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Free Press

July 11, 2019

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Written *Ex Parte* Presentation, WC Docket No. 11-10

Dear Ms. Dortch:

As the Commission proposes to modify its rules and practices governing how and in what format Internet Service Providers ("ISPs") submit information on Form 477 ("Form 477 deployment data"), on where those ISPs have deployed broadband transmission facilities, Free Press urges the Commission to proceed with caution and in a manner that does not reduce the public's full access to this invaluable information.

First, we believe the calls for the Commission to "reform" Form 477 deployment data are based in part on a misunderstanding of what this particular data is, and what it does and does not show. For example, certain parties have cited disparities between the Form 477 deployment data and those parties' studies on broadband speeds and performance, and wrongly concluded that these disparities somehow "prove" there are massive overstatements and flaws in the 477 deployment data. This misstatement (willful or not) of what the Form 477 deployment data represents is suggesting a much larger "problem" than actually exists with the current Form 477 deployment data and reporting requirements, and thus may lead to "reforms" that make our collective understanding of the U.S. broadband market worse.

Second, we are deeply concerned that the USTelecom-led pilot program to produce more granular data will be used as an excuse to reduce or remove public access to the full underlying data sets, which is a long-stated goal of many ISPs and their trade associations. Whatever actions the Commission takes to improve its data on broadband deployment should not reduce public access to this information. Both the National Telecommunications and Information Administration ("NTIA") and the Commission have long-recognized the critical need for full public access to the granular data underlying any maps or reports they may compile. Any policy changes that reduce or change the current level of public access would harm the public interest. Such losses would reduce the Commission's and the public's ability to use data in service of meeting the Communications Act's goals of improving broadband deployment, adoption, and competition.

Accurate, Granular and Publicly Available Broadband Deployment Data Is an Invaluable Resource. But it is Critical for Policymakers and Advocates to Understand the Limitations Inherent in Deployment Data and Maps, and How Deployment Data Differs from Performance or Adoption Data.

Free Press has a lengthy history of representing our members in many Commission proceedings, including the above-captioned and others regarding the collection and dissemination of accurate and granular broadband deployment and adoption data. Our advocacy in this area spans nearly fourteen years.[1] We were an early critic of the Commission's flawed "ZIP Code" Form 477 reporting, and have been very active in working with the Commission and other parties to improve this information collection and reporting.[2] We worked closely with the NTIA as it designed the methodology for the original National Broadband Map,[3] and worked closely with the Commission as it continued to modernize its broadband data and eventually took over the NTIA's biennial data collection and mapping effort in 2014.[4] We have also made extensive use of the underlying broadband deployment data. Such uses include analysis of Form 477 deployment data to study the racial and economic disparities in broadband deployment,[5] to evaluate the rhetoric around supposed changes in deployment following the 2015 *Open Internet*

[1] *See* S. Derek Turner, "Free American Broadband!," *Salon* (Oct. 18, 2005).

[2] *See* Comments of Free Press, *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment ofAdvanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership* et al., WC Docket No. 07-38 *et al*. (filed July 30, 2009); Further Reply Comments of Consumers Union, Consumer Federation of America, Free Press and Public Knowledge, WC Docket No. 07-38 (filed Sept. 2, 2008); Further Reply Comments of Consumers Union, Consumer Federation of America, Free Press and Public Knowledge, WC Docket No. 07-38 (filed Aug. 4, 2008); Further Reply Comments of Consumers Union, Consumer Federation of America, Free Press and Public Knowledge, WC Docket No. 07-38 (filed Aug. 1, 2008); Further Comments of Consumers Union, Consumer Federation of America, Free Press and Public Knowledge, WC Docket No. 07-38 (filed Aug. 1, 2008); Further Comments of Consumers Union, Consumer Federation of America, Free Press and Public Knowledge, WC Docket No. 07-38 (filed July 17, 2008); Reply Comments of Consumers Union, Consumer Federation of America, and Free Press, WC Docket No. 07-38 (filed July 16, 2008); Comments of Consumers Union, Consumer Federation of America and Free Press, WC Docket No. 07-38 (filed June 15, 2007); *see also* Letter from Frank S. Simone, Executive Director Federal Regulatory, AT&T Services Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-38 (May 13, 2008).

[3] *See, e.g.*, Comments of Free Press, Implementation of Title I of the American Recovery and Reinvestment Act of 2009, Docket No. 090309298-9299-01, Dep't of Commerce Nat'l Telecomm. & Info. Admin. and USDA Rural Utilities Service (Apr. 13, 2009).

[4] *See* Letter from Matthew F. Wood, Policy Director, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Modernizing the FCC Form 477 Data Program* et al., WC Docket No. 11-10 *et al*. (filed June 21, 2013) (noting the need to make definitive steps to make Form 477 data available to researchers); Letter from Matthew F. Wood, Policy Director, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-10 *et al*. (filed June 19, 2013) (requesting NTIA's mapping efforts with Form 477 made available for public comment); Letter from S. Derek Turner, Research Director, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-10 *et al*. (filed June 14, 2013) (discussing FCC's failure to implement critical recommendations from the National Broadband Plan); Comments of Free Press, WC Docket No. 11-10 *et al*. (filed Mar. 30, 2011)..

[5] *See* S. Derek Turner, Free Press, *Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption*, 105-119 (2016).

Order,[6] and to shine a light on the current FCC Chairman's overeagerness to claim credit for trends that began long before his tenure as chair.[7]

The Commission's broadband deployment data is a topic of frequent discussion in the halls of Congress and in the media generally. Much of this recent news and discussion involves an understandable, but perhaps misplaced frustration with the underlying Form 477 deployment data. This growing frustration is rooted in the belief that the Commission's data overstates the true level of broadband deployment. Two recent third-party studies have added to this debate.[8] Unfortunately, these two studies and other comments by lawmakers briefed on their results may be unnecessarily confusing the debate. This confusion creates political pressures for "reform" that could lead to a host of poor policy decisions, including reduction of public access to data, misallocation of scarce fiscal resources, and the continued over-emphasis of the rural aspect of the digital divide to the detriment of the affordability aspect.

Thus we urge all parties in this policy discussion to be specific when talking about broadband data. There are three general types of broadband data, and unfortunately all three are routinely conflated in the media and in policy debates.

The first type – deployment data – is the subject of this letter, the Commission's pending "reform" effort, and the central concern of many members of Congress. Deployment data conveys information about the types of broadband transmission technologies and the capacities of these technologies available to a given geographic location.

The second type is performance data about the capacity that a given transmission line (or group of transmission lines) is actually delivering at a particular moment of measurement or a series of these moments. Such data may or may not be presented in conjunction with information concerning what a given line (or group of lines) is <u>expected</u> to deliver. For example, the Commission's Measuring Broadband in America project administered in conjunction with SamKnows purports to measure how ISPs' lines are performing <u>in comparison to the level of service to which end-users subscribe</u>. Other performance data, such as aggregated speed test information from Ookla, M-Lab and others, is not presented in comparison with the speed tiers to which end-users subscribe and the speeds they should therefore expect to receive. In other words, data showing that the average downstream speed in a given geographic area is below 25 megabits per second conveys no information on the specific speed tiers individuals purchase, or even on the average tier to which users in that area subscribe. It thus conveys no information on how well the ISPs in that area are performing relative to what they are selling their customers.

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[6] *See* Letter from Matthew F. Wood, Policy Director, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-108, at 3 (filed Oct. 25, 2017); Reply Comments of Free Press, WC Docket No. 17-108 (filed Aug. 30, 2017); Comments of Free Press, WC Docket No. 17–108 (filed July 17, 2017) (utilizing extensive analysis of Form 477 data to demonstrate the deeply flawed underpinnings of the Commission's "harm to investment" claims).

[7] *See* Letter from S. Derek Turner, Research Director, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 18-238, at 1, 3-5 (Mar. 5, 2019).

[8] *See* Microsoft, "An Update on Connecting Rural America: The 2018 Microsoft Airband Initiative" (Dec. 2, 2018); *see also* Meinrath *et al.*, "Broadband Availability and Access in Rural Pennsylvania," Center for Rural Pennsylvania (June 2019).

The third type of broadband data is subscribership or adoption data (properly called subscribership data when applied to the ISP, and adoption data when describing end-users or a group of end-users). Subscribership data conveys information about the number of, and transmission capacities of, broadband access lines sold to an end-user or group of end-users (*e.g.,* the number of subscribers by speed tier in a given Census Tract). Adoption data conveys information about the proportion of people who adopt broadband, and may or may not include information about the type and theoretical capabilities of the services they adopt (*e.g.*, the percentage of homes in a Congressional district that subscribe to home broadband services; or the percentage of such homes that subscribe to fixed terrestrial broadband services with marketed downstream transmission capabilities above 25 megabits per second).

Unfortunately, in the debates around the use of broadband data to aid efforts to close the digital divide (itself an often poorly defined concept), some people conflate all three types of broadband data, then wrongly blame only one type and source of data – FCC Form 477 deployment data – for an entire litany of broadband market and policy failures.

It should be obvious but let us state it clearly: just because a faster broadband service is available, it does not follow that everyone who resides in an area where that level of service is available will choose to adopt the faster speed tier. Some households will not subscribe at all, and some will willingly choose a lower-priced service with slower transmission speeds. The reasons that people who could subscribe to a service capable of transmitting 25 megabits per second downstream either choose not to do so or cannot afford to do so are critical to understand, if we are trying to close the digital divide in all its forms. These choices may or may not be indicators of policy and/or market failures, but they certainly are not demonstrative proof of inaccurate broadband deployment data.

Unfortunately, much of the current discussion conflates and confuses the results from performance data measurements (e.g., Microsoft's and Penn State's broadband studies)[9] with the FCC's broadband deployment data. And this apparent (but false) contradiction between these two sets of data feeds the misperception that the Commission's deployment data is hopelessly flawed. The reality is much more benign. For the most part, the Commission's Form 477 deployment data is highly accurate and very useful.

There are however, two specific areas where this data collection could be improved.

The first is geographic granularity in rural areas. In 2013, the Commission chose not to continue with the NTIA's methodology requiring reporting of broadband deployment at the Census block road segment for geographically large rural blocks. To the extent that the current methodology misses deployment at certain households, it is in these very same types of large rural blocks, not in the urban blocks that contain the overwhelming majority of U.S. households. The appropriate method to address this potential shortcoming is to restore the NTIA's reporting methodology for rural blocks. While the Commission is contemplating address-level reporting (or the much more vague and potentially less analytically useful "shapefiles"), any such switch would be useful yet may only increase the accuracy of the data for a small percentage of households.

The second area of possible improvement concerns the Form 477 definition of deployment. The Commission's standard for an ISP to claim deployment is too vague and lends itself to potential over-reporting, particularly by CLECs and Fixed Wireless ISPs. The Commission's Form 477 instructions state that "fixed broadband connections are available in a census block if the provider does, or could, within a service interval that is typical for that type of connection—that is, without an extraordinary commitment of resources—provision two-way

[9] At first glance, these studies imply that there must be something terribly wrong with the FCC's deployment data. But this is not the case, because these studies measure certain dimensions of performance without regard to a variety of reasons unrelated to last-mile deployment that could impact the measured performance. It is invalid to compare performance data for all subscribers in an area and conclude from those measurements that the FCC's deployment data is overstating deployment. Microsoft's and Penn State's performance data is based on self-selected individual users testing their connections, including connections that some willingly chose and that may be sold at tiers below the 25 Mbps threshold the Commission typically defines as a minimum speed for "broadband." Furthermore, whether or not these connections are sold as being capable of transmission speeds above 25 Mbps, there may be a variety of reasons that a specific test returns a result below that level, many of which are totally outside the ISP's control (*e.g.*, testing from a wifi deadzone inside their home; testing while other household members are using the connection; testing during a period of time when there's congestion on a route outside of the ISP's network). Contrary to the headlines from articles covering the Microsoft and Penn State studies, the reality is that in basically every location where there is a cable company (which covers about 90 percent of the U.S.'s households) there is broadband service available that meets the Commission's 25/3 Mbps capability threshold. And based on a variety of tests, including those from the FCC's Measuring Broadband in America project, those cable lines are going to deliver the advertised speeds most of the time between the edge of their network and the user's router. It may be the case that in some areas a number of internet users subscribe to a lower-capacity service tier, but that does not mean the FCC's Form 477 fixed deployment data for any given Census block is overstated. We do emphasize however that the M-Lab data on which the Penn State study is based is an invaluable resource for other purposes. This data helped identify ISPs who were engaging in harmful practices through games of brinkmanship in the so-called "paid peering" wars of 2014. *See, e.g.*, Jon Brodkin, "Study: Comcast and Verizon connections to Cogent dropped below 0.5Mbps," *Ars Technica* (Oct. 28, 2014).

data transmission to and from the Internet with advertised speeds exceeding 200 kbps in at least one direction to end-user premises in the census block."[10] The Commission's deployment data should reflect reality, not near-reality. While it is true that a CLEC could use its rights under Section 251 to serve a customer using an unbundled copper loop, the reality is that U.S. CLECs in most markets do not advertise or offer consumer-level DSL services. And though it may be true that a fixed wireless ISP could provide service to a customer in a given Census block by installing a customer premise antenna and aiming that directional antenna towards a nearby relay tower, this ability to serve without an extraordinary commitment of resources may not reflect whether that particular fixed wireless ISP is even marketing service to that block. Thus it might be more accurate if the Commission amended this language to allow reporting as served only those Census blocks in which a carrier actually markets service, or perhaps the Commission should simply have ISPs denote these "could serve" blocks separately from actual served blocks.

The Commission's mobile broadband deployment maps are another subject of critique. We agree that there is likely an unacceptable level of overstated availability on these maps, though no similar level of overstatement is found in the FCC's fixed broadband deployment data. But this is largely a result of the inherent differences in determining where a mobile signal will be available versus where a wired line is buried or strung. Unlike wired deployment data, mobile deployment data is only 100 percent certain at the tower or small-cell level; everywhere else it is a map of propagation probabilities. We encourage the Commission to do what it takes to improve its mobile deployment data; but urge the agency not to let the issues with mobile deployment data accuracy impact its already largely accurate and successful efforts to collect and disseminate granular data on fixed broadband deployment.

Policymakers and advocates alike need – and already have – high quality data for each of the types of broadband concepts described above: deployment (from the FCC's Form 477 deployment data, as well as the prior NTIA versions of same, and from a large number of private sources based on public company reports and other methods); subscribership/adoption (from the FCC's Form 477 Subscription data, and a number of public surveys, the largest and highest quality being the Census Current Population Survey Internet and Computer Use Supplements); and performance (from sources such as the "SamKnows" tests conducted in consultation with the FCC as a part of the Measuring Broadband in America project; the M-lab data; and a variety of data from third-party speed test companies, such as Ookla). Each of these data sources comes with limitations, but all have tremendous utility. The data sets with the most utility are those that are fully transparent and fully publicly available (such as the Form 477 deployment data and M-Lab data).

[10] Federal Communications Commission, FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions, 17 (Dec. 5, 2016) (emphases added, original emphasis omitted).

The Commission Should Improve the Granularity of Its Rural Broadband Deployment Data. But Any Changes to Form 477 Deployment Reporting Requirements Must Maintain Maximal Public Access to the Underlying Data.

Free Press agrees that the FCC's deployment data needs improving. Data collection is an iterative exercise, one that requires collaboration with the ISPs that submit the information, the Commission that collects and analyzes the information, and outside parties who utilize the data in ways that are both unique and complementary to the Commission's analysis. Contrary to recent statements from Chairman Pai,[11] the FCC has made numerous important improvements to Form 477 over the past two decades. But there is still more to do.

However, we are concerned about the true motivations of the USTelecom-led effort that Chairman Pai uncritically embraced this past March. We fear that the end result of USTelecom's non-transparent "pilot" project will be one in which the Commission makes only marginal improvements in deployment data accuracy, while greatly reducing transparency and public access to the underlying information. Such an outcome would contradict the clear will of Congress and past Commission policies that embraced maximal transparency and public use.

To be sure, there is likely a need for the Commission to modify its reporting standard for rural area deployment to collect more granular data. Such changes will improve the efficiency and effectiveness of its USF program and other rural-focused deployment efforts. As we noted above, addressing the potential for overstated deployment in rural areas does not require a wholesale change in Form 477 methodology. Returning to NTIA's road segment reporting methodology for rural blocks would likely address whatever problems exist with fixed broadband deployment data in rural areas.

But for all the hand-wringing over "bad maps," there's actually very little evidence of an actual overstatement problem, certainly when it comes to fixed line deployment data. Anecdotes make for good headlines, but do not offer evidence of a systemic failure in measurement. There are more than 11 million populated Census blocks in the U.S., with 7.5 million of these located outside of urban areas and urbanized clusters.[12] Certainly there will be some level of error given the massive size of these data sets. The use of blocks and not road segments in sparsely populated rural areas will likely lead to some overstatement.

However, the overwhelming majority of the "smoke" that may indicate a "fire" in the Form 477 deployment data comes not from the fixed line deployment data, but from mobile. And as we discussed above, the inherent differences in accurately knowing how a signal will propagate from a tower or small cell versus knowing the precise location of where wires run make the task of measuring accurately much more challenging for mobile than it is for wired broadband infrastructure.

[11] Remarks of FCC Chairman Ajit Pai at USTelecom Forum on Reinventing Broadband Mapping (Mar. 21, 2019).

[12] The Census Bureau designates blocks as urban or non-urban during the decennial Census. Thus a portion of blocks that were classified as non-urban as of the 2010 Census may now meet the definition of an urban block.

The Commission certainly understands these differences. The Mobility Fund II Challenge Process is the agency's effort to provide checks and balances when it comes to the use of deployment data for determining how to allocate certain USF subsidies.[13] The *Order on Reconsideration* chose to forgo use of 477 Mobility data in lieu of a one-time probability-based propagation coverage map submission and challenge process. While we do not have enough information to evaluate the effectiveness of the Challenge Process, all stakeholders have had the opportunity to provide ongoing input; and the incentive of money (or loss of money) for carriers certainly is a strong motivator that will lead to better data.

But the results from the one-time Mobility Fund propagation maps suggests that they may not be much of an improvement over the old Form 477 mobility data, at least on the initial accuracy front. Last December the Commission launched an investigation "into whether one or more major carriers violated the Mobility Fund Phase II (MF-II) reverse auction's mapping rules and submitted incorrect coverage maps."[14] That one or more "major" mobile carriers in a market with only four national carriers may have submitted incorrect coverage maps illustrates the complexities in accurately defining mobile coverage. But there is simply no evidence that the same issues exist for fixed line deployment mapping data. Certainly there are no widespread issues that require a wholesale change to Form 477's fixed line deployment methodology, when modification such as a return to road segment reporting will likely adequately address the potential for overstating fixed deployment in rural areas.

That there is no demonstrated need for a massive overhaul of the Form 477 fixed deployment submission methodology does not mean there is no need for improvements to how the Commission receives, publishes, and analyzes the coverage data. Data requires analysis in order to be turned into useful information. We suggest that analysis reform is just as important as data collection reform. And a key to analysis reform is maintaining full public access to the underlying data, which as recent events make clear, is needed to ensure that the Commission's analysis is sound (and if it is not, to ensure that researchers can transparently critique that analysis).

The process leading up to the release of the most recent Section 706 Report neatly illustrates the types of improvements needed from Commission analyses. Free Press's recent discovery of the over-reporting by the small ISP BarrierFree illustrates the need for the Commission to conduct more rigorous quality control over the data.[15] But even with better quality control, there remains a strong need for outside oversight. Politicians are too often eager to "lie with statistics" in a system where there are incentives to take credit for unearned accomplishments and eschew blame for bad decisions. Though the BarrierFree overstatement issue brought the Commission rebukes from Congress and from a couple of Commissioners themselves, we believe that much of the subsequent critique was misdirected at Form 477 data

[13] *See Universal Service Reform Mobility Fund*, WT Docket No. 10-208, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282 (2017).

[14] Press Release, Federal Communications Commission, "FCC Launches Investigation Into Potential Violations of Mobility Fund Phase II Mapping Rules" (Dec. 7, 2018) (emphasis added).

[15] *See supra* note 7.

itself, when the real fault lies with the current agency leadership all too eager to take credit for positive trends that had no connection to FCC policy.

Indeed, the BarrierFree blunder is a perfect illustration of why it is so critical for the Commission to retain the current level of maximal public access to the underlying Form 477 deployment data. If the public only had access to a finished product of a colorful map and not the underlying data sets, Chairman Pai's false boasting about a massive improvement in broadband deployment would have gone unchecked.

This alignment between industry interests in escaping scrutiny, and a (potentially captured by the industry he oversees) political appointee's interests in taking credit, is a dangerous one. This is why Free Press and many other public interest advocates are wary of what may ultimately come from the AT&T and Verizon-led USTelecom pilot project. While the vaguely described alternative mapping approach has the potential to improve the accuracy of the FCC's data marginally, it appears this new methodology will produce far less transparent data, which will not be subject to systematic verification and use by third-party researchers. We are particularly suspicious of the motivations of USTelecom, because its approach of using ISP-supplied address-level data is an idea its members have vigorously and consistently opposed since the FCC began collecting data.[16] It appears USTelecom's members are only now okay with the idea of maximum granularity because this information will be handled by a private company before the final maps – *but* not the underlying data – are turned over to the Commission.[17] The only check to USTelecom's approach is its tried-and-failed idea of solely using crowd-sourced verification. That is a far worse outcome for transparency and verification than the FCC's current method, where each ISP's list of covered Census blocks is available to anyone.

Whatever changes the Commission considers to the Form 477 deployment methodology, it must ensure that the basic data on where carriers offer service remains publicly available, in forms easily accessible by the public and by researchers. Moreover, retaining the ability to analyze the data at the Census block-level will both maintain comparability to years worth of historical data and continue to facilitate rich analysis by combining these data sets with the wealth of granular demographic and economic information collected by the Census Bureau. Thus far, USTelecom's approach seems to be designed to reduce transparency and the utility of the data, and if adopted may result in a net harm to the public's interest.

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[16] *See, e.g.*, Comments of AT&T Inc., WC Docket No. 11-10 (filed Mar. 30, 2011); *see also, e.g.,* Comments of Verizon and Verizon Wireless, WC Docket No. 07-38 (filed July 17, 2008).

[17] It is unclear what, if any, underlying information will be publicly available if the Commission requires the submission of shapefiles. USTelecom statements indicate the possibility that ISPs will work with a third party like CostQuest, submitting their granular address-level data to the third party who then produces shapefiles for a map. *See, e.g.,* Karl Bode, "No One Trusts Big Telecom to Build a Better Broadband Access Map," *Motherboard* (Mar. 25, 2019) ("When pressed specifically as to whether the industry supports giving access to that data to journalists and researchers, USTelecom punted to Ajit Pai's FCC, whose record on data transparency has not been particularly impressive in recent years. 'This is an industry-funded pilot program that the consortium will share first with the FCC when complete,' a USTelecom spokesperson said. 'If the FCC adopts this new approach on a national basis, they will determine data availability.'").

There should be no doubt: the Commission's current policy of maximum public access is a demonstrated success. This success came despite years of industry claims that such disclosure would lead to disaster. But time has shown that the Commission's 2013 finding (and the NTIA's prior finding) that deployment data is not competitively sensitive, and that ISPs will not be able to claim this information is proprietary, was the correct decision.[18] Though numerous ISPs tried to stop the public release of this data based on claims that it would harm competition, these self-serving predictions have proven to be baseless. For nearly a decade, every single ISP has publicly disclosed its Census block-level broadband deployment (including maximum offered down- and upstream speeds by technology type and consumer vs. business-class offering), and during that time broadband deployment, capacities and competitive entry have increased substantially.[19]

Having been through this before numerous times, we fear USTelecom and its members are setting the Commission up with a ready-made excuse to reduce public access to the underlying broadband deployment data that will be produced from their "fabric" methodology. We expect that USTelecom members will claim address-level deployment data is competitively sensitive, while finished maps (made from shapefiles) are not. But we remind the Commission that it has previously found (when it revised its confidentiality rules in the wake of the 1996 Telecom Act) firms have a history of submitting frivolous non-disclosure requests.[20]

The public interest requires maximum transparency of the data used to justify countless Commission policy decisions, including those that ultimately determine the allocation of billions of ratepayer dollars. We strongly feel that there is no reasonable claim of confidentiality over availability data, even at the most-detailed geographic level. Broadband providers offer services and advertise those services to the public. Providers routinely disclose the availability of service at a specific address to anyone who inquires, making such information available via their public websites. Thus there is no reason the Commission cannot make detailed availability information

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[18] *See Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887, 9923, ¶¶ 80-83 (2013) ("We believe that deployment data should be made public to at least the same extent as NTIA has been making them public via the National Broadband Map. Unlike subscription data, which may be sensitive vis-à-vis competitors and of relatively low value to the general public, deployment data are very useful to the public, particularly to potential customers that wish to understand and compare their service options. Indeed, many providers make such data available to the public on their web sites. We find that dissemination of deployment data promotes a more informed, efficient market. By allowing public release of as much of the information as possible, associations, scholars, and others will be able to use the information in their independent analyses of Commission policies, thereby aiding the Commission in crafting regulations that address specific market problems and eliminating those regulations that have outlived their usefulness. Finally, making these data available to the public provides consumers, states, and experts the opportunity to review the data to ensure the accuracy of the information.").

[19] *See, e.g.*, *Legislating to Safeguard the Free and Open Internet: Hearing on H.R. 1644 Before the Subcomm. on Commc'n & Tech. of the H. Comm. on Energy & Commerce*, 116th Cong. (2019) (written testimony of Matthew F. Wood, Vice President of Policy & General Counsel, Free Press Action).

[20] *See, e.g.*, *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816, ¶ 12 (1998) ("We believe, as do several of the parties, that specifically identifying types of information we need to evaluate requests for confidentiality will reduce the number of unsubstantiated requests that we receive.").

available to the public, in database form, even if it is produced from address-level data that is used to produce shapefiles.

In sum, there is no demonstrated need to implement a complete change to Form 477's fixed line deployment methodology. There is no demonstrated reason to retreat from the current requirement that ISPs report broadband availability (by technology type, maximum upstream and downstream transmission capabilities, and whether or not the service is marketed to residential users) at the Census block geographic level. If the Commission determines that more granular reporting is necessary because of the large geographic size of rural Census blocks, it can return to the NTIA practice of using road segments for such areas. And if the Commission requires address-level reporting, it must continue to release the underlying data, and certainly should not reduce the level of public access or utility of the historical data sets by only releasing a map comprised of shapefiles.

Conclusion

Section 706 of the Telecommunications Act of 1996 mandates that the Commission encourage the universal and timely deployment of advanced telecommunications capability. In order to fulfill this mandate, the Commission, state and local authorities, and the public need detailed, granular and accurate information on the location of broadband infrastructure deployed throughout the country. The Commission is not the only party with the responsibility or ability to accelerate broadband deployment, competition, and adoption. Meeting our national broadband goals requires the public dissemination of broadband data (not just the visual aids made from this data) in an easily accessible format.

There are a few solvable problems with the current deployment data methodology – problems which are largely confined to reporting on mobile deployment in rural areas. But these issues aside, we must not lose sight of the fact that the Form 477 data has been invaluable to holding policymakers, industry representatives, and others to account for their blatant misstatements about the impact of public policies on deployment. Form 477 data has also proven to be an invaluable tool for urban broadband policy matters, such as tracking whether or not ISPs are engaging in redlining in urban areas. Indeed, while the current debate around the use of data to address the digital divide is rural-focused, the Form 477 data in its current form has utility well beyond tracking rural deployment. The use of Census-based geographies is invaluable for demographic analysis of broadband deployment, not just in rural areas, but in urban areas where the digital divide is primarily driven by inadequate competition not inadequate deployment. The Commission must not throw out this valuable demography tool in the name of improving its data.

As advocates for internet users and those on the wrong side of the digital divide due to high prices, we strongly support policies that will bring more broadband competition to all households. The current Form 477 deployment data methodology and method of public dissemination has a proven track record of success. The Commission should only make changes to the current Form 477 deployment reporting requirements and dissemination policies that provide the agency staff, outside researchers, and Congress with the most informative data. The

Commission should take care to not weaken the utility of this data by reducing third-party access, in the name of creating more granularity for the potentially few areas where the existing data may be lacking (and where a challenge process and publicly available data can act as a check to under- or over-reporting).

Respectfully Submitted,

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