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The Leadership Conference

November 3, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, GN Docket No. 17-199

Dear Ms. Dortch:

On behalf of The Leadership Conference on Civil and Human Rights and the undersigned groups, we write to offer our views in this proceeding. [1] The Leadership Conference is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States. The Leadership Conference's Media/Telecommunications Task Force is committed to ensuring that all communities, particularly those who are underserved, have access to affordable, reliable, high-quality advanced communications services, and that workers in the industry have good jobs.

As discussed in more detail below, we make the following recommendations:

- The Commission should consider advanced telecommunications capacity deployment in the 706 inquiry by looking to its practical purpose: its use by people in the United States.
- The Commission should reaffirm its previous conclusion that advanced telecommunications capacity means access to both fixed and mobile broadband service. These services are complementary, not substitutes for each other.
- While fixed and mobile broadband have distinct differences, the Commission should retain its 25/3 Mbps speed definition and evaluate both services by this measure.
- Even if the Commission considers "deployment" to refer only to infrastructure, evidence does not support reversal. At least six studies issued in the last year and a half find that many of the lowest income neighborhoods in the United States lack fiberoptic network access. Further 477 data analysis is needed, as well as improvements to increase its accuracy.
- The Commission should not conclude that the current deployment of advanced telecommunications capability is "reasonable and timely," and should take action to adopt subsidies, support tax policies and digital inclusion programs, and bolster robust broadband Lifeline service. Such actions will accelerate investment in broadband infrastructure, encourage broadband adoption, and close the digital divide.

High-speed broadband is the essential infrastructure of the 21st century. It provides the platform for economic development, jobs, education, health care, public safety, energy efficiency, civic participation, entertainment, and communications among friends and family. The Commission's annual evaluation of advanced telecommunications services is critical to the economic and social well-being of our nation.

The Commission should consider advanced telecommunications capacity deployment in the 706 inquiry by looking to its practical purpose: its use by people in the U.S. In its *Notice of Inquiry*, the Commission seeks comment on how it should evaluate the reasonable and timely deployment of advanced telecommunications capabilities. Use and adoption continues below optimal levels. According to the most recent census data, only 67.3 percent of people in the U.S. have a wired broadband connection. For households earning $20,000 a year or less, 43 percent do not have a wired broadband connection, and for households earning between $20,000 and $75,000 almost 20 percent lack access.[2] Twenty-one million people, or 18 percent of the total population do not have access. Access for people of color is particularly low. According to Pew Research Center, one-quarter (27 percent) of all Americans – with even higher percentages of African-Americans (35 percent), Hispanics (42 percent), and low-income households with annual earnings under $30,000 (47 percent) – do not subscribe to broadband at home, in many cases, because they cannot afford it.[3] Moreover, consistency in access and affordability impact use and should be considered. Even among low-income families who are connected, huge numbers suffer from low-quality service, intermittent service, or are cut off when they cannot afford the cost.[4]

We urge the Commission to reaffirm its 2016 Broadband Progress Report conclusion, which stated that "consumers have advanced telecommunications capability only to the extent that they have access to both fixed and mobile broadband service," and to conduct its evaluation by this measure.[5] In its *Notice of Inquiry*, the Commission seeks comment on how it should evaluate the reasonable and timely deployment of advanced telecommunications capabilities. More specifically, the Commission seeks comments on whether wireless broadband service is an adequate substitute for wireline, and whether mobile broadband speeds of 10/1 Mbps qualify as advanced telecommunications services. The answers to these questions will have a significant impact on the progress of broadband deployment.

As the *Notice of Inquiry* states, "salient differences" between mobile and fixed telecommunications capability compel the Commission to recognize the distinction between these two technologies.[6] Mobile broadband allows people to connect from almost any location and smartphones enable many previously unconnected people to access the Internet. However, despite advances in mobile technology, mobile LTE service remains below broadband speed, service dead zones and signal loss reduce reliability, and wireless broadband is more expensive, with more restrictions, than wireline broadband. These serious drawbacks, along with consumer usage patterns, support the Commission's 2016 conclusion that "fixed and mobile services are not functional substitutes for one another," but have "different and complementary capabilities."[7]

Low-income communities and communities of color are more smartphone-dependent than wealthier and White communities. According to Pew, about 13 percent of poor households – those with household incomes below $30,000 per year – rely on mobile service to connect to the Internet, compared to just one percent of households earning more than $75,000 per year. Twelve percent of Black households and 13

percent of Latino households are smartphone-dependent, compared to four percent of White households.[8] Smartphone dependency does not provide full access to the benefits of the Internet. In addition to the shortcomings discussed above, it remains difficult to apply for a job, take online classes or training, or write a research paper from a mobile device over mobile service. The Commission, by reconsidering mobile service as a substitute for wireline service, would deny the challenges of the smartphone-dependent, ignore a reality of the digital divide, and discourage investment and digital inclusion efforts to connect these communities.

We urge the Commission, at a minimum, to retain the current 25/3 Mbps broadband benchmark to evaluate whether advanced telecommunications capability is being deployed in a reasonable and timely fashion – and to adopt the same standard for mobile and wireline broadband. As the Commission explained in 2015 when it adopted the current benchmark, these speeds represent the minimum capability necessary for a family to engage at the same time in multiple online activities, including streaming high-definition video, downloading files, and participating in an online class. Further, we note that the 25/3 Mbps benchmark falls far short of the goals the Commission set in the 2010 broadband plan – namely, networks capable of delivering 50/20 Mbps by 2015 and 100/50 Mbps by 2020. The Commission should analyze the need to raise the speed benchmark to recognize demand for gigabit networks capable of delivering more data- and video-intensive services and applications over the Internet, including backhaul connectivity for next-generation wireless networks and the "Internet of Things."

Even if the Commission considers "deployment" to refer only to infrastructure, evidence does not support reversal. At least six reports released over the last year and a half find that many of the lowest income neighborhoods in our country lack fiberoptic network deployment, which not only increases their forced reliance on wireless but also jeopardizes their future access to 5G technologies. The National Digital Inclusion Alliance (NDIA) produced a series of maps evidencing stark disparities in fiber deployment in low-income census blocks in Cleveland, Dayton, and Toledo, OH, and Detroit, MI.[9] The Center for Public Integrity produced two studies of noncable Internet providers and found, among other things, that "in urban areas where 94 percent of households have access, low-income families are three times as likely to lack access as the wealthiest urban families."[10] The Haas Institute found one-quarter of California households in AT&T's footprint must rely on the slowest DSL technology, and these households' incomes are 43.5 percent lower than households who are able to access fiber-based technology.[11]

The Commission's 2016 Broadband Report concluded that more than 34 million people lack access to broadband at the Commission's current 25/3 Mbps speed definition—23 million in rural areas and 11 million in urban communities.[12] Although the Commission cites staff analysis that may indicate these numbers have changed substantially, a recent US Telecom analysis of the newest 477 data reports similar findings to the 2016 report. US Telecom found that 90 percent of housing units have access to fixed broadband service at 25/3 Mbps,[13] which means 35.3 million people are without broadband access.[14] And according to that analysis, only 64 percent of rural housing units have access to fixed broadband service at 25/3 Mbps.[15] We believe, at a minimum, the Commission's new staff analysis based on this same data deserves further scrutiny.[16] Even assuming a more robust analysis, we caution overreliance on that data

because, as the Commission admits, 477 data "may overstate or understate the estimate of Americans with access to fixed advanced telecommunications services" and because, *inter alia*, if a census block is listed as served by a provider "it is impossible to tell whether residents of that block seeking service could turn to that provider for service or whether the provider would be unable or unwilling to take on additional subscribers."[17] Existing data on deployment and use demonstrates a persistent digital divide and does not support a Commission reversal. **Advanced telecommunications capability is not being deployed in a reasonable and timely fashion to all Americans**.

We encourage the Commission to take a broad, meaningful look at deployment as it relates to use and to investigate data that demonstrate low-income neighborhoods lack fiber infrastructure. We reiterate our concern that the Commission's current proceeding will reconsider mobile service as a substitute for wireline service and thus lower the bar for broadband speed standards. These changes would deter network investments and cement the digital divide. Instead, the Commission should expeditiously take action to adopt subsidies, support tax policies and digital inclusion programs, and bolster robust broadband Lifeline service. Such actions will accelerate investment in broadband infrastructure, encourage broadband adoption, and close the digital divide.

Thank you for your consideration of our views. Please contact Leadership Conference Media/Telecommunications Task Force Co-Chairs Cheryl Leanza, United Church of Christ, OC Inc., at 202-904-2168 and Michael Macleod-Ball, on behalf of ACLU, at 202-253-7589, or Corrine Yu, Leadership Conference Managing Policy Director, at 202-466-5670, if you would like to discuss the above issues.

Sincerely,

The Leadership Conference on Civil and Human Rights
American Civil Liberties Union
American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
Asian Americans Advancing Justice – AAJC
Center for Media Justice
Common Cause
Communications Workers of America
NAACP
National Consumer Law Center, on behalf of its low-income clients
National Disability Rights Network
National Hispanic Media Coalition
United Church of Christ, OC Inc.

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[1] In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, GN Docket No. 17-199 (rel. Aug. 8, 2017) ("*Notice of Inquiry*").
[2] American Community Survey, 1-Year Estimates, Types of Computers and Internet Subscriptions, S2801, available at:

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https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_S2801&prodType=table

[3] Pew Research Center, "Internet/Broadband Fact Sheet" (Nov. 11, 2016) Available at: http://www.pewinternet.org/fact-sheet/internet-broadband/

[4] Victoria Rideout, Vikki Katz, "Opportunity for All?" at 5 (Joan Ganz Cooney Center, 2016).

[5] *Id*., para. 17.

[6] *Notice of Inquiry*, para. 5.

[7] 2016 Broadband Progress Report, para. 17.

[8] Pew Research Center, US Smartphone Use in 2015 (Apr. 1, 2015). Available at: http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/

[9] National Digital Inclusion Alliance, *AT&T's Digital Redlining of Cleveland*, (March 2017) available at: https://www.digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/; Advocates for Basic Legal Equity, "AT&T Fails To Invest in Low-Income Montgomery County Neighborhoods," (March 21, 2017) available at http://ablelaw.org/media-room/news-and-press-releases/3403-att-fails-to-invest-in-low-income-montgomery-county; National Digital Inclusion Alliance, "More digital redlining? AT&T home broadband deployment and poverty in Detroit and Toledo" (Sept. 6, 2017) available at https://digitalinclusion.org/blog/2017/09/06/more-digital-redlining-att-deployment-and-poverty-in-detroit-and-toledo/.

[10] Allan Holmes, et al., Center for Public Integrity, "Rich people have access to high-speed Internet; many poor people still don't," (May 12, 2016) https://www.publicintegrity.org/2016/05/12/19659/rich-people-have-access-high-speed-internet-many-poor-people-still-dont.

[11] Garret Strain et al., Haas Institute, AT&T's Digital Divide in California, Policy Brief 2017, http://haasinstitute.berkeley.edu/sites/default/files/haas_broadband_042417-singles.pdf See also Mass Dept. of Telecom 706 NOI Comments, GN Docket No. 17-199 (filed Sept. 21, 2017) at 5, whose analysis shows "in Massachusetts, households earning $40,000 are less than two-thirds as likely to subscribe to fixed broadband services (52.4% subscription rate) as are households earning $100,000 (82.4% subscription rate)."

[12] 2016 Broadband Progress Report, *In the Matter of Inquiry Concerning the deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act* (rel. Jan. 29, 2016). ("2016 Broadband Progress Report"). Available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-6A1_Rcd.pdf. *Notice of Inquiry* at para. 41 and note 65.

[13] U.S. Telecom, the Broadband Association, U.S. Broadband Availability Report Mid-2016 at 6, chart 6 (Aug. 25, 2017) available at: https://www.ustelecom.org/sites/default/files/BB%20Availability%202016%201H%20RB%20Final%207.pdf. 35.

[14] This figure uses the Census estimate of 135.7 million households as of July 1, 2016. See U.S. Census, Quick Facts, available at: https://www.census.gov/quickfacts/fact/table/US/PST045216.

[15] Id. at 10, chart 9.

[16] See Notice of Inquiry at para. 41 (citing the same data to support a figure of 93 percent access of all Americans).

[17] *Modernizing the FCC Form 477 Data Program*, FNPRM, Docket No. 11-10 at para. 33 (Aug. 4, 2017).