

Cut Off From the Courthouse:

*How the Digital Divide
Impacts Access to Justice
and Civic Engagement*

EXECUTIVE SUMMARY

Full report available at

<https://nextcenturycities.org/wp-content/uploads/2021/05/cut-off-from-the-courthouse.pdf>



Next Century Cities (“NCC”) is a nonprofit, non-partisan organization that advocates for fast, affordable, and reliable broadband Internet access across the United States. NCC is made up of over 220 members across 40+ states, and they work alongside local officials and community leaders in municipalities of all sizes and political stripes to eliminate the digital divide.

Next Century Cities’ work spans the wide variety of issues affecting connectivity and municipal governments. Across their growing policy and program team, they partner with members to tackle issues including broadband access and adoption, digital inclusion, digital equity, privacy, spectrum allocation, civic engagement, and more. NCC advocates for their members before Congress, the White House, the Federal Communications Commission, and in state capitals and governor’s offices across the United States.



The Samuelson Law, Technology & Public Policy Clinic at UC Berkeley School of Law trains the next generation of lawyers to advance the public interest in a digital age marked by rapid technological change. The Clinic focuses its work on three main areas: protecting civil liberties, ensuring a fair criminal justice system, and promoting balanced intellectual property laws and access to information. It advances these objectives through litigation, regulatory and legislative processes, and policy analysis, including on matters of telecommunications law and policy.

Acknowledgements

The Samuelson Law, Technology & Public Policy Clinic prepared this report for Next Century Cities. The report was researched and drafted by UC Berkeley School of Law students Ross Ufberg and Shalev Netanel under the supervision of Clinic Associate Director Erik Stallman and Clinical Teaching Fellow Gabrielle Daley. Clinical Supervising Attorney Megan Graham also provided invaluable editorial assistance. Next Century Cities Director Francella Ochillo, Senior Policy Counsel Corian Zacher, and Policy Counsel Ryan Johnston contributed to the research, analysis, and drafting. We are indebted to the many stakeholders and experts we interviewed, including Marisol Aguilar, Genna Beier, Tony Cheng, Youseef Elias, Peter Estes, Judge Jeremy Fogel, Air Gallegos, Carmen Gil, Jeremy Haile, Lucia Martel Dow, Rene Mendez, Ted Mermin, Candis Mitchell, Kaelan Orozco, Camille Pannu, Sarah Reisman, Carmen Sanchez, Olivia Sideman, Miguel Soto, Javier Trujillo, Brooke Weitzman, and Rebecca Woodbury.

Executive Summary

The COVID-19 pandemic forced an overdue assessment of state and federal broadband policies. Stark images of people sitting in parking lots to access free Wi-Fi connectivity for school, work, or medical assistance laid bare the gaps in access to affordable broadband. Those images spurred broadband deployment and affordability policies updated for a new reality where much of life takes place online. However, those images paint an incomplete picture that leaves out other significant and inequitably distributed harms faced by the un- and under-connected.

This report fills in a critical missing piece of that picture using insights from interviews with 27 public defenders, family attorneys, public servants, community organizers, and others who provide legal assistance, support community advocacy efforts, and deliver government services in communities throughout California. Those insights show how lack of access to affordable broadband compounds inequality. Lack of access leads to missed court appearances, inability to confer with counsel before life-altering legal proceedings and decisions, isolation from democratic processes, and inability to receive critical government services and safety information.

These insights also show that access and affordability are not the only drivers of this inequality. Digital literacy and access to suitable devices are just as important for meaningful and equal participation in remote proceedings as infrastructure and affordability programs.

While highlighting the digital divide's contribution to other, entrenched forms of inequality, the interviews informing this report also point toward two distinct opportunities for narrowing the digital divide. First, some California communities have become innovative and self-reliant in providing their most disadvantaged residents with affordable or even free broadband services. Second, the same interviewees who recounted how their clients and communities could not access affordable broadband or related programs also signaled their willingness to help connect people to those programs. Thus, the same service providers who regularly witness firsthand the harms inflicted by the digital divide may be key partners in redressing those harms.

After exploring the connection between broadband policy and access to courts, civic engagement, and government services, this report offers the following conclusions:

Key Findings

- 1** Lack of adequate broadband access, devices, and digital literacy skills entrenches existing inequalities that civic institutions are working to eliminate.
- 2** Remote hearings should be optional. In the courts, remote hearings can be effective for ministerial legal hearings and some substantive civil hearings. For civic institutions, remote hearings can increase access, but they can also exclude residents contending with digital access and adoption barriers.
- 3** Deficiencies in public awareness of broadband affordability programs or community broadband services ensure that they remain underutilized. Trusted legal service providers, who work with residents eligible for broadband affordability programs, could be program ambassadors as they are an overlooked touchpoint for information.
- 4** Lack of trust in government affordability programs can be just as much of a barrier to broadband affordability programs as lack of information.
- 5** Mobile Internet service and devices are not sufficient for equitable access to courts, legal services, government proceedings, and public benefits.

Recommendations

- 1 Invest in adoption as well as access.** Greater access to affordable broadband service offerings and digital skills training must accompany the push for remote judicial and administrative proceedings, civic engagement, and government services. Investments in both access and adoption will help to ensure that residents can be heard, apply for government services, and stay informed about local emergencies.
- 2 Partner with community organizations.** Government partnerships with local community organizations may help overcome trust barriers that prevent some households from enrolling in broadband affordability and access programs.
- 3 Support the full range of service providers.** To promote awareness of broadband subsidy programs and digital literacy education initiatives, it is important to partner with and provide resources for public defenders, legal aid offices, and other legal service providers. These providers can serve as program ambassadors and promote broadband adoption in low-income communities. That support should go along with robust resources for libraries, schools, senior centers, and other community anchor institutions.
- 4 Streamline enrollment.** Enrolling in broadband subsidy programs should be as easy as possible. Streamlining the application process and establishing a single application for multiple programs will reduce burdens on some residents.
- 5 Support local solutions.** Broadband funding should support innovative municipal and community-based initiatives to expand access (e.g., municipal mesh networks and hotspot programs). They expand broadband access for communities who are underserved by traditional providers and may not be able to afford broadband even with the assistance of subsidy programs. Flexible funding programs and local best practices are two strategies that can empower communities to tackle persistent digital divides.