

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

In the Matter of)
)
Inquiry Concerning the Deployment of)
Advanced Telecommunications Capability to)
All Americans in a Reasonable and Timely) GN Docket No. 16-245
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)

**COMMENTS OF THE UNITED STATES
TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom) respectfully submits these comments in response to the Federal Communications Commission’s (FCC or Commission) request for input on the current state of advanced telecommunications capability deployment and availability.¹ A majority of USTelecom’s members offer broadband in rural and urban areas across the United States. USTelecom and its members strongly support policies that promote continued broadband deployment by removing barriers to infrastructure investment to ensure that broadband services are available to all Americans.

I. INTRODUCTION

The Commission is tasked with encouraging the deployment of advanced telecommunications services, or broadband, and the primary purpose of this inquiry is to assess whether and how well broadband is being deployed. If, and only if, deployment is not occurring

¹ See *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*, Twelfth Broadband Progress Notice of Inquiry, FCC 16-100, GN Docket No. 16-245 (rel. Aug. 4, 2016) (*Twelfth Broadband Progress NOI*).

in a timely and reasonable fashion, the Commission is empowered to take steps to accelerate deployment in two ways: by removing barriers to infrastructure investment, and by promoting competition. These concepts are interdependent, and we firmly believe that any effort to promote competition that does not focus on facilitating and removing barriers to infrastructure investment will likely fail. FCC Chairman Wheeler has said as much: “I think if you're going to get competition, competition is a facilities-based issue”²

Thus, the Commission must make a full and honest assessment of broadband deployment efforts, including the progress that has been made since the last inquiry. The Commission must also consider the consumer’s perspective about what is adequate deployment, and strive for consistency with determinations made in other contexts, such as the universal service Connect America Fund proceedings. To date, the section 706 determinations have largely turned on what percentage of the U.S. population has access to broadband that meets a particular speed benchmark, which ignores the crux of what the Commission should be measuring, which is *progress* (i.e., “whether [broadband] *is being deployed* ... in a reasonable and timely fashion.”).³ Therefore, we propose that the Commission make a more literal (and realistic) assessment of how we are doing in our efforts to deploy broadband to all Americans by looking not only at where we are in terms of households or individuals with access to broadband at high speeds that many choose not to adopt even when available, but also by giving due weight to the actual overall deployment progress made from year to year. This must include a consideration of real world conditions and a verifiable assessment of whether broadband customers’ needs are being

² Brodtkin, Jon, Ars Technica, “Why Tom Wheeler rejected broadband price caps and last-mile unbundling” (Mar. 16, 2016), available at <http://arstechnica.com/business/2016/03/why-tom-wheeler-rejected-broadband-price-caps-and-last-mile-unbundling/>.

³ 47 U.S.C. § 1302(b) (emphasis added).

met. Also, consistent with our comments to the last broadband progress *Inquiry*,⁴ we again urge the Commission to focus any remedial action it takes, if it finds that broadband is not being adequately deployed, on the removal of barriers to infrastructure investment.

II. DISCUSSION

A. There is Overwhelming Evidence that Competitive Broadband Services Are Being Deployed Throughout the Country.

Government statistics on household broadband availability paint a notably different picture than the Commission of how many Americans have adequate access to broadband services that allow them to take advantage of the access to information, entertainment, employment options, and other services and products that they have come to expect and rely on. Nearly every home in the U.S. has a choice of broadband providers offering either wired, wireless or satellite broadband, which places us far ahead of the European Union in terms of access options. A remarkable 96 percent of households have access to service from at least one wired broadband provider, and nearly all (more than 99 percent) American households have access to service from at least one wireless broadband provider.⁵

Deployment of special access, or business broadband, services is likewise impressive; in 95 percent of census blocks with business broadband demand, there is an incumbent plus at least one competing provider, and 99 percent of business establishments are in those same census

⁴ See Comments of the United States Telecom Association, GN Docket No. 15-191 (filed Sep. 15, 2015).

⁵ See Table, U.S. Broadband Availability, available at <http://www.ustelecom.org/broadband-industry/broadband-industry-stats/availability>. Data for this table was sourced from NTIA, National Broadband Map, Mid-Year 2014.

blocks.⁶ Thus, few objective observers would dispute that we have made extraordinary progress in deploying broadband, as Congress intended when it enacted section 706.

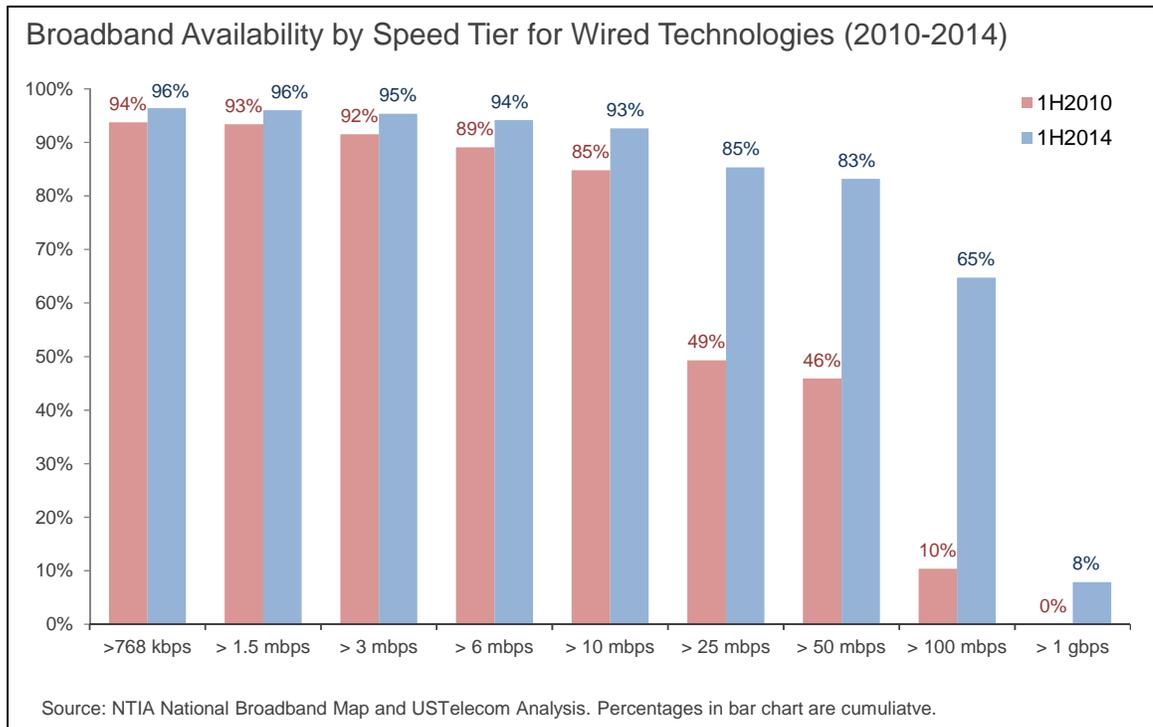
Broadband providers invest more than \$70 billion per year to deploy and upgrade their networks.⁷ As a result, broadband capacity is steadily expanding, with increasingly powerful broadband networks being made available to a larger portion of Americans. As shown in Chart 1,⁸ availability of wired broadband at download speeds of 25 Megabits per second (Mbps) or greater increased from 49 percent of Americans in 2010 – when the Commission first determined that broadband was no longer being deployed on a reasonable and timely basis – to 85 percent of Americans in 2014. Wired broadband deployment at download speeds of 50 Mbps or greater expanded similarly during the same period, and deployment of wired broadband at download speeds of 100 Mbps or greater increased from 10 percent of Americans in 2010 to 65 percent in 2014.

⁶ Mark Israel, Daniel Rubinfeld and Glenn Woroch, “Analysis of the Regressions and Other Data Relied Upon in the Business Data Services FNPRM and a Proposed Competitive Market Test,” at 3 (Aug. 9, 2016).

⁷ USTelecom, Broadband Industry Stats, Historical Broadband Provider Capex, available at <https://www.ustelecom.org/broadband-industry-stats/investment/historical-broadband-provider-capex> (visited Sep. 2, 2016).

⁸ National Broadband Map, Access to Broadband Technology by Speed, Data as of December 31, 2013 (published Jul. 2014 and updated Sept. 2014) and National Broadband Map, Access to Broadband Technology by Speed, Data as of June 30, 2010 (published Feb. 2011), available at <http://www2.ntia.doc.gov/broadband-data> (visited Sep. 2, 2016). USTelecom analysis is based on reported data, which included download speeds only.

Chart 1

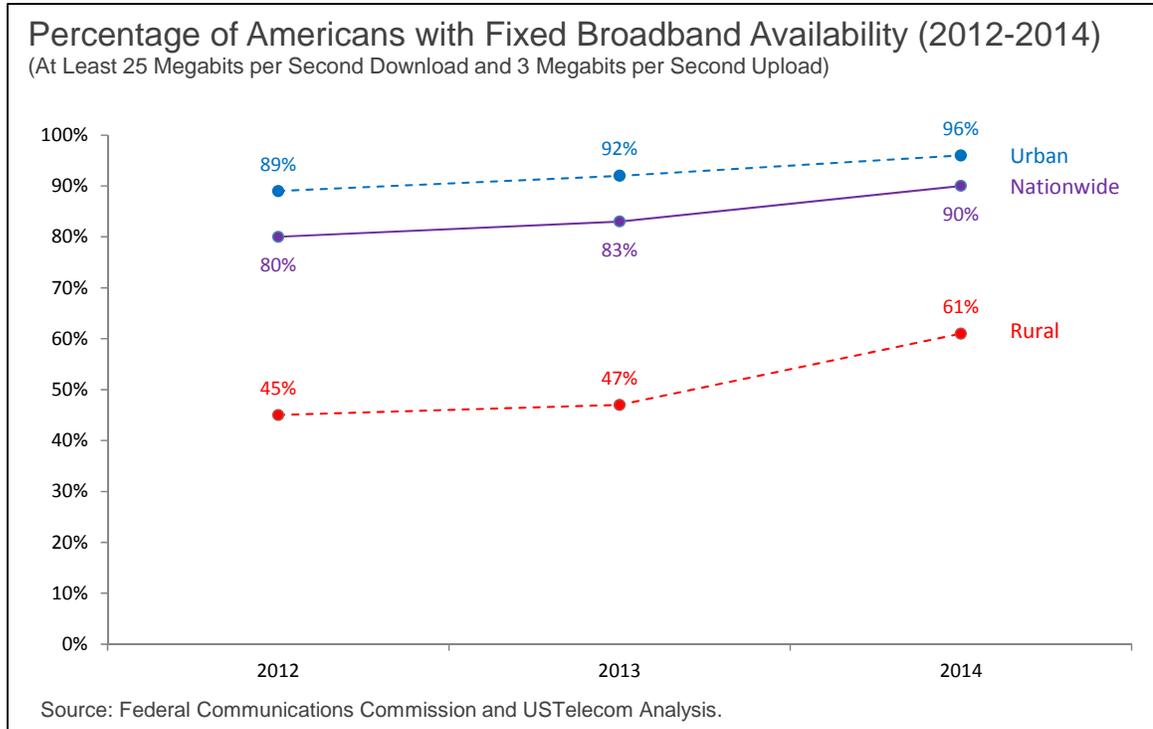


Commission analysis based on its current threshold for broadband capability – download speeds of 25 Mbps or greater *and* upload speeds of 3 Mbps (25/3) or greater – shows that the deployment of increasingly powerful broadband networks to even larger portions of the U.S. population continues at an impressive pace. As shown in Chart 2,⁹ the portion of Americans with access to broadband at 25/3 grew from 83 percent in 2013 to 90 percent in 2014. In rural areas, availability grew from 47 percent to 61 percent during the same period. Based on further Commission analysis in the *Twelfth Broadband Progress NOI*, as of mid-2015, 88 percent Americans had access to broadband at download speeds of at least 50 Mbps and upload speeds of

⁹ Compare the Commission’s data, as presented in Table 7 in the *2016 Broadband Progress Report*, which reports percentages of Americans *unserved*. *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*, 2016 Broadband Progress Report, 31 FCC Rcd 699, 737, Table 7 (2016) (*2016 Broadband Progress Report*).

at least 5 Mbps, and 65 percent of Americans had access to broadband at download speeds of at least 100 Mbps and upload speeds of at least 10 Mbps.¹⁰

Chart 2



Moreover, the Commission itself, through the universal service program’s Connect America Fund is facilitating the yearly spending of billions of dollars toward deployment of broadband at minimum speeds of 10 Mbps download and 1 Mbps upload (10/1) over the next 10 years, in some cases with built-in incentives for providers to deploy broadband meeting the current speed threshold of 25/3 for advanced telecommunications capability.¹¹ Yet, in light of all this progress, the Commission found earlier this year that the advancements we have made are

¹⁰ *Twelfth Broadband Progress NOI* ¶ 15.

¹¹ See, e.g., *Connect America Fund, et al.*, 31 FCC Rcd 5949 (2016) (proposing that participants in the CAF Phase II Auction be awarded bidding credits or other appropriate weighting for offering to provide broadband above the minimum 10/1 speed tier).

“not occurring broadly enough, or quickly enough, to satisfy the goals of section 706.”¹² When, as here, the methodology for assessing deployment success yields results that are not in line with evidence of what is actually happening – that is, the deployment of advanced telecommunications capability to 90 percent of Americans – perhaps it is time to revisit that methodology.

B. The Commission Should Revisit Its Finding that Advanced Telecommunications Capability is Not Available Unless Consumers Have Access to Both Fixed and Mobile Services.

The Commission’s finding in the *Eleventh Broadband Progress Report* that deployment of advanced telecommunications capability requires access to both fixed and mobile broadband service was not necessary to achieve the goals of section 706, nor is it clear that section 706 authorizes the Commission to require that multiple “capabilities” be deployed without evidence that a single deployed and available technology is not sufficient to meet the needs of broadband customers. As USTelecom stated in comments to that proceeding, we do not object to the Commission’s consideration of mobile broadband as advanced telecommunications capability, but rather we object to any requirement that deployment meet *both* a fixed *and* a wireless benchmark. Instead, reasonable and timely deployment of *either* fixed *or* mobile broadband should be sufficient to meet the requirements of section 706.¹³

The Commission is considering imposing speed and service quality benchmarks on mobile broadband services. It should do so only if it intends to find that a mobile broadband service meeting those benchmarks would qualify as “advanced telecommunications capability.” Then, any mobile service deemed to be advanced telecommunications capability should be able to stand alone as fulfilling the section 706 requirements.

¹² *2016 Broadband Progress Report*, 31 FCC Rcd at 701, ¶ 2.

¹³ USTelecom Comments at 6-7.

C. The Commission Need Not Modify or Add More Benchmarks or Factors to this Inquiry.

We agree with the Commission’s proposal not to increase the current speed benchmark of 25/3 for fixed broadband services. As the Commission acknowledges, the available usage data do not at this time support a higher benchmark.¹⁴ Moreover, there is no evidence that the current benchmark does not meet the needs of consumers “to originate and receive high-quality voice, data, graphics, and video telecommunications.”¹⁵ Also, widespread adoption of new bandwidth intensive services such as 4k Ultra HD TV may never happen, and if it does the need for high-speed broadband to accommodate those services is likely years away; therefore such new services should not drive a near-term increase in the benchmark.

The Commission also should not draw unsupported conclusions from the increased deployment of higher-speed fixed broadband, which in and of itself cannot support the adoption of a higher benchmark. These increases are easily explained by the fact that more fiber (including hybrid fiber/cable, or HFC) is being deployed, enabling the provision of more scalable, cost effective services like Ethernet which can provide much higher speeds than the facilities they are replacing. There is no basis for the Commission to require the deployment of higher bandwidth services beyond the current benchmark at this time, especially when competitive market forces are achieving the same result without regulatory intervention.

We previously opined that the Commission should not impose latency or consistency benchmarks for any broadband service, as such requirements seem far removed from the core section 706 inquiry, which looks at the reasonableness and timeliness of broadband

¹⁴ See *Twelfth Broadband Progress NOI* ¶ 13.

¹⁵ *Twelfth Broadband Progress NOI* ¶ 12.

deployment.¹⁶ Given that providers sometimes lack control over the extent of latency and consistency in their service, and the continued difficulty in reliably measuring these benchmarks, our position has not changed on this issue since the last *Inquiry*.¹⁷

With regard to proposals by the Commission related to broadband consistency, there again seems to be little evidence that customer experience is diminished without such requirements. Given the multiple choices available to most Americans for broadband services, competitive market forces are likely the single most effective way to ensure that providers consistently offer high-quality service, and USTelecom members and their competition understand that quality services are necessary to retain customers.

Finally, other proposed factors seem outside the scope of the core purpose of section 706, and risk distracting the Commission from focusing on increasing deployment and availability. As we have noted before, nothing in section 706 directs or gives authority to the Commission to impose obligations to increase adoption; nor does section 706 mention service quality, privacy, or security.¹⁸ These issues are being addressed in other proceedings regarding, for example, universal service¹⁹ and broadband privacy.²⁰ Although the goals the Commission seeks to achieve by considering these additional factors are laudable, they fall outside the Commission's limited section 706 authority, and thus should not be imposed as part of this proceeding.

¹⁶ See USTelecom Comments at 7-9.

¹⁷ See *id.* 8-9.

¹⁸ Yet, the Commission again seeks comment on these factors. *Twelfth Broadband Progress NOI ¶¶ 51-56.*

¹⁹ See, e.g., *Lifeline and Link Up Reform and Modernization, et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016).

²⁰ See, e.g., *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Notice of Proposed Rulemaking, 31 FCC Rcd 2500 (2016).

III. CONCLUSION

Broadband deployment in the United States is a success story. Deployment of advanced telecommunications capability is robust and widespread, and has been increasing and improving year after year as providers compete to reach new customers and retain current ones by providing the speeds and quality of service they need in the 21st Century. Advanced telecommunications capability is being deployed in a timely and reasonable manner, at least judging by the fact that approximately 90 percent of Americans currently enjoy access to service defined as advanced telecommunications capability, and even more consumers have access to multiple modes of high-speed broadband and can choose among multiple carriers for their broadband needs. The Commission should therefore find that the deployment requirements of section 706 have been met. If it does not so find, it must strictly adhere to its limited section 706 authority by imposing only minimum requirements that are necessary to promote continued broadband deployment by removing barriers to infrastructure investment.

Respectfully submitted.

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Dated: September 6, 2016