

November 15, 2018

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 November 13, 2018, Yosef Getachew of Common Cause, Lindsay Stern and Alisa Valentin of Public Knowledge, and Daiquiri Ryan and Francella Ochillo of National Hispanic Media Coalition (collectively, “the Advocates”), met with Adam Copeland, Celia Lewis, Annick Banoun, Joseph Calascione, Trent Harkrader, Alexis Johns, and Pam Megna of the Wireline Competition Bureau with regard to the above captioned proceeding.

The Advocates outlined steps the Commission should take in its *Notice of Inquiry* to evaluate whether broadband is being deployed to all Americans in a timely fashion. The Advocates highlighted the record’s support for: (1) increasing the current benchmark speed for broadband to 100 Mbps; (2) the pitfalls of relying on Form 477 data and the Commission’s flawed methodology, which paints an incomplete and inaccurate picture of broadband deployment; and (3) maintaining that mobile broadband is not a substitute or functional equivalent to fixed broadband. The Advocates also urged the Commission to continue to include broadband deployment measurements for Puerto Rico and other U.S. territories. Finally, the Advocates discussed how the Commission’s actions on a number of broadband related issues have served to widen the digital divide.

**I. The Record Supports Increasing the Benchmark Speed to 100 Mbps Downstream.**

The Advocates urged the FCC to increase the current benchmark speed for broadband to 100 Mbps downstream. Several commenters in this proceeding have called for the Commission to raise the benchmark speed to 100 Mbps or higher.<sup>1</sup> As the Advocates explained, the Broadband Data Improvement Act (BDIA) directs the Commission to continuously improve the standard for broadband.<sup>2</sup>

<sup>1</sup> Comments of INCOMPAS, GN Docket No. 18-238, at 3 (filed Aug. 17, 2018); Comments of Communications Workers of America, GN Docket No. 18-238, at 3 (filed Sept. 10, 2018) (“CWA Comments”); Comments of New America, Open Technology Institute, GN Docket No. 18-238, at 30 (filed Sept. 17, 2018) (“OTI Comments”); Comments of the Central Coast Broadband Consortium, GN Docket No. 18-238, at 2 (filed Sept. 17, 2018).

<sup>2</sup> See Broadband Data Improvement Act, S. 1492, 114th Cong. (2007); see also Comments of Common Cause and Public Knowledge, GN Docket No. 18-238, at 4-5 (filed Sept. 17, 2018) (“Common Cause and Public Knowledge Comments”).

The record also demonstrates that the Commission’s own policy goals require the agency to adopt a forward-looking approach to broadband standards. As CWA explains, the National Broadband Plan provides guidance that 100 million homes should have affordable access to download speeds of at least 100 Mbps by 2020.<sup>3</sup> Finally, the record shows that the current benchmark speed is woefully inadequate compared to international broadband targets.<sup>4</sup>

The Advocates also highlighted the fact that technological innovation and consumer demand for faster broadband warrant the FCC to update its benchmark speed from 25 to 100 Mbps downstream. Online innovation has dramatically grown with the increasing use of over-the-top services, and other high-bandwidth applications. Further, with multiple users in the same house, the current benchmark is inadequate for various, simultaneous activities. As more households use broadband for an increasing number of high-bandwidth uses such as telemedicine and internet of things devices, faster broadband speeds are required. Therefore, the Commission must take a forward-looking approach and update its benchmark speed for broadband to take into account the needs of consumers today and the near future.

## **II. The Commission’s Methodology and Reliance on Form 477 Data is Flawed and Overstates Deployment.**

The Advocates expressed concern over the FCC’s continued use of Form 477 data to measure broadband deployment. The Advocates highlighted that Form 477 reporting of broadband deployment at the census block level, where only one household with access to broadband is sufficient for the entire block to be considered served, overstates broadband deployment. The Advocates explained that the FCC should collect more granular data that goes beyond the census block level to get a complete picture of broadband deployment. For tribal areas, the Advocates encouraged the Commission to work with tribal communities to find out better methods of identifying these communities without leaving them out of the data collection. The Advocates also encouraged the FCC to include racial demographic data in its reports to get a more realistic grasp on how rural communities of color are being left behind regarding broadband deployment.<sup>5</sup> Moreover, Form 477 data is self-reported by broadband providers without independent verification. This leads to little accountability of the providers collecting the data, which leads to overstating broadband availability and inaccurately depicting broadband speeds in an area. In fact, a recent GAO Report confirmed that the FCC’s data overstates broadband access on tribal lands<sup>6</sup> and specifically cited the FCC’s method of data collection under Form 477 as the cause to overstatements of broadband availability on tribal lands.<sup>7</sup> The Commission has already acknowledged that the flaws in its Form 477 data collection has lead to an inaccurate picture of broadband

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<sup>3</sup> See CWA Comments at 3.

<sup>4</sup> CWA Comments at 3; Reply Comments of New America’s Open Technology Institute, GN Docket No. 18-238, at 7 (filed Oct. 1, 2018);

<sup>5</sup> 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-demographic-broadband-data>.

<sup>6</sup> GAO, *Broadband Internet: FCC’s Data Overstate Access on Tribal Lands*, (Sept. 2018), <https://www.gao.gov/assets/700/694386.pdf> (“GAO Tribal Broadband Report”).

<sup>7</sup> *Id.* at 17.

deployment.<sup>8</sup> Its continued reliance on flawed data will only serve to undermine its findings in its annual 706 report.

The Advocates also noted that the Commission must incorporate key metrics into its methodology for measuring broadband deployment including actual speeds, pricing, and quality of service. From 2011-2016, the Commission has collected data on actual broadband speeds as part of its *Measuring Broadband America Report*.<sup>9</sup> These reports measured actual broadband speeds consumers experienced for the purpose of furthering the Commission’s “continuing goal of improving the speeds and quality of broadband access commonly available to the American public.”<sup>10</sup> However, the FCC has failed to conduct these reports for the past two years. At the same time, many consumers continue to experience much slower broadband speeds than what providers advertise.<sup>11</sup> Pricing information is also critical to evaluate broadband availability as cost is consistently cited as the main barrier to broadband adoption.<sup>12</sup> The Advocates stressed that the Commission will continue to receive an incomplete picture of broadband availability without incorporating these metrics.

Overall, inaccurate data of broadband availability skews important data which in turn prevents Congress and the FCC from making much-needed policies to help unserved areas.

### **III. Mobile Broadband Service is Not a Substitute to Fixed Broadband.**

The Commission’s *2018 Broadband Deployment Progress Report* correctly concluded that fixed and mobile broadband services are not substitutes for each other.<sup>13</sup> The record demonstrates that nothing has

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<sup>8</sup> See *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fourteenth Broadband Deployment Report Notice of Inquiry, GN Docket No. 18-238, at 6-7 (rel. Aug. 9, 2018) (explaining that the “Commission’s Form 477 deployment data for fixed services may overstate the deployment of services throughout an area.”).

<sup>9</sup> FCC, *Measuring Broadband America, Fixed Broadband Report* (2016), <https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixed-broadband-report-2016#block-menu-block-4>.

<sup>10</sup> *Id.*

<sup>11</sup> See, e.g., Letter from Kate Forcsey, Associate Policy Counsel, Public Knowledge to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5 et al, at 2 (filed July 20, 2017).

<sup>12</sup> 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-urban-rural-internet-access-major-economies>.

<sup>13</sup> See *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, *2018 Broadband Deployment Report*, FCC 18-10, at 7 ¶ 18 (rel. Feb. 2, 2018) (explaining “we disagree with those that argue that mobile services are currently full substitutes for fixed service . . . there are salient differences between the two technologies . . . there are clearly variations in consumer preferences and demands for fixed and mobile services.”); see also *Inquiry Concerning the Deployment of Advanced Telecommunications Capabilities to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Communications Act of 1996, Amended by the Broadband Data Improvement Act*, GN Docket No. 15-191, *2016 Broadband Progress Report*, FCC 16-6, at 8-9 ¶ 17 (rel. Jan. 29, 2016) (finding “fixed and mobile broadband services are not functional substitutes for

changed since the release of that report that should change the agency's findings.<sup>14</sup> A new finding that mobile broadband is a substitute for fixed broadband would distort the marketplace and undermine broadband deployment.

The FCC should continue to see fixed and mobile broadband as complementary products and measure them separately. Fixed and mobile broadband serve different consumer needs and consumers view them as distinct services.<sup>15</sup> While AT&T explained that “[m]obile broadband connections among U.S. consumers have exploded exponentially in the past ten years,”<sup>16</sup> increased consumer adoption of mobile services does not change the fact that fixed and mobile are distinct services. There are key differences between fixed and mobile services, such as in pricing, variability of speed, reliability, and data caps. For example, mobile broadband usually comes with data caps, which once reached, result in the service provider slowing the consumer's connection. With a fixed connection, large amounts of data usage are permitted without affecting speed.<sup>17</sup> We agree with ITTA that each service satisfies the statutory definition of advanced telecommunications capability, and that they “provide different functionalities, tailored to serve different consumer needs.”<sup>18</sup>

Moreover, the Advocates urged the FCC not to consider 5G as a substitute for fixed broadband. 5G is still very nascent and has only been deployed to a tiny fraction of the U.S. Further, current deployments are non-standard and may be more for testing and demonstration purposes rather than actual commercially viable deployments.<sup>19</sup> 5G is in its early stages of development, years away from full deployment, and different carriers use it to mean different deployment plans and spectrum uses. As cable industry executives have explained, 5G deployments will rely on deep fiber network deployment, which will take “an extremely long time” before 5G services could be considered a credible alternative to fixed broadband.<sup>20</sup> Thus, it is too early for the FCC to claim that 5G is a substitute for broadband. However, even if 5G was a proper substitute, it will only be deployed in urban areas, and not rural areas, which is not helpful for the FCC in creating national policies.

#### **IV. The FCC Should Continue to Include Broadband Deployment Measurement for U.S. Territories to Ensure They Are Not Left Behind.**

The Advocates urged the Commission to include broadband deployment measurement for U.S. territories. A sole filer stated that Puerto Rico and other U.S. Territories affected by natural disasters

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one another . . . in today's society, fixed and mobile broadband are both critically important services that provide different and complementary capabilities, and are tailored to serve different customer needs.”).

<sup>14</sup> CWA Comments at 3-5; OTI Comments at 20-27; INCOMPAS Comments at 4.

<sup>15</sup> Common Cause and Public Knowledge Comments at 10-11.

<sup>16</sup> Comments of AT&T, GN Docket No. 18-238, at 6 (filed Sept. 17, 2018).

<sup>17</sup> Common Cause and Public Knowledge Comments at 11.

<sup>18</sup> Comments of ITTA, GN Docket No. 18-238, at 7 (filed Sept. 17, 2018).

<sup>19</sup> See Mike Dano, *Altice CEO: 5G won't be a threat to cable for 'an extremely long time'*, FierceWireless, Nov. 5, 2018, <https://www.fiercewireless.com/5g/altice-ceo-5g-won-t-be-a-threat-to-cable-for-extremely-long-time>.

<sup>20</sup> *Id.*

should not be included in overall deployment measurements because they may skew the results.<sup>21</sup> This position has no support in the record. Disaster-stricken U.S. Territories must be included in overall broadband deployment data in order to get the most accurate data on broadband availability. Residents of U.S. Territories are U.S. citizens and must be treated as such. The Commission is Congressionally mandated to report on broadband deployment on *all* of the U.S. in order to give an accurate update on the status of broadband deployment. U.S. territories should not be overlooked in the data collection. Nor should these areas be considered served until service is actually restored. Rather than eliminate U.S. Territories from the next broadband deployment report, the FCC should track and report on their broadband deployment per GAO recommendations.<sup>22</sup> Moreover, the Advocates urged the FCC to incorporate the data for U.S. Territories in the same broadband deployment report as it does for the continental U.S., and not in a separate data report. The FCC is charged with reporting accurate data for *all Americans* and writing a separate report for U.S. Territories would be a misleading representation of broadband availability and deployment. If the FCC is finding that broadband is being adequately deployed when in reality it is not, it will lead to bad policies for unserved populations.

## **V. The Commission Should Return to its Previous Interpretation of the Congressional Mandate to Report on the Status of Broadband Deployment.**

The Advocates explained that there is no support in the plain language of section 706 for the FCC to measure whether broadband is being deployed adequately and timely by comparing deployment to prior years. The proposal advanced in the *NOI* would constitute a step backward from Congress' intent when it passed the BDIA in 2008. A main reason Congress passed BDIA was because of its frustration with the FCC's lack of granular information on access, concern over the U.S. decline in broadband rankings, and the need for metrics to ensure all Americans have access to better and affordable broadband service.<sup>23</sup> In order to satisfy Congress' intent, accurately measure broadband deployment, and narrow the digital divide, the FCC should return to its previous interpretation of section 706.

## **VI. The Commission's Recent Actions Have Widened the Digital Divide.**

While the FCC claims that its goal is to narrow the digital divide,<sup>24</sup> there have been numerous recent actions that will have the opposite effect -- specifically its proposals on the Lifeline program<sup>25</sup> and the

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<sup>21</sup> See Comments of American Cable Association, GN Docket No. 18-238, at 9 (filed Sept. 17, 2018) ("A loss of broadband infrastructure in an area as the direct result of natural disaster sheds no light on whether efforts to deploy broadband to the area have been reasonable or timely, so including such areas within calculations of overall deployment would only skew the results.").

<sup>22</sup> Common Cause and Public Knowledge Comments at 18.

<sup>23</sup> See 154 Cong. Rec. H10618-02 (2008).

<sup>24</sup> See Ajit Pai, Chairman, Federal Communications Commission, Remarks at the Maine Heritage Policy Center (Sept. 14, 2018) ("Now, I'm not saying that broadband will solve all of rural America's problems, but connectivity can help . . . That's why my mission and the FCC's top priority is closing the digital divide and maximizing the benefits of broadband for the American people.").

<sup>25</sup> Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, WC Docket Nos. 17-287, 11-42, 09-197, *Fourth Report and Order, Order on Reconsideration, Memorandum Opinion*

elimination of copper retirement rules.<sup>26</sup> The Advocates emphasized that the impact of the FCC's policies in these proceedings will negatively impact vulnerable Americans and widen the digital divide, leaving much of rural and low-income Americans disconnected.

Respectfully submitted,

/s/ Yosef Getachew

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*and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*, 32 FCC Rcd 10475 (2017) (where the Commission proposed to alter the provider eligibility requirements by only allowing providers that are facilities-based to participate in the Lifeline program, which would cause 70 percent of current Lifeline subscribers to lose service).

<sup>26</sup> See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, *Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking*, 32 FCC 11128, 11177 & n.425 (2017) (where the Commission eliminated education and outreach requirements requiring carriers to provide basic, plain language information to its customers detailing the coming changes, repairs, or discontinuances of service).