

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

In the Matter of)
)
Inquiry Concerning Deployment of Advanced) GN Docket No. 18-238
Telecommunications Capability to All Americans)
in a Reasonable and Timely Fashion)

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association (NCTA) supports the Commission’s proposals to maintain key elements of the framework adopted in the Commission’s most recent broadband progress report.¹ In particular, NCTA agrees that the Commission should retain the 25 Mbps downstream/3 Mbps upstream (25/3) standard for “advanced telecommunications capability” while continuing its policy of examining progress in the deployment of other speed thresholds as well. We also encourage the Commission to fully include mobile broadband and other technologies in reaching the conclusion that progress on broadband deployment has been reasonable and timely.

I. THE COMMISSION’S REPORTS DO NOT REFLECT THE SIGNIFICANT PROGRESS BEING MADE IN BROADBAND DEPLOYMENT ACROSS THE COUNTRY

One of the persistent challenges faced by the Commission in assessing the status of broadband deployment is the significant lag time between the collection of data from broadband providers and the release of compiled data to the public, and the resulting understatement in reported deployment levels. The Commission only recently released data from June 2017,²

¹ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 18-238, Fourteenth Broadband Deployment Notice of Inquiry, FCC 18-119 (rel. Aug. 9, 2018) (*Notice*).

² *FCC Releases Form 477 Data on Broadband Deployment as of June 30, 2017*, Public Notice, WC Docket No. 11-10 (rel. Sep. 10, 2018) (providing fixed data only). The Commission’s most recent broadband progress report, released in February 2018, relied on data from December 2016. *See Inquiry Concerning Deployment of*

while providers already have submitted data representing deployment as of June 2018. Given the Commission’s finding that the appropriate measure of reasonableness and timeliness for purposes of this report is to compare “deployment in the present year to deployment in previous years,”³ the significant time lag in releasing data means that parties are limited in their ability to provide a timely empirical assessment of the overall level of progress in deploying broadband.

Even with this time lag, however, it is abundantly clear that there has been significant progress in broadband deployment. The recent data show that the percentage of American households without access to 25/3 terrestrial (wired plus fixed wireless) broadband has declined from 9.3 percent in June 2016 to 7.5 percent in June 2017. More recent data likely would show even further progress. Providers of all broadband technologies have made significant investments in new facilities in 2017 and 2018, which necessarily will lead to improvements in broadband coverage, speed, and competition. For example, cable operators invested over \$20 billion in 2017 and are on track for similar levels in 2018. Cable has made substantial progress in deploying gigabit capable networks across the country and NCTA projects that at least 70 to 75 percent of American households will have access to cable gigabit services by the end of 2018.⁴ This is remarkably fast deployment given that there was no meaningful deployment of such technology only a few years ago.

Existing Commission reports also are inadequate to the extent that they fail to consider the significant portion of unserved areas where federal broadband funding already has been

Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 17-199, 2018 Broadband Deployment Report, 33 FCC Rcd. 1660, 1681, ¶ 50 (2018 Report).

³ 2018 Report ¶ 10.

⁴ See, e.g., Charter’s ‘Summer of Gig’ Promotion Brings Spectrum Gigabit to 6 Million More Locations, Telecompetitor (Aug. 10, 2018) (“Charter now reports Spectrum gigabit service is available to 70% of their footprint.”), <https://www.telecompetitor.com/charters-summer-of-gig-promotion-brings-spectrum-gigabit-to-6-million-more-locations/>; Comcast Corp., *Gig-speed Internet from Xfinity is here. This changes everything.*, <https://www.xfinity.com/gig> (last visited Sept. 12, 2018) (showing nationwide gigabit rollout).

committed. While these areas may be unserved today, there is a plan in place for bringing service to these areas and a provider that has made a commitment to deploy the necessary facilities. For example, providers have accepted billions of dollars in funding through the Connect America Fund, which includes specific buildout commitments and an obligation to identify the specific locations where facilities are built. Distinguishing between areas where deployment commitments exist and unserved areas that still need to be addressed will be critical for the Commission to achieve the goal of bringing broadband to all Americans.

II. THE COMMISSION SHOULD RETAIN THE CURRENT STANDARD FOR IDENTIFYING “ADVANCED TELECOMMUNICATIONS CAPABILITY”

NCTA agrees with the Commission’s proposal to retain the 25/3 Mbps benchmark for advanced telecommunications capability.⁵ As the Commission explained in its *2018 Report*, “fixed services with speeds of 25 Mbps/3 Mbps meet the statutory definition of what constitutes advanced telecommunications capability; that is, such services ‘enable[] users to originate and receive high-quality voice, data, graphics, and video telecommunications.’”⁶

The Commission also should continue its practice of examining deployment of other speed thresholds in addition to the 25/3 benchmark – that is, both higher and lower speeds. As the Commission found in the *2018 Report*, it is helpful to use this annual report to assess progress at multiple speed thresholds.⁷ In particular, Internet access services below the 25/3 threshold provide important capabilities to consumers, including the ability to perform critical functions on multiple devices, such as doing homework, submitting job applications, and using

⁵ *Notice* at ¶ 8.

⁶ *2018 Report* at ¶ 21.

⁷ *Id.* at ¶ 25.

streaming video services.⁸ While the Commission relied in part on the needs of larger households in its original selection of the 25/3 benchmark, lower speed services currently are sufficient for millions of consumers and may be more than sufficient for the 61 percent of households with only one or two residents.⁹ The Commission's unanimous decision to approve billions of dollars in subsidies under the Connect America Fund Phase II for services at the 10 Mbps downstream/1 Mbps upstream (10/1) level confirms that these services are valuable to consumers, particularly consumers that otherwise would be unserved by broadband.¹⁰

The Commission also should report on the significant progress that is being made in the deployment of services that offer gigabit speeds. As noted above, cable operators expect to offer gigabit services reaching 70 to 75 percent of American households by the end of this year.¹¹ The widespread availability of gigabit services promises to unleash a new round of innovation from online services, continuing the virtuous cycle. And as consumer demand for cable's new gigabit services increases, there is no doubt that additional providers will enter the market as well – notably, gigabit services are one of the many promises of new 5G networks.

⁸ For example, Netflix recommends that downstream speeds of 5 Mbps are sufficient for HD-quality video streaming. See Netflix, Internet Connection Speed Recommendations, <https://help.netflix.com/en/node/306>.

⁹ See United States Census Bureau, *American Fact Finder, Occupancy Characteristics*, https://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ACS_16_5YR_S2501 (finding that, for 2016, 27.7 percent of households had one occupant and 33.7 percent had two occupants).

¹⁰ *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd. 15644, 15649, ¶ 17 (2014). Similarly, when the Commission reformed the Lifeline program to support broadband, it used the same 10/1 threshold as the minimum service level eligible for support. See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3993, ¶ 86 (2016). The Commission recently updated that standard to 18 Mbps downstream and 2 Mbps upstream, which only underscores the importance of taking into account speeds lower than 25/3 Mbps for purposes of assessing broadband deployment progress. See Public Notice, *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget*, WC Docket No. 11-42, DA 18-739 (July 18, 2018).

¹¹ The incredible deployment of gigabit services by cable operators will not be fully captured by the Commission's current broadband map. Specifically, the Commission's arbitrary definition of gigabit services as only those that offer 100 Mbps upload speeds will radically understate the progress cable operators have made in expanding the availability of such services. The Commission should revisit this definition before releasing another new version of the map.

III. THE COMMISSION SHOULD RECOGNIZE THE IMPORTANT ROLE PLAYED BY ALL BROADBAND TECHNOLOGIES

The *Notice* includes a number of questions related to the treatment of mobile broadband services.¹² NCTA encourages the Commission to consider all services that meet the statutory definition of advanced telecommunications capability in making the required statutory assessment. The statute itself compels the Commission to consider the availability of advanced telecommunications capability “without regard to any transmission media or technology.”¹³ Pursuant to this language, the availability of mobile broadband or any other technology that meets the definition of advanced telecommunications capability should be examined for purposes of the Commission’s analysis under Section 706.

Moreover, even if such an approach was not compelled by the statute, any analysis that excludes broadband services used by hundreds of millions of consumers would be “incomplete and flawed.”¹⁴ In the *2018 Report*, the Commission found that mobile service is not a complete substitute for fixed service, but it acknowledged that both fixed and mobile broadband services “clearly provide[] capabilities that satisfy the statutory definition of advanced telecommunications capability.”¹⁵ We note that services need not have identical characteristics to be considered substitutes,¹⁶ but at a minimum the Commission should take into account that millions of consumers choose to rely solely on mobile broadband services even where they have

¹² *Notice* ¶¶ 9-11.

¹³ 47 U.S.C. § 1302(d)(1).

¹⁴ *2018 Report* ¶ 17.

¹⁵ *Id.* ¶ 18.

¹⁶ *See, e.g., Citizens Tele. Co. v. FCC*, Case No. 17-2296, et al., slip op. at 27 (8th Cir. Aug. 28, 2018) (“As the intervening cable stakeholders observed, the fact that their services are not the same as BDS does not undermine the other fact that cable services are increasingly functioning as substitutes for BDS anyway.”).

the option to purchase fixed services,¹⁷ and that this number appears poised to increase as 5G wireless services are deployed.

CONCLUSION

The Commission should adopt the recommendations described in these comments and conclude that advanced telecommunications capability is being deployed in a reasonable and timely fashion.

Respectfully submitted,

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September 17, 2018

¹⁷ 2018 Report ¶ 17.