

CATHY McMORRIS RODGERS, WASHINGTON  
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ONE HUNDRED EIGHTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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July 18, 2024

The Honorable Jessica Rosenworcel  
Chair  
Federal Communications Commission  
45 L St, N.E.  
Washington, D.C. 20554

Chair Rosenworcel:

We write to call to your attention *Loper Bright Enterprises v. Raimondo*, a recent Supreme Court decision that precludes courts from deferring to agency interpretations when the statutes are ambiguous.<sup>1</sup> In its decision, the Court explicitly overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which required deference to agency interpretations of ambiguous statutes.<sup>2</sup> By allowing such deference, the Court in *Chevron* enabled the “Administrative State” to usurp the legislative authority that the Constitution grants exclusively to Congress in Article I. The *Chevron* decision led to broader, more costly and more invasive agency regulation of Americans’ lives, liberty, and property.

Perhaps no administration has gone as far as President Biden’s in issuing sweeping Executive edicts based on questionable assertions of agency authority. Though supposedly independent, the Federal Communications Commission (FCC) followed the lead of the President’s administration by promulgating rules that significantly expand the power of the FCC beyond the boundaries set by Congress. These rules impose vast costs and paperwork burdens without any basis of congressional intent.<sup>3</sup> Many of these rules—such as those

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<sup>1</sup> *Loper Bright Enterprises v. Raimondo*, 603 U.S. \_\_\_\_ (2024).

<sup>2</sup> *Id.*

<sup>3</sup> See, e.g., *Burdensome Regulations: Examining the Biden Administration’s Failure to Consider Small Businesses: Hearing Before the H. Comm. on Small Business*, 118<sup>th</sup> Cong. (May 22, 2024) (statement of Dan Goldbeck, Director of Regulatory Policy, American Action Forum), available at <https://www.americanactionforum.org/testimony/burdensome-regulations-examining-the-biden-administrations-failure-to-consider-small-businesses/>.

promulgated to impose President Biden’s broadband agenda—have been based on overreaching interpretations of statutes enacted by Congress years ago, before the issues now regulated were even imagined.<sup>4</sup>

The expansive *Chevron* deference has undermined our system of government, creating an unaccountable Administrative State. Thankfully, the Court has now corrected this pattern, reaffirming that “[i]t is emphatically the province and duty of the judicial department to say what the law is.”<sup>5</sup> Given the Biden administration’s record of agency overreach, we are compelled to underscore the implications of *Loper Bright* and remind you of the limitations it has set on your authority.

As the Committees of jurisdiction authorizing and overseeing the Commission, we assure you we will exercise our Article I legislative authority to draft clear statutes that we expect you to follow. Pursuant to Rules X and XI of the U.S. House of Representatives, the Committees will ensure that the Biden administration respects the limits placed on its regulatory authority by the Court’s *Loper Bright* decision. Accordingly, to assist in this effort, please answer the following no later than July 31, 2024:

1. Please provide the following regarding legislative rules proposed or promulgated since January 20, 2021, identifying in each relevant listing the rule or rulemaking and agency statutory interpretation concerned:
  - a. A list of all pending judicial challenges to final agency rules that may be impacted by the Court’s *Loper Bright* decision.
  - b. A list of all final agency rules not yet challenged in court that may be impacted by the Court’s *Loper Bright* decision if they are so challenged.
  - c. A list of all pending rulemakings in which the Commission is relying on an interpretation of statutory authority that might have depended upon *Chevron* deference prior to the Court’s decision in *Loper Bright*.
2. Please provide the following regarding adjudications initiated or completed since January 20, 2021, identifying in each relevant listing the adjudication and statutory interpretation concerned:
  - a. A list of all pending judicial challenges to final agency adjudications that may be impacted by the Court’s *Loper Bright* decision.
  - b. A list of all final agency adjudications not yet challenged in court that may be impacted by the Court’s *Loper Bright* decision if they are so challenged.
  - c. A list of all pending adjudications in which the Commission is relying on an interpretation of statutory authority that might have depended upon *Chevron* deference prior to the Court’s decision in *Loper Bright*.
3. Please provide the following regarding enforcement actions brought by the Commission in court since January 20, 2021, identifying in each relevant listing the agency statutory interpretation sought to be enforced:

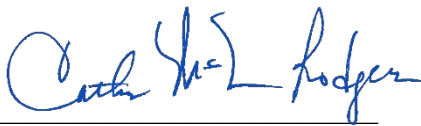
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<sup>4</sup> See, e.g., *In the Matter of Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination* GN Docket No. 22-69, FCC 23-100, Report and Order and Further Notice of Proposed Rulemaking (Rel. Nov. 20, 2023); *In the Matter of Safeguarding and Securing the Open Internet Restoring Internet Freedom*, WC Docket No. 23-320, WC Docket No. 17-108, FCC 24-52, Declaratory Ruling, Report and Order, and Order on Reconsideration (Rel. May 7, 2024).

<sup>5</sup> 603 U.S. at \_\_\_ (slip op. at 7-8) (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)).

- a. A list of all pending enforcement actions in which the agency is relying on a Commission interpretation of statutory authority that might have depended upon *Chevron* deference prior to the Court's decision in *Loper Bright*.
  - b. A list of all concluded enforcement actions in which the court deferred under *Chevron* to a Commission interpretation of statutory authority as a basis for its judgment against a non-agency party.
4. Please provide a list of all proposed or final agency guidance documents or other documents of the agency containing interpretive rules issued since January 20, 2021, identifying in each the statutory authority the rule interprets and the Commission's statutory interpretation set forth in the rule for rules likely to lead to:
- a. An annual effect on the economy of \$100,000,000 or more;
  - b. A major increase in costs or prices for consumers, individual industries, Federal, State, local, or Tribal government agencies, or geographic regions; or
  - c. Significant adverse effects on competition, employment, investment, productivity, innovation, public health and safety, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.
5. Please provide a list of all judicial decisions in cases to which the Commission has been a party that were not ultimately overturned by a higher court in which the court relied upon *Chevron* to yield to the Commission's interpretation of a statute. Please identify in each listing the statutory authority the Commission interpreted and the statutory interpretation upheld.

Sincerely,



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Cathy McMorris Rodgers  
Chair  
Committee on Energy and Commerce



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James Comer  
Chairman  
Committee on Oversight and Accountability