February 4, 2020

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

Re: In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 19-285; Modernizing the FCC Form 477 Data Program, WC Docket No. 11-10; Establishing the Digital Opportunity Data Collection, WC Docket No. 19-195

Dear Ms. Dortch:

On behalf of The Leadership Conference on Civil and Human Rights and the undersigned groups, we write to offer our views in the above-referenced proceedings. The Leadership Conference is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States. The Leadership Conference’s Media/Telecommunications Task Force is committed to ensuring that all communities, particularly those who are underserved, have access to affordable, reliable, high-quality advanced communications services, and that workers in the industry have good jobs. The Federal Communications Commission’s (“FCC” or “Commission”) annual inquiry into whether advanced telecommunications capability is being deployed in a reasonable and timely fashion is critical to determining the state of broadband availability in the nation. Further, the Commission can only conduct an honest assessment of broadband availability through the collection of granular and accurate mapping data. Specifically, the Commission must incorporate key metrics in its data collection process that ensures broadband availability is accurately measured in underrepresented and marginalized communities who have historically lagged behind in connectivity.

As discussed in more detail below, we make the following recommendations:

- The Commission should measure advanced telecommunications capability and deployment in the 706 inquiry by looking to its practical purpose: its use by people in the United States.
- The Commission should take a forward-looking approach and update its benchmark speed for evaluating advanced telecommunications capability.
- The Commission should reaffirm its previous conclusion that adequate access to advanced telecommunications capability means access to both fixed and mobile broadband service. These services are complementary, not substitutes for each other.
The Commission’s Broadband Deployment Report and Form 477 data collection must incorporate key metrics on broadband pricing, quality of service and actual speeds, data on race and other key demographics, and data on usage and subscription rates. The Commission should not conclude that the current deployment of advanced telecommunications capability is “reasonable and timely,” and should take action to adopt subsidies, support digital inclusion programs, and bolster robust broadband Lifeline service. Such actions will accelerate investment in broadband infrastructure, encourage broadband adoption, and close the digital divide.

High-speed broadband is the essential infrastructure of the 21st century. It provides the platform for economic development, jobs, education, health care, public safety, energy efficiency, civic participation, entertainment, and communications among friends and family. Overstatements of broadband availability and inaccurate data prevent both Congress and the FCC from enacting policies that ensure unserved areas get the necessary resources to achieve broadband access. Therefore, the Commission’s annual evaluation of advanced telecommunications services and the collection of granular and accurate mapping data are both critical to the economic and social well-being of our nation.

The Commission should consider advanced telecommunications capability deployment in the 706 inquiry by looking to its practical purpose: its consistent use by the people in the United States. In its NOI, the Commission seeks comment on how it should evaluate the reasonable and timely deployment of advanced telecommunications capabilities. The Commission specifically proposes to measure progress by comparing deployment over a five-year time period. However, this methodology departs from measurement standards adopted in prior 706 inquiries and moves the Commission away from evaluating whether every person in the United States has access to broadband. The Commission should instead analyze the raw numbers of who has access to broadband, while looking to its practical purpose: its use by the people in the U.S.

While broadband deployment to unserved and underserved areas has improved over the years, use and adoption continue to be below optimal levels. According to the most recent census data, only 85.1 percent of people in the U.S. have a wired broadband connection. For households earning $20,000 a year or less, 37.3 percent do not have a wired broadband connection, and for households earning between $20,000 and $75,000, 16.6 percent lack access. Home broadband access for communities of color continues to lag behind the rest of the country. According to a recent Pew report, 39 percent of the Latino community and 34 percent of African Americans do not have a wired connection. Further, the Census Bureau recently found that Native Americans are the least connected with 53 percent lacking a broadband subscription and 53 percent of those living on tribal lands lacking access. Significant disparities in broadband access also exist for communities of color living in rural areas. A report from Third Way found that broadband availability is 16 percentage points higher in majority-white rural counties compared to majority-African American rural counties and 45 percentage points higher in majority-white rural counties compared to majority-Native American rural counties.

Households who struggle to afford broadband might subscribe, only to end a subscription later when financial struggles and pressures preclude a monthly subscription payment. Further, consumers on less
costly limited data plans often run out of data before the end of the month—thereby losing the benefit of their subscription.\textsuperscript{ix} Therefore, consistency in access and affordability impact use should be considered in conjunction with evaluating advanced telecommunications capability deployment. No private or public entity currently measures consistency in access.

Concentrated lack of broadband adoption at the neighborhood level can be more problematic than more widely dispersed adoption. A recent Brookings report found that:

In 2015, almost one in four people (a total of 73.5 million) in the United States lived in low subscription neighborhoods, where fewer than 40 percent of households subscribed to broadband. Such neighborhoods concentrate the digitally disconnected portions of the American population, leaving their residents at risk of missing the economic benefits of a high-speed internet connection.\textsuperscript{x}

Brookings further found that adoption was below 50 percent in neighborhoods where the median income was below $35,000.\textsuperscript{xi} Further granularity in data collection would improve the Commission’s assessment of adoption by neighborhood.\textsuperscript{xii}

Despite the overwhelming evidence that affordability remains a barrier to broadband adoption, the Commission has continuously placed Lifeline, the only subsidy program assisting low-income communities in securing communications services, on the chopping block. First, the Commission’s decision to eliminate the Lifeline Broadband Provider (“LBP”) designation\textsuperscript{xiii} removes a mechanism that was intended to promote more carrier participation in the program. As Commissioner Starks noted in his dissent, there were “approximately 40 companies with pending LBP designations, many of which have applied to provide service in several states with high rates of poverty.”\textsuperscript{xiv} Eliminating the LBP creates a barrier to entry for competitive and innovative service providers to offer Lifeline service. Further, the Commission is now considering several toxic proposals such as surveying eligible Lifeline applicants on whether they could afford communications services without the discount, and requiring subscribers to pay a fee in exchange for receiving a handset.\textsuperscript{xv} These proposals are ultimately designed to reduce participation in the Lifeline program. The Commission has also created program uncertainty around Lifeline by raising the minimum service standards while phasing out support for voice-only service.\textsuperscript{xvi}

This decision puts a significant number of subscribers at risk of losing service. Those who rely on Lifeline are some of the most vulnerable communities in our society, including veterans, domestic violence survivors, and those experiencing homelessness. If the Commission moves forward with its proposed changes to the Lifeline program, it will succeed in further widening the digital divide for our most marginalized and underrepresented communities.

\textbf{The Commission should take a forward-looking approach and update its benchmark speed for broadband.} The NOI proposes to maintain the current benchmark speed for fixed broadband at 25/3 Mbps.\textsuperscript{xvii} However, after five years of maintaining the benchmark at 25/3 Mbps, the Commission must take a forward-looking approach and raise the standard for broadband. Increasing the broadband benchmark speed is important as households connect to an increasing number of devices for a variety of
high-bandwidth uses such as online educational classes and tutoring, video conferencing, telemedicine, and “internet of things” devices.

Further, we note that 25/3 Mbps benchmark falls far short of the goals the Commission set in the 2010 National Broadband Plan – namely, networks capable of delivering 50/20 Mbps by 2015 and 100/50 Mbps by 2020. The current benchmark speed is also inadequate compared to international standards. According to the Commission’s own data, the U.S. ranked 10th out of 28 countries in 2016 in terms of fixed broadband download speeds and 24th out of 28 countries with respect to mobile download speeds.

The Commission should take a forward-looking approach and raise the benchmark speed to recognize demand for gigabit networks capable of delivering more data and video-intensive services and applications over the Internet.

The Commission should reaffirm its 2019 Broadband Deployment Report conclusion that fixed and mobile broadband services are complementary, not substitutes for each other, and conduct its evaluation by this measure. In its NOI, the Commission seeks comment on whether wireless broadband service is an adequate substitute for wireline. The Commission’s decision to treat fixed and mobile broadband as substitute services would have significant consequences on the progress of broadband deployment.

As the Commission acknowledged both in its approval of the T-Mobile/Sprint merger and in its 2019 Broadband Deployment Report, salient differences between mobile and fixed broadband continue to exist. Mobile broadband allows people to connect from almost any location and smartphones enable many previously unconnected people to access the Internet. However, despite advances in mobile technology, mobile LTE service remains below broadband speed, service dead zones and signal loss reduce reliability, and wireless broadband is more expensive with more restrictions than wireline broadband. These serious drawbacks, along with consumer usage patterns, reaffirm the conclusion that mobile and fixed broadband services are complementary, rather than substitutes, for each other.

Low-income communities and communities of color are more smartphone-dependent than wealthier and white communities. According to Pew, 26 percent of poor households – those with household incomes below $30,000 per year – rely only on mobile service to connect to the Internet, compared to just six percent of households earning more than $75,000 per year. Twenty-three percent of Black households and twenty-five percent of Latino households are smartphone-dependent, compared to twelve percent of white households. Smartphone dependency does not provide full access to the benefits of the Internet for these communities. In addition to the shortcomings discussed above, it remains difficult to apply for a job, take online classes or training, or write a research paper form a mobile device over mobile service. The Commission, by reconsidering mobile service as a substitute for wireline service, would deny the challenges of the smartphone-dependent, ignore a reality of the digital divide, and discourage investment and digital inclusion efforts to connect these communities.

The Commission should also not consider 5G as a substitute for fixed broadband. While 5G promises to offer faster speeds, less latency, and greater capacity compared to prior generations of wireless networks,
this technology is still in the early stages of development. Indeed, carriers are in the nascent stages of deploying 5G, and there is still much work to be done in building out hardware and infrastructure before these are fully realized networks. Further, 5G may have different pricing, deployment plans, and use cases, making it harder to determine key metrics such as speed, reliability, and coverage. Due to these uncertainties, the Commission should not consider 5G as a substitute for fixed broadband.

The NOI also proposes once again to include fixed satellite services as part of its assessment of broadband deployment. While satellite broadband has made improvements over time, it still experiences higher latency and performance issues compared to other fixed broadband technologies. Because including satellite can overstate broadband deployment, the Commission should separately analyze it and should not include satellite service in the Commission’s evaluation of whether Americans have access to broadband.

The Commission’s Broadband Deployment Report and Form 477 data collection must incorporate key metrics on broadband pricing, quality of service and actual speeds, data on race and other key demographics, and data on usage and subscription rates. The NOI proposes to continue using Form 477 deployment data for fixed services despite acknowledging the inaccuracies found within the data that lead to overstatements of broadband deployment. The FCC has attempted to address the shortcomings of Form 477 by adopting the Digital Opportunity Data Collection Order where broadband providers will be required to submit polygons depicting their coverage areas. While we encourage the FCC’s work to improve its data collection program, its efforts fall short of collecting the requisite data to get a complete and accurate picture of broadband availability particularly for underrepresented and marginalized communities. In order to get an accurate measurement, the Commission must collect and incorporate key metrics on broadband pricing, quality of service and actual speeds, data on race and other demographics, and data on usage and subscription rates as discussed below.

Pricing information is critical to evaluating broadband availability, given that cost is consistently cited as the main barrier to broadband adoption. As Commissioner Clyburn stated, “service cannot truly be available if you cannot afford it.” According to a recent study from BroadbandNow Research, there was a shift toward higher broadband speeds across the country from Q2 to Q3 in 2019, but also to higher prices. Overall 62 percent of broadband plans increased to a price greater than $60/month. Without collecting broadband pricing data, the Commission has no reliable way to track how much communities pay for broadband and how rates may impact availability. Therefore, broadband pricing data will allow the Commission to determine whether services are available at affordable rates.

Broadband speed is also one of the most important metrics for determining the quality of broadband service. However, the Commission’s Form 477 currently collects data only on broadband speeds advertised by carriers. Third-party groups such as Measurement Lab collect data on actual speeds which often reveals results that are a stark contrast to the advertised speeds collected by the Commission. A recent report from the Center for Rural Pennsylvania also revealed that since 2014 the discrepancy between the broadband speed data collected by the FCC and the speed test results collected by Measurement Lab has grown substantially with the FCC’s data becoming less accurate year-after-year. Therefore, the FCC should look at actual speeds rather than advertised speed. Without
measuring actual speeds, the Commission will be unable to grasp the full picture of broadband access and quality in communities across the country.

Existing disparities in broadband access are based on several demographic factors including race, ethnicity, income, and education level. Pew Research shows that communities of color, older adults, rural residents, and those with lower levels of education and income are less likely to have a home broadband connection.\textsuperscript{xxxv} A recent report from Free Press found that even when accounting for demographic factors like income and education, African American and Latinx communities still lag behind whites in adoption.\textsuperscript{xxxvi} This racial gap suggests that structural barriers still exist that keep communities of color from achieving broadband access.

One structural barrier marginalized communities face is digital redlining where broadband providers have withheld high-speed internet services from certain parts of their service area. A study by the National Digital Inclusion Alliance (“NDIA”) found AT&T digitally redlined the city of Cleveland, withholding high-speed broadband from low-income areas of the city.\textsuperscript{xxxvii} In 2017, NDIA released new maps finding similar evidence of digital redlining in Detroit and Toledo in areas with high poverty rates.\textsuperscript{xxxviii}

The FCC’s broadband maps can play a critical role in highlighting existing disparities in broadband access that continue to impact marginalized communities. Incorporating race and other demographic data into the broadband maps will allow policy makers and other stakeholders to develop solutions for communities that are continually left on the wrong side of the digital divide.

While the FCC must certainly collect more granular deployment data that goes beyond the census block level, it should also collect data on actual usage rates. It is not enough for communities to have access to broadband if they are not actually subscribed. Indeed, Microsoft recently released a study on the actual use of high-speed broadband finding that 162.8 million people do not use the internet at broadband speeds.\textsuperscript{xxxix} By contrast, the FCC’s current Form 477 data collection process found that 19 million households lack access.\textsuperscript{xl}

Broadband subscription levels are also disproportionately lower in marginalized communities. Households that cannot afford broadband are likely to subscribe, only to end a subscription later when financial struggles and pressures preclude a monthly subscription payment. Further, consumers on data limited plans often run out of data before the end of the month—thereby losing the benefit of their subscription. Therefore, duration in subscription should be considered when measuring usage rates.

The metrics listed above are critical to creating maps that accurately represent broadband access in the United States, and accurate maps are vital for ensuring that all communities, particularly those who are underserved, have access to affordable, reliable, high-quality broadband.

**Conclusion**

We encourage the Commission to take a broad, meaningful look at broadband deployment as it relates to its use and to investigate data that demonstrate low-income neighborhoods lack fiber infrastructure. We reiterate that the Commission should reaffirm its 2019 Broadband Deployment Report conclusion that fixed and mobile broadband services are complementary, not substitutes for each other. The
Commission’s Broadband Deployment Report and Form 477 data collection must also incorporate key metrics to ensure broadband availability is accurately measured in underrepresented and marginalized communities. The Commission should expeditiously take action to adopt subsidies, support tax policies and digital inclusion programs, and bolster robust broadband Lifeline service. Such actions will accelerate investment in broadband infrastructure, encourage broadband adoption, and close the digital divide. If you have any questions about the issues raised in this letter, please feel free to contact Media/Telecommunications Task Force Co-Chairs Cheryl Leanza, United Church of Christ, Office of Communication, Inc., at 202-904-2168 or cleanza@alhmail.com, Kate Ruane, American Civil Liberties Union, at 202-675-2336 or kruane@aclu.org, or Corrine Yu, Leadership Conference Senior Program Director, at 202-466-5670 or yu@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
American Civil Liberties Union
Asian Americans Advancing Justice | AAJC
Common Cause
Communications Workers of America
National Consumer Law Center, on behalf of its low-income clients
National Hispanic Media Coalition
United Church of Christ, OC Inc.

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ii NOI at 4.


iv See id.


Samuel Gibbs, *Smartphone use rises in US – but many owners struggle with cost, says study*, The Guardian (April 1, 2015) (according to a Pew study, “23% of all US smartphone owners and 48% of smartphone-dependent users have had to cancel or suspend their phone service because of the cost”), https://www.theguardian.com/technology/2015/apr/01/smartphone-users-us-end-contract-due-to-cost-pew-data.

*Id.* (51% of smartphone-dependent Americans run out of mobile data allowance at least occasionally during the month and almost one-third said it happens frequently).


*Id.*


*Id.*

*Id.*

See Fifth Report and Order at 61.


NOI at 4.


*Id.*


See *id.*

NOI at 8.


NOI at 6-7.


See, e.g., Rani Molla, *More than 60 million urban Americans don’t have access to or can’t afford broadband internet*, Recode (June 20, 2017), https://www.recode.net/2017/6/20/15839626/disparity-between-urban-rural-internet-access-major-economies.


*Id.*


The Center for Rural Pennsylvania, *Broadband Availability and Access in Rural Pennsylvania* (June 2019), at 8-9,


