threat to years of progress achieved through numerous rules at the Federal Communications Commission ("FCC" or "Commission") that aim to put the public interest first. Hundreds of commenters highlighted rules from every corner of the Commission for deletion, but few focus on the sheer oddity of this proceeding and the growing concerns of what may come next. Even the review statutes included in the Telecommunications Act of 1996 confine themselves to a specific subject matter and targeted, specific entities (e.g., broadcasting, telecommunications service providers).[1]

[1] It is worth noting that the Public Notice is highly selective in how it chooses to quote these statutes. For example, while citing 47 U.S.C. § 1302(a) with regard to forbearance, the PN ignores that the first "regulating method" recommended by the statute is "price cap regulation." It is, perhaps, the lack of fit between the actual statutes and the stated goal of the docket to simply "delete" regulation rather than "review," *see Prometheus Radio Project v. FCC*, 373 F.3d 372, 394-95 (3rd Cir. 2004) (Commission must determine whether enhancing of rule, not merely deletion, would serve the public interest), that has prompted the Commission to take the questionable step of relying instead on Executive Orders rather than on its review statutes.

These Reply Comments underscore that the Commission's unprecedented approach to deregulation is wrong, not only legally but also as related to the mission of the FCC in providing *every* American with reliable access to information and one another through telecommunications.

II. The Chairman's Actions Challenge the "Independence" of an Independent Agency

A. The Importance of FCC Independence

The FCC is a quintessential independent agency: a multi-member, bipartisan commission with fixed terms, explicitly designed to be insulated from undue political interference. Such independence is constitutionally permissible and vital to fulfilling the Commission's role in serving the public interest. As affirmed repeatedly by the Supreme Court, independent commissions like the FCC are constitutionally authorized entities performing quasi-legislative and quasi-judicial functions, distinct from purely executive agencies.

In *Humphrey's Executor v. United States*, the Court unanimously recognized Congress's authority to establish independent regulatory commissions, emphasizing that members must be protected from arbitrary removal to maintain impartiality and independence. Such insulation is crucial because, as the Court stated, "one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will."[2] Subsequent cases such as *Wiener v. United States*, 357 U.S. 349 (1958) and *Morrison v. Olson*, 487 U.S. 654 (1988) have reaffirmed these principles, reinforcing that Congress's decision to create tenure-protected FCC commissioners, insulated from political pressure, is integral to effective governance.

This constitutional understanding aligns closely with the historical rationale behind the FCC's creation. Congress explicitly designed the FCC (and its predecessor, the Federal Radio

[2] *Humphrey's Executor v. United States*, 295 U.S. 602, 628 (1935).

Commission) as a response to earlier regulatory schemes that concentrated power (ineffectively) in the hands of a single executive officer. Legislative history clearly shows Congress's intent: the regulation of communications is among those tasks that require "absolute freedom from Executive interference," due to its profound potential impact on society, politics, and democracy itself.[3] As Herbert Hoover noted in testimony leading to the Federal Radio Act of 1927, "unlimited authority to control the granting of radio privileges was too great a power to be placed in the hands of any one administrative officer."[4]

Further legislative discussions emphasized the need to prevent both governmental and private censorship and recognized the dangerous potential for politically motivated abuses of broadcast power. As Senator Clarence Dill succinctly put it, "the importance of radio and particularly the probable influence it will develop... demand that Congress establish an entirely independent body."[5] This foundational rationale remains equally applicable today, given the even greater complexity and centrality of telecommunications to American life.

Maintaining the FCC's independence is essential to its mission and effectiveness. Attempts to undermine this structure through executive overreach or politically motivated interference threaten not only constitutional principles but also the FCC's ability to impartially regulate telecommunications in the public interest. This proceeding, begun at the behest of the executive without even the semblance of regular procedure, is an unfortunate part of the erosion of the independent nature of the FCC and its transformation into a political arm of the President.

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[3] *Wiener*, 357 U.S. at 353.
[4] *Testimony of Secretary Herbert Hoover*, Hearings on H.R. 7357 before the House Committee on the Merchant Marine and Fisheries, 68th Cong., 1st Sess., 8 (1924); quoted in H.R. Rep. No. 69-464, at 19 (1926).
[5] S. Rep. No. 69-772, at 2 (1926).

B. The Chairman's Response to Executive Orders 14192 and 14219 Undermines Agency Independence

Now more than ever, especially when the Constitution, legislation, and Court decisions are sidelined, it is important to see how FCC predecessors dealt with White House policy proposals. When President Obama issued a Statement on Net Neutrality in 2014, expressing the policy of the Executive Branch, much like an Executive Order, he noted correctly, "The FCC is an independent agency, and ultimately this decision is theirs alone."[6] This demonstrated a respect for the FCC's independent status. When Chairman Ajit Pai led the FCC during the first Trump Administration, the Chairman also responded to Executive Orders appropriately. For example, in 2020, when a Trump executive order asked for Section 230 reform, Pai did not take it upon himself to simply follow the president; he instead said he would wait for a petition for rulemaking in accordance with regular procedure and the law.[7] At the same time, then-Commissioner Carr's response broke away from Chairman Pai, foreshadowing his approach as Chair.[8] Later, when President Biden took office and issued, for example, an Executive Order on July 9, 2021 to in part restore net neutrality, Chairwoman Rosenworcel did not rush to initiate some sort of quasi-legal Chairwoman-issued inquiry. She appropriately waited and opened a docket for proper rulemaking in response to Petitions filed by several organizations, following proper FCC procedures and the law.

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[6] The White House, Office of the Press Secretary, *Statement by the President on Net Neutrality* (Nov. 10, 2014), available at https://obamawhitehouse.archives.gov/the-press-office/2014/11/10/statement-president-net-neutrality.

[7] Christian Tamotsu Fjeld and Christopher J. Harvie, *The Implications of Trump's Executive Order and Section 230 of the Communications Decency Act,* Mintz Insights Center (Jun. 3, 2020), https://www.mintz.com/insights-center/viewpoints/2236/2020-06-03-implications-trumps-executive-order-and-section-230.

[8] John Hendel, *Trump's unexpected ally in the fight against tech*, Politico (Jun. 2, 2020), https://www.politico.com/news/2020/06/02/trump-tech-fight-fcc-295422.

Chairman Carr has parted from his predecessors. The *Delete, Delete, Delete* Public Notice, creating the proceeding at issue here, purports to respond to two Executive Orders that together treat "notice and comment" procedures with remarkable disdain. Executive Order 14192 calls generally for the elimination of old rules and regulations for each regulation that agencies promulgate.[9] Executive Order 14219 calls for further removal of rules and even instructs agencies to review rules just to make sure that they are "[consistent] with… Administration policy."[10] This is unfortunately in keeping with the current administration's disrespect for the Administrative Procedure Act (APA).

In one executive order, the President himself stated that on certain matters, "notice and comment is unnecessary because I am ordering the repeal."[11] Such kingly sentiments have no place in American law, and it is likely that many of the attempted regulatory rollbacks hastily initiated throughout the government by the Trump administration on the basis of recent executive orders will be reversed by the courts. By clarifying the "major questions doctrine,"[12] through the repeal of the Chevron Doctrine, and in other areas, the courts have recently scaled back the ability of agencies (independent and otherwise) to enact their policy agendas without careful judicial review. These decisions, as well as the APA itself, apply to Presidential administrations of both parties. Chairman Carr is bending—and likely breaking—the rules. It is ironic that while *Commissioner* Carr was the champion of process and agency independence, *Chairman* Carr seems likely to cast these aside.

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[9] Executive Order 14192 of January 31, 2025, *Unleashing Prosperity Through Deregulation*, 24 Fed. Reg. 9065 (Feb. 6, 2025).
[10] Executive Order 14219 of February 19, 2025, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative,* 36 Fed. Reg. 10583 (Feb. 25, 2025).
[11] Executive Order, *Maintaining Acceptable Water Pressure in Showerheads* (Apr. 15, 2025).
[12] *West Virginia v. EPA*, 597 U.S. 697 (2002).

III. The Commission Fails to Use Proper Legal Justification for Its Public Notice

A. The Public Notice was Not Issued by a Commission Vote, nor was it Promulgated Through Properly Delegated Authority

The Communications Act authorizes the Commission to initiate proceedings in two ways.[13] The first is an act by the Commission.[14] The second is under delegated authority where a Bureau or Office, or other division of the FCC may, with the approval of the Commission and clear delegation of the Commission's functions, make, revise, and remove rules.[15] The *Delete, Delete, Delete* proceeding is not issued under the authority of the Commission nor through delegated authority. This Public Notice, which is labeled "DA 25-219" (DA means "delegated authority"), is not coming from a bureau with rulemaking powers, but instead reads like it is coming from the Commission itself. What is true is that this comes from the Chairman as a direct response to a Trump Executive Order.[16] Nowhere in the law allows the Chair to initiate proceedings on their own volition. As other commenters note, for this reason alone, this proceeding should not and cannot lead to the removal of rules and regulations in itself.[17]

B. This Proceeding Cannot "Delete, Delete, Delete" Without Adequately Relying on the Law

The Commission should not ignore the plain reading of the statute that the Chairman relies on to initiate this proceeding. The plain reading of the statute is what should be followed and, only if ambiguous, should an agency interpret a statute.[18] The Chairman, taking a quite wide

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[13] 47 U.S.C. § 151.
[14] § 155(a).
[15] § 155(c).
[16] Media Bureau, *FCC Chairman Carr Launches Massive Deregulation Initiative*, News Release (Mar. 12, 2025), https://docs.fcc.gov/public/attachments/DOC-410147A1.pdf.
[17] *See* Comments of Lifeline Coalition, GN Docket No. 25-133 (Apr. 11, 2025).
[18] *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___ (2024).

and liberal approach to reading the actual words in 47 U.S.C. § 161, reads the law as "directing the Commission periodically to review rules" when in fact the law is clear regarding the timing and frequency of this review.[19] Having misread the law and stretching it too far, even the foundational legal basis for opening this proceeding is lacking. It is concerning that those at the top of the agency have misread the statute to this degree to instead rely on an executive order.

IV. Any Further Action Must be Taken in Accordance with the Law Under the Administrative Procedure Act

The Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___ (2024), overruled the *Chevron* doctrine, but it did not hold that regulations previously upheld under *Chevron* are now presumptively unlawful. To the contrary, the Court emphasized that "the holdings of [prior] cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite [the Court's] change in interpretive methodology."[20] As a result, existing regulations remain valid unless and until they are properly repealed or amended in accordance with the law under the Administrative Procedure Act.[21]

An agency's belief that a prior regulation is inconsistent with the "best reading" of a statute after *Loper Bright* does not excuse it from complying with the APA's notice-and-comment requirements. The APA mandates that agencies use notice-and-comment procedures both to promulgate new substantive rules and to repeal or amend existing ones.[22]

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[19] Public Notice, note 2; 47 U.S.C. § 161 ("In every **even-numbered year** (beginning with 1998), the Commission **shall**…" (emphasis added)).
[20] *Loper Bright*, 603 U.S. at *34–35 (internal quotation marks omitted).
[21] 5 U.S.C. § 551 et seq.
[22] *See* 5 U.S.C. § 551(5) (defining "rulemaking" to include "repealing a rule"); *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 101 (2015) (agencies may only change existing rules through notice and comment).

The APA provides a narrow "good cause" exception to these requirements, allowing agencies to forgo notice and comment when "impracticable, unnecessary, or contrary to the public interest."[23] But courts have consistently held that "the various exceptions to the notice-and-comment provisions of section 553 will be narrowly construed and only reluctantly countenanced."[24] Courts have permitted invocation of "good cause" only in emergency situations involving imminent threats to health, safety, or national security, not merely because an agency believes a rule is legally infirm or no longer reflects agency policy.

In particular, even an agency's conclusion that a regulation is unlawful does not render notice-and-comment "impracticable" or "contrary to the public interest." Public comment serves vital functions even when an agency questions the legality of a rule. The Supreme Court has made clear that agencies must consider serious reliance interests and possible alternatives short of repeal when revisiting existing rules.[25] Public comment may illuminate these issues, as well as contest the agency's new statutory interpretation.

Moreover, courts have rejected the idea that failure to provide notice and comment can be dismissed as harmless error. The D.C. Circuit has held that "an utter failure to comply with notice and comment cannot be considered harmless if there is any uncertainty at all as to the effect of that failure."[26] When an agency bypasses notice and comment entirely, courts presume prejudice, because the absence of a record deprives both the agency and the court of the

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[23] 5 U.S.C. § 553(b)(B).
[24] *State of NJ v. US Environmental Protection*, 626 F. 2d 1038, 1045 (DC Cir. 1980)
[25] *Cf. FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (an agency must "provide a more detailed justification" when "its new policy rests upon factual findings that contradict those which underlay its prior policy").
[26] *Sugar Cane Growers Co-op of Fla. v. Veneman*, 289 F.3d 89, 96 (D.C. Cir. 2002).

opportunity to consider arguments and information that may be crucial to the decisionmaking process.

Finally, the APA's requirements cannot be avoided simply because the President issues a directive. While the President is not personally subject to the APA, agency actions, even when directed by the President, are.[27] Agencies must therefore engage in reasoned decisionmaking and provide notice and comment unless a genuine emergency justifies bypassing these procedures.

Loper Bright reaffirms the judiciary's responsibility to independently interpret statutes. It does not excuse agencies from adhering to the APA's requirements for repealing or amending rules. Agencies seeking to roll back regulations in light of *Loper Bright* must proceed through full notice-and-comment rulemaking and cannot invoke "good cause" absent the type of exigent circumstances recognized by longstanding case law, which are not present here.

If the Commission were to move forward with the Delete, Delete, Delete of "unnecessary" rules and regulations, it follows that it must do so in accordance with the protections afforded to Americans under the Administrative Procedure Act. While it is recognized that notice and comment is not required when an agency is interpreting its own procedural rules or policy statements when an agency is interpreting an ambiguous statute, often a formal notice and comment period is required by law.[28] As commenter TechFreedom lays out well, the formal rulemaking requirement applies not only when an agency is making a rule but also when an agency is amending or repealing a rule.[29]

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[27] *See Dep't of Homeland Security v. Regents of the Univ. of California*, 591 U.S. 1 (2020) (agency rescission of DACA program required full APA compliance despite presidential directive).
[28] 5 U.S.C. § 553(b).
[29] Comments of TechFreedom, GN Docket No. 25-133 at 5-12 (Apr. 11, 2025).

As such, adequate notice **must** be afforded for each rule that the Commission has made through notice and comment rulemaking by interpreting directives from the Communications Act into the rules and regulations that govern the FCC. Since most of these rules were made through formal rulemaking and are therefore categorized as "substantive" rules, this proceeding must remove rules in the same way – through notice and comment as prescribed by the APA. This proceeding can lead to nothing more than inefficient comment gathering since there is inadequate notice, alongside inadequate time to comment, for each rule brought forth by commenters. The only solution here is to follow the APA and Delete, Delete, Delete the Commission's rules in accordance with the law.

It is also of great importance for the Commission to be wary of using the APA's good cause exemptions. As TechFreedom rightly notes, the agency can remove a rule and waive the notice and comment requirement for good cause if "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[30] As TechFreedom also explains, this exemption must be construed narrowly. But for very limited circumstances that make the rule impractical or impossible to perform, the Commission should not remove rules that it so clearly determined were substantive and important enough to initially warrant notice and comment procedure.

V. The Commission Must Not "Delete, Delete, Delete" Rules to Undermine the Core Purposes of the FCC

The Federal Communications Commission was created with the express purpose of "regulating… communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion,

[30] Comments of TechFreedom at 20 (citing 5 U.S.C. § 553(b)(3)(B)).

national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service" for the protection national security, public safety, and public interest.[31] In achieving this mission as prescribed by Congress, the Commission must ensure that the public interest is safeguarded above all else. Therefore, the Commission must consider the following public interest goals, all of which are mandated by law, as threshold matters to ensure that any rule-removal compromising these themes does **not** occur:

- The Commission must ensure that every American has access to affordable, reliable broadband.[32]
- The Commission must continue to prioritize its universal service goals by empowering the Universal Service Fund and its programs.[33]
- The Commission must fulfill its mandate by protecting and upholding its traditional anti-discrimination obligations in accordance with statute and move progress forward by enhancing Digital Discrimination rules.[34]
- The Commission must make sure that communications services are accessible to all.[35]
- The Commission must promote robust competition through its spectrum and licensing oversight and administrative authority.[36]
- The Commission must prioritize innovations in spectrum and telecommunications services.[37]

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[31] 47 U.S.C. § 151; *see also e.g.* §§ 251, 254, 257 (together creating the Commission's Public Interest Standard).

[32] Statute directs the Commission to ensure that every American has affordable access to communications services. *See* 47 U.S.C. §§ 254(i), 1302.

[33] Statute creates universal service obligations and the Universal Service Fund. *See generally* 47 U.S.C. § 254.

[34] Statute requires the Commission to adopt rules to "prevent" discrimination and "eliminate" existing discrimination. 47 U.S.C. § 1754(b)(1)-(2). Additionally, Section 1 of the Communications Act directs the Commission to ensure that every American has access to communications without discrimination on the basis of race, color, religion, national origin, or sex. *See* 47 U.S.C. § 151.

[35] Statute directs the Commission to ensure that technology is accessible to all communities, and Congress has defined the most important populations to connect as "Covered Populations". *See* 47 U.S.C. §§ 613, 617; *see also* 47 U.S.C. §§ 721(8), 1754(a).

[36] Statute directs the Commission to ensure that the Commission uses its spectrum and licensing authority to support competition and diversity in media and communications services. *See, e.g.* 47 U.S.C. §§ 160(b), 257(b), 276(b)(1), 309(j)(3), 332(a), 543(a).

[37] Statute directs the Commission to innovate and lead globally through robust spectrum policy. *See* 47 U.S.C. §§ 157(a); 303(g), 332(a), 753.

- The Commission must promote its traditional media policies of diversity of views, diversity of ownership, and localism in media.[38]
- The Commission must promote localism in broadcast news and radio media.[39]
- The Commission must protect consumers by supporting public safety, increasing privacy protections, strengthening rules under the TCPA, and promoting policies that put the consumer first.[40]

If the Commission were to remove rules that would compromise any of the above mandates without process, its actions would be illegal and contrary to the public interest.

VI. Conclusion

Chairman Carr has created this proceeding as a direct response to a Trump Administration executive order, ignoring precedent, the law, and the Commission's public interest mandate. For the foregoing reasons, the Commission should close this proceeding.

Respectfully submitted,

/s/ Peter Gregory
/s/ John Bergmayer
/s/ Harold Feld
/s/ Alisa Valentin
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April 28, 2025

[38] Statute directs the Commission to promote diversity in American media. *See* 47 U.S.C. §§ 257(b), 307(b), 521(4), 548.

[39] Statute directs the Commission to ensure that media remains diverse and local. *See* 47 U.S.C. §§ 309(i-j), 257, 307(b).

[40] Statute directs the Commission to prioritize public safety, privacy, and other consumer protections. *See, e.g.* 47 U.S.C. §§ 154(n), 254(c)(1) (public safety); *see also* 47 U.S.C. §§ 222, 551 (privacy); *see generally* 47 U.S.C. § 227 (TCPA).