

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Inquiry Concerning the Deployment of Ad-) GN Docket No. 10-159
vanced Telecommunications Capability to All)
Americans in a Reasonable and Timely Fashion,)
and Possible Steps to Accelerate Such Deploy-)
ment Pursuant to Section 706 of the Telecom-)
munications Act of 1996, as Amended by the)
Broadband Data Improvement Act)

REPLY COMMENTS of UNITED STATES CELLULAR CORPORATION

Grant Spellmeyer
Senior Director - Legislative &
Regulatory Affairs

United States Cellular Corporation
8410 West Bryn Mawr
Chicago, Illinois 60631
(773) 399-4280

David A. LaFuria
Steven M. Chernoff
John Cimko

Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

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SUMMARY

The record in this proceeding supports two central arguments raised by U.S. Cellular in its Comments regarding the Commission's *Notice of Inquiry*. Commenters have suggested that the Commission's seventh report regarding broadband deployment should focus on the role that mobile wireless broadband is playing in bringing broadband services to unserved populations, especially in rural areas.

First, commenters have confirmed that the unique features and functions offered by mobile wireless broadband service providers have fueled the popularity of mobile broadband among consumers, and that technological advances are making mobile wireless platforms even more effective in deploying broadband in rural areas. These various developments described by commenters lend support to U.S. Cellular's argument that the speed benchmark used by the Commission for purposes of the seventh report should be bifurcated to ensure greater accuracy in reporting the availability of both wireless and wireline broadband services.

Second, there is support in the record for U.S. Cellular's argument that the Commission was correct in concluding in the *2010 Sixth Broadband Deployment Report* that broadband is not being deployed in a reasonable and timely fashion. The record supports a conclusion that the Commission sufficiently supported its estimate that between 14 and 24 million Americans do not have access to broadband services, and that this data regarding unserved consumers warranted the Commission's finding with respect to the lack of reasonable and timely deployment.

On the other hand, commenters critical of this finding made by the Commission offer no persuasive arguments for their apparent view that the Commission, for purposes of its reporting under Section 706 of the Telecommunications Act of 1996, should compartmentalize its analysis of broadband deployment to rural and low-income populations and discount the lack of deploy-

ment to these populations for purposes of its findings regarding the overall reasonableness and timeliness of deployment.

There is also support from commenters regarding several other issues raised by U.S. Cellular in its Comments:

■ ***Broadband in Rural Areas.***—There is a risk that the Commission’s broadband speed benchmark would reduce the opportunity for mobile wireless broadband providers to receive universal service support. U.S. Cellular’s suggested bifurcation of the benchmark, with lower speeds used for mobile broadband services, would minimize this risk.

■ ***Ineffectiveness of Market Forces.***—Some parties argue that robust competition, especially in the wireless marketplace, has been effective in accomplishing broadband deployment. U.S. Cellular has demonstrated, however, that concentration in the wireless industry has hampered competition, and that the Commission is correct in concluding that market forces cannot be relied upon to bring deployment to unserved rural areas.

■ ***Affordability and Availability.***—There is support in the comments for U.S. Cellular’s position that the Commission should consider the affordability of broadband services as part of its evaluation of the extent to which broadband is available to consumers. One commenter disagrees, arguing that affordability is an issue related to adoption rather than to availability. In U.S. Cellular’s view, however, if broadband services are unaffordable, then, as a practical matter, they are unavailable. Affordability therefore should be treated as a component of availability.

■ ***The Broadband Assessment Model.***—There is some discussion in the record that the Commission should not rely on the Broadband Assessment Model in future broadband deployment reports because other data is available and because modeling is not useful for assessing the

level of deployment, and is even less appropriate for use in other contexts, such as the design and operation of universal service support mechanisms.

U.S. Cellular disagrees, showing in its Reply Comments that modeling, especially when combined with other data sources such as FCC Form 477 data, has been shown to be probative in estimating the availability of broadband. In addition, modeling is much more reliable and effective as a basis for determining universal service support than other methods, such as reverse auctions.

■ ***The Need for Immediate Action.***—The Commission’s finding in the *Sixth Report* that broadband is not being deployed in a reasonable and timely manner requires immediate corrective action by the agency. Commenters suggest that one area that merits action is universal service reform. This view is supportive of U.S. Cellular’s recommendation in its Comments that the Commission should act immediately to issue a declaratory ruling confirming the Commission’s statutory authority to permit eligible telecommunications carriers to begin using universal service support to deploy and operate broadband services.

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REPLY COMMENTS of UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation (“U.S. Cellular”), by counsel, hereby submits these Reply Comments, pursuant to the Commission’s Notice of Inquiry in the above-captioned proceeding.¹ The *Inquiry* seeks information and comments from interested parties concerning issues relating to the Commission’s preparation of a report to Congress pursuant to the Telecommunications Act of 1996 (“1996 Act”)² concerning the availability of advanced telecommunications capability.³

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, Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137, Seventh Broadband Deployment Notice of Inquiry, FCC 10-148 (rel. Aug. 6, 2010) (“*Inquiry*”). Reply comments in the proceeding are due not later than October 5, 2010.

² Pub. L. No. 104-104, 110 Stat. 56 (1996).

³ Section 706(b) of the 1996 Act, 47 U.S.C. § 1302(b).

I. INTRODUCTION.

The Commission in the *Sixth Report* for the first time decided upon a holistic approach for its analysis of the availability of broadband services, examining this issue with a view toward determining whether the Section 706 test for reasonable and timely deployment is being met throughout the broadband services ecosystem, including with respect to Americans with low incomes and Americans living in rural areas.

U.S. Cellular has strongly supported this approach in its Comments, and the record now before the Commission provides support from other commenters for the continuation of this method of analysis. Those parties dissenting from the Commission's approach, as U.S. Cellular's discussion in the following sections will demonstrate, allow their apparent concerns regarding the remedial actions the Commission may take, pursuant to Section 706(b) of the 1996 Act, to color their arguments that the Commission should abandon the analysis it used for the *Sixth Report*. In any event, these opponents present no persuasive evidence that the Commission's approach and conclusions are flawed or outside the scope of its Section 706 mandate and responsibilities.

Although commenters commend the Commission for its conclusion in the *Sixth Report* regarding the reasonable and timely deployment of broadband services, commenters also share U.S. Cellular's concerns that certain of the Commission's methods of analysis—the broadband speed benchmark, for example—could have adverse consequences for the deployment of mobile wireless broadband, especially in rural areas. U.S. Cellular therefore re-emphasizes its suggestion that the Commission modify the benchmark so that it more effectively and accurately takes account of mobile broadband services.

II. DISCUSSION.

U.S. Cellular’s concerns regarding the Commission’s broadband speed benchmark, as well as U.S. Cellular’s support for the Commission’s conclusion in the *Sixth Report* that broadband is not being deployed in a reasonable and timely manner, are reflected in other comments responding to the *Inquiry*. These and other issues are addressed in the following sections.

A. The Commission Should Establish Separate Broadband Benchmarks for Wireline and Mobile Wireless Providers.

U.S. Cellular argues in its comments that the Commission should consider establishing separate broadband speed benchmarks for fixed and mobile broadband, with a lower benchmark for mobile wireless broadband. U.S. Cellular reasoned that this would enable the broadband deployment report to provide more accurate information regarding the progress and growth in the advanced broadband services market.⁴

Various parties have expressed concerns regarding the broadband benchmark used by the Commission in the *2010 Sixth Broadband Deployment Report*.⁵ AT&T, for example, argues that the broadband benchmark “should focus on the speeds necessary to enable consumers access to the services they desire—including voice, data, and video—rather than adhere to any arbitrary threshold, or set the bar at some idealistic level.”⁶ CTIA argues that the benchmark, in placing a value on speed, ignores the fact that consumers “also clearly put a value on mobility.”⁷ CTIA

⁴ U.S. Cellular Comments at 4-8.

⁵ *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, Amended by the Broadband Data Improvement Act*, GN Docket Nos. 09-137, 09-51, Report, FCC 10-129 (rel. July 20, 2010) (“*2010 Sixth Broadband Deployment Report*” and “*Sixth Report*”), *recon. pending*.

⁶ AT&T Inc. (“AT&T”) Comments at 22.

⁷ CTIA—The Wireless Association® (“CTIA”) Comments at 2. *See id.* at 11 (noting that “[c]onsumers often want mobility, and are in many cases willing to trade some speed for the freedom of a ubiquitous con-

points out that “[m]obility brings broadband *to the person*, and millions of Americans are increasingly relying on mobile service to meet their broadband needs rather than using a broadband service narrowly based on some pre-defined speed, as the Commission’s definition presumes.”⁸

U.S. Cellular agrees with the observations made by AT&T and CTIA. A benchmark aimed at providing a practical, “real world” definition of broadband should accommodate and reflect consumer choices and desires regarding broadband access. Although U.S. Cellular is sympathetic toward CTIA’s concerns that a “speed-centric” benchmark that “excludes the unique attributes of mobility imposes a single, provincial view of what broadband communications ought to look like[,]”⁹ U.S. Cellular believes that its suggested middle-ground approach, involving the use of a separate, lower speed threshold for the mobile wireless broadband benchmark, takes concerns like those expressed by CTIA into account while also serving as a clear-cut measurement tool that should facilitate the Commission’s evaluation of broadband deployment for purposes of Section 706 of the 1996 Act.

Another commenter is concerned that the benchmark of 4 Mbps (download) and 1 Mbps (upload) is set too low and will risk undermining the ability of rural incumbent local exchange carriers (“LECs”) to deploy broadband facilities comparable to those available in urban areas, especially if the Commission’s proposed Connect America Fund disbursements are guided by this assertedly inadequate benchmark.¹⁰ If the Commission agrees that OPASTCO has identified

nection—while still able to stream video or audio, quickly download large files, browse the Internet, and use advanced gaming and social networking applications, among other features”).

⁸ *Id.* (emphasis in original).

⁹ *Id.* at 12.

¹⁰ Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) Comments at 4-5. OPASTCO is concerned that “[a] 4/1 Mbps broadband availability tar-

a problem regarding the level of the threshold and its potential impact on wireline broadband deployment in rural areas, then a solution would be to adopt the bifurcated approach to the threshold recommended by U.S. Cellular. Setting a threshold for wireline broadband providers that is higher than the 4/1 Mbps benchmark would be responsive to OPASTCO's argument that the lower threshold sets the bar too low, with potential consequences for Universal Service Fund ("USF") funding. On the other hand, a lower benchmark for mobile wireless broadband, as discussed above, would better serve to reflect and accommodate the desires of rural consumers (as well as consumers in urban areas) for mobile broadband access.

Finally, some parties object to the broadband benchmark used in the *Sixth Report* because it is "forward looking."¹¹ U.S. Cellular does not agree with this objection because the Commission has provided a reasonable explanation for its benchmark, noting that the benchmark both "reflect[s] current demand patterns"¹² and "establish[es] a practical goal: one that is neither so lofty as to be merely aspirational, nor so minimal that consumers are consigned to rudimentary Internet access that does not support the high-quality services (including video) referenced in the statute."¹³ Nonetheless, U.S. Cellular agrees with TIA that using speed tiers would provide "a

get will not produce broadband services in RLEC service areas that are reasonably comparable to those offered in urban areas." *Id.* at 4. OPASTO also argues that:

RLECs need to invest in high-speed, scalable broadband infrastructure so that their customers have access to the full array of transformational Internet-based applications and services, both now and in the future. This will not occur with a USF that is capped at its current Fund size and a 4/1 Mbps availability target.

Id. at 6.

¹¹ See Telecommunications Industry Association ("TIA") Comments at 2 (arguing that "[i]t is troublesome that the Commission would use a speed meant to be a *future* goal for universal service as the benchmark to determine whether advanced communications are *currently* being deployed to all Americans") (emphasis in original); Verizon and Verizon Wireless ("Verizon") Comments at 21-22.

¹² *Sixth Report* at para. 12.

¹³ *Id.* at para. 13.

more expansive and realist picture of broadband deployment in America.”¹⁴ The bifurcated benchmark suggested by U.S. Cellular is consistent with such an approach, since it would better reflect current demand patterns by accommodating consumers’ desire for mobile broadband.

B. The Broadband Benchmark Should Be Defined in a Manner That Does Not Risk Hampering Broadband Deployment in Rural Areas.

U.S. Cellular explains in its Comments that the current efforts of competitive eligible telecommunications carriers (“ETCs”) to deploy mobile wireless broadband services in rural and high-cost areas are being hindered by numerous Commission policies and actions.¹⁵ These impediments include the interim cap imposed by the Commission on high-cost support available to wireless competitive ETCs,¹⁶ and the recent actions taken by the Commission in the Corr Wireless proceeding.¹⁷ Various aspects of the universal service reform proposals being considered by the Commission could further impede mobile broadband deployment in rural America.¹⁸

The record now before the Commission in this proceeding demonstrates that these problems could be compounded by the flawed broadband benchmark selected by the Commission. CTIA explains that, if the Commission relies upon findings made in its Section 706 reports in

¹⁴ TIA Comments at 2. *See* U.S. Cellular Comments at 8.

¹⁵ U.S. Cellular Comments at 21-23.

¹⁶ *High-Cost Universal Service Support*, Order, 23 FCC Rcd 8834 (2008), *aff’d*, *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

¹⁷ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, CC Docket No. 96-45, WC Docket No. 05-337, Order and Notice of Proposed Rulemaking, FCC 10-155 (released Sept. 3, 2010), *recon. pending*. U.S. Cellular has joined with several other wireless carriers in challenging the Commission’s actions in the Corr Wireless proceeding. *See* Joint Petition for Reconsideration filed by Allied Wireless Communications Corp., Cellular South Licenses, Inc., Commnet Wireless, LLC, Corr Wireless Communications, L.L.C., East Kentucky Network, LLC d/b/a Appalachian Wireless, Leaco Rural Telephone Cooperative, Inc., MTPCS, LLC d/b/a Cellular One, N.E. Colorado Cellular, Inc., PR Wireless, Inc., Union Telephone Company d/b/a Union Wireless, and U.S. Cellular, WC Docket No. 05-337, CC Docket No. 96-45, filed Oct. 4, 2010.

¹⁸ *See* U.S. Cellular Comments at 22-23.

connection with its development and adoption of universal service reforms, then the faulty benchmark could threaten the universal service principle of technological neutrality in two respects.

First, the reports cannot accurately measure the progress of revised universal service programs if the reports do not “reveal the availability of *mobile* broadband—as used by consumers—in all parts of the country.”¹⁹ And, second, if eligibility for USF support is based upon broadband speeds (in parallel with the approach taken by the benchmark), then “the Commission risks undermining its own goals for broadband deployment and adoption by limiting wireless providers’ ability to be part of the broadband solution.”²⁰ CTIA finds this particularly troubling because “wireless is a far more cost-effective method to deploy services, as the Commission’s own Broadband Gap model concludes.”²¹

U.S. Cellular has recently addressed the importance of ensuring that the universal service mechanisms designed by the Commission are “structured to fully support mobile voice and mobile broadband, until the job of building high-quality networks in rural areas is finished.”²² This reasonable objective, which is responsive to the expectations of rural consumers regarding their access to mobile broadband and which also is shaped by the statutory principle of service comparability in rural and urban areas,²³ will be left by the wayside if, as CTIA warns, wireless competitive ETCs are foreclosed from receiving support for broadband deployment by a flawed

¹⁹ CTIA Comments at 14 (emphasis in original).

²⁰ *Id.*

²¹ *Id.* (footnote omitted).

²² U.S. Cellular Comments, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, filed July 12, 2010 (“U.S. Cellular USF Reform Comments”), at 25.

²³ *See* 47 U.S.C. § 254(b)(3).

benchmark. An effective solution to this problem, as U.S. Cellular has suggested, is to use a bifurcated benchmark with a lower speed threshold for mobile wireless broadband.

One party questions the finding in the *Sixth Report* that areas unserved by broadband providers tend to be rural, arguing that, in fact, rural incumbent LECs “have done a commendable job of deploying broadband to their subscribers.”²⁴ NTCA argues that a more important focus for universal service reform should be the preservation of existing support mechanisms (as well as the preservation of rate of return regulation) for incumbents, in order to avoid the need for these carriers to cut back on plant maintenance or other aspects of their operations.²⁵

NTCA fails, however, to provide any persuasive evidence for its proposition that rural incumbent LECs have made significant strides in reducing the extent of unserved areas. It cites a survey in which approximately 150 of NTCA’s member carriers indicated that they were offering broadband service with over 200 kbps capability in at least one direction.²⁶ More data would be necessary to support NTCA’s assertion that, although it may be true that rural areas are more unserved than urban areas “at a very high level,” this is not the case “when one takes a more granular look at areas served by” incumbent LECs.²⁷

²⁴ National Telecommunications Cooperative Association (“NTCA”) Comments at 8 (footnote omitted).

²⁵ *Id.* at 8-9.

²⁶ *Id.* at 8 n.25. Only 31 percent of NTCA’s membership responded to the survey. *Id.*

²⁷ *Id.* at 8. Frontier Communications Corporation (“Frontier”) makes similar claims regarding the availability of broadband in rural areas, disagreeing with the Commission’s conclusion that broadband is not being made available to *all* Americans in a reasonable and timely manner based on the Commission’s finding regarding the lack of availability in rural areas. Frontier indicates that it has made substantial progress in deploying broadband in its service areas. Frontier Comments at 2-3. In U.S. Cellular’s view, Frontier has not supplied sufficient data to support its contentions. Frontier itself concedes “that the data provided from a single company (particularly one that has been as focused as Frontier has been on the deployment of broadband) in a small sample of markets is insufficient to extrapolate greater trends in the overall deployment of broadband—rural or otherwise.” *Id.* at 8. Frontier made this observation in the context of cautioning the Commission not to extrapolate greater trends from data on broadband deployments submitted by Frontier to the Commission as a condition of Frontier’s merger with Verizon, but U.S. Cel-

The data examined by the Commission leads to a different conclusion. Specifically, the Commission indicated in the *Sixth Report* that, “[t]o determine whether the unserved areas we identified were in urban or rural areas, we examined both household density and housing units categorized as rural by the Census Bureau[,]” and that, “[o]n average, these 1,024 unserved areas have a household density of 46.8 households per square mile and have 73 percent of the housing units categorized as rural by the Census Bureau.”²⁸

The implication of NTCA’s argument seems to be that, since unserved areas are not disproportionately rural (in NTCA’s view), there is a basis for concluding that broadband is being deployed in a reasonable and timely manner in most rural areas, and that, therefore, the focus of USF reform should be on maintaining rural incumbents’ networks already being used to provide broadband, rather than focusing USF support on the expansion of broadband deployment in unserved areas.

The facts reflected in the *Sixth Report* do not support such an implication. Moreover, U.S. Cellular is confident that, as the Commission continues to examine whether unserved areas are in urban or rural areas, it will find (based on the criteria used in the *Sixth Report* as well as newly developed broadband mapping data and other data sources) that unserved areas are predominantly rural. Such a finding is intuitively correct because rural areas are sparsely populated and often have difficult terrain and other conditions that make broadband deployment difficult and expensive.

lular believes it applies with equal force to evaluating the progress made by rural incumbent LECs in deploying broadband in rural areas. *Id.*

²⁸ *Sixth Report* at para. 24 (footnote omitted).

These findings will confirm that universal service support mechanisms must focus on expanding broadband deployment to unserved rural areas, as opposed to guaranteeing a continuing stream of funding to rural incumbents to maintain existing networks while the size of their customer base continues to shrink.²⁹ Properly targeted USF funding will help to ensure that broadband is being deployed in a reasonable and timely fashion to all Americans, including those residing in rural areas.

C. The Commission Was Correct in Concluding in the Sixth Report That Broadband Is Not Being Deployed in a Reasonable and Timely Manner.

U.S. Cellular shows in the following sections that the Commission reached an informed and fully supportable decision when it decided that the lack of broadband availability for millions of low-income consumers and consumers in rural areas warranted a conclusion that broadband is not being deployed in a reasonable or timely way.

Criticisms of the Commission's analysis and conclusion present no compelling reason for rejecting or modifying the Commission's approach. U.S. Cellular also demonstrates that there is no basis for claims by some commenters that competitive forces are spurring broadband deployment to an extent warranting a conclusion that this deployment is reasonable and timely for purposes of Section 706.

²⁹ From 2000 through 2006 (the most recent year for which statistics are available), the total number of incumbent LEC access lines has decreased by 25.4 percent. *See* FCC, *Trends in Telephone Service* (Aug. 2008) at 7-3, Table 7.1 (Total U.S. Wireline Telephone Lines), *cited in* U.S. Cellular Reply Comments, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, filed Aug. 11, 2010, at 13-14 n.38 (showing that incumbent LECs had 187,581,092 access lines in 2000 and 140,029,044 access lines in 2006).

1. Parties Disagreeing with the Commission’s Conclusion Fail To Demonstrate That It Was Not Sufficiently Supported.

Some parties maintain that there is no basis for the Commission’s conclusion in the *Sixth Report* that broadband is not being deployed to all Americans in a reasonable and timely manner. AT&T, for example, contends that, since Congress “would have expected” the absence of “certain broadband technologies and investment” in areas facing broadband deployment obstacles (e.g., areas with rural populations), these deployment deficiencies should not have led the Commission to make a general finding that broadband is not being reasonably and timely deployed.³⁰

Verizon argues that the goal of making broadband available to all Americans should not be used “as a basis to conclude that broadband is not in fact being deployed in a reasonable and timely manner everywhere.”³¹ USTelecom argues that, since broadband already has been deployed to 95 percent of American households, the “[r]emaining unserved households should be addressed not with a negative Section 706 finding, but instead with new government support for broadband deployment that makes unserved and underserved areas economic to serve.”³²

It is useful to contrast these criticisms with the actual requirements of Section 706 and with the findings actually made by the Commission in the *Sixth Report*. Section 706 requires that the Commission annually initiate an inquiry “concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) In the inquiry, the Commission shall determine whether advanced

³⁰ AT&T Comments at 24-25. *See* National Cable and Telecommunications Association (“NCTA”) Comments at 6 (arguing that it was a mistake for the Commission in the *Sixth Report* “to equate reasonable and timely deployment with 100 percent broadband availability throughout the United States”).

³¹ Verizon Comments at 18.

³² United States Telecom Association (“USTelecom”) Comments at 9.

telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”³³ The Commission reached the following conclusions in the *Sixth Report*:

Based on our analysis, we conclude that broadband is not being deployed to all Americans in a reasonable and timely fashion. Our analysis shows that roughly 80 million American adults do not subscribe to broadband at home, and approximately 14 to 24 million Americans do not have access to broadband today. The latter group appears to be disproportionately lower-income Americans and Americans who live in rural areas. *The goal of the statute, and the standard against which we measure our progress, is universal broadband availability.* We have not achieved this goal today, nor does it appear that we will achieve success without changes to present policies. The evidence further indicates that market forces alone are unlikely to ensure that the unserved minority of Americans will be able to obtain the benefits of broadband anytime in the near future.³⁴

It is reasonable for the Commission to construe the requirements of Section 706 in the context of the overall statutory goals for the availability of broadband services. Viewed from this perspective, it also is reasonable for the Commission, based on its finding that broadband is not available to substantial numbers of low-income consumers and consumers living in rural areas, to conclude that broadband is not being deployed in a reasonable and timely manner. This conclusion brings with it the message that more needs to be done to accomplish the goal of bringing broadband to all Americans. In this regard, U.S. Cellular agrees with OPASTCO’s argument that “if rural consumers do not have access to ‘reasonably comparable’ advanced services as Congress sought to achieve, it follows that broadband is not being deployed ‘in a *reasonable and timely fashion,*’ as called for in section 706.”³⁵

Although AT&T, NCTA, Verizon, and USTelecom argue that broadband deployment is proceeding well in most of the Nation, this assertion does not compel a finding by the Commis-

³³ 47 U.S.C. § 1302(b).

³⁴ *Sixth Report* at para. 28 (emphasis added) (footnotes omitted).

³⁵ OPASTCO Comments at 6 (emphasis in original) (footnote omitted).

sion under Section 706 that deployment is being accomplished in a reasonable and timely manner. Much has been written regarding the digital divide separating rural Americans from the rest of the country.³⁶ It is reasonable for the Commission, in carrying out its responsibilities under Section 706, to seek to quantify this divide, and to give consideration to the lack of broadband availability for rural consumers (as well as low-income Americans) in assessing whether broadband is being deployed in a reasonable and timely manner.

U.S. Cellular agrees with USTelecom that the data included by the Commission in the *Sixth Report* demonstrates the need for new government support for broadband deployment in unserved and underserved areas,³⁷ but USTelecom is wrong in arguing that this data should not be used in connection with determining whether broadband is being deployed in a reasonable and timely manner. It is reasonable and appropriate for the Commission to take notice of the problems regarding broadband deployment in rural areas, and regarding the availability of broadband to low-income consumers, by indicating that the overall efforts to deploy broadband will not be treated as reasonable or timely so long as significant segments of the American population are being left behind.³⁸

³⁶ See, e.g., Michael J. Copps, Acting Chairman, FCC, BRINGING BROADBAND TO RURAL AMERICA: REPORT ON A RURAL BROADBAND STRATEGY, 24 FCC Rcd 12792, 12802 (para. 15) (2009):

In rural areas, . . . many Americans have no access to [broadband] applications and services, and by extension, to the global community. Rural communities have long been unserved or underserved by broadband technology, but the full implication of this divide has only emerged as the Internet has become less and less a novelty, and more and more a necessity.

³⁷ USTelecom Comments at 9.

³⁸ Verizon argues that the Commission's finding in the *Sixth Report* is flawed because the "progressive tense formulation" used by the statute (*i.e.*, the Commission must examine whether broadband *is being deployed*) "contemplates a forward-looking, ongoing effort" which the Commission failed to take into account. Verizon Comments at 18. Verizon's parsing of the statute is not persuasive. It is reasonable for the Commission to conclude that a "progressive tense formulation" in the statute does not prohibit or otherwise preclude an evaluation of whether broadband "is being deployed" in a reasonable and timely man-

2. The Commission's Decision Was Supported by Relevant and Reliable Data.

NCTA contends that the Commission should have relied upon more current data in the *Sixth Report* and that, had it done so, instead of relying “almost exclusively” on FCC Form 477 data as of December 2008, it would have concluded that broadband in fact is being deployed in a reasonable and timely manner.³⁹

The fact is that the *Sixth Report* was “based on more comprehensive broadband data than any of the Commission’s prior reports.”⁴⁰ In addition to Form 477 data, the Commission relied upon the output of a nationwide model for broadband availability⁴¹ and a survey of Internet end users.⁴² Moreover, the December 2008 Form 477 data was more granular than data available for prior reports because service providers were required to report information by Census Tract, rather than merely reporting the number of broadband connections they provide in each state and the 5-digit ZIP codes for which they had at least one customer.⁴³

While the Commission acknowledged that its “methods [used in the *Sixth Report*] are limited by available data and are therefore imperfect[,]”⁴⁴ the Commission demonstrated that there

ner by taking a snapshot of the status of deployment, based on accurate data and combined with modeling for broadband availability for both wired and wireless technologies, and reaching a conclusion about the light this snapshot sheds on the reasonableness and timeliness of deployment.

³⁹ NCTA Comments at 4. *See* Verizon Comments at 20 (arguing that “the Commission erred by relying almost exclusively on outdated Form 477 data as of December 2008 in reaching its conclusion about the level of broadband adoption (and by extension, its conclusion concerning broadband deployment and availability)”).

⁴⁰ *Sixth Report* at para. 16.

⁴¹ *Id.* at para. 18.

⁴² *Id.* at para. 26 (citing the *2010 Broadband Consumer Survey*, conducted in October and November 2009).

⁴³ *Id.* at para. 19 & n.76.

⁴⁴ *Id.* at 16 n.65. The Commission notes, for example, that subscribership data collected from Form 477 submissions is “an imperfect proxy for broadband availability or deployment.” *Id.* Nonetheless, subscri-

is a sufficient basis for its conclusion in the *Sixth Report* that broadband is not being deployed in a reasonable and timely manner. Although NCTA and Verizon choose to challenge the Commission's use of December 2008 Form 477 data, it is important to note that the Commission's conclusion was based on consumer survey data (approximately 80 million adults do not subscribe to broadband at home)⁴⁵ and the broadband availability model (approximately 14 million Americans do not have access to broadband),⁴⁶ in addition to Form 477 data (showing that "unserved areas are home to 24 million Americans").⁴⁷

The Commission also indicated in the *Sixth Report* that the Form 477 subscribership data was used to "confirm[] the overall levels of broadband availability indicated by the Model."⁴⁸ Thus, contrary to NCTA's and Verizon's claims, the Commission did not rely "almost exclusively" on Form 477 data, and NCTA and Verizon fail to present a convincing case that the Commission's conclusions would have changed significantly as a result of any attempt to rely on more recent Form 477 data.

bership does provide some indication of the level of availability, and Form 477 has been described as the Commission's most reliable source of subscribership statistics. *Id.* (citing comments filed by AT&T). The Commission also notes that more accurate information will be available for future reports. For example, the comprehensive nationwide inventory map of existing broadband service capability and availability is scheduled to be online in February 2011. *Id.* at para. 17. Verizon has suggested that state-level mapping could be the best source of data for evaluating broadband deployment, and argues that the Commission should draw upon this data in assessing the progress of the broadband marketplace. Verizon Comments at 25-26. U.S. Cellular agrees with Verizon's suggestion, *see* U.S. Cellular Comments at 29 n.88, but does not favor any proposal that state-level mapping data should supplant modeling data or other sources of probative data.

⁴⁵ *Id.* at para. 28.

⁴⁶ *Id.* at para. 18.

⁴⁷ *Id.* at para. 22.

⁴⁸ *Id.* at para. 19.

3. **There Is No Evidence That Market Forces Will Facilitate Broadband Deployment in Unserved Areas.**

U.S. Cellular indicates in its Comments that it agrees with the conclusion reached in the National Broadband Plan that market forces will not be sufficient to accomplish the deployment of broadband infrastructure in unserved rural areas.⁴⁹ Some parties have sought to create a different impression in their comments, but their claims are not persuasive.

Comcast argues that data regarding the pace of broadband deployment, and developments in the broadband marketplace, show that broadband providers “are taking all reasonable steps to deploy new and upgraded broadband infrastructure throughout the United States.”⁵⁰ Comcast does not present any data demonstrating that market forces are bringing this infrastructure to unserved rural areas, and Comcast also concedes that, “[a]lthough the private sector continues to be the driving force behind that deployment, there is a clear role for the Commission to encourage further deployment, as well as adoption.”⁵¹

Comcast also states that “[m]obile wireless broadband [providers] continue to invest in new and upgraded infrastructure, and likely will fill current broadband availability gaps in the near future.”⁵² Comcast does not provide any basis for its speculation that the wireless broadband marketplace will drive the elimination of broadband availability gaps, especially in rural areas. U.S. Cellular has explained in its Comments that the concentration of the wireless marketplace, and the effect this has had on competition and the ability of the dominant carriers to affect the utilization of spectrum in rural areas and the development of equipment necessary for the eco-

⁴⁹ U.S. Cellular Comments at 31 (citing Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) (“NBP”) at 136).

⁵⁰ Comcast Corporation (“Comcast”) Comments at 2.

⁵¹ *Id.*

⁵² *Id.* at 5.

conomic deployment of broadband in rural areas, make it unlikely that market forces will promote the deployment of broadband in unserved rural areas.⁵³

CTIA also notes that “rural markets are benefiting from mobile wireless broadband deployment. Carriers large and small are deploying mobile broadband services in rural areas across the country. . . . [R]ural areas are directly benefiting from the cost-effective delivery of mobile wireless broadband, and mobile broadband network coverage is continuing to expand.”⁵⁴ While U.S. Cellular does not disagree, or course, that, as CTIA has pointed out, wireless carriers are making efforts to deploy broadband in rural areas, the issue is that the pace of this deployment is being adversely affected by trends in the wireless marketplace as well as the Commission’s current universal service policies, among other factors. Moreover, CTIA does not purport to claim that this deployment in rural areas is the product of market forces. In fact, a business case for mobile broadband deployment in rural areas is very unlikely in the absence of universal service support.⁵⁵

As U.S. Cellular has explained, service in rural areas in which it has used high-cost support to build and operate high-quality networks has substantially improved, but U.S. Cellular also cautions that, although “support has helped U.S. Cellular to improve its coverage over the past several years, . . . the most rural portions of its service area still require additional investment.”⁵⁶

Verizon, in an attempt to support its position that broadband deployment is proceeding at a reasonable and timely pace, trumpets the view that the wireless industry is “robustly competi-

⁵³ U.S. Cellular Comments at 31-33.

⁵⁴ CTIA Comments at 6-7.

⁵⁵ It also remains true that, as the Commission found in the National Broadband Plan, comprehensive reform of existing universal service mechanisms is necessary because these existing mechanisms “will not close the broadband availability gap.” NBP at 141.

⁵⁶ U.S. Cellular USF Reform Comments at 4-5.

tive”⁵⁷ and that this is prompting “heavy investment . . . and speedy deployment of competing broadband networks and technologies.”⁵⁸

The problem with Verizon’s arguments is that Verizon does not make a persuasive case that competition in the wireless marketplace—even if it existed to the extent claimed by Verizon—would be sufficient to fill broadband availability gaps in rural areas. More fundamentally, Verizon’s glowing picture of wireless competition does not square with reality. The Commission has found, for example, that concentration in the wireless industry has increased by 32 percent since 2003,⁵⁹ and that AT&T and Verizon Wireless continue to increase their market share, with 12.3 million net additions in 2008. The U.S. Government Accountability Office has determined that “[t]he primary change in the wireless industry since 2000 has been the consolidation of wireless carriers.”⁶⁰ U.S. Cellular agrees with Cellular South that “[i]t is difficult to embrace Verizon’s optimism regarding the health of wireless competition in the face of these numbers.”⁶¹

Verizon contends that wireless competition will be increased by the development of 4G services, which will provide speeds comparable to many of the fixed broadband service options currently available to consumers. Verizon states that it invested over \$9 billion for spectrum in the 700 MHz auction, and that it plans to begin providing Long Term Evolution (“LTE”) service

⁵⁷ Verizon Comments at 12.

⁵⁸ *Id.* at 10. *See id.*, Attach. I, Declaration of Michael D. Topper (Jan. 14, 2010) at 2 (arguing that “[t]here is aggressive competition between wireless companies, and throughout all aspects of the wireless sector”).

⁵⁹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, FCC 10-81 (rel. May 20, 2010) at para. 4.

⁶⁰ U.S. Government Accountability Office, Report to Congressional Requesters, *TELECOMMUNICATIONS: Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry*, July 2010, at 10-11 (publicly released Aug. 27, 2010), *quoted in* U.S. Cellular Comments at 32 n.97.

⁶¹ Cellular South, Inc. (“Cellular South”), Reply Comments, WT Docket No. 05-265, filed July 12, 2010, at 14.

in up to 30 markets during this year.⁶² U.S. Cellular has shown, however, that developments in the 700 MHz band since the conclusion of the auction illustrate the pernicious effect that increased concentration—and the growing economic power of AT&T and Verizon—are having in the wireless marketplace.⁶³ The large share of 700 MHz spectrum held by AT&T and Verizon has provided them with the means and opportunity to influence the development of equipment for use in the 700 MHz band, with adverse consequences for smaller carriers that are seeking to use spectrum in the band to deploy broadband services in rural areas. The scenario that has been unfolding in the 700 MHz band provides an example of market forces actually threatening to work against the deployment of broadband services in rural areas.

Finally, Verizon point to what it characterizes as the intense and growing intermodal competition for both wireline and wireless broadband services, and argues that this “is the best evidence that broadband infrastructure is being deployed in a reasonable and timely fashion.”⁶⁴ In U.S. Cellular’s view, however, the best evidence regarding whether broadband is being deployed in a reasonable and timely manner is the number of consumers who do not have access to broadband. The Commission in the *Sixth Report* reasonably concluded that this number is too high (particularly among rural and low-income consumers), warranting a conclusion that broadband is not being deployed in a reasonable and timely manner.

⁶² Verizon Comments at 13-14.

⁶³ U.S. Cellular Comments at 31-33.

⁶⁴ Verizon Comments at 16-17.

D. The Affordability of Broadband Service Should Be Considered as Part of the Commission’s Evaluation of the Availability of Broadband.

The Commission asked in the *Inquiry* whether it should consider affordability as a component of broadband availability,⁶⁵ and U.S. Cellular in its Comments argues that the Commission should do so.⁶⁶ Several commenters agree that the affordability of broadband services should be taken into account by the Commission in its assessment of the availability of broadband for purposes of its Section 706 report.

The Michigan PSC, for example, states that pricing for broadband services is an important aspect of determining availability, explaining that “[t]he Commission must develop data to review pricing in order to analyze fully whether broadband is available to all Americans.”⁶⁷ The Michigan PSC argues persuasively that “it is essential that broadband not just be deployed in the ground, but the service offered must be priced such that it is affordable to the majority of American citizens.”⁶⁸

Treating affordability as a component of availability also would be consistent with the statutory goal of promoting the affordability of services through the Commission’s universal service mechanisms. NCTA indicates that Section 254 of the Communications Act of 1934 (“Act”) “has promoted more widespread access to modern telecommunications [and] also envisions comparable *and affordable* services to all Americans.”⁶⁹ Gathering data regarding affordability

⁶⁵ *Inquiry* at para. 9.

⁶⁶ U.S. Cellular Comments at 15-17.

⁶⁷ Michigan Public Service Commission (“Michigan PSC”) Comments at 3.

⁶⁸ *Id.* See Free Press Comments at 8 (explaining that the Commission should consider the price of subscribing to broadband services because “[p]ricing has a direct bearing on the availability of services to consumers”).

⁶⁹ NCTA Comments at 8 (emphasis added). See U.S. Cellular Comments at 16.

would be useful in evaluating whether the pricing of broadband services being deployed in rural areas is comparable to broadband service pricing in urban areas.

USTelecom takes a different view, arguing that the consideration of broadband affordability as part of the Commission’s Section 706 analysis would “stray into the realm of exploring broadband adoption instead of broadband deployment.”⁷⁰ USTelecom contends that adoption issues should be considered separately as part of universal service reform because any evaluation of “the uptake of broadband service [has] no place in the Commission’s evaluation of whether broadband is being deployed in a reasonable and timely manner”⁷¹

U.S. Cellular disagrees with USTelecom’s analysis. It would be reasonable for the Commission to conclude that, as a practical matter, a broadband service is not available to a consumer if the consumer cannot afford the service. The NBP speaks in these terms, establishing the goal that Americans should not merely have access to broadband services, but instead should have “*affordable access*”⁷² to broadband services. If broadband services are being deployed in a manner that makes the services unaffordable for significant segments of the American population, then there would not be a basis for the Commission to conclude that the services are being deployed in a reasonable manner. Therefore, gathering and evaluating data regarding the affordability of broadband services has a direct bearing on the findings the Commission is required to make by Section 706.

⁷⁰ USTelecom Comments at 17.

⁷¹ *Id.*

⁷² NBP at xvi (emphasis added) (cited in *Inquiry* at para. 9).

E. The Commission Should Continue To Use the Broadband Assessment Model in Connection with Reviewing Broadband Availability for Purposes of Section 706.

U.S. Cellular argues in its Comments that the Broadband Assessment Model can continue to serve the Commission as a useful tool in reviewing mechanisms needed to ensure that all Americans are provided with access to broadband services.⁷³

Verizon questions continued use of the Model, arguing that it “does not provide the most useful approach for analyzing the broadband marketplace as part of the 706 inquiry”⁷⁴ and that “reliance on modeling would add much complexity and potential for controversy, with little if any offsetting benefits.”⁷⁵

U.S. Cellular disagrees with Verizon’s assessment. While it is true, as Verizon notes,⁷⁶ that other sources of data, such as state-level broadband data and information from FCC Form 477 filings, are available for use in the Commission’s Section 706 inquiry, it is reasonable for the Commission to combine these data sources with modeling techniques for purposes of developing a more detailed and accurate assessment of broadband availability. As the Commission noted in the *Sixth Report*, output from one data source can be used to confirm the accuracy of output from other sources.⁷⁷ Moreover, the Commission made prudent use of the Model in the *Sixth Report* by utilizing it, in conjunction with Form 477 data, to establish a range of the estimated number of

⁷³ U.S. Cellular Comments at 29.

⁷⁴ Verizon Comments at 29.

⁷⁵ *Id.* at 30.

⁷⁶ *Id.*

⁷⁷ *See Sixth Report* at para. 19.

Americans who remain without broadband access.⁷⁸ The Model, in fact, produced a more conservative estimate (14 million) than the estimate derived from Form 477 data (24 million).

Verizon extends its criticism of modeling to encompass its use in the Commission's universal service program, arguing that a model "would be even less appropriate for use with universal service or other programs aimed at funding broadband deployment in unserved areas."⁷⁹ Verizon claims that the best way to distribute funding for broadband deployment is to rely on market-based mechanisms such as competitive bidding and reverse auctions.⁸⁰

It would be a mistake for the Commission to forego the use of modeling as a basis for the disbursement of universal service support for broadband, in favor of a reverse auction mechanism. As U.S. Cellular has explained, a well-designed model can effectively and accurately target support to high-cost areas and identify an appropriate level of support.⁸¹

The use of a model for determining and disbursing support for broadband deployment would offer numerous advantages: It would enhance the choices available to consumers in rural areas by promoting competitive entry; it would provide marketplace certainty by establishing a fixed amount of support in a given service area; it could easily be adjusted to change support levels based on the need to accommodate changing circumstances; it would reduce the possibility of anti-competitive conduct by treating all technologies and classes of carriers the same; and it would operate as an effective cap on the level of support.⁸²

⁷⁸ See, e.g., *id.* at paras. 1, 5.

⁷⁹ Verizon Comments at 29.

⁸⁰ *Id.*

⁸¹ U.S. Cellular USF Reform Comments at 18-19.

⁸² *Id.* at 19-20.

Reverse auctions, on the other hand, would introduce a host of problems and complications into the Commission's broadband funding efforts. For example, as U.S. Cellular has explained, reverse auctions, by definition, would restrict marketplace competition and would likely necessitate some form of rate regulation to ensure affordable rates. In addition to the potential for rate regulation, a single-winner auction would establish monopoly networks that would require additional regulation, similar to the interconnection requirements established in Section 251 of the Act, to open up the networks to competitors.⁸³

Finally, in light of the fact that funding under the Recovery Act⁸⁴ will no longer be available for the acquisition of underlying data used in the Model,⁸⁵ U.S. Cellular suggests in its Comments that the Commission should initiate a proceeding to examine whether service providers should be required to compile and submit data pertinent to the functions of the Model.⁸⁶ Verizon notes its opposition to any additional levels of reporting that would create redundant and expensive reporting obligations without serving any demonstrated need or benefit.⁸⁷ U.S. Cellular joins in this concern. Reporting requirements should not be established if they would not significantly contribute to the operations of the Model or if they would impose costly burdens on broadband service providers.

⁸³ *Id.* at 13-14.

⁸⁴ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) ("Recovery Act").

⁸⁵ *Inquiry* at para. 12.

⁸⁶ U.S. Cellular Comments at 29.

⁸⁷ Verizon Comments at 30.

F. The Commission Should Act Immediately To Facilitate Broadband Deployment in Rural America.

If the Commission finds—as it did in the *Sixth Report*—that broadband is not being deployed to all Americans in a reasonable and timely manner, then the Commission is required by Section 706(b) to “take *immediate* action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”⁸⁸

Commenters argue that the Commission should take various actions to facilitate the deployment of broadband to unserved populations. USTelecom notes generally that the Commission “has many tools at its disposal to enable broadband access in rural areas as well as the ability to encourage and accelerate broadband adoption[.]”⁸⁹ and Verizon argues that, in order to increase the availability of broadband in areas that are currently unserved, “it is time to shift the focus of the high cost Universal Service Fund . . . away from supporting legacy voice services and towards more ubiquitous deployment of broadband.”⁹⁰

In U.S. Cellular’s view, the Commission’s findings in the *Sixth Report* underscore the importance of the Commission’s expediting its efforts to forge a new structure for universal service support that will act as a vehicle for achieving the Commission’s policies regarding broadband deployment in rural areas. In this regard, U.S. Cellular agrees with Verizon’s conclusion that the Commission has the statutory authority necessary to reform universal service in order to subsidize broadband deployment in areas where it is otherwise not economically feasible to do so. Verizon argues that, “[s]pecifically, the ambiguous terms of section 254, read in combination

⁸⁸ 47 U.S.C. § 1302(b) (emphasis added).

⁸⁹ USTelecom Comments at 17.

⁹⁰ Verizon Comments at 37.

with the express terms of section 706(b), can fairly be interpreted to give the Commission authority to provide universal service support for broadband deployment.”⁹¹

In fact, U.S. Cellular has recommended in its Comments that, in keeping with the requirements of Section 706, the Commission should take immediate action aimed at accelerating broadband deployment. Specifically, U.S. Cellular has suggested that the Commission should proceed with a declaratory ruling that confirms the Commission’s statutory authority to permit ETCs to immediately begin using universal service support to deploy and operate broadband services, utilizing technologies such as 3G and 4G mobile wireless platforms, to provide both voice and data services.⁹²

III. CONCLUSION.

The record supports U.S. Cellular’s view that the Commission has chosen the right course in concluding that the test of whether broadband is being deployed in a reasonable and timely manner must be applied from the perspective of whether broadband is available to all Americans, including those with low incomes and those residing in rural areas.

Commenters also support U.S. Cellular’s view that the Commission must reflect in its Section 706 analysis the growing importance of, and demand for, mobile wireless broadband services, especially with respect to deployment in unserved rural areas. In this respect, U.S. Cellular urges the Commission to consider its suggestion to use a bifurcated broadband speed benchmark, to better capture mobile wireless broadband availability and to ensure that the oppor-

⁹¹ *Id.* at 39-40.

⁹² U.S. Cellular Comments at 33-37.

tunity for wireless ETCs to participate in the Commission's reformed universal service programs is not compromised.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION



By: _____

David A. LaFuria
Steven M. Chernoff
John Cimko

Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

Grant Spellmeyer
Senior Director - Legislative &
Regulatory Affairs
United States Cellular Corporation
8410 West Bryn Mawr
Chicago, Illinois 60631
(773) 399-4280

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