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

In the Matter of	)	
	)	WC Docket No. 25-276
Build America: Eliminating Barriers to Wireless Deployments	)	

REPLY COMMENTS OF THE STATES OF CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAI'I, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NORTH CAROLINA, OREGON, TENNESSEE, VERMONT, WASHINGTON AND WISCONSIN

Submitting counsel on signature page.

January 15, 2026

SUMMARY OF REPLY COMMENTS

The States of California, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, North Carolina, Oregon, Tennessee, Vermont, Washington and Wisconsin submit these reply comments in specific response to comments supporting the preemption of state and local laws governing the impact of Artificial Intelligence ("AI")-enabled technologies on their citizens[1] and, more broadly, to demonstrate that the Commission should not issue any declaratory ruling purporting to preempt state (and local) laws under the guise of these laws being "an effective prohibition on wireless providers' ability to provide covered service using AI technologies." Notice of Proposed Rulemaking (NPRM), Paragraph 75. The NPRM reaches far beyond the FCC's authority and, in any event, fails to provide meaningful notice of the scope of the FCC's potential preemption of state law. It therefore fails as a matter of substantive legal authority and as a matter of administrative process.

Today, AI is everywhere. AI is not limited to Large Language Models and Generative AI agents or chatbots, but also includes numerous other machine learning algorithms, which are becoming central to a wide range of interactions between people and technology, from the recommendation of streaming movies they might wish to watch, to the ranking of products on an e-commerce site, to healthcare diagnostics, and even to electronic filings that lawyers make in state court every day.

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[1] *See e.g.*, In the Matter of Build America: Eliminating Barriers to Wireless Deployments, FCC 25-67, NOTICE OF PROPOSED RULEMAKING, FCC Rcd (rel. September 30, 2025); Comments of CTIA (December 31, 2025), https://www.fcc.gov/ecfs/document/12312417000463/1; Comments of CPAC Foundation Center for Regulatory Freedom (December 30, 2025), https://www.fcc.gov/ecfs/search/search-filings/filing/12302708830692; Comments of U.S. Chamber of Commerce (December 22, 2025), https://www.fcc.gov/ecfs/search/search-filings/filing/1222288271883; Comments of INCOMPAS (December 31, 2025), https://www.fcc.gov/ecfs/search/search-filings/filing/12311923516265.

States across the political spectrum are legitimately concerned about how businesses using AI may harm their citizens and/or interfere with their own core responsibilities. If the Commission had the authority to preempt state oversight of everything that includes the use of AI, then it could, for example, bar a state court from disciplining an attorney who had electronically filed a brief replete with hallucinatory citations. That is just one example of the overreach that the Commission contemplates.

The better, and legally appropriate, course is for the Commission to stand down and allow Congress to first decide what, if any, federal preemption of state (and local) regulation of AI is appropriate.[2] Without congressional action, and for the multiple legal reasons detailed below, the Commission's reach for the suggested preemption authority will be struck down as invalid.

I. "Artificial Intelligence" is a broad and undefined term that encompasses a significant number of information services beyond the jurisdiction of Sections 253 and 332(c)(7).

The FCC's notice fails to define the term "Artificial Intelligence" and any attempt to do so would demonstrate that AI, as it is generally described, is an established information service of long-standing and broad reach – extending far beyond more recent innovations in LLMs

[2] For one proposed approach see Memorandum from State Attorneys Gen. on Artificial Intelligence ("AI") system accountability measures and policies to Ms. Stephanie Weiner, Acting Chief Counsel, National Telecomm. and Info. Admin. (Jun. 12, 2023), https://coag.gov/app/uploads/2023/06/NTIA-AI-Comment.pdf [https://perma.cc/D37M-RQ27].

and/or Generative AI models.[3] Stated differently, AI can be thought of as a form of software, something the FCC has never sought to regulate.[4]

People today encounter AI in a multitude of ways that do not require use of a chatbot. For example, AI can be used by a company to predict consumer demand for, say, boxes of cereal; shopping for everyday products; driving a smart car; and banking.[5] AI algorithms power social media, enable personalized recommendations and rank results on general-search or specialized shopping sites.[6] AI performs such common informational functions as assisting the practice of medicine, recommending prices using information shared between competitors[7], the marketing

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[3] Transcript of Remedies Hearings Proceedings at 2447: 14-17, *United States v. Google*, No. 20-3010 (D.D.C. 2025), Testimony of Sunar Pichai (stating, "Artificial intelligence, you know, building thinking machines, if you will, has been around for many, many decades"); Arend Hintze, *Understanding the Four Types of Artificial Intelligence*, GOVERNMENT TECHNOLOGY (November 14, 2016), https://www.govtech.com/computing/understanding-the-four-types-of-artificial-intelligence.html (including IBM's chess-playing supercomputer from the 1990's as among examples of AI systems); Phil Weiser, Developing a True North for Regulating AI: The Importance of Protecting Competition and Promoting Innovation, 12 Colo. Tech. L. J. 211, 214 (2025) (stating, "First, we must ask how any law will define AI. Particularly at this time, this is no easy task, as differentiating AI from the use of algorithms or even software more broadly can prove challenging.").

[4] As Colorado Attorney General Phil Weiser explained:

> At its core, artificial intelligence is a type of software. Much like the transition from desktops to mobile phones or from local programs to cloud computing, AI is the next step in how software is developed and deployed. But not all software is AI, and it is becoming increasingly difficult to disentangle the two as more and more software leverages the technology.

Towards Effective AI Governance: Promoting Trust and Preventing Harms, Remarks at the Artificial Intelligence Symposium (Sept. 30, 2025), https://coag.gov/blog-post/attorney-general-phil-weiser-prepared-remarks-artificial-intelligence-symposium-9-30-2025.

[5] *How is AI Applied in Everyday Life*, Caltech Science Exchange, https://scienceexchange.caltech.edu/topics/artificial-intelligence-research/artificial-intelligence-everyday-life-uses.

[6] Editors of ScienceNews Today, *15 Real-Life Examples of AI in Everyday Life*, Sci. News Today (Oct. 9, 2025), https://www.sciencenewstoday.org/15-real-life-examples-of-ai-in-everyday-life (providing examples of use of AI in autonomous vehicles, Netflix, shopping, and social media); *Uses of Artificial Intelligence in Everyday Life*, GeeksforGeeks (last updated Apr. 5, 2024), https://www.geeksforgeeks.org/artificial-intelligence/10-examples-of-artificial-intelligence-in-real-life-2024 (providing further examples of AI use in autonomous vehicles, healthcare diagnostics, retail); *see also* Daffodil Software, *20 Uses of Artificial Intelligence in Day-to-Day Life*, Daffodil Insights, https://insights.daffodilsw.com/blog/20-uses-of-artificial-intelligence-in-day-to-day-life.

[7] U.S. Dep't of Justice, *Justice Department Sues RealPage for Algorithmic Pricing Scheme that Harms Millions of American Renters*, Press Release No. 24-1047 (Aug. 23, 2024), https://www.justice.gov/opa/pr/justice-department-sues-realpage-algorithmic-pricing-scheme-harms-millions-american-renters.

of retail products, the operation of ride-sharing apps and self-driving vehicles, the operation of smart devices, and, of course, in the creation of legal filings.[8]

The FCC has never before suggested that its jurisdiction under Sections 253 and 332(c)(7) is broad enough to regulate state oversight of decisions made by software. Nor could it plausibly do so, unless it was prepared to regulate the entire economy, from self-driving cars to the practice of law. Notably, comments filed with the Commission in this proceeding that support preemption do not themselves offer a consistent view of what constitutes AI[9], supporting the view that the Commission has failed to provide adequate notice and highlighting the treacherous nature of the FCC attempting to oversee this emerging area. These comments mistakenly conflate the mere use of software in their business with providing a telecommunications service. *See* Comments of INCOMPAS (stating the Commission's inquiry should extend "beyond physical construction to encompass AI-related restrictions" which includes "AI-driven tools that enhance compliance, reliability, and efficiency" such as spam and fraud detection, customer service automation, call routing, and accessibility tools); Comments of U.S. Chamber of Commerce (referring to AI technologies used for "network management and optimization, resiliency and troubleshooting, self-healing, and customer service"); Comments of CPAC Foundation Center for Regulatory Freedom (suggesting that any regulation of "advanced software, automated systems, and data-driven tools" used by communication services should be subject to targeted

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[8] Jay Adkisson, *Lawyers Caught Submitting AI Briefs Face Worse Than The Court's Monetary Sanctions*, Forbes (Oct. 27, 2025), https://www.forbes.com/sites/jayadkisson/2025/10/27/lawyers-caught-submitting-ai-briefs-face-worse-than-the-courts-monetary-sanctions.

[9] *See e.g.*, Comments of CTIA, supra n.1 (no definition of AI); Comments of CPAC Foundation Center for Regulatory Freedom, supra n.1 (no definition of AI); Comments of U.S. Chamber of Commerce, supra n.1 (no definition of AI); Comments of INCOMPAS, supra n.1 (no definition of AI).

preemption and that state regulations requiring the completion of AI-related studies, audits, or disclosures can function as indirect moratoria).

II. Sections 253 and 332(c)(7) do not reach information services such as those created by or constituting AI.

The only statutory basis for the Commission's NPRM is Sections 253(a) and 332(c)(7). Section 253(a)provides in relevant part that:

> ''(a) IN GENERAL.—No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Section 332(c)(7)(B)(i) states in relevant part:

> **(i)** The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--
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> **(I)** shall not unreasonably discriminate among providers of functionally equivalent services; and
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> **(II)** shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

In paragraphs 75-78 of the NPRM, the Commission requests comments on several variations of AI use in telecommunications: (1) Paragraph 75 seeks comment on "whether state and local regulations addressing the use of AI may be an effective prohibition on wireless providers' ability to provide covered service using AI technologies"; (2) Paragraph 77 seeks comment on "ways AI tools are, or may be, used in communications networks to provide higher quality service and ensure the efficient and intensive use of the electromagnetic spectrum for the public benefit" and how state and local regulations could have the effect of "impeding the advancement of telecommunications and personal wireless service"; and (3) Paragraph 78 seeks information about state and local AI regulations that "prohibit or have the effect of prohibiting the provision of covered wireless services."

AI as a set of machine-enabled activities is beyond the jurisdiction of the Commission. AI is not the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[10] Instead, AI is a classic information service. For example, an AI-enabled app used to call a ride-sharing service or to rank products on a shopping site quite obviously meets the definition of "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications" (where telecommunications is the mechanism of transmittal).[11] So too do the now ubiquitous AI chatbots and Large Language Models that provide information using telecommunications networks.

The FCC lacks authority to regulate information services and thus lacks the authority to preempt state (and local) laws that deal with the impact of information services on their citizens. *Mozilla Corp. v. FCC*, 940 F.3d 1, 75 (D.C. Cir. 2019) ("[I]n any area where the Commission lacks the authority to regulate, it equally lacks the power to preempt state law."). Indeed, judicial decisions make plain that edge services[12] like those enabled by AI are beyond the jurisdiction of the FCC. *In re MCP No. 185*, 124 F.4th 993, 1003 (6th Cir. 2025) ("Everyone agrees with the Commission's classification of edge providers as offering an information service.").

The Commission's reference to "wireless services" does not provide authority to oversee state (and local) regulation of AI. Congress has never provided the required authorization for the

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[10] 47 U.S.C § 153(50) (defining "telecommunications").

[11] 47 U.S.C § 153(24) (defining the term "information service").

[12] "Edge providers" are "websites that generate their own content, such as video streaming services (Netflix), commercial marketplaces (Amazon), social media (Facebook), and search engines (Google)) via an interconnected network of fiber optic cables, high-speed routers, and other equipment." *In re MCP No. 185*, 940 F.3d at 998.

Commission to declare that entire categories of state law are unenforceable.[13] Such asserted preemption would require that Congress be "unmistakably clear in the language of the statute" if it intends to preempt state law in a way that would upset the "usual constitutional balance of federal and state powers." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). Nothing Congress has said provides the required clarity, nor has it expressly delegated to the Commission the very major question as to the state (and local) role in overseeing the impact of AI-enabled technologies on their citizens. *See e.g.*, *MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218, 225 (1994) (FCC was not given the power to make "basic and fundamental" changes in a statutory scheme); *see also Nat'l Fed'n of Ind. Business v. OSHA*, 142 S. Ct. 661 (2022) (per curiam) (discussing the major-questions doctrine).[14]

Where Sections 253(a) or 332(c)(7) have been applied to preempt state (or local) law, the relationship between state (or local) regulation and the provision of telecommunications has been much stronger. That is because state (or local) regulations must "materially inhibit or limit the ability of any competitor or potential competitor to compete." *In the Matter of Public Utility Comm'n of Texas*, 13 FCC Rcd. 3460, 3470 (1997). Thus, the Ninth Circuit has ruled that for Section 253(a) to preempt state (or local) regulation, there must be more than the mere "possibility" of impact on telecommunications; preemption requires that "a regulation would have to actually prohibit or effectively prohibit the provision of services." *Sprint v. Cnty. of San*

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[13] The Commission is surely aware of this lack of authority as Paragraph 77 of the NPRM asks commenters to "provide legal theories on how the Commission has authority under sections 253 and 332(c)(7) to preempt these state and local AI regulations." Their attempts to crowdsource legal authority make it abundantly clear that Congress has not provided the required authority to preempt state or local regulation of AI.

[14] *See generally City of New York*, 486 U.S. at 63–64, 66; *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986) ("[A] federal agency may pre-empt state law only when and if it is acting within the scope of its congressionally delegated authority."); *Pub. Serv. Comm'n v. FCC*, 909 F.2d 1510, 1515 n.6 (D.C. Cir. 1990) ("The FCC cannot regulate (let alone preempt state regulation of) any service that does not fall within its Title II jurisdiction over common carrier services or its Title I jurisdiction over matters 'incidental' to communication by wire").

Diego, 543 F.3d 571, 578 (9th Cir. 2008) (cleaned up).[15] That analysis has not even been attempted here and for good reason – AI-enabled technologies are users of telecommunications, not a candidate to undermine their deployment.[16]

Section 253(b) provides no adequate protection for state interests both because (i) it shifts the burden of justification onto state and local governments without justification and (ii) legitimate state interests in overseeing AI likely reach far beyond "requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."[17] Such a concept of Section 253 is so expansive that, if accepted, it would give the FCC unbounded authority to prevent any state regulation of any kind across a range of sectors in our economy where that sector used AI in some manner. Not only is this concept implausible as an interpretation of the Communications Act, it would, if implemented, raise significant Tenth Amendment concerns. *See Gregory v. Ashcroft*, 501 U.S. at 463.

Section 332 fares no better as a source of authority for the Commission. Section 332(c)(7) addresses limitations on the traditional authority of state and local governments to

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[15] Because of the failure to identify any actual effects, any Commission action would also be invalid as an arbitrary and capricious decision unsupported by any factual record. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (stating that an agency rule is arbitrary and capricious if the agency has relied on factors which Congress did not intend for it to consider, entirely fails to consider an important aspect of the problem, offers an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it cannot be ascribed to a difference in view or the product of agency expertise.)

[16] Even if one imagines a world in which some form of AI prohibits telecommunications entry and competition, the NPRM wholly fails to provide any insight into what they might be and thus does not provide sufficient notice of a declaratory ruling that a "category" of state laws are preempted under Section 253. The failure of notice arises from, as noted before, the extraordinarily diverse ways in which AI can be used. The FCC notice provides no suggestion as to how current state or local oversight might conceivably constitute a "material inhibition" of telecommunications services. *See City of Portland v. United States*, 969 F.3d 1020, 1034 (9th Cir. 2020). Unfounded speculation is not sufficient. *Id*. at 1042 (striking down the FCC's "malleable and open-ended" objections to local regulation of the aesthetic appearance of small cell facilities).

[17] *Nixon v. Missouri Municipal League*, 541 U.S. 125, 141 (2004).

regulate the location, construction, and modification of wireless communication facilities.[18] Grouping state or local regulation of AI into a section of the Act relating only to the "placement, construction, and modification of personal wireless service facilities"[19] would be a blatantly unlawful expansion of the Commission's authority.[20]

III. Legitimate State Interests Would Be Impaired Were Oversight of AI Preempted.

As Commissioner Gomez has explained, "States can be important test labs for what may or may not work with emerging technologies like this one."[21] The ability of states to act as "laboratories" for the creation of new solutions to societal challenges is a fundamental component of federalism. *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis J., dissenting). Thus, important forms of state and local regulation that seek to "govern[] or limit[]" AI include oversight of:

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[18] *See City of Rancho Palos Verdes, Cal. v. Abrams*, 544 U.S. 113, 115 (2005).

[19] 47 U.S.C § 332(c)(7)(A) ("Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.").

[20] *See City of Portland v. United States*, 969 F.3d 1041 (stating, "The Supreme Court has told us that 'an agency may not rewrite clear statutory terms.'") and *Nixon v. Missouri Municipal League*, 541 U.S. 140 (stating, "federal legislation threatening to trench on the States' arrangements for conducting their own governments should be treated with great skepticism, and read in a way that preserves a State's chosen disposition of its own power…").

[21] Statement of Commissioner Anna M. Gomez, *Build America: Eliminating Barriers to Wireless Deployments*, WC Docket No. 25-276, Notice of Proposed Rulemaking (Sept. 30, 2025).

- AI-generated deepfakes[22] and AI-generated explicit material,[23]
- Basic disclosures when consumers are interacting with specific kinds of AI [24]
- The setting of rents through the use of AI,[25]
- New forms of consumer scams,[26]
- Ensure identity protection for endorsements and other AI-generated content,[27]: and
- Consumer opt out of consequential automated-decisions.[28]

None of these are remotely related to limiting the entry or operation of telecommunications networks.

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[22] *See e.g*., Political Reform Act of 1974, CAL. GOV'T CODE §§ 81000-91014 (amended 2025); N.H. REV. STAT. ANN. § 664:14-c; COLO. REV. STAT. § 1-46-101; FLA. STAT. § 106.145; S.B. 33, 2025-2026 Leg., 34th Gen. Assemb., 1st Sess. (Alaska 2025); H.B. 986, 2023-2024 Leg., Reg. Sess. (Ga. 2024); S.B. 1571, 2024 Leg., Reg. Sess. (Or. 2024).

[23] *See e.g.*, S.B. 25-288, 2025 Leg., 75th Gen. Assem., 1st Reg Sess. (Colo. 2025); TENN. CODE ANN. § 39-17-1002, amended by 2024 Tenn. Acts, Pub. Ch. 911, eff. 7/1/2024; ILL. COMP. STAT. 103-0825 / 6-106.1 (2024); H.B. 2299, 2025 Leg., Reg. Sess. (Or. 2025); H.B. 4744, 2023-2024 Leg., 193rd Gen. Assemb., Reg. Sess. (Mass. 2024); S.B. 217, 2023-2024 Leg., 135th Gen. Assemb., Reg. Sess. (Ohio 2024); Ala. Code § 14A-6-240.

[24] UTAH CODE ANN. § 13-72a-201; CAL. HEALTH & SAFETY CODE § 1316.9; S.B. 640, 2025 Leg., Reg. Sess. (Haw. 2025); H.B. 3021, 2025-2026 Leg., 104th Gen. Assemb., Reg. Sess. (Ill. 2025); H.B. 127, 2025 Leg., Reg. Sess. (Idaho 2025); H.B. 1620, 2025 Leg., Reg. Sess. (Ind. 2025).

[25] H.B. 24-1057, 2024 Leg., 74th Gen. Assemb., Reg. Sess. (Colo. 2024); H.B. 2847, 2025 Leg., 1st Reg. Sess. (Ariz. 2025); S.B. 3657, 2024-2025 Leg., Reg. Sess. (N.J. 2024); H.B. 558-FN, 2025 Leg., Reg. Sess. (N.H. 2025); S.B. 2697, 2025-2026 Leg., Reg. Sess. (N.Y. 2025); FLA. STAT. § 106.145

[26] Phil Weiser, *Developing a True North for Regulating AI: The Importance of Protecting Competition and Promoting Innovation*, 12 Colo. Tech. L. J. 211, 214 (2025); *See, e.g.*, CAL. BUS. & PROF. CODE §§ 1798.100, et seq. (2019); FLA. STAT. §§ 501.059 et seq. (2021), OK. STAT. tit 15 §§ 775C.1, et seq. (2022); MD. CODE ANN. §§ 14-4501 et seq. (2023); H.B. 679, 2025- 2026 Leg., Reg. Sess. (Ga. 2025).

[27] *See, e.g.*, N.H. REV. STAT. ANN. § 638:26-a; CAL. CIV. CODE § 3344.1; A.B. 5164, 2024-2025 Leg., Reg. Sess. (N.J. 2025); S.B. 217, 2023-2024 Leg., 135th Gen. Assemb. Reg. Sess. (Ohio 2024); H.B. 431, 2025-2026 Leg., Reg. Sess. (Pa. 2025); UTAH CODE ANN. § 45-3-2, et seq; A3540 (N.J. Stat. Ann. § 2C:21-17.7 et. seq.).

[28] CAL. CIV. CODE §§ 1798.100 et seq. (2018); COLO. REV. STAT. §§ 6-1-1301 et seq. (2020); CONN. GEN. STAT. §§ 42-515 et seq. (2022); DEL. CODE. ANN. tit. 6 §§ 12D-101 et seq.; IND. CODE §§ 24-15-1-1 et seq.; KY. REV. STAT. ANN. §§ 367.3611 et seq.; MD. CODE ANN. §§ 14-1601 et seq.; MINN. STAT. § 325O.01; MONT. CODE ANN. §§ 30-14-2801 et seq.; NEB. REV. STAT. §§ 87-1101 et seq. (2024); N.H. REV. STAT. ANN. § 507-H; NJ §§ 56:8-166.4 et seq.; OR. REV. STAT. §§ 646A.570 et seq. (2023); 6 R.I. GEN. LAWS §§ 6-48.1-1 et seq. (2024); TENN. CODE ANN. §§ 47-18-3201 et seq.; TEX. BUS. CODE ANN. §§ 541.001 et seq. (2023); VA. CODE ANN. §§ 59.1-575 et seq.

Even more fundamentally, the FCC's proposal would impinge the function of core state responsibilities of the kind protected by the Tenth Amendment.[29] The constitutional commitment to federalism, as protected by the Tenth Amendment, means, for example, that when a state court sanctions an attorney for the electronic filing of a brief contained "hallucinated" case citations, it would be passing strange and unconstitutional for federal regulation to direct states how to approach this issue. More generally, if the use of AI became a defense against state consumer protection enforcement, that would constitute a significant intrusion into a traditional state function. Indeed, multiple state attorneys general, including California, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, North Carolina, Oregon, Tennessee, Vermont, Washington and Wisconsin, are challenging activities based on the use of AI-enabled information services, such as social media. *Arizona v. Meta Platforms*, Case 4:23-cv-05448 (N.D. Cal. Oct. 24, 2023) ECF No. 1.

We agree that AI is a transformative technology with a number of promising uses. That's why AI can be used by governments, for example, to confront important social challenges "ranging from fighting wildfires and predicting adverse weather events to water management to reducing traffic and urban emissions."[30] As the Supreme Court has explained, "federal legislation threatening to trench on the States' arrangements for conducting their own governments should be treated with great skepticism, and read in a way that preserves a State's chosen disposition of its own power." *Nixon v. Missouri Municipal League*, 541 U.S. at 140. The risk of action here

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[29] *See Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) ("Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign.").

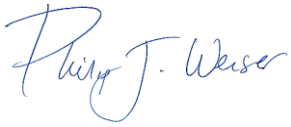
[30] Weiser, 12 Colo. Tech. L. J. at 214.

limiting how states could use AI and limit its use is yet another reason for the FCC to decline to act in this context.

IV. The FCC's process is inadequate and cannot be cured based on the current notice.

Given the breadth of potential uses of AI and the lack of any definition, the NPRM fails to provide the requisite notice required by the APA. *See FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012) (stating lack of clear notice could lead to arbitrary enforcement); *Dist. of Columbia v. U.S. Dep't. of Agric.*, 496 F. Supp.3d 213, 228 (D.D.C. 2020) (stating, "The importance of a robust notice-and-comment process is due to the central purpose served to 'subject agency decision making to public input and to obligate the agency to consider and respond to the material comments and concerns that are voiced'" and "part of the purpose of notice and comment rulemaking is to ensure the parties develop a record for judicial review.") (cleaned up); *Georgia v. Wheeler*, 418 F. Supp.3d 1336, 1374 (S.D. GA. 2019) (holding that agency's vague Proposed Rule "did nothing to put interested parties on notice of a total shift in the…definition."). The NPRM is simply too vague to be actionable. Among other defects, it contains no definition of "Artificial Intelligence," no reference to any specific state (or local) laws that would be pre-empted, and no designation of any actual effects from any state or local action preventing telecommunications entry. *Cf. City of Portland*, 969 F.3d 1020 (9th Cir. 2022) (discussing the imposition of fees on wireless carriers).

Sincerely,



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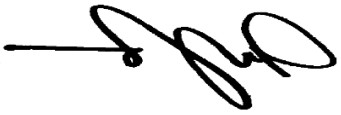

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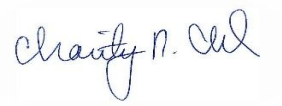

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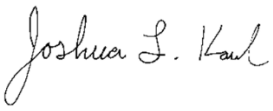

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