

Subcommittee on Communications and Technology
Hearing on
“Trump FCC: Four Years of Lost Opportunities”
September 17, 2020

The Honorable Michael O’Rielly, Commissioner
Federal Communications Commission

The Honorable Anna Eshoo (D-CA):

1. Political files submitted to the Federal Communications Commission (FCC) play an important role in ensuring the public knows how candidates, outside groups, and others are using the public’s airwaves for television and radio during an election. Unfortunately, the millions of documents the FCC manages are not machine readable, making meaningful analysis nearly impossible. Would you support a requirement for political files to be submitted to the FCC in a machine-readable format?

ANSWER: The Commission has previously considered this matter, and the record identified significant costs and other burdens for the Commission staff that may outweigh the suggested benefits to consumers. There is currently no item before the Commission on this topic; however, should an item be circulated before the end of the year, I will consider all views and give them due consideration.

2. The FCC’s 2020 Broadband Deployment Report finds that “the current speed benchmark of 25/3 Mbps remains an appropriate measure by which to assess whether a fixed service is providing advanced telecommunications capability,” specifically citing the statutory definition of “advanced telecommunications capability” as services that “enable[] users to originate and receive high-quality voice, data, graphics, and *video* telecommunications.” (¶13; 47 U.S.C. § 1302(d)(1) (emphasis added)). However, when I look at the recommended bandwidth for Zoom, Google Meet, and Cisco WebEx, each requires upload speeds of 3 Mbps for high quality video.

Given that millions of households are juggling with parents participating in video calls at the same time as students are participating in class via video conference, does this speed threshold make sense today? What do you think is an appropriate threshold?

ANSWER: In August 2020, the Commission sought comment on issues and proposals to guide its analysis in drafting its annual, statutorily mandated Broadband Deployment Report, including the appropriate speed benchmark for advanced telecommunications capability. For the 2021 Report, the Commission proposed to maintain its existing 25/3 Mbps benchmark for fixed services, noting that a consistent benchmark helps the Commission and the public track deployment progress over time. While I am cognizant of the unprecedented bandwidth demands imposed on residential broadband networks due to the ongoing COVID-19 pandemic, 25/3 Mbps service supports the typical usage needs and demands of the vast majority of consumers even

during times of high demand such as the pandemic, and this level certainly enables users to originate and receive high-quality voice, data, graphics, and video calling. Further, this functional test is codified in the statute, and it would be inappropriate for the Commission unilaterally to invent a new threshold to conform to the demands of every potential usage pattern. I would also point out that the recommended upload speed for *high quality* video calling on Zoom, Google Meet, and Cisco WebEx is in fact much lower than 3 Mbps: recommendations vary between 600 Kbps and 1.5 Mbps. While 3 Mbps upload speeds may be recommended for *high definition* video conferencing, the statute does not reference such a standard of video resolution.

Additionally, I am very concerned that altering the current benchmark would allow the Commission to take its eye off its primary focus of connecting those Americans who don't have any access to broadband service at this threshold. As we've seen in past examples, increasing the broadband threshold can result in subsidies being spent on upgrades in areas that already have service, rather than reaching those that are truly unserved.

3. We often discuss the digital divide as if it's only about access to broadband when we know our country also faces an affordability crisis. Yet the FCC doesn't collect broadband pricing data.

Does the FCC have the legal authority to collect broadband pricing data? If so, why hasn't it done so?

ANSWER: I completely agree that affordability is a significant obstacle to broadband access for millions of Americans, and I have, therefore, been a strong advocate of ensuring that the Lifeline program remains viable for those who need it. At the same time, the statute doesn't directly speak to this matter, and it is unclear whether other provisions could be read to provide authority for the FCC to collect broadband pricing data. Further, the Broadband DATA Act of 2020 omits any mention of such information, and specifically focuses on improving the accuracy and granularity of the FCC's broadband deployment maps. As such, the Commission's efforts to improve its data have focused primarily on deployment, rather than on pricing. Finally, it should be noted that while the FCC currently does not collect broadband pricing data, Internet Service Providers are required to publicly disclose pricing data, pursuant to the Transparency Rule that the Commission retained in the Restoring Internet Freedom Order.

The Honorable Greg Walden (R-OR):

1. The FCC's broadcast ownership regulations have long hampered traditional media outlets ability to compete with their digital counterparts that are completely unregulated. Before COVID-19, this type of outdated, asymmetrical regulation was simply a relic of a bygone era that four bipartisan Commissions have been unable to address. But now, these regulations—in addition to the business impacts of COVID-19—are threatening one of the strongest antidotes to the misinformation spreading online: investments in real journalism.

Since the Commission is still awaiting to see if the Supreme Court will overturn the activist Third Circuit Court's blockade of updating its regulations, are there waivers or other tools the Commission could use that advance investments in local news, preserve the public interest, and promote the benefits of a transaction while also guarding against concerns such as a potential lack of viewpoint diversity?

ANSWER: I couldn't agree more that the Commission needs to reduce asymmetric burdens imposed on traditional media outlets to allow these entities to compete with new, unregulated entrants in the marketplace. While I believe a fundamental review and rewrite of existing regulatory burdens is absolutely necessary, a comprehensive overhaul may be unlikely to happen soon. In the meantime, we should consider more limited efforts that would help relieve regulatory costs and level the playing field.

For example, in a recent blog post, I highlighted a handful of changes that could provide immediate relief to local broadcasters and would not shortchange consumer protections, ranging from ending certain license modification freezes to updating the presumption in favor of a failing station waiver. Further, allowing for more efficient processing of certain transactions can help to support and increase local news, especially in rural and smaller city markets. I have also written about this topic in a blog that specifically references Sioux Falls, South Dakota. Each blog—dated September 25, 2020, and June 25, 2020, respectively—can be accessed at <https://www.fcc.gov/about/leadership/mike-orielly#blog>.