

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

In the Matter of	)	
	)	
Office of Economics and Analytics	)	
Seeks Comment on the State of	)	GN Docket No. 20-60
Competition in the Communications	)	
Marketplace	)	
	)	
	)	

**REPLY COMMENTS OF NEXT CENTURY CITIES**

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**I. Introduction**

Next Century Cities (“NCC”)<sup>1</sup> submits this reply in response to the Office of Economics and Analytics’ (“OEA”) request for comment on the state of competition in the communications marketplace in the above captioned docket.<sup>2</sup> While many commenters have suggested that there is adequate competition in the communications marketplace, NCC disagrees. Member municipalities throughout NCC’s network can attest that competition in both urban and rural areas of the US may leave something to be desired for the people that live there.

Communications technologies play a critical role in keeping us connected and local economies strong. Whether we are working, learning, utilizing online services, or simply trying to keep in touch with friends and family, affordable and reliable communications technologies are essential. As the Commission noted in its 2018 competition report, consumers have access to

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<sup>1</sup> Next Century Cities is a nonprofit nonpartisan 501(c)(3) coalition of over 200 member municipalities that works collaboratively with local leaders to ensure reliable and affordable broadband access for every community, while helping others realize the economic, social and public health importance of high-speed connectivity.

<sup>2</sup> *Office of Economics and Analytics Seeks Comment on the State of Competition in the Communications Marketplace*, GN Docket No. 20-60, DA 20-199 (OEA 2020).

the internet through many different forms of fixed and wireless technologies.<sup>3</sup> These services vary widely in capacity, function, speed, and cost of deployment.<sup>4</sup> However, these variations may mean that some technologies are not available to consumers in certain geographic areas and do not always provide meaningful substitutes for one another.

While many commenters have noted that the current state of the communications market is now more than competitive than ever, the cities, towns, villages, and counties that are struggling to provide reliable high-speed connectivity at affordable prices, have few service options that often keep costs high and speeds low. Meanwhile, build-out costs prevent many of them from being able to attract providers to unserved and underserved portions of their communities. As Rebecca Landry, IT Director and Assistant City Manager for Keene, New Hampshire, stated “providers are extremely open that because of our low population density, they have little interest in providing service.” Competition may be increasing as new communications technologies are introduced, however, there are markets that lack meaningful provider competition. The Commission can help develop solutions.

Recognizing the importance of incorporating local perspectives into this proceeding, several of our members shared details on the state of competition in their municipalities. NCC works to support those local officials and others, especially in communities that continue to struggle with connecting their residents to broadband. The local officials in our network share a commitment, and understand how important it is, to develop and deploy broadband connectivity solutions in a timely and cost effective manner.

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<sup>3</sup> See FCC, Communications Marketplace Report at 178 (2018), <https://docs.fcc.gov/public/attachments/FCC-18-181A1.pdf> (statement of Chairman Ajit Pai).

<sup>4</sup> *Id.*

Local officials from the municipalities highlighted in this filing shared insights on the ubiquity of high-speed connections and average broadband speeds in their communities. They also explained the role of network infrastructure, importance of affordability, and steps that the Commission should take to promote broadband access in competition in their areas. NCC is committed to working with the Commission to bring local voices to the table to provide a clear and accurate picture of the challenges that their communities face.

## **II. Less Than Half of Louisville Residents Have Meaningful Choice in Broadband Provider**

In Louisville, KY, a Next Century Cities Member, competition has been at the forefront of municipal action for years. Louisville is a community of approximately 617,638 residents spread across 380 square miles. The most recent data from the Census Bureau reveals that 79% of residents do have a broadband subscription, but local officials believe this metric may present a more optimistic picture than is true.<sup>5</sup>

Across the Louisville metro area, speeds vary widely between zip codes and specific homes are restricted to the few options in their area. According to FCC data, 61.77% of residents in Louisville have access to gigabit speeds (1000/100), but local leaders highlight that in other neighborhoods “only DSL service exists with a max speed of 6 Mbps.”<sup>6</sup> To increase these speeds

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<sup>5</sup> US Census Bureau, *QuickFacts: Louisville/Jefferson County (balance)*, <https://www.census.gov/quickfacts/fact/table/louisvillejeffersoncountyalancekentucky/AGE295218>, (Last visited May 27, 2020).

<sup>6</sup> E-mail from Chris Seidt, Director of Information Technology, Louisville, Kentucky, to Francella Ochillo, Executive Director, Next Century Cities (May 20, 2020 11:44 EST) (on file with author).

and connect unserved homes in Louisville, residents have reported that costs can total \$10,000 for a single home, an unfathomable financial burden for households.<sup>7</sup>

When a third provider entered the Louisville market, speeds increased and prices decreased. However, the current market only consists of two wireline providers and their price per megabit varies widely. In parts of the metro area, customers pay \$1.20/megabit each month whereas others pay \$0.15/megabit.<sup>8</sup> An increase of 700% per megabit within a single municipality should create concern for any observer. These prices are the result of little to no competition between incumbent providers in Louisville, and municipal leaders report that less than half of their residents have multiple options for broadband subscriptions above 50 mbps download speeds.<sup>9</sup> These metrics motivated leaders to take active steps and attract competition within the metropolitan area.

In 2019, the Louisville/Jefferson County Metro Government invested \$5.4 Million in middle mile-fiber through a partnership with the Commonwealth's KentuckyWired project.<sup>10</sup> Louisville is using this investment to "spur new carrier interest in the area." Local officials recognize that a lack of action from the federal government has created an environment where Louisville must promote "an open and competitive market to drive broadband deployment through easing barriers to entry in the market."<sup>11</sup> They continue to do this by updating new

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Alfred Miller, *KentuckyWired promised broadband and high-tech jobs. Will it ever deliver?*, Louisville Courier Journal (Jan 15, 2020), <https://www.courier-journal.com/story/news/politics/2020/01/15/kentuckywired-projects-unclear-future-leaves-state-reeling/4307356002>.

<sup>11</sup> Seidt *supra* note 6.

franchise application windows, implementing one-touch-make-ready policies, and streamlining permitting processes.

These actions by Louisville are expanding a competitive market, but municipal action alone will not suffice. “At the federal level, much of the broadband focus seems to be on rural broadband, which has largely left cities to fend for themselves in terms of driving carrier investment,” expressed one official.<sup>12</sup> To become an active partner, the FCC must take steps to not only mitigate the damage of inaccurate Form 477 data in Louisville and similarly situated municipalities across the country, but Louisville urges the Commission to provide municipal authority to hold franchise recipients accountable to serve all residential addresses equally.

### **III. Pennsylvania Markets are Plagued by Inaccurate Data and Limited Competition**

Next Century Cities has several member cities in the state of Pennsylvania that includes urban and rural areas. Unlike the Commission’s previous mapping data surrounding the state of Pennsylvania, a study released in June of 2019 has shown that over 800,000 Pennsylvania residents lack broadband access.<sup>13</sup> In a state with a population of 12 million people, this means that almost 6.25% of the population of Pennsylvania does not have access to the internet.

The Center for Rural Pennsylvania defines 48 of Pennsylvania’s 67 counties as rural, and estimates that approximately 3.4 million Pennsylvanians live in those rural counties.<sup>14</sup> As such

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<sup>12</sup> *Id.*

<sup>13</sup> The Center for Rural Pennsylvania, *Broadband Availability and Access in Rural Pennsylvania* at 7 (2019), [https://www.rural.palegislature.us/broadband/Broadband\\_Availability\\_and\\_Access\\_in\\_Rural\\_Pennsylvania\\_2019\\_Report.pdf](https://www.rural.palegislature.us/broadband/Broadband_Availability_and_Access_in_Rural_Pennsylvania_2019_Report.pdf) (PA Broadband Study).

<sup>14</sup> *Id.* at 12 (This accounts for 72% of PA counties and roughly a quarter of all PA residents).

the FCC has stated in the past that many rural communities often rely on cellular and wireless providers as their primary internet service provider (“ISP”). Further, a Pennsylvania House of Representatives Consumer Affairs hearing noted that “69 percent of all high-speed broadband connections in Pennsylvania are served by mobile providers.”<sup>15</sup> Mobile wireless service is not an adequate substitute for fixed broadband and often realizes speeds far less than the minimum benchmark speeds of 25 downstream and 3 upstream the FCC has set forth. This would set the FCC’s reports that broadband is fully available across Pennsylvania at odds with the on-the-ground broadband reality experienced by many of its residents.

Assessing speeds and competition in the telecommunications marketplace in Pennsylvania is contingent upon the mapping data reported by providers. If providers report accurate and reliable Form 477 data it will give the Commission a clear view of which areas are served, which are not, and which are connected in part. Notably, current procedures allow providers to over-report the areas they serve. As long as the Commission continues to define service in a census block as “the areas where a provider does, or could, without an extraordinary commitment of resources, provide service,<sup>16</sup> it will be difficult to identify who remains underserved and underserved.

The Center for Rural Pennsylvania conducted over 11 million speed tests across Pennsylvania which it then added to a historic archive of 15 million tests. This provided the

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<sup>15</sup> Presentation on the Telecommunications Industry: Hearing before the Comm. on Consumer Affairs, 2017 Leg., at 6 (Pa 2017).

<sup>16</sup> Form 477 Instructions at 34; FCC, Fixed Broadband Deployment Data from FCC Form 477, <https://us-fcc.app.box.com/v/Form477Instructions> (last visited May 28, 2020) (noting the definition of “available” is as follows. “ For purposes of this form, broadband connections are available in a census block if the provider does, or could, within a service interval that is typical for that type of connection—that is, without an extraordinary commitment of resources—provision two-way data transmission to and from the Internet with advertised speeds exceeding 200 kbps in at least one direction to end-user premises in the census block.”).

Center with over 25 million broadband tests to determine where there are gaps in broadband coverage, and where provider submitted data may be inaccurate.<sup>17</sup> The results often found that counties experienced slower measured speeds than the availability shown in FCC maps.<sup>18</sup> In fact the report found that, based on 2018 data, no county in Pennsylvania had at least 50% of the populace receiving broadband as defined by the Commission.<sup>19</sup>

Communities in Pennsylvania that are seeking to increase competition often find themselves at odds with incumbent utility or internet providers. For example, Lancaster City created a partnership with MAW communications in which the city loaned money to MAW to deploy a fiber network. However, this project was met with serious resistance from the local investor-owned electric company PPL. In Lancaster, PPL owns a majority of the utility poles. MAW eventually filed a complaint with the FCC arguing that it cannot access utility poles and thus not deploy the fiber network it has partnered with Lancaster to connect its citizens.<sup>20</sup> The Commission ruled that “PPL’s refusal to accept or process MAW’s pole attachment applications violates PPL’s duty to provide access under section 1.1403(a) of our rules.”<sup>21</sup> In essence, PPL should provide telecommunications carriers such as MAW non-discriminatory access to its

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<sup>17</sup> PA Broadband Study at 41.

<sup>18</sup> *Id.* at 70 (Figures 3 through 5 noting that the FCC maps show 25 Mbps downstream all across Pennsylvania, whereas, NDT measured speeds show a wide variety of speeds with slower speeds concentrated in rural counties and higher speeds concentrated in more urban counties).

<sup>19</sup> See *Faculty Member’s research shows broadband disconnect for many in Pennsylvania*, PennState News (June 04, 2019), <https://news.psu.edu/story/576715/2019/06/04/research/faculty-members-research-shows-broadband-disconnect-ma> ny.

<sup>20</sup> See Pole Attachment Complaint of MAW Communications, Inc., EB Docket No. 19-29, (filed Feb. 8, 2019), <https://ecfsapi.fcc.gov/file/10209759113250/MAW%20Access%20Complaint.pdf> (MAW’s Sec. 224 Petition).

<sup>21</sup> *In the Matter of MAW Communications, Inc., v. PPL Electric Utilities Corp.*, Memorandum Opinion and Order, EB Docket No. 19-29, para. 15 (2019).

poles. Denying access is only permitted where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes.<sup>22</sup>

This has not been the only case of attachment issues between a telecommunications provider and PPL. Pole owners have frequently been identified as one of the biggest hurdles to increasing investment in fiber networks in Pennsylvania.<sup>23</sup> Cities in Pennsylvania want to increase broadband deployment, however, anticompetitive practices by incumbents and the lack of diverse connectivity solutions statewide prevent its market from being truly competitive.

#### **IV. Conclusion**

Competition drives network buildout, pushes costs, down and incentivizes providers to increase speeds. At a time when Americans want and need access to reliable, affordable, and high-speed connectivity, the Commission must look at these markets from various perspectives, including how it impacts communities that are still struggling to provide their residents with high-speed connectivity. Local officials have the clearest view of how the Commission's policies affect their communities. The Commission should make every effort to work with them and maintain open dialogues about ways to increase competition and promote broadband deployment in markets that are wanting.

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<sup>22</sup> *Id.* at para. 14.

<sup>23</sup> PA Broadband Study at 36.