



July 2, 2010

EX PARTE

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: 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**

Dear Ms. Dortch:

The Commission is currently considering, pursuant to Section 706 of the Act, its most recent report to Congress on “whether advanced communications capability is being deployed to all Americans in a reasonable and timely fashion.”¹ In each of the previous Section 706 Reports, the Commission has answered that question in the affirmative.

More recently, in its National Broadband Plan, the Commission once again confirmed the virtually unparalleled rate at which broadband networks have been deployed throughout this country.² It also recognized that, unlike many of the great national infrastructure projects that have come before it, the deployment of broadband has been accomplished almost exclusively through private investment by the nation’s communications companies. As the National Broadband Plan succinctly puts it, “[f]ueled primarily by private sector investment and innovation, the American broadband ecosystem has evolved rapidly.”³

While benchmarks based on long-term, ambitious goals are appropriate as targets worth striving for in the context of the National Broadband Plan, Congress’ mandate to the Commission with respect to Section 706 requires a more practical analysis of America’s progress towards widespread broadband deployment. And against any such reasonable benchmark, that progress continues to be extraordinary.

Deployment: The express language of Section 706 asks the Commission to report only on the country’s progress with respect to whether advanced services are being “deployed” in a

¹ See 47 U.S.C. §706(b).

² See, “Connecting America: The National Broadband Plan” (rel. March 16, 2010) (“NBP”) at p. 3 (“Today, high-speed Internet is transforming the landscape of America more rapidly and more pervasively than earlier infrastructure projects.”).

³ NBP at p. XI.

reasonable and timely fashion. And as the Commission's own extensive survey has demonstrated, private investment has connected more than 95% of the US population via wireline broadband infrastructure capable of supporting actual download speeds of at least 4 Mbps.⁴ In fact, 82% of Americans have a choice of at least two *wired* broadband providers offering such speeds, which is *nearly twice as high as in Europe*.⁵ Deployment to business customers has been even greater, with 96% of all business locations having access to wireline broadband from the telephone company and 92% of businesses having access to cable broadband.⁶ Such penetration has been accomplished despite significantly greater geographic and demographic hurdles than in many other countries. For example, the United States has approximately one-quarter the population density of Europe; one-tenth that of Japan; and one-fifteenth the density of South Korea.⁷

And, of course, the above percentages do not even take into consideration the rapid growth of mobile wireless broadband or satellite broadband. As the National Broadband Plan found, 98% of Americans have access to at least one 3G wireless provider—and 77% have access to at least *three* such providers.⁸

The National Broadband Plan also recognizes that American consumers have reaped the benefits of having more choice in broadband providers than consumers in most other countries. As the Plan recognizes, this “competition appears to have induced broadband providers to invest in network upgrades.”⁹ Various estimates place private investment in broadband networks at between \$60 billion and \$100 billion annually, as cable, telephone and wireless companies continually battle to deliver faster and faster speeds to consumers. In fact, only one out of the thirty countries surveyed by the OECD had a higher level of private broadband infrastructure investment on a per capita basis than the United States between 1997 and 2007 (the most recent year for which such data is available)—and U.S investment on this basis has been *twice that or more* than a number of technologically developed countries including South Korea, France and Germany.¹⁰

As the Commission found, the result of this aggressive competition is that advertised speeds have grown approximately 20% per year over the past decade.¹¹ And, perhaps most importantly for purposes of the Section 706 Report, it is apparent that broadband companies—both wireline and wireless—are in the middle of ongoing efforts to deliver even faster and more robust networks to even more Americans. Telephone companies are continuing to deploy fiber deeper and deeper into their broadband networks; cable companies are in the process of ubiquitously deploying DOCSIS 3.0 technology; and multiple wireless broadband providers are rapidly deploying 4G wireless technology.¹² In the midst of such technological innovation, it

⁴ NBP at 20.

⁵ *Id.*; compare, iDate, *Broadband Coverage in Europe: Final Report, 2009 Survey* (December 2009) at p. 18.

⁶ NBP at 20.

⁷ http://en.wikipedia.org/wiki/list_of_countries_and_dependencies_by_population_density

⁸ NBP at 39.

⁹ NBP at 38.

¹⁰ OECD, *Communications Outlook 2009* (August 2009) at Chapter 4, Table 4.17 (Version 1, updated August 3, 2009) available at <http://dx.doi.org/10.1787/625111707460> (visited June 29, 2010). This figure excludes spectrum licenses. Switzerland had the highest per capita investment during this period.

¹¹ NBP at 20.

¹² NBP at 20, 22.

would be simply illogical for the Commission to deduce that broadband deployment is failing to make adequate progress towards meeting the broadband needs of the vast majority of Americans.

Adoption: While Section 706 asks only about broadband deployment, there also can be no doubt that U.S. consumers have embraced broadband technology. As the National Broadband Plan found, “nearly two-thirds of American adults have adopted broadband at home.”¹³ More precisely, residential broadband subscribership has grown from only 1 million in 1999 to approximately 80 million in a single decade.¹⁴

This rapid pace of adoption dwarfs earlier consumer technologies. The U.S. achieved 50% broadband household penetration in less than nine years, more rapidly than any other network technology and many critical information technologies.¹⁵ After its invention by Alexander Graham Bell in 1876, the first telephone exchange appeared in 1878 and the first automatic switch went into commercial use in 1892.¹⁶ After the Bell patents expired in 1894, thousands of companies entered the market to provide local exchanges. Yet the telephone did not achieve 50% household penetration until sometime between 1940 and 1950—about a half a century after the patent expiration. Cable television service took over thirty-five years to achieve 50% household penetration in the U.S.¹⁷; personal computers took 20 years; color televisions took 20 years; and wireless telephones took 16 years.¹⁸ While government and industry have a mutual interest in spurring even greater adoption levels, broadband penetration has greatly outpaced all of these prior technologies and continues to grow.

Usage: The National Broadband Plan correctly identifies perhaps the most important benchmark in assessing the reasonableness of American broadband deployment when it states “we should lead the world where it counts—in the use of the Internet and in the development of new applications that provide tools that each person needs to make the most of his or her own life.”¹⁹ And indeed, America does lead the rest of the world in these regards.

The United States is among the world leaders in usage as measured by bandwidth consumed per Internet user. Recent data indicate that in 2009, the United States consumed more bandwidth per Internet user at 19.2 GB per month than the largest countries in Western Europe—France 16.0, Germany 12.1, United Kingdom 11.5, and Italy 7.9—and Japan at 10.8.²⁰ Among countries for which usage data were available, only South Korea, which is an outlier, was a substantially larger user of broadband. Nonetheless, North America, predominantly the United

¹³ NBP at 23.

¹⁴ NBP at 167; Federal Communications Commission, High Speed Services for Internet Access (January 2008), at Table 4.

¹⁵ See John Horrigan, Home Broadband Adoption 2008, PEW Internet & American Life Project, Home Broadband Adoption 2008 (July 2008) at p. 3. According to PEW, broadband achieved 50% penetration sometime between March of 2007 and May of 2008.

¹⁶ Federal Communications Commission, Statistical Trends in Telephony July 1998, Table 16.3, p. 87 at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend298.pdf (visited June 2, 2009).

¹⁷ U.S. Department of Commerce, Census Bureau, Statistical Abstracts of the United States (2008, 2000, 1994, 1985, 1980, 1976) available at http://www.census.gov/compendia/statab/past_years.html (last visited June 2, 2009).

¹⁸ Consumer Electronics Association, Household Product Penetration, 2008-9.

¹⁹ NBP at p. 4.

²⁰ Based on an analysis of usage data from Cisco’s Visual Networking Index 2010 (available at http://www.ciscovni.com/vni_forecast/index.htm) and Internet user data from the International Telecommunications Union (<http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>).

States, leads all other regions of the world in Internet usage as measured by bandwidth consumption per Internet user. Indeed, this most recent data from Cisco and the ITU show greater growth in United States usage than projected one year earlier and show that the United States performs even better relative to other countries than previously projected.²¹

In short, not only do Americans continue to adopt Internet technologies, but those that have done so are utilizing these to a greater extent than virtually any other nation to, in the Commission’s words, “make the most of his or her own life.”

Consumer Satisfaction and Affordability: It is also apparent that American consumers are continuing to receive more and more value for their broadband dollar. As the National Broadband Plan noted, various studies rank the United States high in broadband affordability.²² And as USTelecom demonstrated in its comments to the Broadband Notice of Inquiry, competition among broadband providers is resulting in ever-increasing affordability as the cost per Mbps continues to fall.²³

Weighted Average Monthly Prices for Top 5 ILEC Wireline Broadband Services

Year	Maximum Advertised Price by Downstream Speed Tier					
	Up to 768 kbps	768 kbps -1.5 mbps	Up to 3.0 mbps	Up to 7.0 mbps	Up to 15 mbps	Up to 30 mbps
2001	*	\$50	n/a	n/a	n/a	n/a
2002	\$28	\$32	*	n/a	n/a	n/a
2003	\$28	\$30	*	n/a	n/a	n/a
2004	\$30	\$33	\$46	*	*	n/a
2005	\$20	\$27	\$33	\$39	*	*
2006	\$20	\$23	\$28	\$36	*	*
2007	\$18	\$25	\$28	\$39	\$51	*

Finally, in a statistic that for some reason has not received the attention it deserves, a recent survey conducted on the Commission’s behalf found that found that 91% of broadband consumers are satisfied with their broadband service—in fact, the Commission found that half are *very satisfied* with their service.²⁴ Such satisfaction levels would be remarkable in any mature industry—but are even more so with respect to an industry that is continuing to invest more than \$60 billion each year in expanding and improving its product offerings.

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²¹ See *Ex Parte* letter from Walter McCormick, GN Docket 09-51 (December 22, 2009).

²² NBP at p. 39 (citing to Gregory Rosston et al., Household Demand for Broadband Internet Services (2010), available at http://siepr.stanford.edu/system/files/shared/household_demand_for_broadband.pdf ; Int’l Telecomms. Union, Measuring the Information Society: The ICT Development Index 66 (2009), available at http://www.itu.int?itu-d/ict/publications/idi/2009/material/idi2009_w5.pdf.

²³ Wireline Broadband Pricing 2001-2007, USTELECOM: THE BROADBAND ASSOCIATION (June 2008), available at <http://www.ustelecom.org/uploadedFiles/Learn/Broadband.Pricing.Document.pdf> (last visited June 1, 2009). Copyright USTelecom 2008.

²⁴ See FCC Press Release at page 2, dated June 1, 2010 available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298525A1.pdf

Section 706 asks the Commission to determine whether broadband is being *deployed* to all Americans in a reasonable and timely manner. The Commission's own analysis in the National Broadband Plan reinforces other evidence showing that competition, industry investment and technological developments are rapidly leading to deployment of robust broadband networks to all corners of the country but the most prohibitively expensive to reach.

It is absolutely appropriate for the Commission to be concerned about the remaining small percentage of Americans who may not have access to broadband in the foreseeable future because such deployment is not currently economically viable—indeed, Section 254 of the Act gives the Commission both the responsibility and the authority to ensure “access to advanced telecommunications and information services...in all regions of the Nation.”²⁵ Similarly, while Section 706 is focused on broadband deployment, the Commission in other contexts has numerous tools at its disposal through which it can encourage and perhaps accelerate adoption rates, particularly among demographic groups that are under-represented relative to the nation as a whole. USTelecom has previously expressed its support for such efforts and proposed ways that the Commission and industry could work together towards this mutual goal.

In sum, while the Commission must expressly acknowledge in the Section 706 Report that broadband has been and continues to be deployed “in a reasonable and timely fashion” for the vast majority of Americans, identifying those limited areas of concern for Congress in a granular and nuanced fashion would be appropriate. On the other hand, it would be both inconsistent with the Congressional intent behind Section 706 and fundamentally misleading for the Commission to find that these discrete concerns over-ride the much more compelling conclusion that Americans are experiencing the benefits of a tremendously successful broadband ecosystem.

Respectfully submitted,



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²⁵ 47 U.S.C. §254(b).