

**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. 15-191
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

**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 comments on certain aspects of the Notice of Inquiry (“*NOI*”) in the above-captioned proceeding.¹

Introduction

WISPA is the trade association of more than 850 members that represents the interests of wireless Internet service providers (“WISPs”) that provide IP-based fixed wireless broadband services to consumers, businesses and anchor institutions across the country. WISPs primarily use unlicensed spectrum in the 900 MHz, 2.4 GHz and 5 GHz bands and lightly-licensed 3.65 GHz spectrum to deliver last-mile broadband and voice services. By using unlicensed spectrum,

¹ *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*, Eleventh Broadband Progress Notice of Inquiry, GN Docket No. 15-191, FCC 15-101 (rel. Aug. 7, 2015) (“*NOI*”). See also *Order*, GN Docket No. 15-191, DA 15-923 (rel. Aug. 13, 2015) (extending comment and reply comment deadlines to September 15, 2015 and September 30, 2015, respectively).

WISPs can deploy fixed broadband and voice services quickly with relatively lower infrastructure costs and reduced barriers to entry to enable high-quality and affordable service in unserved, underserved and competitive areas. For backhaul and middle-mile connectivity, WISPs use unlicensed spectrum, licensed spectrum and fiber based on availability, capability and cost. WISPA estimates that WISPs serve more than 3,000,000 people, many of whom reside in rural, unserved and underserved areas where wired technologies like FTTH, DSL and cable Internet access services may not be available. The vast majority of WISPs are small businesses, many of which have only a handful of employees.

WISPA regularly participates in rulemaking and other proceedings before the Commission on issues such as open Internet regulation, spectrum availability and universal service (“USF”) reform. WISPA’s overriding focus is on promoting opportunities for small fixed wireless broadband providers by easing onerous regulations, seeking additional spectrum resources and ensuring a level playing field in USF and other subsidy programs.

Discussion

I. BECAUSE FIXED AND MOBILE BROADBAND MEET DIFFERENT CONSUMER NEEDS, BOTH SHOULD BE AVAILABLE IN ORDER TO SATISFY SECTION 706

WISPA agrees with the Commission that “fixed and mobile broadband appear to meet different consumer needs.”² In addition to the factors cited by the Commission that contrast the download speeds and data caps of fixed and mobile broadband,³ WISPA has previously commented that

² *NOI* at ¶ 8.

³ *See id.* at ¶¶ 10-14.

Mobile broadband is expensive to build, does not deliver the same quality of service as fixed broadband and is several times more expensive for end users when factoring in mobile broadband data caps. And while mobile wireless may be useful for Twitter, email and light web browsing, it simply cannot meet the full-featured broadband needs of consumers who need to look for a job, upload a resume or edit documents.⁴

The Commission must not lose sight of these threshold distinctions, as well as the fact that there are still millions of Americans who cannot receive fixed broadband in their homes.⁵ For these consumers, mobile broadband is an inadequate substitute – it does not enable home-based businesses, online educational opportunities, video streaming or other applications that consumers in urban and suburban areas take for granted.

To determine whether and to what extent advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion, the Commission must treat the fixed and mobile markets separately. There are many areas of country where a consumer may be able to access mobile broadband, but may not be able to obtain access to fixed broadband services. The Commission's USF rules recognize this truism by establishing separate funding programs for each platform. This policy should not be disturbed.⁶

To this end, the Commission should take additional steps to make it easier for broadband providers to deploy service to unserved areas. Since 2011, the Commission has authorized a

⁴ Comments of WISPA, WC Docket No. 10-90, *et al.* (filed Aug. 8, 2014) at 7.

⁵ *See NOI* at ¶ 13. The *NOI* cites sources indicating that between 5-10 percent of homes have mobile broadband service but not fixed service. *See id.* at n.29. This “small portion” equates to 15-30 million people that lack fixed broadband service, whether by choice or by lack of availability. *Id.*

⁶ In footnote 17 of the *NOI*, the Commission compares the performance characteristics of certain kinds of fixed broadband technologies – FTTP, cable, DSL and satellite. *See NOI* at n.17. Nowhere, however, does the Commission make any effort to discuss the attributes of fixed wireless technologies such as those used by WISPs to serve more than 3,000,000 people. Any discussion of the fixed broadband marketplace that excludes fixed wireless technologies is by definition flawed, incomplete and, thus, unreliable.

Remote Areas Fund (“RAF”) to provide support to “extremely high cost” areas.⁷ Now that the Commission has completed its cost model, learned from the rural broadband experiment program, established CAF Phase II support areas for price cap carriers and begun work on a rate-of-return support program, the Commission should turn its attention to the RAF for those areas that are hardest to serve and, presumably, require the highest level of support.⁸

II. THE COMMISSION SHOULD RETAIN EXISTING BENCHMARKS FOR FIXED TERRESTRIAL SERVICE

Speed. Just last year, and despite significant disagreement in the record, the Commission increased the speed benchmark to 25 Mbps/3 Mbps to define “advanced telecommunications capability” for fixed terrestrial services.⁹ The Commission proposes to retain this benchmark.¹⁰ WISPA agrees that the Commission should not further increase this benchmark, but rather should ensure that its policies are designed to meet the objectives of Section 706 – encouraging deployment of advanced telecommunications capabilities to *all* Americans – *before* it raises the bar yet again. Even at slower download speeds of 5-10 Mbps, WISP customers can simultaneously stream one or two videos without running up against a data cap. This supports the view the 25/3 Mbps standard does not have a market basis, and certainly should not be increased.

⁷ *Connect America Fund*, 26 FCC Rcd 17663, 17837-39 (2011).

⁸ *See, e.g., NOI*, Statement of Commissioner Michael O’Rielly at 2.

⁹ *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*, 30 FCC Rcd 1375, 1377, 1398-1408 (2015).

¹⁰ *See NOI* at ¶ 24.

Moreover, adopting a standard that favors even faster download speeds ignores the Commission's legal obligation to promote access and adoption of broadband services to those millions of Americans that continue to lack basic fixed broadband in their homes. Were it to raise the bar at this time, the Commission instead would be setting the stage to enable large, billion-dollar companies to seek even more subsidies to overbuild their own networks – many of which were built with federal USF support in the first place.

Latency. The Commission also seeks input on whether to adopt a latency standard for fixed terrestrial service.¹¹ In comments filed in connection with the CAF Phase II rules,¹² WISPA did not object to using of 100 milliseconds as a criterion for support eligibility, measured as a round-trip from the input device to the Internet core.¹³ WISPA does not believe there is sufficient basis for the Commission to now reject that standard – made with the benefit of a complete record in a rulemaking proceeding – and adopt some different standard.

Consistency. The Commission asks whether speed and latency consistency should be elements of its definition of advanced telecommunications capability for fixed terrestrial service.¹⁴ While a consistency standard may be appropriate in the context of determining whether a particular statement about a provider's advanced telecommunications capability criteria may be true, WISPA believes that including such a metric in the Section 706 context would be of little use and would be difficult to assess. Instead of requiring this information from all providers, the Commission should invite comment on whether its Part 54 reporting

¹¹ See *id.* at ¶ 35.

¹² See Comments of WISPA, WC Docket No. 10-90, *et al.* (filed Aug. 8, 2014) at 6 n.16.

¹³ See *NOI* at n.75.

¹⁴ See *id.* at ¶ 43.

requirements should be amended for CAF Phase II recipients.¹⁵ Those providers that are found to have falsely advertised their broadband capabilities are subject to false advertising rules, and should not also be subject to whatever sanctions the Commission might adopt to enforce an unnecessary and duplicative consistency requirement.

Other Factors. WISPA believes that the Commission should continue to consider pricing and data allowances as additional factors to determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely manner.¹⁶ It is appropriate for the Commission to continue to track this information going forward in order to monitor whether providers are offering broadband at fair and reasonable prices, which may help determine the extent to which broadband is being adopted in certain areas. The Commission must not, however, use pricing information as a basis to regulate prices.

¹⁵ *See, e.g.*, 47 C.F.R. § 54.313. WISPA has urged the Commission to exempt small businesses that receive CAF Phase II support from any speed and latency measurement requirements that impose additional costs and burdens on them. *See* Comments of WISPA, WC Docket No. 10-90 (filed Dec. 22, 2014).

¹⁶ *See NOI* at ¶ 50.

Conclusion

In undertaking its Section 706 obligations, the Commission should continue to treat fixed and mobile broadband as different services and retain its existing criteria for defining “advanced telecommunications capability.”

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

September 15, 2014

By: */s/ Alex Phillips, President*
/s/ Mark Radabaugh, FCC Committee Chair
/s/ Jack Unger, Technical Consultant

Stephen E. Coran
Deborah J. Salons
Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006-1809
(202) 416-6744
Counsel to the Wireless Internet Service Providers Association