

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

In the Matter of)	
)	
Inquiry Concerning the Deployment of)	
Advanced Telecommunications Capability to)	
All Americans in a Reasonable and Timely)	GN Docket No. 11-121
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)	

**COMMENTS OF VERIZON AND VERIZON WIRELESS ON THE
EIGHTH BROADBAND PROGRESS NOTICE OF INQUIRY**

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I. INTRODUCTION AND SUMMARY

Wireline and wireless broadband providers have invested hundreds of billions of dollars in deploying next-generation broadband networks. As confirmed by the data underlying the National Broadband Map, these networks already reach nearly 96 percent of the population of the United States. With substantial upgrades to wireline infrastructure and the extensive rollout of competing 3G – and now 4G – wireless broadband services, these networks are continuing to expand to cover even more Americans. Under the circumstances, the Commission should find that broadband has been and is continuing to be deployed across the United States in a reasonable and timely fashion.

In completing its eighth annual broadband progress report, the Commission should not repeat the same analytical mistakes that it has made in the past two reports. First, the Commission should include mobile wireless data in analyzing broadband availability. There is no reasonable basis for excluding mobile broadband services from the Commission's analysis, particularly with the deployment of 4G networks that provide broadband speeds comparable to and, in some cases, greater than wireline broadband networks and the Commission's current broadband benchmark. As evidenced by the rapid rate of adoption, consumers recognize the capabilities and significant benefits of wireless broadband services, and the Commission should as well. Second, consistent with language of section 706, the Commission should distinguish broadband availability from broadband adoption in determining whether broadband is being deployed consistent with statutory objectives. That approximately four percent of the country's population currently does not have access to broadband today at home is not a basis for a nationwide finding that broadband is not in fact being deployed in a reasonable and timely manner. Third, the Commission should focus its efforts on using and improving the data underlying the National Broadband Map in

completing its annual broadband progress reports. This effort would provide a consistent approach to assessing broadband deployment from year to year.

Finally, the Commission should pursue policies that promote continued broadband investment and innovation. Specifically, the Commission should: (i) promptly conclude its proceeding to reform the universal service and intercarrier compensation system; (ii) reaffirm that all IP services are interstate information services that are subject to the Commission's exclusive jurisdiction; (iii) increase available spectrum for wireless broadband services; and (iv) forego unnecessary and intrusive regulation of broadband. Adherence to these policies would allow the Commission to address the limited gaps that exist in broadband availability and ensure that Americans continue to enjoy the benefits of next-generation wireline and wireless broadband networks.

II. BROADBAND IS BEING DEPLOYED IN A REASONABLE AND TIMELY FASHION.

The broadband marketplace in the United States is thriving, as intermodal competition and consumer choices continue to expand. Traditional telephone companies, cable operators, wireless providers, and satellite providers continue to invest substantial sums in deploying new broadband technologies, such as fiber-to-the-premises, DOCSIS 3.0, 4G wireless services (including LTE and WiMax), and next-generation satellite broadband. Consumers increasingly have a multitude of options for broadband service, particularly with the rollout of wireless 4G services that provide greater cross-platform competition by virtue of higher speeds and expanded capabilities combined with the significant benefit of mobility. In short, broadband deployment and competition is flourishing.

The success of broadband deployment in the United States is confirmed by the data

underlying the National Broadband Map,¹ which, according to the Commission, “are the nation’s most current and best publicly available broadband deployment data.”² As required by the Broadband Data Improvement Act and funded as part of the American Recovery and Reinvestment Act, the National Telecommunications and Information Administration (NTIA), in coordination with the Commission, has overseen the state-level process of collecting and processing detailed information about broadband services, including availability, speed, and technology.³

Armed with the information supplied by state-level entities and in consultation with the Commission, NTIA released the first iteration of the nationwide map of broadband availability in February 2011, the second iteration of which is expected to be released soon. NTIA also made available its Broadband Statistics Report with data as of June 2010, which reflects that 95.6 percent of household units and 95.5 percent of the population in the United States have access to broadband service with download speeds in excess of 3 Mbps and upload speeds in excess of 768 Kbps.⁴ Indeed, according to NTIA, nearly 50 percent of the U.S. household units and population already had access to broadband service with download speeds in excess of 25 Mbps as of June 2010. While NTIA has acknowledged that this map is

¹ <http://www.broadbandmap.gov/>.

² *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*, Eighth Broadband Progress Notice of Inquiry, GN Docket No. 11-121, FCC 11-124, ¶ 9 (rel. Aug. 5, 2011) (“*Notice of Inquiry*”).

³ See Broadband Data Improvement Act of 2008, Pub. L. No. 110-385, 122 Stat. 4097 (codified at 47 U.S.C. §§ 1301-04); NTIA, *State Broadband Data and Development Grant Program*, Notice of Funds Availability and Solicitation of Applications, 74 FR 32545 (2009).

⁴ See <http://www.broadbandmap.gov/download/reports/national-broadband-map-technology-by-speed.pdf>, at 3 (Access to Broadband Technology by Speed Report).

a work in progress and parties have identified imperfections in the initial data, the map – and the data that comprise it – confirms that broadband has been and is continuing to be deployed on a reasonable and timely basis throughout the United States.

The availability of broadband will only continue to expand with the continued rollout of the next generation of wireless broadband services. Verizon Wireless introduced its 4G LTE network in December 2010 in 38 metropolitan areas that covered more than 110 million Americans. Verizon Wireless has continued to rapidly deploy this service since that time. Just last month, Verizon Wireless activated its 4G LTE network in 25 additional cities, making available 4G wireless broadband service to more than 160 million Americans – over half the U.S. population – in less than eight months.⁵ Verizon Wireless will continue rapidly expanding its network, with plans to offer 4G LTE service to more than 185 million Americans by the end of 2011 and throughout its entire 3G footprint by the end of 2013.

Verizon Wireless' deployment of its 4G LTE network is not limited to major cities. For example, on September 15, 2011, Verizon Wireless will deploy its 4G LTE network in Lima, Ohio, which has a population of less than 38,000.⁶ In addition, Verizon Wireless is working with rural communications companies to collaboratively build and operate a 4G LTE network in rural areas using the tower and backhaul assets of the rural company and Verizon Wireless' core 4G LTE equipment and 700 MHz spectrum. Already, ten rural companies have announced their participation in the LTE in Rural America program and

⁵ Press Release, “Verizon Wireless’ 4G LTE Network Available to More Than Half The U.S. Population,” <http://news.vzw.com/news/2011/08/pr2011-08-17d.html> (Aug. 17, 2011) (“4G LTE Press Release”).

⁶ Press Release, “Verizon Wireless Brings Its 4G LTE Network to Lima, Ohio, On Sept. 15,” <http://news.vzw.com/news/2011/08/pr2011-08-22b.html> (Aug. 22, 2011); *see also* <http://www.idcide.com/citydata/oh/lima.htm>.

have leased spectrum covering, in total, more than 2.1 million people in rural communities and nearly 62,000 square miles.⁷

Of course, Verizon is not alone in investing heavily in broadband networks, and its investments in next-generation broadband prompt other providers to respond. For example, competitors – including established carriers such as AT&T and Sprint as well as newer entrants such as Clearwire – are rolling out their own 4G networks. In addition, other providers, including most recently DISH, seek to leverage satellite spectrum to offer 4G broadband services.⁸ One recent report estimates that 4G network investments over the next five years could reach \$53 billion.⁹ Analysts also project that the United States will have more 4G subscribers than the entire Asia-Pacific region by the end of 2014 and that the

⁷ See 4G LTE Press Release. The continued expansion of broadband availability even in rural areas recently was confirmed by the Department of Agriculture (USDA). See *Farm Computer Usage and Ownership*, <http://www.nass.usda.gov/> (follow “Find NASS Publications” to “Release Day”) (Aug. 12, 2011). According to the USDA, a total of 62 percent of U.S. farms now have Internet access, compared with 59 percent in 2009. *Id.* at 3. Of those farms with Internet access, the vast majority rely upon broadband, as dial-up access dropped from 23 percent in 2009 to 12 percent in 2011. *Id.*

⁸ See *Application of TerreStar Networks Inc., Debtor-in-Possession; and TerreStar License, Inc., Debtor-in-Possession and DISH Network Corporation and Gamma Acquisition L.L.C.*, File No. SAT-ASG-20110822-00165, Attachment Narrative at 13 (filed Aug. 22, 2011) (seeking authorization to allow DISH to launch a hybrid satellite and terrestrial mobile and fixed broadband network using 40 MHz of 2 GHz Mobile-Satellite Service, which will be integrated “into the broad 3G to 4G mobile wireless market ... by providing the ubiquitous coverage that cannot be achieved solely through terrestrial networks”); Press Release, “LightSquared and InterGlobe Communications Sign Multi-Year 4G LTE Wholesale Agreement,” <http://www.lightsquared.com/> (follow “Media Center” to “Press Releases”) (Aug. 23, 2011) (announcing agreement by which wholesale customer on LightSquared’s 4G-LTE network will add high-speed mobile data and satellite services to its range of business communications solutions that include VoIP, high-speed Internet, video conferencing and IP telephony).

⁹ See Deloitte, *The Impact of 4G Technology on Commercial Interactions, Economic Growth, and U.S. Competitiveness*, <http://www.deloitte.com/us/impactof4g>, at 7 (Aug. 2011) (estimating that 4G network investments could contribute up to \$151 billion in gross domestic product growth and create up to 771,000 jobs).

United States will lead the world in 4G service adoption, with more than 20 percent of all U.S. mobile lines utilizing 4G technology, as compared to the global average of just 2.1 percent.¹⁰

In addition to the billions that have been and are expected to be invested in 4G wireless broadband networks, upgrades and deployment of next-generation wireline broadband networks continue as well. For example, Verizon continues to invest and deploy its all-fiber FiOS network that will pass more than 18 million premises. By mid-year 2011, Verizon's FiOS network already passed 16.1 million premises, and FiOS Internet penetration was 34 percent at the end of second-quarter 2011, as compared with 30 percent at the end of second-quarter 2010.¹¹

Here too Verizon is not alone. Cable companies continue to invest billions of dollars upgrading their broadband infrastructure to deploy DOCSIS 3.0. According to industry analysts, DOCSIS 3.0 will be available to 85 million homes passed in the United States by the end of 2011 and 90 million homes passed at the end of 2012, as compared to 50 million at the end of 2009.¹²

¹⁰ In-Stat, "LTE Subscriber Growth will See a Bumpy Road on Its Path to Nearly 115 Million Subscribers by 2014," <http://www.instat.com/index.asp> (follow "Research News" to "December 2010") (Dec. 2, 2010); *see also* "Yankee Group 2011 Predictions: 4G Fuels the Decade of Disruption," eumvno.files.wordpress.com/2010/12/2011predictions_dec2010.pdf, at 2 (Dec. 2010).

¹¹ "Verizon Reports Accelerated Revenue Growth, Expanded Margins and Strong 2Q Earnings Performance," <http://www.verizon.com> (follow "About Us" to "Investor News" to "News at a Glance") (July 22, 2011).

¹² Alan Breznick, "Crossroads for DOCSIS 3.0," www.lightreading.com (follow "Heavy Lifting" to "Heavy Lifting Analyst Notes") (Feb. 18, 2011).

That broadband is being deployed in a reasonable and timely fashion is confirmed by a survey conducted last year by the Pew Internet and American Life Project, which found that two-thirds of American adults now use broadband Internet access connections at home.¹³ The survey confirmed that lack of access to broadband facilities is far down the list today of those factors preventing more widespread adoption of broadband, with only six percent of those nonusers citing lack of availability as the reason. *Id.* at 11.

The Commission's own data further underscore the reasonableness and timeliness of broadband deployment. For example, a consumer satisfaction survey recently conducted by the Commission found that 92 percent of consumers were either very or somewhat satisfied with the reliability of their services, that 91 percent were very or somewhat satisfied with the speed of their services, that 82 percent were very or somewhat satisfied with their providers' customer service, and that 93 percent were very or somewhat satisfied with their services overall.¹⁴

Likewise, the Commission recently found that actual broadband speeds provided by wireline broadband service providers generally are close to, and in some cases exceed, advertised speeds (contrary to previous suggestions by the Commission).¹⁵ The Commission retained SamKnows to evaluate the service offerings of 13 of the largest wireline Internet

¹³ Pew Internet & American Life Project, "Home Broadband 2010," <http://www.pewinternet.org/Reports/2010/Home-Broadband-2010.aspx>, at 2 (Aug. 11, 2010).

¹⁴ FCC Working Paper, "Broadband Satisfaction: What consumers report about their broadband Internet provider," http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-303263A1.pdf, at 2 (Dec. 2010).

¹⁵ See Federal Communications Commission, *Measuring Broadband America: A Report on Consumer Wireline Broadband Performance in the U.S.*, http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0802/DOC-308828A1.pdf (Aug. 2, 2011).

service providers using three technologies – Digital Subscriber Line (DSL), cable, and fiber-to-the-home. Among other things, the study found that, during peak periods, fiber-to-the-home services (such as Verizon’s FiOS Internet service) averaged 114 percent of advertised download speeds and 112 percent of advertised upload speeds. *Id.* at 4-5. That consumers are generally satisfied with their broadband services and that advertised speeds and actual speeds are comparable confirms the reasonable and timely deployment of broadband services in the United States.

III. THE COMMISSION SHOULD NOT REPEAT THE SAME ANALYTICAL MISTAKES IT MADE IN PRIOR ASSESSMENTS OF BROADBAND DEPLOYMENT.

The Commission repeatedly has found that broadband services are developing in a competitive manner and that broadband is available to the vast majority of Americans, with only isolated pockets of the country lacking access.¹⁶ Nonetheless, in its last two broadband progress reports, the Commission found that broadband was not being deployed to all

¹⁶ See, e.g., *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶ 44 (2005); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 272 (2003); *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21496, ¶ 19 (2004); see also *Connecting America: The National Broadband Plan*, <http://download.broadband.gov/plan/national-broadband-plan.pdf>, at 20 (2010) (“National Broadband Plan”) (finding that “[t]oday, 290 million Americans—95% of the U.S. population—live in housing units with access to terrestrial, fixed broadband infrastructure capable of supporting actual download speeds of at least 4 Mbps”) (citations omitted); *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; A National Broadband Plan for Our Future*, Sixth Broadband Progress Report, 25 FCC Rcd 9556, ¶ 1 (2010) (“Sixth Broadband Progress Report”) (finding based on 2008 data that 14 to 24 million Americans, out of a total population of approximately 310 million did not have access to broadband).

Americans in a reasonable and timely fashion.¹⁷ However, this finding was premised upon several analytical mistakes, which the Commission should not repeat.

First, the Commission erroneously excluded mobile wireless Internet access services in analyzing broadband availability due to concerns about the accuracy of data regarding mobile broadband speeds. *Seventh Broadband Progress Report*, ¶ 26. This concern is misguided as 3G service – which is now available to the overwhelming majority of Americans and has been rapidly adopted by consumers – is capable of meeting consumers’ broadband demands. And the next-generation 4G service that now are being rapidly deployed generally far exceed the Commission’s broadband speed benchmark, and cannot reasonably be ignored in the Commission’s assessment of broadband availability.

The significance of excluding wireless broadband is evident from the Commission’s determination in the past two broadband progress reports that “as many as 26 million Americans live in areas unserved by broadband.” *Notice of Inquiry*, ¶ 2 (citing *Seventh Broadband Progress Report* ¶ 1). The Commission can only arrive at this inflated figure by excluding wireless broadband services. Indeed, with a population of 308,745,538 in the United States based on the 2010 Census and with 95.5 percent of the U.S. population having access to high speed broadband, including wireless broadband, NTIA’s data reflect that fewer than 13.9 million residents lack access to broadband service with download speeds in excess of the Commission’s benchmark.¹⁸

¹⁷ *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*, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008, ¶ 1 (2011) (“*Seventh Broadband Progress Report*”); *Sixth Broadband Progress Report*, ¶ 2.

¹⁸ Although the Commission’s benchmark for determining whether broadband is

Contrary to the Commission’s suggestion in the last report, concerns about speeds cannot justify excluding wireless broadband services from the Commission’s analysis. As an initial matter, there should be no question that the 4G services that are now being rapidly deployed for consumers must count for purposes of the Commission’s analysis. With its commercial launch in December 2010 to more than 110 million customers, Verizon Wireless 4G LTE broadband customers – working in real-world, fully-loaded network environments – have experienced typical download speeds of 5 to 12 Mbps and typical upload speeds of 2 to 5 Mbps. Indeed, independent testing of Verizon Wireless’ 4G service in five cities nationwide recently confirmed average download speeds of 12.3 Mbps and upload speeds of 4.7 Mbps.¹⁹

Other competitors offering 4G service likewise report download speeds in excess of the Commission’s threshold. For example, both Sprint and Clearwire trumpet average download speeds on their 4G networks ranging from 3 to 6 Mbps.²⁰

While lacking some of the capabilities of these 4G services, 3G services also continue to be an integral part of consumers’ broadband experience and should not be ignored by the Commission. Almost all of the national and regional wireless providers now offer some

available is a threshold service offering actual speeds of 4 Mbps/1 Mbps, the Commission has based its “statutory assessment of deployment on the 3 Mbps/768 kbps tier ... because it is the closest to the 4 Mbps/1 Mbps threshold.” *Seventh Broadband Progress Report* ¶ 25.

¹⁹ “Carriers’ Lofty Claims of 4G Speed Put to the Test,” http://www.msnbc.msn.com/id/44148462/ns/technology_and_science-wireless (Aug. 16, 2011) (describing results of 4G testing in Atlanta, Chicago, New York City, Orlando, and San Francisco).

²⁰ See <http://www.clear.com/support/faq/before-you-buy/wimax/what-is-wimax> (noting that Clearwire’s 4G service offers “bursts over 10 Mbps” and allows customers to “stream movies, play online games and video chat on the go”); see also www.sprint.com (follow “Shop” to “4G” to “Our 4G Advantage” to “4G in Action”).

form of 3G (or 3G+) service, and consumers' embrace of these services demonstrates that these services are capable of meeting many consumers' broadband needs. Moreover, many of these services enable speeds in excess of the Commission's benchmark.²¹ As evidenced by consumers' rapid adoption of these services – and the fast-paced innovation in devices and applications using these services – the capabilities of 3G services bring the benefits of broadband to millions of consumers and satisfy a wide range of popular uses.

In fact, with the deployment of 3G and now 4G networks, consumers increasingly rely upon a host of mobile devices, such as smartphones and tablets, to meet their broadband needs.²² These devices allow consumers to send and receive email, engage in social networking, share photographs and music, and store and retrieve data, including books, newspapers, magazines, and videos.

Consumers have found mobile broadband devices particularly appealing in light of the large variety of data plans that are available at attractive prices to meet their different

²¹ For example, the HSPA technology deployed by AT&T and others may allow download speeds of up to 7.2 Mbps, and the EV-DO Rev. A deployed by Verizon Wireless, Sprint, and others allows maximum download speeds of 3.1 Mbps, although the typical speeds experienced by consumers may be somewhat below these levels. *See Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Thirteenth Report, 24 FCC Rcd 6185, ¶¶ 131-32 (2009).

²² *See, e.g., Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010-2015*, http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf (Feb. 1, 2011) (projecting that there will be more than 7.1 billion mobile connected devices worldwide by 2015); Posting of Nick Bilton to Bits Blog, "Tablet Sales to Spike in 2011, Forrester Says," <http://bits.blogs.nytimes.com/2011/01/04/tablet-sales-to-spike-in-2011-forrester-says/> (Jan. 4, 2011, 17:28 EST) (noting analyst estimates that there will be 82 million tablet users in 2015 in the U.S. as compared to approximately 50 million such users in 2012); NielsenWire, "In US, Smartphones Now Majority of New Cellphone Purchases," http://blog.nielsen.com/nielsenwire/category/online_mobile (June 30, 2011) (noting that 38 percent of U.S. consumers own smartphones, and "55 percent of those who purchased a new handset in the past three months reported buying a smartphone instead of a feature phone, up from 34 percent just a year ago").

needs and budgets. For example, the price of Verizon's 5 GB data plan, which was \$60 in 2009, has fallen nearly 17 percent in just two years and is now available for \$50.²³ In 2004, AT&T offered a \$19.99 data plan for the first 8 MB of data.²⁴ In 2011, AT&T offers 250 MB data plans for the iPad and other tablets for \$14.99, while 3GB and 5 GB data plans are available for \$35 and \$50, respectively.²⁵ In 2004, Sprint offered a \$40 data plan for 20 MB; in 2011 Sprint offers a 3 GB data plan for \$44.99 (3G) and an unlimited data plan for \$49.99 (4G).²⁶ Of course, these prices do not incorporate the improvements in the capabilities of these services that have occurred over these years, which is itself reflected in the large increases in the usage allowances of mobile data plans.

With declining prices for mobile broadband service and with mobile broadband-enabled devices being more affordable than desktops and laptops, it is no surprise that combined sales of smartphones and tablets are expected to exceed 425 million units

²³ Verizon's mobile broadband plan offerings are available online at: <http://www.verizonwireless.com/> (follow "Shop" to "Plans: Mobile Broadband") (accessed Sept. 6, 2011).

²⁴ 2004 pricing data is from Gerard Brosnan, "Trends in the Mobile Data Services Market," *The Telecommunications Review*, <http://www.noblis.org/NewsPublications/Publications/TechnicalPublications/TelecommunicationsReview/Documents/04-Brosnan-TR2005.pdf>, at 4 (2005). Precise price comparisons over time are hampered by the dramatic improvements in mobile broadband services, making it difficult to find the same type and quality of plan offered over time. For example, in 2004, data plans were primarily for email and text operated at much slower speeds, and much less mobile broadband content was available.

²⁵ AT&T's mobile broadband plan offerings are available online at: <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/data-connect-plans.jsp> (accessed Sept. 6, 2011).

²⁶ Sprint's mobile broadband plan offerings are available online at: http://shop.sprint.com/mysprint/shop/plan/plan_wall.jsp?tabId=pt_data_plans_tab&flow=AA&planFamilyType=null (accessed Sept. 1, 2011).

worldwide, significantly outpacing sales of traditional personal computers.²⁷ Indeed, many consumers increasingly rely primarily on mobile services for broadband access, and this trend is particularly pronounced among certain demographics. One recent study found that “[u]nder 30, nonwhite, low-income and less-educated smartphone users report ‘they mostly go online using their phones.’”²⁸ Under these circumstances, the Commission simply cannot turn a blind eye to wireless broadband services in determining whether broadband is being deployed in a reasonable and timely fashion. *Notice of Inquiry* ¶ 10.

Second, the Commission erroneously conflated broadband adoption with broadband availability, giving the United States a nationwide failing grade for broadband deployment until everyone in the country has access and has decided to subscribe to the service. This approach cannot be reconciled with the language of section 706, which requires an assessment of whether broadband “is being deployed to all Americans in a reasonable and timely manner.” 47 U.S.C. § 1302(b). By speaking in terms of “deploy[ment]” and incorporating a progressive tense formulation that plainly contemplates a forward-looking, ongoing effort, Congress directed the Commission to conduct a reasoned analysis of broadband deployment in light of relevant circumstances. The Commission ignored this directive by focusing solely on whether the ultimate goal of universal availability had already

²⁷ Ercan Ersoy, “Smartphone, Tablet Sales to Top Computers in 2011, Deloitte Says,” *Bloomberg*, Feb. 16, 2011, <http://www.bloomberg.com/news/2011-02-16/smartphone-tablet-sales-to-top-computers-in-2011-deloitte-says.html>; *see also* Remarks of FCC Chairman Julius Genackowski, Telecommunications Industry Association, http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-306768A1.pdf (May 19, 2011) (“The world is going mobile,” noting that “[s]martphone sales have eclipsed PC sales.”)

²⁸ *See* Lucy Hood, “Smartphones Are Bridging the Digital Divide,” *Wall Street Journal* (Aug. 29, 2011) (“Some 87% of them, according to Pew, sometimes use their mobile phones to browse the web, but 38% use their handsets as their primary means to access the Internet. National surveys . . . similarly found that more than 60% of Latino, black and young smartphone users often or even always use smartphones for their Internet connections.”).

been satisfied. *See Seventh Broadband Progress Report* ¶ 48; *Sixth Broadband Progress Report* ¶ 28 & n.119. That some customer *somewhere* in the country does not have access to broadband is not a basis for finding that broadband is not in fact being deployed in a reasonable and timely manner anywhere.

The Commission should adjust course and provide the more realistic, reasoned analysis required by section 706. As evidenced by the plain language of section 706, the deployment and upgrade of America's broadband infrastructure will be an ongoing – likely never-ending – process. At a minimum, the Commission should more expressly limit any negative findings under section 706 to those few areas (which, according to NTIA's and the Commission's own data, cover less than five percent of the population) that remain truly unserved today and are unlikely to be reached by private investment in the near future.

Third, the Commission erroneously minimized the apples-to-apples comparisons that showed substantial improvements in broadband availability between the last two years' reports. For example, applying the same methodology in its *Sixth Broadband Progress Report*, which relied on Form 477 data as of December 2008, and its *Seventh Broadband Progress Report*, which used June 2010 data, the number of Americans residing in unserved counties declined from 24.6 million to 12.2 million, and the number of households in unserved counties declined from 9.4 million to 4.6 million. *See Seventh Broadband Progress Report* ¶¶ 34-35. The Commission should not diminish or dismiss the significance of such progress, regardless of whether subscription data may be “an imperfect proxy for deployment.” *Id.* ¶ 34.

Furthermore, by relying on the data underlying the National Broadband Map in each of its annual broadband progress reports, the Commission can avoid the difficulties inherent

in using different vintages of data from different sources in assessing broadband deployment. Indeed, by focusing its efforts on using and improving the data underlying the National Broadband Map in completing its annual broadband progress reports, the Commission could ensure an apples-to-apples comparison of such reports going forward, while also honoring the President's and Chairman's commitments (and the statutory obligation) to minimize the unnecessary burdens of regulation.²⁹ This approach also would best leverage the hundreds of millions of dollars of federal funding and considerable effort spent on behalf of broadband providers and numerous other stakeholders – including the Commission, NTIA, and state-level broadband mapping entities. *Notice of Inquiry* ¶ 9. That data, which will be updated approximately every six months, together with the granular data required by the most recent revisions to the Form 477, will provide the information necessary for the Commission to discharge its responsibilities under section 706.³⁰ The Commission also should take

²⁹ In January 2011, President Obama called on all agencies to reexamine their significant rules, and to streamline, reduce, improve, or eliminate them on the basis of that examination. *See* Executive Order 13563 (Jan. 18, 2011), 76 FR 3821 (2011); Executive Order, *Improving Regulation and Regulatory Review*, <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>). Chairman Genachowski subsequently endorsed this policy initiative in Prepared Remarks at the Broadband Acceleration Conference, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304571A1.pdf (Feb. 9, 2011). In July 2011, the President took this burden-reducing initiative a large step further by calling on independent regulatory agencies – including the Commission – to follow the same requirements that other agencies follow. *See* Executive Order 13579 (July 11, 2011), 76 FR 41857 (2011); Executive Order, *Regulation and Independent Regulatory Agencies*, <http://www.whitehouse.gov/the-press-office/2011/07/11/executive-order-regulation-and-independent-regulatory-agencies>.

³⁰ *See Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691 (2008).

advantage of third-party sources, such as the customer surveys conducted by Pew, which provide another useful data point in assessing broadband deployment.

Moreover, the Commission should refrain from adopting new reporting requirements under the guise of proposed revisions to Form 477 – requirements that are unnecessarily burdensome and serve no purpose related to the Commission’s statutory responsibilities.

Notice of Inquiry ¶ 11. Consistent with the recent directives of President Obama, the Commission should focus on opportunities to eliminate unnecessary reporting obligations and improve the efficiency of existing broadband data reporting, rather than merely looking to increase industry-wide data reporting obligations for almost any conceivable purpose.³¹ Congress selected and funded the broadband mapping initiative as the best way to obtain comprehensive broadband data, and the Commission should rely to the maximum extent possible on that data rather than recreating the wheel through duplicative data collection efforts.

Indeed, given that nearly 96 percent of households already have access to broadband, and that the availability gap will continue to shrink over the coming years, there is no need for an ongoing, nationwide reporting process to gauge broadband availability beyond that required in connection with the National Broadband Map. Instead, more tailored efforts – such as reporting requirements focused on any continuing gaps in availability or targeted to providers receiving funding to address those gaps – would be more appropriate than broad,

³¹ See *supra*, fn. 29; see also President Barack Obama, “Toward a 21st Century Regulatory System,” *Wall Street Journal* (Jan. 18, 2011) (noting the Obama Administration’s goal of “getting rid of absurd and unnecessary paperwork requirements that waste time and money”); Remarks by the President to the Chamber of Commerce, U.S. Chamber of Commerce Headquarters, Washington, D.C., <http://www.whitehouse.gov/the-pressoffice/2011/02/07/remarks-president-chamber-commerce> (Feb. 7, 2011) (stressing importance of “cutting down on the paperwork that saddles businesses with huge administrative costs”).

industry-wide and nationwide reporting obligations. For example, if universal service funding, NTIA or RUS loans or grants, or any other federal funding is used for broadband deployment, then those providers receiving funding could report to the Commission on the ongoing process of expanding broadband availability.

IV. THE COMMISSION SHOULD ADOPT APPROPRIATELY TAILORED POLICIES THAT WOULD ACCELERATE DEPLOYMENT AND FURTHER THE GOAL OF UNIVERSAL AVAILABILITY OF BROADBAND.

Even though the broadband marketplace is subject to intense and growing competition and nearly 96 percent of Americans have access to broadband today, the Commission must pursue policies that promote continued broadband investment and innovation. These appropriately tailored policies would help address the gaps that exist in broadband availability and ensure that Americans continue to enjoy the benefits of next-generation wireline and wireless broadband networks.

First, the Commission should promptly conclude its proceeding to reform the universal service and intercarrier compensation regimes.³² In order to increase broadband availability in those limited areas that remain unserved (*i.e.*, areas covering less covering approximately four percent of the population and where private investment is unlikely to reach in the near future), it is time to shift the focus of the high cost fund away from supporting legacy voice services and toward more ubiquitous deployment of broadband. At the same time, to clear the way for broadband deployment in unserved areas and greater

³² See, *e.g.*, Comments of Verizon and Verizon Wireless, *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, at 37-41 (Sept. 7, 2010) (“Verizon Section 706 Comments”); Comments of Verizon and Verizon Wireless, *Framework for Broadband Internet Service*, GN Docket No. 10-127, at 69-72 (July 15, 2010) (“Verizon Broadband Framework Comments”).

investment in underserved areas, the Commission must rationalize its intercarrier compensation system. A single, low terminating rate that applies to all traffic and all providers is critical to provide regulatory certainty regarding intercarrier compensation revenue and payments. To put the high cost fund on a sustainable path going forward and to modernize the intercarrier compensation system, the Commission should adopt “America’s Broadband Connectivity Plan.”³³

Second, the Commission should reaffirm that all IP-based services – regardless of provider or technology – are interstate information services and are subject to the Commission’s exclusive jurisdiction.³⁴ Doing so would eliminate the regulatory uncertainty regarding the IP-based services that ride over those broadband networks the Commission seeks to expand – uncertainty that presents an obstacle to additional deployment. Broadband platforms and the IP-based services that ride over those platforms are being rolled out over wide geographic areas without regard to state boundaries. Uniform, federal rules that govern broadband and IP networks and services would allow these networks and services to be deployed with common systems, platforms, and processes, and result in efficiencies that provide significant cost savings. In contrast, a piecemeal, localized approach of state or local regulation would eliminate those efficiencies and increase costs and would undermine widespread deployment and adoption of broadband.

³³ See Verizon *et al.*, *America’s Broadband Connectivity Plan*, WC Docket No. 10-90 *et al.* (July 29, 2011); see also Public Notice, *Further Inquiry Into Certain Issues in the Universal Service – Intercarrier Compensation Transformation Proceeding*, WC Docket No. 10-90 *et al.* (Aug. 3, 2011).

³⁴ See, e.g., Verizon Section 706 Comments at 32-35; Comments of Verizon and Verizon Wireless, *High-Cost Universal Service Support et al.*, WC Docket No. 05-337 *et al.*, at 5-21 (Nov. 26, 2008); Comments of Verizon, *IP-Enabled Services*, WC Docket No. 04-36 *et al.*, at 31-42 (May 28, 2004).

Third, consistent with its recognition that “[w]ireless broadband is poised to become a key platform for innovation in the United States over the next decade,” National Broadband Plan at 75, the Commission should increase available spectrum for wireless broadband services.³⁵ As the National Broadband Plan found, “[t]he growth of wireless broadband will be constrained if government does not make spectrum available to enable network expansion and technology upgrades . . . [resulting in] higher prices, poor service quality, an inability for the U.S. to compete internationally, depressed demand and, ultimately, a drag on innovation.”³⁶ The Commission should move quickly and aggressively to identify and reallocate additional spectrum for mobile broadband use. For example, a contiguous block of 25 MHz in the 1755-1850 MHz band could be reallocated and paired with the 2155-2180 MHz band that is currently allocated for AWS but not yet assigned. *See* National Broadband Plan at 86-87. This would provide 50 MHz of new AWS spectrum that is aligned with the current AWS band plan and fully compatible with AWS networks that are currently being designed and built. Only with the reallocation of this and other substantial blocks of spectrum for future mobile use will the mobile broadband market realize its full potential.

³⁵ *See, e.g.*, Verizon Section 706 Comments at 35-36.

³⁶ National Broadband Plan at 77; *see also* The White House, Presidential Memorandum: Unleashing the Wireless Broadband Revolution, <http://www.whitehouse.gov/the-press-office/presidentialmemorandum-unleashing-wireless-broadband-revolution> (June 28, 2010) (“America’s future competitiveness and global technology leadership depend, in part, upon the availability of additional spectrum Expanded wireless broadband access will trigger the creation of innovative new businesses, provide cost-effective connections in rural areas, increase productivity, improve public safety, and allow for the development of mobile telemedicine, telework, distance learning, and other new applications that will transform Americans’ lives.”).

Finally, the Commission should forego unnecessary and intrusive regulation of broadband that deters network investment.³⁷ The Commission's *Open Internet Order* and *Data Roaming Order* are recent examples.³⁸ However, the Commission is now considering imposing further regulatory burdens on broadband services, such as by subjecting broadband to outage reporting. The increased regulation and uncertainty resulting from heavy-handed new regulation of broadband services directly undermine the key policy goals embodied in section 706 and in the National Broadband Plan and strike a blow to the already shaky economy by reducing the ability and incentives for network providers to take risks and make the investments leading to such economic growth and job creation.

V. CONCLUSION

The Commission should confirm that broadband services are being deployed in a reasonable and timely fashion in the overwhelming majority of the country, and the Commission should continue to pursue policies that encourage broadband investment and innovation.

³⁷ See, e.g., Verizon Section 706 Comments at 41-46; Verizon Broadband Framework Comments, at 1-20, 72-78.

³⁸ *Preserving the Open Internet; Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905 (2010); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411 (2011).

Respectfully submitted,

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