

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Inquiry Concerning the Deployment of) GN Docket No. 10-159
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)
)

**REPLY COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) hereby submits its reply comments in response to the *Notice of Inquiry* issued in the above-captioned proceeding.¹

The initial comments in this proceeding confirm that for the Commission to achieve the goal of promulgating a useful report on the current status of broadband deployment, as envisioned by Congress and required by section 706 of the Telecommunications Act of 1996,² it should avoid the errors made in the *Sixth 706 Report*.³ That document demonstrates that a report

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, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Deployment Notice of Inquiry, FCC 10-148 (rel. Aug. 6, 2010) (*Notice of Inquiry*).

² Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153, 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. 47 U.S.C. § 1301 *et seq.*

³ See Comments of AT&T Inc., GN Docket No. 10-159, at 25-28 (Sept. 7, 2010) (AT&T Comments); Comments of Comcast Corporation, GN Docket No. 10-159, at 2 (Sept. 7, 2010); Letter from Danielle Coffey, Vice President, Government Affairs, Telecommunications Industry Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 10-159, at 1-2 (Sept. 7, 2010); Comments of the United States Telecom Association, GN Docket No. 10-159, at 5-9 (Sept. 7, 2010) (USTelecom Comments); Comments of Verizon and Verizon Wireless, GN Docket No. 10-159, at 2-4, 17-24 (Sept. 7, 2010) (Verizon Comments); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*,

can be no better than the data that goes into it. In the case of the *Sixth 706 Report*, the Commission’s reliance on out-of-date information and its failure to consider information on broadband projects funded by American Recovery and Reinvestment Act (ARRA) stimulus money resulted in an inaccurate report of the pace of broadband deployment in the country.

Compounding this problem, the Commission answered the wrong question in the *Sixth 706 Report*. Rather than reporting on whether broadband “is being deployed” in a reasonable and timely manner, as the statute requires, the Commission answered the unasked question of whether 100 percent of Americans have access to broadband today. Not surprisingly, the answer to that question is “no.” Despite great strides made by providers in rolling out broadband in a relatively short amount of time,⁴ and billions of dollars in stimulus funding being committed,⁵ universal broadband has not yet been achieved. Given that all of this, including the overall success in deployment and the reasons why there are gaps still to be filled, was comprehensively documented in the National Broadband Plan, it was surprising and disappointing that the

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 Nos. 09-137, 09-51, Sixth Broadband Deployment Report, FCC 10-129 (rel. July 20, 2010) (*Sixth 706 Report*). NCTA filed a petition seeking reconsideration of the *Sixth 706 Report*. NCTA Petition for Reconsideration, GN Docket Nos. 09-137, 09-51 (Aug. 19, 2010) (NCTA Petition for Reconsideration).

⁴ Verizon Comments at 5-17.

⁵ See *Secretary Locke Announces Recovery Act Investments To Expand Broadband Internet Access And Spur Economic Growth*, Commerce Department News Release, Sept. 27, 2010, <http://www.commerce.gov/news/press-releases/2010/09/27/secretary-locke-announces-recovery-act-investments-expand-broadband-i> (announcing the final awards under the \$4 billion Broadband Technology Opportunities Program (BTOP)); *Agriculture Secretary Vilsack Announces Recovery Act Broadband Projects to Bring Jobs, Economic Opportunity to Rural Communities*, USDA News Release, Sept. 13, 2010, http://www.usda.gov/wps/portal/usda!ut/p/c5/jZBLD4JADIR_UguLdj2iECUgwQfPi1kNIZhIMZGQ8O-Fmx7AbY_zTacZKGBcJfq6El3dKiEhg2J9i_gxSYIrM7hDjNoXy3fs0xZ3Gzbq-ZeOsWug50cWeXsH0ac_7nTKW_ZPOs6MjRAe2qaEHAqazSEGuSwr8RggVstoaOijqI2SqX9VHyX9B876DdBPA68mw6eV8m51H5jsgzLi7w9OaUAY/dl3/d3/L2dJQSEvUU3QS9ZQnZ3LzZfUDhNVIzMVDMxMEJUMTBJQ01IMURERDFTODU!/?printable=true&contentidonly=true&contentid=2010%2f09%2f0461.xml (“By leveraging \$2.5 billion in Recovery Act funding authorized by Congress, USDA has been able to provide loans and grants of \$3.6 billion to construct 307 broadband projects in 46 states and one territory.”).

Commission in the *Sixth 706 Report* asserted for the first time ever that broadband is not being deployed in a reasonable and timely manner.

The Commission should reconsider its erroneous conclusion from the *Sixth 706 Report* and avoid repeating these mistakes in the next 706 report. As the commenters agree, the next 706 report should rely on the most current information available.⁶ And rather than stating the obvious – that universal broadband has not yet been achieved – in the next 706 report the Commission should instead provide “a reasoned analysis of the ongoing deployment of broadband in light of relevant circumstances.”⁷

The initial comments reveal one key area of disagreement. Some commenters argue that the Commission should increase the speed threshold used to examine broadband availability in the next 706 report. Free Press, for example, argues that much higher speeds, particularly in the upstream direction, are needed because “high quality . . . video” is among the functionalities identified in the statute.⁸ The Fiber-to-the-Home Council (FTTHC) proposes a “multi-tier approach” with Minimum (1.5 Mbps down/384 kbps up), Average (12 Mbps down/2.5 Mbps up), and Maximum (101 Mbps down/20 Mbps up) tiers.⁹

⁶ AT&T Comments at 26-27; USTelecom Comments at 5; Verizon Comments at 21.

⁷ Verizon Comments at 18.

⁸ Comments of Free Press, GN Docket No. 10-159, at 6 (Sept. 7, 2010) (Free Press Comments). In discussing “actual” versus “advertised” speeds, Free Press cites the Omnibus Broadband Initiative’s technical paper for the proposition that actual download speeds lag advertised speeds by 50 percent. Free Press Comments at 7 (citing Broadband Performance, OBI Technical Paper No. 4, Omnibus Broadband Initiative, [http://download.broadband.gov/plan/fcc-omnibus-broadbandinitiative-\(obi\)-technical-paper-broadband-performance.pdf](http://download.broadband.gov/plan/fcc-omnibus-broadbandinitiative-(obi)-technical-paper-broadband-performance.pdf) (OBI Broadband Performance Paper)). As NCTA and others have explained, the analysis relied on in that paper significantly overstates the discrepancy between actual and advertised speeds. See AT&T Comments at 27-28; Letter from Neal M. Goldberg, Vice President and General Counsel, NCTA, to Joel Gurin, Chief, Consumer and Governmental Affairs Bureau, FCC, GN Docket No. 09-51, CG Docket No. 09-158 (Mar. 26, 2010). The Commission currently is working to gather more accurate broadband speed data. *Comment Sought on Residential Fixed Broadband Services Testing and Measurement Solution*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, Public Notice, 25 FCC Rcd 3936 (OBI 2010). NCTA is participating in, and fully supportive of, those efforts.

⁹ Comments of the Fiber-to-the-Home Council, GN Docket No. 10-159, at 5, 10 (Sept. 7, 2010) (FTTHC Comments); see also Comments of the National Telecommunications Cooperative Association, GN Docket No.

The Commission should reject these proposals. As NCTA and others have explained, the 4 Mbps downstream/1 Mbps upstream standard recently adopted by the Commission in the *Sixth 706 Report* represents an appropriately forward-looking, yet attainable, benchmark by which to measure the current progress of broadband deployment.¹⁰ The Commission based the 4/1 broadband definition on the average level of service customers are expected to need in the near future.¹¹ These speeds, which were adopted by the Commission less than three months ago in July 2010, represent significant increases in both the downstream and upstream thresholds from the speeds used in the previous five reports.¹²

The Commission should reject the assertion by Free Press that the statute compels speeds that enable customers to stream high-definition (HD) video.¹³ Congress used the term “high

10-159, at 3 (Sept. 7, 2010) (suggesting that speeds should be “forward looking and evolve to reflect this exponential growth [in] availability and demand.”).

¹⁰ Comments of the National Cable & Telecommunications Association, GN Docket No. 10-159, at 8 (Sept. 7, 2010) (NCTA Comments); Comments of Frontier Communications Corporation, GN Docket No. 10-159, at 3-6; Comments of the Michigan Public Service Commission, GN Docket No. 10-159, at 2 (Sept. 7, 2010). The 4 Mbps downstream and 1 Mbps upstream thresholds chosen by the Commission in the *Sixth 706 Report* do not correspond directly to data requested and collected by the Commission on the Form 477. The Commission instead used 3 Mbps downstream and 768 kbps upstream, for which data are reported on the Form 477, as a proxy for the 4/1 threshold. *Sixth 706 Report* at ¶ 5. As NCTA noted in its initial comments, the Commission could combine the 4/1 speed thresholds to measure broadband as 5 Mbps upstream and downstream combined, consistent with RUS’s approach in awarding the second round of ARRA funding. NCTA Comments at 9 (citing *Broadband Initiatives Program*, RUS, Notice of Funds Availability and Solicitation of Applications, 75 Fed. Reg. 3820, 3822 (Jan. 22, 2010)). Conducting an analysis on a combined speed basis would allow the Commission to measure progress towards accomplishment of the goals set forth in the National Broadband Plan, while avoiding the unreasonable conclusion that areas receiving downstream speeds in excess of 5 Mbps are somehow “unserved” if they can only receive upstream speeds of 512 kbps or less.

¹¹ *Sixth 706 Report* at ¶ 13.

¹² The Commission’s previous standard for measuring advanced services were services at speeds in excess of 200 kbps in both directions. *Id.* at ¶¶ 4-5.

¹³ Free Press Comments at 5. Free Press has made this argument in prior 706 proceedings and NCTA has explained why Free Press is incorrect. *See* Reply Comments of the National Cable & Telecommunications Association, GN Docket Nos. 09-137 and 09-51, at 2-4 (Oct. 2, 2009) (“Congress plainly did not envision or require the Commission to use the capability to originate high-definition television as the reference point for measuring whether advanced telecommunications service providers were deploying broadband in a ‘reasonable and timely’ way.”); National Cable & Telecommunications Association Opposition to Petition for Reconsideration, GN Docket No. 07-45, at 3 (Sept. 17, 2008) (“Plainly Congress did not expect the Commission to make a negative finding on ‘reasonable and timely’ deployment any time the capability to receive, let alone originate, a new broadband application – such as standard or high-definition video – is not deployed soon after it is introduced.”).

quality,” not “high definition,” and there is no basis for the Commission to equate the two.¹⁴

The Commission’s current definition of broadband is one that enables consumers to upload and download high quality video and it is more than adequate to satisfy the statutory language.¹⁵

The Commission also should reject the FTTHC proposal to use an evolving, multi-tiered definition.¹⁶ While the premise underlying the use of multiple tiers is not unreasonable given the multiple objectives the Commission is trying to achieve,¹⁷ implementation of such an approach would be difficult unless the tiers were fully consistent with tiers used by the Commission (or in the future, NTIA) in collecting deployment data. In addition, none of the proposed tiers matches the definition used in the *Sixth 706 Report*. As NCTA explained in its opening comments, increasing the speed thresholds again would run counter to the Commission’s goal of using “a relatively static point at which to gauge the progress and growth in the advanced services market from one Report to the next.”¹⁸

CONCLUSION

If done correctly, the Commission’s 706 report could be an extremely valuable tool on which to base broadband policy decisions, measure the progression of broadband deployment in the United States, and gauge the need for future action to spur deployment in certain areas. To produce an accurate and useful report, the Commission must rely on current information and a consistent definition of broadband. Furthermore, the Commission must not confuse the end goal

¹⁴ 47 U.S.C. § 1302(d)(1).

¹⁵ OBI Broadband Performance Paper at 16-17 (“Thus the 4 Mbps download, 1 Mbps upload Target is forward-looking, taking into account forecasts of future usage, along with current usage and historical increases in broadband speeds. It represents a speed significantly higher than what the typical residential customer consumes today (approximately 1 Mbps downstream and 250 kbps upstream), and a speed sufficient to stream high quality video”).

¹⁶ FTTHC Comments at 10.

¹⁷ *Id.* at 3.

¹⁸ *Sixth 706 Report* at ¶ 13.

of universal broadband availability with Congress's directive that the Commission measure and determine whether progress toward that end goal is occurring on a reasonable and timely basis.

Respectfully submitted,

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