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Beginning a process that will lead to a report on the availability of broadband service in the US, Federal Communications Commission Chairwoman Jessica Rosenworcel has proposed that the FCC adopt new standards for what qualifies as broadband internet access service and for determining whether broadband deployment is sufficient to meet American needs. The proposal would be the first update to the broadband standards in many years and could have a significant effect on FCC internet policies, including whether it will reinstate its network neutrality rules.

Under the Communications Act, the FCC is required to report annually on whether "advanced telecommunications capability" is "being deployed on a reasonable and timely basis." This evaluation is based on the FCC's determination of what qualifies as advanced telecommunications capability, which it has changed as technology evolves and historically has been based on the speeds available from internet access providers. The FCC last adopted a new standard in 2015, when it set the minimum speed for advanced services at 25 megabits per second (Mbps) downstream and 3 Mbps upstream.

Chairwoman Rosenworcel is proposing to raise the minimum speed for broadband to 100 Mbps/20 Mbps. This will reduce the percentage of the country that is deemed to have broadband service and make it harder for the FCC to conclude that broadband is being deployed on a reasonable and timely basis. She also is proposing to set a "national goal" of 1 gigabit per second downstream and 500 Mbps upstream speeds "for the future," although that would not be a binding standard.

In addition, Chairwoman Rosenworcel has proposed that, for the first time, the FCC consider "affordability, adoption, availability, and equitable access" in determining whether broadband is being deployed sufficiently. This would broaden the scope of the FCC review beyond the percentage of the population that has access to service at benchmark speeds to a wider range of issues, including whether certain groups, such as low-income households or members of minority groups, can obtain access at the benchmark speed. This more granular analysis also would make it more difficult for the FCC to conclude that broadband is being deployed on a reasonable and timely basis.

The impact of adopting Chairwoman Rosenworcel's proposals could be significant. For instance, the FCC has used determinations about the availability of broadband service in considering whether to adopt network neutrality rules. For that reason, any change that leads to a determination that broadband is not being deployed in a reasonable and timely manner could result in regulatory changes.

The FCC proceeding that will consider these proposals is in a preliminary stage, and the FCC has not yet requested comments on broadband availability. As the FCC currently has two Democratic commissioners and two Republican commissioners, it is possible that the Republican commissioners could block including these proposals in the final request for comments. Nevertheless, Chairwoman Rosenworcel's announcement almost certainly will trigger comments on these issues no matter what is included in the notice, and once the fifth FCC commissioner is confirmed, it is likely that these proposals will be adopted in the final broadband deployment report.

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