Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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	GN Docket No. 07-45

COMMENTS OF AT&T INC.

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I. INTRODUCTION AND SUMMARY

AT&T Inc. (AT&T) respectfully submits the following comments in response to the Commission's fifth inquiry concerning the deployment of broadband to all Americans pursuant to section 706 of the Telecommunications Act of 1996.[1] In its September 2004 *Fourth 706 Report*, the Commission predicted that, if it applied "minimal regulation" to broadband Internet access services, competitive market conditions would continue to drive broadband deployment

[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*, GN Docket No. 07-45, Notice of Inquiry, FCC 07-21 (released April 16, 2007) (*Fifth 706 Inquiry*). *See* § 706 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996), reproduced in the notes under 47 U.S.C. § 157. In these comments, AT&T uses the term "broadband" to refer collectively to both "advanced services" and "high-speed services" as the Commission defines and uses those terms, unless otherwise specified. *See Fifth 706 Inquiry*, n.3 at 1. Additionally, because the Commission has traditionally focused on residential and small business customers in its 706 inquiries, AT&T directs these comments primarily to addressing issues that affect those market segments, unless otherwise noted.

and subscribership across the U.S. in the years ahead.[2] As it turns out, the Commission's prediction was spot on. Since the *Fourth 706 Report*, the number of broadband lines in the U.S. has more than doubled to 64.6 million lines, and there are now more than 1,300 broadband providers offering service across the country.[3] As discussed below, competition among these providers is flourishing and consumers are reaping the benefits of lower prices, higher speeds and more innovative services.

The Commission's deregulatory approach to broadband has been critical in fostering the inter-modal competition in the U.S. broadband marketplace. Chief among the Commission's recent efforts to promote broadband deployment is the 2005 *Wireline Broadband Order*,[4] which leveled the regulatory playing field between cable modem broadband services and competing wireline broadband services, such as DSL, and spurred both investment in the networks supporting these services and competition in the overall broadband market. The Commission should ensure this success story continues by maintaining its "hands-off" approach to the Internet; *i.e*., by minimizing regulation and its chilling effect on investment, deployment and competition. As the platforms for the provision of ever more advanced broadband-based services continue to converge and the amount of traffic delivered over these platforms continues to grow, the need for a stable, pro-investment de-regulatory environment becomes even greater. In this environment, where investment in next generation broadband networks is crucial to meet

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[2] *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*, GN Docket No. 04-54, Report at 9 (rel. Sept. 9, 2004) (*Fourth 706 Report*).

[3] *High-Speed Services January 2007 Report* at Table 8**.**

[4] *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, Report and Order, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Order*).

consumer demand for innovative new services, the Commission must remain steadfast in its commitment to keeping broadband Internet-based services unregulated.

Accordingly, the Commission should be careful not to abandon regulatory guideposts that have provided a stable foundation for broadband deployment and penetration. One such guidepost is the Commission's use of 200 kilobits per second (Kbps) as the threshold for "high speed" service (over 200 Kbps in at least one direction) and "advanced" service (over 200 Kbps in both directions). While some consumers have a desire for higher speed broadband, in general, consumer tastes for broadband have not shifted so completely toward the higher range of available transmission speeds to warrant abandoning the existing 200 Kbps threshold. In fact, a significant number of Internet customers in the U.S. still gain access via dial-up connections today. The Commission should keep in mind these consumer-driven marketplace realities as it evaluates the terms "high speed" and "advanced" services going forward.

Finally, the Commission should exercise caution when assessing the state of the U.S. broadband market in comparison with markets in other countries. Although such comparisons may provide general insights about the effectiveness of broadband policies in other countries, the Commission must be cognizant of divergent geographic, technological, economic, social and political characteristics among the nations it compares. Moreover, the Commission should not lose sight of the fact that Congress' core goal in section 706 was not the achievement of a high ranking on a particular broadband "top-ten list," but rather the creation of the job-producing economic growth that results from a deregulatory environment where broadband providers are encouraged to invest in and deploy broadband networks and services.

II. DISCUSSION

A. Robust Competition Continues to Drive Broadband Deployment

In the *Fourth 706 Report*, the Commission hailed the substantial increases in broadband deployment and competition in the two years since its *Third 706 Report*. As the Commission reported at the time, subscribership to high-speed services had tripled from 9.6 million lines in June 2001 to 28.2 million lines in December 2003, and subscribership to advanced services more than tripled, going from 5.9 million lines in 2001 to 20.3 million lines in December 2003.[5] According to the Commission, this impressive growth and the "proliferation of new advanced telecommunications networks and services" was a result of the "competitive nature of the broadband market, including new entrants using new technologies, [which] is driving broadband providers to offer increasingly faster service at the same or even lower retail prices."[6]

More importantly, the Commission also observed "the continuation of a positive trend that first emerged in [its] last report: namely, the increasing availability of advanced telecommunications capability to certain groups of consumers – those in rural areas, those with low incomes, and those with disabilities – who stand in particular need of advanced services," which "demonstrates that we are making substantial progress in closing the gaps in access that these groups traditionally have experienced."[7]

Based on this record, the Commission concluded that "deployment of advanced telecommunications capability to all Americans is reasonable and timely."[8] Moreover, the

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[5] *See Fourth 706 Report* at 28-29; *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*, CC Docket No. 98-146, Report, 17 FCC Rcd 2844 (2002) (*Third 706 Report*).

[6] *Fourth 706 Report* at 13.

[7] *Fourth 706 Report* at 9.

[8] *Id*. at 38.

Commission optimistically predicted that "subscribership to broadband services will increase in the future as new applications that require broadband access, such as VoIP, are introduced into the marketplace, and consumers become more aware of such applications."[9] The Commission cautioned, however, that this bright broadband future was dependent on the Commission allowing competition to flourish with "minimal regulation".[10] As then-Commissioner Martin explained, "[r]egulatory uncertainty and delay function as entry barriers, limiting investment and impeding deployment of new services."[11]

True to its word, the Commission subsequently removed a major impediment to broadband deployment in September 2005 when it released the *Wireline Broadband Order*, which, at long last, extricated wireline broadband Internet access service (*e.g.*, DSL) from the investment-draining confines of Title II regulation and placed it on the same deregulatory footing as cable modem service. More specifically, in that *Order*, the Commission declared that wireline broadband Internet access service is an information service with a telecommunications transmission component that would no longer be subject to the Commission's antiquated *Computer Inquiry* unbundling regime. As the Commission explained, "we find the public interest is best served if we permit competitive marketplace conditions to guide the evolution of broadband Internet access service."[12]

As it turns out, the Commission was *right*. The broadband marketplace has grown tremendously since the Commission's decisions in the *Fourth 706 Report* and the *Wireline Broadband Order*. As former FCC Chief Economist Thomas Hazlett explained last year in the

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9 *Id*. at 38-39.

10 *Id*. at 9.

11 *Id*. at 6.

12 *Wireline Broadband Order* at ¶ 85.

Wall Street Journal, despite some initial hand-wringing about deregulating wireline broadband Internet access, the marketplace response has been tremendous: "DSL packages are cheaper, performance speeds are faster, and the number of subscribers is growing more quickly than under [common carrier] rules."[13] According to Hazlett, the "bottom line" is that "[s]ince DSL began to shed its [common carrier] obligations, users have flocked to the service."[14]

Indeed, the Commission's own data collected through mid-year 2006 reveals that both broadband deployment and subscribership are robust. High-speed lines have grown from approximately 26 million in December 2003 to more than 64 million as of June 2006, while advanced services lines have increased from approximately 20 million to more than 50 million.[15] At the same time, the percentage of zip codes with at least one broadband provider increased from approximately 85 percent in December 2003 to more than 96 percent in June 2006, while the percentage of zip codes with *four or more providers* increased from approximately 46 percent to more than 76 percent.[16] These impressive growth trends, moreover, have been confirmed by other reputable observers of the broadband marketplace.[17]

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[13] *Broadbandits*, Thomas Hazlett, Wall Street Journal (Aug. 12, 2006). *See also Verizon, Cablevision skirmish as war nears*, USA Today (Aug. 24, 2006) (describing intense competition between cable and telephone companies).

[14] *Id.*

[15] *See Wireline Broadband Order* at ¶ 51 (citing *High-Speed Services July 2005 Report*, at 4); *Fourth 706 Report* at 10; *High-Speed Services January 2007 Report*, at 3-4 and Chart 12.

[16] *See Wireline Broadband Order* at ¶ 51 (citing *High-Speed Services July 2005 Report*, at 4); *High-Speed Services January 2007 Report*, at 2.

[17] *See, e.g.*, PEW Internet & American Life Project, Home Broadband Adoption 2006, at 5-7 (*Pew Center Report*) (revealing that, in March 2005, approximately 60 million Americans had broadband in the home, up 25% over the previous year, and in March 2006, 84 million American adults had broadband in their homes, a 40% increase over 2005). *See also* Press Release, Leichtman Research Group, "*2.9 Million add High-Speed Internet in the First Quarter of 2007*, May 7, 2007, http://www.leichtmanresearch.com/press/050707release.html, (observing that 2.9 million new broadband subscribers were added during the first quarter of 2007 by the nation's top 19 broadband internet providers).

As broadband availability has expanded, prices for broadband services – due to competitive market forces – have continued to drop.[18] According to the Pew Center Report, home high-speed Internet users reported in December 2005 average monthly bills of $36, which was a $3 decrease from the $39 monthly tab reported in February 2004. Over that same period, DSL users reported a greater decline in monthly bills, from $38 to $32.[19] In fact, between 2004 and 2007, AT&T lowered the monthly rate for its 1.5 Mbps (megabits per second) DSL service from $49.95 to $19.99 – a decline of *sixty percent*.

At the same time broadband prices have declined, the availability of higher transmission speeds has increased. Many wireline broadband providers, including AT&T, currently offer DSL services with a variety of transmission speed options to meet their customers' needs, typically ranging from 768 Kbps up to 6 Mbps. Other wireline providers, such as Verizon, are deploying fiber-to-the-home networks, which currently enable speeds up to 30 Mbps. Not to be outdone, cable operators are making similar offers. According to the National Cable & Telecommunications Association (NCTA), "most cable operators offer broadband speeds topping 5 Mbps and some operators . . . offer speeds up to 50 Mbps."[20] NCTA even claims that cable operators will "soon deploy a new architecture (DOCSIS 3.0) which will allow speeds above 100 Mbps.[21]

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[18] *See* InsideBayArea.com, "*Rivals AT&T and Comcast Adding Jobs, Battling for Customers [California]*," April 20, 2007 (reporting on robust competitive battle between AT&T and Comcast, for both employees and broadband customers, in northern California: "Comcast Corp. and AT&T Inc. are on a Bay Area-wide hiring binge as they battle each other and roll out new products in an effort to come out on top in an industry where customer service will be a key deciding factor." According to the report, "AT&T has hired almost 200 employees to help it roll out its latest Bay Area offering: U-verse TV . . . [which] provides satellite television over an Internet-based delivery platform in addition to high-speed Internet service")**.**

[19] *Pew Center Report* at iii-iv, 6-7.

[20] Letter from K. McSlarrow, NCTA, to Congress, April 23, 2007.

[21] *Id*.

Even more encouraging than the robust, head-to-head broadband competition between cable and telephone companies, however, is the entry of other inter-modal competitive providers into the marketplace. As the Commission explained in the *Fourth 706 Report*, new broadband technologies, like Wi-Fi, Wi-Max, mobile wireless, broadband over power line and satellite broadband services were increasingly competing for consumers' broadband dollars. Since the Commission issued that *Report* in 2004, this inter-modal competition has continued to grow significantly. According to the Commission's data there are 1,323 providers offering broadband Internet access service today, and 814 of those providers offer services *other than* ADSL or cable modem service.[22] Indeed, in December 2003, the Commission reported no mobile wireless broadband lines in the U.S. By June 2006, however, there were more than 11 million such lines, with roughly 8 million of those added during the first 6 months of 2006 alone.[23]

With regard to fixed wireless, Sprint has announced plans to deploy a nationwide Wi-MAX network that is expected to cover 100 million people in the U.S. by 2008.[24] And Clearwire, while just having become a public company in March 2007, already offers wireless high-speed Internet access "in 38 metro markets, covering approximately 8.9 million people in more than 400 municipalities" from Alaska to Florida.[25] EarthLink, for its part, has been aggressively deploying municipal Wi-Fi networks in a host of cities around the nation.[26]

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[22] *High-Speed Services January 2007 Report*, Chart 11.

[23] *Id*. at Table 1.

[24] "*Sprint unveils WiMax plans*," CNET News.com (March 26, 2007), http://news.com.com/Sprint+unveils+WiMax+plans/2100-1039_3-6170672.html?tag=nefd.top.

[25] *See* http://phx.corporate-ir.net/phoenix.zhtml?c=198722&p=irol-homeProfile&t=&id=&.

[26] *See* "*EarthLink lands largest municipal Wi-Fi network deal*," Atlanta Business Chronicle, April 13, 2007 at http://phoenix.bizjournals.com/atlanta/stories/2007/04/09/daily32.html.

In addition to terrestrial wireless services, satellite broadband services are available nationwide from at least three major providers: HughesNet, Starband and WildBlue.[27] In fact, AT&T, in conjunction with WildBlue, just recently announced the expansion of satellite broadband service to homes and businesses across its 22-state wireline territory, with a focus on rural areas. Customers choosing this service will be able to select from three service packages with speeds of up to 1.5 Mbps downstream and up to 256 Kbps upstream.[28]

As the Commission recognized in its *Fourth 706 Report*, broadband over power lines (BPL) holds significant promise as an alternative platform for broadband service, particularly considering the ubiquitous national power grid. According to recent reports, BPL continues to attract investment from a variety of sources and commercial BPL services are being offered in several states.[29]

As the preceding demonstrates, robust inter-modal competition is continuing to drive broadband investment and deployment, which, in turn, is affording consumers more innovative service options, higher speeds and lower prices. To ensure these pro-consumer trends continue in the future, the Commission must stand firmly by its commitment to let market forces, rather than government regulation, dictate the evolution of the broadband marketplace.

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[27] *See, e.g.*, "*Hughes to Offer DSL Coverage throughout USA*," Satellite News, March 19, 2007 (Hughes Network Systems offering enterprise users nationwide broadband coverage with a choice of DSL and/or satellite technologies); News Release, "*AT&T significantly Expands Broadband Service to Rural Consumers across Traditional 22-State Territory*", May 9, 2007 (satellite broadband service).

[28] News Release, "*AT&T significantly Expands Broadband Service to Rural Consumers across Traditional 22-State Territory*", May 9, 2007.

[29] *See Fourth 706 Report* at 23. *See also EarthLink, GE fund broadband over power line provider*, CNET News (May 14, 2006) (stating that Current Communications Group received $130 million in financing from GE, EarthLink and others); *utility.net Announces Commercial Broadband Rollout in Michigan with Potential to Reach One Million Customers in Coming Years*, PRNewswire (April 30, 2007); *DirecTV to Trial Internet Over Power-Lines This Year*, Wired Blog Network (May 15, 2007); Current Technologies website at http://www.currenttechnologies.com/about/index.html (describing commercial BPL deployments by Duke Energy in Ohio, Indiana and Kentucky, and by TXU Electric Delivery in Texas, as well as smaller scale deployments in Maryland and California).

B. To Encourage Further Deployment, the Commission Should Maintain its "Hands-Off" Approach to the Internet.

The Commission should be commended for acting decisively in the *Wireline Broadband Order* to level the broadband regulatory playing field by removing the strictures of Title II and the *Computer Inquiry* regime from wireline broadband Internet access services. In so doing, the Commission spurred wireline broadband network investment and facilities deployment, and, consequently, promoted the availability of competitive broadband services to consumers and businesses across the country. The *Wireline Broadband Order*, thus, was an unequivocal step in the right direction.

The Commission asks in this *Fifth 706 Inquiry*, however, whether there is now any specific evidence of anti-competitive conduct in the marketplace that would impair or negate the pro-consumer advances described above.[30] The broadband market is robustly competitive as demonstrated by the positive trends in price, speed, and availability. These are the clearest, most definitive signs that, in fact, the broadband market is *not* suffering from anti-competitive behavior, but is thriving as Congress and the Commission intended. And, in the absence of any clear and present evidence of a market failure that is demonstrably harming consumers, the Commission should not stray from the deregulatory path it has presciently chosen.[31]

The flow of broadband network investment dollars has noticeably quickened since the Commission removed monopoly-era Title II and *Computer Inquiry* regulations from wireline broadband Internet access services. Total common carrier investment in broadband-related network upgrades has trended upward since 2004, and particularly jumped in the wake of the

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[30] *Fifth 706 NOI* at ¶ 16.

[31] AT&T will provide a more comprehensive discussion of broadband industry practices in response to the Commission's pending inquiry on that specific subject. *See In the Matter of Broadband Industry Practices*, WC Docket No. 07-52, Notice of Inquiry, FCC 07-31 (rel. April 16, 2007).

Wireline Broadband Order.[32] This is an unmistakable result of the improved regulatory outlook for DSL and other wireline broadband Internet access services, which will only get better with time and continued investment, encouraged by stability in the regulatory landscape.

As the marketplace has demonstrated, judicious non-intervention creates incentives for further investment, and the Commission, therefore, should continue to follow Congress's directive to keep the Internet unfettered by federal or state regulation.[33] In particular, section 706 of the Act requires the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" via appropriate regulatory tools "that remove barriers to infrastructure investment."[34] In directing the Commission to use the tools of de-regulation to achieve its objectives, Congress evinced an understanding that broadband network deployment is highly capital-intensive and time-consuming, and also endorsed the belief that *market forces* (*i.e*., the laws of supply and demand that are permitted to operate efficiently once regulatory barriers to investment are removed) can and will deliver the availability of "advanced telecommunications capability to all Americans" that Congress sought.

By creating a stable deregulatory environment for wireline broadband Internet access through the *Wireline Broadband Order*, the Commission has taken an important step to encourage the investment that will be required for carriers to build-out their broadband networks

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[32] *See* Testimony of Jeffrey A. Eisenach, Ph.D., Before the Committee on Commerce, Science and Transportation, United States Senate, April 24, 2007 at 2, Figure 1 (". . . Figure 1 demonstrates an important and largely undisputed fact: investment in broadband networks is moving ahead very rapidly. The two leading providers, the telephone and cable companies, are investing literally tens of billions of dollars to upgrade their networks, with cable companies adding voice telephony, telephone companies adding video, and both increasing dramatically the capacities of their networks to carry high speed data.")

[33] *See* 47 U.S.C. § 230 (b) (2) (U.S. policy is to "preserve the vibrant and competitive free market that presently exists for the Internet . . .").

[34] § 706 (a).

nation-wide, particularly the fiber-based networks needed for next-generation broadband services. But while that first step was important, it is not the only one necessary to spur broadband deployment consistent with the directives of section 706. Increasingly, video and voice services are being provided over converged broadband platforms (*e.g.*, VoIP and IP video over wireline facilities, VoIP over cable facilities). Thus, as these underlying broadband platforms begin to support multiple services that could potentially be subjected to a variety of legacy regulatory regimes (*e.g.*, Title II for voice, Title VI for video), new barriers to broadband investment have begun to surface.

For example, while the Commission took important steps in the *Pulver* and *Vonage Orders* to shield VoIP services from the imposition of outmoded, legacy economic regulation by state commissions, the threat of such state regulation has again presented itself.[35] Similarly, although the Commission has made strides in reforming the local franchising process to encourage competitive entry by video providers, such as AT&T and others, uncertainty still remains over the regulatory classification of, and regulatory obligations applying to, broadband IP video services like IPTV.[36] Thus, to promote the deployment of advanced broadband services that rely on a common or shared underlying broadband network – such as Internet access, VoIP and IP video – the Commission cannot rest on its deregulatory laurels. Instead, the Commission must strive to provide a stable, pro-investment, deregulatory environment for all of these converged services so that network operators will continue to have the incentives to invest in the next generation broadband networks that will bring these converged services to all Americans.

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[35] *See, e.g.*, *Staff of the Public Service Commission of the State of Missouri v. Comcast IP Phone, LLC*, Case No. TC-2007-0111 (complaint alleging that Comcast's IP Phone service is an offer of basic local exchange and interexchange telecommunications service in Missouri requiring certificate of service authority from Missouri PSC and accompanying regulatory treatment)**.**

[36] *See, e.g.*, Letter from J. Smith, Senior V.P., AT&T, to M. Dortch, in WC Docket No. 04-36, *IP-Enabled Services*, January 12, 2006.

C. The Commission Should Not Abandon the Definitions of High-Speed Service and Advanced Service in Use Today.

In the *Fifth 706 Inquiry* (as in the *Fourth 706 Inquiry*), the Commission seeks comment on whether it should increase the speed that a service must offer to be deemed "high-speed" (over 200 Kbps in at least one direction), or to be deemed an "advanced service" (over 200 Kbps in both directions).[37] The Commission asks whether "rapid technological changes in the marketplace" create a "need to alter the definitional framework utilized in prior inquiries."[38] The Commission also asks whether consumer expectations regarding bandwidth needs should influence its definitional framework.

Although these inquiries can certainly produce useful information, the premises of the questions themselves seem to focus too narrowly on one aspect of the provision of advanced telecommunications capability: transmission speed. Indeed, Congress chose not to specify a particular speed in defining advanced telecommunications capability in section 706. This was a wise decision because "[e]nabl[ing] users to originate and receive high-quality voice, data, graphics, and video telecommunications," is not solely speed-dependent.[39] Rather, it is a function of speed and other factors, including the types of applications that a user runs, the customer premises equipment chosen for the communication, the protocols used to transmit data, and the use of any compression technologies to reduce the size of the data files to be transmitted, among other things. Thus, as it evaluates whether to adjust the threshold for "broadband," the Commission should remain cognizant that factors other than pure transmission speed do affect whether a consumer is able to enjoy a rich broadband experience.

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[37] *Fifth 706 Inquiry* ¶ 12.

[38] *Id*.

[39] § 706 (c) (1).

Moreover, while the current 200 Kbps threshold for "high-speed" and "advanced services" should not necessarily become the sole or permanent standard for "high-speed" or "advanced services," the actual utility of that standard for achieving Congress' section 706 goals should not be minimized. Rather than abandoning that threshold, the Commission should use a tiered approach -- as it currently does on the existing Form 477 -- that leaves 200 Kbps as the beginning point for the range of speeds that fit within the established definitions. Under this tiered approach, the Commission currently collects data on a range of speeds from 200 Kbps to 100 Mbps, which gives it the ability to track trends in consumers' broadband speed preferences, as they migrate from dial-up to entry-level broadband services, and then onto higher-speed broadband services.

Indeed, in determining what speeds to use in defining "high-speed services," "advanced services," and any other classification(s) the Commission may employ, the Commission should be guided principally by the choices that consumers are making in the marketplace for Internet access services. Consumers – not the Commission – are in the best position to gauge the value proposition of the different offerings available today, based not only on speed, but also pricing, reliability, and other factors.

For example, while the number of dial-up Internet access customers in the U.S. is certainly declining, a leading market analyst estimates that approximately 24 percent of U.S. households still use dial-up services.[40] Moreover, the FCC's data show that almost 22 percent of broadband subscribers still subscribe to services with speeds above 200 Kbps in only one direction and almost 28 percent of subscribers subscribe to services with downstream and upstream speeds between 200 Kbps and 2.5 Mbps. Thus, it would be unwise for the

[40] *Selling High-Speed Services to the Broadband Have-Nots*, Forrester Research (April 3, 2007).

Commission to abandon the 200 Kbps standard, particularly given the large number of Internet users using lower tier broadband services, let alone the significant number of users still relying on dial-up Internet access service.

Nonetheless, to fulfill its section 706 duties, the Commission legitimately should continue to monitor the development of broadband service offerings and the overall migration patterns of Internet users as they move from dial-up service to entry-level broadband services and from there to more advanced services. The Commission's multi-tiered categorization approach to broadband data collection adopted in the *Data Gathering Order* is an appropriate method for accomplishing this task.[41]

Finally, to the extent the Commission nonetheless finds it appropriate to modify its broadband definitions (and it should not), the Commission must be cognizant of the unintended regulatory consequences that may flow from such a decision. For example, in the *Wireline Broadband Order*, the Commission granted relief for wireline "broadband" Internet access services, which it defined as those Internet access services meeting the "high-speed" standard, *i.e.*, 200 Kbps in at least one direction.[42] If that standard were moved, a question could be raised as to the continued applicability of the *Wireline Broadband Order*'s relief for services below whatever new threshold the Commission adopts. Similarly, changing the 200 Kbps standard may impact the obligation of some Internet access providers to comply with the Commission's CALEA rules,[43] or the obligations of some interconnected VoIP providers to comply with the

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[41] *See Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order 19 FCC Rcd 22340 at 22347, ¶ 14 (2004) (*Data Gathering Order*).

[42] *See Wireline Broadband Order* at ¶ 5.

[43] *See In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, Second Report and Order and Memorandum Opinion and Order, 21 FCC Rcd 5,360 at 5,366 (2006) (imposing CALEA obligations on facilities-based providers of "broadband" Internet access service).

Commission's rules for VoIP 911,[44] CALEA, universal service contributions and CPNI. While it does not appear from the *Notice* that the Commission intended in any way to change the regulatory relief and/or obligations that apply to these broadband-related services (nor should it), the Commission must consider very carefully the potential repercussions of modifying its 200 Kbps standard before it takes any action in that regard.

D. The Commission Should Exercise Caution When Evaluating Reports Comparing Broadband Deployment in the U.S. and Other Countries.

The Commission seeks comment on how U.S. broadband penetration rates compare to rates in other nations and whether such comparisons yield insight into the U.S. economic position in the global economy.[45] The Commission also asks about reliability of data that may be available to make such international comparisons.[46]

Although a review of broadband deployment in foreign markets may, as a general matter, provide some useful insights as the Commission evaluates domestic broadband policies and market practices, the Commission must avoid the temptation to focus on simplistic rankings of international broadband deployment, particularly rankings that fail to account for important differences between markets. For example, the semi-annual broadband penetration survey produced by the Organization for Economic Cooperation and Development (OECD) has generated significant controversy in this regard.[47] In this report ranking the 30 OECD nations

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[44] *See, e.g.*, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, *E-911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10,245 at 10,257-58 (2005) (interconnected VoIP service defined, among other things, as a service that "requires a broadband connection from the user's location").

[45] *See Fifth 706 Inquiry*, ¶ 31.

[46] *Id*.

[47] *See* OECD Directorate for Science, Technology, and Industry, "*Broadband Statistics to December 2006*," (April 2007) ("*OECD 2007 Report*").

for broadband adoption – *i.e.*, broadband *use* -- the OECD found that the U.S., after having been fourth in the rankings in 2001 when they were first developed, had slipped to fifteenth.[48]

Several commentators have demonstrated, however, that the methodology employed in the rankings fails to account for critical factors that, for the Commission's section 706 purposes, should be considered. The U.S. State Department, for example, pointed out recently that the OECD's use of home subscribership as a proxy for actual broadband use fails to capture broadband usage outside the home.[49] But such usage is a significant part of the U.S. broadband experience. In the U.S., unlike a number of countries surveyed by the OECD, millions of broadband users are technically "non-subscribers" because they access the Internet from a variety of places outside their homes (*e.g.*, Wi-Fi hot spots, offices, libraries, university classrooms, *etc*.). Thus, these users are simply omitted from the OECD's subscription-centric methodology.[50] In addition, because the OECD does not describe with specificity its data sources and processes for ensuring that different countries' data are reliable and based on comparable measurement criteria, the extent to which some countries' broadband counts may or may not include business digital special access-like services is unclear.

Also, the OECD's comparisons fail to account for significant differences between OECD countries in the survey. As the Progress and Freedom Foundation's Scott Wallsten explained in testimony before the Senate Commerce Committee, "many factors differ across countries that affect both the costs of supplying broadband – such as population density – and the demand for broadband – such as the ability or inability to subscribe to television services over broadband

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48 *See id*. Interestingly, the OECD survey confirmed that, while the U.S. may rank 15th in the OECD survey, the OECD confirms that America continues to have the largest total number of broadband subscribers worldwide, constituting roughly 30 percent of all broadband connections in OECD countries.

49 *See* Letter from Ambassador David Gross to OECD Secretary General Angel Gurria, April 24, 2007 at 1.

50 *Id*.

lines."[51] The State Department echoes this observation, and cautions that the OECD's analysis should be more sensitive to "the variance in OECD members' demographics, geography and technological trends," by taking into consideration "the remarkable non-subscriber access to broadband services achieved in the United States and in other member countries."[52]

Finally, speed provisioning and measurement criteria may not be consistent across countries. A recent study by Analysys Consulting surveying broadband offers in a number of advanced countries reported that "differences in actual bandwidth speeds among the offerings of broadband service providers internationally are less significant than simple advertised rates imply."[53]

This is not to suggest that U.S. policy makers should not attempt to gauge broadband deployment in the U.S. in comparison to other nations. However, a more rigorous analysis is required to ensure that an "apples to apples" comparison is made so that meaningful insights can be extrapolated from the data. Indeed, Congress's motivation in enacting section 706 was not as simplistic as achieving a top ranking on someone's broadband list. Rather than pursuing broadband deployment as an end in itself, Congress tasked the Commission with promoting broadband deployment through deregulation as a means of fostering investment and job-producing economic growth. Thus, to the extent that the Commission wishes to gauge its

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[51] Testimony of Scott Wallsten, Ph.D., Senior Fellow and Director of Communications Policy Studies, the Progress & Freedom Foundation, before the Committee on Science, Commerce, and Transportation, U.S. Senate, April 24, 2007.

[52] *See* Letter from Ambassador David Gross to OECD Secretary General Angel Gurria, April 24, 2007 at 1. *See also* "*U.S. Official Says OECD Survey Omits Non-Subscriber Data*," Communications Daily, April 25, 2007 (discussing U.S. critique of OECD's methodology, including with respect to population distribution, demand-impacting factors like governmental subsidies, *etc*., and failure of the OECD methodology to place proper emphasis on multi-platform delivery for broadband services).

[53] *See* Analysys Consulting Limited, "*Survey of International Broadband Offerings*," Michael Kende, Principal Consultant, October 4, 2006, found at http://www.analysys.com/pdfs/BroadbandPerformanceSurvey.pdf.

success in fulfilling Congress's overarching objectives in section 706 as compared to broadband-related economic progress in other nations, it should look beyond mere statistics on broadband penetration.

For example, the Economist Intelligence Unit, the business information arm of the group that publishes *Economist* magazine, conducts an annual survey of "e-readiness," which is a "measure of a [country's] e-business environment" using "a collection of factors that indicate how amenable a market is to Internet-based opportunities."[54] Specifically, "E-readiness derives from more than just the number of computers, broadband connections and mobile phones in the country; also critical are citizen's ability to utilize technology skillfully, the transparency of the business and legal systems, and the extent to which governments encourage the use of digital technologies."[55]

While our intent in these comments is not to endorse a particular report or vendor, AT&T believes that a comprehensive review and analysis of a country's digital performance, whether from the EIU or another credible source, is likely to be far more insightful for policymakers than a mere ranking of broadband penetration. Thus, we would encourage the Commission to pursue such a multi-faceted analysis as it considers the relevance of broadband deployment to the position of the U.S. in the world economy.

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[54] *See* Economist Intelligence Unit, EIU Mediadirectory, Press Release, April 26, 2007, found at http://www.eiruesources.com/mediadir/default.asp?PR=2007042601.

[55] *Id*. at 1. In the EIU's 2007 e-readiness rankings, for example, the U.S. occupies the number two spot (unchanged from the previous year).

III. CONCLUSION

The Commission's deregulatory efforts have had very positive impacts for the deployment of broadband services to date. The Commission should now stay the course by maintaining a stable, deregulatory environment, which will drive further investment, innovation and competition in broadband services for all Americans.

Respectfully submitted,

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