

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Inquiry Concerning the Deployment of ) GN Docket No. 16-245  
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 )

**COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) submits these comments in response to the *Notice of Inquiry* for the Commission’s annual broadband progress report.<sup>1</sup>

This statutorily-mandated exercise requires the Commission to evaluate annually the deployment of broadband services and identify any shortcomings in that deployment. However, the report is only meaningful if the yardstick by which the adequacy of broadband deployment is measured is the right one. Having very recently instituted a dramatic change to the definition of “advanced telecommunications capability,” the Commission should not again move the goalposts. The Commission’s focus on the minutia of broadband performance characteristics detracts from a meaningful assessment of the state of broadband in America; it serves only to

---

<sup>1</sup> *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, Twelfth Broadband Progress Notice of Inquiry, FCC 16-100 (rel. Aug. 4, 2015) (*Notice of Inquiry or Notice*); Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. § 1302 (Section 706).

augment the complexity of the analysis with little resulting benefit. The Commission should reject the *Notice's* proposals to again change the factors in its analysis.

The Commission also should acknowledge the effect its own policies have on achieving the goal of universal availability of advanced telecommunications capability. While the Commission has taken some positive steps in the last year, such as its decision ensuring that all telecommunications carriers and broadband providers have access to poles at low, uniform rates, the Commission's past decisions in the context of the Connect America Fund will preclude millions of rural consumers from having any possibility of receiving advanced telecommunications capability for years to come.

**I. THE COMMISSION SHOULD RETAIN ITS CURRENT SPEED BENCHMARK AND DEVELOP A PRINCIPLED METHODOLOGY FOR DERIVING FUTURE BENCHMARKS**

In the *Notice of Inquiry*, the Commission proposes to retain the escalated 25 Mbps/3 Mbps speed benchmark adopted 18 months ago.<sup>2</sup> NCTA supports the Commission's proposal to retain its fixed broadband speed benchmark and urges the Commission to ensure that any future changes to this benchmark are derived through a rigorous fact-based methodology.

Over the past 20 years, providers have invested approximately 1.4 trillion dollars of private risk capital to deploy – and constantly improve – broadband communications services.<sup>3</sup> The Internet has become the most powerful and versatile communications medium ever devised. The Commission recognizes that “[t]he open Internet drives the American economy and serves, every day, as a critical tool for America's citizens to conduct commerce, communicate, educate,

---

<sup>2</sup> *Notice of Inquiry* ¶ 13.

<sup>3</sup> See US Telecom, *Historical Broadband Provider Capex (1996 – 2014)*, <https://www.ustelecom.org/broadband-industry-stats/investment/historical-broadband-provider-capex>.

entertain, and engage in the world around them.”<sup>4</sup> Consumers are able to access the Internet through multiple broadband architectures, including cable, telephone, wireless, and satellite networks. The benefits that consumers derive from broadband will only increase as providers continue to deliver better telecommunications capabilities at even faster speeds, such as the cable industry’s DOCSIS 3.1 technology, which supports speeds up to 10 Gbps.<sup>5</sup>

As NCTA has previously suggested, in measuring the adequacy of broadband deployment, the Commission should employ a benchmark that accurately reflects the capabilities that consumers need to support popular applications.<sup>6</sup> Employing metrics that are not based on the current needs of consumers necessarily renders any resulting report far less useful and meaningful. The purpose of the inquiry is to evaluate the *current* state of the deployment of advanced telecommunications capability. NCTA has previously explained that an approach that ignores the realities of the marketplace and focuses on a forward-looking, aspirational standard is “legally suspect . . . because the statute calls for a report that judges the progress of the broadband services consumers currently use.”<sup>7</sup>

In the *Notice of Inquiry* the Commission seems to have started down the right path by looking to actual data to justify maintaining its current speed benchmark. As the Commission

---

<sup>4</sup> *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶ 1 (2015).

<sup>5</sup> See William Morrow, *Blazing Fast Gigabit Internet Now Possible with DOCSIS 3.1 Technology*, Huffington Post (June 3, 2016), [http://www.huffingtonpost.com/william-morrow/blazing-fast-gigabit-inte\\_b\\_10283840.html](http://www.huffingtonpost.com/william-morrow/blazing-fast-gigabit-inte_b_10283840.html); Jeff Baumgartner, *DOCSIS 3.1 in the Wild*, Multichannel News (July 14, 2016), <http://www.multichannel.com/blog/bauminator/docsis-31-wild/406337> (discussing Comcast’s DOCSIS 3.1 trials in Atlanta); Daniel Frankel, *Cox Set to Take Fiber to the Node, Deploy DOCSIS 3.1*, Fierce Cable (May 23, 2016), <http://www.fiercecable.com/cable/cox-set-to-take-fiber-to-node-deploy-docsis-3-1> (discussing Cox’s plans to extend fiber deeper into its network and deploy DOCSIS 3.1).

<sup>6</sup> See Comments of the National Cable & Telecommunications Association, GN Docket No. 14-126, at 6-7 (filed Sept. 15, 2015) (NCTA September 2015 Comments).

<sup>7</sup> NCTA September 2015 Comments at 6 & n.14.

recognizes, the current benchmark accommodates the expected needs of even those households using an atypically large amount of bandwidth, accounting for multiple streams of bandwidth-intensive applications like HD streaming video, in addition to web browsing, email, and other applications.<sup>8</sup> The Commission recognizes that the deployment of higher-speed fixed broadband services has outpaced subscription rates for those services.<sup>9</sup> Thus the Commission should adopt the *Notice*'s proposal to retain the current benchmark.

In developing future benchmarks the Commission should engage in a more thorough inquiry by analyzing the performance characteristics of popular applications and the full range of consumers' broadband needs *before* deriving its benchmark, instead of reverse engineering a standard to fit the results it seeks to achieve. Similarly, the Commission should reject the notion of adopting a future-oriented, "aspirational" benchmark, which would be necessarily divorced from the realities of the marketplace and would only serve as yet another limiting – and distracting – factor in the Commission's analysis.<sup>10</sup> Indeed, adopting an aspirational speed benchmark would only serve to exacerbate the mistake the Commission made in the context of the Connect America Fund. By offering billions of dollars in subsidies for incumbent local exchange carriers (LECs) to deploy broadband services at 10 Mbps/1 Mbps while retaining a 25 Mbps/3 Mbps speed benchmark for measuring advanced telecommunications capability, the

---

<sup>8</sup> *Notice of Inquiry* ¶ 13.

<sup>9</sup> *Notice of Inquiry* ¶ 15 ("Despite current adoption rates of fixed broadband services at speeds above our present benchmark, we note that deployment of fixed services at high speeds continues to progress at a faster pace than does consumer adoption."). The Commission also finds that "as of June 30, 2015, only 12 percent of all Americans lacked access to fixed broadband services at speeds of 50 Mbps/5 Mbps, and only 35 percent of all Americans lacked access to fixed broadband at speeds of 100 Mbps/10 Mbps," while the June 2015 FCC Form 477 data and 2015 household data show that "only 27 percent of all Americans had adopted fixed services at speeds of 50 Mbps/5 Mbps, and only 14 percent had adopted fixed services at speeds of 100 Mbps/10 Mbps, as of June 30, 2015." *Id.* ¶¶ 14-15.

<sup>10</sup> *Notice of Inquiry* ¶ 19.

Commission has ensured that millions of Americans in subsidized areas will remain “unserved” for years to come.<sup>11</sup> Funding deployment at speeds lower than its own benchmark places the Commission in the illogical position of incentivizing failure by its own standards – a problem that would only worsen if the Commission increases the speed benchmark used for measuring broadband deployment in the future. For these reasons, the Commission should adopt the *Notice’s* proposal to maintain the current benchmark and abandon the notion of creating an additional “aspirational” standard.<sup>12</sup>

## **II. THE COMMISSION SHOULD LIMIT ITS INQUIRY TO DEPLOYMENT ISSUES**

As NCTA has previously explained, the *Notice’s* proposals to review factors unrelated to the technical characteristics of broadband networks and the services they enable are unnecessary in this context and go beyond Congress’s Section 706 mandate.<sup>13</sup> Section 706 requires the Commission to “initiate a notice of inquiry concerning the *availability* of advanced telecommunications capability to all Americans” and “determine whether advanced telecommunications capability is being *deployed* to all Americans in a reasonable and timely fashion.”<sup>14</sup> NCTA reiterates that Congress specifically defined “advanced telecommunications capability” in terms of technical network characteristics and the services they enable.<sup>15</sup> The Section 706 inquiry is not the appropriate context for the Commission to examine factors that go

---

<sup>11</sup> NCTA September 2015 Comments at 3.

<sup>12</sup> *Notice of Inquiry* ¶¶ 13, 19.

<sup>13</sup> NCTA September 2015 Comments at 7-10.

<sup>14</sup> 47 U.S.C. § 1302(b) (emphasis added).

<sup>15</sup> *Id.* § 1302(d)(1) (“The term ‘advanced telecommunications capability’ is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.”)

beyond deployment into other areas, such as broadband subscription, performance consistency, and usage allowances. The Commission should not develop an entire methodology to measure and analyze the significance in the Section 706 context of factors that are only tangentially relevant to broadband deployment or availability.

As NCTA has previously noted, refraining from examining these issues in the Section 706 inquiry does not prevent the Commission from exploring them in other more appropriate contexts.<sup>16</sup> For example, the Commission explores latency, service consistency, and packet loss as part of its Measuring Broadband America initiative, which is the appropriate forum for evaluating these issues. It addresses broadband subscription by low-income consumers in the Lifeline context and pricing and usage allowances as part of its urban rate survey. Further complicating the Section 706 inquiry with issues that do not have a material effect on the availability of broadband or the rate at which it is deployed detracts from the utility and significance of the Commission's analysis. For these reasons, the Commission should again refrain from examining non-deployment issues in the context of its annual broadband assessment.

In particular, the Commission should reject its proposal to expand the criteria for "advanced telecommunications capability" to include a latency benchmark for fixed broadband services.<sup>17</sup> While latency may be a useful measure to consider in evaluating end-user experience for certain Internet applications, such as those requiring a high degree of interactivity, it is unnecessary to include it as a part of the advanced telecommunications capability definition for

---

<sup>16</sup> NCTA September 2015 Comments at 9-10.

<sup>17</sup> *Notice of Inquiry* ¶ 30.

measuring deployment. As NCTA has previously said, “no ISP currently offers broadband Internet service with . . . latency that render[s] the service effectively unusable.”<sup>18</sup> Furthermore, the Commission has been investigating latency in the context of the Measuring Broadband America program. The Commission’s work in that context reasonably demonstrates that latency is not an issue. For example, the 2015 Measuring Broadband America report states that “the differences in average latencies among terrestrial-based broadband services are small, and are unlikely to affect the perceived quality of such highly interactive applications.”<sup>19</sup> Any effort to establish a consistent and comprehensive latency benchmark in the context of the annual deployment report would be enormously expensive and of trivial benefit given the Commission’s previous findings. Given this, the Commission should not adopt it.

### **III. THE COMMISSION SHOULD REVERSE ITS DECISION TO DEFINE REASONABLE AND TIMELY DEPLOYMENT AS REQUIRING THE PRESENCE OF BOTH FIXED AND MOBILE BROADBAND**

In the *2016 Broadband Progress Report*, the Commission made an unwise and legally questionable decision to require an area to have access to both fixed and mobile broadband in order for advanced telecommunications capability to be deemed deployed in that area.<sup>20</sup> As NCTA told the Commission before it issued this report, requiring access to both fixed and mobile broadband cannot be reconciled with the clear language used by Congress in Section 706, and thus there is no statutory basis to require the availability of both technologies to determine

---

<sup>18</sup> See NCTA September 2015 Comments at 8.

<sup>19</sup> *2015 Measuring Broadband America Fixed Broadband Report*, FCC’s Office of Engineering and Technology and Consumer and Governmental Affairs Bureau, <https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-broadband-america-2015>, at 7 (OET and CGB 2015).

<sup>20</sup> *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, ¶ 24 (2016) (*2016 Broadband Progress Report*).

reasonable and timely deployment.<sup>21</sup> Moreover, mobile broadband is emerging as a competitive alternative for fixed broadband for many applications and millions of consumers and thus should not be treated as incapable of individually satisfying consumers' needs in certain contexts. In order to properly consider the market in a holistic manner, the Commission should rethink this approach in the next report and reject its finding that reasonable and timely deployment of advanced telecommunications capability requires access to both fixed and mobile broadband.

### **CONCLUSION**

The Commission should refrain from adopting proposals that serve only to complicate the analysis, rather than providing any additional meaningful insight into whether broadband deployment is occurring in a reasonable and timely manner.

Respectfully submitted,

**/s/ Steven F. Morris**

Steven F. Morris  
Jennifer K. McKee  
National Cable & Telecommunications  
Association  
25 Massachusetts Avenue, NW – Suite 100  
Washington, DC 20001-1431

September 6, 2016

---

<sup>21</sup> NCTA September 2015 Comments at 10-11; 47 U.S.C. § 1302.