

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

In the Matter of)
)
Inquiry Concerning the Deployment of) GN Docket No. 14-126
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**

March 6, 2015

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The Commission has now issued its fourth report in five years stating that broadband is not available to all Americans in a reasonable and timely manner.¹ Amazingly, nowhere in this report does the Commission acknowledge its own role in failing to rectify the alleged problem.² Rather than helping consumers in areas with no broadband at all, for instance, the Commission has spent billions of dollars (and plans to spend billions more) to fund incremental upgrades to phone companies' existing DSL networks. Or rather than establishing a program to promote broadband adoption, the Commission has taken no action at all since implementing an 18-month-long "pilot program" in 2012 to make universal service funds available to low-income Americans for broadband. Not only has the Commission failed to pursue meaningful solutions to these problems, it has exacerbated them by arbitrarily raising the speeds for services it will

¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, FCC 15-10 (rel. Feb. 4, 2015) (*2015 Broadband Progress Report*).

² Indeed, as evidenced by its recently released Annual Performance Report, the Commission holds itself to an entirely different standard than the private sector. The glowing tone of the Annual Performance Report, based on the same developments that are essentially deemed worthless in the *2015 Broadband Progress Report*, is quite remarkable. See Federal Communications Commission, Fiscal Year 2014 Annual Performance Report, at 3 (highlighting growth in connections of 10 Mbps or more and growth in mobile broadband subscriptions), at http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0223/DOC-332180A1.pdf.

define as “broadband” and by imposing Title II regulation on previously unregulated broadband services. Neither of these decisions will do anything to bring faster, cheaper, or more robust broadband services to a single American.³ By taking the steps proposed by the National Cable & Telecommunications Association (NCTA) in these comments, the Commission can begin to redirect its efforts and make real progress in serving consumer needs and achieving the goals established by Congress.

INTRODUCTION AND SUMMARY

In the *2015 Broadband Progress Report*, the Commission concluded that broadband has not been deployed on a “reasonable and timely” basis pursuant to Section 706(b) of the Communications Act.⁴ In particular, the Commission found that 55 million Americans do not have access to broadband, which it defined for the first time as service capable of 25 Mbps downstream and 3 Mbps upstream.⁵ The Commission’s negative conclusion as to the reasonableness and timeliness of deployment echoes a conclusion first reached by the Commission in the *Sixth Broadband Progress Report* back in 2010 (although that Commission defined broadband as 4 Mbps downstream and 1 Mbps upstream).⁶ The Commission reiterated

³ As Commissioner O’Rielly stated, “I am far more concerned about the Americans that will remain unserved as a result of our rules. Forget about an open Internet; they have no Internet. We need to be focused on ways to promote deployment, and not in some roundabout virtuous cycle way, but through proven deregulatory measures.” *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Dissenting Statement of Commissioner Michael O’Rielly at 3.

⁴ *2015 Broadband Progress Report* at ¶ 4.

⁵ *Id.* at ¶¶ 3-4. NCTA does not concede the validity of the 25/3 standard, but since the Commission has determined this is the standard that defines broadband for purposes of section 706, we reference it for purposes of these comments.

⁶ *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 Nos. 09-137, 09-51, Sixth Broadband Deployment Report, 25 FCC Rcd 9556, 9559-60, ¶ 5 (2010) (*Sixth Broadband Progress Report*).

this conclusion in both the *Seventh Broadband Progress Report* in 2011 and the *Eighth Broadband Progress Report* in 2012.⁷

Based on its negative finding regarding the reasonableness and timeliness of deployment, the *2015 Broadband Progress Report* included a Notice of Inquiry seeking comment on how the Commission should implement the directive in Section 706(b) that it “shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”⁸ Surprisingly, the Commission offers no proposals of its own, notwithstanding the years it has spent analyzing broadband deployment issues and its repeated negative findings under Section 706(b).

As explained in these comments, the gaps in broadband deployment identified in the *2015 Broadband Progress Report* are largely attributable to the Commission’s failure to effectively implement many of its own prior recommendations. In particular, the Commission has not implemented the National Broadband Plan’s recommendation to expand the universal service Lifeline program to support broadband, and it has not implemented the Remote Areas Fund that it established to deploy broadband to unserved areas.⁹

⁷ *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, Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, *Seventh Broadband Progress Report and Order on Reconsideration*, 26 FCC Rcd 8008, 8009, ¶ 1 (2011) (*Seventh Broadband Progress Report*); *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, Amended by the Broadband Data Improvement Act*, GN Docket No. 11-121, *Eighth Broadband Progress Report*, 27 FCC Rcd 10342, 10344, ¶ 1 (2012) (*Eighth Broadband Progress Report*).

⁸ 47 U.S.C. §1302(a).

⁹ *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, at 20, 129, 136, 157 n.6, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (Omnibus Broadband Initiative, Mar. 16, 2010) (*National Broadband Plan*); *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17837, ¶¶ 533-38 (2011) (*CAF Order*).

Unfortunately, rather than directing its universal service resources to implementing programs that would make meaningful progress on broadband deployment and adoption (or improving the effectiveness of existing programs that clearly are failing to make such progress), the Commission has perpetuated a regime that continues to favor incumbent DSL providers while largely excluding other providers. Compounding the situation, the Commission's recent adoption of Title II regulation for previously unregulated services will affirmatively harm deployment and adoption. While the Commission has spent its time worrying about whether broadband customers are able to stream nascent 4K programming,¹⁰ it has virtually ignored those who have no broadband whatsoever.

As described in more detail below, NCTA proposes the following steps the Commission immediately should take to fill the gaps identified by the Commission:

- (1) The Commission immediately should revoke its offer to incumbent local exchange carriers (LECs) of exclusive access to over \$10 billion in high-cost universal service support for services that fail to meet the Commission's current definition of broadband. Instead, funding should be offered on a competitively neutral basis to any qualified broadband provider willing to provide service of the speed and quality defined by the Commission.
- (2) The Commission immediately should take steps to implement the Remote Areas Fund that it adopted in the 2011 *CAF Order* but never implemented.
- (3) The Commission immediately should issue a Notice of Proposed Rulemaking to create a broadband Lifeline program, which was first identified as a priority in the 2010 National Broadband Plan.
- (4) An independent third party should examine why progress extending broadband deployment to unserved areas has been so slow given that more than \$28 billion in federal funding has been spent on this goal since the Commission first found that deployment was not reasonable and timely back in 2010.

These proposals would redirect the nation's resources to bringing broadband service to those who need it most. The Commission should adopt them immediately.

¹⁰ 2015 *Broadband Progress Report*, FCC 15-10 at ¶ 47 (adopting 25 Mbps downstream threshold because, according to Netflix, that is what is necessary to stream 4K content).

I. THE COMMISSION SHOULD REVOKE THE RIGHT-OF-FIRST-REFUSAL FOR PHASE II OF THE CONNECT AMERICA FUND AND IMMEDIATELY OFFER ALL PHASE II SUPPORT THROUGH COMPETITIVE BIDDING

To the extent the Commission believes that all Americans should have access to 25/3 Mbps broadband, it is obvious that the Commission must reboot the Connect America Fund (CAF) program so that funding is directed toward achieving that goal as efficiently as possible. Unfortunately, the centerpiece of the current CAF program – the offer of model-based support to incumbent LECs under CAF Phase II – is guaranteed to fail at that goal. In particular, the Commission is preparing to offer incumbent LECs exclusive access to \$10.8 billion in support over six years to build networks capable of delivering 10/1 Mbps broadband.¹¹ In its current form, this program perpetuates the problem identified in the *2015 Broadband Progress Report* because it ensures that millions of Americans will continue to be “unserved” even after billions of dollars are given to incumbent LECs in their areas. To avoid this senseless result, the Commission should revoke the offer of model-based support to the incumbent LECs and immediately take steps to offer all CAF Phase II support under a competitive bidding regime that is open to any broadband provider willing to provide 25/3 Mbps broadband service to areas where that level of service is not available today.

Revoking the exclusive offer of model-based support to incumbent LECs and moving immediately to competitive bidding has numerous advantages. First and foremost, such a policy would ensure that billions of dollars in high-cost support are devoted to making measurable progress on closing the gap identified in the *2015 Broadband Progress Report*. Unless significant changes are made immediately, customers that are unserved today will not have access to 25/3 Mbps broadband when CAF Phase II is completed in 2021. To put it bluntly, if

¹¹ *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order, FCC 14-190, ¶¶ 9, 15, 31 (Dec. 18, 2014).

25/3 Mbps is “table stakes” in 2015,¹² a program that spends over \$10 billion to deliver less than half that level of speed six years from now is a colossal waste of consumers’ money.

Allowing all broadband providers capable of providing 25/3 Mbps service immediately to bid for CAF Phase II support will attract participation from a variety of technologies, not just DSL providers. For example, cable operators today have no problem meeting the 25/3 Mbps threshold using DOCSIS 3.0 technology. Moreover, some operators already are starting to introduce speeds of 1 Gbps and these offerings will start to become commonplace over the next few years as operators begin to introduce DOCSIS 3.1 equipment. Similarly, if the Commission offers over \$10 billion through competitive bidding, fiber-to-the-home (FTTH) providers may find that it makes sense to participate. While major FTTH providers like Google Fiber have so far deployed facilities only in high-density urban areas, the availability of so much support under a competitive bidding model may turn the business case for future investment in rural areas from negative to positive.¹³

The Commission’s limited experience with a more competitive approach to distributing support in the context of the Rural Broadband Experiments (RBE) demonstrates that such an approach could result in significant savings to the high-cost program. The bids for RBE projects were less than half the cost estimated by the Commission’s cost model to serve those same areas.¹⁴ Applying this model to the entire CAF Phase II program and eliminating support in areas already served by an unsubsidized provider offers the possibility of billions of dollars in

¹² *2015 Broadband Progress Report*, FCC 15-10, Statement of Chairman Tom Wheeler at 2.

¹³ See Fiber-To-The-Home Council Americas’ Petition for Rulemaking to Establish A Gigabit Communities Race-To-The-Top Program, WC Docket No. 10-90, RM-11703 (July 23, 2013) (proposing the use of CAF money to fund gigabit networks in Tier II and III markets).

¹⁴ Notes from the Sandbox - The Rural Broadband Experiment Auction Results, Blog post by Jonathan Chambers, Chief, Office of Strategic Planning and Policy Analysis, Federal Communications Commission, <http://www.fcc.gov/blog/notes-sandbox-rural-broadband-experiment-auction-results> (Dec. 24, 2014).

savings, which could be used to fund other aspects of the Commission’s universal service programs, including the Remote Areas Fund and broadband Lifeline programs discussed below.

II. THE COMMISSION IMMEDIATELY SHOULD TAKE STEPS TO IMPLEMENT THE REMOTE AREAS FUND

A key finding of the National Broadband Plan was that it would be prohibitively expensive to deliver terrestrial broadband services to the most remote homes in the United States.¹⁵ The Commission recognized that satellite or fixed wireless services made far more sense for these remote areas, and adopted a Remote Areas Fund (RAF) that would be used to support the deployment of broadband in extremely high-cost areas where a reasonable level of subsidies would be insufficient to attract wireline investment.¹⁶

Notwithstanding the Commission’s thorough understanding of how best to bring broadband to the most remote parts of the nation, the Commission has yet to spend a single dollar to support deployment in areas that will be covered by the RAF in the three years since adopting the *CAF Order*.¹⁷ To rectify this situation, the Commission immediately should find that areas that do not attract a bid for service at the 25/3 Mbps threshold will be eligible for the RAF bidding process, which should incorporate a less robust definition of broadband that would enable participation from alternative technologies such as fixed wireless and satellite.

Immediately implementing the RAF will produce significant benefits. While the Commission now defines broadband using the 25/3 Mbps threshold so as to exclude wireless and satellite services, there is no doubt that having any one of these services available is vastly

¹⁵ *National Broadband Plan* at 138 (estimating a cost of \$56,000 per home to reach the most expensive 250,000 homes).

¹⁶ *CAF Order*, 26 FCC Rcd at 17837-38, 18092-93, ¶¶ 533-34, 1224.

¹⁷ See *Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 14-190 (rel. Dec. 18, 2014), Concurring Statement of Commissioner Michael O’Rielly at 1 (“Moreover, I’ve seen no evidence of any work on the Remote Areas Fund – the backstop to provide service in areas that aren’t claimed by an incumbent or at auction.”).

preferable to having none of them available. In the most remote areas, where CAF funding is insufficient to attract wireline investment, the Commission should take the view that slower broadband – which is largely capable of meeting most Internet users’ needs today – is better than no broadband.

III. THE COMMISSION IMMEDIATELY SHOULD TAKE STEPS TO IMPLEMENT A BROADBAND LIFELINE PROGRAM

Another key finding of the National Broadband Plan is that many customers will not adopt broadband even if it is widely available where they live.¹⁸ Research has demonstrated that there are a variety of factors that motivate the decision not to adopt broadband.¹⁹ While the majority cite relevance as the most important reason for non-adoption, a subset cite price (including the cost of obtaining a computer or other device) as the main reason for whether or not they subscribe.²⁰

The cable industry has worked diligently to develop programs to promote broadband adoption. Comcast’s Internet Essentials program is the nation’s largest and most comprehensive broadband adoption program, offering low-cost broadband service, an option to purchase a computer for less than \$150, and access to free digital literacy training.²¹ Since 2011, Comcast’s innovative program has connected more than 350,000 families, or about 1.4 million low-income

¹⁸ *National Broadband Plan* at 168-69.

¹⁹ *See, e.g.,* Carere, McGovern, Noriega, Schwarz, *The Willingness to Pay for Broadband of Non-Adopters in the U.S.: Estimates from a Multi-State Survey*, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2375867 (Nov. 18, 2014); Kathryn Zickuhr, *Pew Research Center Report, Who’s Not Online and Why*, <http://www.pewinternet.org/2013/09/25/whos-not-online-and-why/> (Sept. 25, 2013) (Pew Research Adoption Report).

²⁰ *Pew Research Adoption Report* (finding that 19% of Internet non-users cite price as the main factor).

²¹ *Comcast Internet Essentials, Program Highlights, July 2014*, at https://www.internetessentials.com/sites/internetessentials.com/files/reports/fcc_executive_summary_bifold_080114.pdf.

Americans, to the power of the Internet.²² A number of other cable operators, including Cox, Bright House, Mediacom and Suddenlink, offer discounted broadband service to low-income consumers through the Connect2Compete program.²³

As compared to these private sector adoption initiatives, the efforts made by the Commission over the last five years have been decidedly lackluster. In 2012 the Commission authorized a small number of test projects related to the use of Lifeline funding for broadband,²⁴ but it has released no information about the results of those trials and it has done nothing to move forward with a permanent program. More recently, Commissioner Clyburn announced a series of principles to guide the development of a broadband Lifeline program.²⁵ Commissioner Rosenworcel also expressed the need to update Lifeline for the broadband era.²⁶ Notwithstanding the wide support that has been expressed for such a program,²⁷ the Commission has yet to act.

To rectify this situation, it is long past time for the Commission to issue a Notice of Proposed Rulemaking to establish a broadband Lifeline program. NCTA generally supports moving forward with an effective broadband Lifeline program provided that support from such a program is made available to any qualified broadband provider. The Commission should not

²² *Id.*

²³ See Connect2Compete, About Us, at <http://everyoneon.org/about/c2c/>.

²⁴ *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6794-95, ¶¶323-25 (2012).

²⁵ Commissioner Mignon Clyburn, “Reforming Lifeline for the Broadband Era,” Speech before the American Enterprise Institute, https://apps.fcc.gov/edocs_public/attachmatch/DOC-330453A1.pdf (Nov. 12, 2014).

²⁶ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket Nos. 13-184 and 10-90, Second Report and Order and Order on Reconsideration, FCC 14-189, Statement of Commissioner Jessica Rosenworcel (Dec. 19, 2014).

²⁷ See, e.g., Comments of AT&T, WC Docket No. 11-42, at 19-20 (Apr. 21, 2011); Comments of Comcast Corporation, WC Docket No. 11-42, at 3 (Apr. 21, 2011); Comments of Cox Communications, Inc., WC Docket No. 11-42, at 10 (Apr. 21, 2011); Comments of Verizon and Verizon Wireless, WC Docket No. 11-42, at 4-5 (Apr. 21, 2011).

repeat the mistake it made with high-cost support and tilt the playing field in favor of incumbent LECs.

IV. AN INDEPENDENT THIRD PARTY SHOULD EXAMINE WHY MASSIVE FEDERAL FUNDING HAS PRODUCED SO LITTLE PROGRESS ON RURAL BROADBAND DEPLOYMENT

The Commission first reached the conclusion that broadband deployment was not reasonable and timely back in 2010. Between high-cost universal service support and ARRA stimulus funding, roughly \$28 billion has been spent by federal agencies over the last five years,²⁸ yet the Commission once again has concluded that there are significant gaps in broadband deployment. Accordingly, in addition to the Commission making the prospective policy changes recommended above, it is critical that an independent third party perform a post-mortem and determine why so much federal spending has produced such paltry results.

From NCTA's perspective, there are three central flaws that characterize virtually every federal broadband support program – a failure to fully embrace competition, a failure to focus support on unserved areas, and a failure to be transparent about how money is being used. The absence of competition in the Commission's universal service high-cost support program is striking. With the exception of the \$100 million Rural Broadband Experiments program, virtually all of the Commission's high-cost support programs are designed to favor incumbent LECs over all other providers. The Commission provides rate-of-return LECs with roughly \$2 billion each year in exclusive access to support. The CAF programs that have been implemented to date all have given price cap LECs exclusive or preferred access to funding, while these carriers have also received billions of dollars in "legacy" high-cost support that includes no

²⁸ Specifically, the American Recovery and Reinvestment Act of 2009 (ARRA) included \$4.7 billion for the Broadband Technology Opportunities Program (BTOP) administered by NTIA and \$2.5 billion for the Broadband Initiatives Program (BIP) administered by RUS, while the Commission has distributed roughly \$21 billion in high-cost support. RUS separately administers broadband and telecommunications loan programs that provide billions of dollars in additional funding.

obligation to deploy new broadband facilities. More than three years after adopting major reforms to the high-cost program, it is inexcusable that the Commission has not more fully embraced competition. The failure to look beyond the incumbent LECs means that consumers in rural areas are stuck with DSL networks that are far less capable than the networks that might have been available if support had been offered to cable operators and FTTH providers under a competitive model.

Another significant reason more progress has not been made in achieving the goal of universal broadband access is that the Commission and RUS continue to provide support in areas that already are served, rather than focusing exclusively on areas that are unserved. To its credit, the Commission has made progress on this issue in the CAF context, where most support has been directed to areas where unsubsidized providers are not already offering service. But no such progress has been made in areas served by rate-of-return LECs, where the Commission continues to provide support on a study area basis with little regard to the level of competition. Funding administered by RUS suffers from many of these same problems. The BIP program awarded funding in areas where a majority of customers already had access to broadband and the agency's loan programs follow a similar approach.²⁹

All of these problems are compounded by an almost complete lack of transparency on the part of both RUS and the Commission as to how and where funding is spent and what recipients do with that money. Despite repeated admonishment from GAO,³⁰ and repeated assurances that

²⁹ See, e.g., Eisenach and Caves, *Evaluating the Cost-Effectiveness of RUS Broadband Subsidies: Three Case Studies* (April 2011), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1809002.

³⁰ See GAO -14-587, *FCC Should Improve the Accountability and Transparency of High Cost Program Funding* (July 2014) (2014 GAO USF Report); GAO-14-511, *USDA Should Include Broadband Program's Impact in Annual Performance Reports* (June 2014) (2014 GAO RUS Report). These are only the two most recent reports criticizing the accountability and transparency of these programs. Both agencies have been the subject of numerous GAO reports over the last few years, none of which seem to produce improvements.

improvements are coming,³¹ the public is still largely in the dark about these programs even in the face of significant questions about their effectiveness.³² In 2015, there is no reason that agencies handing out billions of taxpayer dollars every year should be providing so little information to the public about what that money is supposed to accomplish and whether it is being used effectively.

³¹ 2014 GAO USF Report at 48; 2014 GAO RUS Report at 22.

³² See, e.g., Politico Magazine, *The Government Loan Program with a 116 Percent Default Rate* (Feb. 24, 2015) (“It’s hard for insiders and nearly impossible for outsiders to figure out how much various programs will cost.”).

CONCLUSION

After years of studying broadband issues, promoting rural broadband deployment should be a relatively straightforward economic problem for the Commission to address. As the National Broadband Plan found, the key is to (1) identify areas where there is no business case for broadband deployment at the requisite speed; (2) use competitive bidding to offer the minimum level of support necessary to incent such deployment on a technologically neutral basis; and (3) support meaningful alternatives, such as satellite and fixed wireless, for the most remote homes that are prohibitively expensive to serve at the requisite speeds.³³ The National Broadband Plan also recognized that a multi-faceted strategy, including a broadband Lifeline program, would be needed to promote broadband adoption.³⁴

Had the Commission followed such an approach immediately upon first concluding that deployment was insufficient under Section 706(b), the nation would be far closer to achieving the goal of universal access to broadband than it is today. By taking the steps recommended in these comments, the Commission can put the country back on track for achieving the goals established by Congress.

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³³ *National Broadband Plan* at 138, 145.

³⁴ *Id.* at 172.