

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Inquiry Concerning Deployment of) GN Docket No. 20-269
Advanced Telecommunications Capability)
to All American in a Reasonable and)
Timely Fashion)

**REPLY COMMENTS OF COMMON CAUSE, NEXT CENTURY CITIES,
AND PUBLIC KNOWLEDGE**

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I. INTRODUCTION & SUMMARY

Common Cause, Next Century Cities (“NCC”), and Public Knowledge submit this reply to the Federal Communications Commission’s (“FCC” or “Commission”) request for public input on whether broadband is being deployed to all Americans in a reasonable and timely fashion.¹

High-speed internet connections are no longer a luxury. In the wake of the COVID-19 pandemic, broadband has become a necessity. The record in this proceeding clearly reflects a consensus that current speed benchmarks are inadequate to meet the needs of modern households, especially in light of increased telework and distance learning, which have introduced new concerns, particularly for multiple users connected to a single network. The record shows strong support for an increase in benchmarks speeds from 25/3 to 100 Mbps symmetrical, a standard that is warranted and reasonable given speeds already available to many Americans.

Whether an area is served with speeds that are lower, meet, or exceed current benchmarks will remain unclear as long as the Commission continues to rely on flawed Form 477 data. It is well documented that Form 477 data is inaccurate and the Commission must start working with other organizations, including state and local governments, to collect data that accurately reflects the state of broadband deployment in communities nationwide.

Additionally, commenters agree that the Commission should continue its practice of measuring mobile wireless and fixed services separately. These distinct services operate differently and are often used for meaningfully dissimilar purposes. Slower speeds, data caps,

¹ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, Sixteenth Broadband Deployment Report Notice of Inquiry, GN Docket No. 20-2969 (2020), <https://docs.fcc.gov/public/attachments/FCC-20-112A1.pdf> [hereinafter NOI].

and throttling are key attributes of mobile wireless service that are simply not present in a fixed connection. The record underscores the conclusion that 5G is an infant technology which the FCC should not consider as a substitute for a fixed connection.

Finally, commenters largely agree that Tribal areas are critically underserved and the Commission should consult with Tribal governments on broadband deployment. While there is no single solution that will close the digital divide, on Tribal lands and otherwise, keeping community leaders with valuable knowledge and insights on deployment challenges will only ensure that these areas remain unserved.

The Commission has the opportunity to fulfill its Section 151 mandate.² Aside from increasing the quality and availability of its mapping data, it is time for the Commission to reevaluate benchmark speeds to ensure all American's have access to high-speed service.

II. THE COMMISSION SHOULD INCREASE THE CURRENT BENCHMARK SPEED FOR BROADBAND TO 100/100 MBPS BECAUSE THE RECORD DEMONSTRATES THAT THE CURRENT BENCHMARK IS INADEQUATE.

Although the Commission's NOI proposes to maintain the current benchmark speed of 25/3 Mbps for assessing whether advanced telecommunications capability is deployed to all Americans in a reasonable and timely fashion,³ the record demonstrates that 25/3 Mbps is no longer adequate to meet the broadband needs of households today. Based on the rapid increase in demand for both downstream and upstream traffic, the record supports increasing the benchmark to symmetrical speeds of at least 100/100 Mbps.

A. The Record Demonstrates that Consumer Demand Warrants Increasing the Speed Benchmark for Broadband.

Broadband speeds of 25/3 Mbps are increasingly insufficient and no longer adequate to meet the needs of households. As the Open Technology Institute at New America ("OTI") and

² 47 U.S.C. § 151 (2018).

³ NOI, *supra* note 1 at ¶4-5.

Access Now explain, children need sufficient, fast internet to “get connected” and “adults in the same households also need [a] sufficient internet connection to work from home...”⁴ Notably, the FCC itself admits that household internet speeds must exceed 25/3 Mbps to run more than one “high demand application,” such as video conferencing, online gaming, or streaming HD video. As ADTRAN, INC. correctly comments, “the benchmark ought to be tied to the statutory definition of ‘advanced telecommunications capability capability[.]’” Because multiple people within a household are now using high demand applications, 25/3 Mbps falls short of the statutory requirement aimed at “enabl[ing] users to originate and receive high-quality voice, data graphics and video telecommunications...”⁵ Simply put, the “25/3 Mbps minimum speed benchmark should not apply to households with multiple users[.]”⁶ Instead, a benchmark speed of 100/100 Mbps is warranted and reasonable.

Yet, some commentators acknowledge the increasing demand for faster broadband speeds, but fail to explain how to accommodate that need without a meaningful increase in the Commission’s minimum standard. For example, the Free State Foundation recognizes the data intensive nature of today’s applications, but also believes that an increase to 100 Mbps download speeds is “[a] drastic or ‘audacious’ re-definition... contrary to the statute’s directive that the Commission make its deployment determination based on a reasonableness standard.”⁷ This

⁴ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of New America’s Open Technology Institute and Access Now*, GN Docket No. 20-269, 10 (2020) [hereinafter OTI & Access Now Comments].

⁵ See 47 U.S.C. § 1302(d)(1)

⁶ OTI & Access Now Comments, *supra* note 4 at 10 (2020) (referencing *Closing the K–12 Digital Divide in the Age of Distance Learning*, Common Sense Media and Boston Consulting Group, at 17 (2020)

https://www.common sense media.org/sites/default/files/uploads/pdfs/common_sense_media_report_final_6_29_12-42pm_web_updated.pdf.

⁷ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of The Free State Foundation*, GN Docket No. 20-269, at 10-11 (2020) [hereinafter The Free State Comments].

belief does not align with today's reality. To the contrary, some industry representatives have suggested that today's broadband demands warrant benchmark speeds even higher than 100/100 Mbps. INCOMPAS urges that, since gigabit services are available to most Americans, the Commission should increase the benchmark even higher to 1 Gbps.⁸

Demand for broadband speeds is only increasing. A study by the Fiber Broadband Association ("FBA"), set for release later this year, shows that residential bandwidth demand has increased at a rate of 20-25 percent consistently over the last two decades.⁹ According to the FBA, by 2027, a family of four will require symmetric speeds of at least 400 Mbps.¹⁰ Additionally, Growth Strategy consulting firm Frost & Sullivan predicts a sevenfold growth in telehealth by 2025, which relies on high-speed connectivity.¹¹

More immediately, the pandemic has also increased the demand for higher speeds. Members of the Wireless Internet Service Provider Association ("WISPA") noticed that their most popular broadband offerings have shifted from 10/3 Mbps to 25/3 Mps.¹² Despite this shift, WISPA argues in favor of maintaining the current standard, "[g]iven the fact the speed required for the applications that most broadband consumers use has not changed substantially since, and actual subscriptions have not yet consistently surpassed the benchmark level[.]"¹³ But this

⁸ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of INCOMPAS*, GN Docket No. 20-269, at 6 (2020) [hereinafter INCOMPAS Comments].

⁹ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of The Fiber Broadband Association*, GN Docket No. 20-269, at 9 (2020) [hereinafter FBA Comments].

¹⁰ *Id.* at 9-10.

¹¹ Mike Miliard, Telehealth Set For 'Tsunami of Growth,' says Frost and Sullivan, Healthcare IT News (May 15, 2020), <https://www.healthcareitnews.com/news/telehealth-set-tsunami-growthsays-frost-sullivan>.

¹² Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of The Wireless Internet Service Providers Association*, GN Docket No. 20-269, at 7 (2020) [hereinafter WISPA Comments].

¹³ *Id.* at 6.

argument puts the cart before the horse—benchmarks necessarily must come before adoption. It is baked into the very concept of a “benchmark.” Benchmarks help ensure that the market is able to meet consumers’ needs as they develop. And, when it comes to broadband, consumer demand is constantly increasing.

Additionally, WISPA states that 25/3 Mbps is “the most commonly offered package” yet provides no details on the price differential when gigabit speeds are available.¹⁴ While WISPA implies that subscriptions have not surpassed the benchmark because there is no demand in their members’ markets, the record suggests that the cause is a limited supply of affordable gigabit internet, not the lack of consumer demand. Moreover, even if increased demand was solely the result of the panic, as INCOMPAS explains, “the Pandemic will be with us well beyond the publication of this report,” and will “impact broadband over the next few years.”¹⁵ As we noted in our comments, a recent survey of HR leaders shows that 77 percent expect more employees to work remotely, even a year after COVID-19 has largely subsided.¹⁶

Thus, before, during, and after COVID-19, consumers need faster broadband speeds. The FCC should reevaluate its benchmark to ensure that consumer broadband needs are met.

B. Consumer Demands During and After the COVID-19 Pandemic Warrant Symmetrical Broadband Speeds of 100/100 Mbps

In order to align with consumer needs both during the COVID-19 pandemic, and after, the Commission must increase speed to a symmetrical 100/100 Mbps. In support of this proposition, OTI cites a 2019 Benton Institute for Broadband and Society report which calls for a

¹⁴ *Id.* at 7.

¹⁵ INCOMPAS Comments, *supra* note 8 at 6 (2020).

¹⁶ The Conference Board, From Immediate Responses to Planning for the Reimagined Workplace, 8 (2020), <https://conference-board.org/pdfdownload.cfm?masterProductID=20874>.

new minimum 100/100 Mbps benchmark to close the digital divide.¹⁷ In addition, Free Press highlights in their comments that Congress in fact intended for there to be symmetrical speeds.¹⁸ The report which accompanied the Senate bill that contained the Telecommunications Act of 1996 (“1996 Act”) defined advanced telecommunications capability with equal emphasis on users’ ability to “originate” and “receive” data.¹⁹

While USTelecom argues against symmetrical speeds because “almost all customers are almost always consumers of data and not contributors,” the record indicates otherwise. Referencing a recent OpenVault report, the National Rural Electric Cooperative emphasizes that broadband upstream consumption is up 56 percent year-over-year.²⁰ Contrary to their position, USTelecom themselves reference the upload intensive nature of video sharing services that have become central to our day-to-day lives during the pandemic. According to them, “[u]ploading 1080p over group chat, which is the most demanding use case, is still only 3 Mbps.”²¹ However, that means the current benchmark upload speed is only capable of supporting a single video conference let alone a household of connected users.²² Consumers should not have to choose between a virtual class for a student, a video conference for a parent, or a telehealth appointment

¹⁷ OTI & Access Now Comments, *supra* note 4 at 10-1; Jonathan Sallet, *Broadband for America’s Future: A Vision for the 2020s*, Benton Institute for Broadband & Society, Oct. 2019, at 66, <https://www.benton.org/publications/broadband-policy2020s>;

¹⁸ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of Free Press*, GN Docket No. 20-269, at 13 (2020) [hereinafter Free Press Comments].

¹⁹ Telecommunications Competition and Deregulation Act of 1995, S. 652, Senate Report 104-23, 104th Congress, 1st Session (1995)

²⁰ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of The National Rural Electric Cooperative Association*, GN Docket No. 20-269, at 10 (2020) [hereinafter NRECA Comments]; OpenVault, *Broadband Insights Report*, 9 (2020), https://openvault.com/wpcontent/uploads/2020/08/Openvault_Q220_DataUsage_OVBI.pdf.

²¹ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of USTelecom - The Broadband Association*, GN Docket No. 20-269, 11 (2020) [hereinafter USTelecom Comments].

²² *Id.*

for a grandparent. The Commission should update its vastly asymmetric benchmark for broadband speeds to 100/100 Mbps to reflect consumer's ever increasing internet demands and, importantly, fulfill the legislative intent of the 1996 Act.

C. The Record Indicates Deployment of Faster, Symmetrical Broadband Speeds by Our Nation's Networks.

Commenters, such as NCTA and USTelecom, admit that cable operators are already poised to handle faster broadband speeds. NCTA points out that gigabit service is being offered by cable providers to over 80 percent of American consumers and fiber is being offered to nearly 40 percent of those consumers.²³ Although the same commenters use this data to argue that it would be unnecessary for the Commission to raise the 25 Mbps downstream/3 Mbps upstream speed threshold for fixed broadband, we believe the opposite is true.

US Telecom relies on the fact that only 31.6 percent of residential subscribers purchase services above 25 Mbps to make the point that most consumers do not need faster broadband, but surveys show otherwise. One such survey showed that over 75 percent of respondents did not know the internet speed their household needed to meet current demand.²⁴ US Telecom cannot rely solely on what consumers purchase as proof that the current benchmark speed is sufficient when most consumers are relatively uninformed about what broadband speeds they actually need.

Additionally, US Telecom fails to consider that many consumers do not purchase faster broadband speeds because they cannot afford it—not because they do not need a faster

²³ *Id.* at 6; Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of NCTA - The Internet & Television Association*, GN Docket No. 20-269, 3 (2020) [hereinafter NCTA Comments].

²⁴ R. Dallan Adams, *Survey: Many Feel Their Current Internet is Too Slow and Overpriced, Yet Few Have Upgraded*, TechRepublic (Oct. 1, 2020), <https://www.techrepublic.com/article/survey-many-feel-their-current-internet-is-too-slow-and-overpriced-yet-few-have-upgraded/>.

connection. According to a survey from Pew Research Center, half of non-broadband users do not subscribe because of the cost, and only 56% of households with an annual income of less than \$30,000 a year have broadband service at home.²⁵ The average cost of broadband in America is over \$60 a month, making it cost prohibitive for a large number of Americans.²⁶ Factors such as cost impact which broadband speeds consumers purchase and can explain why some subscribers choose not to upgrade their service even though they might need a faster connection.

Other customers do not have a choice in which speed they purchase, because only one provider is available—and that provider may not offer faster speeds if their technology does not allow it.²⁷ The Communications Workers of America and the National Digital Inclusion Alliance conducted a study of AT&T's service coverage.²⁸ They found that 28 percent of AT&T's network footprint does not meet the FCC's current 25/3 broadband benchmark.²⁹ These numbers were worse in Oklahoma (49 percent without 25/3 Mbps coverage) and Mississippi (45 percent without 25/3 Mbps coverage).³⁰ The report also found that AT&T has a pattern of opting out of upgrading its network to fiber, leaving many residents with “2005 vintage DSL at download

²⁵ Monica Anderson, *Mobile Technology and Home Broadband 2019*, Pew Research Center (June 13, 2019), <https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019/>.

²⁶ Emily Stewart, *America's Monopoly Problem, Explained by Your Internet Bill*, Vox (Feb. 18, 2020), <https://www.vox.com/the-goods/2020/2/18/21126347/antitrust-monopolies-internet-telecommunications-cheerleading>.

²⁷ Emily Stewart, *Give Everybody the Internet*, Vox (Sept. 10, 2020), <https://www.vox.com/recode/2020/9/10/21426810/internet-access-covid-19-chattanooga-municipal-broadband-fcc>.

²⁸ Commc'ns Workers of Am. & Nat'l Digit. Inclusion All., *AT&T's Digital Redlining Leaving Communities Behind for Profit* (Oct. 2020), <https://cwa-union.org/sites/default/files/20201005attdigitalredlining.pdf>.

²⁹ *Id.* at 4.

³⁰ *Id.*

speeds of 6, 3, 1.5 or even .768 Mbps.” Even at these slow speeds, many residents “still pay the same \$70 per month they would pay for 100/100 Mbps fiber—if they could get it.”³¹

Lack of choice regarding which speed to purchase, is not a unique problem for AT&T customers. As Richard Tenney of Maine points out, “Consolidated Communications claims to be able to provide 80/20 and 25/2 service.”³² However, the reality for Mr. Tenney is much different. He says “they (1) can barely provide me with 10/1 using bonded DSL, and (2) cannot provide any service at all to several of my neighbors who have requested it.”³³ Mr. Tenney’s comments echo those of Richard and Barbara Malm, who asked Consolidated Communications for DSL service and were told there was not enough capacity for them.³⁴ It is important to note that this problem is not unique to rural areas. Broadband providers in urban areas have been accused of digital redlining, providing only sub-standard, low-speed service to residents in low-income neighborhoods.³⁵

Additionally, NCTA’s argument that “raising the benchmark could undermine the Commission’s efforts as providers may target the newly deemed unserved areas rather than areas with little to no service,” is a shortsighted view that does not take into account the reality of the current situation.³⁶ Providers are going to upgrade service where it makes sense for their bottom line regardless of the benchmark. In addition, in the long run raising the benchmark speeds increases competition which will serve to lower prices for consumers. With so many ISPs

³¹ *Id.* at 6.

³² Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of Richard Tenney*, GN Docket No. 20-269 (2020).

³³ *Id.*

³⁴ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of Richard Malm, Barbara Malm*, GN Docket No. 20-269 (2020).

³⁵ Stewart, *supra* note 27.

³⁶ NCTA Comments, *supra* note 22 at 3.

offering high speeds, and offered speeds continually increasing, the Commission can comfortably increase its benchmark speed to 100/100 Mbps.

III. BECAUSE THERE IS CONSENSUS IN THE RECORD THAT FORM 477 DATA IS FLAWED, THE COMMISSION SHOULD PARTNER WITH OTHER ORGANIZATIONS TO SUPPLEMENT ITS DATA.

Commenters agreed that Form 477 data is inadequate and overstates broadband deployment. Continuing to use faulty data in its 706 Report, the Commission knowingly provides inaccurate information that prevents lawmakers from enacting sound policy. Instead, the FCC should work with partners to ensure that it has the most accurate data possible until data from the FCC’s Digital Opportunity Data Collection Order or data Congress has mandated the FCC to collect through the Broadband DATA Act is available.³⁷

The inaccuracy of Form 477 data is a well-known fact. As OTI and Access Now point out, “Form 477 data does not give an accurate depiction of who can purchase broadband, and who cannot. The Commission knows it, members of Congress know it, and the general public has caught on to these inaccurate maps as well.”³⁸ Even commenters that encourage the FCC to continue using Form 477 admit that it is inaccurate. For example, ADTRAN “recognizes that the current Form 477 data has flaws.”³⁹ There is not a single commenter on the record that tries to argue that Form 477 data *is* accurate.⁴⁰

The inaccuracies of Form 477 data have real consequences and prevent the adoption of sound broadband policy. As the National Rural Electric Cooperative Association explains, flaws

³⁷ Establishing the Digital Opportunity Data Collection, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC Rcd 7505, ¶ 10 (2019).

³⁸ OTI & Access Now Comments, *supra* note 4 at 20.

³⁹ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of ADTRAN, Inc*, GN Docket No. 20-269, 9 (2020) [hereinafter ADTRAN Comments].

⁴⁰ Even US Telecom acknowledges that Form 477 data is inaccurate, choosing instead to frame the inaccuracies as trivial. *See* USTelecom Comments, *supra* note 21 at 14.

in Form 477 data were “built into and provided the basis for including and excluding census blocks from the CAF II reverse auction and again for the RDOF Phase I auction.”⁴¹ And, as OTI and Access Now explain “[r]elying on Form 477 data additionally has outsized consequences for already marginalized communities, including tribal nations, as it understates broadband needs and affects funding opportunities for broadband initiatives.”⁴² By continuing to use Form 477 data without taking steps to address its inaccuracies, the FCC will continue to inadvertently exclude areas that struggle with deployment from funding opportunities.

Although US Telecom acknowledges that the inaccuracies of Form 477 data have “material consequence” in the context of rural service, it argues that “such flaws are immaterial in urban areas that are subject to demonstrable competition from multiple competitors.” This argument fails to consider how Form 477 data misrepresents competition in urban areas. Because a service provider only needs to provide service to one home in a census block in order to claim that the whole block has service, it is possible for census blocks to show as having multiple providers even though only a few homes have access to multiple providers. This is the exact challenge that Geoff Wiggins from Liberty Township faces. As he puts it, “Our census block is reported serv[ed] by both Centurylink and Spectrum. We do not have service. We’re also not [Rural Digital Opportunity Fund] eligible because both service a limited number of homes in the block. 900 feet from having 100Mbps broadband.”⁴³

Instead of continuing to use Form 477 data while the FCC works on enacting a new regime of broadband collection, the Commission should partner with other organizations, including state and local governments, to address the inaccuracies of current data. We agree with

⁴¹ NRECA Comments, *supra* note 20 at 8.

⁴² OTI & Access Now Comments, *supra* note 4 at 22.

⁴³ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of Broadband Connects America*, GN Docket No. 20-269, 4 (2020) [hereinafter BCA Comments].

OTI and Access Now, “[t]he Commission should do more to ensure integrity in the results of this report....The facts at issue in this proceeding are too important to continue relying on faulty data, and even an incremental change towards more robust data would be welcome.”⁴⁴

IV. THERE IS CONSENSUS IN THE RECORD THAT MOBILE WIRELESS SERVICE IS NOT A SUBSTITUTE FOR FIXED BROADBAND SERVICE

The COVID-19 pandemic has shown that connectivity is critical as many daily activities have transitioned online. However, not all connectivity solutions are created equal. Commenters on the record agree there is a meaningful distinction between fixed and wireless services.⁴⁵ As the Wireless Internet Service Provider’s Association (“WISPA”) notes, many users may substitute between mobile and fixed broadband when accessing certain services and applications; they are not yet functional substitutes for all users and customer groups.⁴⁶

These distinctions include average speed, data caps, price, and availability. INCOMPAS aptly noted that consumers of mobile services achieve an average download speed of 44.06 Mbps as opposed to those with fixed services which achieve an average of 152.60 Mbps.⁴⁷ This disparity means that those relying on wireless connections, unlike those with fixed broadband, will not be able to run multiple “high-demand applications” such as video conferencing, streaming, or gaming.

Some commenters have argued that advanced LTE and 5G mobile wireless broadband services are capable of serving as meaningful substitutes for fixed service.⁴⁸ This view is a

⁴⁴ OTI & Access Now Comments, *supra* note 4 at 21.

⁴⁵ See WISPA Comments, *supra* note 12 at 2-5; OTI & Access Now Comments, *supra* note 4 at 11-16; NRECA Comments, *supra* note 20 at 4-7; ADTRAN Comments, *supra* note 39 at 5-6; Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of NTCA - The Rural Broadband Association*, GN Docket No. 20-269, 2-4 (2020); INCOMPAS Comments, *supra* note 8 at 11-12; USTelecom Comments, *supra* note 21 at 10.

⁴⁶ WISPA Comments, *supra* note 12 at 2.

⁴⁷ INCOMPAS Comments, *supra* note 8 at 11.

⁴⁸ Free State Comments, *supra* note 7 at 13-17.

misguided attempt to compare services that operate in meaningfully different ways. As we have seen, students who live in areas without fixed broadband connections are traveling to Wi-Fi hotspots to learn or complete schoolwork.⁴⁹ If mobile wireless service was a meaningful substitution this type of travel would not be required. Similarly, the Free State Foundation argues that simply because mobile wireless services has the capacity to reach above Commission benchmark speeds it is a viable substitute.⁵⁰ Again, this critically overlooks that many wireless service providers implement data caps, or throttle speeds after a certain data thresholds have been crossed.⁵¹ However, on fixed connections, large amounts of data usage are permitted and speeds are not throttled for heavy usage.⁵²

The Commission concluded in the *2020 Broadband Deployment Report* that mobile broadband subscribers “may not be able to use their mobile devices as in-home hotspots to stream large quantities of HD video content.”⁵³ This extends not just to Netflix or YouTube, but to video conferencing platforms that are required for telework or distance learning applications.⁵⁴ As the Open Technology Institute at New America accurately points out, “a household of several people cannot share a single mobile broadband connection to support the vast variety of needs that come with the demand of work, school, healthcare, commerce, entertainment, information

⁴⁹ Alisha Ebrahimji, *School Sends California Family a Hotspot After Students Went to Taco Bell to Use Their Free WiFi*, CNN (Aug. 31, 2020), <https://www.cnn.com/2020/08/31/us/taco-bell-california-students-wifi-trnd/index.html>.

⁵⁰ Free State Comments, *supra* note 7 at 14

⁵¹ Comments of Comments of Common Cause, Next Century Cities, and Public Knowledge at 25-26.

⁵² *Id.* at 25.

⁵³ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, *2020 Broadband Deployment Report*, GN Docket No. 19-285, 6 ¶12 (2020) [hereinafter 2020 Broadband Report].

⁵⁴ *Id.*

and more.”⁵⁵ OTI noted that according to OpenVault, data consumption spiked to 400 GB per month, more than 10 times the usage limit for a Verizon “unlimited” mobile data plan.⁵⁶

Mobile wireless service and fixed service have been and continue to be distinct services simply based on the ways in which they operate. Claiming that because wireless service is able to mirror woefully outdated benchmark speeds and that it should be folded into the same data set as fixed broadband service will undermine good policymaking and perpetuate overreporting. That methodology would also prevent unconnected and underconnected communities from receiving essential resources to build out new fixed broadband networks.

V. THE RECORD SUPPORTS THE CONCLUSION THAT 5G IS NOT A SUBSTITUTE FOR FIXED SERVICE.

It bears reiterating that 5G networks are far from being deployed as readily available commercial services. To classify 5G as a substitute for a fixed broadband connection would require 5G services to be an established technology in the market.⁵⁷ It is widely known that entities deploying 5G services are hyper-focused on urban areas with high population densities or specific high-traffic areas.⁵⁸ This leaves rural communities, suburbs, and those outside of the highest populated areas of cities without access to this technology, and they will likely remain without access to 5G coverage for some time. Accordingly, there is currently far too little evidence to support a conclusion that 5G has become or will be an adequate and affordable substitute for fixed broadband in the short term.

The COVID-19 pandemic has shown the nuanced differences between fixed and mobile broadband, and given a clearer picture of service limitations associated with mobile connections.

⁵⁵ OTI & Access Now Comments, *supra* note 4 at 14.

⁵⁶ *Id.*

⁵⁷ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, *Comments of Common Cause, Next Century Cities, and Public Knowledge*, GN Docket No. 20-269, 27 (2020).

⁵⁸ OTI & Access Now Comments, *supra* note 4 at 15.

It is well-documented on the record that these services have not been, are not, and will likely not be substitutes for each other. The Commission should continue to evaluate their availability independently to determine if these distinct services are being made available to all Americans, regardless of zip code, in a reasonable and timely fashion.

VI. THE RECORD SHOWS SUPPORT FOR THE CONTINUED INCLUSION OF TRIBAL DEPLOYMENT MEASURES

The Commission asked for comment on whether deployment on Tribal lands still lags compared to deployment in non-Tribal areas.⁵⁹ The record unambiguously supports that Tribal lands are still underserved by broadband deployment. Commenters, such as the Open Technology Institute at New America (OTI) and Free Press discuss the extent to which Tribal lands are underserved by broadband deployment. According to Free Press, 34 percent of Native Americans—approximately 13 million people—lack a fixed broadband connection at home. Native Americans are also twice as likely as self-identified non-Hispanic white people to rely on mobile service as their sole method of getting online at home.⁶⁰

We support OTI’s claim that the FCC “must ensure that Tribal governments with firsthand knowledge and data on Tribal members and chapters served, cost and quality of service, can challenge providers’ claims about where they offer service, and start collecting accurate data on broadband in Tribal lands.”⁶¹ Incorporating Tribal input is crucial to support broadband deployment on Tribal lands and reducing the digital divide. Especially since, as with non-Tribal areas, Form 477 data overstates availability on Tribal lands.⁶² Without more granular and accurate data about Tribal deployment, it is difficult for policymakers to address the issue.

⁵⁹ NOI, *supra* note 1 at ¶15.

⁶⁰ Free Press Comments, *supra* note 18 at 4.

⁶¹ OTI & Access Now Comments, *supra* note 4 at 22.

⁶² Government Accountability Office, Broadband Internet FCC’s Data Overstate Access on Tribal Lands, 22 (2018), <https://www.gao.gov/assets/700/694386.pdf>.

After all, there is no one-size fits all broadband solution, and designing a tailored solution is difficult without fully understanding the challenges.

VII. CONCLUSION

High-speed connectivity is now a greater necessity than it has ever been before. This pandemic has revealed exactly how much households rely on the ability to get online and maintain broadband subscriptions to accomplish even daily tasks. Clear, accurate, and granular data about who is and is not connected and details about their connection such as the technology, actual speed, and pricing are critical for determining where resources can be efficiently deployed to connect citizens with employers, healthcare providers, educators, and loved ones.

There is definitive support in the record for the Commission to take action, adjusting data collection and analysis procedures accordingly. If the Commission does so, we will be one step closer to highlighting and responding to the very real challenges faced by Americans across the nation on the wrong side of the digital divide.

Respectfully submitted,

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