



October 1, 2019

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: WC Docket No. 11-10, *Modernizing the FCC Form 477 Data Program*; WC Docket No. 19-195, *Establishing the Digital Opportunity Data Collection*; RM-11841, *Petition to Prohibit Use of E-Rate Funds to Build Fiber Networks in Areas Where Fiber Networks Already Exist*; WC Docket No. 13-184, *Modernizing the E-Rate Program for Schools and Libraries*; WT Docket No. 18-197, *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*

Dear Ms. Dortch:

On September 27, 2019, Joshua Stager and Amir Nasr of New America’s Open Technology Institute (“OTI”) met with Commissioner Starks’ Special Advisor, Alisa Valentin, to discuss the *Establishing the Digital Opportunity Data Collection* proceeding.¹

We urged the Commission to collect data on the cost of broadband service in the United States. Affordability remains a major barrier to broadband adoption, yet no government agency collects data on the price of broadband service. This information is necessary to fully understand the digital divide and combat it.² Pricing information would also inform the Commission’s assessment of the broadband marketplace and whether Americans have sufficient choices. Recent comments by Hood Canal Communications, a small ISP in Oregon, and the Competitive

¹ Comments of New America’s Open Technology Institute and Public Knowledge, WC Dockets No. 19-195 and 11-10 (Sep. 23, 2019), <https://ecfsapi.fcc.gov/file/10923043564843/OTI%20and%20PK%20Broadband%20Mapping%20FNPRM%20Comments.pdf> (“OTI and PK Comments”).

² *Id.* at 3-4 (“These surveys show that low-income Americans are less likely to subscribe to broadband services than those in higher wage brackets—reflecting the fact that affordability is a key factor in whether or not a household opts to purchase broadband access.”).

Carriers Association indicate that broadband providers already store data on the price of their services and that reporting this information to the FCC would not be burdensome.³

We also reiterated the need for the Commission to continue publishing broadband data in a manner that is transparent, open, and machine-readable.⁴ The Commission has made Form 477 data available in this format for many years, enabling critical transparency and third-party research on the digital divide.⁵ This transparency was also critical to uncovering major flaws in the Commission's recent Broadband Deployment Report.⁶

We also discussed OTI's longstanding advocacy for a "broadband nutrition label," a standardized format for ISPs to disclose pricing data to consumers.⁷ The Commission adopted a nutrition label as a voluntary safe harbor for ISPs to comply with the 2015 Open Internet Order, which was later repealed as part of the Restoring Internet Freedom Order.⁸ The Commission should exercise its transparency authority to reestablish an ISP nutrition label to help consumers understand broadband service plans.

We also expressed concern about the proceeding's impact on the E-Rate and Rural Health Care programs. The FNPRM includes a question about "duplicative funding" that seemingly implicates a petition filed by three Texas carriers seeking to prohibit E-Rate funds

³ *Id.* at 4-5 ("For example, Mike Oblizalo, Vice President and General Manager of a small ISP called Hood Canal Communications, has noted that the company's pricing and tier of service data is 'collected on a monthly basis through our billing vendor and by advice of counsel we store the data for six years. The data can be exported from the billing software into a machine-readable format.'"); Senator Blumenthal Questions for the Record, "Broadband Mapping: Challenges and Solutions," Senate Committee on Commerce, Science, and Transportation (April 24, 2019), <https://www.blumenthal.senate.gov/imo/media/doc/Broadband%20Mapping%20QFR%20Responses%20-%20Senator%20Richard%20Blumenthal.pdf>.

⁴ OTI and PK Comments at 6-7.

⁵ Bill Callahan, "AT&T's Digital Redlining Of Cleveland," National Digital Inclusion Alliance (March 10, 2017), <https://www.digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/>; S. Derek Turner, "Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption" Free Press (Dec. 2016), https://www.freepress.net/sites/default/files/legacypolicy/digital_denied_free_press_report_december_2016.pdf.

⁶ Jon Brodtkin, "Ajit Pai says he's fixed giant FCC error that exaggerated broadband growth," Ars Technica (May 1, 2019), <https://arstechnica.com/tech-policy/2019/05/ajit-pai-says-hes-fixed-giant-fcc-error-that-exaggerated-broadband-growth/>.

⁷ Emily Hong et al., "Broadband Truth-in-Labeling: Empowering Consumer Choice Through Consumer Disclosure," New America's Open Technology Institute (July 2015), <https://static.newamerica.org/attachments/4508-broadband-truth-in-labeling-2/Broadband%20Truth-in-Labeling%202015.c9ecf56cc29149488ad3263779be60b0.pdf>. A copy of this report has been attached as an Appendix to this ex parte.

⁸ Jon Brodtkin, "FCC's 'nutrition labels' for broadband show speed, caps, and hidden fees," Ars Technica (April 4, 2016), <https://arstechnica.com/information-technology/2016/04/fccs-nutrition-labels-for-broadband-show-speed-caps-and-hidden-fees/>.

from ever going to an area served by an incumbent.⁹ This petition, if granted, would harm the E-Rate program and the teachers and students who rely on the networks that these funds help build.¹⁰ The petition ignores the fact that the Commission has already implemented reforms to ensure the most cost-effective use of universal service funds, as well as other realities about E-Rate special construction support.¹¹ Additionally, the petition lacks sufficient evidence to justify the Commission taking such a drastic action.¹² For these reasons, OTI recently filed comments in opposition to the petition along with Access Humboldt, National Consumer Law Center (on

⁹ Report and Order and Second Further Notice of Proposed Rulemaking, WC Docket No. 19-195, WC Docket No. 11-10 (Rel. Aug. 6, 2019), <https://docs.fcc.gov/public/attachments/FCC-19-79A1.pdf> ¶ 84 (“Can the maps and datasets derived from the Digital Opportunity Data Collection be used in connection with the other universal service programs, in particular E-Rate and Rural Health Care, to the extent they provide support for infrastructure build-out, to promote efficiency, minimize waste, and help avoid duplicative funding within the Fund?”).

¹⁰ Comments of CVIN, RM-11841, WC Docket No 13-184 (June 28, 2019), at 4, <https://ecfsapi.fcc.gov/file/10628058178768/Comments%20of%20CVIN.pdf>; Comments of Uniti Fiber, RM-11841, WC Docket No 13-184 (July 1, 2019), at 10-12, <https://ecfsapi.fcc.gov/file/107010508627947/Uniti%20Fiber%20Texas%20LEC%20Petition%20Comments%20070119.pdf> (“Comments of Uniti Fiber”); Reply Comments of Uniti Fiber, RM-11841, WC Docket No 13-184 (July 16, 2019), at 5-6, <https://ecfsapi.fcc.gov/file/10716337715586/Uniti%20Fiber%20Reply%20Comments.pdf>; Comments of State E-Rate Coordinators’ Alliance, RM-11841, WC Docket No 13-184 (July 1, 2019), at 5, <https://ecfsapi.fcc.gov/file/107020733100590/SECA%20Initial%20Comments%20to%20TX%20Carriers%20Petition.pdf>; Reply Comments of Florida E-Rate Team, RM-11841, WC Docket No 13-184 (July 16, 2019), at 3, <https://ecfsapi.fcc.gov/file/1071654070409/Florida%20E-rate%20Team%20Texas%20Petition%20Reply%20Comments.pdf>; Comments of the Consortium for School Networking, the Schools, Health & Libraries Broadband Coalition, the Texas Association of School Administrators, the Texas Association of School Boards, the Texas Association of School Business Officials, the Texas Computer Education Association the Texas K-12 CTO Council, E-Rate Central, Educational Professional Services, VST Services, CSM Consulting, Inc., the Pacific Northwest Gigapop, and the Utah Education and Telehealth Network, RM-11841, WC Docket No 13-184, CC Docket No. 02-6 (July 1, 2019), at 10-11, [https://ecfsapi.fcc.gov/file/10701076212242/Final%20SHLB%20Comments%20to%20Texas%20E-rate%20Petition%20w-Attachments%20\(07.01.19\).pdf](https://ecfsapi.fcc.gov/file/10701076212242/Final%20SHLB%20Comments%20to%20Texas%20E-rate%20Petition%20w-Attachments%20(07.01.19).pdf) (“Comments of SHLB et al.”), (“Furthermore, the Texas Carriers’ proposed process would add significant delay to the deployment of needed broadband facilities and add significant confusion to applicants that are seeking to improve the broadband capability for their schools, libraries, students, teachers and library patrons. This delay of approximately six months is particularly worrisome for schools and libraries in northern climates that may have a shorter window of time during the summer to deploy facilities – these applicants may be delayed for more than one year if they have to wait until the following summer to dig the trenches necessary for the special construction project. This delay will harm students and library patrons—the ultimate beneficiaries of the E-rate program.”).

¹¹ Comments of Incompas, RM-11841, WC Docket No 13-184, CC Docket No. 02-6 (July 1, 2019), at 9-10, <https://ecfsapi.fcc.gov/file/1070107704325/INCOMPAS%20Opposition%20-%20E-Rate%20Petition%20RM-11841.pdf> (“Comments of Incompas”); American Library Association, WC Docket No 13-184, CC Docket No. 02-6 (July 1, 2019), at 2-3, <https://ecfsapi.fcc.gov/file/1070178289870/ALA%20Comments%20Texas%20Carriers'%20Petition%2007012019.pdf>; Comments of Uniti Fiber at 4-6.

¹² Comments of SHLB et al. at 6; Comments of Incompas at 2-4.

behalf of its low-income clients), Next Century Cities, Public Knowledge, and the United Church of Christ.¹³

Lastly, we urged the Commission to reject T-Mobile's proposed acquisition of Sprint and supported Commissioner Starks' recent call to pause the agency's review of the transaction.¹⁴ OTI strongly opposes the proposed merger because it would raise consumer prices, eliminate choice, jeopardize the Lifeline program, and kill jobs.¹⁵ We are deeply concerned that the Commission is reportedly considering a draft order behind closed doors, without any public disclosure or opportunity for public comment.¹⁶

We submit this notice of ex parte presentation pursuant to Section 1.1206(b) of the Commission's rules.

Respectfully,
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¹³ Comments of New America's Open Technology Institute, Access Humboldt, National Consumer Law Center, on behalf of its low-income clients, Next Century Cities, Public Knowledge, and United Church of Christ, OC Inc, RM-11841, WC Docket No. 13-184 (July 1, 2019), <https://ecfsapi.fcc.gov/file/10702021009876/FCC%20E-Rate%20Petition%20Comments.pdf>.

¹⁴ Tweet of Commissioner Geoffrey Starks (Sep. 24, 2019), <https://twitter.com/GeoffreyStarks/status/1176523594517667842?s=20>.

¹⁵ Petition to Deny of Common Cause, Consumers Union, New America's Open Technology Institute, Public Knowledge, and Writers Guild of America, West, WT Docket No. 18-197 (Aug. 27, 2018), <https://newamericadotorg.s3.amazonaws.com/documents/T-Mobile+Sprint+Petition+to+Deny+CC+CU+OTI+PK+WGA.pdf>.

¹⁶ Ex Parte Notice of the Communications Workers of America, New America's Open Technology Institute, Public Knowledge, Free Press, Consumer Reports, WT Docket No. 18-197 (Aug. 26, 2019), <https://ecfsapi.fcc.gov/file/1082688405875/8-26-19%20Public%20Interest%20and%20Labor%20Organizations%20Commissioner%20Starks%20Ex%20Parte%20.pdf>.