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

International Comparison and Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47

REPLY COMMENTS OF
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

The National Cable & Telecommunications Association ("NCTA") hereby submits its reply comments in the above-captioned proceeding. NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators serving more than 90% of the nation's cable television subscribers, as well as more than 200 cable programming networks and services. NCTA's members also include suppliers of equipment and services to the cable industry. The cable industry is also the nation's largest broadband provider of high-speed Internet access after investing $145 billion over ten years to build out a two-way interactive network with fiber optic technology.

INTRODUCTION

In its Public Notice of March 31, 2009, the Commission seeks comment on how to implement the provisions of the Broadband Data Improvement Act ("BDIA")[1] requiring it, among other things, to include international comparisons in the annual assessment and report on broadband capability that it is required to conduct pursuant to Section 706 of the

[1] Broadband Data Improvement Act of 2008, Pub. L. No. 110-385, 122 Stat. 4097 (codified at 47 U.S.C. §§ 1301-04).

Telecommunications Act of 1996. As the comments filed in response to the Notice make clear, the Commission's task is not an easy one. The Commission is unlikely to find, without compiling it itself, reliable data that is either uniform throughout the surveyed international communities or that can be readily adjusted in order to yield meaningful comparisons. Moreover, any such data, in order to provide a valid indication of broadband capability and availability, needs to take into account extraneous factors that skew the data and result in spurious correlations and comparisons.

Nevertheless, the task set forth by Congress is an important one – precisely because the use of unreliable and invalid international comparisons has already injected misleading assumptions and perceptions into discussions and deliberations regarding broadband policy. Especially now, as the Commission takes on a leading role in defining a national broadband policy, it is critically important to rely on accurate information and to avoid tenuous international comparisons and rankings that are likely to add more heat than light to sound policy analysis.

I. THE COMMISSION NEEDS TO DEVELOP A DATA BASE FROM MULTIPLE NATIONS AND COMMUNITIES THAT IS UNIFORM AND RELIABLE

While the Commission's general assignment is to compare "the extent of broadband service capability (including data transmission speeds and price for broadband service capability),"[2] Congress has identified a number of distinct factors that the Commission must examine and take into account when making this comparison. Simply identifying the extent to which broadband service is available to households (the rate of deployment) and the extent to which households choose to purchase broadband service (the rate of penetration) will not be sufficient. Nor will simply measuring and comparing transmission speeds and prices. The Commission must also take into account such variables as:

[2] 47 U.S.C. § 1303(b)(1).

> market structures, the number of competitors, the number of facilities-based providers, the types of technologies deployed by such providers, the applications and services those technologies enable, the regulatory model under which broadband service capability is provided, the types of applications and services used, business and residential use of such services, and other media available to consumers.[3]

As several commenting parties have pointed out, readily available databases are not suitable for comparing all these factors in the 75 communities in 25 countries that are to be the subject of the Commission's assessment.[4] International data compiled by the Organization for Economic Cooperation and Development ("OECD"), for example, comes from a multitude of sources. First of all, the methodologies and the variables taken into account from source to source, and from nation to nation are neither uniform nor uniformly reliable.[5] But uniformity and reliability of data are crucial if the Commission's comparative assessments are to have any validity at all.

Second, in any event, the statistics reported by OECD and other available sources generally reflect *national* data and do not provide the community-based data that the BDIA requires.[6] Thus, even if the OECD data could reliably be used for comparisons among nations, it would be of no use in conducting comparisons between communities with similar characteristics, as the BDIA mandates.

Therefore, to provide the assessments and comparisons required by Congress, the Commission will almost certainly have to use its own resources to create a reliable database that enables meaningful community-to-community comparisons. Or, to the extent that it is required

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[3] 47 U.S.C. § 1303(b)(3).

[4] *See, e.g.*, Comcast Corporation Comments at 2-5; United States Telecom Association (USTelecom) Comments at 5-6; Verizon Comments at 13; J. Scott Marcus Comments at ¶¶ 9-11.

[5] *See* Comcast Comments at 3.

[6] *See* J. Scott Marcus Comments at ¶ 10; Comcast Comments at 5; USTelecom Comments at 5-6.

to rely on external sources of data that differ from nation to nation and community to community, the Commission's assessments will have to expressly identify such disparities and discrepancies in order to ensure that the data is not erroneously interpreted in the public policy arena.[7]

II. THE COMMISSION'S ANALYSIS MUST TAKE INTO ACCOUNT THE MULTIPLICITY OF VARIABLES THAT AFFECT BROADBAND AVAILABILITY IN ORDER TO AVOID SPURIOUS COMPARISONS

Moreover, in addition to ensuring reliable community-to-community comparisons, it is also critically necessary to ensure that the statistics being compiled and compared are, in fact, valid indicators of broadband capability, availability and usage. As has been noted by several commenting parties, spurious correlations can easily occur in the rankings of broadband deployment based on OECD and other data if the analysis does not take into account extraneous explanatory variables.[8]

For example, statistics that measure availability of broadband on a per capita basis are misleading when comparing availability among nations (or among communities) because broadband subscriptions are typically purchased by *households*. As a result, countries that have, on average, more persons per household (such as the United States) would have lower *per capita* penetration rates than countries with fewer persons per household (such as Denmark) if their *per household* penetration rates were exactly the same. And their per capita ranking would decline *vis-à-vis* countries with lower household sizes, even if household penetration increased at exactly the same rate in all countries.[9]

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[7] *See* Johannes M. Bauer Comments at 4.

[8] *See* Comcast Comments at 6; USTelecom Comments at 5; AT&T Comments at 6.

[9] *See* Johannes Bauer Comments at 4; USTelecom Comments at 5; Comcast Comments at 8.

Similarly, a failure to distinguish between business and residential availability of broadband service – and to analyze and take into account the manner and extent to which broadband service is used at work and in the home – would also lead to misleading and meaningless comparisons.[10] For example, demand for broadband service – and, therefore, household penetration rates – can be significantly affected by the availability of broadband connections in the workplace and in schools and libraries. Some individuals who have access to – and permission to use – broadband services for e-mail, Internet browsing and other broadband functions at work or school may be willing to forgo such services at home. But it would be wrong to compile data that fails to distinguish such individuals from others who have no access to Internet service at all.

These are just the most simplistic and obvious examples of variables that need to be taken into account in any meaningful multivariate analysis that purports to compare broadband capability among nations. Ignoring such variables will inevitably lead to "rankings" that more accurately reflect relative household sizes or population density or business use of broadband among nations than full broadband capability and availability. Commenting parties have identified other variables that affect broadband availability and penetration, which also need to be controlled for and taken into account. To meet its statutory mandate, the Commission therefore needs to develop a robust survey tools that fully captures the complexity of the task.

[10] *See* Comcast Comments at 6-7; Verizon Comments at 7.

III. THE COMMISSION SHOULD TAKE APPROPRIATE STEPS TO ENSURE THE RELIABILITY AND VALIDITY OF ITS CONSUMER SURVEYS

The BDIA also directs the Commission to conduct periodic domestic consumer surveys of broadband service capability.[11] As in the case of the required international assessments, reliability and validity of the Commission's survey methodology is crucial. As suggested by Comcast, the Commission should augment its internal expertise by consulting with independent experts in the critical tasks of

> (1) picking an appropriate survey method, (2) designing careful surveys, (3) selecting a nationally representative sample, (4) ensuring that sample sizes have enough power to produce statistically significant results, (5) oversampling groups in the populations of particular interest to allow for accurate study of sub-groups, (6) training survey staff to administer surveys with reliability, (7) establishing reliable and valid coding methodologies, and (8) selecting and employing appropriate statistical techniques for analyzing the data.[12]

Moreover, in collecting information and reporting findings, the Commission will need to ensure the accuracy of its information regarding prices by taking into account any bundling discounts and other potential price promotions and discounts.[13] Similarly, in analyzing "actual speed" available to consumers, the Commission's analysis should take into account and control for any factors beyond the broadband provider's control.[14]

CONCLUSION

An effective national broadband policy depends on accurate information regarding the extent to which the marketplace is working to encourage broadband investment, innovation, deployment and availability throughout the nation and the extent to which regulatory policy can encourage or hinder such developments. Internet facilities and services have been deployed and

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[11] 47 U.S.C. § 1303(c)(1).

[12] Comcast Comments at 9

[13] *See, e.g.*, AT&T Comments at 6; USTelecom Comments at 6

[14] *See* AT&T Comments at 5-6.

upgraded by cable operators and other facilities-based broadband providers throughout the United States at an extraordinarily rapid pace. Congress has given the Commission the task and opportunity to ensure that assessment of these developments by policy makers fully informed and is not marred by false or distorted comparisons with developments abroad.

Respectfully submitted,

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