

**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)

**COMMENTS OF THE UNITED STATES
TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom) respectfully submits these comments in response to the Federal Communications Commission’s (FCC or Commission) request for input on the current state of broadband deployment and availability.¹ USTelecom and its members, which offer broadband in rural and urban areas across the United States, strongly support policies that promote continued broadband deployment by removing barriers to infrastructure investment. We therefore urge the Commission to refine its approach to this inquiry by focusing first and foremost on removing barriers to infrastructure investment. Also, to better reflect how consumers use broadband and view its “availability,” the Commission should reconsider its methodology for determining “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion”² and use a

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) (*Eleventh Broadband Progress NOI*).

² See 47 U.S.C. § 1302(b). “Advanced telecommunications capability” is defined as “high-speed, switched broadband telecommunications capability that enables users to originate and receive high-

more common sense approach that considers real world conditions and assesses the broadband experience from the consumer's perspective.

I. The Commission Must Prioritize Removal of Barriers To Investment To Achieve Its Broadband Deployment Goals

Broadband providers in the U.S. invested \$78 billion in network infrastructure in 2014, according to a new analysis by USTelecom.³ That number represents a \$3 billion, or 4 percent, increase in investment over 2013 and \$14 billion, or 22 percent, increase over 2009 investment. Yet recent regulatory decisions have increased barriers to broadband investment and innovation.⁴ Moreover, infrastructure investment by broadband providers has recently fallen, and many believe that reduced levels of investment will characterize the industry over the future.⁵ This is a step in the wrong direction that threatens to reverse several years of strong, sustained investment in broadband infrastructure.

quality voice, data, graphics, and video telecommunications using any technology.” 47 U.S.C. §1302(d)(1).

³ See *Broadband Investment Gains Continued in 2014*, USTelecom Research Brief (Jul. 24, 2015) (available at <http://www.ustelecom.org/sites/default/files/documents/Investment-2014-Research-Brief-July-2015.pdf>).

⁴ See, e.g., *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, 30 FCC Rcd 5601 (rel. Mar. 12, 2015) (defining all Internet access services as telecommunications services and subjecting them to burdensome, public utility-style regulations); *Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, FCC 15-97, ¶ 132 (rel. Aug. 7, 2015) (conditioning approval of ILECs' discontinuance of certain legacy enterprise services on their commitment to make wholesale services not currently subject to price regulation available at reasonably comparable prices).

⁵ See Hal Singer, *Does The Tumble In Broadband Investment Spell Doom For The FCC's Open Internet Order?*, Forbes (Aug. 25, 2015) (noting second quarter 2015 declines in capital expenditure by major wireline broadband providers including AT&T, Charter, Cablevision, Verizon, and CenturyLink, ranging from 4 to 29 percent) (available at <http://www.forbes.com/sites/halsinger/2015/08/25/does-the-tumble-in-broadband-investment-spell-doom-for-the-fccs-open-internet-order/>). See also Free State Foundation, *All the Investment We Cannot See* (Sep. 15, 2015) (noting that “infrastructure investment will be less going forward than it otherwise would be absent the FCC's new Internet regulations”) (available at <http://freestatefoundation.blogspot.com/2015/09/all-investment-we-cannot-see.html>).

Ongoing infrastructure investment is essential to meeting the nation’s broadband deployment goals, and regulatory decisions that make it harder or less practical to invest run counter to the purpose of section 706. Congress expressly directed the Commission to remove barriers to investment as the only sustainable way to encourage the nationwide broadband deployment envisioned by section 706.

As noted in our comments to the *2015 Broadband Notice of Inquiry* filed earlier this year, USTelecom’s members have experienced firsthand barriers to broadband infrastructure deployment.⁶ Now, as then, we urge the Commission to take concrete steps to create and sustain a regulatory environment that provides clear incentives for investment, including the removal of barriers and the promotion of facilities-based competition. By doing so, the Commission will ensure that advanced telecommunications capability is “deployed to all Americans in a reasonable and timely fashion.”⁷

Almost one year ago, USTelecom filed with the Commission a petition for forbearance from various outdated regulatory requirements applicable only to incumbent local exchange carriers (ILECs).⁸ As USTelecom explained in its Forbearance Petition, unlike most broadband providers – including cable, wireless, and competitive fiber providers – ILECs are not free to focus their expenditures on next-generation networks designed to deliver the higher-speed

⁶ Comments of the United States Telecom Association, GN Docket No.14-126, at 2 (filed Mar. 6, 2015). These barriers include: (1) outdated legacy regulations that apply only to a subset of wireline telecommunications providers that divert substantial resources away from next generation networks; (2) restrictive local rules and regulations that hamper the roll-out of broadband services; (3) the inability to deploy fiber facilities to multi-dwelling units (“MDUs”) due to uncooperative building owners; and (4) the lack of financial support necessary to subsidize broadband deployment in high-cost areas that are otherwise uneconomic to serve. *Id.* We continue to urge the Commission to eliminate or at least lessen the negative effects of these barriers on infrastructure deployment.

⁷ 47 U.S.C. § 1302(b).

⁸ See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, WC Docket No. 14-192 (filed Oct. 6, 2014).

broadband services customers increasingly crave; instead they “must direct a substantial portion of their expenditures to maintaining legacy networks and fulfilling regulatory mandates whose costs far exceed any benefits.”⁹ This imbalance in regulatory requirements must be remedied.

One way to eliminate a significant barrier to broadband investment would be to grant USTelecom’s Forbearance Petition seeking overdue relief from outdated and costly regulations.¹⁰ This forbearance relief would allow ILECs to redirect investment from legacy telephone networks to next-generation broadband networks,¹¹ which would help the Commission achieve its broadband deployment goals.

Another significant step the Commission could take to eliminate barriers and spur additional broadband infrastructure investment would be to ensure that other regulatory decisions do not make it harder and more costly for ILECs to retire copper and discontinue legacy services and replace them with fiber-based facilities and services. Modern fiber and IP-based networks will bring consumers and businesses untold benefits resulting from faster, more robust connectivity to the Internet, data, and applications. The revenues needed to keep legacy networks and services running could be made available for new broadband infrastructure. Moreover, while compelling ILECs to maintain legacy services so that competitors can piggyback onto those services may prop up *competitors* in the short-term, it does very little to sustain real *competition* in the long-term.

⁹ See *id.* at 3.

¹⁰ See *id.* at 6-7.

¹¹ See FCC, *Connecting America: The National Broadband Plan* at 59 (Mar. 2010) (“Regulations require certain carriers to maintain POTS - a requirement that is not sustainable - and lead to investments in assets that could be stranded. These regulations can have a number of unintended consequences, including siphoning investments away from new networks and services.”); Tom Wheeler, Chairman, FCC, Prepared Remarks at Silicon Flatirons, University of Colorado Law School, Boulder, Colorado at 5 (Feb. 10, 2014) (“[d]ue in part to outdated rules, the majority of the capital investments made by U.S. telephone companies from 2006 to 2011 went toward maintaining the declining telephone network, despite the fact that only one-third of U.S. households use it at all”), *available at* <http://transition.fcc.gov/DailyReleases/DailyBusiness/2014/db0210/DOC-325531A1.pdf>.

More than a decade ago, the Commission recognized that facilities-based competition is essential to long-term and sustained competition, emphasizing the need to encourage and provide incentives for companies to invest in new equipment and facilities to meet the growing consumer demand for high-speed services, which in turn would accelerate broadband deployment.¹² We therefore urge the Commission to refocus on ensuring that it imposes only those regulations necessary to protect consumers, public safety, and other core values, and regulations that create the right incentives, in a minimally regulatory environment, that will allow providers to help achieve the nation’s reasonable broadband deployment goals.

II. The Commission Should Reconsider Its Methodology for Defining and Measuring Advanced Telecommunications Capability

In the *2015 Broadband Progress Report*, the Commission acknowledges that “there is no single standard for what should qualify as advanced service,”¹³ but nevertheless expressly declines to adopt multiple benchmarks at this time, finding that a single benchmark “is the appropriate means to allow us to analyze whether advanced service is being deployed.”¹⁴ A single benchmark, however, does not take into account variations in the richness of broadband offerings, especially among different technologies and geographies, nor does it take into account the fact that consumers use broadband for different purposes, which the Commission

¹² See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 16984 (2003) (“we are very aware that excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology”).

¹³ *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*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, GN Docket No. 14-126, FCC 15-10, ¶ 19 (rel. Feb. 4, 2015) (*2015 Broadband Progress Report*).

¹⁴ *Id.* at ¶ 23.

acknowledges.¹⁵ Going forward, the Commission’s determination of what qualifies as “advanced telecommunications capability” should better account for these variations and different uses.

True adherence to the section 706 statutory purpose, which is to determine whether broadband capability is being deployed on a timely and reasonable basis, does not require use of a single bright-line determination of what constitutes advanced telecommunications capability. One flaw in the current inquiry, for example, is the lack of analysis on whether consumers’ needs are being met by the current deployment of broadband. The Commission should revisit the basic deployment question asked by Congress and determine, based at least in part on consumers’ perspectives, whether the services deployed are capable of delivering high-quality telecommunications as contemplated by Congress (rather than as measured against an unrealistic single scenario of multiple persons in one household simultaneously engaging in multiple bandwidth-intense activities). We suspect that such an inquiry would yield a resounding “yes.”

III. Consumers Need Not Have Access to Both Fixed and Mobile Services for Advanced Telecommunications Capability to be Deemed Available

The Commission asks whether consumers must have access to *both* fixed and mobile broadband service for advanced telecommunications capability to be deemed available.¹⁶ Specifically, it suggests that both fixed broadband service at 25 Mbps/3 Mbps *and* mobile broadband service at 10 Mbps/1 Mbps¹⁷ are necessary. To be clear, USTelecom does not object to the Commission’s consideration of mobile broadband in its section 706 inquiry. We do, however, object to any requirement that deployment meet *both* a fixed *and* a wireless

¹⁵ *Eleventh Broadband Progress NOI* at ¶ 10 (“a number of factors [] appear to indicate that mobile and fixed broadband are different services that address different consumer telecommunications needs”).

¹⁶ *Eleventh Broadband Progress NOI* at ¶ 6.

¹⁷ *Eleventh Broadband Progress NOI* at ¶ 30

benchmark. Instead, reasonable and timely deployment of *either* fixed *or* mobile broadband capability should be sufficient to deem advanced telecommunications capability available.

Given the widespread deployment of fixed and high-speed mobile services in this nation, and the overwhelming adoption by consumers of such services, there is no question that consumers who rely on their computers, mobile phones, and other devices to reach the internet, watch live and recorded video streaming, do their banking, and access their music libraries in the cloud believe they have access to advanced telecommunications capability. Thus, the section 706 inquiry could (and probably should) end there.

Robust competition in the broadband market counsels against the imposition of a single standard to define for consumers and the market what constitutes “advanced telecommunications capability.” Because today’s broadband offerings provide a range of high-speed broadband capabilities that enable high-quality access to telecommunications, it is not necessary to impose additional speed benchmarks or add other performance measurements. Providers have responded to consumers’ thirst for broadband access at home and work, and on the move, including with mobile offerings and Wi-Fi access, and consumers who are not happy with their broadband service have multiple options to choose from. Broadband deployment in the U.S. is a success story, and this inquiry should not be used to saddle providers with requirements that are not necessary to achieve the statute’s broadband deployment goals.

IV. The Commission Should Not Add More Benchmarks or Factors to this Inquiry

The Commission seeks comment on “benchmarks to define advanced telecommunications capacity” in general, with specific proposals on speed benchmarks and whether to develop benchmarks on quality of service, including latency and consistency, for all

types of broadband offerings.¹⁸ We have already opined that the Commission should reconsider imposing any bright-line speed benchmarks to measure broadband availability and instead focus more on a more practical, common sense approach to determining whether advanced telecommunications capability is being made available to all Americans.¹⁹

We likewise see no need for latency or consistency benchmarks for any broadband service. In asking whether latency and consistency benchmarks should be used to define advanced telecommunications capability,²⁰ the Commission threatens to veer even further away from the core inquiry under section 706, which looks at the reasonableness and timeliness of broadband deployment. Latency and consistency vary among broadband services, and the extent of latency and consistency are not always within the provider's control, or may vary with the number of users at any given time, the weather, or downstream interferences or traffic on the network. Thus, it is unclear how the Commission would even reliably measure these benchmarks, or require them to be measured.

The Commission has in the past rejected imposing latency benchmarks because reliable data (and methodologies for reliably gathering such data) have not been available.²¹ It is not clear from the *Eleventh Broadband Inquiry* that much has changed since the last report: “the Commission currently lacks the kind of small-scale geographic data for latency that it has for speed, and [] this data limitation exists for all categories of broadband.”²² Despite some new

¹⁸ *Eleventh Broadband Progress NOI* at ¶ 21.

¹⁹ *See supra* p. 6. With regard to mobile broadband service, for example, widespread deployment of 4G and LTE services makes it unnecessary to establish a speed benchmark to measure high-speed mobile broadband availability, and any reasonable and impartial inquiry would show that these services are being deployed on a reasonable and timely basis, due in large part to competition.

²⁰ *Eleventh Broadband Progress NOI* at ¶¶ 31, 41.

²¹ *See, e.g., 2015 Broadband Progress Report* at ¶ 25 (explaining that there is limited data on latency for fixed broadband and mobile services).

²² *Eleventh Broadband Progress NOI* at ¶ 36.

reporting of measurements for consistency in the last section 706 inquiry,²³ the outlook for reliable data on consistency does not appear to be any better: “the Commission does not currently have granular, geographic data on broadband service consistency [for satellite, mobile, and fixed terrestrial broadband].”²⁴ Given the continuing lack of data on these two metrics, benchmarks for latency and consistency should not be imposed at this time.

Finally, no other factors should be imposed to determine what qualifies as advanced telecommunications capability. By considering additional factors, the Commission risks losing focus on the core section 706 inquiry and imposing upfront costs and complexity that undermine its very objectives. Take, for example, broadband adoption; clearly the Commission as well as providers have an interest in making sure that consumers adopt and use broadband, and indeed many of the Commission’s universal service efforts are designed to increase affordability and adoption. But nothing in section 706 directs or gives authority to the Commission to impose obligations to increase adoption. Nor does section 706 mention service quality, privacy, or security, yet the Commission asks whether it should impose such requirements as part of its efforts to ensure deployment under section 706.²⁵ We believe this goes far beyond the scope of section 706, which directs the Commission to encourage deployment and remove barriers to infrastructure investment (section 1302(a)) and, if necessary, take steps to accelerate deployment by removing barriers and by promoting competition (section 1302(b)). These additional factors are not necessary to the core purpose of the 706 inquiry, and thus they should not be imposed as requirements to achieve reasonable and timely deployment. While such factors may be relevant, imposing them as requirements in this context falls outside the Commission’s limited section 706 authority.

²³ See *2015 Broadband Progress Report* at ¶ 103.

²⁴ *Eleventh Broadband Progress NOI* at ¶ 43.

²⁵ *Eleventh Broadband Progress NOI* at ¶ 49.

V. Conclusion

Congress expressly recognized in section 706 that promoting competition and removing barriers to infrastructure investment would make deployment of advanced telecommunications capability to all Americans a reality. The Commission therefore should focus its regulatory efforts on promoting competition and removing barriers to ensure that the nation's core deployment goals are met.

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