

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Inquiry Concerning Deployment of)
Advance Telecommunications Capability)
to All Americans in a Reasonable and)
Timely Fashion)

GN Docket No. 17-199

REPLY COMMENTS OF AT&T SERVICES, INC.

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INTRODUCTION AND SUMMARY

The commenters broadly agree that the Commission should reject the overly restrictive interpretations of Section 706 that have led the Commission, in its most recent reports, to conclude that the industry is not deploying advanced capabilities on a timely basis. The commenters support more reasonable interpretations of the relevant provisions, and many agree that the Commission should apply that corrected framework to find that deployment of advanced telecommunications capability is occurring in a reasonable and timely fashion. At the same time, a number of commenters also urge the Commission to recognize the investment-chilling effect of Title II regulation of broadband services, and they agree that the Commission should expeditiously reclassify broadband services as an information service to remove those impediments to investment and deployment.

More specifically, there is broad agreement that the Commission should adopt its proposal to interpret the statutory phrase “*is being deployed to all Americans*” as an instruction to “evaluat[e] *progress*”¹ – not whether all Americans *already* have the most advanced technologies available.² The commenters also agree that, although the existing 25 Mbps/3 Mbps speed benchmark for fixed services was arbitrary, if the Commission retains that benchmark in this report, the Commission should clarify that the Section 706 benchmark is not the same thing as

¹ Thirteenth Section 706 Report Notice of Inquiry, *Inquiry Concerning Deployment of Advance Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, ¶ 30 (rel. Aug. 8, 2017) (“*Notice*”) (emphasis added). Section 706 requires the Commission to report annually on “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.” 47 U.S.C. § 1302(b).

² *Compare Inquiry Concerning Deployment of Advance Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 30 FCC Rcd. 1375, ¶¶ 4, 79 (2015) (“*2015 Report*”) (finding that deployment is not occurring in a timely manner because 17 percent of Americans did not already have access to a fixed service offering 25 Mbps/3 Mbps).

“broadband.” And a number of commenters agree that the Commission should adopt its suggestion that it would “be more practical to use deployment of various air interface technologies” – specifically, LTE – “as a proxy” for a speed benchmark, which would be too difficult to administer in the mobile context. *Notice* ¶ 19.

Applying a more appropriate statutory analysis, many commenters agree that the Commission should conclude that both fixed and mobile advanced telecommunications capability are being deployed in a reasonable and timely fashion. Most of these commenters also agree, however, that the *Title II Order* introduced considerable investment-suppressing uncertainty, and there is evidence that investment levels have suffered as a result. To satisfy one of its core missions under Section 706, the Commission should therefore reclassify broadband services as information services and return to the light touch regulation that fostered reasonable and timely deployment. By contrast, the Benton Foundation’s accusations that AT&T’s broadband deployments avoid low income neighborhoods are baseless.

I. THE COMMENTS CONFIRM THAT THE COMMISSION SHOULD CORRECT ITS UNDERSTANDING OF THE NATURE OF THE STATUTORY INQUIRY FOR ADVANCED CAPABILITIES.

The comments confirm that the Commission should correct past misinterpretations of Section 706. First, the comments confirm that Section 706 clearly requires an evaluation of progress in the deployment of advanced telecommunications capability, not whether such capabilities have already been deployed to all Americans.³ Only proponents of regulation argue

³ Opening Comments of AT&T Services, Inc., *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, at 4-5 (filed Sept. 21, 2017) (“AT&T Comments”); Comments of CTIA, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, at 2 (filed Sept. 21, 2017) (“CTIA Comments”) (“Congress intended for the Commission to report on the ongoing progress of deployment” as opposed to whether deployment had been completed.); Comments of NCTA – The Internet and Television Association, *Inquiry Concerning Deployment of Advanced*

for a reading of Section 706 that requires a negative finding until such capabilities have been deployed to every American.⁴ But these commenters cannot identify any legitimate statutory basis for this reading. Indeed, Congress directed the Commission to assess whether such capability “is being deployed,” not whether it “has been deployed.”⁵ If Congress thought it was asking the Commission to tell it when advanced capabilities were fully deployed to all Americans, Congress would have said so. Moreover, as the definition of advanced telecommunications capability will continue to evolve, announcing full deployment would be pointless because technological advances would potentially render the conclusion stale as soon as it was reached.

Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 17-199, at 4 (filed Sept. 21, 2017) (“NCTA Comments”) (evaluating progress is the “better approach.”); Comments of USTelecom, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, at 14 (filed Sept. 21, 2017) (“USTelecom Comments”) (the Commission should “evaluate reasonableness and timeliness of deployment on the basis of progress rather than a snapshot of a single benchmark at a point in time.”); Comments of Verizon on the Thirteenth Section 706 Report Notice of Inquiry, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, at 12 (filed Sept. 21, 2017) (“Verizon Comments”) (the Commission “should not limit itself to looking at a snapshot of current deployment data, but should instead take into account the investment in broadband now being made by providers, and where appropriate, consider its policies that encourage or fund broadband deployment.”).

⁴ See, e.g., Comments of Incompas, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, at 6 (filed Sept. 21, 2017) (“Incompas Comments”); Comments of ITTA – The Voice of America’s Broadband Providers, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, at 8-11 (filed Sept. 21, 2017) (“ITTA Comments”).

⁵ See, e.g., Notice ¶ 4 (“Accordingly, we look to the language of the statute to guide our evaluation of the state of deployment of ‘advanced telecommunications capability’ in the United States today. We intend to conduct this *Inquiry* by orienting it toward evaluating whether the progress being made in the deployment of advanced telecommunications capability is occurring in a reasonable and timely fashion. We believe this is the most faithful approach to fulfilling this requirement in the statute.”).

Second, the comments demonstrate that the Commission should adopt its proposal to “incorporate both fixed and mobile advanced telecommunications services into [the] Section 706 inquiry,”⁶ and that the Commission should find that advanced services capability has been deployed to an area if it has *either* a fixed *or* mobile broadband service. As USTelecom notes (at 5), “the statute calls for some form of advanced telecommunications capability to be deployed and available, not a particular form or multiple forms.”⁷

Again, commenters that favor regulation oppose this approach and argue that the Commission should find advanced telecommunications capability available only in areas where *both* fixed and mobile broadband services have been deployed.⁸ They contend that mobile cannot do all of the things fixed connections can do and that mobile serves only as a complementary advanced capability.⁹ But these commenters never come to grips with the fact that fixed and mobile services each independently give consumers the ability to “originate and receive high-

⁶ Notice ¶ 5. *See also, e.g.*, AT&T Comments at 5; CTIA Comments at 4, 16; NCTA Comments at 17; USTelecom Comments at 5; Verizon Comments at 9-12.

⁷ *See also* NCTA Comments at 8 (“the statute itself compels the Commission to consider the availability of advanced telecommunications capability ‘without regard to any transmission media or technology’”) (quoting 47 U.S.C. § 1302(d)(1)).

⁸ *See, e.g.*, Incompas Comments at 7-11; ITTA Comments at 6-8; Comments of Microsoft Corporation, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, at 7-9 (filed Sept. 21, 2017); Comments of NTCA – The Rural Broadband Association, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, at 3-11 (filed Sept. 21, 2017); Comments of the Open Technology Institute at New America, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, at 4-20 (filed Sept. 21, 2017); Comments of Public Knowledge, et. al, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, at 8-11 (filed Sept. 21, 2017); Comments of the Wireless Internet Service Providers Association, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, at 2-7 (filed Sept. 21, 2017).

⁹ *See, e.g.*, Incompas Comments at 7.

quality voice, data, graphics, and video telecommunications,”¹⁰ and thus either can contribute to satisfying the statutory standard for deployment to all Americans. Indeed, LTE-based mobile services offer the same core functionalities as wireline broadband services, with similar speeds, including, for example, Internet access, email, social media, VoIP, video calling, television and video streaming. The comments confirm that Americans are increasingly using wireless services in lieu of wireline services,¹¹ and many have already chosen to switch entirely to mobile services.¹² As carriers deploy 5G networks and services in coming years, fixed and wireless services are likely to become even more fully substitutable.

A. The Commenters Agree That The Commission Should Clarify That Advanced Telecommunications Capability And Broadband Are Not Synonymous.

There is broad agreement that the Commission’s prior selection of a 25 Mbps/3 Mbps speed benchmark for tracking the progress of the deployment of fixed services was arbitrary, and that if the Commission retains that standard here, it should explicitly clarify that the 25 Mbps/3 Mbps is not the threshold for defining what constitutes “broadband.”

First, the comments demonstrate that the Commission’s decision to increase the speed-based benchmark for fixed services to 25 Mbps/3 Mbps in 2015 was made on the basis of a

¹⁰ 47 U.S.C. § 1302(d)(1).

¹¹ *Notice* ¶ 5; *see also* AT&T Comments at 5 (“[A] growing number of customers are using mobile broadband services in lieu of fixed alternatives. . . .”); CTIA Comments at 4, 16 (consumers, moreover, “have voted with their wallets firmly in support of the timely efforts industry has made to bring mobile wireless broadband to the American people.”); NCTA Comments at 17 (“it is long past time for the Commission to take a more inclusive approach and consider all broadband technologies in its analysis.”); USTelecom Comments at 5-6 (“it no longer makes sense to exclude mobile services from this inquiry,” because real world experience demonstrates “that consumers increasingly use mobile data and services, including usage in fixed locations, interchangeably for many voice, data, graphics, and video applications.”); Verizon Comments at 9-11.

¹² *See* Twentieth Report, *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 17-69, ¶ 21 (rel. Sept. 27, 2017) (“FCC 2017 Mobile Wireless Report”).

misunderstanding of the statutory standard.¹³ The statutory question is whether the capability gives consumers the ability to “originate and receive high-quality voice, data, graphics, and video telecommunications using any technology,”¹⁴ and the Commission’s assumption that it needed to select a speed benchmark necessary to allow multiple users to stream HD video while performing other tasks on multiple devices was not justified.¹⁵ Rather, the statutory standard requires the Commission to evaluate the speeds needed to provide the services that typical consumers want to use, as opposed to “aspirational” speeds.¹⁶ The 25 Mbps/3 Mbps benchmark was adopted “without demonstrating . . . that this particular threshold was an adequate measure of what Congress had in mind as ‘advanced telecommunications capability. . . .’”¹⁷

Commenters seeking to avoid the obvious finding that Section 706 is satisfied propose to move the goal posts even further – proposing speed benchmarks even higher than 25 Mbps/3 Mbps, and as high as 1 Gbps (download speeds).¹⁸ These commenters provide no basis for this new benchmark other than that these are the next-generation services and that providers have begun to deploy them. But this approach would ensure that the Congressional standard in Section 706 could never be satisfied, as the goal posts are constantly moved out to the over-the-horizon generation of technology as opposed to the current advanced generation that is meeting the needs of customers. Indeed, as AT&T demonstrated, the vast majority of AT&T households today who subscribe to even a 25 Mbps or greater service only rarely use that much bandwidth at any

¹³ See AT&T Comments at 6.

¹⁴ 47 U.S.C. § 1302(d)(1).

¹⁵ See AT&T Comments at 6-7.

¹⁶ NCTA Comments at 5, n.12.

¹⁷ USTelecom Comments at 7.

¹⁸ Incompas Comments at 20.

particular time for their everyday activities. There is certainly no basis therefore to conclude that Americans lack advanced telecommunications services if they do not have even faster services.

Moreover, adoption of a 1 Gbps benchmark for Section 706 purposes would create an even larger and unjustifiable disconnect with the minimum standard for universal service funding, which is an entirely reasonable 10 Mbps downstream and 1 Mbps upstream. And as AT&T noted, a recent study explained that “the vast majority of online activities appear to be accessible with 5.0 Mbps or less” and “beyond 5 Mbps, the value [a] subscriber obtains from further increase will depend on factors like how many connected devices operate at a single time and the types of connections she requires.”¹⁹

Second, if the Commission chooses to frame this inquiry with reference to this aggressive 25 Mbps/3 Mbps standard, the Commission should acknowledge that the selection of that benchmark has led many pro-regulation parties to equate that benchmark, which is simply intended to measure the progress of the deployment of advanced telecommunications capability, with the definition of “broadband.”²⁰ The Commission should explicitly repudiate that notion, especially when millions of current broadband customers affirmatively choose to subscribe to lower speeds. NCTA emphasizes the importance of ensuring—if the benchmark is retained—that it is for the narrow purposes of the Section 706 inquiry and not applicable in other contexts in which the Commission assesses the deployment of broadband.²¹ USTelecom echoes this concern that the

¹⁹ Yu-Hsin Liu, Jeffrey Prince, and Scott Wallsten, *Distinguishing Bandwidth and Latency in Households’ Willingness-to-Pay for Broadband Internet Speed*, Technology Policy Institute at 3-4 (Aug. 2017), <https://techpolicyinstitute.org/wp-content/uploads/2017/08/Distinguishing-Bandwidth-and-Latency-in-Households-Willingness-to-Pay-for.pdf>.

²⁰ AT&T Comments at 7-8.

²¹ See NCTA Comments at 6-7.

Commission should continue to recognize that different standards and thresholds may be appropriate in different contexts, such as the Universal Service Fund.²²

B. The Commission Should Use LTE as the Benchmark for Mobile Services.

The comments also demonstrate that the Commission should adopt its proposal to use an air interface technology – specifically, LTE – as a proxy for a speed benchmark.²³ Measuring LTE coverage would require only a trivial effort, given that the necessary data are reported in Form 477,²⁴ and the comments confirm that average LTE speeds are generally above 20 Mbps.²⁵ By contrast, any attempt to use a benchmark based on measured mobile broadband speeds would be fraught with challenges. There are many variables that affect speed in a mobile network that do not exist in the wireline context and that would make measurement of speeds needlessly difficult. As the Commission correctly acknowledged, there are greater “degrading effects from factors such as congestion, interference, and challenges presented by physical velocity of a mobile antenna.”²⁶ Attempting to measure speeds would require the Commission to resolve endless methodological issues that have no clear answer, such as how many samples should be taken, how often, and in what geographic areas, and many other similar issues.

²² USTelecom Comments at 8.

²³ Notice ¶ 19 (“Would it be more practical to use deployment of various air interface technologies (e.g., LTE) as a proxy for speed benchmarks?”).

²⁴ See, e.g., AT&T Comments at 10; USTelecom Comments at 10 (“[t]he most readily available data for mobile broadband services collected by the Commission is currently based on [LTE] technology, which makes it well-suited for the Section 706 deployment analysis.”).

²⁵ AT&T Comments at 10-11; USTelecom Comments at 10.

²⁶ Twelfth Broadband Progress Notice of Inquiry, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 16-245, ¶ 43 (rel. Aug. 4, 2016).

C. The Comments Confirm That The Industry Is Deploying Advanced Telecommunications Capability In A Timely Fashion, But The *Title II Order* Is Preventing Faster Deployment.

The commenters agree that, under these appropriate standards, the Commission can (and should) conclude that advanced telecommunications capability is being deployed in a reasonable and timely manner.²⁷ The industry has invested billions of dollars in advanced telecommunications capabilities over the past several years, and enormous progress has been made in the deployment of advanced services over both wireline and mobile platforms. Indeed, the portion of housing units covered by 25 Mbps download speeds has increased from 49% to more than 90% since 2010,²⁸ and since 2010 LTE has grown from infancy to being essentially ubiquitous (99.7% of the population covered).²⁹

But the comments further demonstrate that progress could be even better, if the drag on investment caused by the *Open Internet Order* were removed. USTelecom shows that Title II regulation has “lessened incentives for broadband investment,”³⁰ while CTIA specifically notes that “imposing Title II requirements on broadband providers has undermined wireless network deployment.”³¹ Thus, as Verizon explains, this demonstrated drag on investment confirms the need for a “light regulatory touch and remov[al of] common carri[er] regulation from broadband

²⁷ AT&T Comments at 11-12; CTIA Comments at 2-3; NCTA Comments at 9-10; USTelecom Comments at 2-5.

²⁸ See Patrick Brogan, *U.S. Broadband Availability Mid-2016*, USTelecom, Chart 7 (Aug. 25, 2017), <https://www.ustelecom.org/sites/default/files/US%20Broadband%20Availability%20Mid-2016%20formatted.pdf>.

²⁹ See FCC 2017 Mobile Wireless Report, Chart II.A.2.

³⁰ USTelecom Comments at 4 (citing *Restoring Internet Freedom Notice of Proposed Rulemaking* point by Commission that Title II regulation has put investment and innovation at risk).

³¹ CTIA Comments at 24.

internet access services,”³² because Title II simply “isn’t working and ultimately will handcuff innovation, stifle investment, and hurt consumers.”³³

Proponents of continued Title II regulation have no answer to these facts. Consequently, some comments resort to repeating patently untrue and inflammatory allegations that some broadband providers are purposefully holding back investment in some areas. The most extreme example is the Benton Foundation, which asserts that AT&T’s broadband deployments avoid low income neighborhoods.³⁴ In fact, AT&T has invested \$135 billion in its broadband networks over the past five years, more than any other public company in any industry in the United States. As a result of these investments, AT&T today covers virtually every American (of all incomes) with at least one form of high speed broadband service. Indeed, AT&T has deployed a nationwide LTE-based mobile wireless network with average speeds above 20 Mbps that covers virtually every area where people live and work. AT&T has deployed wireline broadband services with maximum speeds of at least 6 Mbps to virtually every household (high and low income) within its wireline broadband footprint. And AT&T has deployed wireline broadband services with maximum speeds of at least 18 Mbps to 73% of households in its wireline broadband footprint, covering similar portions of high and low income households.

³² Verizon Comments at 22.

³³ *Id.*

³⁴ Comments of Benton Foundation, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, at 4-7 (filed Sept. 21, 2017).

CONCLUSION

For the foregoing reasons, the Commission should find that advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.

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