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. 09-137
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

REPLY COMMENTS OF FREE PRESS

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I. Introduction

In our initial comments in the instant proceeding, we demonstrated that the Commission need only look to the law itself in order to find guidance on how to define the term "broadband." Congress already answered this question, providing a very clear answer: "broadband" is a term that refers to any technology that provides end-users the ability to originate and receive high-quality voice, data, graphics, and video content. This is of course an evolving standard by design. But under the constraints and expectations of current technology, it means any two-way electronic communications medium that can, at a minimum, and at all times, actually deliver to each end-user of a single connection, 5 megabits per second (Mbps) of symmetrical bandwidth, at latencies low enough to enable high-quality real time voice and video two-way communications.

This is our own *low-end*, fact-based interpretation of the parameters of the term "broadband" as defined by Congress in both the 1996 Telecommunications Act and the 2008 Farm Bill. The Commission of course should craft its own interpretation of the legal language that is relevant to today's world. This interpretation must also be relevant in the future -- in the world that the National Broadband *Plan* is supposed to deliver to all Americans. But it is important that the Commission not stray far from the law in its effort to define this unnecessarily imprecise term.

Unfortunately many of the initial comments in this proceeding make this mistake -- ignoring and misrepresenting both the law and Congressional intent on this matter. Many providers want the Commission define "broadband" in a manner that falls well short of the standard set by Congress. Some of these definitions are so transparently self-serving and so hypocritical that they lie well outside the boundary of reasonable debate. In these brief reply

comments we call the Commission's attention to some of the more egregious examples of self-serving interpretations of the term at the center of this important policy debate. In the end, we hope the Commission ignores what the self-interested providers say is best for America's future, and base the polices of the National Broadband Plan on the aspirational standards that Congress established for America's future.

II. Providers Only Offer Self-Serving Definitions of 'Broadband' that Completely Ignore the Parameters Set by Congress in the 1996 Telecommunications Act and the 2008 Farm Bill

We are not surprised certain commenters want the Commission to low-ball the standard for America's communications future. But the Commission should be aware that some of these pleas come with the taint of hypocrisy, and at times ignore the plain meaning of the law. Take for instance AT&T, who in their comments tells the Commission:[1]

> "To be sure, some broadband applications do require fairly stringent performance characteristics with little jitter, low latency, and high reliability. But these applications -- real-time VoIP or streaming video, for example -- are not necessarily mandatory components of the connectivity that unserved Americans sorely need today, nor are they necessarily components for which all Americans wish to pay.
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> [...]
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> For residential customers, that minimal set of applications should include the ability to exchange emails, participate in instant messaging, and engage in basic web-browsing. It also should include the ability to engage in Internet-based education programs, interact with Internet based government services, and participate in online energy, healthcare, and public-safety programs. If the Commission determines that this is the correct set of capabilities, then a simple definition of broadband based on a reasonably achievable throughput minimum might be appropriate, and concerns about jitter and latency might be less relevant."

[1] AT&T Comments, at 4-5.

First, the Commission must realize that AT&T's interpretation of the term "broadband" is one where a connection need not support real-time VoIP and video capabilities -- where the minimum standard should be capability to support email, text-based IM, and basic Web page browsing. While this may suit AT&T's business model, it is in direct contrast to the *exact* standard Congress set in both 1996 and 2008 -- where "broadband" is the explicit capability to support real-time VoIP *and* high-quality two-way video applications.

Second, the Commission must realize that AT&T -- like many other incumbents -- are arguing one thing in this proceeding, and saying the exact opposite in other proceedings. For example, in 2008 AT&T wrote in comments to the Commission[2]:

> "Until recently, the most popular Internet activities consisted of surfing mostly text- oriented webpages, conducting basic e-commerce, exchanging e-mails, and downloading document files...
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> [...]
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> Over the past few years, however, bandwidth-intensive applications such as streaming video have exploded in popularity. These applications have dramatically increased the volume of Internet traffic—both downstream and upstream...
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> [...]
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> Today, users in the United States download more than 9.5 billion video clips from YouTube per month...YouTube is just the vanguard of the Internet video distribution business.
>
> [...]

[2] Comments of AT&T, Inc., In the Matter of *Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices, Petition of Free Press et al. for Declaratory Ruling that Degrading an Internet Application Violates the FCC's Internet Policy Statement and Does Not Meet an Exception for "Reasonable Network Management,"* File No. EB-08-IH-1518, WC Docket No. 07-52, pp. 6-8 (2008).

> Video is only one of several bandwidth-intensive applications that are placing new demands on the Internet's access and backbone networks. Others include such music downloading services as iTunes, which have supplanted compact discs as the primary means of music distribution; on-line printing and photo-sharing services such as Kodak, Snapfish, Shutterfly, and Photobucket; and the enormously popular class of 'massively multiplayer online role-playing game[s],' such as Sony's EverQuest and Blizzard Entertainment's World of Warcraft."

So in this instant proceeding we see the telecommunications giant telling the Commission that broadband should be defined in a manner *that excludes* the exact two-way voice and video capabilities contained in the Congressional definition of "broadband." AT&T says that such applications "are not necessarily mandatory components of the connectivity that unserved Americans sorely need today, nor are they necessarily components for which all Americans wish to pay." But in previous pleadings before the Commission, the carrier provided numerous examples of the numerous bandwidth intensive applications that have "exploded in popularity" Carriers like AT&T cannot have it both ways -- either these applications that require two-way robust connectivity are popular, or they are not; they are either applications that users find valuable, or they are not. Which is it? Should we believe AT&T when they say that video and interactive gaming are "enormously popular", or should we believe past statements from the company stating that "[w]hile 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."[3]

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[3] This comment, made in 2007 is quite instructive. Though today AT&T is generally on board with the low-ball 768kbps downstream definition of "broadband, Tier 1", when the Commission last reviewed this definitional issue the carrier balked at moving the ball past the 1999-set standard of 200kbps. The Commission ignored the pleas to keep the standard at the bare minimum, and the sky did not fall. *See* Comments of AT&T, Inc, *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, p. 3 (2007).

It is clear that as consumers gain access to more robust high speed Internet services, that they will make use of those services. Innovators with a larger pool of potential users will create new valuable services that make use of the increased capacity. This cycle of demand quickly catching up to supply should not be surprising. Indeed, it is exactly why Congress set a then-aggressive goal for "broadband" in Section 706 of the 1996 Telecommunications Act. But in the incumbent's world, *advanced* capability means something only slightly better than dial-up, that even 200kbps is "more than sufficient"[4] and quite "adequate" for just about anything a consumer would want to do with an Internet connection.[5] And if a market player manages to exceed that low bar by the smallest amount, well then that deserves to be called *next generation* broadband.[6]

What this attitude -- pervasive in the incumbents' comments -- suggests is a view that consumer's use of *current* network capabilities equates to consumers being completely satisfied with those capabilities, with no desire for higher speeds. But this static view is simply not

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[4] "Moreover, USTelecom believes that it would be counterproductive for the Commission to arbitrarily increase the definition of broadband speed. For many consumers and businesses, the 200 Kbps capability is more than sufficient to meet their current needs, which often consists of basic e-mail use, access to general information (e.g. government websites and news) and the transmission of standard digital media such as pictures and documents." *See* Comments of the United States Telecom Association, *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol Subscribership*, WC Docket No. 07-38, p.15 (2007).

[5] "The threshold 200 kbps qualification for broadband services remains adequate, as many broadband applications like web browsing and e-mail are effectively carried out at this speed." *See* Joint Comments of Verizon and Verizon Wireless, *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol Subscribership*, WC Docket No. 07-38, p. 22 (2007).

[6] In perhaps the most self-serving moment in the incumbent's comments came from Comcast, who told the Commission that 600kbps downstream/500kbps upstream was an appropriate "current" definition of broadband, but that advertised speeds of 12Mbps downstream/2Mbps upstream deserves to be called "next generation broadband." Of course, it is no coincidence that Comcast already offers the majority of its customers speeds at this level (albeit only for the first 10MB of data using their "Powerboost" technology).

supported by the history of Internet use. Applications like Hulu and YouTube became wildly popular once there was a critical mass of end-users that had connections that could support these applications. The Internet ecosystem is indeed a field of dreams -- if you build it, they will come; and if you build even more, even more will come. Sadly, in their comments to the Commission the providers seem to think that because consumers make the best use that they can of their slow, asymmetric connections that they don't want faster, symmetric connections.[7] This is the exact type of backwards logic that Congress intended for the Commission to reject as it crafts the National Broadband Plan.

III. Calls for a Lower Definitional Standard for Mobile Wireless Technologies Violate the Oft-Touted Principle of Technological Neutrality

Nowhere in the law -- not in Section 706, nor in the American Recovery and Reinvestment Act -- did Congress express any desire for the Commission to craft broadband policy based on differential treatment of mobile versus fixed technologies. Yet numerous providers and wireless equipment companies are adamant that the Commission adopts an even lower low-ball definition for broadband as it applies to mobile wireless technologies. But in prior comments many of these same parties touted the principle of "technological neutrality" when it comes to the awarding of broadband stimulus dollars.[8] Similarly, these same parties are constantly describing mobile Internet access as a perfect substitute for fixed access, while also

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[7] *See* e.g., Comments of TimeWarner Cable, "Incorporating the Form 477 structure also would account for broadband services with asymmetrical upstream and downstream speeds, which are quite popular with consumers based on the most typical types of usage over their broadband connections. Asymmetrical speeds thus comprise an important broadband service option for consumers."

[8] *See e.g.* Comments of AT&T Inc., *In the Matter of A National Broadband Plan for Our Future*, GN Docket No. 09-51, pp. 19-20 (2009). "The Commission thus far has heeded Congress's instruction, making technological neutrality a key element of its general policy approach. It should be careful to do the same here."

noting that fixed and mobile services are already, and will in the future be quite divergent in what types of capabilities they can offer end users.[9]

While we certainly believe that mobile broadband or mobile Internet access is an increasingly important communications medium -- and whose deployment and adoption should certainly should be encouraged -- there is nothing in the law that suggest that it is at all appropriate for the Commission to establish a separate threshold definition of broadband for mobile services. But this also does not mean that the Commission should adopt a low-ball definition of broadband in order to ensure that today's 3G technologies fall into this classification.

We remind the Commission that the instant proceeding is about how to define the term "broadband" for the purposes of the National Broadband Plan. It is not about deciding which projects qualify for stimulus funds under the ARRA. The NTIA already decided that matter, in a manner that we largely agree with[10] -- one that (as the law requires)[11] -- gives priority to projects that offer higher speeds, but that is flexible in getting some basic level of non-dial-up Internet

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[9] *See* e.g. Comments of Sprint Nextel, citing prior T-Mobile comments, T-Mobile, for example, encourages the Commission to, at a minimum, "adopt different definitions or standards of what constitutes 'broadband' based on the technology being used to provide the service." *See also* Comment of Verizon, asking the Commission to "recognize differences between fixed and mobile broadband and address each separately." Verizon also commented, "the Commission should likewise consider the requirements of more advanced and emerging applications as it sets longer term national objectives related to broadband. Fixed services at 50 Mbps and mobile services at 5 Mbps, for example, would provide enough speed to support most of the most advanced applications available today, and higher targets may be appropriate in the future as new applications emerge." In other words, mobile and fixed cannot now, nor in the future possibly be substitutable technologies, because they are an order of magnitude (or more) different in their actual application-support capabilities.

[10] With the exception of the reliance on advertised, not actual or probable speeds.

[11] "The Assistant Secretary, in awarding grants under this section, shall, to the extent practical... consider whether an application to deploy infrastructure in an area... will, if approved, provide the greatest broadband speed possible to the greatest population of users in the area." *See*, Section 6001(h)(2)(B), American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

access services to areas that might not otherwise ever see any deployment.[12] No, the National Broadband Plan is about ensuring "that all people of the United States have access to broadband capability" and establishing "benchmarks for meeting that goal." It is about putting forward a plan "for use of broadband infrastructure and services in advancing consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes." Most importantly, it is a plan that must offer "a detailed strategy for achieving affordability of [broadband] and maximum utilization of broadband infrastructure and service by the public." With this in mind, the Commission must recognize that "maximum utilization" can only be achieved on an infrastructure that is truly robust and open to all applications.

Respectfully submitted,

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[12] "The Commission need not adopt any new specific definitions of "broadband" for the purposes of assisting NTIA in the administration of the BTOP program. The Commission and NTIA should simply use the existing categories reported on Form 477 as a guide for qualifying and categorizing a particular grant application. These categories are the "first generation data" and "basic broadband tiers 1-7" established in the 2008 Form 477 Report and Order. This does not mean that the NTIA should avoid establishing specific speed benchmarks or other eligibility criteria.