**Before the**

Federal Communications Commission

Washington, D.C. 20554

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| In the Matter of  Petition for Declaratory Ruling Regarding  Broadband Speed Disclosure Requirements | **)**  **)**  **)**  **)**  **)**  **)** | CG Docket No. 17-131  June 16, 2017 |

**COMMENTS OF THE INSTITUE FOR LOCAL SELF-RELIANCE**

**I. Introduction**

The Institute for Local Self-Reliance (ILSR) mission is to provide innovative strategies, working models and timely information to support environmentally sound and equitable community development. To this end, ILSR works with citizens, activists, policymakers, and entrepreneurs to design systems, policies, and enterprises that meet local or regional needs; to maximize human, material, natural, and financial resources; and to ensure that the benefits of these systems and resources accrue to all local citizens.

**II. Summary**

ILSR opposes a declaratory ruling in the matter of Broadband Speed Disclosure Requirements as proposed by US Telecom and NCTA. Even if the Commission had the authority to do so, which it does not, such a ruling would be inappropriate. If the Commission had the authority to establish a uniform standard and preempt state authority over these matters, granting this petition would be a heavy handed and over reaching approach to establish uniformity that would impinge on state authority.

**III. Authority**

The Commission does not have authority to simply remove states’ ability and authority to protect their BIAS subscribers from misleading or potentially dishonest claims about advertised services. If the Commission did have the authority to establish a uniform standard for measuring delivered speeds and require states to solely use that standard, the FCC should submit the proposed rule changes through a proper rulemaking procedure prior to exercising that power.

A declaratory ruling from the Commission at this point on this matter would be premature, contrary to existing practices, and wholly inappropriate.

**IV. The Proper Standard**

If the Commission had the authority to act on the petition from USTelecom and NCTA, it still should not issue a declaratory ruling. It is far from clear that present Commission rules on transparency are sufficient to support the robust broadband marketplace that communities need.

The marketplace needs honest information to work - some networks use technologies that are capable of consistently delivering advertised speeds whereas others use technologies more likely to have bottlenecks during high demand. Residents and businesses should be able to distinguish between these options without having to become experts in broadband terminology.

A fundamental question is whether some providers mislead customers by advertising rates that are not achievable under common condition, regardless of whether providers make some additional information available at a location unlikely to be visited by someone shopping for broadband.

The Commission can assume that purchasers of BIAS are likely most interested in how their connection will function during peak times of demand. “Peak” is the time when most people and businesses wish to use their connections. It is illogical to suppose that people are most interested in how well their connection works when they are least likely to be interested in using it.

Further, the transparency rule requires that ISPs post averages, but national averages may not be particularly useful for a given state. For instance, consider a network that invests heavily in 10 states but has footprints in 2 states that continue to use connections that are overwhelmed during peak periods. They may advertise high “up to” speeds in those 12 states and have an average and median calculation that appears to be reasonable during peak periods but subscribers in the 2 left behind states will not be able to reach what was advertised to them.

In considering these scenarios, the Commission should recognize that its rules were developed during a period when most broadband technology was less capable of delivering consistent speeds during peak periods. But many technologies, when used honestly and by a technically competent provider, are able to deliver advertised rates at all times of day. These technologies include DOCSIS 3.0, DOCSIS 3.1, various FTTH standards, and even connections using fixed wireless.

In a recent interview, Brough Turner from the WISP netBlazr explained how they deliver advertised rates consistently.

The question is, what do you need to do to guarantee that they all see 300 megs up and 300 megs down any time they run a speed test? The answer is, if it's 300, you need 300 megs of headroom above the peak of the actual usage. If it's 500 meg service, you need 500 megabits of headroom above the peak of the actual usage. For residential users in Boston, that peak is distributed at different times between nine PM and midnight. I look at minute-by-minute averages of the actual traffic between nine PM and midnight. As long as I've got 300 or 500 megs of headroom above that actual traffic, then anybody who runs a speed test or anybody who hits a webpage and does a download or something will get the full 300 or 500 that they're paying for.[[1]](#footnote-1)

Providers may invest in technologies that provide a more consistent connection if they choose. By allowing providers to make unrealistic claims with an asterisk, the Commission is effectively punishing those who have invested in better networks by making it more difficult for consumers to distinguish which provider will offer a better service.

We do not believe the Commission has the authority to, nor should it, preempt states from protecting BIAS subscribers, but if it were to do so, it must engage in proper rulemaking. Adhering to proper procedure in this case is necessary so the Commission can explain why services with vastly different peak performance characteristics may be advertised as equal with true differences in performance revealed only on a web page somewhere that explains the actual inferiority of their service.

**VII. Conclusion**

For the reasons set forth, the Petition for a declaratory ruling in the matter of Broadband Speed Disclosure Requirements as proposed by US Telecom and NCTA should be denied.

Respectfully submitted,

Institute for Local Self-Reliance

1. <https://muninetworks.org/content/transcript-community-broadband-bits-episode-245> [↑](#footnote-ref-1)