

**DISSENTING STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199.

If one were to take quick glance at this report, you would immediately conclude that a whole lot has changed over the past year when it comes to the state of broadband deployment in America. The now-titled 2018 Broadband *Deployment* Report boldly concludes that the Federal Communications Commission (FCC) is meeting its section 706(a) mandate to “encourage the deployment of broadband on a reasonable and timely basis.” But what a more critical read of the report reveals is that this year’s findings misinterpret “the plain text of section 706,” endorse a self-serving and amorphous measurement of “progress,” make changes to critical factors in its analysis, and rely heavily on *projected deployment* following actions taken by the FCC in 2017. Simply put, this report is biased, flawed, and woefully incomplete.

The statistics are glaringly clear: persistent digital and opportunities divides remain for far too many in our nation. With respect to fixed 25 Mbps/3 Mbps and 10 Mbps/3 Mbps mobile LTE, approximately 44 million Americans lack access to both services. A whopping 66.2% of Americans living in rural and Tribal areas—as compared to 2.1% of Americans living in urban areas—still lack access to fixed 25/3 broadband. These are tens of millions of our fellow citizens who lack access to broadband putting them at a severe disadvantage when it comes to robust opportunities in education, healthcare, government services, and civic participation.

Instead of grappling with this unfortunate reality, this report blatantly suggests that Congress did not intend for the FCC to meet a *rigid* requirement that *each* and *every* American be served. Pardon me? Congress’ intent when it comes to these reports could not have been any clearer. The plain language of Section 706 states “the Commission shall determine whether advanced telecommunications capability **is** being deployed to all Americans in a reasonable and timely fashion.” Similarly, the Broadband Data Improvement Act of 2008 requires the Commission to consider a plethora of factors and “compile a list of geographical areas that are not served by any provider of advanced telecommunications capability.” Those statutes clearly mandate that the Commission determine if broadband is being deployed to *all Americans*.

Instead of evaluating how close we are to connecting *all Americans*, this report now measures progress by comparing deployment in the present year to deployment in previous years. I am blown away that what is supposed to provide a comprehensive analysis of broadband deployment to *all Americans*—particularly those living in rural and Tribal lands— instead creates a *new* measurement of progress and misinterprets Congressional intent in order to declare “Mission Accomplished.” Even as it sets a new metric, the report adopts no standards by which we should judge any progress, nor does it back up its unsourced and breathless assertions that the *2015 Open Internet Order* caused a drop in deployment.

As if manipulating Congressional intent and altering the fundamental analysis were not enough, the report goes further by removing price as a factor in its analysis. Price is a well-known indicator for assessing broadband *availability*. A previous study found that 71% of those without broadband identified affordability as a major factor. What is painfully clear, is that a service cannot truly be *available* if you cannot *afford* it. But in the majority’s rush to declare victory and rack up brownie points, they once again disregard the plight of low-income Americans.

Additionally, the report includes satellite service in its analysis — a factor that has been recognized by previous reports as likely to overstate deployment to a significant degree. Despite this report’s recognition of the same potential overstatement, the majority opted to include such data in their analysis — resulting in a significant increase in statistics showing access to broadband. For example, 25 million Americans lack access to both fixed and mobile broadband at 25 Mbps/3 Mbps and 5

Mbps/1Mbps respectively. However, when satellite is included, the estimate of unserved Americans drops to 14 million. While admittedly there have been noteworthy improvements when it comes to satellite services, just ask those I met last year in Marietta, Ohio and the year before in Raymond, Mississippi whether their broadband needs are being truly met.

Last, but certainly not least, the report bases its finding of timely broadband deployment pursuant to section 706(b) on *projected* deployment based off a laundry list of actions the FCC took in 2017. Specifically, the report states “while the December 2016 Form 477 data in the report does not yet reflect the beneficial effects of the Commission’s actions in 2017, the marketplace is already responding to the more deployment-friendly regulatory environment now in place.” This reminds me of the majority’s approach to competition in the *Business Data Services Order*, where *potential* competition equated to *actual* competition. Here the majority unsurprisingly and incorrectly states that *projected* reasonable and timely deployment is the same as *actual* reasonable and timely deployment.

Critical progress reports should not rely on the “hypothetical” when it comes to reaching a conclusion. Analysis based on data that shows the current state of “Broadband Progress,” not misinterpreted measurements and cavalier explications of Congressional intent that tilts the scale against the needs of the consumer longing for broadband is what we need. Indeed, the deployments the majority loudly touts pale greatly in comparison to the deployments that occurred in the year after the adoption of the *2015 Open Internet Order*. But if you are desperate to justify flawed policy, I think the straw-grasping conclusions contained in this report is for you.

I dissent.