

**PUBLIC
KNOWLEDGE**

DEAR CONGRESS: WE MUST OVERCOME OUR TECHNOLOGY CHALLENGES





January 13, 2021

Dear Newly Elected Members of Congress:

Mission Critical: We Must Overcome Our Technology Challenges

Technology policy -- the laws that determine who controls information and user data, who has internet access, and what people can and can't do online -- can help us meet the biggest challenges of our democracy because the internet empowers every movement, every community, and every voice. Public Knowledge, a non-profit consumer advocacy group that works at the intersection of telecommunications, copyright, and internet law, is uniquely positioned to help new members of Congress find solutions to the growing challenges technology presents.

When we design technology policies that reflect American values and the diversity of American experiences, we can protect our democracy; stop the spread of misinformation; support independent journalism as a source of truth; preserve the people's power to tell their own stories; connect our communities to opportunity through broadband; enhance privacy protections; promote consumer choices in the marketplace; and hold dominant digital platforms accountable to the public for their actions, or lack thereof. When we fail, we risk losing [free and fair access to information, culture, and tools](#) for every American to access facts, speak, and organize peacefully. When we fail, we further entrench dominant technology and communications companies that play an ever-more important role in our lives. When we fail, we strip Americans of economic, education, and civic opportunities critical to helping us pull through this pandemic, rebuild from its devastating impact on our lives, and unify our fractured nation. **Let us not mince words; the stakes are high.**

We hope that emphasizing the available solutions will help Congress tackle the multitude of public health, economic, and social threats we face that are so often exacerbated by technology. Technology can help us test, trace, and treat the coronavirus while growing our national and individual potential, keeping us connected and informed as the world changes drastically around us while enabling us to preserve privacy, protest injustice, and support our diverse communities. But unregulated, unchecked, and uncontrolled power in the hands of the few -- be they [tech companies](#), [internet service providers](#), or [media cartels](#) -- can also lead to grim consequences, especially when such companies and services impact almost every aspect of our lives.

The only way to rise to these unprecedented challenges is to move toward a fair, creative, and connected future for all of us by creating technology policies that prioritize the public good and the health of our democracy. To assist new members of Congress and your staff, we have shared our insight for meeting some of the most pressing challenges in this space. Public Knowledge stands ready to help you bring this more inclusive future to reality, for now there is no alternative but to overcome.

What we believe, and what you will find in this letter:

- [Facts and transparency form the foundation of a healthy democracy.](#)
- [Broadband connects our communities to opportunity.](#)
- [We need a comprehensive federal law to protect consumer privacy.](#)
- [We should hold dominant digital platforms accountable.](#)
- [We should open up the digital platform bottleneck to enable the next great idea.](#)
- [Our resilience depends on a right to repair.](#)
- [Thoughtful technology policy can support a fair, creative, and connected future for everyone.](#)



Facts and Transparency Form the Foundation of a Healthy Democracy

The contemporary news and information ecosystem is complex and interconnected. Though the current regulatory focus is the spread of misinformation on digital platforms (including through a variety of proposed reforms to Section 230 of the Communications Decency Act), in reality both quality information and misinformation flow across both legacy and digital media. Effective policy solutions will compel digital platforms to moderate content in the public interest, and also ensure the viability of trusted local journalism.

We Need More Than Platform Self-Regulation To Ensure Americans an Informed Voice

Background: Social media platforms on the internet have offered citizens and politically motivated groups the opportunity to reach a wide audience. Sometimes this is beneficial, as when otherwise-marginalized groups can gather and gain momentum for their movements. Unfortunately, social media has also offered a microphone and an amplifier to people and groups that use misinformation, conspiracy theories, and hate speech to achieve their political aims. When the huge reach of a digital platform is combined with its financial incentive to increase engagement and time spent on the platform (due to an advertising-driven business model), the risk of harm to individuals, society, and democracy becomes enormous. The scale and dominance of a few digital platforms have given them an outsize role in public discourse.

Solutions: We believe these factors necessitate a legislative approach that assigns an obligation to dominant digital platforms to moderate content in the public interest. We cannot be reliant on self-regulation, which has been demonstrated to be insufficient. Content moderation in the

public interest encompasses transparency of the platform's community standards, an active approach to content moderation to enforce them, and a transparent [approach to due process](#). Any scheme must also pass First Amendment requirements (especially if the government is involved in its creation or administration), be content-neutral, address the highest-priority sources and harms of misinformation, and be informed by the idea that [some groups are more likely to suffer harm from, or be silenced by, misinformation](#). It also must protect people against [bogus legal claims](#), including abusive copyright claims and attendant take-downs. Public Knowledge offers an [innovative new solution](#), modeled on the EPA's "Superfund" to clean up toxic waste sites, to help clean up toxic content on digital platforms. We also believe that [common sense reform](#) to [Section 230](#) -- not revoking it, or politicising it -- may be part of the solution. Our proposals for promoting competition against dominant digital platforms detailed below may also provide some improvements to content moderation by allowing users to "vote with their feet" by choosing platforms with better moderation policies.

A Free Press Is Still the Cornerstone of Democracy

Background: Local journalism has long faced challenges to its survival, and the COVID-19 pandemic presented a new threat of extinction. Local media operations are facing significant losses of advertising revenue and cutting staff and circulation throughout the nation. But quality, local, civic journalism is one of our most essential resources, especially in the fight to counter misinformation online. We've had enough of the positioning of the free press as "fake news" and "the enemy of the people." Technology policy should work to ensure a vibrant free press.

Solutions: From the country's founding, Congress has supported a free press by providing subsidies for publications, encouraging competition in the media market, promoting public access to information, and fostering local and public broadcasting. We believe there are ways to ensure access to trusted sources of information, including [local civic journalism](#), without encroaching on editorial independence. It's also essential to ensure access to published and creative works by expanding the [role and reach of local libraries](#).



Broadband Connects Our Communities To Opportunity

Broadband is an essential service required for participation in nearly all facets of daily life. However, [our nation has a persistent digital divide](#) -- an estimated 42 million Americans don't have the ability to purchase broadband, and almost half of the country can't access the internet at broadband speeds (currently defined as 25/3 Mbps). Rural, Tribal, and minority communities are particularly impacted by the digital divide with 26% of rural Americans and less than half of rural Americans on Tribal lands lacking access to fixed broadband. Moreover, just 66% of African Americans and 61% of Hispanics report having broadband at home. Policymakers must ensure that high-speed broadband is universally available, affordable, and adopted.

Since its inception, the Federal Communications Commission has been charged by Congress with ensuring that "all Americans" have access to communications services. (47 U.S.C. § 151) Unfortunately, the Commission has fallen short of that goal through a series of missteps and outright failure to do what is necessary to meet its charge from Congress. In addition to the FCC's regulatory tools for promoting broadband deployment and adoption, there is funding made available through the Department of Agriculture's Rural Utility Service for deployment of broadband in rural and Tribal areas. The Department of Commerce, Department of Labor, and numerous other federal agencies also play a significant role through a host of [grant and loan programs](#) designed to help in promoting affordability, digital literacy, deployment, and other needs for broadband access.

Although it may be necessary to revamp the Telecommunications Act to embolden the FCC to close the digital divide, leveraging these grant programs to ensure all Americans have both the access and skills to thrive in a modern world must be a key Congressional priority. Appointing an FCC Chair that understands the authorities present in the Telecommunications Act that allow

it to insist on ubiquitously available, affordable, and reliable broadband while Congress works to develop modifications to the Telecommunications Act is also essential.

Closing the Digital Divide Means No One Gets Left Behind

Background on Deployment: There are multiple reasons why so many are left on the wrong side of the digital divide. For some, broadband isn't available, but for others, it's not affordable. Amongst those who do have broadband, many find that it's not reliable or sufficient for household online activities. [Closing the digital divide requires universal and affordable access to high-speed broadband and the devices and skills needed to adopt it.](#)

When broadband isn't available, it's usually because market incentives have failed. Building out to rural and Tribal areas can be expensive because providers must build networks over long distances and difficult terrain. At the same time, given low population densities (and hence, few potential customers), efforts to build out networks don't provide a good return on investment. In urban areas, providers sometimes fail to build out or upgrade networks not because of distance and terrain, but because they don't believe that they can make enough profit by serving low-income consumers. This practice is called "[digital redlining](#)" and most frequently impacts communities of color and low-income communities, impeding their ability to connect and communicate freely online.

The sustainability of FCC funding is also in jeopardy because of the method in which funds are raised for the Universal Service Fund, the program used to promote universal access to broadband. That fund assesses fees to carriers based on the number of telephone lines -- but the number of subscribers for those services is shrinking as customers abandon landline phones in favor of broadband. At the same time, the need for the Universal Service Fund is likely to increase as broadband has become a necessity for participating in our society. That causes the charges dispersed to each individual landline phone customer to increase dramatically, and jeopardizes the long-term stability of the fund.

Solutions to Deployment: Congress cannot fall victim to the belief that the popularization of 5G will magically solve the digital divide. Without funding broadband deployment, low-income urban and rural areas will still be left behind. The government must increase funding for broadband deployment in order to connect all Americans. That funding should be based on accurate data about where broadband is, and isn't, available (because you can not solve a problem when you don't know the extent of it), and should not [disincentivize state investment](#) in closing the digital divide by prohibiting "[overbuilding](#)." Deployment funding should only be used to invest in "future-proof" networks that can meet consumer broadband needs well into the future, so that we do not invest in networks that are outdated before they are built. Doing this would require the FCC to change the benchmark speed for broadband for the first time in five years -- to 100/100 Mbps. This speed better reflects household broadband usage, where multiple members of a household engage in high-bandwidth activities (such as video conferencing and streaming) at the same time.

In addition, funding should be available to municipalities to build their own networks to serve their communities. This funding should prioritize [open-access infrastructure](#). If necessary, funding should be available to build out middle-mile networks, too. Congress should also prohibit digital redlining by requiring that all providers offer equal networks across their service areas. Until Congress passes such legislation, the FCC should condition deployment funding on providers building out with equal, high-quality networks to 100% of their service areas.

In order to ensure that there is funding available for deployment, the FCC, potentially directed by legislation, should reform the contribution mechanism for the Universal Service Fund. Although research still must be done to determine how reforms will impact consumers, it is likely that reforms that expand the base of assessed services will ensure that the fund is sustainable.

Unlicensed spectrum powers consumer Wi-Fi and supports innovation. In addition to increasing funding for broadband deployment, Congress and/or the FCC should also promote the availability of unlicensed spectrum by repacking spectrum. Policymakers can also promote connectivity for community anchor institutions like schools and libraries through the E-rate program, and allow those institutions to use their connections as backhaul to offer broadband to-the-home for community members.

Broadband Access Isn't Enough if Consumers Can't Afford It

Background on Affordability: [America has some of the highest priced broadband in the world due in large part to a lack of competition](#). At the same time, price is one of the [most cited](#) reasons that people do not subscribe to broadband service. The COVID-19 pandemic has exacerbated the affordability problem with millions of Americans newly unemployed. Despite this affordability problem, there is only one federal program intended to help those in need afford broadband -- the Lifeline program. The Lifeline program currently offers a subsidy of \$9.25 to help customers connect to broadband, but this amount does not cover quality broadband service in most areas, and some consumers may not take advantage of the program because they are unable to pay the difference. Others who qualify for the program don't even know it exists. That's why only [23% of eligible consumers](#) participate in the program, with some states having as little as 1% of eligible consumers participate.

Solutions to Affordability: To ensure that broadband is affordable for the most economically vulnerable Americans, Congress or the FCC must subsidize broadband. Any subsidy, whether through Congress or the Lifeline program, should provide at least \$50 per household, and \$75 per Tribal household, to account for their higher connectivity costs and rise with inflation or be subject to regular review by the FCC to ensure support remains sufficient. In order to ensure that the program is used by those who need it, the FCC should work with other agencies, such as the Department of Agriculture and state and local governments, to advertise Lifeline and any other subsidy to eligible consumers. In addition, the Commission should tie any deployment dollars to a requirement to offer an affordable option. Since we can't know the extent to which

the price of broadband is causing the digital divide without knowing the price of broadband, Congress should mandate the FCC to first collect data about the cost of broadband, including fees and equipment rentals.

Finally, both Congress and the FCC must work to ensure that consumers have the devices and skills they need to access the internet. While we await Congress passing the [Digital Equity Act](#), the Commission should consider extending Lifeline funding for devices to access the internet, as well as ways in which it can support digital literacy efforts.

Ensuring Resilient, Reliable Networks Keeps Americans Connected and Informed During Disasters and Times of Great Strife

Background: Once Congress and the Commission ensure that everyone has access to affordable broadband, [we must then ensure that broadband is meeting consumer needs](#). This means that broadband and other communications services work when consumers need them to, and that these services also allow consumers to access the content that they want without internet companies controlling their access. The Trump administration has been dedicated to deregulation, ultimately harming consumers' ability to connect to high-quality broadband.

The FCC's allegiance to a [deregulatory agenda](#), combined with broadband providers' failure to invest in communications infrastructure, have allowed our nation's networks to crumble, leading to long outages when people need wireless communications most (for example, during the California wildfires). Additionally, the FCC repealed [net neutrality](#) regulations in 2017 and determined that broadband is a Title I "information service" instead of a Title II "telecommunications service." This repeal limited the FCC's ability to regulate broadband, preventing the agency from enforcing rules against broadband providers blocking online content, throttling service speeds, or giving preferential treatment to some websites and services over others.

Solutions: The first step towards ensuring that networks are reliable and resilient is collecting better data to understand how our nation's networks are holding up to consumer use. This [includes](#) collecting data about length and breadth of network outages; the actual speeds that consumers are experiencing; and provider data caps. Then the FCC must hold companies accountable for their degrading, unreliable networks by establishing [mandatory](#) network resiliency frameworks, including requirements that wireless carriers agree before disaster strikes to serve each other's customers during disasters, and requirements that providers offer 72 hours of on-site [backup power](#) for vital communications equipment.

In addition, Congress (or the FCC if Congress chooses not to address) should immediately reclassify broadband as a Title II telecommunications service, thereby enabling the Commission to regulate broadband. Congress should also direct the FCC to reinstate net neutrality regulations prohibiting blocking, throttling, and paid prioritization. This action will ensure that consumers don't have to pay more to access the online content of their choice. Lastly, in order

to “future-proof” network speeds, the FCC should revise the Section 254 limitation that universal service support be available for services for which a majority have subscribed. This construct means rural, Tribal, and low-income communities will always lag behind.



We Should Update Our Privacy Protections to Include Consumer Data

Background: Individual control of one’s personal information remains the basis for privacy law in the United States. Privacy and personal autonomy in our online, digital, and connected world are not abstract academic or philosophical matters but fundamental human rights. The misuse and abuse of personal information through commercial data practices generates real harms that affect real people, both individually and collectively. Unfortunately, our current laws are failing to meaningfully protect consumers. Privacy violations take many forms, many of which go beyond the traditional legally cognizable harms of financial or physical harm. The unauthorized or unlawful collection, retention, use, and exchange of personal data can lead to unfair discrimination, lost opportunity, reputational harm, and market manipulation.

Solution: Public Knowledge believes the U.S. must pass a [strong and comprehensive federal privacy bill](#) to put consumers back in control of their personal data and their lives. This means we must move away from “notice and consent” type frameworks and create baseline protections that give consumers assurances that their data will be protected. Companies should only be allowed to collect the data that is necessary to provide their service, and all personally identifiable information collected should be protected -- not just “sensitive” information.

Furthermore, consumers should be able to easily find out what data companies have collected about them, correct any errors in that information, and regularly delete their information. In order to effectively change corporate behavior, a federal privacy law must be regularly enforced. Relying on only the Federal Trade Commission and state attorneys general to provide

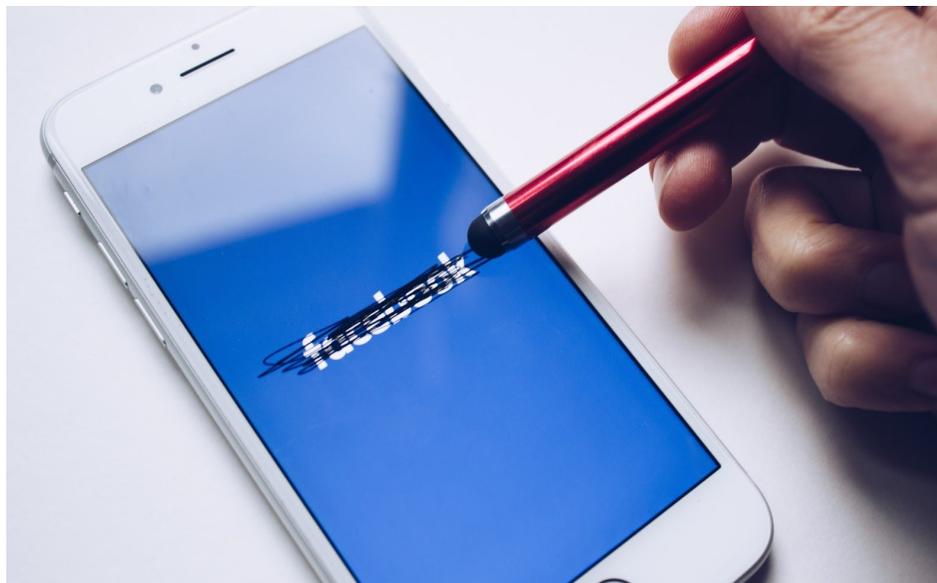
enforcement won't be enough. Therefore we must give consumers the option to go to court when their privacy rights are violated.



We Should Hold Dominant Digital Platforms Accountable to the Public

When the internet first entered popular consciousness, enthusiasts marveled at the dynamism and competitiveness of the early online ecosystem. The internet had the potential to give voice to every citizen and point of view. Regulators and policymakers took -- and still take -- a largely hands-off approach to allow the nascent and fragile industry to innovate and thrive. However, in the last decade, a few big names have grown increasingly ubiquitous.

Now, massive digital platforms bring large swathes of the internet economy under one roof, providing billions with a streamlined, hyper-convenient user experience, collecting data along the way. The global COVID-19 pandemic has made a handful of platforms even more powerful as much of the world has gone online to work, attend school, entertain themselves, to connect with family and friends, and to obtain telehealth services. Digital platforms now present a number of challenges for our economy and our society, each of which may require distinct policy and regulatory solutions.



Opening Up the Digital Platform Bottleneck to Enable the Next Great Idea

Background: The economic characteristics of digital markets make them prone to tipping (e.g., “network effects”) towards one or two dominant firms, making meaningful competition difficult to maintain in this stage of the market’s development. Public Knowledge supports the investigations and lawsuits by the Justice Department, Federal Trade Commission, Antitrust Subcommittee of the Judiciary Committee, and state attorneys general into potentially anti-competitive behavior by these dominant digital platforms.

Solutions: Public Knowledge also believes that current antitrust frameworks are limited in their ability to deal with the unique characteristics of digital markets, and there must be [new laws](#) and [specialized regulators](#) to deal with the challenges posed by digital platforms, just as our policymakers developed oversight regimes for other transformational technologies in the past (e.g., railroads, radio communications, and air travel). Requirements for interoperability and non-discrimination are powerful tools to promote competition in this important industry. [Constraints](#) on the ability of digital platforms to collect proprietary data (such as sales information, customer demographics, or whether the vendor uses associated affiliate services such as Google Ads or Amazon Fulfillment Centers) and then use this data collected to privilege themselves at the expense of vendors are another.



Community Resilience Depends on a Right to Repair

Background: In recent years, software has made its way into more and more goods -- from thermostats to tractors to lifesaving medical devices. This software comes with new, restrictive contracts which claim to bar owners or independent shops from repairing these devices when they break. In practice, this means that farmers lose valuable harvest days waiting for a licensed repair technician, and hospitals cannot repair ventilators that malfunction in the middle of a global pandemic. This rests on expansive interpretations of contract and copyright law which allow manufacturers to assert that purchasers do not “own” goods, and therefore need a license merely to use the goods that they have paid for. Under this logic, any violation of a license results in “unauthorized” access to the embedded software (a copyrighted work), which in turn violates federal law.

Solutions: Public Knowledge believes that a general right to repair is crucial both for individual autonomy and [institutional resilience](#). Proposals to restore a meaningful right to repair must include (1) designing products with repairability in mind; (2) requiring manufacturers make service manuals and repair parts available; and (3) preventing warranties, terms of service, and consumer contracts from limiting consumer rights in this area.



Thoughtful Technology Policy Can Support a Fair, Creative, and Connected Future for Everyone

The digital world touches every aspect of our lives. Although the digital revolution has created new challenges for our society to overcome, like misinformation and invasive privacy practices, it has also helped us uplift marginalized voices and encourage free expression.

Millions of Americans use the internet to share their stories, obtain an education, or connect with loved ones thousands of miles away. As the pandemic rages on, internet access and all that entails -- from engaging friends on social media to securing virtual healthcare -- will only grow more crucial, and the pain points more magnified.

Public Knowledge is available to help you create thoughtful policy that respects the people both empowered and impacted by technology to resolve these issues. Our strategic partnership could support a fair, creative, and connected future for all of us. We look forward to working with you as you serve during this challenging time. Together, we can find solutions to promote a healthy and vibrant technology sector that ensures all Americans realize and benefit from the full potential of these technologies.

Sincerely,
Chris Lewis
President & CEO
Public Knowledge

A handwritten signature in cursive script that reads "Chris Lewis".