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**Testimony of Allie Bohm
On Behalf of the New York Civil Liberties Union
Before the New York City Council Committee on Technology and
Subcommittee on Zoning and Franchises
Regarding Oversight: Broadband and the Digital Divide**

October 13, 2020

The New York Civil Liberties Union (NYCLU) is grateful for the opportunity to submit the following testimony regarding broadband and the digital divide. The NYCLU, the New York State affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices across the state and over 180,000 members and supporters. The NYCLU defends and promotes the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution through an integrated program of litigation, legislative advocacy, public education, and community organizing.

Due to COVID-19, for the last seven months, New Yorkers have been living much of our lives online. Even as New York City slowly re-opens, many continue to rely on the internet to work, attend school, go to the doctor, seek entertainment, and visit with loved ones. Unfortunately, New Yorkers do not all have access to the high-speed internet that would allow us to participate in a hearing like this. Against this backdrop, the Committee and Subcommittee's focus on broadband and the digital divide is particularly timely.

Digital Redlining

Across the five boroughs, between 17 and 20 percent of New Yorkers lack internet access.¹ Predictably, the brunt of the digital divide falls on particular communities. As the map below illustrates (Fig. 1),² according to the 2018 American Community Survey, more than 40 percent of residents in swaths of Sunset Park, Borough Park, Brownsville, Bushwick, and Coney Island in Brooklyn; Flushing, Far Rockaway, Corona, Laurelton, Springfield Gardens, St. Albans, Linden Hill, Cedar Manor, and Locust Manor in Queens; Harlem, Washington

¹ *Table B28011: Internet Subscriptions in Household*, AMERICAN COMMUNITY SURVEY, 2018, <https://data.census.gov/cedsci/table?q=B28011&g=0400000US36.140000&tid=ACSDT5Y2018.B28011&hidePreview=false>.

² For an interactive version of this map, see *NYC Broadband Map*, NYCLU, <https://new-york-civil-liberties-union.github.io/NYC-Broadband-Map/> (last visited Oct. 14, 2020).

Heights, Inwood, Alphabet City, the Lower East Side, Chinatown, and Two Bridges in Manhattan; and Fox Hills, Clifton, and New Brighton Hamilton Park in Staten Island lack broadband access.³ In the Bronx, there is hardly a census tract east of Riverdale where more than 70 percent of the population has broadband connectivity, and in the vast majority of the Bronx, more than 40 percent of the population goes without access.⁴

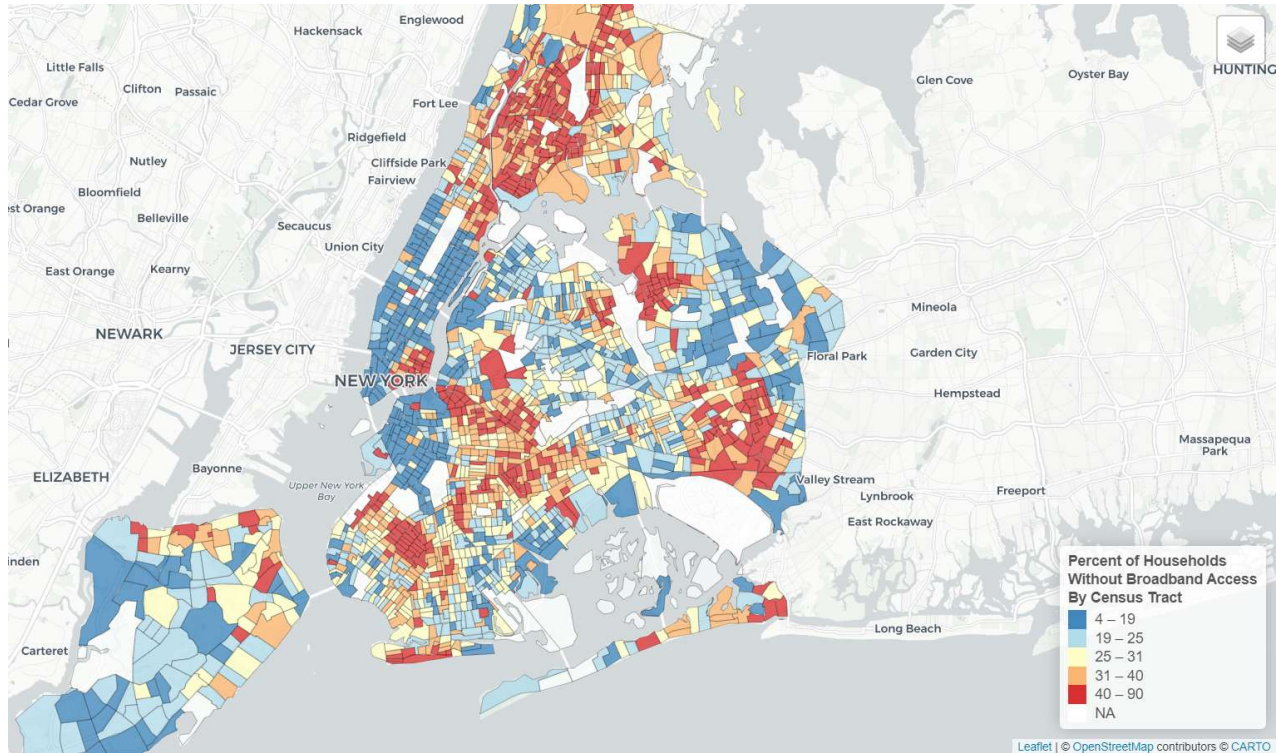


Figure 1: Map showing the percent of households without broadband access by census tract.

These communities are home to individuals who disproportionately live at the intersection of poverty and structural racism. Forty-six percent of New York City households living below the poverty line do not have home internet access.⁵ About 30 percent of Latinx and Black New Yorkers lack broadband internet access, compared with 20 percent of white New Yorkers.⁶ Some of these neighborhoods are the same areas that have been devastated by the coronavirus pandemic, including Far Rockaway, Coney Island, Borough Park, and Flushing, as well as Fordham, Kingsbridge, and Morrisania in the Bronx.⁷

³ Table B28011, *supra* note 1.

⁴ *Id.*

⁵ Mayor de Blasio and Taskforce on Racial Inclusion and Equity Announce Accelerated Internet Master Plan to Support Communities Hardest-Hit by COVID-19, NYC, July 7, 2020, <https://www1.nyc.gov/office-of-the-mayor/news/499-20/mayor-de-blasio-taskforce-racial-inclusion-equity-accelerated-internet-master>.

⁶ SCOTT M. STRINGER, CENSUS AND THE CITY: OVERCOMING NYC’S DIGITAL DIVIDE IN THE 2020 CENSUS 5 (July 2019).

⁷ NEW YORK DOCTORS COALITION T3 EQUITY SUBCOMMITTEE, TESTIMONY FOR THE NEW YORK CITY COUNCIL COMMITTEES ON HEALTH AND HOSPITALS ON THE SEPTEMBER 30TH CONTACT TRACING EQUITY HEARING 1 (2020).

Moreover, many of the communities lacking connectivity – from Brownsville, Bushwick, and Coney Island in Brooklyn to Flushing, Corona, Cedar Manor, and Laurelton in Queens, to Harlem, Alphabet City, the Lower East Side, Chinatown, and Two Bridges in Manhattan, to Fox Hills, Clifton, and New Brighton in Staten Island, to the entire South Bronx – were graded as “Hazardous” by the federal government’s Home Owner’s Loan Corporation between 1935 and 1940,⁸ as indicated on the map below (Fig. 2).⁹ This meant that lenders would “refuse to make loans in these areas.”¹⁰ This discriminatory application of housing credit, known as “redlining,” was an explicitly race-based policy designed to keep racial and ethnic minorities in poverty. Today’s digital redlining – the dearth of internet access in these neighborhoods – serves the same function.

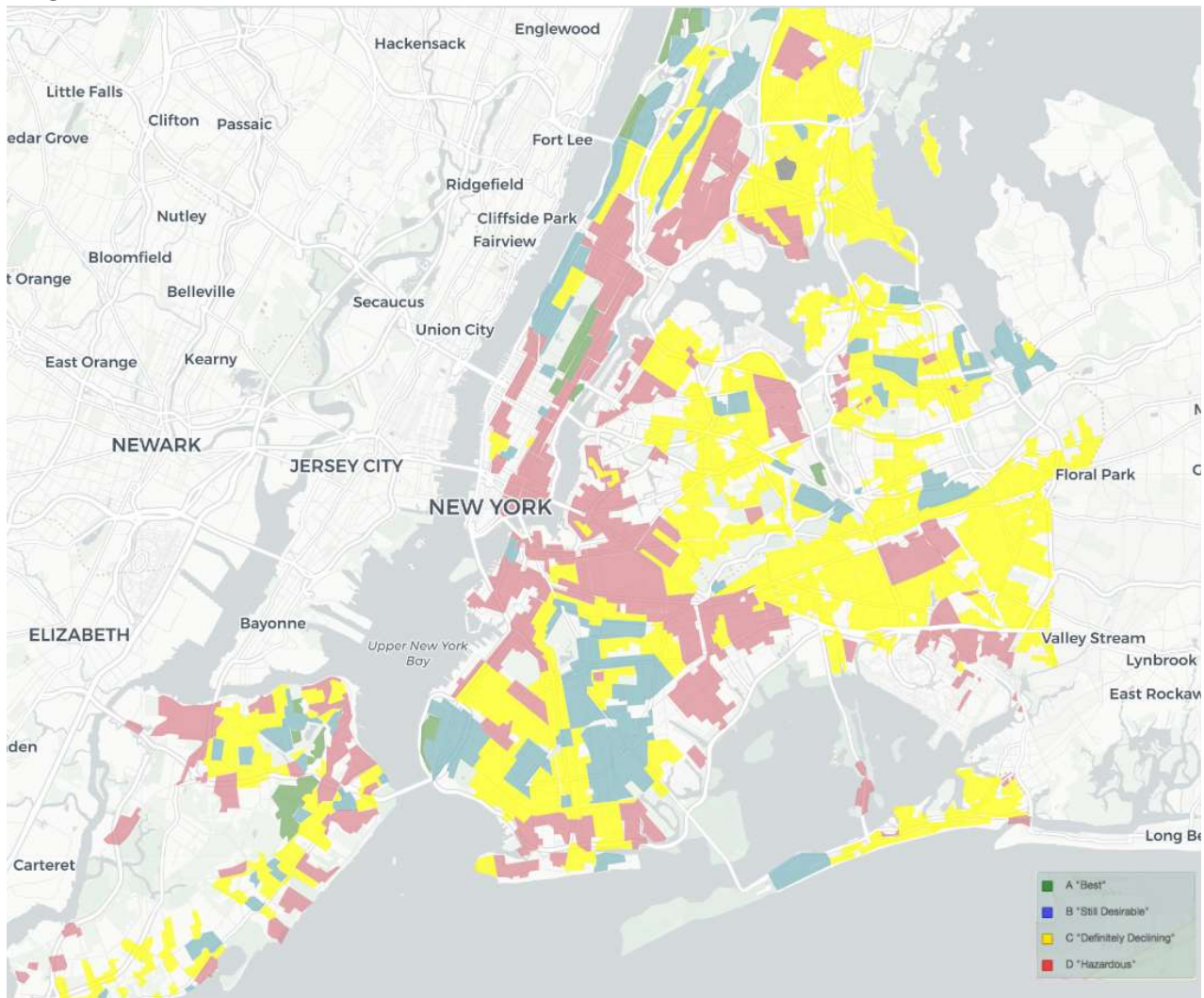


Figure 2: Map showing the Home Owner’s Loan Corporation federal lending guidelines (1935-1940).

⁸ *Mapping Inequality*, UNIVERSITY OF RICHMOND, <https://dsl.richmond.edu/panorama/redlining/#loc=9/40.594/-74.187&maps=0> (last visited Oct. 14, 2020).

⁹ For an interactive version of this map, see *NYC Broadband Map*, NYCLU, <https://new-york-civil-liberties-union.github.io/NYC-Broadband-Map/> (last visited Oct. 14, 2020).

¹⁰ *About Mapping Inequality*, UNIVERSITY OF RICHMOND, <https://dsl.richmond.edu/panorama/redlining/#loc=9/40.594/-74.187&maps=0&text=about> (last visited Oct. 14, 2020).

At the same time, the New Yorkers who do have internet access are paying too much for it. On average, New Yorkers pay nearly \$65 per month for internet in comparison to the \$46.30 per month individuals in Tokyo pay and the roughly \$31 per month Parisians pay¹¹ – even though Tokyo and Paris, like New York City, have more than 10,000 residents per square kilometer.¹²

The Consequences of the Digital Divide

Lack of internet access has consequences in every area of life. As the 2020 – 2021 academic year begins in a hybrid format, the digital divide’s impact on education is front of mind for many New Yorkers. When schools moved online in the spring, the NYCLU surveyed families across the state to gather information about how schools are handling education during the pandemic.¹³ Two-hundred and thirty responses came from New York City. Across the state, 18 percent of families reported inadequate internet access – and this is likely an undercount, because the study was conducted online.¹⁴ The lack of reliable internet detrimentally impacts students’ ability to learn remotely, especially if students live in homes without internet or without enough devices for all school-age children. The students who will be disproportionately impacted are Black and Latinx students as well as students living in low-income households.¹⁵

The digital divide effects other fundamental rights as well. In the darkest days of the pandemic, when public spaces were closed and New Yorkers were discouraged from taking the subway and visiting with anyone outside of their immediate households, divorced and separated parents were forced to choose between spending time with their children (and complying with their custody and visitation orders) and minimizing their families’ exposure to COVID-19. Those without reliable internet access were unable to even have video calls with their children, interfering with their fundamental right to parent their children.¹⁶ For parents of children in the foster care system, inadequate internet access could mean permanent family separation as parents without internet access are unable to work toward reunification,¹⁷ both because they are unable to visit, even electronically, with their children during the pandemic and because they are unable to access the services, like addiction or mental health counseling, required for reunification¹⁸ because those services have moved exclusively online due to the coronavirus.

¹¹ BECKY CHAO & CLAIRE PARK, THE COST OF CONNECTIVITY 41 (New America Open Technology Institute, July 2020).

¹² *Id.* at 32.

¹³ NYCLU, EDUCATION AND SCHOOL SERVICES IN NEW YORK DURING COVID-19 (2020).

¹⁴ *Id.* at 2.

¹⁵ See generally NYCLU, LEARNING DURING A PANDEMIC: A BACK TO SCHOOL GUIDE FOR PARENTS, EDUCATORS, AND STUDENTS 8 (2020).

¹⁶ *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

¹⁷ See *In Re Michael B.*, 80 N.Y.2d 299, 311 (1992).

¹⁸ See *In re Kenneth A.*, 206 A.D.2d 602, 604 (3d Dep’t 1994).

In addition, even as New York City's courts slowly re-open, some continue to require virtual appearances,¹⁹ which can be impossible for New Yorkers who do not have a reliable broadband connection. Some attorneys have resorted to logging into the virtual court room, calling their clients, and having their clients try to participate in the virtual hearing over speakerphone. Participating through speakerphone can create situations where it is difficult to hear or be heard and to understand or be understood by the court. This may have a detrimental effect on the outcome of the proceeding.

Even when the consequences of the digital divide do not rise to the level of a constitutional violation, they can have a profound impact on individuals' lives. By this point in the pandemic, nearly everyone who has internet access has experienced the frustration of a dropped video call or an internet outage right as an important meeting is set to begin. For those without internet access who rely on cell signal, this is every video call and every meeting. Deficient connectivity may impact their ability to maintain a job that requires remote work, their ability to access telehealth care, and their ability to connect with loved ones, among all other facets of life. Moreover, those who lack both internet and a cell signal are simply cut off from society.

Recommendations

The NYCLU appreciates that both the Mayor and the City Council are focusing on ways to expand broadband access and that the City is prioritizing NYC Housing Authority (NYCHA) housing. As the City looks for additional ways to increase access, we encourage Councilmembers to consider all possible options, including expanding franchise authority, distributing mobile hotspots to New York City students, ensuring internet access at City homeless shelters, and exploring City-run options like municipal broadband.

There is no single cure to the digital divide. The City must distribute devices to those with the most need, including students, the elderly, and the homeless. But distribution alone is insufficient. Devices are not worth much without cell signal or Wi-Fi access, too many shelters lack cell service and Wi-Fi connectivity,²⁰ and the City has its fair share of cell phone dead zones.²¹ Similarly, granting franchises to new players is insufficient when the majority of large buildings in New York City have exclusive contracts with an incumbent internet service provider (ISP), and incumbents refuse to share their wires and fiber with new entrants.²²

¹⁹ *Virtual Court Appearances for the Public*, NY COURTS, <https://portal.nycourts.gov/knowledgebase/article/KA-01070> (last visited Oct. 14, 2020).

²⁰ Sarah Part, Advocates for Children of New York, Oversight: Broadband and the Digital Divide, Testimony before the New York City Council Committee on Technology and Subcommittee on Zoning and Franchises (Oct. 13, 2020).

²¹ *See generally Cellphone Dead Zone? 3 Ways to Boost Reception at Home*, FORBES, Feb. 11, 2016, <https://www.forbes.com/sites/trulia/2016/02/11/cellphone-dead-zone-3-ways-to-boost-reception-at-home/#5395616d628a>.

²² Virginia Lam Abrams, Starry, Oversight: Broadband and the Digital Divide, Testimony before the New York City Council Committee on Technology and Subcommittee on Zoning and Franchises (Oct. 13, 2020); Leecia Eve, Verizon, Oversight: Broadband and the Digital Divide, Testimony before the New

Whichever approaches the City selects, it must ensure that those with the most acute need are prioritized – starting with wiring homeless shelters and making sure that all New York City students have reliable internet access. The City must also guarantee that any new broadband is affordable and that any new broadband comes equipped with privacy and net neutrality protections, because ISPs – which already reap handsome profits from their customers – should not be using, disclosing, selling, or permitting access to their customers’ personal information without their customers’ informed consent,²³ and because individuals, not their ISPs, should be choosing which websites and services they access on the internet.²⁴

Unfortunately, New York City has not always honored these priorities when deploying internet. For example, LinkNYC, the public Wi-Fi kiosks the City deployed in 2014, are mostly located in more affluent neighborhoods²⁵ and do not offer the speed and reliability of a broadband connection. In addition, they are privacy-invasive, collecting personal information about both the individuals who use them and passersby. They are also opaque; to date New Yorkers have not seen a detailed list of the sensors included in the kiosks nor how LinkNYC uses the personal information it collects in its ad-driven business model.²⁶ In short, LinkNYC did not make a meaningful dent in the digital divide, and any solutions the City selects this time must do better.

The NYCLU thanks the Committee and Subcommittee for the opportunity to provide testimony today and for their consideration of this critically important issue.

York City Council Committee on Technology and Subcommittee on Zoning and Franchises (Oct. 13, 2020).

²³ See generally NYCLU, TESTIMONY OF THE NEW YORK CIVIL LIBERTIES UNION BEFORE THE NEW YORK STATE SENATE COMMITTEE ON CONSUMER PROTECTION AND THE NEW YORK STATE SENATE COMMITTEE ON INTERNET AND TECHNOLOGY REGARDING PROTECTING CONSUMER DATA AND PRIVACY ON ONLINE PLATFORMS (Nov. 22, 2019).

²⁴ See generally *Legislative Memo: Net Neutrality*, NYCLU, 2019 – 2020, <https://www.nyclu.org/en/legislation/legislative-memo-net-neutrality>.

²⁵ See *LinkNYC*, NYC DOITT, <https://www1.nyc.gov/site/doitt/initiatives/linknyc.page> (last visited Oct. 14, 2020); see also Annie McDonough, *DoITT head Jessica Tisch’s hard line against LinkNYC vendor*, CITY & STATE, Mar. 4, 2020, <https://www.cityandstateny.com/articles/policy/technology/doitt-head-jessica-tischs-hard-line-against-linknyc-vendor.html> (“CityBridge has failed to install 537 promised LinkNYC kiosks – many of which were set to be built in outer boroughs, which suffer[] from a dearth of the kiosks, which provide free WiFi, telephone and device charging services. CityBridge has not installed a single kiosk since the fall of 2018[.]”).

²⁶ Ava Kofman, *Are New York’s Free LinkNYC Internet Kiosks Tracking Your Movements?*, THE INTERCEPT, Sept. 8, 2018, <https://theintercept.com/2018/09/08/linknyc-free-wifi-kiosks/>.