



MEMORANDUM

September 7, 2019

**To:** Subcommittee on Communications and Technology Members and Staff

**Fr:** Committee on Energy and Commerce Staff

**Re:** Hearing on “Legislating to Connect America: Improving the Nation’s Broadband Maps”

On Wednesday, September 11, 2019, at 10:30 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a legislative hearing entitled “Legislating to Connect America: Improving the Nation’s Broadband Maps.”

**I. BACKGROUND**

The Federal Communications Commission (FCC) began collecting subscription and connection data for broadband and telephone service using Form 477 in 2000.<sup>1</sup> Since then, these data have become the primary source for many FCC actions, including its publication of statutorily mandated reports to Congress regarding competition among certain service providers, and the availability of advanced communications capability.<sup>2</sup> The FCC has also used these data to update its universal service policies, including by excluding certain areas from receiving support.<sup>3</sup> Notably, the FCC collects Form 477 data for both fixed and mobile broadband.<sup>4</sup>

**A. FCC Collection of Fixed Broadband Data**

Through Form 477, historically, the FCC has required fixed broadband providers to identify the census blocks in which fixed broadband service is available.<sup>5</sup> The FCC has defined

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<sup>1</sup> See Federal Communications Commission, *Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program*, Report and Order and Second Notice of Proposed Rulemaking, WC Docket No. 19-195 and WC Docket No. 11-10, at ¶ 5 (rel. Aug. 6, 2019) (hereinafter “*FCC Broadband Mapping Order*”).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at ¶ 8.

<sup>4</sup> *Id.* at ¶ 2.

<sup>5</sup> *Id.* at ¶ 8.

“availability” as whether the provider does—or could within a typical service interval or without an extraordinary commitment of resources—provide service to a single end user in a given census block.<sup>6</sup> As a result, if even a provider could serve a single area in a census block, the FCC has counted the *entire* census block as being served.<sup>7</sup> According to the Census Bureau, in “a city, a census block looks like a city block bounded on all sides by streets[,] . . . but [i]n remote areas, census blocks may encompass hundreds of square miles.”<sup>8</sup>

In a 2018 report, the Government Accountability Office (GAO) found that the FCC’s fixed broadband availability methodology overestimates broadband deployment by “counting an entire census block as served if only one location has broadband.”<sup>9</sup> GAO also found the FCC data overstated deployment by “allowing providers to report availability in blocks where they do not have any infrastructure connecting homes to their networks if the providers determine they could offer service to at least one household.”<sup>10</sup>

## **B. FCC Collection of Mobile Broadband Data**

For mobile broadband service, the FCC’s Form 477 requires providers to report their coverage areas by submitting maps depicting where consumers can expect to receive the minimum advertised services.<sup>11</sup> In imposing this requirement, the FCC does not require providers to use a standardized method with defined technical parameters when determining their coverage areas.<sup>12</sup> As a result, according to the FCC, its mobile broadband data cannot be compared across providers.<sup>13</sup>

To improve the accuracy and usefulness of the mobile broadband data that the FCC collects, Congress included a version of H.R. 1546, the Rural Wireless Access Act, introduced by Reps. Loeb sack (D-IA) and Costello (R-PA), in Section 505 of the Consolidated

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<sup>6</sup> *Id.* at ¶ 13.

<sup>7</sup> Government Accountability Office, *Broadband Internet: FCC’s Data Overstate Access on Tribal Lands*, Report to Congressional Requesters (Sept. 2018) (“*GAO Broadband Internet Report*”), [www.gao.gov/assets/700/694386.pdf](http://www.gao.gov/assets/700/694386.pdf) at page 17.

<sup>8</sup> United States Census Bureau, *What Are Census Blocks?*, Census Blogs (Jul. 11, 2011), [www.census.gov/newsroom/blogs/random-samplings/2011/07/what-are-census-blocks.html](http://www.census.gov/newsroom/blogs/random-samplings/2011/07/what-are-census-blocks.html).

<sup>9</sup> *GAO Broadband Internet Report* at 17.

<sup>10</sup> *Id.*

<sup>11</sup> *FCC Form 477 Instructions* at 24, <https://transition.fcc.gov/form477/477inst.pdf>.

<sup>12</sup> *GAO Broadband Internet Report* at 15.

<sup>13</sup> *Id.*

Appropriations Act, 2018.<sup>14</sup> That law requires the FCC to establish a methodology for collecting mobile coverage data within 180 days of the conclusion of the Mobility Fund Phase II Auction.<sup>15</sup>

Last year, however, the FCC opened an investigation into whether one or more major carriers violated the Mobility Fund Phase II reverse auction’s mapping rules.<sup>16</sup> The Mobility Fund Phase II Auction would allocate up to \$4.53 billion over 10 years to advance high-speed mobile broadband service in rural areas.<sup>17</sup> That auction contemplated a mobile data collection separate and apart from Form 477.<sup>18</sup> As a result of the FCC’s investigation, however, the Mobility Fund II auction remains delayed, and the FCC has yet to implement the requirements of the Rural Wireless Access Act.<sup>19</sup>

### **C. Recent FCC Action Regarding Data Collection**

Last month, the FCC adopted a report and order that will require fixed broadband providers to submit new maps of the areas in which their services are available.<sup>20</sup> As part of this new data collection, the FCC will require providers to submit data using shapefiles—or polygons—rather than on a census block basis, as was previously required.<sup>21</sup> This new collection is similar to the FCC’s Form 477 data in that it will allow providers to submit availability data based on where a provider has a current connection or “could provide such a connection within ten business days of a customer request.”<sup>22</sup> As part of its report and order, the FCC also required the Universal Service Administrative Company (USAC) to create an online portal for “local, state, and tribal governmental entities and members of the public to review and dispute the broadband coverage polygons filed by fixed providers.”<sup>23</sup> The order leaves the current Form 477 system in place, but requests comment on whether the FCC should sunset

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<sup>14</sup> RAY BAUM’S Act, Pub. L. No. 115-141, § 505 (2018).

<sup>15</sup> *Id.*

<sup>16</sup> Federal Communications Commission, *FCC Launches Investigation into Potential Violations of Mobility Fund Phase II Mapping Rules*, Press Release (Dec. 7, 2018).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *FCC Broadband Mapping Order* at ¶ 10.

<sup>21</sup> *Id.* at ¶ 11.

<sup>22</sup> *FCC Form 477 Instructions* at 24, <https://transition.fcc.gov/form477/477inst.pdf>.

<sup>23</sup> *FCC Broadband Mapping Order* at ¶ 11.

some or all of the Form 477 collection.<sup>24</sup> Notably, the FCC did not apply this new collection to the mobile broadband providers, only to fixed providers.<sup>25</sup>

Beyond the new data collection, the FCC made several adjustments to the existing Form 477 process. The FCC described these changes as reducing “the burden on service providers required to submit the form.” As part of that, the FCC chose to no longer “treat as confidential service providers’ minimum advertised or expected speed data for mobile broadband services.”

Separate from its report and order, the FCC asked additional questions about whether it should require more granular data for fixed providers, how to account for satellite providers, how to improve mobile broadband coverage data, and how to better incorporate public feedback in the data collection process, among other things.

## II. LEGISLATION

### A. H.R. 2643, the “Broadband Mapping After Public Scrutiny Act of 2019”

Reps. Latta (R-OH) and Welch (D-VT), introduced H.R. 2643, the “Broadband Mapping After Public Scrutiny Act of 2019 (“MAPS Act”) on May 9, 2019. The MAPS Act would require the FCC to establish a challenge process to be used to verify the collection and use of fixed and mobile broadband service coverage data submitted to the FCC by private entities and governmental entities to verify fixed and mobile broadband coverage.

### B. H.R. 3162, the “Broadband Data Improvement Act of 2019”

Reps. Rodgers (R-WA) and O’Halloran (D-AZ), among others, introduced H.R. 3162, the “Broadband Data Improvement Act of 2019”, on June 6, 2019. The Broadband Data Improvement Act of 2019 would require the FCC to establish a rule that each broadband provider submit, biannually, information regarding the geographic availability of the broadband service it provides, as well as a challenge process in which the validity of the information in the National Broadband Map could be challenged by a provider or member of the public. The National Broadband Map would then be used by Federal agencies to determine the extent of the availability of broadband service. In addition, under this Act, the Commission would select an entity to assist with collecting the information, supporting the challenge process, creating the National Broadband Map, and tracking and validating how funds are made available and used for the development of broadband infrastructure. The legislation also specifies that it shall be unlawful for a person to willfully and knowingly submit information or data that is inaccurate with respect to the availability of broadband internet access service. The FCC would be authorized to be appropriated \$55 million for 2020, as well as an additional \$50 million for every year through 2026.

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at ¶ 2.

**C. H.R. 4128, the “Map Improvement Act of 2019”**

Reps. Luján (D-NM), Bilirakis (R-FL) and Doyle (D-PA) introduced H.R. 4128, the “Map Improvement Act of 2019” on July 30, 2019. The Map Improvement Act of 2019 would require the FCC, in coordination with National Telecommunications and Information Administration (NTIA), to establish a standardized methodology for collecting and mapping fixed and mobile broadband internet service coverage data in the United States. The bill would also require a standardized challenge process to verify coverage data from providers and challenge any aspects of the data believed to be inaccurate. The FCC would be required to establish an Office of Broadband Data Collection and Mapping within the Commission to serve as the central point of data collection, aggregation, and validation. The NTIA would be required to establish a technical assistance program under which the Assistant Secretary would provide grants to state and local entities to assist with data collection.

**D. H.R. 4229, Broadband Deployment Accuracy and Technological Availability Act**

Reps. Loeb sack (D-IA) and Latta (R-OH) introduced H.R. 4229 the “Broadband Deployment Accuracy and Technological Availability Act” (“Broadband Data Act”) on September 6, 2019. The Act would require the FCC issue new rules to require the collection and dissemination of granular broadband availability data. It would also require the FCC to establish a process to verify the accuracy of such data, including by using data submitted by other government entities or the public. In addition, it would require the FCC to use this data to create coverage maps based on a serviceable location fabric map regarding fixed broadband.

**E. H.R. 4227, the Mapping Accuracy Promotes Services Act (MAPS Act)**

Reps. McEachin (D-VA) and Long (R-MO) introduced H.R. 4227, the “Mapping Accuracy Promotes Services Act” (MAPS Act), on September 6, 2019. The MAPS Act specifies that it is unlawful for a person to willfully, knowingly, or recklessly submit broadband service data that is inaccurate.

## **II. WITNESSES**

The following witnesses have been invited to testify:

**James M. Assey**

Executive Vice President

NCTA—The Internet & Television Association

**Shirley Bloomfield**

Chief Executive Officer

NTCA—The Rural Broadband Association

**Dana J. Floberg**

Policy Manager

Free Press & Free Press Action

**Jonathan Spalter**

President and CEO

USTelecom Association

**Grant Spellmeyer**

Vice President, Federal Affairs & Public Policy

U.S. Cellular

**James W. Stegeman**

President/CEO

CostQuest Associates