

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

<b>In the Matter of</b>	)	
	)	
<b>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</b>	)	<b>GN Docket No. 12-228</b>

**COMMENTS OF  
THE UNITED STATES TELECOM ASSOCIATION**

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## **Summary**

By any meaningful benchmark, broadband deployment in the United States is a resounding success story. Unparalleled private investment by broadband providers continues to expand the reach and capabilities of broadband networks. More than 95 percent of the U.S. population has access to robust and diverse wired broadband infrastructure, including fiber to the home, cable and DSL, and the Commission's own research shows that 91 percent of broadband users are satisfied with their broadband service which meets – and in some cases even exceeds – its advertised broadband speeds. These realities have made the United States a world leader in broadband deployment, competition and Internet usage.

Despite the challenging economic environment, broadband investment represents one of the nation's economic bright-spots. Whether analyzed over a fifteen year period or on a year-to-year basis, broadband providers are committing immense capital resources to ensure that the United States remains a global leader in broadband deployment. USTelecom recently released data demonstrating that overall spending by broadband providers equates to nearly \$1.2 trillion invested on networks from 1996 through 2011. In the last decade, these companies have averaged more than \$65 billion a year. The same data shows that despite an extremely challenging economic environment, broadband capital investment remained steady at approximately \$66 billion in 2010 and 2011, a 4.2 percent increase from \$63 billion in 2009.

A more granular level analysis of the data demonstrates the significant capital expenditures made solely by wireline providers, and shows that wireline companies contributed over \$640 billion between 1996 and 2011. During this same period, wireline companies averaged approximately \$40 billion annually in investment. In one consecutive four-year period, these companies' investments ranged between \$51 billion and \$79 billion annually. Moreover, the wireline portion of broadband provider capital expenditures remains the largest component of broadband investment, as compared to wireless and cable platforms.

Examining several metrics in the international context demonstrates the global leadership of the United States in this arena. For example, United States investment in broadband infrastructure is substantially greater when compared to other developed countries. In addition, the United States has more competitive facilities-based broadband markets than most of the rest of the world, with approximately four-fifths of United States households able to choose among two or more wired competitors, compared to 45 percent who can choose from two or more wired providers in the European Union. Moreover, domestic broadband investment has helped to place the United States among world leaders in Internet usage. Finally, the United States invests a greater percentage of private fixed capital in information and communications technology (ICT) than any other industrialized country.

Based on these facts, the Commission's examination of broadband deployment in the United States must lead to the conclusion that broadband is being deployed to all Americans in a reasonable and timely fashion. The Commission's own survey has demonstrated that massive private investment has connected more than 94 percent of the U.S. population via robust wired broadband infrastructure capable of supporting actual download speeds of at least 4Mbps. The

percentage of competing wireline providers is nearly twice as high as in Europe, and deployment to business customers has been even greater, with 96 percent of all business locations having access to wireline broadband from the telephone company and 92 percent of businesses having access to cable broadband.

Although the issue of broadband adoption is important, Section 706 exclusively addresses whether broadband “is *being* deployed,” not the uptake of broadband service. In this regard, in addition to the substantial existing and planned private investment taking place in the broadband marketplace, the Commission should also take into account the investments being made in broadband infrastructure through the broadband funding provided by the American Recovery and Reinvestment Act of 2009 (ARRA). The total amount of funding announced for infrastructure programs from the two agencies responsible for disbursement of these taxpayer funds is approximately \$8 billion when the over \$1 billion in RUS loans and the over \$1 billion in recipients’ matching funds are added to the grant amounts. As of July 2012, NTIA has disbursed approximately \$1.9 billion of the \$3.8 billion it awarded for projects under BTOP, and as of June 2012, RUS has disbursed approximately \$1 billion of the \$3.3 billion it awarded for projects under BIP. A continued determination by the Commission that significant and reasonable progress is not being made in the deployment of broadband to all Americans raises very serious questions about the success of these programs and whether these monies were a worthwhile investment of taxpayer money, particularly in light of the country’s current debt issues.

Particular actions with respect to implementing the Order’s high-cost universal service policies, and lack of clarity with respect to some of the universal service provisions, threaten to diminish the full potential of the Order to accelerate the transition from legacy circuit-switched facilities to advanced IP facilities. The stated purpose of CAF Phase I is to “expand voice and broadband availability as much and as quickly as possible” and to begin “closing the rural-rural divide.”

Prompt adoption and implementation of a cost model that would produce results consistent with objectives of the Order and the 706 Report, development of an interim support mechanism for price cap ILECs for 2013 that has adequate funding and includes eligibility criteria that harmonize broadband service requirements with funding eligibility requirements, and approval of the Windstream, CenturyLink and FairPoint waiver requests with respect to interim support for 2012, represent the most efficient ways to support broadband networks in areas served by price cap carriers. These actions would advance the objectives of the Transformation Order as it relates to such carriers and the consumers living in the areas they serve this year and in 2013.

Commission actions with respect to rate-of-return ILECs would also serve to advance the extension and upgrading of broadband facilities. In particular, uncertainty and lack of clarity around the present and future effects of benchmarks based on the Quantile Regression Analysis (QRA) adopted by the Wireline Competition Bureau’s Order pose risks to the delivery of rural broadband and expansion of rural broadband availability. The Commission should assess the issues raised by USTelecom’s Application for Review. The QRA-based benchmarks not only

affect those carriers who face reductions this year, but also result in a chilling effect on investment for rate-of-return ILECs whose support is currently unchanged by the QRA. If companies cannot understand the operation of the QRA, as appears to be the case, it will not be effective in providing incentives for prudent investment.

The Commission should also clarify or reconsider aspects of its new USF reporting requirements, as unnecessary administrative burdens divert funding from other priorities including the extension and upgrading of broadband service. The Commission should require only those ETCs that accept CAF Phase II support to file new five-year build out plans. Moreover, the Commission should make clear that CETCs whose support is being phased down are not required to provide any of the information or certifications described by sections 54.313(a)(1) through (a)(7) for broadband service, and are not required to provide the results of the network performance tests contemplated by section 54.313(a)(11).

Finally, to the extent the Commission continues to be predestined to conclude that – despite the efforts of private investment and the infusion of billions of dollars in government spending – the country continues to be off course in deploying broadband, the remedy directed to the Commission by Section 706 itself is clear. In that event, the Commission must “take immediate action to accelerate deployment of such capability by *removing barriers to infrastructure investment* and by promoting competition in the telecommunications market.” And, without question, one of the most significant continuing barriers to broadband infrastructure investment are legacy regulations that no longer make sense in a broadband-centric marketplace. One of the best ways in which the Commission can act in this area is through rapid grant of USTelecom forbearance petition. USTelecom’s petition focuses on outdated voice-centric rules that make little sense today, particularly given the dramatic changes that have taken place in technology and in the market for communications services. Such rules and regulations simply serve to divert limited investment dollars away from infrastructure investment.

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**COMMENTS OF  
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)<sup>1</sup> submits these comments on the Ninth Broadband Progress Notice of Inquiry (Notice)<sup>2</sup> issued by the Federal Communications Commission (Commission) in the above-referenced proceeding regarding its annual inquiry under Section 706 of the Telecommunications Act of 1996, as amended (Section 706).<sup>3</sup> The Commission is under a statutory obligation to regularly conduct its Section 706 inquiry in order to determine whether broadband is being deployed to all Americans in a reasonable and timely

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<sup>1</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

<sup>2</sup> Ninth Broadband Progress Notice of Inquiry, *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*, FCC 12-91, GN Docket No. 12-228 (August 21, 2012) (*Notice*).

<sup>3</sup> 47 U.S.C. Section 1302(b). Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, Section 706, 110 Stat. 56, 153 (the Telecommunications Act), as amended in relevant part by the Broadband Data Improvement Act, Publ. L. No. 110-385, 122 Stat. 4096 (2008)(BDIA), is now codified in Title 47, Chapter 12 of the United States Code. *See* 47 U.S.C. Section 1301 et seq.

fashion. USTelecom maintains that any examination of broadband deployment in the United States must lead to the conclusion that this question be strongly answered in the affirmative.

Broadband deployment in the United States is continuing at a vigorous rate and remains an unquestionable success story. Unparalleled private investment by broadband providers of nearly \$1.2 trillion dollars since 1996 – continues to expand the reach and capabilities of broadband networks. This private investment, averaging \$65 billion in the last decade, has in turn resulted in the availability to more than 95 percent of the U.S. population of robust and diverse wired broadband infrastructure, including fiber to the home, cable and DSL. Moreover, based on the Commission’s own research, 91 percent of broadband users said they are satisfied with their broadband service,<sup>4</sup> which meets – and in some cases even *exceeds* – its advertised broadband speeds. Indeed, the Commission’s most recent broadband speed testing report notes that the actual increase in broadband speeds experienced by consumers was “even greater than the increase in advertised speed—from 10.6 Mbps to 14.6 Mbps—an almost 38 percent improvement over the one year period.”<sup>5</sup> These realities have made the United States a world leader in broadband deployment, competition and Internet usage.

Based on these, and other findings, there can be no question that broadband is being deployed to all Americans at a rate that far exceeds the “reasonable and timely” standard in Section 706. Moreover, the Commission’s recent reforms to the universal service fund (USF)

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<sup>4</sup> See, Commission Survey, *Americans’ perspectives on online connection speeds for home and mobile devices*, p. 1 (available at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-298516A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298516A1.pdf)) (visited September 18, 2012) (noting that 91% of home broadband users are satisfied with the speed of their service.).

<sup>5</sup> Commission Report, *2012 Measuring Broadband America, A Report on Consumer Wireline Broadband Performance in the U.S.*, p. 6, August 2, 2012.

and intercarrier compensation will further promote the ability of broadband network providers to expand the reach of broadband networks in the United States.

## **I. BROADBAND PROVIDERS ARE CONTINUING THEIR TREND OF MASSIVE INVESTMENT IN BROADBAND INFRASTRUCTURE**

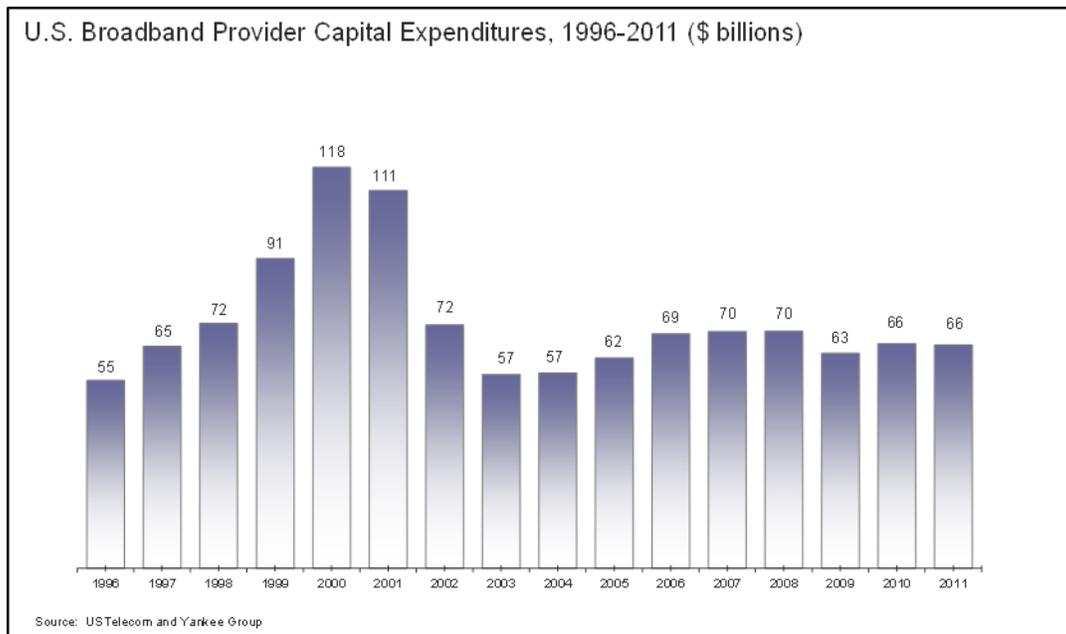
Despite the challenging economic environment in recent years, broadband investment represents one of the nation's economic bright spots. The infusion of private capital into the broadband marketplace has made the United States a global leader in broadband deployment. USTelecom's member companies are committed to broadband investment and deployment; increased broadband penetration; and bringing the full promise of broadband to all Americans.

### ***A. Capital Expenditures Continue to Increase***

Whether analyzed over a sixteen-year period or on a year-to-year basis, broadband providers are committing immense capital resources to ensure that the United States remains a global leader in broadband deployment. In collaboration with Yankee Group, USTelecom recently released data showing substantial and persistent capital investment by broadband providers over the last sixteen years.<sup>6</sup> The analysis demonstrates that overall spending for the past 16 years by broadband providers equates to nearly \$1.2 trillion invested on networks from 1996 through 2011. In the last decade alone, investments by these providers have averaged more than \$65 billion a year. The data, reflected in the below chart, show capital expenditures for the broadband industry as a whole, which includes wireline, wireless, and cable providers.

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<sup>6</sup> USTelecom's examination is based on a detailed analysis of company financial filings, market research, and data from trade associations and the government. These data are in "current" or "nominal" dollars, not "real" dollars adjusted for price and quality, which improve rapidly over time in technology industries such as broadband. The study is part of USTelecom's ongoing research into overall industry trends in U.S. broadband investment and comparative global standings.

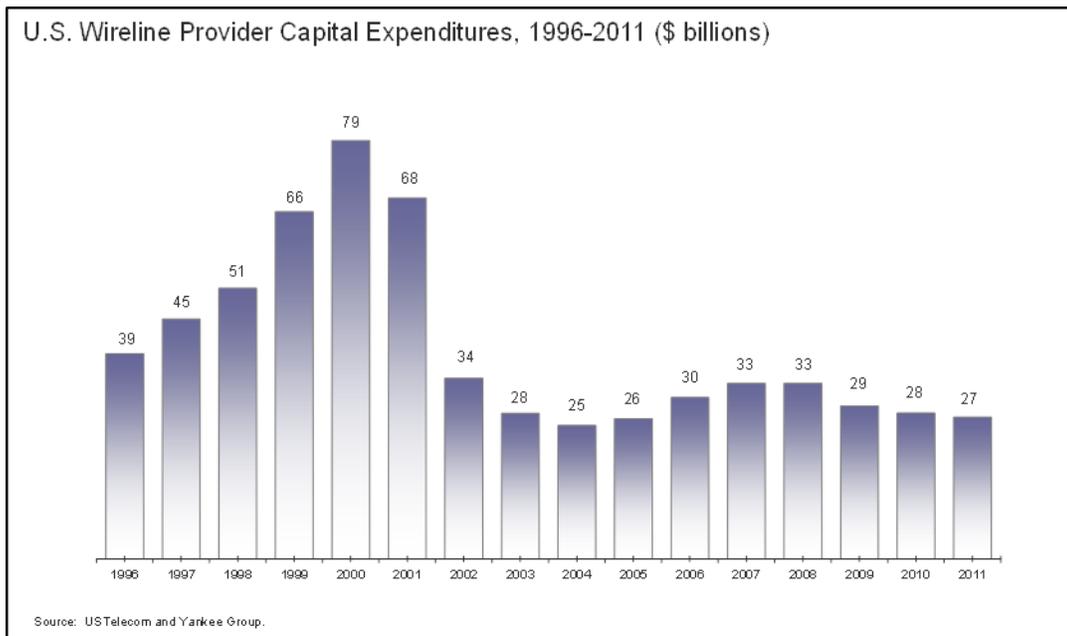


To put these figures into context, when President Kennedy committed the United States to landing a man on the moon in ten years, the government spent approximately \$12 billion per year – in 2010 dollars – on the Apollo program. Similarly, when President Eisenhower committed the nation to building an interstate highway system, the federal government spent approximately \$15 billion per year – in today’s dollars. In other words, broadband providers annually invest more than five times the annual investment in the original interstate highway program; and more than five times the annual investment in the Apollo program. The key distinction, however, is that the funding of our nation’s broadband networks represents private sector investment as opposed to taxpayer funds.

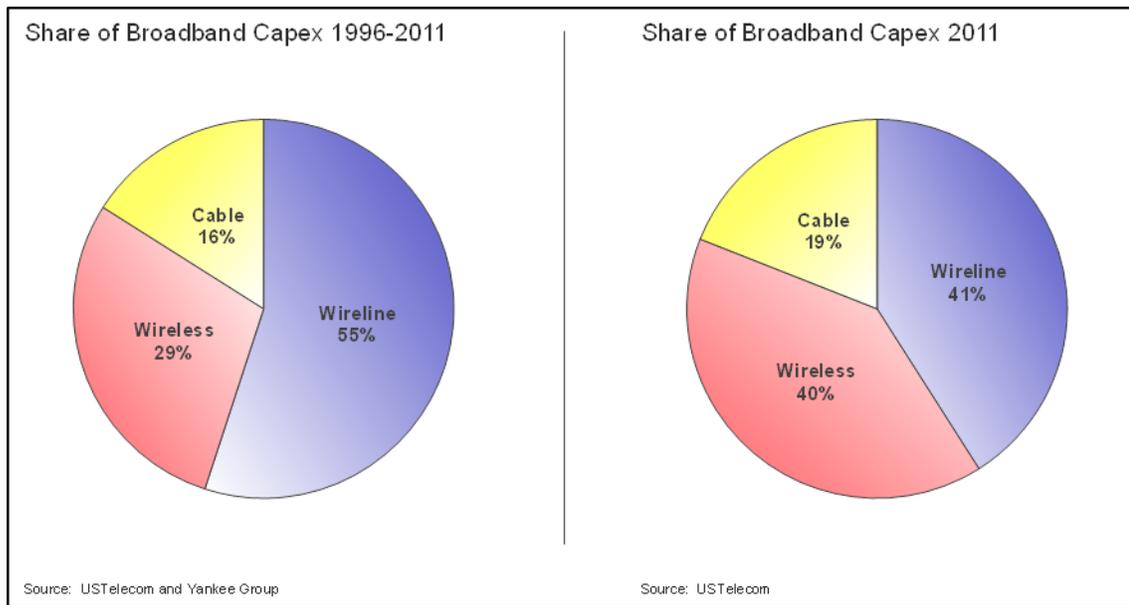
The data also show that in an extremely challenging economic environment, broadband providers have *increased* their capital expenditures on their broadband networks. Specifically, in 2010 and 2011 alone broadband capital investment remained steady at approximately \$66 billion, a 4.2 percent increase from \$63 billion in 2009.

**B. *The Wireline Industry is a Significant Contributor to Broadband Industry Capital Expenditures***

Examining the data at a more granular level further demonstrates the significant capital expenditures made by wireline providers. As reflected in the below chart, the wireline industry is a major contributor to broadband industry capital expenditures. Over the sixteen year period from 1996 – 2011, wireline companies contributed approximately \$640 billion, an average of \$40 billion per year. In one consecutive four-year period, these companies’ investments ranged between \$51 billion and \$79 billion annually.



The wireline portion of broadband provider capital expenditures remains the largest component of broadband investment. Specifically, from 1996 - 2011 the wireline portion of broadband provider capital expenditures was 55 percent – compared to 29 percent for wireless and 16 percent for cable. In 2011 wireline companies still contributed the most capital at 41 percent, followed closely by 40 percent for wireless and then cable at 19 percent.



Wireline broadband providers' networks support the vast majority of broadband traffic today. While mobile broadband is growing at exponential rates, mobile traffic represents less than 3 percent of global data traffic today and still will account for less than 10 percent in 2016.<sup>7</sup> Moreover, wireline companies' substantial investments further enable wireless broadband services as well wireline services, since nearly all wireless traffic traverses wireline networks.<sup>8</sup> Whether the consumer's device is connected to a mobile wireless tower, a WiFi hot spot, or plugged into a fixed network, wireline expansion is required in order to accommodate wireless data traffic that has grown an average of 58 percent per year since 2005, is projected to grow more than 40% in the next year, and to nearly triple again by 2016.

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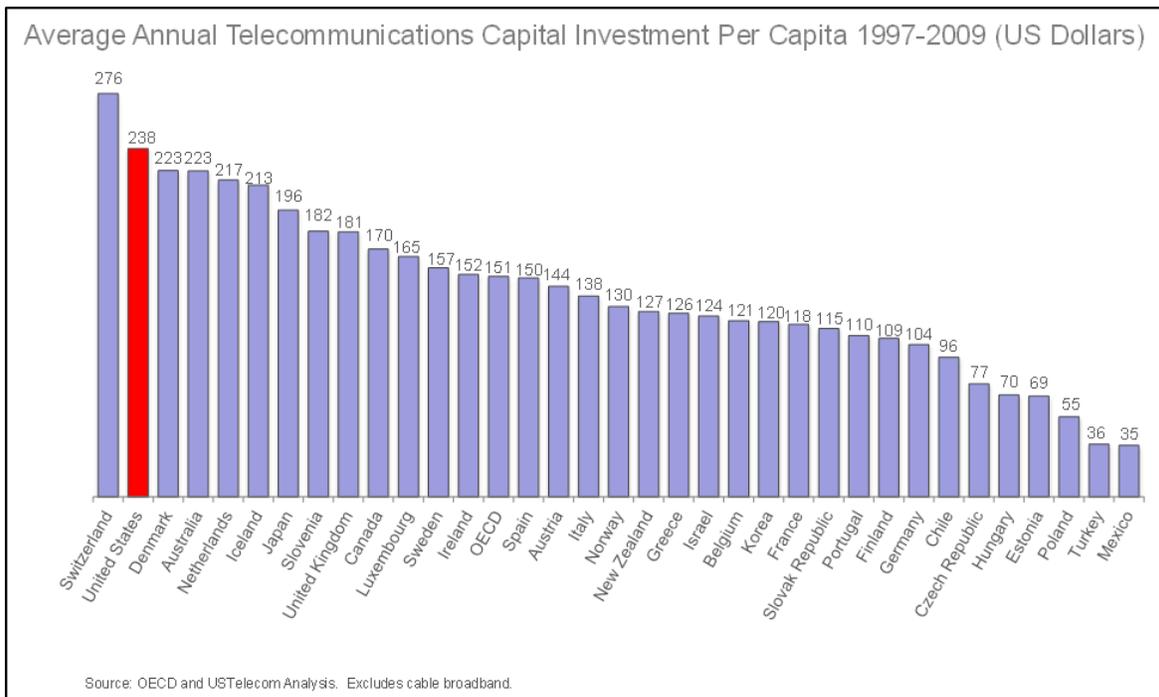
<sup>7</sup> See, Cisco website, *Cisco Visual Networking Index: Forecast and Methodology, 2010-2015*, Table 2 and Table 18, June 1, 2011 (available at: [http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c\\_11-481360\\_ns827\\_Networking\\_Solutions\\_White\\_Paper.html](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c_11-481360_ns827_Networking_Solutions_White_Paper.html)) (visited September 18, 2012).

<sup>8</sup> However, it should be noted that 94% of Americans have access to mobile broadband, with 98% having access to 3G or better mobile data speeds. See USTelecom Broadband Quickfacts, (available at: <http://www.ustelecom.org/broadband-industry/broadband-industry-stats/investment>) (visited September 20, 2012).

***C. The United States is a World Leader in Broadband Availability, Adoption and Usage***

The United States compares very favorably in a number of international comparisons, which raises questions about the validity of statements by policymakers and advocates that the U.S. lags other nations. This level of deployment has been accomplished despite significantly greater geographic challenges than in many other countries. As the Commission performs its international comparisons, it should take into account that the United States has approximately one-quarter the population density of Europe; one tenth that of Japan; and one-fifteenth the density of South Korea. Examining several metrics in the international context demonstrates the global leadership of the United States in this arena.

First, United States investment in broadband infrastructure continues to be substantially greater when compared to other developed countries. According to the OECD, the United States has invested more per capita in broadband telecommunications networks than any of its industrialized peers, except Switzerland. From 1997 - 2009, the United States invested an annual average of \$239 per capita, compared to the OECD average of \$151. Although these figures do not include cable, if they did the United States would likely look even better by comparison, given the relatively large size of the cable footprint in the United States as compared to other countries.



Moreover, a more robust study released in May 2011 by the Berkeley Research Group entitled the *Connectivity Scorecard 2011* (Connectivity Scorecard), expanded its analysis of broadband “in a much broader way to embrace more than just infrastructure and hardware.”<sup>9</sup> In addition, the Connectivity Scorecard “looks at substantially more than just penetration rates and counts,”<sup>10</sup> and focuses also on the business sector by considering “an extensive array of

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<sup>9</sup> Berkeley Research Group Report, *Connectivity Scorecard 2011*, p. 4, May 5, 2011 (available at: <http://www.connectivityscorecard.org/images/uploads/media/TheConnectivityReport2011.pdf>) (visited September 18, 2012) (*Connectivity Scorecard*). As such, it examined “the totality of interaction between a nation’s telecommunications infrastructure, hardware, software, networks, and users of these networks, hardware and software. Thus broadband lines, PCs, advanced corporate data networks and advanced use of wireless data services are certainly measures of connectivity, but so are human skills relevant to the usage of these infrastructures, technologies and networks.” *Id.*

<sup>10</sup> *Connectivity Scorecard*, p. 4.

utilisation indicators — such as levels of Internet use, take-up of Internet-based services, and use of websites by businesses.”<sup>11</sup>

Based on this approach, the Connectivity Scorecard concludes that the United States and Sweden “dominate” the rankings. Among other things, it found that the score of the United States reflects its “all-round strengths in ICT.”<sup>12</sup> Moreover, the Connectivity Scorecard noted that the United States is “showing modest signs of catching up with the leading countries in areas of consumer infrastructure where a few years ago it may have been farther behind—3G penetration and average broadband speeds are areas where the U.S. is improving.”<sup>13</sup>

Second, the United States has more competitive facilities-based broadband markets than most of the rest of the world. Approximately eighty percent of United States households can choose among two or more wired competitors. This compares to 45 percent who can choose from two or more wired providers in the European Union. The strength of the competing providers, as measured by national shares, among the different types of providers is more balanced in the United States than other countries, which helps to make the domestic market among the most competitive and innovative in the world.

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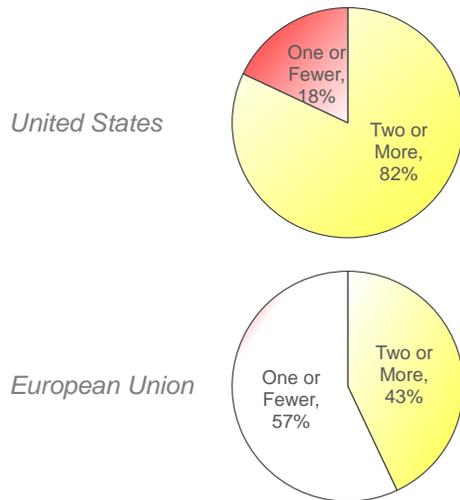
<sup>11</sup> *Id.*, p. 8.

<sup>12</sup> *Id.*, p. 22.

<sup>13</sup> *Id.*

### International Comparison of Fixed Facilities Broadband Competition

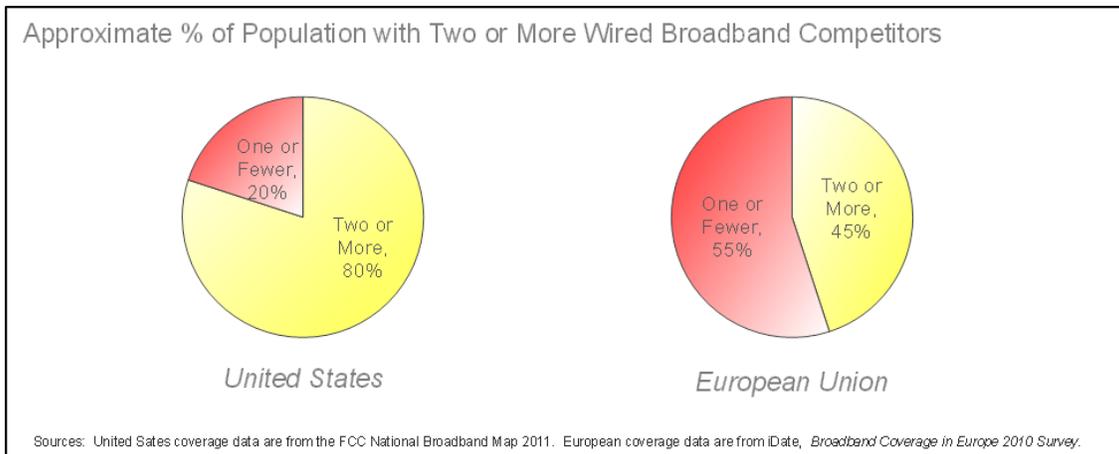
% of Population with Two or More Wired Broadband Competitors



% Share by Fixed Broadband Technology

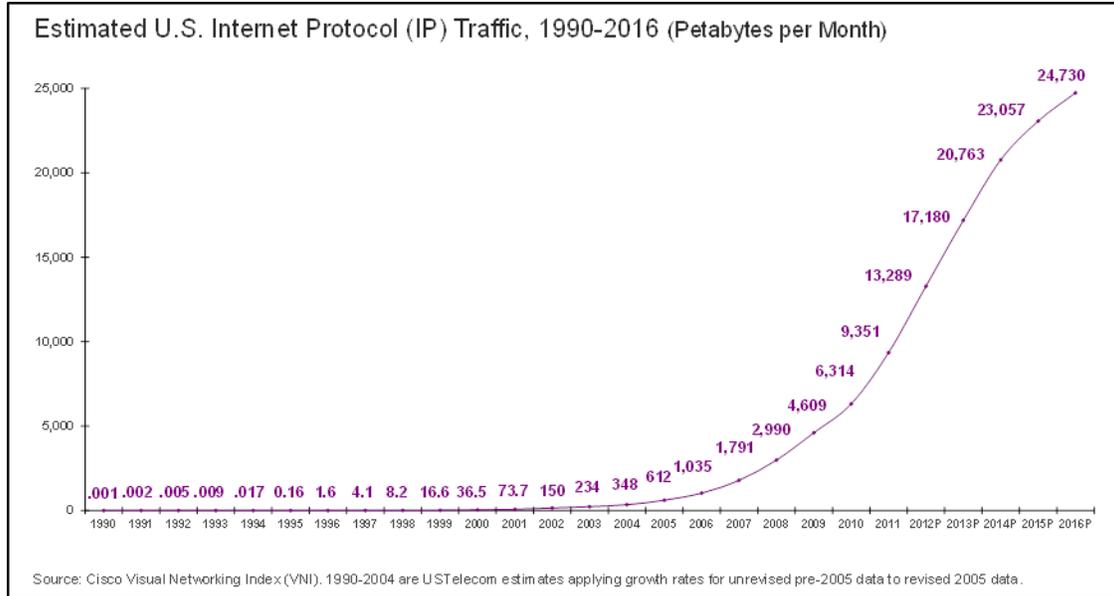
	Fiber or DSL	Cable Modem	Other
U.S.	45%	53%	2%
Europe	84%	16%	n/a
Japan	86%	14%	n/a
South Korea	68%	32%	n/a

Sources: United States coverage data are from the FCC National Broadband Plan. European coverage data are from iDate, *Broadband Coverage in Europe 2009 Survey*. Share data are from OECD and are for both business and residential subscribers. OECD data are for the 21 countries that are among the EU27 plus Iceland and Norway.



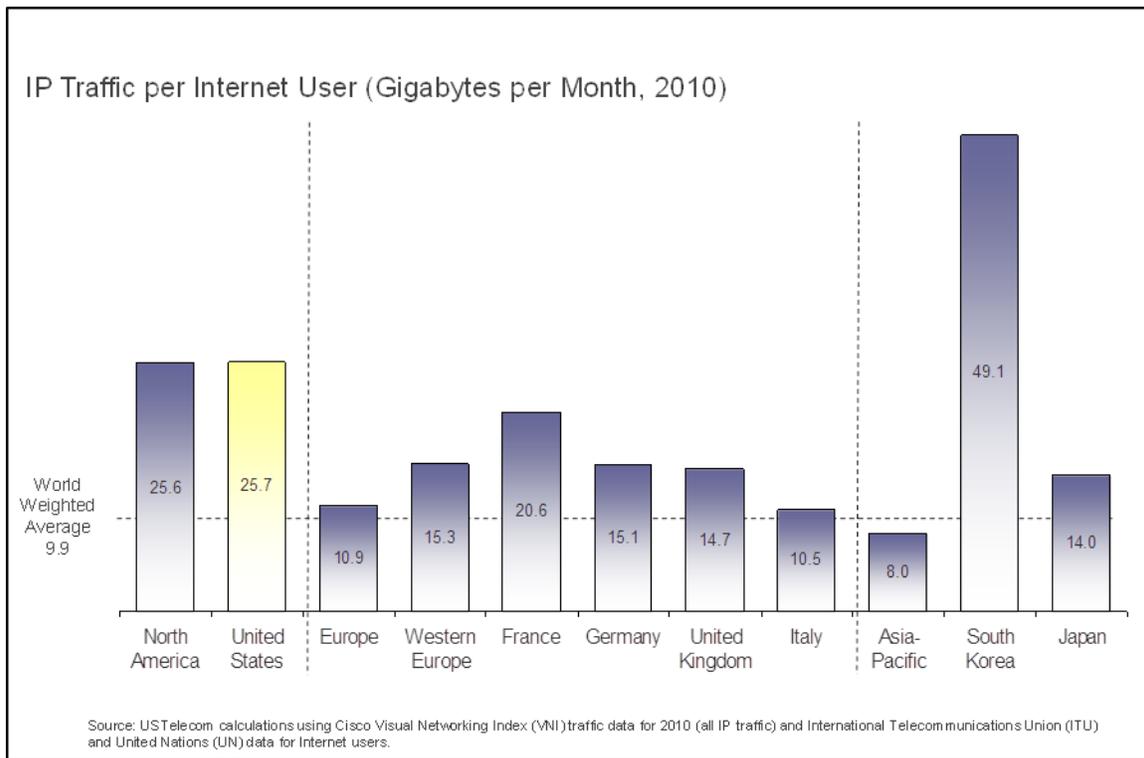
Third, domestic broadband investment has helped to place the United States among world leaders in Internet usage. There is perhaps no better measure of the value consumers place on networks than usage. The United States is capable of accommodating massive data traffic

growth, driven largely by increased online video, while generating the most traffic per user among industrialized nations except South Korea.<sup>14</sup>

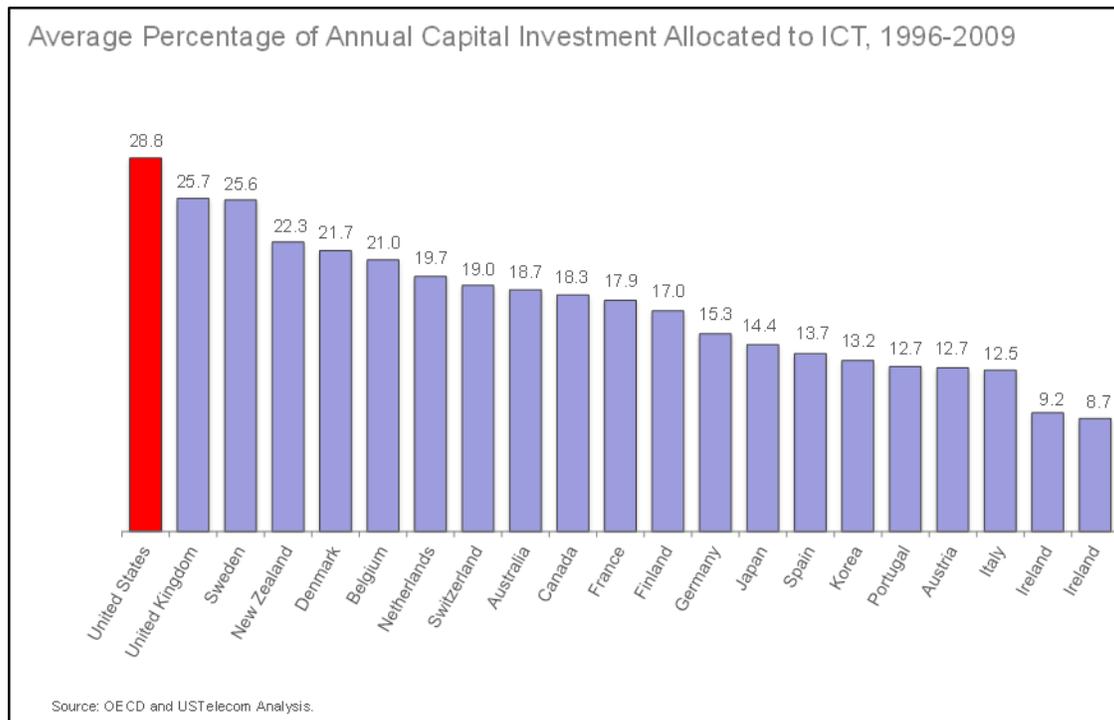


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<sup>14</sup> South Korea is a bit of an outlier due to extraordinary amounts of residential online video downloading. The massive usage gap between South Korea and the rest of the world virtually disappears when compared based on, for example, business traffic.



Fourth, United States broadband investment goes hand-in-hand with international leadership in broader technology investment. The United States invests a greater percentage of private fixed capital in information and communications technology (ICT) than any other industrialized country. The United States has led the industrialized world in this category of investment, which enhances the lives of American consumers and the productivity and competitiveness of American businesses, in all but one year since the OECD began tracking this statistic in 1980. As a result, the United States enjoys a healthy ICT ecosystem, of which broadband is a key component.



The private sector continues to do its share to bring broadband to American consumers and businesses. With average capital investment over the last decade of around \$65 billion per year, broadband providers are building the critical information and communications technology infrastructure for continued U.S. leadership and innovation in the global information economy. Our industry's investment will continue to enable life-enhancing technological innovations for Americans, and will make American businesses more productive and competitive.

## **II. BROADBAND IS BEING DEPLOYED TO ALL AMERICANS IN A REASONABLE AND TIMELY FASHION**

Based on the foregoing, the Commission's examination of broadband deployment in the United States must lead to the conclusion that broadband is being deployed to all Americans in a reasonable and timely fashion. The massive investment currently taking place in the broadband marketplace has resulted in substantial broadband penetration throughout the country.

The Commission's own survey has demonstrated that massive private investment has deployed robust wired broadband infrastructure capable of supporting actual download speeds of at least 4Mbps to more than 95 percent of the U.S. population.<sup>15</sup> Moreover, approximately eighty percent of households can choose from two or more wired broadband competitors, whether fiber to the home, DSL, cable or – in some instances – a cable over-builder. When wireless broadband offerings are analyzed, the data show that 98 percent of American consumers can get 3G wireless, which is in the process of being upgraded to 4G wireless.

The percentage of competing wireline providers is nearly twice as high as in Europe.<sup>16</sup> Deployment to business customers has been even greater, with 96 percent of all business locations having access to wireline broadband from the telephone company and 92 percent of businesses having access to cable broadband.<sup>17</sup> And this figure includes only DSL and does not account for special access and other high capacity services.

Moreover, the United States is rapidly transitioning from 3G wireless networks to 4G wireless networks. According to a recent Deloitte report, wireless telecommunications companies in the United States could invest \$25 to \$53 billion in fourth generation cellular wireless networks (4G) between 2012 and 2016, triggering \$73 to \$151 billion in gross domestic product growth and creating 371,000 to 771,000 jobs.<sup>18</sup>

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<sup>15</sup> See National Broadband Plan, p. 20.

<sup>16</sup> See National Broadband Plan, p. 20; compare, iDate, *Broadband Coverage in Europe: Final Report, 2009 Survey*, p. 18 (December 2009).

<sup>17</sup> See National Broadband Plan, p. 20.

<sup>18</sup> Deloitte report, *The Impact of 4G Technology on Commercial Interactions, Economic Growth, and U.S. Competitiveness*, August 2011 (available at: [http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/TMT\\_us\\_tmt/us\\_tmt\\_impactof4g\\_081911.pdf](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/TMT_us_tmt/us_tmt_impactof4g_081911.pdf)) (visited September 18, 2012).

By almost any meaningful benchmark, broadband deployment in the United States is a resounding success story. Clearly, the private sector is doing its part to bring broadband to the vast majority of Americans. Indeed, broadband is being deployed to all Americans at a rate that far exceeds the “reasonable and timely” standard in Section 706.

While broadband adoption, particularly among low-income populations, is certainly an important topic, and USTelecom recognizes the importance of developing an efficient and effective program to encourage broadband adoption by low-income consumers,<sup>19</sup> Section 706 exclusively addresses whether broadband “*is being deployed*,”<sup>20</sup> not the uptake of broadband service. Although the issue of broadband adoption is important, it is being addressed by the Commission in its proceeding on reform of the low-income programs.<sup>21</sup>

In light of the Commission’s focus on this issue in other proceedings, and the Commission’s limited statutory authority under Section 706, consideration of *adoption* issues has no place in the Commission’s evaluation of whether broadband is being *deployed* in a reasonable and timely manner for purposes of the 706 Report.

Moreover, the Commission’s examination must be forward-looking, determining whether broadband is “*being deployed*” in a timely manner. In this regard, in addition to the substantial existing and planned private investment taking place in the broadband marketplace, the Commission must also take into account the investments being made in broadband infrastructure

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<sup>19</sup> See Letter of Jonathan Banks to Marlene H. Dortch, January 25, 2010, GN Docket Nos. 09-47 and 09-137.

<sup>20</sup> 47 U.S.C. §706(b).

<sup>21</sup> See, Notice of Proposed Rulemaking, *Lifeline and Link Up Reform and Modernization*, Federal-State Joint Board on Universal Service, *Lifeline and Link Up*, 26 FCC Rcd 2770, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109 (March 2011).

through the broadband funding provided by the American Recovery and Reinvestment Act of 2009 (ARRA).<sup>22</sup>

The Rural Utilities Service (RUS) and the National Telecommunications and Information Administration (NTIA) obligated approximately \$7 billion dollars in grants and loans to increase broadband availability and adoption. The bulk of this money, in the form of the RUS Broadband Initiatives Program (BIP) and the infrastructure portion of NTIA's Broadband Technology Opportunity Program (BTOP) was intended to bring broadband to unserved areas of the country.<sup>23</sup> The total amount of funding announced for infrastructure programs from the two agencies is approximately \$8 billion when the more than \$1 billion in RUS loans and the more than \$1 billion in recipients' matching funds are added to the grant amounts.<sup>24</sup> As of July 2012, NTIA has disbursed approximately \$1.9 billion of the \$3.8 billion it awarded for projects under BTOP, and as of June 2012, RUS has disbursed approximately \$1 billion of the \$3.3 billion it awarded for projects under BIP.<sup>25</sup>

The Commission *must* consider these funding commitments and buildout obligations in its examination of whether broadband "is being deployed" in a reasonable and timely manner. RUS stated that its awards "will provide access to 2.8 million households, 364,000 businesses,

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<sup>22</sup> *American Recovery and Reinvestment Act of 2009, PL 111-5 (ARRA).*

<sup>23</sup> The remaining funds are allocated to broadband adoption projects and the NTIA mapping initiative authorized by the BDIA.

<sup>24</sup> This data is drawn from RUS and NTIA project announcements as of August 30, 2011.

<sup>25</sup> United States Government Accountability Office Report, *Recovery Act, Broadband Programs Are Ongoing, and Agencies' Efforts Would Benefit from Improved Data Quality*, September 2012, GAO-12-937.

and 32,000 anchor institutions across more than 300,000 square miles.”<sup>26</sup> Similarly, NTIA states that its investment in middle mile infrastructure is in areas encompassing an estimated 40 million households and 4 million businesses.<sup>27</sup>

Particularly important for the Commission’s consideration in its Ninth Report are the billions of dollars of grants, loans and/or loan guarantees ARRA made available to both RUS and NTIA for funding for broadband infrastructure. In the context of the RUS BIP, these funds were explicitly directed to rural areas without sufficient access to high speed broadband service to facilitate rural economic development and to projects that provided service to the highest proportion of rural residents that did not have access to broadband service.<sup>28</sup>

Similarly, the ARRA established a multi-billion dollar national broadband service development and expansion program at NTIA, the purpose of which include providing access to broadband service to consumers residing in unserved areas and providing improved access to broadband service to consumers residing in underserved areas.<sup>29</sup>

These two programs alone directed approximately \$7 billion to expanding broadband availability to unserved areas and underserved areas of the country. A continued determination by the Commission that significant and reasonable progress is not being made in the deployment of broadband to all Americans raises very serious questions about the success of these programs

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<sup>26</sup> Rural Utilities Service, Broadband Initiatives Program Fact Sheet (available at: <http://www.rurdev.usda.gov/supportdocuments/BIPFactSheet10-20-10.pdf>) (visited September 18, 2012).

<sup>27</sup> NTIA Report, *The Broadband Technology Opportunities Program, Expanding Broadband Access and Adoption in Communities Across America, Overview of Grant Awards*, December 14, 2010, p. 5 (available at: <http://www.ntia.doc.gov/report/2010/expanding-broadband-access-and-adoption-communities-across-america-overview-grant-awards>) (visited September 18, 2012).

<sup>28</sup> ARRA, H.R. 1-4, 1-5.

<sup>29</sup> ARRA, §6001.

and whether these monies were a worthwhile investment of taxpayer money, particularly in light of the country's current debt issues.

### **III. THE COMMISSION CAN ACCELERATE BROADBAND DEPLOYMENT THROUGH PROMPT AND PROPER IMPLEMENTATION OF ITS HIGH-COST UNIVERSAL SERVICE POLICIES**

The Commission's USF/ICC Transformation Order<sup>30</sup> represents a landmark decision in telecommunications regulation, and the Commission's willingness to tackle many of the problems that undermine the universal service and intercarrier compensation programs in a comprehensive way is an unprecedented achievement. The Commission took long overdue steps to reform and modernize these complicated programs, which did not optimally serve the purposes for which they were established.

USTelecom and its members support the Commission's efforts. However, particular actions with respect to implementing the Order's high-cost universal service policies, and lack of clarity with respect to some of the universal service provisions, threaten to diminish the full potential of the Order to accelerate the transition from legacy circuit-switched facilities to advanced IP facilities.

For price cap ILECs, the Commission should accelerate the development and implementation of appropriate, model-based funding to better connect the large majority of rural Americans served by those companies. The Commission has found that more than 80 percent of

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<sup>30</sup> *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime: Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, FCC 11-161 (2011) (*USF ICC Transformation Order*).

households without broadband service are located in areas served by price cap carriers.<sup>31</sup> The Commission should move rapidly to adopt a sensible model that would produce results consistent with objectives of the Order and the 706 Report. A well-constructed model will best meet the Commission's goals to fairly and efficiently extend and improve broadband service to unserved and underserved rural high-cost areas.

However, the Commission should also take action to advance the universal service objectives of the Transformation Order in the likely event that a cost model is not adopted by the January 2013 target date. Current uncertainty around the availability of price cap carrier support constrains price cap ILECs from making investment decisions to extend and improve broadband facilities. The Commission should keep in mind the carefully balanced equation it intended in the Order and follow through on the concurrent adoption and implementation of the Order's intercarrier compensation and high-cost funding components. The broadband investment implications of implementing only one side of the equation, the intercarrier compensation phase-down, without properly balancing that change with an adequate and timely CAF, are significant. Therefore, the Commission should adopt an interim CAF plan for 2013 that has adequate funding and includes eligibility criteria that harmonize broadband service requirements with funding eligibility requirements.

Additionally, the Commission should promptly approve the pending Windstream, CenturyLink and FairPoint petitions for waiver of the current CAF Phase I rules, which would permit those companies to use more of the 2012 CAF Phase I funding that has been allocated to them to advance broadband deployment in the near term. The stated purpose of CAF Phase I is

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<sup>31</sup> *USF ICC Transformation Order*, ¶130.

to “expand voice and broadband availability as much and as quickly as possible” and to begin “closing the rural-rural divide.”<sup>32</sup> Nevertheless, it is clear that the program’s restrictive rules – including the \$775 per-household deployment requirement – are preventing the Commission from achieving its goals. At least \$185 million of the \$300 million that the Commission has dedicated to CAF Phase I and allocated to price cap carriers based on the high-cost nature of their service areas will lie unused under the existing program rules, while millions of Americans in high-cost areas remain without any broadband service indefinitely.

The Commission allocated \$60 million in incremental support to Windstream for 2012, but the Order simultaneously prevented Windstream from being able to accept 99 percent of that funding due to the \$775 per-unserved location buildout requirement. Because Windstream has undertaken aggressive efforts to deploy broadband service in recent years, there remain very few individual locations in the company’s service areas that can be served economically for \$775 or less in incremental support, even assuming a significant additional company investment.<sup>33</sup> Nevertheless, there are tens of thousands of consumers in the lowest-cost unserved portions of Windstream’s service areas that could receive broadband access in the near term if the Commission waives the \$775 per-location requirement and enables Windstream to use the funding that has been allocated to it, along with \$12 million of the company’s own funding, to deploy nearly 2,000 miles of second-mile fiber to reach more than 17,000 unserved locations.<sup>34</sup>

The Commission states that “[w]e reiterate that the focus of CAF Phase I is a relatively narrow

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<sup>32</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17720, 1772 ¶¶ 145, 128 n.201.

<sup>33</sup> See *Windstream Election and Petition for Waiver* at p. 13, WC Docket No. 10-90 et al. (filed July 24, 2012).

<sup>34</sup> See Appendix 5 of the *Petition* which identifies by state the number of locations and wire centers that would receive funding upon grant of the waiver.

one; to spur deployment of broadband to relatively low-cost locations that nevertheless currently have no service at all, while we implement CAF Phase II.”<sup>35</sup> Grant of the Windstream waiver petition would further that goal—it would accomplish deployment of broadband to the lowest-cost locations within Windstream’s footprint that currently have no broadband service. Likewise, denial of the waiver request would undermine that goal, leaving those thousands of locations without broadband for the foreseeable future, while already allocated money—and the private investment that would accompany it—goes unspent.

Similarly, the Commission should promptly approve the waiver request filed by CenturyLink.<sup>36</sup> CenturyLink seeks a limited waiver of section 54.312(b) of the Commission’s rules, which, among other things, provides that recipients of Connect America Fund Phase I (CAF I) incremental support must deploy broadband to locations identified as unserved by fixed broadband on the then-current version of the National Broadband Map, maintained by the National Telecommunications and Information Administration (NTIA). In particular, CenturyLink seeks a waiver so that it may deploy to locations within specified areas that are shown on the National Broadband Map (NBM) as served by fixed wireless Internet service providers (WISPs), but which CenturyLink contends are not fully served within the meaning of the CAF I program by those fixed wireless.<sup>37</sup>

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<sup>35</sup> See *Connect America Fund*, Second Order on Reconsideration, WC Docket No. 10-90 et al., at ¶ 23 (rel. Apr. 25, 2012).

<sup>36</sup> CenturyLink Petition for Waiver, WC Docket No. 10-90 et al. (filed June 26, 2012) (Petition); see also *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and FNPRM*); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10<sup>th</sup> Cir. Filed Dec. 18, 2011); 47 C.F.R. § 54.312(b).

<sup>37</sup> *Id* at 1.

USTelecom recommends prompt approval of the CenturyLink Petition. Where WISPs are actually providing service more analogous to satellite service rather than fixed broadband, the Commission should follow the precedent in the *USF-ICC Transformation Order*, and grant the requested waiver so that all customers in the areas that are not fully served may receive the benefits of broadband using CAF I funding.

The Commission should also promptly grant the waiver request of FairPoint Communications, Inc. relating to certain portions of section 54.312(b) of the Commission's rules, which, among other things, provides the timeframe and obligations associated with accepting Connect America Phase I incremental support.<sup>38</sup> Specifically, FairPoint requests waiver of the 90-day window in which carriers had to accept or decline allocated Connect America Phase I incremental support.<sup>39</sup> If the waiver is granted, FairPoint proposes to accept the \$2,831,783 in allocated Phase I incremental support that it previously declined, conditioned on the favorable disposition of litigation currently pending with the Maine Public Utilities Commission. FairPoint also requests waiver of the requirement to connect to one unserved location for every \$775 in incremental support accepted. Granting FairPoint's requested waivers is a prudent use of its remaining unelected portion of the 2012 CAF incremental amount allocated to FairPoint and consistent with the intended use of the funds. The special circumstances articulated by FairPoint in its waiver petition along with the significant amount of

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<sup>38</sup> See *FairPoint Communications Petition for Waiver of Sections 54.313(b)(2) and (3) of the Commission's Rules and Conditional Election of Incremental CAF Support*, WC Docket Nos. 10-90 and 05-337 (filed Sept. 10, 2012).

<sup>39</sup> *Id* at 14.

its own capital committed by FairPoint to build out broadband facilities, demonstrates that grant of FairPoint's waiver request is clearly in the public interest.

Taken together, prompt adoption and implementation of the cost model, development of an interim support mechanism for price cap ILECs for 2013, and approval of the Windstream, CenturyLink and FairPoint waiver requests with respect to interim support for 2012, represent the most efficient ways to support broadband networks in areas served by price cap carriers and to advance the objectives of the Transformation Order as it relates to such carriers and the consumers living in the areas they serve this year and in 2013.

Rate-of-return ILECs also have concerns about implementation of certain high-cost universal service aspects of the USF/ICC Transformation Order. Uncertainty and lack of clarity around the present and future effects of benchmarks based on the Quantile Regression Analysis (QRA) adopted by the Wireline Competition Bureau's *Order* pose risks to the delivery of rural broadband and expansion of rural broadband availability. The Commission should address the issues raised by USTelecom's Application for Review.<sup>40</sup>

The QRA-based benchmarks not only affect those carriers who face reductions this year, but also result in a chilling effect on investment for rate-of-return ILECs whose support is *currently* unchanged by the QRA. If companies cannot understand the operation of the QRA, as appears to be the case, it will not be effective in providing incentives for prudent investment. The Commission itself has acknowledged that greater certainty and predictability with regard to

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<sup>40</sup> See *Application for Review of the United States Telecom Association*, (WC Docket Nos. 10-90 and 05-337), filed June 22, 2012.

revenues enables carriers to invest in modern, IP networks.<sup>41</sup> Unfortunately the current iteration of the QRA diminishes that certainty and predictability for rate-of-return carriers.

Addressing the uncertainty created by the QRA would best serve the goals of the *USF/ICC Transformation Order*<sup>42</sup> to encourage the efficient expansion and improvement of broadband service to consumers in rural areas served by rate-of-return ILECs. A stable and predictable QRA would provide a better environment for investment and accelerate the transition from circuit-switched to IP networks. It would be more fiscally responsible, as it would accurately target those spending excessively; it would make all rate-of-return companies more accountable for their USF-supported investments; and it would provide incentives to maximize the value of scarce program resources. Moreover, addressing the QRA issues would not interfere with the Commission's goal of ensuring that high-cost universal service funding is spent efficiently and constrained within a budget.

Finally, the Commission should also clarify or reconsider aspects of its new USF reporting requirements, as unnecessary administrative burdens that divert funding from other priorities including the extension and upgrading of broadband service. The Commission should require only those ETCs that accept CAF Phase II support to file new five-year build out plans.

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<sup>41</sup> See, ¶ 9 of *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime: Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, FCC 11-161 (2011) (*USF ICC Transformation Order*).

<sup>42</sup> *Id* at ¶ 11.

As CTIA and USTelecom demonstrated in their joint Petition,<sup>43</sup> no useful purpose would be served by requiring other ETCs to file new build out plans. CETCs whose support is being phased down, and incumbent LEC ETCs receiving CAF Phase I support, cannot develop accurate build out plans because their existing support is scheduled to be eliminated, and because they do not know how much funding they will receive from future programs or if they will choose to participate in those programs.

Moreover, the Commission should make clear that CETCs whose support is being phased down are not required to provide any of the information or certifications described by sections 54.313(a)(1) through (a)(7) for broadband service, and are not required to provide the results of the network performance tests contemplated by section 54.313(a)(11). The clarification sought by the Petition is consistent with the *Transformation Order*'s conclusion that "[c]ompetitive ETCs whose support is being phased down will not be required to submit any of the new information or certifications ... related solely to the new broadband public interest obligations..."<sup>44</sup> Any new broadband reporting requirements should apply, if at all, only to carriers electing CAF Phase II support. The provisions of sections 54.313(a)(1) through (a)(7) would impose significant burdens on ETCs if applied to broadband service, as would the network testing requirements in section 54.313(a)(11). ETCs do not currently track broadband service outages in the format contemplated by section 54.313(a)(2). The Commission recently decided against imposing network outage reporting requirements on broadband Internet services,

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<sup>43</sup> See *CTIA and United States Telecom Association Petition for Clarification and Reconsideration or, in the Alternative, For Waiver, Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, (filed Jun. 25, 2012).

<sup>44</sup> See *USF/ICC Transformation Order*, *pets. for review pending sub nom.* In re: FCC 11-161, No. 11-9900 (10<sup>th</sup> Cir., filed Dec. 8, 2011).

citing the need for further study of the technical issues.<sup>45</sup> Furthermore, neither the section 54.313(a)(11) network performance testing nor the application of sections 54.313(a)(1) through (a)(7) to broadband service are necessary to ensure compliance with CAF Phase I obligations. Other provisions of section 54.313 impose sufficient reporting requirements for the Commission to monitor ETCs' compliance with the CAF Phase I program's specific obligations.<sup>46</sup>

**IV. THE COMMISSION CAN ACCELERATE BROADBAND DEPLOYMENT BY ELIMINATING BURDENSOME REGULATIONS THAT IMPOSE COSTS ON THOSE COMPANIES DEPLOYING BROADBAND FACILITIES, AS DIRECTED BY SECTION 706**

To the extent the Commission is determined to conclude that – despite the efforts of private investment and the infusion of billions of dollars in government spending – the country continues to lag in deploying broadband, the remedy mandated by Section 706 itself is clear. The Commission must “take immediate action to accelerate deployment of such capability by *removing barriers to infrastructure investment* and by promoting competition in the telecommunications market.”<sup>47</sup> Without question, one of the most significant continuing barriers to broadband infrastructure investment are legacy regulations that no longer make sense in a broadband-centric marketplace.

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<sup>45</sup> Report and Order, *Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, 27 FCC Rcd 2650, ¶¶ 9, 114 (2012).

<sup>46</sup> 47 CFR §§ 54.313(b)-(c).

<sup>47</sup> 47 U.S.C. §1302 (emphasis added).

One of the efficient ways in which the Commission can act in this area is through rapid grant of USTelecom forbearance petition.<sup>48</sup> USTelecom's petition focuses on outdated, voice-centric rules that make little sense today, particularly given the dramatic changes that have taken place in technology and in the market for communications services. Such rules and regulations simply serve to divert limited investment dollars away from infrastructure investment.

This guiding principle of Section 706 is consistent with the spirit of the Obama Administration's effort to reduce regulatory burdens on small businesses. President Obama emphasized in Executive Order Number 13,563,<sup>49</sup> that a policy standard works best when it is based on "a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify)" and when they "impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations."<sup>50</sup> The Commission should take this guidance to heart as it examines ways in which to further promote broadband deployment.

Moreover, Chairman Genachowski expressed the Commission's commitment to ensure that its rules and policies "promote a healthy climate for private investment and job creation."<sup>51</sup> USTelecom applauds the Chairman's decision to develop a retrospective review plan, pursuant to President Obama's recent Executive Order.

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<sup>48</sup> See, Public Notice, *Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Telecommunications Regulations*, DA 12-352 (released March 8, 2012).

<sup>49</sup> Executive Order No. 13,563 of January 18, 2011.

<sup>50</sup> Executive Order §1(b).

<sup>51</sup> Commission News Release, *FCC Chairman Genachowski Continues Regulatory Reform to Ease Burden on Businesses; Announces Elimination of 83 Outdated Rules*, August 22, 2011.

Such an approach was recommended in a recent report released in May 2011 by McKinsey & Company (McKinsey Report).<sup>52</sup> Among other findings, the McKinsey Report found that the United States ranked highest among developed nations in generating the most value from the Internet.<sup>53</sup> In particular, the United States contained the highest ratings in terms of human capital resources, access to financial capital and infrastructure investment when compared to other Organization for Economic Cooperation and Development (OECD) nations. The McKinsey Report noted that these factors were among the most important for any “country wishing to build a strong Internet ecosystem.”<sup>54</sup>

The only area in which the United States lagged behind its OECD counterparts in Sweden, Japan and Canada, however, was in the area of creating an “attractive business environment.”<sup>55</sup> One approach identified in the McKinsey Report for ensuring such an environment was through the promotion of deregulation, which it concludes brings increased competition, motivates companies to increase investment and fosters increased innovation.<sup>56</sup> The Commission should therefore seek to rationalize current regulatory mechanisms and continue to eliminate outdated regulatory underbrush that serve only to divert limited private resources away from investment in broadband infrastructure.

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<sup>52</sup> McKinsey & Company Report, *Internet matters: The Net’s sweeping impact on growth, jobs, and prosperity*, May 2011 (available at: [http://www.mckinsey.com/insights/mgi/research/technology\\_and\\_innovation/internet\\_matters](http://www.mckinsey.com/insights/mgi/research/technology_and_innovation/internet_matters)) (visited September 18, 2012) (*McKinsey Report*).

<sup>53</sup> *McKinsey Report*, p. 28.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*, p. 31.

<sup>56</sup> *Id.*

## **V. CONCLUSION**

A thorough, comprehensive and data-driven examination of the complete picture of broadband being deployed in the United States must lead to the conclusion that broadband is being deployed in a reasonable and timely manner, consistent with the standard set in Section 706. According to the Commission's own calculations, broadband has already been deployed to 95 percent of American households.

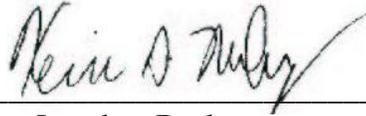
The Commission's conclusions in its Sixth Report, Seventh Report and Eighth Report that broadband is not being deployed in a reasonable and timely manner to all Americans are flawed and should not be carried forward into the Ninth Report. The Commission's examination should be forward-looking, determining whether broadband is "being deployed" in a timely manner. As demonstrated above, there are many efforts underway in which broadband is being deployed to Americans currently unserved and/or underserved.

The lack of broadband availability in some areas does not warrant a negative Section 706 finding. The Commission, instead, should respond to high-cost conditions and address the goals of Section 706 by making targeted support available for new broadband deployment in unserved and underserved areas. This can best be accomplished through immediate action by the Commission to reform the outdated intercarrier compensation and universal service systems.

Finally, consistent with President Obama's recent Executive Order, the Commission can further encourage and accelerate broadband deployment by adhering to the principle contained in Section 706 of the Act that directs the Commission to "remov[e] barriers to infrastructure investment." By eliminating costly legacy regulations, the Commission can make more investment dollars available for the deployment of broadband networks.

Respectfully submitted,

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