

**Universal Digital Access
Observations and Recommendations to Help Bridge the
Digital Divide for All Americans**

**Submitted by
Digital Empowerment and Inclusion Working Group
of the
Advisory Committee on Diversity and Digital Empowerment**

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Introduction

In the 21st Century digital economy, access to broadband service is a prerequisite to access to employment, educational opportunities, health and medical information, community engagement, news, and political participation. Broadband has become essential to the full and meaningful exercise of the fundamental rights and privileges of citizenship in the United States, and we need to ensure that all Americans have access to this critical resource.

Since his first day as Chairman of the Federal Communications Commission (“FCC” or “Commission”), Chairman Ajit Pai’s “number one priority has been closing the digital divide and bringing the benefits of the Internet age to all Americans.”¹ The FCC Advisory Committee on Diversity and Digital Empowerment (“ACDDE” or “Diversity Committee”) generally classifies this worthy objective as “universal digital access,” similar to the more commonly recognized term “universal service.” The concept of universal service has its origins in the Communications Act of 1934, when Congress took action to promote the availability to all Americans of a rapid and efficient nationwide communications network. Federal support for deployment of telephone network infrastructure in rural, remote, and high-cost areas connected residents living in those parts of the country to their fellow citizens.² The Lifeline program that emerged from the nation’s commitment to universal service also ensured that low-income Americans would have equitable access to the benefits and capabilities of basic telephone service.³

In 1996, Congress took further action to provide eligible schools, libraries, and rural health care providers with the universal service support benefits through the Universal Service Fund Program not just for basic telephone service, but basic Internet access service as well.⁴ All Americans, regardless of

¹ FCC, *Bridging the Digital Divide for all Americans*, <https://www.fcc.gov/about-fcc/fcc-initiatives/bridging-digital-divide-all-americans>.

² See generally, 47 U.S.C. § 254; see also *Universal Service*, FCC (June 3, 2019), <https://www.fcc.gov/general/universal-service>.

³ See MTS and WATS Market Structure, and Amendment of Parts 67 & 69 of the Commission’s Rules and Establishment of a Joint Board, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985).

⁴ The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 71-72 (1996) (codified at 47 U.S.C. § 254(b)). Congress referred to Internet access services as “advanced telecommunications services.” *Id.*

where they live or their economic status, would receive the many benefits to educational and health care opportunities made possible by new communications technologies.

Universal digital access seeks to build upon – and advance in the 21st century – the same objectives of the bipartisan-supported original universal service programs. Today, broadband is a critical driver of U.S. economic growth and has transformed American daily life. Broadband connectivity has created jobs, strengthened the U.S. position as an effective global competitor, and brought the promise of e-commerce, news and entertainment, and digital health care to unserved and underserved communities in urban, suburban, *and* rural communities. The ACDDE also recognizes that universal digital access is a fundamental element to digital equity. “Digital equity” is defined as “a condition in which all individuals and communities have the information technology capacity needed for full participation in our society, democracy and economy.”⁵ “Digital equity is necessary for civic and cultural participation, employment, lifelong learning, and access to essential services.”⁶

The ACDDE believes that broadband is essential to full participation in society and to ensure equal opportunities for citizens of all ages. For example, today’s students rely on broadband to complete homework assignments, access course materials, undertake research for writing and study projects, access online learning resources, and apply to college.⁷ Broadband also is critical to providing working families with information about – and connection to – employment opportunities and benefits. Broadband also can enlarge workforce eligibility options through immersive and blended learning online training programs, expand opportunities to work from the home for residents in unserved and underserved areas, and enhance the visibility and competitiveness of entrepreneurs, innovators, and small businesses in such communities.

Moreover, the telehealth capabilities enabled by broadband make medical care and health and wellness information more accessible for residents of unserved and underserved communities – where there may be a shortage of health care facilities or specialists – and can save time, money, and energy traveling to and from in-office visits, often many miles from home. Expanding broadband availability also enhances the quality of life of residents, offering the convenience of online banking, bill payment, e-commerce and e-government services, as well as more opportunity for civic engagement.

The benefits of broadband are wide-ranging and substantial. However, not all Americans share in those benefits, hence the need for universal digital access. According to the FCC, 21.3 million Americans lack access to high-speed Internet access service.⁸ To help reduce this number, there are a host of current and proposed programs that will provide billions in financial support (to include low interest loans, grants and subsidies) from local, state and federal entities that incentivize deployment in underserved and

⁵ *Definitions*, NDIA, <https://www.digitalinclusion.org/definitions/>.

⁶ *Id.*

⁷ FCC Commissioner Rosenworcel has stressed the important role of broadband in closing what she calls the “Homework Gap,” noting that the vast majority of teachers assign homework that requires access to online resources and highlighting the need for today’s students to have technology knowledge and skills integrated into their curriculum. *In the Matter of Lifeline & Link Up Reform & Modernization*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7952 (2015) (Statement of Commissioner Jessica Rosenworcel).

⁸ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2019 Broadband Deployment Report, FCC 19-44, ¶ 2 (rel. May 29, 2019) (reporting data as of Dec. 2017).

unserved areas, such as the FCC’s Connect America Fund II and the U.S. Department of Agriculture’s ReConnect Pilot Program.⁹

The ACDDE recognizes that several underlying causes of the digital divide exist. In order to reach all 21.3 million Americans in an expedient manner, a multifaceted approach is necessary. The high cost of deployment is just one significant obstacle to universal digital access, and increased financial support and the programs mentioned above will not necessarily help close the digital divide in every instance. To this end, the ACDDE’s Digital Empowerment and Inclusion (“DEI”) Working Group identified another underlying cause, specifically the practice of overbuilding existing broadband providers by other companies that are funded by public money. Government subsidized overbuilding hampers the ability of all Americans to have universal digital access. In short, overbuilding any area with scarce public funds that already receives sufficient broadband service diminishes the reach and effectiveness of such funds because there is zero investment in communities that have *no* access to broadband – the truly unserved. In today’s race to promote 5G technology, too many communities have “no G” and thus, should be a top priority for any such funding.

The DEI Working Group further submits that digital redlining is another important issue that denies certain communities fair access to broadband technology and digital content. While there is no empirical data that provides evidence of a widespread problem, the practice of digital redlining is an equally important issue to examine because of the detrimental impact it can have on our communities when it occurs. While people have used the term “digital redlining” to mean different things, the term most commonly refers to activity consistent with the definition offered by the NDIA. The NDIA has defined “digital redlining” as “the denial, to certain communities or neighborhoods, of equal access to the terms, conditions and level of service of advanced information or telecommunications technologies, on the basis of race, ethnicity, income, or wealth.”¹⁰ Unfortunately, the effects of digital redlining can disadvantage some of the country’s most vulnerable and marginalized communities. Although generally thought of in the context of urban areas, digital redlining can occur in high-cost rural communities as well, when buildout decisions are inappropriately based on socio-economic factors.

While broadband is rapidly changing every facet of American life, the faster the technology moves and the greater the benefits it provides, the greater the penalties and disadvantages for those who get left behind. Promoting universal digital access by re-doubling our efforts to identify unserved areas regardless of geographic area, gender or sexual orientation, race/ethnicity, income, etc., is essential to achieve full digital empowerment.

While helpful, the government programs mentioned above will not necessarily reach various communities or resolve the circumstances in which certain citizens do not have access to broadband and therefore, cannot be engaged in the digital economy. The next two sections of this document will discuss

⁹ See also the Rural Utility Service (“RUS”) Telecommunications Infrastructure Loan Program, Farm Bill Broadband Loan Program, Broadband Initiative Program (“BIP”), Rural Broadband Access Loan and Loan Guarantee Program, and Community Connect Grant Program. The National Telecommunications Information Administration completed its Broadband Technologies Opportunity Program (“BTOP”). Proposed programs include the FCC’s \$20 Billion Rural Digital Opportunity Fund, the FCC’s single biggest step to help close the digital divide. Joan Engebretson, *Pai Proposes FCC Rural Digital Opportunity Fund: \$20.4 Billion Over 10 Years for Price Cap Territories*, TELECOMPETITOR (April 12, 2019), <https://www.telecompetitor.com/pai-proposes-fcc-rural-digital-opportunity-fund-20-4-billion-over-10-years-for-price-cap-territories/>.

¹⁰ See Callahan, Bill, “AT&T’s Digital Redlining Of Cleveland,” Columbus, Ohio: National Digital Inclusion Initiative, March 10, 2017, <https://www.digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/> (last accessed June 12, 2019).

the negative effects of digital redlining and the unintended negative consequences of government subsidized overbuilding, respectively, and offer recommendations to reduce, if not eliminate them.

Digital Redlining

In September 2017, Chairman Pai charged the ACDDE to explore equitable access to high-speed broadband and other digital resources for all citizens¹¹ Chairman Pai has acknowledged digital redlining as the “notion that within a certain geographic area, a company might have a business case for building out in areas A, B and C. But in area D they simply say, ‘[w]e’re not going to deploy there because we don’t see the return on investment,’ or for whatever reason. So from a regulatory perspective, we want to make sure that there are no rules standing in the way of them doing that.”¹² Further, the Chairman observed that digital redlining “fenc[es] off lower-income neighborhoods on the map and says ‘[i]t’s not worth the time and money to deploy there.”¹³

The DEI Working Group respectfully acknowledges the Chairman’s exposition of digital redlining and offers a set of recommendations that can potentially prevent and guard against efforts to exclude certain communities from the availability of high-speed broadband networks and other digital resources. In particular, we present proposals that can help provide a business case against redlining, while simultaneously suggesting best practices for the universal deployment of high-speed broadband networks, where appropriate. The DEI Working Group posits that if the Commission takes a proactive and collaborative approach to reducing digital redlining, we can facilitate broadband investment in communities that do not have access to broadband, thereby reducing potential discriminatory practices and closing the digital divide.

The following recommendations are the result of constructive deliberation within the DEI Working Group based on Chairman Pai’s charge.

¹¹ See Remarks of FCC Chairman Ajit Pai in Washington, DC at the First Meeting of the Federal Communications Commission’s Advisory Committee On Diversity And Digital Empowerment (Sept. 25, 2017), available at <https://www.fcc.gov/document/chairman-pai-remarks-diversity-digital-empowerment-cmte-meeting>.

¹² Molly Wood, *Can a free market solve the digital divide?*, MARKETPLACE (Sept. 12, 2017), <https://www.marketplace.org/2017/09/12/tech/can-free-market-solve-digital-divide-ajit-pai>.

¹³ Remarks of FCC Chairman Ajit Pai at the Newseum, *The Future of Internet Freedom*, (April 26, 2017), available at <https://www.fcc.gov/document/chairman-pai-speech-future-internet-regulation>.

Recommendations to the ACDDE

June 24, 2019

The DEI Working Group offers the following two (2) recommendations to the full body of the ACDDE membership for consideration as the Federal Communications Commission explores strategies for addressing this potentially discriminatory practice.

1. *The Federal Communications Commission should improve upon its broadband mapping and reporting to reduce the likelihood of digital redlining practices.*

The availability of complete or near sufficient data about where broadband is being deployed in both urban and rural areas is critical to identifying and remedying digital redlining. While the DEI Working Group recognizes the plethora of local, state, and federal programs currently available to address disconnected Americans, we also recognize that accurate mapping and reporting are the key to linking those programs with users in need.

As part of this recommendation, the DEI Working Group recommends that the ACDDE urge the Federal Communications Commission to engage in more thoughtful data collection and analysis. We also strongly encourage the FCC to improve the accuracy, increase the effectiveness, and simplify the process of mapping and reporting of broadband connectivity across the country. These strategies will equip those deploying broadband services with more robust information around access and enhance the business case for broadband investments, especially in geographic areas with fewer regulatory and topographical restrictions to buildout.

2. *The Federal Communications Commission should charge the next iteration of the ACDDE with the development of a “best practices toolkit” to guard against digital redlining practices.*

As stated, the DEI Working Group should follow through on consultations with diverse stakeholders to develop a set of best practices against digital redlining. We encourage the next charter of the ACDDE to incorporate this issue into their committee agenda by establishing both core principles and sharing actual best practices where communities are working to identify and mitigate digital redlining. Whereas the NDIA and other organizations have conducted research and published white papers and reports on this issue, the Federal Communications Commission should engage members of the ACDDE to compile and share such activities as part of the toolkit against redlining. We also propose that industry leaders be engaged in the conversations to both contribute to the set of core principles and share their own voluntary actions to encourage more ubiquitous broadband deployment.

As part of this final recommendation, it is imperative that the Federal Communications Commission re-charter the ACDDE and place responsibility on this advisory group to continue this important work.

The DEI Working Group offers these recommendations as a pathway to understanding the impacts of digital redlining and exploring strategies for controlling and, ideally, curing this problem. We also implore such an approach to complement the Federal Communications Commission’s current efforts to bridge the digital divide.

Government Subsidized Overbuilding

U.S. broadband speeds have increased tremendously in recent years. Gig speeds now blanket most of the country and new 5G, or 10G, technologies are now on the horizon. Today, more than ever, policymakers need to ensure that those citizens that have “no G” are part of and receive the educational, economic, social, and other benefits of the digital economy. While the enhancements of new broadband speed technologies are noteworthy, bringing all Americans into the Internet economy and the digital age with access to broadband is even more critically important.

In recognition of the recently completed Connect America Fund Phase II reverse auction and the new \$600 Million ReConnect Fund Pilot Program to be administered by the U.S. Dept. of Agriculture’s Rural Utilities Service, there is a shared “goal of closing the digital divide by expanding broadband access to all Americans, while ensuring prudent use of taxpayer dollars.”¹⁴ There is bipartisan support for this goal, as evidenced by the many state and federal government efforts to promote broadband deployment using financial support, such as subsidies, loans, and grants to incentivize broadband service providers to construct high-speed broadband networks and stimulate investment. Another bipartisan concern, however, is to avoid duplicate efforts, as well as the use of government resources to compete with private capital by funding overbuilding of existing networks in areas that either already have access to broadband service, or those that lack access to broadband service but are scheduled to have such access with the support of local, state, or federal funding.

FCC Commissioner O’Rielly has recognized the dangers of government funding for overbuilding to areas where there is sufficient access to broadband: “When one provider received special funding, it distorted the ability of non-recipients to operate, pay off debt, raise capital, and satisfy consumer interest.”¹⁵ In other words, government subsidized overbuilding discourages investment and competition. The danger of overbuilding by government subsidized competitors is even greater, because the use of scarce government (and taxpayer) money is not used efficiently nor is funding used for the highest and best use. In both scenarios, the impact of government subsidized overbuilding can be particularly devastating when the providers being overbuilt are minority- or women-owned, or small businesses, entities that have traditionally suffered from access to capital issues.

The DEI Working Group is well-positioned to develop principles and a framework that will help to prevent government subsidized overbuilding in various scenarios. We present a wide range of recommendations for the ACDDE’s consideration; such recommendations are general in scope, without particular emphasis to any one program. We recommend the following ten principles and framework to the full body of the ACDDE membership for consideration to present to Chairman Ajit Pai. We also recommend that the ACDDE consider requesting that Chairman Pai task the next ACDDE, upon its re-charter, to continue to identify strategies that will prevent government subsidized overbuilding.

¹⁴ Letter from Chairman John Thune, U.S. Senate Committee on Commerce, Science and Transportation, and Chairman Roger Wicker, Subcommittee on Communications, Technology, Innovation and the Internet, to Secretary Sonny Perdue, U.S. Dept. of Agriculture (Aug. 22, 2018), *available at* https://www.ntca.org/sites/default/files/documents/2018-08/Sen%20Thune%20USDA%20letter.pdf?utm_source=facebook.

¹⁵ FCC Commissioner Michael O’Rielly, *Federal Broadband Infrastructure Spending: Potential Pitfalls*, FCC BLOG (Feb. 1, 2017), <https://www.fcc.gov/news-events/blog/2017/02/01/federal-broadband-infrastructure-spending-potential-pitfalls>.

Recommended Principles and Framework

1. Allocate local, state, and federal public funding (subsidies, loans, grants or loan/grant combinations) only to designated geographic areas that lack access to terrestrial broadband service offering a minimum 10 Mbps download/1 Mbps upload speeds (“10/1”). This assessment should include, but is not limited to, any current or pending award or distribution of public funds at the local, state or federal level, regardless of the stage of construction. If government funding has been designated (e.g., through the Connect America Fund Phase II auction or a RUS broadband loan program), awarded or distributed, the area is deemed to have sufficient service and would not receive additional funding support.
2. Areas with less than 10/1 Mbps can exist in any geographic area, including rural, urban and suburban areas. Some geographic areas meet or exceed this threshold but still contain individual locations which are unserved.
3. Determination of whether an area has access to 10/1 Mbps should be technologically neutral, in order to allow for greater diversity in technological solutions to meet local needs.
4. Determination of whether an area is unserved should include a consideration of the number or a percentage of locations in that area that receives at minimum 10/1 speeds.
5. Governmental entities awarding funds should provide a specific measurement for a “service area” so that adequate and uniform geographic measurements can be made to identify locations that do not have sufficient service.
6. There should be increased communication and coordination by and amongst local, state and federal agencies regarding deployment and mapping data, and approval of funding support to prevent duplicate government funding and subsidized overbuilding.
7. There should also be increased access by the public to government databases, and/or a timely release of government data to the public.
8. Until an updated national broadband map has been developed, the government entity awarding the funds should use all available data and resources to verify that an area does not currently have access to broadband service offering speeds of at least 10/1 Mbps, including data from the FCC, NTIA, other federal, state, and/or local agencies, and the private sector.
9. All applicants should identify the names and actual speeds of all existing broadband providers in a suggested service area for funding. Speed data can be gleaned from a provider’s public filings, Open Internet Policy, and/or actual tests.
10. The government entity awarding the funds should develop an expedient, fair, and user-friendly challenge process where a consumer, local government, a consumer advocacy group, or an existing provider in the subject area can challenge an applicant’s assessment that a service area does not have access to broadband service offering speeds of at least 10/1 Mbps.

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