

**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 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. 15-191

COMMENTS OF WINDSTREAM SERVICES, LLC

Windstream Services, LLC (“Windstream”) herein provides comments in response to the Federal Communications Commission *Eleventh Broadband Progress Notice of Inquiry* (“*NOI*”) in the above-referenced proceeding.¹ The Commission contemplates that, when it makes its annual report on “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion,” as required by Congress in Section 706 of the Telecommunications Act of 1996, it might define “advanced telecommunications capability” as including access to both fixed and mobile broadband meeting its benchmark standards. Putting aside whether such a definition would be consistent with the statute,² it would undoubtedly be premature.

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*, GN Docket No. 15-191, Eleventh Broadband Progress Notice of Inquiry (rel. Aug. 7, 2015) (“*NOI*”).

² “Advanced telecommunications capability” is defined in the statute “without regard to any transmission media or technology.” *See* 47 U.S.C. § 1302(d)(1). Thus, the plain language of

Before the Commission can begin to decide such a fundamental question regarding the role of mobile broadband in today’s society and the relationship between fixed and mobile broadband services, it must develop a standardized, comprehensive testing regime for mobile broadband that is analogous to the Measuring Broadband America regime for fixed broadband. Only after the Commission has established such a testing program and examined usage patterns and the extent to which consumers use cellular service versus Wi-Fi can it come to informed conclusions regarding whether mobile broadband is a complement or a substitute to fixed service. Moreover, the Commission should refrain from imposing additional criteria and benchmarks for analyzing the availability of fixed broadband until it has developed the ability to test for such criteria with regard to mobile service and can apply benchmarks in a competitively neutral manner.

I. THE QUESTIONS IN THE NOI HIGHLIGHT THE NEED FOR THE COMMISSION TO ESTABLISH A COMPREHENSIVE, STANDARDIZED TESTING REGIME FOR MOBILE BROADBAND.

Before the Commission can determine the role of mobile broadband in the provision of advanced telecommunications capability—including the fundamental question of whether “advanced telecommunications capability” is only present where a consumer has access to both fixed and mobile broadband—the Commission must focus on developing a standardized and comprehensive testing regime for mobile broadband that is analogous to the Measuring Broadband America regime for fixed broadband services.

the statute seems to suggest that access to any such capability, regardless of how it is provided, satisfies the examination.

More than five years ago, the National Broadband Plan called for “more transparent and standard disclosures of coverage, speeds, and performance for mobile networks.”³ In its annual Section 706 Reports, the Commission has for years been raising “concerns about the quality and reliability” of available data on mobile and satellite services.⁴ Nevertheless, the Commission after years of inaction and still more years of discussion, have only come up with a mobile testing regime that does not produce reliable data or enable providers to make accurate disclosures regarding network performance. The Measuring Broadband America program for mobile broadband collects only crowdsourced data, which the Commission notes “comes from a self-selected group of users, and there often is little control for most tests regarding such parameters as when people implement the test, whether the test is performed indoors or outdoors, the geographic location of the tester, and the vintage of the consumer’s device.”⁵ Moreover, the

³ Federal Communications Commission, *Connecting America: The National Broadband Plan* at 147 (rel. March 16, 2010) (“National Broadband Plan”).

⁴ See *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. 10-159, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008, 8023-24, ¶ 26 (2011) (excluding mobile wireless data from the conclusions in the report because of “concern that [the] data do not accurately reflect where mobile wireless subscribers actually are able to obtain service that meets the broadband performance threshold.”). See also *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. 11-121, Eighth Broadband Progress Report, 27 FCC Rcd 10342, 10366-67 ¶¶ 35-40 (2012) (citing “concerns” about mobile data).

⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 13-135, Seventeenth Report, 29 FCC Rcd 15311, 15405, ¶ 191 (2014) (“*Seventeenth Mobile Wireless Report*”). See also NOI at fn.137 (noting that iOS application only permits manual testing, which “can lead to biased results . . . and may provide a less accurate picture of overall broadband performance”).

Commission has acknowledged flaws in the mobile broadband testing methodology for measuring latency, noting that it “may bias subsequent tests toward higher performance.”⁶

Quite simply, the Commission’s existing mobile broadband measurement program does not even come close to providing the Commission with data “actual speeds that can be tied to geographic areas that will allow [it] to evaluate where mobile broadband meeting a particular speed benchmark is and is not being deployed.”⁷ Without such data, how can the Commission even begin to assess the role of mobile broadband and whether access to both mobile and fixed broadband is necessary? And without such an assessment, how can the Commission make reasoned policy findings on a range of issues, including broadband competition levels, universal service reform, and transparency requirements? The many questions raised in this proceeding highlight the need for the Commission to continue to work toward a mobile broadband testing regime that produces a comprehensive, statistically valid picture of mobile broadband performance throughout the United States.

II. THE COMMISSION SHOULD REFRAIN FROM IMPOSING ADDITIONAL CRITERIA AND BENCHMARKS UNTIL IT CAN DO SO IN A COMPETITIVELY NEUTRAL MANNER.

The Commission should refrain from imposing any additional criteria and benchmarks for analyzing the availability of fixed broadband until it has developed the ability to test for such criteria with regard to mobile service and can apply any benchmarks in a competitively neutral manner. As discussed above, the Commission’s priority at this point should be to develop a comprehensive and standardized mobile broadband testing regime that is analogous to the Measuring Broadband America testing program for fixed broadband, and to use such a testing

⁶ *Seventeenth Mobile Wireless Report* at ¶ 206.

⁷ *See NOI* at ¶ 59.

regime to analyze usage patterns and the extent to which consumers use cellular service versus Wi-Fi. From there, if the Commission decides to adopt additional benchmarks, it can do so for both fixed and mobile broadband.

The *NOI* seeks comment on whether the Commission should adopt additional benchmarks for fixed broadband service, such as benchmarks for latency and consistency,⁸ but notes that it “does not currently have granular, geographic data” on such characteristics.⁹ It thus proposes either to use the Measuring Broadband America testing results for fixed broadband as a proxy, or to consider “other data sources or analytical approaches.”¹⁰ The *NOI* also raises the question of whether the Commission should develop different standards for the same characteristics in the mobile context. Again, this line of inquiry highlights the need for the Commission to bring its mobile testing regime on par with the Measuring Broadband America testing program for fixed broadband. Only then will the Commission be able to come to informed conclusions regarding whether different benchmarks are reasonable or warranted. From there, if the Commission deems it necessary or useful to adopt additional benchmarks, it would be able to do so for both fixed and mobile broadband in a competitively neutral way.

CONCLUSION

The Commission in its *NOI* asks a number of fundamental questions regarding the roles of fixed and mobile broadband in today’s society and the relationship between fixed and mobile services in the eyes of consumers. Only through a comprehensive and standardized testing regime for mobile broadband will the Commission be able to answer these questions and make

⁸ *NOI* at ¶¶ 35, 43.

⁹ *Id.* at ¶¶ 36, 43.

¹⁰ *Id.*

informed policy decisions on a variety of issues, including universal service support for mobile broadband and transparency requirements. Therefore, the Commission should prioritize the development of such a testing regime, rather than expanding the existing fixed broadband testing regime or imposing additional benchmarks on fixed broadband.

Respectfully submitted,

Malena F. Barzilai
Eric N. Einhorn
WINDSTREAM CORPORATION
1101 17th St., N.W., Suite 802
Washington, D.C. 20036
(202) 223-7664 (phone)
(330) 487-2740 (fax)

September 15, 2015