Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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. 10-159**

COMMENTS OF THE

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

To the Commission:

I. INTRODUCTION

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits these comments in response to the Commission's Notice of Inquiry in the above-captioned docket.[1] ITTA is an alliance of mid-size telephone companies that collectively serve more than 19 million access lines in 44 states, and offer subscribers a broad range of high-quality wireline and wireless voice, data, Internet, and video services. In the instant NOI, the Commission seeks comment on issues relating to the definition of broadband, whether broadband is being deployed to all Americans in a reasonable and timely manner, and actions that could, potentially, accelerate deployment.

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[1] *Inquiry Concerning the Deployment 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: Seventh Broadband Deployment Notice of Inquiry,* GN Docket No. 10-159, FCC 10-148 (2010) (NOI).

II. DISCUSSION

The Commission is in the midst of a comprehensive reexamination of communications policies that affect end-users Nationwide. In April 2009, the Commission initiated a major undertaking when it released the first Notice of Inquiry relating to the Commission's obligations under the American Recovery and Reinvestment Act of 2009 (Recovery Act) to submit to Congress "a report containing a national broadband plan;"[2] in May 2009, the Commission released a report on rural broadband;[3] subsequently, the Commission sought comment in a series of notices addressing multi-faceted aspects of broadband, culminating in the release of the NBP report to Congress.[4] The Commission is currently engaged in numerous rulemaking proceedings arising out of the NBP. The instant NOI arises out of the Commission's separate obligation, pursuant to Section 706 of the Telecommunications Act of 1996,[5] as amended, to determine annually whether broadband is being deployed to all Americans in a reasonable and timely fashion.

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[2] Pub. L. No. 111-5, 123 Stat. 115, § 6001(k)(2); *see, also, A National Broadband Plan for Our Future: Notice of Inquiry*, Docket No. 09-51, FCC 09-31 (Apr. 8, 2009).

[3] Bringing Broadband to Rural America: Report on a Rural Broadband Strategy, Michael J. Copps, Acting Chairman, Federal Communications Commission (2009) (Rural Broadband Report).

[4] *See,* Connecting America: A National Broadband Plan, Federal Communications Commission (available at http://www.broadband.gov/plan/) (2010).

[5] 47 U.S.C § 1302(b). Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (the Telecommunications Act), as amended in relevant part by the Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008) (BDIA), is now codified in Title 47, Chapter 12 of the United States Code. *See* 47 U.S.C. § 1301 *et seq.*

Definition of Broadband and Frequency of Definitional Updates

In the instant NOI, the Commission asks whether a broadband benchmark of 4 Mbps upstream, 1 Mbps downstream (4/1) is appropriate, and whether the definition of broadband should contemplate performance issues such as latency and jitter.[6] A consumer-centric focus should drive Commission policy; a paradigm user experience should be identified and verified, and the amount of capacity necessary to support that user experience should inform the benchmark. At the outset, the Commission must be careful to not set the initial threshold so low as to place providers in rural and high-cost areas "behind the curve." The Commission's OBI technical paper finds that broadband speeds are doubling every four years.[7] Accordingly, the initial threshold must contemplate anticipated demands at the time regulatory mechanisms will have facilitated build-out. In a similar vein, the Commission's inquiries into the role of performance characteristics and frequency of updates to the benchmark are particularly salient.

Sound public policy, consistent with universal service principles, must recognize that rural areas need access to telecommunications and information services to ensure economic, educational, and health care opportunities. Performance characteristics are an integral aspect of end-user experience. "Blazing broadband" is meaningless if users regularly experience latency and jitter that preempts reasonable opportunities to rely upon applications such as streaming video or other similar "real time" services. These characteristics are measurable. By way of example, a White Paper provided to the National Telecommunications and Information

[6] NOI at para. 5.

[7] Broadband Performance: OBI Technical Paper No. 4, at 4, 11 (2010) (available at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0813/DOC-300902A1.pdf).

Administration (NTIA) and the Rural Utilities Service (RUS) by ADTRAN Inc.[8] explores "the effect of different types of access network architectures on the peak vs. sustainable speeds per subscriber."[9] The study examines factors affecting traffic loading, access network architectures, and performance. The White Paper addresses results arising out of three types of networks (DSL, hybrid fiber-coax, and broadband wireless access) and contemplating various network load scenarios and evaluating the performance of networks with dedicated last mile resources vs. networks relying on shared last mile channels. These types of study results should inform the Commission's conclusions regarding overall end-user experiences that are a vital component of the definition of broadband.

Additionally, the Commission asks whether review of the standard every four years is sufficient to enable a reasonably-timed update of the definition.[10] ITTA submits that the Commission should contemplate a more frequent update. By way of explanation, the Commission recently released the 2010 "Section 706 Report."[11] In that 2010 Report, the Commission adopted an updated broadband benchmark.[12] The benchmark pushed the threshold from 200 kbps to 4 Mbps download capabilities coupled with 1 Mbps upload capabilities.

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[8] *See Broadband Initiatives of the American Recovery and Reinvestment Act of 2009: Letter from Stephen L. Goodman, Counsel for ADTRAN, Inc., to Bernadette McGuire-Rivera, U.S. Department of Commerce*, Docket No. 090309298-9299-01 (Apr. 13, 2009), and Attachment, "Defining Broadband Speeds: An Analysis of Peak vs. Sustained Data Rates in Network Access Architectures" (ADTRAN White Paper).

[9] ADTRAN White Paper at 1.

[10] NOI at para. 5.

[11] *Inquiry Concerning the Deployment 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: Report,* GN Docket Nos. 09-137, 09-51, FCC 10-129 (2010) (2010 Report).

[12] 2010 Report at para. 11.

Although the new benchmark provides a more realistic evaluative assessment of broadband service than did the nearly-historic 200 kbps standard, the sudden shift (an effective instant increase of 1,900 percent) drove the Commission to find "that broadband deployment to *all* Americans is not reasonable and timely."[13] For ITTA members, who have on average deployed broadband to more than 85 percent of their respective service areas, the new finding did not reflect the full scope of their aggressive deployment achievements. Under existing regulatory policies, private investment coupled with public support has fueled broader-reaching networks of increasing capacity in rural and high-cost regions. Broadband infrastructure and services offered by ITTA members build local economies, support education, and enable critical health care across rural America. The sudden definitional change of broadband, resulting in negative findings regarding Nationwide deployment, masked the achievements of ITTA carriers conquering the challenges of rural and high-cost regions. Moreover, the findings risk opportunities to obtain capital if lenders perceive inaccurately that prior investments have failed to yield satisfactory results.

Updates should occur more frequently than quadrennially. In the first instance, frequent updates would enable the markets and providers to address evolving needs more nimbly. More critically, frequent updates would inform, if not compel, regulatory processes necessary to compensate for challenging economic factors in rural and high-cost areas that do not naturally encourage investment in broadband. Postponing review and update of standards to every fourth year risks leaving consumers in rural and high-cost areas lagging when more frequent regulatory updates may be necessary in order to ensure the reasonable reliability of policies intended to promote broadband deployment.

[13] 2010 Report at para. 2 (emphasis in original).

Influences on the Definition of Broadband

The Commission seeks comment on whether its definition of broadband should be influenced by (a) other Federal agencies and/or (b) other Nations. ITTA submits that the Commission may be *informed,* but should not *per se* be *influenced* by the definition of broadband that may be promulgated by other Federal agencies. The Commission is an independent Federal agency whose independence should not be potentially clouded by reliance on Executive branch decisions. The Commission, however, would be derelict to not be informed by the expertise emanating from Executive branch or other independent Federal agencies. That information can be relied upon to formulate the Commission's resolution, but should not be accepted as a factor that would be presumptively weighted in the Commission's analysis.

Similarly, the Commission should resist popular calls to rely upon or be influenced by other nations' broadband practices. As has been borne out in discussions regarding high-cost modeling, the variables in the United States alone render difficult base comparisons among regions comprising varying terrain, population density, and demographic factors that inform broadband deployment decisions. The usefulness of any analogous experience emanating from a foreign nation is questionable, at best. The Commission should endeavor, along with the industry, to determine the standards that best meet our National public policy and statutory mandates, and conform Commission action to those benchmarks.

Availability and Affordability

The Commission seeks comment on whether, for purposes of Section 706, "broadband availability" should refer to "a customer's ability to purchase a capability that has been

deployed."[14] Availability should refer to the actual deployment of facilities and the objective technical ability to access services provided over those facilities. Defining "availability" as a function of a *customer's* ability could implicate elements of affordability that renders the service effectively available to specific individual consumers. Accordingly, the definition could be refined by qualifying the standard of customer ability to denote a customer's "reasonable ability" to purchase. This subjective language would reflect the universal standard of generally "comparable rates" set forth in the Communications Act of 1934,[15] as amended, without implicating individual customers' abilities.

Data Collection and Modeling

The Commission explains that when creating the most recently-used model, the Commission relied upon non-recurring ARRA funds.[16] The Commission now seeks comment on how, in the future, it can best assemble the level of data that the model requires. Toward that end, the Commission asks whether it is "advisable" for the Commission to collect updated data from state and Federal sources given the costs and burdens such requests will impose upon government agencies. In the first instance, however, it has not been determined that this model is the best mechanism to be used. As noted previously by ITTA, a prerequisite for determining the usefulness and appropriateness of any model is the ability of stake-holders to evaluate the model. Inaccessibility of a model to industry participants, by contrast, precludes proper evaluation. By way of comparison, the Hybrid Cost Proxy Model (HCPM) was, in the Commission's assessment, the result of "an open and deliberative process in which industry

[14] NOI at para. 9.

[15] 47 U.S.C. § 254(b)(1).

[16] NOI at para. 12.

experts, state commissions, staff of the Federal-State Joint Board on Universal Service, and other interested parties provided valuable assistance."[17] The same open process should attend the current model. In regard to necessary data collections, as the Commission contemplates potential burdens placed upon state or Federal agencies, the Commission must be mindful of data collection burdens placed upon providers. Toward that end, greater industry participation in model development should lead to more rational, appropriately-focused data collection outcomes.

Broadband Deployment and Usefulness of Consumer Survey Results

The Commission asks how or whether consumer survey results should be incorporated in analyses and future reports.[18] Such data may be considered for inclusion to the extent it may reflect consumer perspectives, but it should not be used to substitute or modify data submitted by providers or otherwise collected under verifiable processes. The Commission's interest in evaluating the scope and timeliness of broadband deployment should incorporate rational evaluations that inform the evolving definition of broadband, market conditions that affect broadband deployment, and the effectiveness of regulatory mechanisms intended to promote broadband deployment where naturally occurring economic factors would not.

III. CONCLUSION

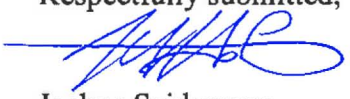
ITTA members have on average deployed broadband to more than 85 percent of their respective service areas. Under existing regulatory policies, private investment coupled with public support has fueled broader-reaching networks of increasing capacity in rural and high-cost regions. The Commission must ensure that its findings reflect the aggressive achievements of

[17] *See, Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support: Notice of Inquiry and Notice of Proposed Rulemaking,* WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, FCC 10-58, at para. 6 (2010).

[18] NOI at para. 24

regions. The Commission must ensure that its findings reflect the aggressive achievements of mid-size carriers serving primarily rural America. ITTA looks forward to working with the Commission to develop solutions to conquer the challenges of deploying advanced services in rural and high-cost regions.

Respectfully submitted,



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