Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF THE CITIES OF BOSTON, MASSACHUSETTS, AND PORTLAND, OREGON, ANNE ARUNDEL COUNTY, MARYLAND, AND THE MT. HOOD CABLE REGULATORY COMMISSION

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October 6, 2017

EXECUTIVE SUMMARY

While much work remains to close the digital divide, the rapid growth and expansion of Internet service providers nationwide makes it clear that local governments are not the cause of any problems that remain. Local governments are promoters and partners, not obstacles, to deploying broadband. The great successes broadband providers present to the Commission in this proceeding should echo into those infrastructure proceedings currently open at the Commission in which it seeks to portray local governments as obstacles. For while the communications industry celebrates its successes in this docket, it presents inherently contradictory narratives elsewhere. The Commission should not be fooled by this duplicitous approach.

Local governments and community leaders at all levels of government recognize and embrace the broad array of benefits provided by widespread broadband deployment and the affordable and competitive advanced services it can support. Economic growth, public safety, education, health, and civic engagement are all enhanced by the availability of modern connectivity. Local governments have no incentive nor history of obstructing deployment in their communities. In fact, local governments have worked proactively for decades to promote deployment, competition, and connectivity, often in the face of barriers erected by incumbent providers desperate to block the entry of competitive providers.

Moreover, there is a continued need for the Universal Service Fund and numerous other initiatives that seek to close the digital divide. Local governments must be encouraged and supported as critical partners in making progress in this national effort.

Local governments strongly oppose any Section 706 Report that would erroneously conclude that American communities and consumers are adequately served by the presence of either fixed or mobile broadband. The 21st Century economy and society demands robust wired

and wireless access. Communities need both types of service to support economic growth, educational achievement, and public safety. Similarly, any effort to consider lower speed metrics to be "good enough" should also be abandoned. Congress directed the Commission to look ahead and push America's communications infrastructure into the future, not simply examine the status quo and determine whether or not it is good enough. Amending the definition for what constitutes access to advanced telecommunications services does not solve policy problems; it merely hides them. Americans deserve better. Whether all Americans are served should be based on granular data, consistently and transparently collected. Whether all Americans have access to advanced telecommunications services must be based on objective truth, not inherently contradictory narratives advanced on an as-convenient basis.

Finally, local governments urge the Commission to recognize and fully embrace the positive impact local government will continue to have on broadband deployment. One step in achieving that result would be to include additional local government representatives in initiatives like the Broadband Deployment Advisory Committee. To ensure the validity and authenticity of any policy outcomes, all stakeholders must be fairly and equally represented throughout all stages of the policymaking process, and we urge the Commission to take strong steps to address current shortcomings in this area.

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I. INTRODUCTION

The Cities of Boston, Massachusetts and Portland, Oregon, joined by Anne Arundel County, Maryland, and the Mt. Hood Cable Regulatory Commission (collectively, "Local Authorities") submit these Reply Comments in response to the Federal Communications Commission's ("Commission") Notice of Inquiry regarding the analytical framework to apply to the Thirteenth Annual Section 706 Report.[1] The Local Authorities urge the Commission to embrace the reality that consumers need, and demand, access to both fixed and mobile broadband services. Furthermore, the record before the Commission in this and other proceedings demonstrates the systematic advancement of inherently contradictory narratives from the broadband industry, which is quick to celebrate its accomplishments here while simultaneously complaining elsewhere of barriers that prohibit deployment. The Commission must recognize that two conflicting stories cannot both be true. Furthermore, the Commission must recognize that, were there any veracity to industry claims of local government obstruction of broadband deployment, the very successes so eagerly celebrated in this record could not be possible. Local governments recognize and embrace the benefits of robust, competitive, and affordable broadband connectivity. They should be embraced as partners in the broadband effort, not maligned as obstacles to progress.

[1] *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Notice of Inquiry, FCC 17-109, GN Docket No. 17-199, (rel. Aug. 8, 2017) ("NOI"). Unless otherwise specified, all citations to "Comments" refer to filings submitted in GN Docket No. 17-199.

II. LOCAL GOVERNMENTS RECOGNIZE AND SHARE THE COMMISSION'S DESIRE TO PROMOTE BROADBAND DEPLOYMENT, AND ARE ACTIVELY WORKING TO CLOSE THE DIGITAL DIVIDE.

A. Local Governments are Keenly Aware of the Value Broadband Access Provides for Their Communities and Constituents.

The Commission's National Broadband Plan, released in 2010, found that "[b]roadband is a platform to create today's high-performance America - an America of universal opportunity and unceasing innovation, an America that can continue to lead the global economy, an America with world-leading, broadband-enabled health care, education, energy, job training, civic engagement, government performance and public safety."[2] Local governments have a deep-seated interest in ensuring that this vision is realized, and for decades have pursued universal broadband connectivity in their communities as perhaps the most critical factor in unlocking the potential of the digital economy. Local governments understand connectivity creates jobs, drives education and civic engagement, enhances health, promotes economic growth, protects public safety, and spurs innovations. Local governments dedicated to advancing the interests of their constituents and promoting their communities in a competitive and connected world have long recognized the critical importance of broadband.

Local governments agree with the Commission that "high-speed Internet access is an increasingly important gateway to jobs, health care, education, and information, allowing innovators and entrepreneurs to create businesses and revolutionize local industries."[3] Local governments have a keen interest in ensuring that these very benefits are realized for all their citizens. Local governments nationwide expend substantial resources promoting broadband deployment and Internet access, whether through support for anchor institutions, ordinances

[2] Connecting America: The National Broadband Plan at p. 3 (2010).
[3] *Improving Competitive Broadband Access to Multiple Tenant Environments,* GN Docket 17-142, 31 FCC Rcd. 9140, Notice of Inquiry (rel. Aug. 4, 2016) ("MTE NOI") at ¶ 1.

designed to incentivize new deployment, or other efforts. In August 2017, for example, seventeen Mayors from across Missouri gathered to discuss closing the digital divide in their communities.[4] Regarding the significance of broadband access, Kansas City, Missouri Mayor Sly James said: "This infrastructure is as important as concrete, mortar and sidewalks and curbs. This is how information is disseminated. This is how services are acquired. The things we need to do aren't political. They're practical."[5]

While progress is being made, the robust competitive nationwide marketplace for telecommunications services envisioned by Congress in the Telecommunications Act of 1996 remains unrealized.[6] There is little direct competition between the country's four largest broadband providers. Approximately 61 percent of Americans, according to FCC data, have only one fixed broadband provider available.[7] Even in the 13 percent of census blocks with three or more providers available, "anecdotal evidence suggests that many within those census blocks likely do not have as many options."[8] Recent polling shows that 75 percent of Americans believe that "everyone needs [Internet access] in a 21st century economy," and that that same percentage

[4] Bill Lucia, *Missouri Mayors Look to Expand High-Speed Internet Access*, Route Fifty (Aug. 13, 2017), http://www.routefifty.com/smart-cities/2017/08/kansas-city-mayor-sly-james-high-speed-internet/140201/.
[5] *Id.*
[6] *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*, GN Docket No. 15-191, 2016 Broadband Progress Report (rel. Jan. 29, 2016) ("2016 Broadband Progress Report") Table 6 (noting that 61% of Americans have at most one choice for fixed advanced telecommunications capability).
[7] *Id.*
[8] Institute for Local Self-Reliance (ILSR) and Next Century Cities (NCC) Comments, *Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, at p. 2 (Jul. 24, 2017) ("ILSR/NCC MTE Comments").

of Americans believe "local government should play a role" in making sure Internet access is affordable and accessible.[9]

Local governments have no reason to stand in the path of broadband deployment. In fact, "more than 500 communities found that investing in Internet infrastructure was the only way to obtain the type of Internet access their residents and businesses needed."[10] These communities "invest[] in a range of Internet infrastructure that serve residents, businesses, and/or local government facilities" which "save public dollars by reducing telecommunications costs for local government and private enterprise by encouraging reasonable rates and better services."[11] Cities interested in promoting competitive broadband pass local ordinances to ease deployment, including one-touch make-ready policies,[12] yet find themselves attacked in court at every turn by incumbents who place a higher priority on preserving local monopolies than deploying broadband.[13] And in those communities where local action promotes competition, incumbents have a strong track record of responding to that competitive pressure, ensuring the free market works for consumers, not just for entrenched incumbents.[14]

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[9] *See* Freedman Consulting, LLC, *New Poll: Americans Support Increased Internet Access, Affordability, Competition* (Aug. 2, 2017), *available at* http://tfreedmanconsulting.com.routing.wpmanagedhost.com/wp-content/uploads/2017/08/Polling_Access-Memo_Final_20170802.pdf

[10] ILSR/NCC MTE Comments at p. 5.

[11] Id. at 5-6

[12] *See, e.g.*, Jacob Ryan, *Louisville Metro Council OKs 'Google Fiber Ordinance'*, WFPL (Feb. 11, 2016) ("An ordinance meant to streamline the process for bringing ultra-fast Internet service to Louisville won easy approval Thursday from the Metro Council."), http://wfpl.org/louisville-metro-council-oks-google-fiber-ordinance/.

[13] See, e.g., Joey Garrison, *AT&T sues Nashville Over Google Fiber 'One Touch' Law*, Tennessean (Sept. 22, 2016), http://www.tennessean.com/story/news/2016/09/22/att-sues-nashville-over-google-fiber-one-touch-law/90852632/.

[14] *See, e.g.*, Harrison Weber, *AT&T plays follow the leader with Google, announces it will also bring gigabit speeds to Austin*, TNW (Apr. 9, 2013), https://thenextweb.com/insider/2013/04/09/att-plays-follow-the-leader-with-google-announces-it-will-also-bring-gigabit-speeds-to-austin/#.tnw_mfkuZ5sT; Jim Gallagher, *Charter*

For example, Anne Arundel County, Maryland, found in 2006 that while much of its population was served by one or more providers, approximately 40 square miles of the county were unserved. Furthermore, it was unlikely that the situation would change. Working with incumbent providers and using Broadband Technology Opportunities Program grants in conjunction with local investment, the County invested in fiber-to-the-premises facilities to help improve conditions and allow private enterprise to more readily offer retail services. This resulted in advanced services being available not only to consumers and businesses, but to schools, libraries, and police and fire stations previously denied connectivity. This fundamentally local challenge was solved by a public-private partnership in which the local government was empowered and motivated to solve a local problem.

Broadband access is a tangible, visceral, immediate need for hundreds of communities nationwide. Connectivity is "literally a matter of life and death" in some communities, such as Harrison County, Ohio.[15] Local officials believed that inadequate cell coverage there has cost lives, despite all four nationwide carriers depicting the county as almost completely blanketed with coverage in their maps and in data reported to the FCC. In Muskingum County, "schools frequently lose signal for over an hour, often making it impossible for students to do their work."[16] And "in Monroe County, as in other areas, the lives that could be best helped by telehealth because of their distant location are also the ones who are most likely to lack access to

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Communications to Raise Internet Speeds, St. Louis Post-Dispatch (Jun. 13, 2014), http://www.stltoday.com/business/local/charter-communications-to-raise-internet-speeds/article_20ea8382-91be-5419-b785-fedcdb313b70.html.

[15] *In the Matter of Technology Transitions*, GN Docket No. 13-5, *Ex Parte* Letter from Eleven Ohio Counties and Public Knowledge at p. 6 (Jul. 19, 2017) ("Ohio Ex Parte").

[16] Id. at 7

it."[17] As the Town of Leverett, Massachusetts, detailed, robust broadband "ensures economic and demographic viability of rural areas."[18]

Local governments and community leaders are "working tirelessly to ensure fast, affordable, reliable Internet access so that their residents can take full advantage of the educational, economic, and civic engagement opportunities that come from next-generation broadband."[19] Community leaders recognize that "broadband is essential to economic development, public safety, and a vibrant quality of life."[20] Local communities are an integral part of the solution to the nation's connectivity problems, not the obstacle to progress they are cast as by providers. Those same providers have already failed to serve hundreds of communities and tens of millions of Americans.

B. Communities Nationwide Face Varied and Unique Challenges in Pursuing Universal Broadband Availability, and are Best Positioned to Recognize and Act to Address Local Challenges.

Local leaders nationwide are acutely aware of the desperate need for connectivity and the struggles their communities will face without reliable access.[21] Communities across the country, faced with a lack of service from dominant providers, have tackled the problem head-on in a variety of ways. Some communities have adopted policies to ease the entry of new competitors.[22] Other cities have opened up their own publicly-owned municipal networks to provide critical

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[17] Id. at 4.
[18] Leverett, MA Comments at p. 1.
[19] ILSR/NCC MTE Comments at p. 8.
[20] Letter from 45 Members of Congress to the Commission, GN Docket No. 17-199, at p. 1 (Oct. 5, 2017) ("Bicameral Congressional Letter").
[21] *See, e.g.*, *Ohio Ex Parte*; *Technology Transitions*, GN Docket No. 13-5; *Ex Parte* Letter from Seven West Virginia Counties and Public Knowledge (filed Jul. 20, 2017) ("West Virginia Ex Parte") (demonstrating widespread awareness among local government officials of the critical importance of broadband for economic and social development).
[22] *See, e.g.*, Jacob Ryan, *Louisville Metro Council OKs 'Google Fiber Ordinance'*, WFPL (Feb. 11, 2016) ("An ordinance meant to streamline the process for bringing ultra-fast Internet service to Louisville won easy approval Thursday from the Metro Council."), http://wfpl.org/louisville-metro-council-oks-google-fiber-ordinance/.

middle-mile infrastructure, lowering the up-front expenditure requirements for providers willing to enter the market and meet the community's needs. Still, others have worked either independently, through utility co-ops, or through other public-private partnerships to directly ensure the provision of retail broadband services. At every turn, these efforts have been opposed by some of the same incumbent broadband providers who seek here to trumpet their success in deploying broadband rapidly throughout the country.

As the Commission continues to examine an array of mechanisms for closing the digital divide, we strongly encourage the elevation of successful local initiatives. Broadband issues manifest on a street-by-street basis, impacting residents of different neighborhoods within the same community in profoundly different ways, and local governments are often best equipped to address consumer concerns, whether through oversight of cable systems through local franchise authorities, engagement with providers through rights of way management practices, or direct partnership with providers to solve the problems that manifest in their communities. While the Commission is well-equipped to consider the big picture of broadband nationwide, local challenges frequently demand local solutions. We therefore urge the Commission to empower local government to keep solving those problems and continuing to serve as partners in deployment in the future, as they have throughout the digital revolution.

The Commission has a crucial role to play in promoting broadband deployment and closing the digital divide, but it cannot singlehandedly tackle the challenges inherent in promoting competitive, advanced telecommunications capability nationwide. Many of the challenges, and therefore solutions, inherent in closing the digital divide, connecting consumers, and promoting competition are fundamentally local concerns. They are not best addressed by one-size-fits-all nationwide policy. As the Institute for Local Self-Reliance and Next Century

Cities noted, "[w]hile federal and state laws have the potential to help cities and counties, local communities are best at determining their needs."[23]

Federal policy will certainly play a crucial role in advancing the deployment of broadband nationwide, but Commission action is not a cure-all, and is not appropriate or permissible in all situations. Local governments are playing their part on an ongoing basis to promote all types of broadband deployment. Commission actions to homogenize policy over fundamentally local matters, even if legally permissible, would undermine a variety of ongoing local efforts to promote competition and close the digital divide. As the Institute for Local Self-Reliance and Next Century Cities noted, "decision makers at the federal or state local are too far removed from a local community's experiences with large or small ISPs" to effectively address the unique challenges faced by each community across the country.[24]

Local governments must have the legal authority and ability to act to solve problems they themselves identify. The Commission must not tie local governments' hands and force them to sit idly by while solvable problems go unaddressed. Instead the Commission should promote collaborative relationships between public agencies and service providers, rather than embracing the adversarial approach of dominant providers.

C. The Universal Service Fund and Its Various Initiatives Are Needed to Close the Digital Divide.

Even as the communications industry trumpets its successes and urges the Commission to define away the digital divide,[25] hundreds of local communities nationwide, and tens of millions of Americans, are being left behind. County Commissioners and administrators from 11 counties in Ohio took exception to the FCC's data and the coverage maps of the four nationwide wireless

[23] ILSR/NCC MTE Comments at p. 5.
[24] ILSR/NCC MTE comments at p. 5.
[25] *See e.g.*, USTelecom Comments at p. 2, CTIA Comments at p. 2.

carriers, which depict Appalachia as relatively well-served.[26] The local officials described a different experience of struggling with a "lack of reliable mobile access."[27] They implored the Commission to "focus on users and not just the provider end of the equation" in enacting broadband policy.[28] Local leaders from across the nation find that "the power of large incumbent telephone and cable companies discourages new investment."[29]

The record before the Commission in this and other proceedings reflects the vast amount of work that remains to be done. Numerous rural broadband providers express concern about the high cost of rural deployment and uncertainty arising from inconsistent USF funding to support cost recovery.[30] Policy initiatives that depend solely on paving the way for, and where necessary subsidizing, private industry represent an incomplete set of solutions to the problems posed in providing connectivity to all Americans. Government at all levels must have a role, as should educational institutions, community organizations, competitive providers, and constituents themselves. The continued need for programs such as Lifeline, E-Rate, the High-Cost Fund, and the forthcoming second phase of the Mobility Fund proceeding, along with innumerable state and local efforts to streamline, encourage, and subsidize connectivity, all demonstrate the for the importance of inclusiveness in the problem-solving process. Such inclusiveness is vastly preferable to exclusionary and adversarial efforts to enact sweeping policy changes to impose one-size-fits-all solutions to fundamentally unique local challenges.

Competition, choice, and the benefits of broadband are essential for all communities, regardless of their socio-economic status. Rural communities, which often are less lucrative

[26] Ohio Ex Parte at pp. 3, 4.
[27] *Id.*
[28] *Id*.
[29] ILSR/NCC MTE Comments at p. 2.
[30] NTCA Comments at Appendix A. pp 15-18.

markets for service providers, remain critically underserved, but they are not the only unserved areas. In some cases, the failure of the communications industry to serve some urban communities tracks racial and socioeconomic lines with disturbing accuracy. In Cleveland, for example, research from the National Digital Inclusion Alliance based on the Commission's own Form 477 data reflected a stark difference in service availability and investment spending between low-income majority-minority communities and wealthier areas.[31] Digital redlining of this nature has been reported in Detroit, and throughout California, as well.[32] The Commission must recognize the harmful impacts that can occur when local monopolies are allowed to choose which communities do and do not have the opportunity to succeed in the 21st Century.

Rural communities, too, suffer from provider practices even in places already deemed served. Despite advertising unlimited data plans to rural residents and listing vast swaths of rural areas as covered by those plans, Verizon recently announced plans to disconnect thousands of users it deemed too expensive to continue serving.[33] The Commission's Section 706 inquiry must carefully examine actual provider practices rather than perusing broad coverage maps and generalized data to satisfy itself that consumers have access. The Commission must consider whether service truly is available, accessible, and usable for the purposes needed. Rural applications such as precision farming require vast data capacity on both fixed and mobile

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[31] *See* National Digital Inclusion Alliance, *AT&T's Digital Redlining of Cleveland* (Mar. 10, 2017), *available at* https://www.digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/.

[32] *See, e.g.* National Digital Inclusion Alliance, *More digital redlining? AT&T home broadband deployment and poverty in Detroit and Toledo*, (Sept. 6, 2017), *available at* https://www.digitalinclusion.org/blog/2017/09/06/more-digital-redlining-att-deployment-and-poverty-in-detroit-and-toledo/; Garrett Strain, Eli, Moore, Samir Gambhir, *AT&T's Digital Divide in California*, Haas Institute Policy Brief (2017), *available at* http://haasinstitute.berkeley.edu/sites/default/files/haas_broadband_042417-singles.pdf.

[33] *See, e.g.*, Jon Brodkin, *Verizon kicking people off network for using just a few gigabytes a month*, Ars Technica, (Sept. 21, 2017), https://arstechnica.com/tech-policy/2017/09/verizon-kicking-people-off-network-for-using-just-a-few-gigabytes-a-month/.

networks,[34] and the Commission should consider whether the services providers claim to offer in communities nationwide are actually accessible and usable by the residents of those communities.

Section 706 of the Act requires the Commission to ensure that service is made available to *all* Americans, not simply those who present the best business case to service providers. As the Commission examines its obligations under the statute, we are concerned that its desire to depart from past precedent by focusing on whether a community has *any* service, rather than *adequate* service, risks tacitly blessing service provider practices that have deeply concerning effects and exacerbate the symptoms of the digital divide, including decreased economic opportunity, educational success, and community engagement outcomes. As the Commission considers its metrics and analytical framework, we strongly urge that particular attention be paid to the harms that arise from inaction and lowering of aspirations. The disparity in service between dense, lucrative markets and the many rural and low-income communities where modern broadband eludes so many Americans demonstrates the continued need for action at all levels of government and throughout the private sector. The Commission must not exclude local government from the problem-solving process at the behest of dominant carriers whose conduct raises serious concerns.

Achieving affordable and universal broadband connectivity is difficult, but that doesn't mean it's not worth pursuing. The Commission cannot and should not take the easy way out by defining away the problem or satisfying ourselves with "good enough" measures. If the Commission is truly committed to closing the digital divide, it must preserve all tools in its toolbox, including the opportunity to collaborate with, rather than exclude and push aside, local

[34] Deere & Company Comments at p. 2.

authorities. Commenters would point out a paradox to the Commission. Those parts of the country most open to new infrastructure investment with the least regulatory requirements remain the nation's least served. Yet the communications industry celebrates its success in the densest areas of the country which, many times, have the most robust regulatory oversight. Sprint celebrates network densification taking place in numerous cities nationwide, yet rural America remains disconnected.[35] Any problems, it is clear, do not arise from local government regulatory oversight.

III. COMMUNICATIONS INDUSTRY CLAIMS OF ROBUST INVESTMENT AND ADEQUATE DEPLOYMENT ARE FUNDAMENTALLY INCONSISTENT WITH ITS PROFFERED RATIONALES FOR ATTACKING LOCAL AUTHORITY.

A. The Record is Replete with Service Provider Claims that Deployment is Robust, Substantial, and Proceeding at Breakneck Pace.

"Section 706 of the Telecommunications Act of 1996, as amended, requires the Commission to determine and report annually on 'whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.'"[36] In the words of the telecommunications industry, the answer to that question is a resounding 'Yes!' Verizon hails "staggering" broadband deployment "nationwide."[37] AT&T celebrates the "billions of dollars" invested in "advanced telecommunications capabilities over the past several years."[38] CTIA describes recent deployment as "remarkable" and cites "more than $200 billion in network

[35] *See, e.g.* Press Release, *The Secret's Out! Sprint to Illuminate Chicago with Thousands of Network Enhancements and 100+ New Stores* (May 8, 2017), http://investors.sprint.com/news-and-events/press-releases/press-release-details/2017/The-Secrets-Out-Sprint-to-Illuminate-Chicago-with-Thousands-of-Network-Enhancements-and-100-New-Stores/default.aspx; Press Release, *Sprint's New Cell Sites Hit Network Coverage Out of the Park in Downtown Detroit* (Apr 3, 2017), http://investors.sprint.com/news-and-events/press-releases/press-release-details/2017/Sprints-New-Cell-Sites-Hit-Network-Coverage-Out-of-the-Park-in-Downtown-Detroit/default.aspx.

[36] NOI at ¶ 1.

[37] Verizon Comments at p. 3.

[38] AT&T Comments at p. 3.

improvements" in addition to investments in spectrum or wireline or other third party infrastructure as indicative of the robust and steady deployment of mobile broadband in the United States.[39] CTIA describes some 308,000 cell sites in operation at the end of 2016; an increase of more than 100,000 over the preceding decade.[40] And USTelecom argues that "U.S. broadband providers continue to deploy and upgrade networks rapidly, bringing consumers across the nation ever-faster service and choice."[41]

With regard to coverage, USTelecom (using older, slower speed metrics) highlights its view that "96% of Americans [have] at least one wired broadband service offering available to them."[42] And CTIA reports that "4G LTE service is available to 99.7 percent of Americans, covering more than 71 percent of the total U.S. land area."[43] CTIA suggests that investment shows no sign of slowing, either, as they highlight "wireless providers . . . expected to invest $275 billion to build out 5G over the next decade."[44]

In sum, then, the picture is rosy, in the view of America's broadband giants. The FCC's own data paints a starkly different picture, however, as do those same providers in other proceedings where their interests are better served by a doom-and-gloom outlook on broadband deployment. The Commission must not tolerate this duplicity, let alone rely upon it to justify substantial policy changes.

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[39] CTIA Comments at p. 5.
[40] *Id.*; CTIA Annual Wireless Industry Survey, Year End 2016 Top Line Results, at p. 4 (2017), *available at* https://www.ctia.org/docs/default-source/default-document-library/annual-year-end-2016-top-line-survey-results-final.pdf?sfvrsn=2.
[41] USTelecom Comments at p. 2.
[42] *Id.*
[43] CTIA Comments at p. 4
[44] CTIA Comments at p. 6.

B. The Commission's Own Data Suggests the Persistence of a Wide Digital Divide, and a Severe Shortage of Rural Service and Wireline Competition.

The Commission's Notice of Inquiry notes that "93% of all Americans" are served by at least one wireline broadband provider offering speeds meeting the Commission's current 25/3 speed threshold.[45] However, the 2016 Broadband Progress Report found that only 38 percent of Americans enjoyed competitive choice between even two providers of wireline broadband, while 39 percent of rural Americans went wholly unserved.[46] All told, nearly 40 million Americans had no access to fixed advanced telecommunications capability.[47] And in rural America, only 13 percent enjoy any choice in broadband provider.[48] Immense work remains to be done until the broadband needs of the 21st Century consumer and digital economy are met by America's broadband providers.

In the wireless space, network coverage appears excellent, yet problems persist. In July 2017, representatives of dozens of communities across Appalachia gathered in Marietta, Ohio, for the Appalachian Ohio-West Virginia Connectivity Summit. Among many concerns voiced about the abysmal state of connectivity in their communities was a widely shared experience that the coverage maps advertised by carriers and presented to the Commission utterly fail to reflect the reality on the ground.[49] Even as the wireless industry trumpets its coverage, the reality is that the industry's networks fail to meet the needs of millions of Americans living in areas where blanket coverage is advertised. And that industry is poised to experience further consolidation,

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[45] NOI at ¶ 41.
[46] 2016 Broadband Progress Report at Table 6.
[47] *Id*.
[48] *Id*.
[49] *See*, Kate Forscey, *What's Lacking in Appalachia: Tales from a Broadband Connectivity Conversation*, Public Knowledge (Jul. 28, 2017) https://www.publicknowledge.org/news-blog/blogs/whats-lacking-in-appalachia-tales-from-a-broadband-connectivity-conversatio.

even as the benefits of competition finally begin to trickle down to consumers in the form of lower prices.[50]

C. Other Recent Dockets Opened By the Commission Reflect Industry Arguments Directly Contradicting The Claims Proffered Here.

Even as broadband providers trumpet their accomplishments and celebrate their investments and scale of deployment in this proceeding, they simultaneously paint a grim picture elsewhere; attacking local government and claiming that state and local governments inhibit deployment. These dueling narratives are fundamentally irreconcilable.

In its wireless and wireline infrastructure proceedings, the Commission sought comment on potential barriers to investment and deployment.[51] The wireless industry was particularly quick to respond, alleging that, despite its "staggering"[52] success in deploying broadband, local policies "burden the small cell siting process" and "have the effect of delaying or preventing small cell deployment."[53] Despite this, however, T-Mobile was able to expand its network by more than 2,000 sites in 2016 alone.[54] All four major nationwide carriers routinely invest in network densification efforts, and tout those achievements alongside investments in new and innovative technologies.[55]

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[50] *See* Twentieth Wireless Competition Report, FCC 17-126, at ¶¶ 5-6 (rel. Sept. 27, 2017).
[51] *See generally Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 17-79, ¶94 (rel. Apr. 21, 2017) ("Wireless NPRM/NOI"); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 at ¶104-108 (rel. Apr. 21, 2017) ("Wireline NPRM/NOI").
[52] Verizon Comments at p. 3
[53] Verizon Comments, WT Docket No. 17-79, at p. 3.
[54] T-Mobile 2016 Annual Report (2017) ("We had approximately 66,000 cell sites, including macro sites and distributed antenna system network nodes as of December 31, 2016, compared to approximately 64,000 cell sites as of December 31, 2015"), *available at* http://investor.t-mobile.com/Cache/1001223313.PDF?O=PDF&T=&Y=&D=&FID=1001223313&iid=4091145.
[55] *See, e.g.* Lowell McAdam, Chairman and Chief Executive Officer, Verizon Communications Inc., Annual Letter to Shareholders (Dec. 2016), *available at* http://www.verizon.com/about/sites/default/files/annual_reports/2016/letter.html; Press Release,

As a broad coalition of local governments pointed out in those same proceedings, "if local policies rose to the level of prohibitions, this level of deployment simply would not be happening."[56] As the wireless industry itself insists here, "mobile wireless broadband deployment has been and continues to be reasonable and timely."[57] Wireline providers share the same outlook, arguing that "there are ample market incentives for providers to deploy better and faster broadband in most of the country, and certainly no systemic market failure when it comes to deploying broadband in the U.S."[58]

It is impossible to reconcile these assertions about the pace and scope of deployment, with claims that local authority must be severely curtailed to permit deployment to proceed. While it is understandable as a business practice that broadband providers might seek to suppress local authority and force subsidization of their infrastructure by the public, the simple reality is

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AT&T Labs' Project AirGig Nears First Field Trials for Ultra-Fast Wireless Broadband Over Power Lines, (Sep. 20, 2016), http://about.att.com/newsroom/att_to_test_delivering_multi_gigabit_wireless_internet_speeds_using_power_lines.html; Scott Bergmann Prepared Statement to House E&C, April 5, 2017: "In just seven years, wireless providers have blanketed the country with $200 billion in network spending to deliver 4G LTE mobile broadband nationwide. Today, 99.7 percent of Americans have access to 4G LTE service, and 95.9 percent can choose from three or more 4G LTE providers."; *See, e.g.* Press Release, *The Secret's Out! Sprint to Illuminate Chicago with Thousands of Network Enhancements and 100+ New Stores* (May 8, 2017), http://investors.sprint.com/news-and-events/press-releases/press-release-details/2017/The-Secrets-Out-Sprint-to-Illuminate-Chicago-with-Thousands-of-Network-Enhancements-and-100-New-Stores/default.aspx; Press Release, *Sprint's New Cell Sites Hit Network Coverage Out of the Park in Downtown Detroit* (Apr 3, 2017), http://investors.sprint.com/news-and-events/press-releases/press-release-details/2017/Sprints-New-Cell-Sites-Hit-Network-Coverage-Out-of-the-Park-in-Downtown-Detroit/default.aspx..

[56] Smart Communities and Special Districts Coalition Reply Comments, WT Docket No. 17-79, WC Docket No. 17-84, at p. 9 (Jul. 17, 2017) ("Smart Communities Infrastructure Reply Comments"). https://ecfsapi.fcc.gov/file/10718221383967/REPLY_SMART%20COMMUNITIES.pdf .

[57] CTIA Comments at p. 2.

[58] USTelecom Comments at p. 4.

that the law does not permit such aggressive action, and by the telecommunications industry's own words, there is no "market failure" that would justify such action.

D. The Commission Must Not Rely on Poorly Substantiated, Inherently Contradictory Industry Claims.

In light of the inherently contradictory records developed by the telecommunications industry in a number of proceedings before the Commission, and the substantial lack of substantiation for claims of local prohibitions advanced by the allegedly aggrieved parties, there is no basis to take action against local governments who share the Commission's interest in, and commitment to, closing the digital divide. As local governments pointed out in the infrastructure dockets, the record is devoid of substantiated and particularized evidence of actual harm arising from local government action.[59] No provider has clearly identified any substantial deployment to an unserved or underserved area that was not carried out as a direct result of local government action.[60]

In its submission to this proceeding, NTCA shared the results of its 2016 Broadband/Internet Availability Survey. Among other questions, NTCA asked its members to identify "specific obstacles" encountered in efforts to deploy fiber to customers.[61] Not one of the 52 individual responses published by NTCA identified local government policies as a culprit in the prohibition of broadband service.[62]

[59] Smart Communities Infrastructure Reply Comments at pp. 6-7.
[60] *Id.*at 6.
[61] NTCA Comments at Appendix A, pp. 15-18.
[62] *Id.*

In sum, and as the Commission recently noted, unsubstantiated and nonspecific allegations of harm are not "sufficiently supported and credible for purposes of decisional reliance" and thus must be disregarded, here and elsewhere, by the Commission.[63]

IV. COMMISSION EFFORTS TO MEASURE SERVICE TO ALL AMERICANS MUST BE GRANULAR AND REQUIRE CONSISTENT, TRANSPARENT MEASUREMENT TECHNIQUES.

We share the City of New York's concern that "some of the proposed changes in the Commission's [Notice of Inquiry] would lead to the creation of a report that would seemingly inflate the level of access that Americans have to advanced telecommunications capabilities."[64] Accurate, detailed data is of critical importance in understanding the connectivity issues facing communities, which sometimes manifest at a street-by-street or even house-by-house level.[65] The Commission's proposed approach suggests that communities may be deemed served if they have access to even a single wireless provider, and that coverage of landmass equates to coverage of population, as though residents are distributed at regular intervals across cities, counties, and states. We agree with the City of New York that "census blocks are not granular enough to determine where and to whom advanced telecommunications capabilities are not being deployed."[66] We oppose any framework that would result in data in any way less granular than the already inadequate data collected and reported by past Section 706 reports.

In particular, data about wireless coverage must be reported not only accurately and in a granular form, but consistently as well. Federal law entitles wireless providers to relief from

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[63] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Order Denying Request for Extension of Time, WT Docket No. 17-79, FN 6 (rel. Jul. 13, 2017).
[64] City of New York Comments at 1.
[65] Jon Brodkin, When home Internet service costs $5,000—or even $15,000. Ars Technica (Jan. 16, 2017), *available at* https://arstechnica.com/information-technology/2017/01/when-home-internet-service-costs-5000-or-even-15000/.
[66] City of New York at p. 3.

local zoning and land use policy in cases where they can demonstrate a need to deploy at a particular location, yet providers are not required to use the same metrics in demonstrating a gap in service as they use when advertising coverage to customers or reporting their progress to the Commission. Granular reporting of actual locations served in a consistent and transparent matter is necessary to ensure that service providers report honestly to the Commission about the practical reality on the ground. CTIA reports that "4G LTE service is available to 99.7% of all Americans" yet simultaneously complains that local siting policies prohibit deployment of necessary wireless services. The Commission should require providers to use the same metrics and measurement techniques in reporting the extent of their service to the Commission as they use when seeking to supersede local laws based on the need to fill a gap in their network.

Toward this end, the Commission should require that providers use standardized methodologies to measure and report coverage on as granular a level as possible. For example, the City of New York has proposed to require "submission of propagation models based on standardized measures" to be paired with population maps for an easy and accurate comparison of providers' coverage areas.[67] These requirements should be transparent and standardized across all mobile broadband providers. Doing so would ensure that a single source of consistent, comparable data exists to allow the Commission to accurately determine the true extent of mobile coverage. And it would allow federal, state, and local efforts addressing broadband deployment shortfalls to be more precisely targeted and to provide for more objective evaluation of service need.

Finally, we urge the Commission to focus on whether the goal has been reached in determining whether deployment is "reasonable and timely" rather than adopting industry

[67] *Id.*

proposals to focus on whether or not progress is being made. We concur with Deere & Company that "it is time for the [Commission] to view broadband availability through an expanded lens – one that incorporates a geographic and functional usage metric aimed at advancing broadband deployment to industries and economic activities where access to this key input has fallen behind."[68] For the tens of millions of Americans in thousands of communities nationwide who lack adequate, affordable, competitive broadband, an annual report applauding the broadband industry for making progress will serve as cold comfort. Communities and constituents are left behind when they remain unserved. Lowering the Commission's aspirations and satisfying itself with year-over- year progress falls far short of Congress' stated desire to evaluate deployment to *all* Americans. Year-over-year progress metrics based on a narrow parsing of the language in the statute do a disservice to Americans who need broadband for health, education, economic survival, and civic participation. The Commission is charged with serving, first and foremost, the public interest.[69] Applauding broadband providers for getting a little bit better every year doesn't serve the public nearly so well as setting clear goals requiring that *all* Americans have access to the connectivity the 21st Century demands.

V. COMMUNITIES AND CONSUMERS DEMAND BOTH FIXED AND MOBILE BROADBAND AT INCREASING SPEEDS. FCC METRICS SHOULD REFLECT THAT REALITY, NOT A FICTIONAL WORLD IN WHICH ONE OR THE OTHER IS SUFFICIENT.

A. Americans Continue to Require both Fixed and Mobile Broadband Access In Their Communities.

It is essential to the validity of the Commission's findings that it examine not only the services consumers are currently using, but the services they desire, as well. In particular, the Commission must recognize that consumers and communities demand fast, competitive, and

[68] Deere & Company Comments at pp. 1-2.
[69] *See* 47 U.S.C. § 151.

affordable fixed *and* mobile broadband offerings to meet their connectivity needs. As noted by numerous commenters, broadband connectivity is essential to virtually every facet of modern life. Twelve United States Senators, in a letter to the Commission, noted that a lack of robust, competitive connectivity "prevent[s] individuals in these communities from applying for jobs; their children from doing their homework; and many small business owners from running businesses out of their homes."[70] All communities and all consumers have different needs, and the Commission must recognize that *advanced* telecommunications community must include both fixed and mobile broadband access.

For example, the City of Portland's smartphone ownership is estimated to be a few percentage points above the national average of 80 percent, up from 69 percent in 2014. Even as smartphone ownership and bandwidth-hungry streaming usage is exploding, the Commission's suggestion of a lower speed benchmark for mobile stands in stark contrast to the FCC's argument for increased wireless capacity. Both more capacity and faster download speeds will be the only way to meet the internet usage needs of the mobile internet users in Portland, Oregon, and other communities nationwide.

Boston's June 2016 Broadband Survey demonstrated clearly that, where consumers have access and can afford both fixed and wireless connections, they choose to have both services. 80 percent of Boston households had home access to the Internet, and 72 percent had mobile access. Affordability was cited as the primary barrier to future subscription. The substantial overlap of homes that have both fixed and mobile broadband demonstrates conclusively that consumers

[70] Letter from United States Senators Franken, Brown, Baldwin, Blumenthal, Heitkamp, Klobuchar, Warren, Schatz, Markey, Udall, Gillibrand, and Wyden, to the Commission, GN Docket No. 17-199 (Aug. 31, 2017) ("August 31 Section 706 Senate Letter").

view and adopt fixed and mobile broadband connections as complementary services, not substitutes.

Local governments recognize and embrace the numerous reasons for which consumers demand broadband access, and the untold benefits derived from bringing that connectivity to their communities. The State Educational Technology Directors Association, for example, notes that "equitable, robust broadband is essential for all students" in urging the Commission to ensure both fixed and mobile broadband is available.[71] Local governments share in the Association's recommendation that the Commission "continue supporting state and local leaders' efforts to strengthen the communications infrastructure serving the nation's schools."[72]

Education is but one area that compels a deep-seated interest in broadband availability on the part of local governments. As the Town of Leverett, Massachusetts, found, robust broadband access "has special importance for businesses – home-based and telecommuting – that work with large data, graphics, and video transmissions."[73] Mobile offerings are often limited in data capacity and throughput speeds, and come with substantially higher costs per gigabyte.[74] We concur with the Senators that "a small business owner who wants to begin a new venture today would not be adequately supported by mobile only service."[75]

Public safety, too, requires widespread broadband availability. As next-generation 911 services come online, ATSC 3.0 brings broadband-like features to the broadcasting world, and the tech transition moves increasing numbers of communities away from legacy copper

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[71] State Educational Technology Directors Association Comments at pp. 1-2
[72] *Id.* at p. 2.
[73] Leverett, MA Comments at p. 2.
[74] Open Technology Institute at New America Comments.at p. 5 ("OTI Comments"); *see also* [74] *See* CTC Technology & Energy, *Mobile Broadband Service is Not an Adequate Substitute for Wireline*, GN Docket No. 17-199Z.
[75] August 31 Section 706 Senate Letter at p. 2.

networks, the future of public safety is broadband. Future visions for 911 include the ability to share pictures and video with 911 dispatchers and first responders, to more accurately locate individuals within structures, and to communicate more effective emergency alerts to mobile devices. Even as the nation gears up to build FirstNet as a wireless platform, that connectivity will almost entirely depend on fixed broadband for backhaul. Finally, as recent disasters in Texas, Florida, and Puerto Rico, as well as past calamities including Hurricane Sandy have shown, different types of infrastructure provide different benefits before, during, and after disasters, and American communities and local governments, which make up the first line of defense and response to natural disasters, depend on robust and redundant communications facilities. Suggesting that either fixed or mobile being available in a community is good enough, as the Commission's current proposal seems to do, risks compromising the ability of communities to plan and prepare for disasters, keep people safe during and after catastrophic events, and rapidly recover from times of calamity.

Simply put, American consumers, businesses, and communities nationwide demand both fixed AND mobile service from multiple providers at competitive and affordable rates, and the Commission must not consider any community served until the full vision of the Telecommunications Act of 1996, and Congress' directives embodied in Section 706 and elsewhere, are fully realized.

B. The Statute Requires the Commission to Look Ahead, Not Simply Satisfy Itself With the Status Quo.

Section 706 is clear: the Commission must examine whether "advanced telecommunications capability" is being deployed to *all* Americans in a reasonable and timely manner.[76] Congress' directive is to require the Commission to act to correct any shortfall in

[76] 47 U.S.C. § 1302

access to advanced capabilities – not bare minimum services – for all Americans. This clearly suggests that the Commission's inquiry must be forward-looking and aspirational, not whether consumers and businesses have the bare minimum to get by. Accordingly, the Commission must reject requests by industry to keep its standards static, or even to lower them by incorporating "multiple speed tiers" as some suggest.[77] The 21st century economy, including innovations like autonomous and connected vehicles, smart cities, virtual reality, and the deployment of 5G wireless technology, all represent the epitome of advanced technology, yet all depend in part or in whole on access to robust broadband. Congress' mandate is to look forward. Their charge is ignored by the Commission's proposed definitions and static evaluation of whether past advances are good enough to get by. The Commission must not abdicate its mandate to lead in this area, and should enhance its standards, holding the telecommunications industry to a strengthened standard as it follows Congress' direction to move deployment forward.

In a letter to the Commission, 45 members of Congress spoke unequivocally. "The policy changes contemplated by this NOI would run counter to the intent of Congress by attempting to fulfill that statutory obligation through definitional changes, rather than concrete action."[78] To stand still in the digital age is to be left behind; American consumers, businesses, and communities deserve better. "Simply moving the goalposts is not a policy solution."[79] Accordingly, we strongly support the statutory analysis conducted by Public Knowledge, and urge the Commission to conform its inquiry to the directions of Congress.

[77] NCTA Comments at p. 6.
[78] Bicameral Congressional Letter at p. 1.
[79] *Id.*

C. Industry Attempts to Rationalize a Lower Mobile Speed Benchmark Completely Disregard Consumer Cost and the Public Interest.

The Commission tentatively proposes to evaluate mobile broadband at a lower 10/1 Mbps speed threshold, as opposed to the fixed broadband metric of 25/3 Mbps. We strongly oppose this proposal as it fails to address consumer cost and the public interest. Industry justifications seek to do little more than reset the bar sufficiently low that it may be cleared easily by industry without substantial investment. Industry commenters argue that a 10/1 standard for mobile is appropriate because "most mobile connections are used by a single person and a single device."[80] While technically true, industry advocates seem dead-set on ignoring the context in which that usage exists; typically, shared.

While one 10/1 connection per person may seem adequate on paper, American consumers are well aware that a mobile-only reality would fall far short of meeting their needs. Analysts estimate that 80 percent of mobile device traffic is offloaded to fixed networks via Wi-Fi hotspots connected to *fixed* broadband connections, not to mobile carriers' networks.[81] To suggest that mobile is adequate because the 10/1 connection is not shared is disingenuous at best.

Furthermore, wireless hardware is expensive and remains somewhat limited in function, despite incredible innovation over the past decade. Mobile devices are expensive, easily damaged, and do not carry the same capabilities as computers. Mobile devices, for example, are not well-suited to students doing homework, arts and entertainment businesses, or complex data-driven tasks. Reliance on mobile connections as "substitutable" at a lower speed ignores the broad array of functions that are simply beyond the capability of the average smartphone.

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[80] NCTA Comments at p. 8.

[81] Sean Kinney, *Analyst: Wi-Fi carries 80% of mobile data traffic*, RCR Wireless News (Jul, 7, 2016) https://www.rcrwireless.com/20160707/network-infrastructure/wi-fi/analyst-wi-fi-carriers-80-mobile-data-tag17.

Finally, wireless service is expensive. While it is true that a 25/3 Mbps connection is perhaps shared among multiple users, that shared connection is often priced similarly to a single unlimited line of wireless data. For true equivalence to be honestly argued, service providers would need to account for unit costs in their analysis. All industry commenters who support a 10/1 Mbps standard for mobile are silent on the question of cost, however. As discussed by the Open Technology Institute,[82] and described in detail by a technical report prepared by CTC at the request of the Communications Workers of America, mobile offerings are not technically capable of serving as a substitute for fixed services.[83] The simple reality is that mobile service is not a substitute, consumers do not see it as a substitute, and they cannot afford to treat it that way.

D. Evidence of Expanding Mobile-Only Utilization Reflects the Rising Cost and Unaffordable Nature of Fixed Broadband, Not a Shift in Consumer Demand or Expectations.

Wireless industry commenters and the Commission rely on a Pew Foundation study finding that 13 percent of Americans rely solely on mobile connections, while 73 percent subscribe to fixed services.[84] While mobile adoption is certainly expanding, simply deciding that service is being deployed in a reasonable and timely fashion, and is advanced, purely because consumers are buying it, skips several critical analytical steps.

Smartphone ownership amongst Portland, Oregon, residents is approximately the same for all racial and ethnic groups. However, the 2014 Portland Broadband Adoption Survey showed 72 percent of Hispanic adults lived in a cell-phone-only household compared to 50 percent nationally. Digital equity gaps will only be widened for those Portland residents who can only afford to access the internet via cell phone service and are only able do so at 10 Mbps

[82] *See* OTI Comments at pp. 5-20.
[83] *See* CTC Technology & Energy Report, *supra* Note 74.
[84] NOI at ¶ 9.

speeds or lower. Similarly, the City of Boston finds a household broadband adoption rate of approximately 81.6 percent, but notes that rates of broadband adoption lag significantly in areas of Boston with lower average household income.[85] In those areas, Boston expects that community members are more likely to be highly dependent on mobile devices not due to a fully discretionary choice, but rather due to struggles with affordability.

Broadband costs, meanwhile, continue to rise. Comcast recently raised its standalone broadband prices to $90 including modem hardware, and analyses project, and companies will continue, to increase broadband pricing.[86] That a portion of generally lower-income users rely solely on mobile connections may more properly be attributed to the high cost of maintaining both fixed and mobile service in complementary roles.

As Commissioner Rosenworcel explains, "no matter who you are or where you live, you need access to modern communications to have a fair shot at 21st century success."[87] To get there, the Commission must set higher standards, and be realistic about the work that needs to be done to reach them. The current proposal, unfortunately, seems meant to set benchmarks already cleared in order to support a rapid declaration of victory. Americans deserve better.

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[85] *See* Adie Tomer, Elizabeth Kneebone, Ranjitha Shivaram, *Signs of digital distress: Mapping broadband availability and subscription in American neighborhoods*, The Brookings Institution (Sept. 12, 2017), *available at* https://www.brookings.edu/research/signs-of-digital-distress-mapping-broadband-availability/#tract-map.

[86] Daniel Frankel, *Cable broadband is underpriced, and operators should aim for $90 ARPU target, analyst says*, Fierce Cable (Jun. 19, 2017), http://www.fiercecable.com/cable/cable-broadband-underpriced-operators-should-aim-for-90-arpu-target-analyst-says.

[87] Statement of Commissioner Jessica Rosenworcel on Being Sworn In as Commissioner of the FCC (Aug. 11, 2017), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-346185A1.pdf.

VI. LOCAL GOVERNMENTS SUPPORT EFFORTS TO DEVELOP RESOURCES TO INFORM LOCAL GOVERNMENTS' POLICYMAKING CHOICES WHILE PRESERVING LOCAL FLEXIBILITY AND AUTHORITY.

The NOI also asks whether "other actions, in addition to those already under way, might encourage more expansive and rapid deployment of networks that provide advanced telecommunications capability."[88] Like the Commission, we have a keen interest in closing the digital divide in order to maximize opportunities for our communities and constituents.

Efforts such as the Commission's Broadband Deployment Advisory Committee ("BDAC") present a unique opportunity for diverse stakeholders to engage productively in search of mutually beneficial solutions to help inform government at all levels in making policy choices that best serve the particular needs of the nation's diverse patchwork of communities. It is critical that a broad array of local voices be included in these efforts, and we urge the Commission to recognize and take steps to address the substantial imbalance in the makeup of the BDAC and its working groups, which overwhelmingly favors industry voices on all topics.[89] For example, the BDAC's Model Code for Municipalities working group, established to "draft a model code as a resource for municipalities to accelerate broadband deployment"[90], includes only three local government voices among its 24 members.[91] At least 14 of the 24 members hail from the broadband industry.

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[88] NOI at ¶ 48.

[89] *See* Membership Lists of BDAC & Working Groups, *available at* https://www.fcc.gov/broadband-deployment-advisory-committee; *see also* Blake Dodge, *FCC packs broadband advisory group with big telecom firms, trade groups*, The Center for Public Integrity (Aug. 11, 2017), https://www.publicintegrity.org/2017/08/11/21057/fcc-packs-broadband-advisory-group-big-telecom-firms-trade-groups.

[90] Presentation of the BDAC Model Code for Municipalities Working Group, Slide 2 (Jul. 20, 2017) *available at* https://www.fcc.gov/sites/default/files/bdac-07-20-2017-presentation-model-code-for-municipalities.pdf..

[91] FCC Announces The Membership Of Two Broadband Deployment Advisory Committee Working Groups: Model Code For Municipalities And Model Code For State, GN Docket No. 17-83, (May 8, 2017) found at https://apps.fcc.gov/edocs_public/attachmatch/DA-17-433A1.pdf.

It is essential to the success of any advisory body that it meaningfully include the full range of perspectives it purports to address. We do not believe the BDAC membership, as selected by the Commission, meets that important criteria. We are, accordingly, quite concerned that the BDAC will struggle to speak with authority and legitimacy as to the interests and concerns of state and local governments regarding issues including, but not limited to, broadband deployment, competition, legislative and regulatory approaches, and preemption recommendations. Without a more balanced makeup and more than token efforts to include local government, the BDAC process risks being little more than an industry-driven focus group developing industry wish lists without meaningful consideration of local policy concerns.

Similarly, we support the Commission's effort to develop model materials that may inform state and local policymakers as they address broadband policy issues in their communities. The focus appears, however, to be on building one set of model codes with the intention that those be adopted as widely as possible, for the sake of uniformity. While it is understandable why the industry-focused majorities of the BDAC and all its working groups would desire national uniformity, it is imperative that the Commission respect decades of its own precedent, discussed above, and recognize that each community has unique needs and challenges, and that one-size-fits-all solutions are simply not appropriate. Accordingly, we urge the Commission to expand the BDAC's mandate to focus on collecting a diverse array of policy systems which have been demonstrated to achieve positive results in meeting the needs of communities, not just service providers.[92]

Local governments nationwide have pursued a broad array of approaches to expanding broadband deployment and enhancing competition. These include but are not limited to:

[92] *See* Ex Parte Letter from the National Association of Regulatory Utility Commissioners, GN Docket No. 17-83 (Aug. 21, 2017).

municipal broadband projects, public-private partnerships, investment-friendly franchising policies, streamlined wireless siting rules, and one-touch-make-ready pole attachment provisions designed to ease competitive entry and accelerate deployment. All of these options, and more, should be presented as part of any BDAC model materials, as the needs of each community are unique and may be better met by some approach other than the condensed, unified approach likely to be promulgated by the industry-dominated BDAC working groups. The Commission should consider a broad effort to provide the full scope of effective practices as part of any materials it develops.

One practice that may be included as a working example is the City of Boston's effort to integrate technical principles regarding broadband-ready building into the development process. In partnership with WiredScore, Boston has developed a Broadband Ready Building Questionnaire to further the City's goal to cultivate a broadband ecosystem that serves the current and future connectivity needs of residents, businesses, and institutions. Departments across the City are working to streamline and otherwise adapt existing policies and processes to enable private investment in broadband infrastructure, expand competition and choice for residents and businesses, and create an environment that is equipped to support a diverse range of connectivity purposes now and in the future.[93]

Though included in the design review process pursuant to Article 80 of the Boston Code, Wired Certification is not a requirement placed upon developers. While developers are required to complete the questionnaire, it is not used as a regulatory tool. The questionnaire represents but one part of Boston's range of efforts to promote broadband deployment and competition, and is

[93] The Broadband Ready Building Questionnaire and other City of Boston efforts are discussed in further detail in the City of Boston's Reply Comments in MB Docket No. 17-91 (Jun. 9, 2017).

but one of many approaches that could be included in any Commission-endorsed best practices compendium.

It is essential that communities nationwide are presented with more options than just one path, favorable to and endorsed by the broadband industry. Each community faces unique challenges and the Commission can best meet its goals by including a robust and broad array of local voices, leading to the presentation of a full array of options to ensure that communities may choose the path that is best for their unique situation, and not simply what is best for large broadband providers.

VII. CONCLUSION

Local governments are promoters and partners, not obstacles, to deploying broadband. The great successes broadband providers present to the Commission in this proceeding should echo into those infrastructure proceedings currently open at the Commission. For while the communications industry celebrates its successes in this docket, it presents inherently contradictory narratives elsewhere. The Commission should not be fooled by this duplicitous approach.

Respectfully Submitted,

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October 6, 2017