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Before the

Congress of the United States
House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology

"Empowering and Connecting Communities through Digital Equity and Internet Adoption"

January 29, 2020

Chairman Doyle, Ranking Member Latta, Chairman Pallone, Ranking Member Walden and esteemed members of the subcommittee—my name is Gigi Sohn. I am a Distinguished Fellow with the Georgetown Institute for Technology Law & Policy, and a Senior Fellow and Public Advocate at the Benton Institute for Broadband & Society.[1] I served as Counselor to former Federal Communications Commission ("FCC") Chairman Tom Wheeler from November 2013 to December 2016, and co-founded the non-profit Public Knowledge, which remains a leading voice on broadband policy issues. During my time at the FCC, I worked on the Commission's efforts to modernize its Lifeline and E-Rate programs which provide broadband subsidies, respectively, for low-income Americans and schools and libraries.

Thank you for inviting me to testify today on two vital, but overlooked, issues that are critical to connecting every American to broadband—digital equity and broadband adoption. Many of the recommendations I will make today for closing the digital divide are taken from the Benton Institute for Broadband & Society's recent report, *Broadband for America's Future: A Vision for the 2020s,*[2] authored by former FCC General Counsel Jonathan Sallet.

Introduction

It is beyond dispute that broadband Internet is a vital tool for participation in our society, our economy, and our culture. Many jobs can only be applied for online, even service-industry positions, such as those at fast food chains.[3] Access to government services, which are largely migrating online, requires reliable Internet access, especially as brick and mortar government facilities like the Department of Motor Vehicles and post offices are growing scarcer. Broadband access is also critical to successful primary education: seven out of ten schools assign homework that must be submitted online.[4] But we don't even need to look that far for examples: the only way I was permitted to submit this written testimony was online!

But beyond replacing previously in-person interactions, broadband Internet access has become a vehicle for enormous, and previously unfathomable, opportunity for individuals and businesses alike. Broadband enables artists to sell their crafts on Etsy, students to take online courses from Coursera and Khan Academy, far-flung friends and family to connect on email and social media, rural residents to access high-quality health care, and workers to telework. These tremendous

[1] I would like to thank my Georgetown Law Institute for Technology Law & Policy colleagues, DeVan Hankerson and Jeff Gary, for assisting me with this testimony.

[2] JONATHAN SALLET, BROADBAND FOR AMERICA'S FUTURE: A VISION FOR THE 2020S, BENTON INST. FOR BROADBAND & SOC'Y 1–150 (2019), https://www.benton.org/sites/default/files/BBA_full_F5_10.30.pdf [hereinafter Benton Broadband Report].

[3] Digital Inclusion Advocate Deb Socia told the Benton Institute that she sat in two different fast-food restaurants in two different cities on two different Sundays. Each time she saw a man approach a manager and beg to submit a paper job application. Both were turned down; one began to cry. "'What does it mean,' Socia asked, 'when you can't flip a burger in America without Internet access?'" Benton Broadband Report, *supra* note 2 at 64.

[4] FED COMMC'NS COMM'N, THIRD REPORT AND ORDER, FURTHER REPORT AND ORDER, AND ORDER ON RECONSIDERATION, IN THE MATTER OF LIFELINE AND LINK UP REFORM AND MODERNIZATION (WC DOCKET NO. 11-42); TELECOMMUNICATIONS CARRIERS ELIGIBLE FOR UNIVERSAL SERVICE SUPPORT (WC DOCKET NO. 09-197); CONNECT AMERICA FUND (WC DOCKET NO. 10-90) 1–224 (2016), https://docs.fcc.gov/public/attachments/FCC-16-38A1.pdf (*see also* Commissioner Rosenworcel's separate statement at 200).

advances change the nature of work, education, and healthcare and enable greater flexibility for connected Americans to choose where they live, how they work, and how they care for their families. Connection changes lives.

But it's important to pause here. The success stories of broadband are far from equally distributed. Despite the centrality of broadband Internet access to American society, a full 141 million people in the United States do not subscribe to fixed home Internet at the FCC's now outdated 25 down, 3 up (25/3Mbps) definition for broadband. In 2020, that speed requirement is far from sufficient for many of the standard needs of consumers and small-business owners.[5] That is nearly 43% of the American population. Think about that. If you walk down the street, a person you meet is nearly as likely as not to not have broadband Internet at home.

The reasons for non-adoption are not as straightforward as some may like to claim.[6] While 7% of unconnected Americans don't subscribe because no fixed broadband is available where they live, that still leaves 36% of U.S. residents who reportedly *do* have access to 25/3 Mbps fixed broadband and either choose to subscribe to a slower tier or simply go without any service at all.[7]

What is even more alarming is that home broadband adoption rates aren't improving – they have remained stable for the past three years.[8] Now is the time for policymakers to act. Addressing the reasons why so many do not subscribe to a broadband connection is critical to ensuring that all Americans can benefit from the opportunities that broadband provides.

Minorities and Low-income Americans, Both Rural and Urban, Are Disproportionately on the Wrong Side of the Digital Divide

The digital divide affects every geographic region of our country. While policymakers have focused disproportionately on broadband deployment in rural areas of the United States, Americans who live in cities also face enormous challenges to broadband connectivity.[9] Indeed, noted broadband adoption researcher John Horrigan found that the country's broadband adoption problem is three times higher in urban areas than rural.[10]

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[5] Karl Bode, *The Current Definition of 'Broadband' Is Too Slow and Ajit Pai Refuses to Change It*, VICE (Aug. 13, 2018), https://www.vice.com/en_us/article/qvmn3q/the-current-definition-of-broadband-is-too-slow-and-ajit-pai-refuses-to-change-it.

[6] *See* Dana Floberg, *The Truth About the Digital Divide*, FREE PRESS (Sept. 25, 2019), https://www.freepress.net/our-response/expert-analysis/insights-opinions/truth-about-digital-divide.

[7] *Legislating to Connect America: Improving the Nation's Broadband Maps Before the H. Comm. on Energy & Commerce, Subcomm. on Commc'ns and Tech.*, 116th Cong. (2019) (statement of Dana J. Floberg, Policy Manager, Free Press and Free Press Action Fund Figure 1 at 9).

[8] PEW RES. CTR., *Internet/Broadband Fact Sheet* (June 12, 2019), https://www.pewresearch.org/internet/fact-sheet/internet-broadband/#who-has-home-broadband.

[9] Bill Callahan, *Worst Connected Cities 2018*, NDIA (Oct. 23, 2019), https://www.digitalinclusion.org/blog/2019/10/23/worst-connected-cities-of-2018.

[10] John B. Horrigan, *Analysis: Digital Divide Isn't Just a Rural Problem*, DAILY YONDER (Aug. 14, 2019), https://www.dailyyonder.com/analysis-digital-divide-isnt-just-a-rural-problem/2019/08/14.

A closer look reveals that while unconnected Americans are spread out geographically, communities of color and low-income Americans are far more likely not to adopt broadband than are whites and individuals and families with higher incomes. According to a recent study by the Pew Research Center, 79% of white U.S. adults have home broadband, while only 66% of black Americans and 61% of Hispanic Americans do so. The same study showed that 92% of Americans making $75,000 or more have home broadband, while 78% of Americans making between $30,000 and $74,999 have it, and only 56% making less than $30,000 have home broadband.[11]

Additionally, analysis by my colleagues at Free Press of the November 2017 U.S. Census Bureau Current Population Study ("November 2017 CPSs") showed similarly troubling numbers. As of year-end 2017, 84% of white people adopted home Internet, compared to 79% of Hispanic people, 76% of Black people, 70% of American Indian/Alaska Natives, and 81% of Native Hawaiian/Pacific Islanders.[12] The same analysis showed only 42% of households with annual family incomes below $20,000 had fixed wired home Internet service, compared to 83% of households with incomes above $100,000.[13]

Racial disparities in adoption can be explained somewhat by income inequality along racial lines. But when Free Press controlled for income along with other factors like age, job, and education, it still found many racial and ethnic groups continue to lag behind whites in home broadband adoption. This can be attributed to structural inequality, such as housing discrimination and discriminatory credit and lending practices that resulted in segregated, underserved communities and facilitated disparate broadband deployment in high- and low-income areas as well as unequal access to technology.[14]

Some commentators have argued that the main reason racial minorities and low-income Americans don't adopt broadband is that they fail to see its "relevance," and that affordability is no longer a major factor.[15] But claims of non-relevance are often tied to other barriers, including cost of Internet access, lack of digital literacy and equipment costs.[16] According to the November 2017 CPS, lower income quintiles are far more likely than higher income quintiles to cite their inability to afford broadband as a primary reason for not adopting. To be sure, nearly 25% of non-adopting households making less than $20,000 annually say that lack of affordability is the most important reason they do not have broadband. Black and Hispanic households (at 29% and 26% respectively) are more likely than white households (19%) to say they would subscribe to

[11] Monica Anderson, *Mobile Technology and Home Broadband 2019*, PEW RES. CTR. 1–23 (June 13, 2019), https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019.

[12] *Legislating to Connect America: Improving the Nation's Broadband Maps Before the H. Comm. on Energy & Commerce, Subcomm. on Commc'ns and Tech.*, *supra* note 7 at 12-13.

[13] *Id.* at 14-15.

[14] Fed. Commc'ns Comm'n, *Strategies and Recommendations for Promoting Digital Inclusion* at 1–30 (Jan. 11, 2017), https://www.fcc.gov/document/strategies-and-recommendations-promoting-digital-inclusion.

[15] Blair Levin & Larry Downes, *Cities, not Rural Areas, Are the Real Internet Deserts*, WASH. POST (Sept. 13, 2019), https://www.washingtonpost.com/technology/2019/09/13/cities-not-rural-areas-are-real-internet-deserts.

[16] Floberg, *supra* note 6.

broadband if it were available at a lower price and are also more likely to seek broadband service outside the home, especially when it is provided for free, as in libraries or coffee shops. [17]

Cost Remains A Primary Barrier to Broadband Adoption

As discussed above, cost of both broadband and equipment remains a primary barrier to broadband adoption for Americans across country. Study after study demonstrates this.[18]

The high price of broadband isn't simply a pet complaint of public interest advocates. Americans pay some of the highest broadband prices in the world. In 2017, a study comparing the price of broadband among the 35 OECD countries found that Americans pay the second-highest prices. In the U.S, various studies put the average cost of a broadband connection somewhere between $60 and $72 a month.[19] Despite the fact that broadband is already expensive, some of the nation's largest broadband providers have recently raised their prices.[20] For low-income and even some middle-income families, these prices, already prohibitive, are now insurmountable.

So why are U.S. broadband prices so high? One major reason is the lack of competition across the country. Lack of competition creates adoption challenges in urban and particularly in rural areas. The truth is, it's difficult to understand exactly how much competition there is. Even though the FCC recently changed the method by which broadband providers measure who has access to broadband, the FCC's current competition data is based on system that allows broadband providers to measure their service on a broad census-block level, and further allows them to count areas as served as long as the provider *could* theoretically provide service, even if that provider does not currently and does not plan to do so. Even under these overly optimistic numbers, the FCC's data shows that about 28% of U.S. households have access to no more than

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[17] This week, the Schools, Health & Libraries Broadband Coalition and the Kansas City Public Library released a report showing a strong relationship between low household broadband adoption levels and poverty. The report also shows that rising economic tides in cities has little to do with recent growth in broadband adoption, but that declines in poverty rates do. JOHN B. HORRIGAN, EXAMINING KANSAS CITY'S PROGRESS IN ADDRESSING THE DIGITAL DIVIDE: A COMPARATIVE ANALYSIS (2019), https://www.shlb.org/uploads/Policy/Policy%20Research/SHLB%20Research/SHLB_KC_Broadband.1203_final.pdf.

[18] *See* Monica Anderson, *Mobile Technology and Home Broadband 2019*, PEW RES. CTR. 1–23 (June 13, 2019), https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019; COLIN RHINESMITH, DIGITAL INCLUSION AND MEANINGFUL BROADBAND ADOPTION INITIATIVES, BENTON INST. FOR BROADBAND & SOC'Y 1–53 (2016), https://www.benton.org/sites/default/files/broadbandinclusion.pdf; Brian Whitacre & Colin Rhinesmith, *Broadband Un-Adopters*, 40 TELECOMMC'NS POL'Y 1–13 (2016), https://www.sciencedirect.com/science/article/pii/S0308596115001937.

[19] Karl Bode, *AT&T Jacks Up Broadband Rates With Misleading "Property Tax" Fee*, TECHDIRT (Oct. 18, 2019), https://www.techdirt.com/articles/20191014/07525843188/att-jacks-up-broadband-rates-with-misleading-property-tax-fee.shtml; s*ee* Jon Brodkin, *AT&T Raises Prices 7% by Making Its Customers Pay AT&T's Property Taxes*, ArsTechnica (Oct. 11, 2019), https://arstechnica.com/tech-policy/2019/10/att-raises-prices-7-by-making-its-customers-pay-atts-property-taxes; Christian Hetrick, *Happy Holidays From Comcast. Your Cable Bill Is Going Up Again*, INQUIRER (Dec. 13, 2019), https://www.inquirer.com/business/comcast/comcast-cable-bill-rise-broadcast-fee-regional-sports-20191213.html; Karl Bode, *Charter Spectrum Once Again "Competes" By... Raising Prices*, TECHDIRT (Sept. 9, 2019), https://www.techdirt.com/articles/20190828/08453242874/charter-spectrum-once-again-competes-raising-prices.shtml.

[20] *See*, Bode, *supra* note 17; Brodkin, *supra* note 17; Hetrick, *supra* note 17.

two providers at the 25/3 Mpbs speed threshold for broadband and 95% have access to no more than two providers at speeds of 100/10 Mpbs.[21]

This lack of competition most negatively affects three demographics: middle-income households, lower-income households, and rural America. BroadbandNow found that households in states with a median household income of less than $60,000 frequently pay more for the same 25/3 Mbps than do households with a median household income of more than $60,000. That is, broadband providers take the opportunity to charge lower-income Americans more for the same service. It also found the least dense 10% of areas defined by ZIP code pay an average of 37% more for residential wired broadband at 25/3 Mbps than those in the 10% densest areas. That lower-income communities pay higher prices is no surprise, since wealthier communities are two to three times more likely to have more than two choices for broadband providers than are communities with lower-than-average household incomes.[22]

However, when new competition is introduced in broadband markets, the benefits are demonstrable. As described in greater detail in *Broadband for the 2020s*, numerous studies have shown that consumers benefit with lower prices and better quality of service as the number of broadband providers increases beyond zero, one or two.[23] Direct evidence from places like Kansas City, Chattanooga Tennessee, Wilson North Carolina, and Longmont Colorado demonstrate that new competition either from a private or municipal broadband provider results in incumbent providers dropping their prices and increasing their speeds-but not in nearby areas the new competition didn't serve.[24]

But competition alone won't solve the adoption gap. Current research suggests that low-income people can only afford to pay about $10 per month for broadband. For example, nine focus groups of low-income residents of Kansas and Maine showed that few would subscribe to broadband service at $50 a month, but many would do so at $10 a month.[25] And after speaking with eight low-income communities across the United States, Simmons University researcher Colin Rhinesmith found that $10 – $15 a month was the limit people were willing to pay, and that "anything more costly would be challenging for them to afford."[26] For those on limited incomes, even $10 – 15 a month Internet access competes with other utility bills and even the cost of food.[27]

The United States Needs an Affordability Agenda

To meet the goal of universal connectivity and the challenge of providing fixed broadband at about $10 per month, the United States must develop a multi-pronged strategy. This is what my

[21] FED. COMMC'NS COMM'N, *Internet Access Service Reports*, (Aug. 29, 2019), https://www.fcc.gov/internet-access-services-reports.

[22] Benton Broadband Report, *supra* note 2 at 47.

[23] *Id.*

[24] *Id.* at 50-51

[25] *Id.* at 65

[26] *Id.* at 66

[27] *See id.*

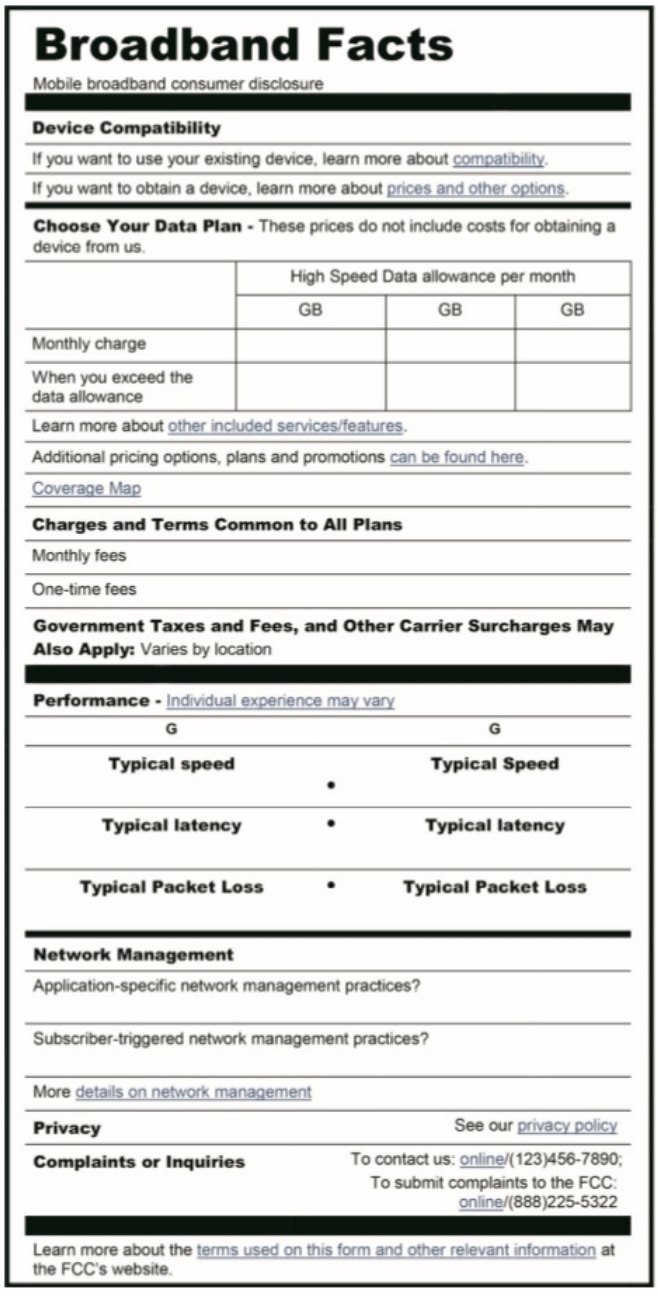
Benton colleague and former FCC General Counsel Jonathan Sallet calls an "Affordability Agenda." Below I discuss the policy strategies that should be part of such an agenda.

Require Price Transparency

As we have seen in the E-Rate context, when broadband providers are required to be transparent about their prices, competitive pressures often drive prices down.[28] While the FCC has finally changed the type of data broadband providers must submit to demonstrate who does and does not have access to broadband, the carriers are not required to submit pricing information. Congress should mandate that the FCC require broadband providers to submit non-promotional pricing information and should require public disclosure of added fees and equipment costs. In addition, Congress or the FCC should restore the Fixed Broadband Consumer Disclosure Label (reproduced below as Figure 1),[29] which was withdrawn by the FCC in 2017. This label will help consumers make informed choices about the price, quality, and value of their broadband service.

[28] EDUCATION SUPERHIGHWAY, 2017 STATE OF THE STATES: FULFILLING OUR PROMISE TO AMERICA'S STUDENTS 19 (2017), https://s3-us-west-1.amazonaws.com/esh-sots-pdfs/educationsuperhighway_2017_state_of_the_states.pdf.

[29] Jon Brodkin, *FCC's "Nutrition Labels" for Broadband Show Speed, Caps, and Hidden Fees*, ARSTECHNICA (Apr. 4, 2016), https://arstechnica.com/information-technology/2016/04/fccs-nutrition-labels-for-broadband-show-speed-caps-and-hidden-fees.



Broadband Facts

Mobile broadband consumer disclosure

Device Compatibility

If you want to use your existing device, learn more about compatibility.

If you want to obtain a device, learn more about prices and other options.

Choose Your Data Plan - These prices do not include costs for obtaining a device from us.

	High Speed Data allowance per month		
	GB	GB	GB
Monthly charge			
When you exceed the data allowance			

Learn more about other included services/features.

Additional pricing options, plans and promotions can be found here.

Coverage Map

Charges and Terms Common to All Plans

Monthly fees

One-time fees

Government Taxes and Fees, and Other Carrier Surcharges May Also Apply: Varies by location

Performance - Individual experience may vary

G		G
Typical speed	•	**Typical Speed**
Typical latency	•	**Typical latency**
Typical Packet Loss	•	**Typical Packet Loss**

Network Management

Application-specific network management practices?

Subscriber-triggered network management practices?

More details on network management

Privacy See our privacy policy

Complaints or Inquiries To contact us: online/(123)456-7890; To submit complaints to the FCC: online/(888)225-5322

Learn more about the terms used on this form and other relevant information at the FCC's website.

Figure 1. Sample Broadband Nutrition Label

Promote Competition

As discussed above, more competition means lower broadband prices for everyone. There are many things that Congress could do to incentivize more competition, but I will focus on three:

First, Congress should prohibit states from blocking communities that wish to build their own broadband networks, be they municipal networks, public-private partnerships or other arrangements. While numerous cities and towns across the nation have successfully built gigabit speed networks at low prices, 19 states still have laws on the books that prohibit either the

building or the expansion of such networks.[30] These laws, passed at the urging of the largest incumbent broadband providers, are not only flatly anticompetitive, they prohibit deployment in rural communities that the incumbents have no intention of ever serving. Most destructively, these laws directly raise the price of broadband for the most vulnerable Americans.

Second, Congress should give a bidding preference to "open access networks" when allocating broadband deployment subsidies. Open access networks allow any broadband provider to connect to a network and provide last-mile service to a customer. This model has become very popular for community broadband builds. For example, the Utah Telecommunications Open Infrastructure Agency (UTOPIA) network is the largest open-access network in the United States, comprised of a consortium of 15 Utahan cities. UTOPIA owns and operates the fiber middle-mile and last-mile network and permits private service providers to use the infrastructure to offer retail digital services to customers in UTOPIA member cities. Currently there are 10 Internet service providers offering residential service and 30 offering business services on UTOPIA's network. This level of broadband competition is practically unheard of in the United States.

Finally, either the FCC or Congress should prohibit exclusive contracts between broadband providers and so-called multi-tenant environments ("MTEs") like apartment buildings and condominiums. Nearly one-third of Americans, including many low-income Americans, live in MTEs and have no choice of broadband provider, leaving them at the mercy of whatever price the provider decides to set. The FCC began a proceeding to examine these exclusive deals last summer but has not yet issued an order.[31]

Protect and Strengthen the Lifeline Program

In 2016 the FCC moved the Lifeline program into the digital age by applying the $9.25 subsidy to both fixed and mobile broadband service. For more than 12 million Americans, this is the only way they can afford the Internet access they need to apply for jobs, submit homework, and receive government services. Importantly, the FCC's 2016 *Lifeline Modernization Order* opened the door for new competition in the Lifeline program by offering an FCC-administered path to becoming a Lifeline provider.[32] Where in the past a Lifeline provider needed permission from each state in which it sought to do business, the 2016 Order permitted one-stop-shopping for a broadband provider to become a Lifeline Broadband Provider ("LBP"). What the FCC hoped to accomplish was more competition for Lifeline service, which would lower prices and allow the small subsidy to go further in getting robust broadband service to low-income Americans.

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[30] Kendra Chamberlin, *Municipal Broadband Is Roadblocked Or Outlawed In 25 States*, BROADBANDNOW (Apr. 17, 2019), https://broadbandnow.com/report/municipal-broadband-roadblocks.

[31] FCC, NOTICE OF PROPOSED RULEMAKING AND DECLARATORY IMPROVING COMPETITIVE BROADBAND ACCESS TO RULING IN THE MATTER OF IMPROVING COMPETITIVE BROADBAND ACCESS TO MULTIPLE TENANT ENVIRONMENTS (GN DOCKET NO. 17-142); PETITION FOR PREEMPTION OF ARTICLE 52 OF THE SAN FRANCISCO POLICE CODE FILED BY THE MULTIFAMILY BROADBAND COUNCIL (MB DOCKET NO. 17-91) FCC.GOV 1–65 (2020), https://www.fcc.gov/ecfs/filing/07122510817317.

[32] FED. COMMC'NS COMM'N, *FCC Modernizes Lifeline Program for Low-Income Consumers* (Apr. 27, 2016), https://www.fcc.gov/document/fcc-modernizes-lifeline-program-low-income-consumers.

Nine new carriers sought and received LBP status. But in his first weeks in office, FCC Chairman Pai reversed those determinations, and later, in an order issued in November 2019, the FCC eliminated LBP status altogether, requiring once again that Lifeline providers seek state-by-state permission to provide service.[33] When I was at the FCC, I was told in no uncertain terms by several large broadband providers that such a requirement ensured that they would not participate in the Lifeline Program.

The current FCC has been unsuccessful in driving a stake through the heart of the Lifeline program by disallowing mobile resellers from participating in the program. Approximately 70% of Lifeline recipients get service from these companies. A decision by the U.S. Court of Appeals, D.C. Circuit reversing an FCC order prohibiting resellers from obtaining an additional tribal Lifeline subsidy ensured that the Commission could not similarly prohibit resellers from obtaining any Lifeline subsidies.[34]

But this has not deterred the FCC majority from trying to kill Lifeline by a thousand cuts. In addition to eliminating the federal LBP status, the November 2019 Lifeline Order added new hurdles to the Lifeline application process, and in a further request for comments, asked whether (1) Lifeline providers should be prohibited from providing free phones for customers in person or at all, and (2) Lifeline recipients should be asked whether they would buy broadband in the absence of a Lifeline subsidy. This latter inquiry caused FCC Commissioner Geoffrey Starks to remark that "I don't believe we've ever probed elderly Medicare recipients on how much they actually value their medical services: nor should we probe vulnerable Lifeline recipients on how much they value their connectivity."[35]

Eliminating competition from the Lifeline program, erecting hurdles to applying and receiving Lifeline funds, asking invasive questions about how much applicants value broadband and proposing to require "skin in the game" from Americans for whom paying for a handset could mean less food on the table or fewer clothes on their back is intended to do one thing—dampen demand for the program so severely that it shrinks to nothing.

The rickety base upon which the future of Lifeline now sits was exacerbated by the FCC's 2017 decision to reclassify broadband as an information service. Since under the Communications Act, Lifeline funds are available only to telecommunications services, it is highly questionable whether Lifeline funds can be used for broadband at all under this classification. In its decision

[33] FCC, FIFTH REPORT AND ORDER, MEMORANDUM OPINION AND ORDER ON RECONSIDERATION, AND FURTHER NOTICE OF PROPOSED RULEMAKING IN THE MATTER OF BRIDGING THE DIGITAL DIVIDE FOR LOW INCOME CONSUMERS (WC DOCKET NO. 17-287); LIFELINE AND LINK UP REFORM AND MODERNIZATION (WC DOCKET NO. 11-42); TELECOMMUNICATIONS CARRIERS ELIGIBLE FOR UNIVERSAL SERVICE SUPPORT (WC DOCKET NO. 09-197) FCC.GOV 1–110 (2019), https://www.fcc.gov/document/fcc-further-strengthens-lifeline-against-waste-fraud-and-abuse [hereinafter November 2019 Lifeline Order].

[34] National Lifeline Association v. FCC, No. 18-1026 (D.C. Cir. 2019), https://cases.justia.com/federal/appellate-courts/cadc/18-1026/18-1026-2019-02-01.pdf?ts=1549035042.

[35] *See* 2019 Lifeline Order, *supra* note 31.

upholding the FCC's repeal of the 2015 *Open Internet Order*, the D.C. Circuit remanded this very question back to the FCC.[36]

Congress should halt the war on Lifeline and instead strengthen the program. Among other things, it should (1) make clear that Lifeline funds can support broadband Internet access; (2) restore the federal LBP designation and require the FCC to authorize new federal LBPs; (3) remove hurdles to the application process and instead give the Universal Service Administration Corporation (USAC) the resources it needs to expedite the hard launch of the National Eligibility Verifier system, which was mandated by the 2016 Modernization Order but is still in "soft-launch" mode across the country. This system would make Lifeline enrollment automatic when applicants are enrolled in a qualifying federal program; (4) vacate the FCC's November 2019 *Further Notice of Proposed Rulemaking* in the Lifeline docket.[37]

There are two other important ways Congress and the FCC can strengthen Lifeline and ensure that a program that is underutilized[38] is meeting the needs of those who can benefit most. First, Congress or the FCC should consider enlarging the scope of eligibility. In 2019 the income eligibility for Lifeline was 135% of the federal poverty guidelines: $28,796 for a family of three. But there is nothing magical about that number, and indeed, eligibility for federal programs ranges between 125 –185% of the federal poverty line ($39,461), and some federal programs don't use poverty guidelines at all. As the Benton Broadband Paper puts it "[t]he FCC's 135 percent standard should be re-examined in light of the importance of access to broadband, the evolution of the broadband market, the cost of expanding eligibility and, of course what people can afford."[39]

Second, Congress and the FCC should consider whether an additional subsidy should be provided so that Lifeline recipients can purchase robust fixed broadband service. Currently, 90% of Lifeline recipients purchase mobile service, in large part because those services are usually free with the $9.25 subsidy, while fixed services are not. And as the FCC itself recognizes, mobile service is not a substitute for fixed broadband. It is much more difficult to apply for a job, do homework, or take online courses with only a mobile connection, which often comes with strict data caps and much slower speeds. [40]

Condition Federal Funding on Offering Low-Cost Broadband Service

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[36] Mozilla Corp. v. FCC, No. 18-1051 (D.C. Cir. 2019), https://cases.justia.com/federal/appellate-courts/cadc/18-1051/18-1051-2019-10-01.pdf?ts=1569940362.

[37] 2019 Lifeline Order, *supra* note 31.

[38] For example, in 2018, the Lifeline program spent just 50% of its budget, $1.14 billion out of $2.28 billion. Jon Brodkin, *Ajit Pai works to cap funding for rural and poor people, gets GOP backing*, ARSTECHNICA (June 4, 2019), https://arstechnica.com/tech-policy/2019/06/fcc-funding-for-poor-people-and-rural-areas-ajit-pai-says-lets-cap-that.

[39] Benton Broadband Paper, *supra* note 2 at 68.

[40] Despite my best efforts and those of my FCC colleagues, we could not in 2016 convince any new major cable operator who provides low-cost fixed broadband service to become a Lifeline provider (Cox was a lifeline provider at the time and remains one). Indeed, any chance of that occurring vanished when the FCC eliminated the federal LBP designation in November 2019.

The FCC disburses billions of dollars annually to mobile and fixed providers to build out their networks. Indeed, the FCC will vote this week to approve the $20.4 billion Rural Digital Opportunity Fund (RDOF) that will make grants to broadband providers to build high-speed networks in high cost areas. This money will be disbursed without any guarantee that the recipients will help to make broadband more affordable for their low-income customers. Congress and the FCC should consider as a requirement for funding for broadband deployment the provision of 50/50 Mpbs service (with other requisite performance criteria including unlimited usage) for $10 per month to eligible recipients.[41]

Support Programs that Make Low-Cost Computing Devices Available

While most of my testimony has focused on the cost of Internet access, the 2019 Pew survey also found that 6% of non-adopters cited the cost of computing equipment as the primary reason they don't have broadband at home.[42]

There are a number of non-profits around the country that are providing low-cost or free computers, mostly refurbished, to families in need, including PCs for People,[43] Connecting for Good in Kansas City Missouri,[44] Free Geek in Oregon,[45] and E2D in Charlotte North Carolina.[46]

As discussed in greater detail below, Congress can support these and other state and local digital inclusion initiatives by passing the Digital Equity Act and other legislation that supports state and local efforts to connect their citizens.

Provide Support for Access "To and Through" Community Anchor Institutions

Anchor institutions, such as schools, libraries and healthcare providers, not only provide Internet access to populations most impacted by the digital divide (low-income families, job seekers, students, and seniors), these important institutions also provide "jumping off" points to extend additional broadband deployment to surrounding residential and business customers.

Some community anchor institutions have adopted programs that extend broadband access beyond their walls. For example, libraries and schools in a number of cities and towns across the nation have been experimenting with mobile wireless hotspot programs, which allow people to "check-out" broadband hotspots for home use. Schools have been providing buses equipped with Wi-Fi for students to use after hours.

Currently, the FCC only permits E-Rate funds to be used for broadband access to and within the physical school or library. That restriction makes no sense at a time when 70% of schools assign homework online and where learning occurs far beyond the classroom. Congress should clarify

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[41] Benton Broadband Paper, *supra* note 2 at 69.

[42] Monica Anderson, *Mobile Technology and Home Broadband 2019*, PEW RES. CTR. (June 13, 2019), https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019.

[43] *PCs for People*, https://www.pcsforpeople.org.

[44] *Connecting for Good*, https://www.connectingforgood.org.

[45] *Free Geek*, https://www.freegeek.org.

[46] *E2D*, https://www.e-2-d.org.

that programs like hotspot lending, Wi-Fi on buses and other innovative broadband programs that promote K-12 learning are eligible for E-Rate funds.

Congress and the FCC Should Assist Local Communities' Efforts to Connect their Residents

If digital equity is ever to be achieved, it will be because of the efforts of local communities. While the majority of my testimony has focused on what the federal government can do to make broadband more affordable, the hard work of making sure that non-adopters (1) are aware of how to access low cost broadband services and programs like Lifeline; (2) have the skills to use the Internet both for personal and professional use; and (3) can obtain low-cost computing equipment and technical support, falls to community digital inclusion advocates who are dedicated to ensuring that all of their residents are connected.

Already, with assistance from groups like the National Digital Inclusion Alliance and Next Century Cities, cities and towns around the country have adopted digital inclusion plans. These plans include providing digital literacy training, job skills training, low-cost computers and information about where low-cost connectivity can be found. In places like Kansas City, Boston, Charlotte, Chicago and Austin, a digital inclusion plan becomes a starting point for coordination between non-profits, community anchor institutions and government entities to ensure that as many people on the wrong side of the digital divide are being reached.[47]

Congress and the FCC can and should assist these efforts. First and foremost, Congress should pass the Digital Equity Act of 2019, which establishes two grant programs to be administered by the National Telecommunications and Information Administration ("NTIA") to promote digital equity nationwide. The legislation creates an annual $120 million formula grant program for all 50 states, the District of Columbia, and Puerto Rico to fund the creation of digital equity (or inclusion) plans in each State. It also creates an annual $120 million competitive grant program to support digital equity projects undertaken by individual groups, coalitions and other communities of interest. Finally, the Digital Equity Act tasks NTIA with evaluating digital equity projects and providing local, state and federal policymakers with detailed information about which projects are most effective.

These funds, which pale in comparison to what the federal government gives to for-profit network operators to deploy broadband, will incentivize more states and localities to develop their own digital inclusion programs and will provide sorely needed funds to the small community-based nonprofits that are doing the hard work of connecting their communities on the ground.

Finally, the FCC should revisit its own recommendations for helping communities promote digital inclusion which it made pursuant to the *2016 Lifeline Modernization Order*. Those recommendations are included in a report entitled *Strategies and Recommendations for*

[47] Benton Broadband Paper, *supra* note 2 at 73.

Promoting Digital Inclusion,[48] and since it was published just before the FCC leadership turned over in January 2017, has been largely ignored. But the report, in addition to highlighting best practices for closing the digital divide, also made a number of recommendations for how the FCC can engage in outreach and develop partnerships with consumer groups, community groups, philanthropic organizations, local and federal government officials and industry to increase broadband adoption and digital literacy for the unconnected.

Conclusion

Achieving digital equity will take a multipronged strategy and the collective efforts of local, state and federal governments, community anchor institutions, the non-profit sector, philanthropies, industry and countless individuals. I look forward to working with the Subcommittee on the recommendations I have put forth today.

[48] FED. COMMC'NS COMM'N, *Strategies and Recommendations for Promoting Digital Inclusion* (Jan. 11, 2017), https://www.fcc.gov/document/strategies-and-recommendations-promoting-digital-inclusion.