

March 4, 2019

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

Re: Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 18-238

Dear Ms. Dortch,

On February 28, 2019, Yosef Getachew of Common Cause, and Lindsay Stern and Alisa Valentin of Public Knowledge (collectively, “the Advocates”), met with Randy Clarke, Acting Legal Advisor for Wireline and Public Safety to Commissioner Starks, with regard to the above-captioned proceeding.

The Advocates expressed concern that the Federal Communications Commission’s (“FCC” or “Commission”) draft 2019 Broadband Deployment Report (“2019 Report”) as previewed in a recent news release¹ paints an inaccurate and incomplete picture of the current state of broadband availability and deployment. The Advocates explained that the Commission’s mandate under Section 706 is to conduct an honest and accurate assessment of the state of broadband availability in the nation. To do this, the Commission must have an understanding of how broadband is used today, incorporate a methodology that relies on granular data, and include key metrics that are critical in evaluating broadband availability. The findings and conclusions of the Commission’s annual report inform policy-making at both the agency and Congress to ensure unserved areas get the necessary resources to achieve broadband access. The 2019 Report’s conclusion that broadband is being deployed in a reasonable and timely basis despite its findings that millions of households still lack access to high-speed broadband indicates the Commission continues to rely on a flawed methodology that skews broadband availability in the nation.

¹ Press Release, FCC, Report: America’s Digital Divide Narrows Substantially, (Feb. 19, 2019), <https://docs.fcc.gov/public/attachments/DOC-356271A1.pdf> (“News Release”).

The Current Benchmark Speed is No Longer Adequate to Meet the Broadband Needs of Households Today.

The Commission's news release indicates that the 2019 Report maintains the benchmark speed for fixed broadband at 25 Mbps/3 Mbps.² However, the Advocates explained this benchmark speed is no longer adequate to meet the broadband needs of households today. The Advocates highlighted that technological innovation and consumer demand for faster broadband warrant the FCC to update its benchmark speed from 25 Mbps to 100 Mbps downstream. Online innovation has dramatically grown with the increasing use of over-the-top services, internet of things devices, and other high bandwidth applications.

Communities increasingly depend on faster broadband speeds to access high-bandwidth applications such as telehealth, educational, and entrepreneurial services, including in rural areas and low-income areas that are underserved. For example, telehealth can connect patients with healthcare providers online, promote independent living, and provide access to 24/7 care. In rural communities, hospitals and healthcare facilities continue to permanently close, forcing patients to drive long distances to receive treatment from a licensed healthcare provider. Telehealth services provide a way to lower medical costs for families living in areas without adequate healthcare services; however, unreliable and costly broadband impact rural communities' ability to benefit from these services.³

The Advocates also noted that with multiple users in the same house, the current benchmark is inadequate for various, simultaneous activities. As more households depend on broadband for an increasing number of high-bandwidth uses such as outlined above, faster broadband speeds are required. Therefore, the Commission's decision to maintain the current benchmark speed fails to consider the needs of consumers today and the near future.

The Commission's Reliance on Inaccurate Data and Flawed Methodology Overstates Deployment.

The Commission's 2019 Report notes a more than 25 percent drop in the number of Americans that lack access to fixed broadband.⁴ However, the Commission's continued use of Form 477 data to measure broadband deployment makes this finding inaccurate. The Advocates

² See *id.*

³ See Peter L. Stenberg, *Rural Individuals' Telehealth Practices: An Overview*, USDA, Economic Research Service, (November 2018), <https://www.ers.usda.gov/webdocs/publications/90530/eib-199.pdf?v=869.3> (explaining that "telehealth users will likely require high-quality broadband service to fully access all telehealth services in the future because health providers continue to improve their telehealth offerings and the new services (such as virtual patient visits) require high-quality broadband service.").

⁴ See News Release at 1.

highlighted that Form 477 overstates broadband deployment because it reports deployment at the census block level, where only one household with access to broadband is sufficient for the entire block to be considered served. The Advocates explained that without more granular data that goes beyond the census block level, the FCC will not get a complete picture of broadband deployment.

The Advocates noted that the Commission must also incorporate key metrics into its methodology for assessing broadband deployment including actual speeds, pricing, quality of service, and actual usage rates. Third party groups with deeper and more granular data sets already examine some of these metrics. For example, M-Lab measures actual speeds that broadband service providers offer rather than advertised speeds.⁵ 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.⁶ The Advocates explained that the Commission should work with these groups to develop a comprehensive data set that provides an accurate and complete picture of broadband availability. Pricing information is also critical to evaluate broadband availability as cost is consistently cited as the main barrier to broadband adoption.⁷ The Advocates stressed that the Commission will continue to receive an incomplete picture of broadband availability without incorporating these metrics.

The Advocates explained that competition must be part of the Commission's analysis in assessing broadband availability. It is not enough for consumers to simply have access to one broadband provider. As the record in this proceeding demonstrates, competition promotes broadband deployment and improvements in network quality.⁸ However, the FCC's own data shows consumers often have only one choice for high-speed broadband.⁹ Without robust competition, consumers will continue to face inadequate broadband availability.

The Advocates also encouraged the FCC to include racial demographic data in its reports to get a more realistic grasp on how communities of color are being left behind regarding broadband availability. For example, communities of color in rural America face systemic

⁵ See "Who We Are," Measurement Lab, <https://www.measurementlab.net/who/>.

⁶ See Steve Lohr, *Digital Divide is Wider Than We Think, Study Says*, NY Times (Dec. 4, 2018), <https://www.nytimes.com/2018/12/04/technology/digital-divide-us-fcc-microsoft.html>;

⁷ Rabu 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-urbanrural-internet-access-major-economies>.

⁸ See Comments of New America's Open Technology Institute, GN Docket No. 18-238, at 18 (filed Sept. 17, 2018).

⁹ See *Communications Marketplace Report et al*, GN Docket No. 18-181 *et al*, Report, FCC 18-181 at 96-99 (rel. Dec. 26, 2018).

barriers in achieving broadband access.¹⁰ Further, roughly 15 percent of households with school-age children lack access to adequate broadband services, but this disparity impacts communities of color at higher rates.¹¹ There are additional layers to the digital divide that must be addressed and can only be addressed through the collection of various demographic data.

The Commission’s Statutory Mandate Under Section 706 is to Determine Whether Broadband is Being Deployed to All Americans, Not Simply to Compare Deployment to Prior Years.

The Commission’s news release cites to a few data points in the 2019 Report that find broadband deployment increased compared to prior years.¹² The 2019 Report uses these data points to conclude that broadband is being deployed in a reasonable and timely basis. However, the Advocates explained that the Commission’s mandate under Section 706 is not simply to compare deployment to prior years. Neither the plain language nor the legislative history of the statute directs the Commission to interpret its mandate by conducting a year-over-year comparison. The plain language of Section 706 directs the Commission to determine “whether advanced telecommunications capability is being deployed to *all Americans* in a reasonable and timely fashion.”¹³ Further, the Broadband Data Improvement Act (“BDIA”) indicates that Congress directed the FCC to conduct its annual broadband deployment report with particular ends in mind and with recourse to a specific framework. The BDIA was passed largely out of Congressional frustration for the Commission’s failure to provide granular information on access, and expressed broad concern over the decline of the United States in broadband rankings relative to other developed countries.¹⁴

Not only is the Commission’s approach contrary to its statutory mandate but it is also illogical. The Commission’s interpretation is circular reasoning – it measures the adequacy of deployment based on existing uses, which are the product of existing deployment, therefore deployment is always timely because consumers are always using it. The dangers of the

¹⁰ See Alisa Valentin, *Why Rural Communities of Color Are Left Behind: A Call for Intersectional Demographic Broadband Data*, Public Knowledge Blog (Oct. 19, 2018), <https://www.publicknowledge.org/news-blog/blogs/why-rural-communities-of-color-are-left-behind-a-call-for-intersectional-de>.

¹¹ Monica Anderson and Andrew Perrin, *Nearly one-in five teens can’t always finish their homework because of the digital divide*, Pew Research Center (Oct. 26, 2018), <http://www.pewresearch.org/fact-tank/2018/10/26/nearly-one-in-five-teens-cant-always-finish-their-homework-because-of-the-digital-divide/>.

¹² News Release at 1.

¹³ 47 U.S.C. 1302(b) (emphasis added).

¹⁴ See S. Rep. No. 110-204, at 1-5 (2007), as reprinted in 2008 U.S.C.C.A.N. 1707, 1707-09 (“BDIA Senate Report”); 154 Cong. Rec. H10618-02 (2008) (the House passed S. 1492 as passed by the Senate. As a consequence, there is no House Report or Conference Report).

Commission interpreting its mandate under Section 706 in this way is that it will always conclude broadband is being deployed in a reasonable and timely basis. Concluding that broadband is being timely deployed despite millions of households lacking access, as the Commission acknowledges, can prevent the agency or Congress from enacting policies that ensure robust access.

In accordance with Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed in the above-referenced docket. Please contact me with any questions regarding this filing.

Respectfully submitted,

/s Yosef Getachew

Yosef Getachew

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