

Written Testimony of

Mignon L. Clyburn
Former FCC Commissioner

Before the

U.S. House of Representatives
Committee on Energy and Commerce

Regarding

“LIFT America: Modernizing Our Infrastructure for the Future”

May 22, 2019

Chairman Pallone, Ranking Member Walden, and members of the Committee, thank you for inviting me to testify this morning. I am Mignon Clyburn, former Acting FCC Chairwoman and Commissioner.

For almost nine years, I had the profound privilege of serving on the Federal Communications Commission. During my tenure, I was afforded the opportunity to travel across the country and around the world where I witnessed first-hand the transformative power of broadband. In Senegal, The Gambia, Ghana and Kenya, I saw farmers' incomes literally rise before my eyes as they compared prices in competing markets and took their goods to be sold in those places that yielded the highest returns. I witnessed children with special needs in an Arlington County school, and adults with cultural differences and mental health challenges on Los Angeles' Skid Row, get a firmer footing by accessing online learning tools, social and psychiatric services and training techniques previously not available in their community.

A broadband connection made all of this and more possible. And that previously digitally unsavvy Grandmother I met in Mississippi? Well, she became the lead spokesperson of a wildly successful rural telehealth pilot that is saving road miles, money, and time and is making traumatic diabetic medical episodes that previously resulted in costly emergency room visits a thing of the past.

Unfortunately, too many Americans and rural communities remain disconnected and unable to leverage this incredible power. Schools without an adequate internet connection disadvantage students and educators and make it more likely that they will remain stuck on the wrong side of the digital divide. Today, an estimated seven out of ten students are assigned school work that requires online access, but without broadband access at home, they are forced

to sit in the parking lots of McDonald's or the local library and complete their homework in cars or on concrete stoops late into the night.

Rural health clinics off the grid are not adequately serving their patients, forcing them to drive hours for follow-up exams, miss work and school to get test results read or forgo specialized care. Rural communities without adequate broadband cannot attract industry, and are likely to suffer from brain drain as their young move away for more robust economic opportunities in larger, better connected cities.

When I was first sworn in as a federal commissioner nearly 10 years ago, there were heated debates about the necessity of broadband. Today, those who still claim that broadband is a luxury and not an essential service are simply not living in the same universe as you and me.

Since the FCC released its National Broadband Plan at the direction of Congress — it has focused on how best to address the broadband network availability gap. It rightly transformed its Universal Service Fund's high-cost program into the Connect America Fund and required those funds to be used to support and expand broadband-enabled networks. Many lessons have been learned from that mandate, and I hope those lessons will continue to guide Congress as it considers funding broadband infrastructure through the LIFT America Act.

I have highlighted some experiences to bolster my support of efforts that promise to enable and expand broadband deployment in America. Allow me to now offer a few suggestions on how to improve upon them through the proposed legislation.

First, I recommend that you go big and be bold. The LIFT America Act contemplates a \$40 billion infusion of capital for broadband infrastructure — almost ten times the annual amount of CAF funding currently available. While significant, it is an important and necessary level of investment. But what is just as important is getting this right. How then do we ensure

that the money we invest is best used to serve the American people? The answers, I believe, should include the very principles Congress considers in the LIFT America Act.

Capital expenditures should be prioritized for communities currently without broadband-capable infrastructure — by this I mean those areas in both rural and urban America, that today do not even have 10/1 Mbps speeds. Funding must be targeted to places with the greatest need, to ensure that those communities and citizens who have been completely left behind, are connected as quickly as possible. Prior attempts — while important and well-intentioned — simply have not done enough to close persistent gaps. Investments must begin there. These communities should be our top priority, as such, I support the Act prioritizing unserved areas with a reverse auction.

Second, determinations of where support is needed to deploy broadband should be based on reliable and verifiable coverage maps. Everyone is frustrated because it has been clear for quite some time that more needs to be done to improve the FCC maps. To be frank, I recommend that we throw those coverage maps out. They should never again be used for *any* proceedings, including for funding purposes.

FCC Form 477. In short, it needs to be changed. Providers should be required to show where they *currently* provide service, using subscription-based information to confirm network coverage, and comparing the FCC's information to third-party sources, like Microsoft's broadband usage data that is publicly available. Commissioner Rosenworcel has suggested crowd-sourcing information to improve the maps... another good idea. It is critical that Congress requires the FCC to update Form 477 and reform its maps right away, so that we know the geographic areas in the U.S. without 10/1 Mbps coverage — the areas that should be prioritized for the LIFT America Act funding. In sum, I recommend the LIFT America Act

clarify that these steps must be taken to improve the National Broadband Availability Map *before* it is used to determine the unserved areas eligible for LIFT America Act funding.

Third, you should approach this investment as an 'only once' proposition. In others words, taxpayers should be asked to fund broadband infrastructure just one time and the infrastructure built should be robust and capable of serving their communities long into the future. The U.S. lags behind European and Asian countries in broadband infrastructure designed to deliver high-speed service that can be upgraded cost effectively. And as more businesses and American consumers rely upon connectivity, online demand is increasing, which means we need robust networks to handle that demand.

Since we are going big and bold with the LIFT America Act legislation — Congress should be investing the taxpayers' money in infrastructure that will deliver high-speed broadband of at least 1 Gigabit, future-proof symmetrical service. This should put our country on par with others and catch us up to those that are already ahead. As such, the legislation can remain competitively and technologically neutral, but it must be refined to give projects that can deliver 1 Gig of symmetrical service a priority in the reverse auction. Similarly, where 1 Gigabit can be upgraded to deliver even higher speeds quickly and at a lower cost, the proposed legislation should include that as a positive in the weighting process.

To the extent that the legislation enables and promotes more fiber deployment, such deployment can be used to support 5G wireless networks. Indeed, we will not even have robust 5G networks without fiber connectivity. Thus, recipients of this taxpayer funding should not be permitted to unreasonably withhold wholesale service from other providers that can and will use fiber connectivity to bring 5G and other types of broadband service to rural America. They are benefiting tremendously from scarce public dollars, and we should allow those dollars to be

leveraged by the private sector in as many ways possible. Accordingly, I recommend adding a clause to the legislation that prohibits recipients from unreasonably withholding wholesale service to other broadband providers.

Fourth, as FCC Commissioner O'Reilly has emphasized, we must be mindful and coordinate all of the government broadband funding mechanisms to avoid duplicative funding and ensure that we get as much bang from our limited bucks as possible. Accordingly, the new funding provided by the LIFT America Act should be restricted to those unserved areas that are not receiving funds from the Connect America Fund Phase II, the USDA's ReConnect program, or the upcoming Rural Digital Opportunity Fund that Chairman Pai recently announced. It is appropriate for the FCC to be the coordinating agency for all of this work, and the legislation should be modified to require the FCC to ensure duplicative funding for all of these programs does not occur.

Moreover, as has been rightly emphasized, reverse auctions have brought more benefits, saved the taxpayers money and should be embraced to more efficiently and effectively close the broadband network availability gap. For example, one study estimated that the Connect America Fund II auction resulted in 70% less funding than the FCC's original CAF model suggested would be needed to deploy broadband. Indeed, in the CAF II, on average the FCC will be spending just over \$2,000 per location as compared to its recent announcement that the rate-of-return carriers opting into the A-CAM model will receive just over \$6,000 per location. Thus, I support the LIFT America Act's plan to use a reverse auction which will encourage providers to bid, promoting efficiency. I also believe it is important to encourage participation by as many potential providers in the reverse auction to drive efficiency and effectiveness; thus, I am supportive of no provider being required to be an eligible telecommunications carrier to

participate in the reverse auction. This will ensure incumbent providers, competitive providers, local communities and rural electric cooperatives (among others) have the opportunity to bid. Moreover, to the extent that any state legislation restricts local communities from offering broadband service, thus participating in the reverse auction, this legislation should clarify that the LIFT America Act supersedes those state prohibitions. Indeed, it is well past time for the Congress to preempt all state laws that prohibit local communities from delivering or expanding existing broadband service to meet their citizens' demand.

The legislation should provide every auction winner the rights to access poles, conduit and rights-of-way under Section 224 of the Communications Act to build their broadband infrastructure efficiently. The legislation also should clarify that building owners cannot prohibit a funded provider from serving a tenant that has requested the service. As you may be aware, broadband providers have faced barriers to obtaining access to poles, conduits, rights-of-way and multi-tenant buildings. Accordingly, the legislation should clarify that funded providers cannot be refused the access needed to construct their networks and reach consumers. In San Francisco, where the city passed a local ordinance requiring building owners to allow broadband providers access when a tenant requests service from that provider, a new fiber-to-the-home provider has been able to build its network faster, enabling 1 Gig of symmetrical service at reasonable prices in areas that previously had no such offering.

I would be remiss if I also did not draw attention to the fact that while infrastructure funding is crucial to connecting unserved areas, low-income and minority consumers are more likely to remain disconnected from broadband opportunities due to the cost of service. The FCC's Lifeline program was reformed to help connect consumers to broadband by subsidizing the service — an important change that I advocated as Chair of the Joint Board and as an FCC

Commissioner. Unfortunately, the Lifeline program and the broadband subsidy it supports remains in jeopardy with a looming FCC proceeding that proposes to remove from the program most of the providers that are serving this community. I stand with both Commissioners Starks and Rosenworcel in calling for that proposal's rejection. We need to make it a priority that no American should be left behind because they cannot afford broadband and that the digital divide not be ignored while we are enabling taxpayer Universal Service Funds to be used only to build broadband networks.

If any two institutions deserve the moniker of anchor institutions, it is our nation's schools and libraries. They remain the foundation and the backstop of educational, employment and (re)training opportunities and are primarily responsible for our professional successes. Enabling these institutions the option to participate in the auction at the state level where communities are deemed unserved, may very well net innovative alternatives for those who are digitally disconnected.

As a former co-owner of an often single-person operated coffee, popcorn and ice cream shop and one who witnessed Hurricane Hugo's destructive force, I am especially sensitive to the public's expectations of our nation's first responders. Enabling a more intuitive, redundant and interoperable 9-1-1 network that allows one to send texts or images in addition to completing voice calls, is not an option but a necessity. I applaud Representatives Eshoo and Shimkus for embracing a plan that would establish local agency coordination and the expanded use of internet protocol and broadband to enable a more resilient public safety network.

Not a year goes by without a headline highlighting the crisis with our nation's water systems. While Flint, Michigan has dominated the headlines, there are hundreds of failing drinking water systems that are threatening the health and well-being of American citizens, most

notably our children. What is obvious is that state and local committees are unable to tackle this half a trillion dollar problem alone, so the creation of the Broadband Infrastructure Finance and Innovation Act (BIFIA) program at the National Telecommunications and Information Administration is positive news. A \$5 billion investment making low-interest financing available for broadband infrastructure deployment projects would begin to help those on Native lands and millions of others who in 2019 are still drinking from lead pipes.

I would like to commend you, Chairman Pallone and all who have been working on the LIFT America Act, for your leadership. Every American should have affordable access to broadband, and your work to ensure that this happens in the near term is vitally important to securing a brighter economic future for each citizen and our nation.

Thank you for the opportunity to testify. I am happy to answer any questions you may have.