

356
ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

May 8, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

We write to renew our concerns about the faulty broadband deployment data at the Federal Communications Commission (FCC or Commission) and ask that you provide information about how these data are being used. Since Congress requires agencies—including the Commission—to base its policy decisions on reliable and accurate information,¹ conclusions reached by the Commission that are not grounded in a record with reliable facts and objective data must be reexamined.

As you know, Section 706 of the Telecommunications Act of 1996 requires the Commission to conduct an annual inquiry into “the availability of advanced telecommunications capability.”² After receiving the results of the inquiry, the Commission is then empowered to take action to remedy any deficiencies revealed by the inquiry.³ In passing this provision, Congress intended for the Commission to make its policy choices based on reliable deployment data.

Yet time and again, experts have testified in the House of Representatives and the Senate that the FCC’s data is not reliable.⁴ These experts have told us that these flaws have led to FCC data and maps that consistently overstate broadband coverage, creating a perception that

¹ 5 U.S.C. § 706(2)(a).

² 47 U.S.C. § 1302.

³ *Id.*

⁴ House Committee on Energy and Commerce, *Broadband: Deploying America’s 21st Century Infrastructure*, 115th Cong. (Mar. 21, 2018); House Committee on Energy and Commerce, *Defining and Mapping Broadband Coverage in America*, 115th Cong. (June 21, 2018).

competition is more robust than it is. We know from our constituents as well as our own experience that the reality on the ground does not match the FCC's data.

We specifically raised these concerns in the comments we submitted in the Commission's proceeding to eliminate net neutrality.⁵ As we said then, "[b]efore moving forward, the FCC should first correct its data, as required." Yet disappointingly, the Commission did not even acknowledge this concern in its ultimate order eviscerating net neutrality, as it was required to do by the Administrative Procedures Act.

Just months later, the Commission unveiled a new broadband map, which we hoped would show the Commission had worked to improve its data.⁶ Yet by all accounts, this map continues to wildly misrepresent the availability of broadband to Americans across the country and demonstrates that the Commission has failed to respond to the bipartisan, bicameral calls for accurate data.⁷ We are particularly concerned that such unrepresentative data were used as the basis of the Commission's decision to undo consumers' net neutrality protections.

We, therefore, ask you to provide a response to the following questions so we can better understand how the Commission uses its broadband data:

1. In your statement supporting the *Restoring Internet Freedom* Notice of Proposed Rulemaking, you pledged that the FCC would "follow the facts and the law where they take us."⁸ Did the Commission rely on erroneous "facts" gleaned from faulty form 477 data to support its reasoning in the *Restoring Internet Freedom* proceeding that ultimately rolled back net neutrality? Please provide a yes or no answer and a brief explanation.
2. If the Commission did use the data from its Form 477 in the *Restoring Internet Freedom* proceeding, how did the Commission confirm the accuracy of the data? Please provide any technical analysis performed by Commission staff to ensure that that its data was accurate.

⁵ Representatives Frank Pallone, Jr., Mike Doyle, Anna Eshoo, Diana DeGette, Jan Schakowsky, Doris Matsui, Kathy Castor, John Sarbanes, Jerry McNerney, Peter Welch, and Joseph P. Kennedy III, Comments, WC Docket No. 17-108, at 10-12 (filed Aug. 4, 2017).

⁶ *FCC Launches New Broadband Map*, Broadcasting and Cable (Feb. 22, 2018).

⁷ See, e.g., Letter from Sens. Roger Wicker, Margaret Wood Hassan, Cory Gardner, Angus King, Jerry Moran, Amy Klobuchar, Pat Roberts, and Gary Peters, to FCC Chairman Ajit Pai (March 8, 2018); Senate Committee on Commerce, Science and Transportation, *Rebuilding Infrastructure in America: Investing in Next Generation Broadband*, 115th Cong. (March 13, 2018).

⁸ Federal Communications Commission, *Restoring Internet Freedom*, Notice of Proposed Rulemaking, WC Docket No. 17-108 (statement of Chairman Ajit Pai).

The Honorable Ajit V. Pai
May 8, 2018
Page 3

3. If the Commission did not use the Form 477 data to make its final determination to eliminate net neutrality protections, on which data was its decision based?
4. If the Commission did not use the Form 477 data to support its findings in the *Restoring Internet Freedom Order*, why has the Commission deemed these data sufficient for other Commission purposes, such as for use in making decisions on how to deploy funding from the Universal Service Fund, but not a sufficient basis for supporting its decision to reverse net neutrality protections? Please explain.

I appreciate your attention to this important matter. Please provide responses to this letter by May 29, 2018. Please contact Gerald Leverich of the Democratic Committee staff at (202) 225-3641 should you have any questions regarding this request.

Sincerely,



Frank Pallone, Jr.
Ranking Member



Mike Doyle
Ranking Member
Subcommittee on Communications
and Technology