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May 22, 2025

Honorable Scott S. Harris
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re: *Federal Communications Commission v. Consumers' Research*, No. 24-354; *SHLB Coalition v. Consumers' Research*, No. 24-422

Dear Mr. Harris:

During oral argument in these consolidated cases, questions arose about how Congress would respond if the Court affirmed the *en banc* decision below by holding that “as a first-principles matter” the revenue-raising mechanism in 47 U.S.C. § 254 violates the nondelegation doctrine. *Consumers' Rsch. v. FCC*, 88 F.4th 917, 928–31 (11th Cir. 2023) (Newsom, J., concurring in judgment).

The relevant leadership in both chambers of Congress have now confirmed they are fully aware of this issue and are prepared to take action.

Sen. Ted Cruz (R-TX), Chair of the Senate Committee on Commerce, Science & Transportation, publicly announced today: “As the Supreme Court weighs a decision in *FCC v. Consumers' Research*, Congress stands ready to act. My team is already drafting legislation to fix USF.” Senator Ted Cruz (@SenTedCruz), X (May 22, 2025, 10:11 AM), <https://x.com/SenTedCruz/status/1925555231544262934>. Sen. Cruz has long been an advocate for USF reform. Under his leadership, the Commerce Committee released a detailed white paper proposing legislative fixes. See *Protecting Americans from Hidden FCC Tax Hikes: A Blueprint for Universal Service Fund Reform*, U.S. Senate Comm. on Com., Sci. & Transp., <https://www.commerce.senate.gov/services/files/45983F37-2FA5-4586-BCCA-8E044955E3AF>.

Similarly, Rep. Richard Hudson (R-NC), Chair of the House Energy & Commerce Committee's Subcommittee on Communications & Technology, has addressed the pending litigation by assuring that Congress will step up: “We know that if the courts go a certain way, we're going to need some kind of

skinny solution,” and “we’re prepared to take some action if we need to.” Christopher Cole, *GOP Rep. Says Lawmakers Ready for FCC Subsidy Fix*, Law360 (Mar. 28, 2025), <https://www.law360.com/articles/2317269/gop-rep-says-lawmakers-ready-for-fcc-subsidy-fix>.

When questioned during oral argument whether Congress would step up with a fix, even Petitioners’ counsel agreed: “[O]f course, Congress would do it.” Tr.110:25.

Respectfully,

/s/ R. TRENT MCCOTTER

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