

**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 )

To: The Commission

**REPLY COMMENTS OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, hereby replies to the initial Comments filed in response to the Notice of Inquiry (“*NOI*”) in the above-captioned proceeding.<sup>1</sup> WISPA notes that there is strong support in the record for maintaining the Commission’s current speed standard for advanced communications capability, as proposed in the *NOI*. Moreover, WISPA strongly opposes the technology-specific proposal made by the Fiber to the Home Council Americas (“FTTH Council”) that all-fiber network deployment, instead of speed, should serve as a benchmark for advanced telecommunications capability,<sup>2</sup> as well as Netflix’s self-serving

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

<sup>2</sup> Comments of the Fiber to the Home Council Americas on the Twelfth Broadband Progress Notice of Inquiry, GN Docket No. 16-245 (filed Sept. 6, 2016) (“FTTH Council Comments”).

proposal to introduce regulation of data caps and other usage-based pricing plans under the guise of promoting high-quality broadband access.<sup>3</sup>

## Discussion

### I. THE RECORD SUPPORTS MAINTAINING THE CURRENT SPEED BENCHMARK FOR ADVANCED COMMUNICATIONS CAPABILITY.

In its initial Comments, WISPA demonstrated that the Commission's 25/3 Mbps speed standard for evaluating the availability of advanced telecommunications capability is appropriate and should not be altered.<sup>4</sup> There is strong support for this view among a broad range of other commenting parties, including service providers, equipment providers, trade groups, and public interest organizations.<sup>5</sup> For example, the National Cable & Telecommunications Association ("NCTA") states that the service benchmarks should be based on the current state of deployment, using "a benchmark that accurately reflects the capabilities that consumers need to support popular applications."<sup>6</sup> Accordingly, it comments that as the Commission has "very recently instituted a dramatic change to the definition of 'advanced telecommunications capability,' the Commission should not again move the goalposts."<sup>7</sup> Similarly, ADTRAN explains that "if anything, the 25/3 Mbps benchmark was too high, given the statute's definition of "advanced

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<sup>3</sup> Comments of Netflix, Inc., GN Docket No. 16-245 (filed Sept. 6, 2016 ("Netflix Comments")).

<sup>4</sup> Comments of the Wireless Internet Service Providers Association, GN Docket No. 16-245 (filed Sept. 6, 2016) ("WISPA Comments").

<sup>5</sup> See, e.g., Comments of ADTRAN, Inc., GN Docket No. 16-245, at 7-8 (filed Sept. 6, 2016) ("ADTRAN Comments"); Comments of Hughes Network Systems, LLC, GN Docket No. 16-245, at 6-7 (filed Sept. 6, 2016); Comments of the National Cable & Telecommunications Association, GN Docket No. 16-245, at 2-4 (filed Sept. 6, 2016) ("NCTA Comments"); Comments of TechFreedom, GN Docket No. 16-245, at 8- 12 (filed Sept. 6, 2016) (arguing that, if anything, the 25/3 Mbps benchmark is set too high).

<sup>6</sup> NCTA Comments at 3.

<sup>7</sup> *Id.* at 1.

telecommunications capabilities," the Commission's interpretation of that term, consumer adoption rates for high speed services, and consumer demand for services such as 4K TV.”<sup>8</sup>

There is therefore no basis upon which the Commission could reasonably conclude that the time is ripe for a further increase in the Section 706 speed benchmark.

Many parties also agree with WISPA that no purpose would be served by attempting to adopt a longer-term, aspirational speed standard for advanced services.<sup>9</sup> As ADTRAN notes, “[f]or the Commission to speculate on future services, and what speeds will be necessary to support them and whether current deployment plans are on track to meet those demands, simply requires too much guesswork by the Commission.”<sup>10</sup> NCTA further explains 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>11</sup> Accordingly, the Commission should reject this possibility as raised in the *NOI*.

## **II. THE COMMISSION SHOULD NOT CONSIDER THE DEPLOYMENT OF ALL-FIBER NETWORKS TO BE A BENCHMARK FOR ADVANCED TELECOMMUNICATIONS CAPABILITY.**

Parroting comments that it has made previously, the FTTH Council “again submits that the Commission should cease using speed as a benchmark for advanced telecommunications capability and instead adopt the more relevant, objective metric, one based on network infrastructure: are all-fiber networks being deployed to all Americans in a reasonable and timely

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<sup>8</sup> ADTRAN Comments at 7.

<sup>9</sup> See WISPA Comments at 4.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> NCTA Comments at 3, *citing* Comments of the National Cable & Telecommunications Association, GN Docket No. 15-191, at 6-7 (filed Sept. 15, 2015).

fashion?”<sup>12</sup> It reiterates the opinion that “any fixed speed benchmark becomes stale as soon as it [is] established, forcing the Commission to constantly move the goalposts of its Section 706(b) analysis” and that such an evolving speed benchmark “creates uncertainty.”<sup>13</sup> It further adds that “only all-fiber networks provide the performance and scalability necessary to meet consumer bandwidth demands well into the future”<sup>14</sup> and that as “the market for wireline broadband services continues its transition to all-fiber networks with unlimited bandwidth, the concept of ‘speed’ as a benchmark is becoming an increasingly outdated proxy for advanced telecommunication capability.”<sup>15</sup>

WISPA continues to strongly oppose the adoption of any “all-fiber deployment” benchmark as a new proxy for advanced telecommunication capability. First, such an approach would plainly be contrary to the language of the statute, which defines the term “advanced telecommunications capability ... *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*.”<sup>16</sup> Accordingly, regardless of what trappings the FTTH Council may use to adorn its annual plea for technology favoritism,<sup>17</sup> there can be no justification for the Commission to

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<sup>12</sup> FTTH Council Comments at 3. *See also* FTTH Council Comments, GN Docket No. 15-191, at 3 (filed Sept. 15, 2015) (“FTTH Council 2015 Comments”) and FTTH Council Comments, GN Docket No. 14-126 at 2 (filed Sept. 4, 2014) (almost identical language).

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> Telecommunications Act of 1996, Section 706(c)(1), codified at 47 U.S.C. § 1302(d)(1) (emphasis added).

<sup>17</sup> *See* FTTH Council Comments at 3-6 nn.5-14 (substituting new footnote material in lieu of material cited in its 2015 Comments). *Compare* FTTH Council 2015 Comments at 3-5 nn.5-13.

ignore the express statutory language and adopt a technology-specific benchmark to the exclusion of other technologies, both present and future, that enable users to transmit and receive high-quality content.

Second, as described in the foregoing section, it is simply inaccurate to contend that “any fixed speed benchmark becomes stale” immediately and that the Commission is therefore compelled “to constantly move the goalposts.” The Commission’s benchmarks are informed by data and evolve incrementally as new or updated applications develop, as service providers build or upgrade their facilities, and as consumers adjust over time to these changes in the broadband marketplace. As this year’s commenters suggest, the notion that these standards are in constant flux is mistaken.

Finally, it bears noting that the Commission continues to promote policies that advance spectrum-based broadband services,<sup>18</sup> which can be especially appropriate for providing broadband service to rural areas, where it is not – and may never be – cost-effective to provide fiber to every home, farm and business. As Deere observes, “agricultural producers, service providers, and equipment suppliers are intensely interested in expediting the deployment of high-speed fixed and mobile broadband services to rural areas where, by definition, farming, ranching, and other agricultural operations are concentrated.”<sup>19</sup> Commission policies should strive to encourage broadband deployment to rural and other underserved areas using the broad menu of technology options that are available, taking a balanced approach rather than seeking to put broadband consumers on an “all fiber” diet.

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<sup>18</sup> See, e.g., *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, 31 FCC Rcd 5011 (2016) (adopting Order on Reconsideration and Second Report and Order with respect to additional spectrum made available for shared wireless broadband use).

<sup>19</sup> Comments of Deere & Company, GN Docket No. 16-245, at 3 (filed Sept. 6, 2016).

### **III. THE COMMISSION SHOULD NOT CONSIDER DATA CAPS IN EVALUATING THE DELIVERY OF HIGH QUALITY TELECOMMUNICATIONS CAPABILITY.**

Netflix advances its own self-serving and statutorily-infirm proposal to modify the characterization of “advanced telecommunications capability.” It argues that data caps and other forms of usage-based pricing must be regulated as a means of promoting advanced telecommunications capability because such variable billing practices may “discourage a consumer’s consumption of broadband, and may impede the ability of some households to watch Internet television in a manner and amount they would like.”<sup>20</sup> This is so, according to Netflix, because variable pricing may make it “more expensive to watch Internet television.”<sup>21</sup>

Section 706, however, makes plain that the appropriate analysis of “advanced telecommunications capability” is based on the availability of “high-quality voice, data, graphics, and video telecommunications.”<sup>22</sup> In other words, the inquiry relates to the overall quality of service available, not the quantity of service that individual consumers may use. Netflix’ proposal, however, is entirely divorced from Section 706’s focus on promoting overall service quality. A recalibrated emphasis defining “advanced” capability based on the capacity of video “binge-watchers” to engage freely in voracious data consumption would be the equivalent of the Michelin Guide suddenly announcing that restaurants desiring to maintain starred review status must henceforth offer an all-you-can-eat buffet. In broadband, as in dining, such a policy would be a prescription for advancing quantitative consumption, which is good for Netflix, at the expense of qualitative service, which is bad for consumers and contrary to the language of

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<sup>20</sup> Netflix Comments at 4. *See also* Comments of the Utilities Technology Council, GN Docket No. 16-245, at 8 (filed Sept. 6, 2016) (“it would be appropriate for the Commission to recognize data caps as a barrier to broadband adoption, and recommend policies to eliminate them”).

<sup>21</sup> Netflix Comments at 5.

<sup>22</sup> Telecommunications Act of 1996, Section 706(c)(1), *codified at* 47 U.S.C. § 1302(d)(1).

Section 706. Accordingly, Netflix' proposal would be contrary to the public interest, and should be rejected.

Rather than interfering in the market for broadband services by attempting to regulate service provider's usage and pricing policies, the Commission should do what it has always done where competition exists and leave such business decisions to marketplace behavior.<sup>23</sup> To the extent that unlimited data use at a flat service rate is important to some consumers, they can be expected to seek out service providers that accommodate this type of heavy usage. Other consumers that seek a high quality broadband experience at the most affordable price may prefer bandwidth-limited plans that comport with their lower usage habits. The choice of one service provider over the other in this context is wholly unrelated to whether the service provided is considered "advanced."

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<sup>23</sup> See, e.g., *Business Data Services in an Internet Protocol Environment, et al.*, 31 FCC Rcd 4723, 5000 (2016), Statement of Chairman Tom Wheeler ("Competition means that consumers are better off; that our economy gets stronger and - very importantly - that government can take a backseat to the marketplace").

### **Conclusion**

In undertaking its Section 706 obligations, the Commission should retain its existing criteria for defining “advanced telecommunications capability.” The Commission should reject the alternative proposals to (1) use the deployment of all-fiber networks as a benchmark for advanced telecommunications capability and (2) regulate data caps and usage based pricing generally as part of the statutory Section 706 analysis.

Respectfully submitted,

### **WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

September 21, 2016

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