

Building Back Better by Closing the Digital Divide:

**Consolidation, Competition, and the
High Costs of Connectivity Keeping New Yorkers Offline**

Free Press Remarks for the Reimagine New York Commission

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Jessica J. González

It's an honor to speak with you about your work to reimagine a more equitable New York in the wake of the pandemic.

We appreciate that among your three focal points is the charge to reduce the digital divide. Working to reduce it, or eliminate it altogether, is also core to Free Press's mission: reimagining media to realize a just society, so that everyone can connect and communicate.

It's not just important to us as an organization, and our nearly 1.5 million members, including 30,000 in New York. It's personal to me too. Before I went to law school, I was a public school teacher. When I was laid off from that job, I was able to keep my phone and connection to the world thanks to a federal program called "Lifeline," paired with an additional California state Lifeline subsidy. Because of those social safety net programs, I had a reliable phone number for job, law school, and financial aid applications.

I've told this story before, directly to Members of Congress and the FCC, who still attack and try to scale back the \$9.25 per month benefit that the Lifeline program provides. That's right: when they should be working to eliminate the digital divide, some in Washington work instead to eliminate one of the very few supports to get people with limited budgets online.

So as we know, long before COVID-19 hit -- upending so many millions of lives, and hitting Black and Brown folks the hardest -- it was already a struggle to promote and fund programs aimed at making sure everyone has a voice in our society. Long before this pandemic, we knew how important communications tools are for staying connected to family and friends, as well as education, health and economic opportunities. As you look to bold solutions, I hope you will focus on the affordability crisis spurred by tremendous concentration in the broadband marketplace nationwide and in New York.

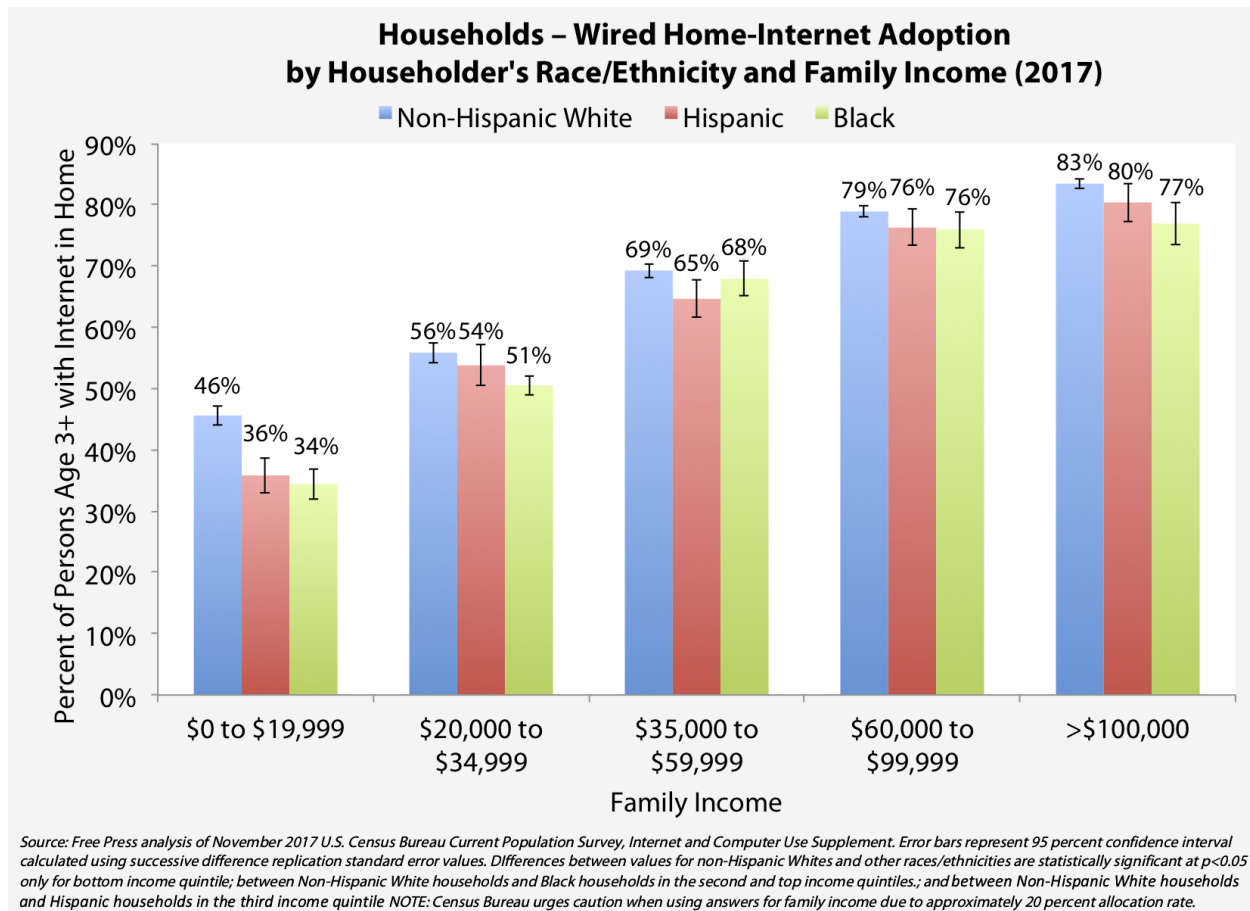
Less choice means higher prices and higher rates of disconnection for the communities so often excluded from opportunity. And while broadband has become a utility in every real sense except the legal sense, thanks to the Trump FCC's repeal of its authority to regulate broadband, the bargain the nation struck with the telephone company a century ago has long since crumbled. Where once we had a regulated phone monopoly, we have essentially given up on regulation but retained the monopoly. That's poor public policy.

Even with billions of dollars a year in federal and state infrastructure subsidies for communications systems we haven't done nearly enough to remedy structural racism in the sector. As outlined in Free Press' report, *Digital Denied*, there are small but significant disparities in broadband deployment based on race and ethnicity, even when controlling for wealth. Solutions must acknowledge that there are still fewer internet choices on average in communities with a higher percentage of Black, Latinx, and Native American residents.

And these disparities are even more eye-popping when we look at whether people can afford to subscribe to home internet service once it is available in their neighborhoods.

You may hear from the FCC that there are 18 million people nationwide without access to bare minimum broadband -- and advocates note that number could be far higher, with tens of millions perhaps not consistently getting speeds they pay for. But based on recent Census data, we can see that when it comes to wired internet service, the digital divide is actually much larger if we talk about people who may indeed have access to broadband but still can't afford it.

Nationwide, there are at least 50 million people with no wired internet connection at home. Only 56 percent of households nationwide making less than \$20,000 a year have any type of home broadband connection, including wired or wireless. In New York State, that number is barely better, at 63 percent. But if we concentrate on wired connections, we see another gaping divide based on race and ethnicity: just 46 percent of white households at the \$20,000 or less income level had a wired connection of any type. Compare that to 36 percent of Hispanic households and 34 percent of Black households in that income bracket.



Matt will spend just a few more minutes explaining how these low adoption numbers nationwide and in New York are tied directly to the incredibly high concentration levels in the broadband market. So as you consider solutions to close the digital divide in New York, I hope you will focus on bold interventions to make broadband more affordable right away and more competitive as soon as possible.

Matt Wood

The home internet market is a natural monopoly, with high startup costs and tremendous scale advantages for the incumbent. Along with their technology and their effective lobbying strategy, this all makes cable companies dominant broadband players today.

Over the last 25 years, policymakers promoted the idea of having two wired broadband options -- at least for people in densely populated areas. But as Jessica mentioned, the bargain has not been a great one. Natural monopoly has become almost wholly unregulated duopoly, at best, and even when there are two options the providers don't really compete to produce meaningful choices and savings for customers.

I'm cognizant of presenting on the legacy of Time Warner Cable to this audience. Before I switched to the consumer advocacy side, I was an outside lawyer for Time Warner Cable while Mr. Parsons was still Chairman and CEO of Time Warner. And we've just heard from Jon Sallet, the antitrust expert and general counsel at the FCC when Charter acquired Time Warner Cable in 2016. So others here today know a thing or two about this topic.

But without re-litigating that history, Free Press did just revisit the current state of the home broadband market. We filed last week at the FCC to oppose Charter's request for an early exit from merger conditions, like a ban on data caps, that were supposed to run until 2023. And our filing showed just how dominant cable providers are.

Together, Charter and Comcast serve more than half of all home internet subscribers, and nearly two-thirds of the subscribers getting the FCC's current definition of "broadband": 25 Mbps downstream and 3 Mbps upstream. That's likely enough to stream a high-definition video, but not necessarily the multiple streams families working from home and going to school virtually need right now. Charter and Comcast offer service to more than 72 percent of households that have any such broadband speeds available to them, and Charter is the only available wired broadband option for a quarter of the homes in its service territory nationwide.

Available Wired Downstream Speed	Percent of Households In Charter's Footprint Where Charter is Only Wired ISP	Percent of Households In Charter's Footprint Where Charter Competes Against One or More Wired ISPs
Any Downstream Speed	3.5%	96.5%
>25 Mbps Downstream	25.7%	74.3%
>50 Mbps Downstream	33.6%	66.4%
>100 Mbps Downstream	42.3%	57.7%
>300 Mbps Downstream	64.2%	35.8%

Source: Free Press Analysis of FCC Form 477 Data as of June 30, 2019

When we drill down to the state and local level, it's not that bad: it's worse. Legacy cable companies do not compete against each other, just as legacy telephone companies don't. So in New York, Charter and Altice each serve parts of New York City and elsewhere in the state, but even when they are "neighbors" they do not build in each other's territories.

Charter and Altice together have nearly 70 percent of all broadband subscribers in the state. Verizon has almost a quarter too. That means 94 percent of the wired broadband market in New York is controlled by just three providers. That kind of power is hard to contain or crack, even with vigorous antitrust enforcement and well-funded new entrants. And the local cable company, whether it's Charter or Altice in any borough or town, may have well over half of the broadband subscribers. Nationally, Charter has almost 60 percent of the wired broadband customers everywhere it offers service.

So I want to be clear that we agree with every recommendation that Jon and OTI made. We must find innovative ways to spur and fund new broadband, including publicly owned systems, cooperatives, public/private partnerships, and private companies willing to face off against this kind of entrenched power. And we have to learn more about what people are actually paying for broadband today -- which, as OTI detailed, has been a decades long challenge for advocates like us to route around. But cable companies have historically turned down federal and state subsidies, including any that come with conditions like "open access" obligations to provide wholesale capacity to competitors, or requirements to offer service at an affordable rate.

That's why we need an all-of-the-above approach to affordability and adoption. Encouraging incumbents to voluntarily offer better service for low-income populations is one of the answers. But so too is a better federal subsidy for today's plans, which we and our friends from OTI have been pursuing in negotiations for additional COVID-19 relief legislation. The House of Representatives earlier this summer passed the HEROES Act, and the Moving Forward Act. They set aside up to \$50 per month for broadband for low-income families and those who've lost their jobs during the pandemic, and they would make mandatory these companies' voluntary pledges not to shut-off internet service right now.

Returning to that kind of essential services framework for broadband is key -- though cable and phone companies to some degree succeeded in making "utility" a dirty word in DC during the last few decades. We need to build a reimagined broadband future with more competitive offerings, but we also need to make sure we don't leave 6 million current broadband households across the state waiting months or years for the more affordable and reliable options they need right now.