

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning the Deployment of)	GN Docket No. 14-126
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)	

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

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TABLE OF CONTENTS

I. THE SECTION 706 REPORT CAN BE A USEFUL POLICY TOOL IF IT IS PREPARED PROPERLY.....2

II. THE COMMISSION SHOULD USE MULTIPLE BENCHMARKS IN PERFORMING ITS SECTION 706 ANALYSIS RATHER THAN JUST ONE.....3

III. THE COMMISSION SHOULD NOT RAISE THE BASELINE DEFINITION OF BROADBAND AT THIS TIME5

 A. The Analysis in the Tenth Notice Does Not Support a Significant Increase in the Baseline Definition of Broadband5

 B. An Increase in the Baseline Definition of Broadband Could Divert Resources from the Primary Goal of Promoting Broadband Deployment in Completely Unserved Areas7

IV. THE COMMISSION SHOULD EVALUATE THE EFFECTIVENESS OF ITS EFFORTS TO BRING BROADBAND TO UNSERVED AREAS.....9

CONCLUSION.....11

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The National Cable & Telecommunications Association (NCTA) encourages the Commission to ensure that its next annual broadband progress report pursuant to section 706 of the Telecommunications Act of 1996 provides relevant, useful, and accurate information on the status of broadband in America.¹ In particular, the Commission should prepare a report that accurately reflects the tremendous scope and variety of broadband services available to American consumers rather than pursuing definitional changes that minimize or exclude services that are valued by consumers. The report also should evaluate whether current policies for extending broadband to unserved areas have been effective and renew the Commission's commitment to targeting high-cost universal service support to those areas with no broadband service at all.

¹ Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996 Act), as amended in relevant part by the Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008) (BDIA), is now codified in title 47, chapter 12 of the United States Code. 47 U.S.C. § 1301 *et seq.*

I. THE SECTION 706 REPORT CAN BE A USEFUL POLICY TOOL IF IT IS PREPARED PROPERLY

The report required by Congress under section 706 is an important opportunity to measure the success of federal policies and private sector efforts to make broadband available throughout the United States. As broadband becomes increasingly relevant in the lives of American consumers, it is more important than ever that the Commission make the most of this reporting requirement by providing a thorough, timely, and accurate portrayal of the broadband marketplace.

Unfortunately, in recent years, the Commission has fallen short of this objective because the report has not been issued in a timely manner and has focused solely on fixed terrestrial services to the exclusion of other broadband platforms. As described (but not explained) in the *Tenth Notice*, the Commission issued the *Ninth Notice* in August 2012 but never issued a report in response to that notice.² Putting aside any statutory concerns,³ it is clear that the Commission cannot adequately track the state of broadband deployment in such a fast-paced environment if there is a 2-3 year gap between reports. Similarly, the Commission's failure to include a meaningful discussion of the role of satellite and mobile wireless services in its last report – the *Eighth Report* issued in August 2012 – created the impression that the Commission was more interested in reaching a particular conclusion than in providing a meaningful assessment of the marketplace.⁴

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, Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, Tenth Broadband Progress Notice of Inquiry, FCC 14-113 (rel. Aug. 5, 2014) (*Tenth Notice*).

³ The report required under section 706 must be issued annually and the Commission must complete its inquiry within 180 days of its initiation. 47 U.S.C. § 1302(b).

⁴ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, GN Docket No. 11-

As NCTA explains in these comments, the Commission should follow three basic steps for the report to have the most value. First, it should comply with the statutory requirement to report every year and to release reports within six months of issuing a Notice of Inquiry. Second, it should measure performance against the same benchmarks every year so it can observe progress over time.⁵ Finally, it should account for all technologies and all levels of service. A report that follows these principles will be more useful to the public and could provide a reliable basis for the many important policy decisions facing the Commission.

II. THE COMMISSION SHOULD USE MULTIPLE BENCHMARKS IN PERFORMING ITS SECTION 706 ANALYSIS RATHER THAN JUST ONE

One of the concerns with respect to past section 706 reports is that the Commission's decision to define the statutory term "advanced telecommunications capability" by reference to a single speed threshold increasingly has resulted in a failure to fully capture the state of the broadband marketplace. Such an approach made sense when the Commission first started issuing these reports two decades ago because the threshold was sufficiently low that the Commission counted as broadband virtually any service that did not require the customer to "dial up" to reach the Internet. But to the extent that the speed threshold increases and the Commission considers other factors such as latency and usage allowances, there is a legitimate concern that an increasing number of capable, and very popular, services that many consumers use to access the Internet may no longer be counted as "broadband" services.

Continuing the same approach of focusing on a single speed threshold would be a mistake. It is important that the section 706 report better reflect the multi-faceted nature of

121, Eighth Broadband Progress Report, FCC 12-90 (rel. Aug. 21, 2012) (*Eighth Report*), Dissenting Statement of Commissioner Ajit Pai at 2 (Pai Statement) (Section 706 "does not permit us to segregate fixed connections from mobile connections, focusing on the former and neglecting the latter.").

⁵ *Id.*, Pai Statement at 3 (statutory language "most naturally requires a comparison of broadband deployment within the country at one point in time with broadband deployment at a later point in time, after which an assessment can be made as to whether 'reasonable and timely' advancements have been made.").

today's broadband marketplace, which features a wide variety of technologies and services that are able to cater to the varying needs of American consumers. All of these services, even those that may not meet a particular performance threshold, are valued by consumers, as evidenced by the fact that consumers spend their money purchasing these services.

The Digital Agenda Scoreboard released by the European Union (EU) provides a good example of how to improve the utility of the section 706 report by tracking data for multiple speed benchmarks.⁶ The EU analysis reports on the availability of basic broadband, next generation broadband (at least 30 Mbps), and ultrafast broadband (at least 100 Mbps downstream) and it reports on the availability of different types of technology, both individually and in the aggregate.⁷ The EU analysis also identifies trends and concerns at a granular level, e.g., use of low speed fixed broadband (less than 2 Mbps) is minimal in all countries but Estonia and Slovenia.⁸ This analysis facilitates more comprehensive policy discussions than a single threshold would, particularly for a larger country like the United States.

The Commission should incorporate a similar approach into its next broadband progress report. For example, an approach that tracks baseline service (at least 4 Mbps downstream), as well as 2-3 higher speed levels (e.g., at least 10 Mbps downstream, at least 100 Mbps downstream, and at least 1 Gbps downstream), would better enable the Commission and the public to understand the current state and future trajectory of the broadband marketplace.⁹ If the Commission measures the availability of these service levels on a regular basis, it will be able to

⁶ European Commission, Broadband Markets - Digital Agenda Scoreboard 2014, at <https://ec.europa.eu/digital-agenda/en/news/scoreboard-2014-trends-european-broadband-markets-2014>.

⁷ *Id.*

⁸ *Id.* at 21.

⁹ The Commission already has incorporated this type of analysis into its Measuring Broadband America report. See *2014 Measuring Broadband America Fixed Broadband Report* (OET/CGB 2014) at 51-54 (analysis of panelist migration to higher tiers).

identify success and concerns at a more granular level, which will facilitate the Commission’s ability to identify more targeted policy solutions.

III. THE COMMISSION SHOULD NOT RAISE THE BASELINE DEFINITION OF BROADBAND AT THIS TIME

A. The Analysis in the *Tenth Notice* Does Not Support a Significant Increase in the Baseline Definition of Broadband

In the *Tenth Notice*, the Commission solicits input on how it should define the term “advanced telecommunications capability” for purposes of the 706 report and whether it should retain the current speed benchmark of 4 Mbps downstream and 1 Mbps upstream.¹⁰ As NCTA explained in response to the *Ninth Notice*, the Commission should not change the baseline broadband speed threshold from 4 Mbps downstream and 1 Mbps upstream because a 4/1 Mbps connection is still sufficient to perform the primary functions identified in section 706 – high-quality voice, video, and data.¹¹

The Commission suggests that raising the threshold may be necessary due to increased usage of Internet applications and devices.¹² It is true that usage is increasing, but this increased usage has not changed the nature of voice, data, and video traffic or the capability required to handle that traffic.¹³ In particular, a 4/1 Mbps connection is sufficient to handle HD video. As demonstrated in a recent report by NetForecast, a broadband connection with 4 Mbps

¹⁰ *Tenth Notice* at ¶ 5.

¹¹ Comments of the National Cable & Telecommunications Association, GN Docket No. 12-228 (filed Sept. 20, 2012) (NCTA 2012 Comments) at 7 (“Even as speeds increase, it is important for the Commission to know how many Americans have baseline broadband service because that level of service enables consumers to realize the significant benefits of broadband technology, including the ability to receive high-quality video.”).

¹² *Tenth Notice* at ¶¶ 8-12.

¹³ NCTA 2012 Comments at 8-9 (“The *Notice of Inquiry* correctly observes that people increasingly have more devices attached to their home broadband connections. It does not follow, however, that the definition of broadband should be modified to raise the speed threshold based on the number of devices in the home.”).

downstream has more than sufficient capacity to handle an HD video stream from Netflix.¹⁴ The Commission suggests that higher speeds may be needed to handle “super HD” video traffic,¹⁵ but even if true, given the limited presence of super HD video at this time, and the many other Internet services and functionality that can be easily accommodated with a 4/1 connection, there is no basis for finding that a connection must be able to handle one particular type of video in order to meet the definition of broadband.

The Commission also asks whether the baseline definition of broadband should be based on the needs of a household with multiple people all using multiple devices at the same time and proposes a complex approach for calculating the needs of an average household.¹⁶ As an initial matter, the majority (61 percent) of households in the United States have only one or two occupants and, therefore, are below the average of three people proposed by the Commission.¹⁷ Similarly, the assumption that each member of a household is using multiple devices to access the broadband network simultaneously is not realistic. To read section 706 as requiring that every broadband connection be capable of supporting simultaneous video streaming by multiple people using multiple devices cannot be justified.

Even if the Commission had accurately described the behavior and needs of a typical household, setting a baseline standard based on the average household does not make sense. For

¹⁴ NetForecast, *How the Netflix ISP Speed Index Documents Netflix Congestion Problems* (June 2014) at 8, at http://www.netforecast.com/wp-content/uploads/2014/06/NFR5117_How_the_Netflix_ISP_Speed_Index_Documents_Netflix_Congestion_Problems.pdf.

¹⁵ *Tenth Notice* at ¶ 12 (chart estimating 7 Mbps need for Super HD video).

¹⁶ *Id.* at ¶ 9 (“Is it reasonable under section 706 to set a speed benchmark by looking at whether every member of a household can use multiple devices simultaneously?”); *id.*, ¶ 11 (“Is it reasonable under section 706 to set a speed benchmark by looking at whether every member of a household can use multiple devices simultaneously?”).

¹⁷ U.S. Census Bureau, U.S. Department of Commerce, and Office of Policy Development and Research, U.S. Department of Housing and Urban Development, *American Housing Survey for the United States: 2011*, 23-24, Table C-08-AO (2013), available at <http://www.census.gov/content/dam/Census/programs-surveys/ahs/data/2011/h150-11.pdf> (27.3% of households have one occupant, 33.4% of households have two occupants).

example, if an agency were trying to count the number of cars in use, it would be irrational to define the term “car” as only including four-door sedans or larger vehicles just because those are the types of vehicles that meet the needs of a “typical” household. Just as a two-door compact is still a car even if it may not be fully functional for large families, an Internet connection should still be considered a broadband connection even if it does not meet the needs of some households.

The Commission also should not exclude services from its analysis simply because they do not meet a particular latency threshold or offer usage allowances below a particular level. Services that offer a different mix of price and functionality than baseline broadband service all provide important options in the marketplace and should be considered as part of any competitive analysis. For example, it would not make any sense to exclude consideration of mobile wireless broadband services, which are indispensable to millions of Americans, simply because some service plans are deemed by the Commission to provide insufficient usage allowances for certain types of online activity. Any analysis that ignores how consumers actually choose to spend their money on broadband services would lack credibility.

The appropriate way to acknowledge and accommodate all of these issues is to build in and begin to track different speed thresholds in the section 706 report. In that way, as utilization of broadband evolves, the Commission will be able to make appropriate policy judgments based on a variety of speed thresholds.

B. An Increase in the Baseline Definition of Broadband Could Divert Resources from the Primary Goal of Promoting Broadband Deployment in Completely Unserved Areas

The potential effect that raising the baseline speed might have on universal service subsidies should be a factor in the Commission’s decision on how to define “advanced telecommunications capability” for purposes of section 706. The Commission does not need to

incorporate any definitions adopted in this proceeding into its universal service rules,¹⁸ but to the extent there is a relationship between the two proceedings, it would be shortsighted not to consider the effect that a decision in one context would have on the other. In particular, raising the baseline could lead to more universal service support being spent in areas that today are considered to be served with broadband. It also calls into question the wisdom of the Commission's current programs. For example, raising the baseline suggests that the \$500 million spent on Connect America Fund (CAF) Phase I is wasted money since recipients are not required to provide "broadband" at the 10 Mbps threshold at any new locations.

More importantly, absent significant increases in the universal service budget, raising the baseline means there will be less money and more delay in getting service to areas that are totally unserved. As should be obvious to the Commission by now, there are some areas where no amount of federal subsidy has been sufficient to attract broadband investment by the incumbent telephone companies. If the Commission raises the baseline speed threshold, it is likely that these companies will focus first on upgrading networks in areas already receiving service (e.g., from 4 Mbps to 10 Mbps) before building in unserved areas. The better approach for achieving the universal access goal identified in section 706 would be to leave the baseline speed threshold at 4 Mbps and devote more funding to alternative technology platforms, such as fixed wireless,

¹⁸ Indeed, in past reports it has explicitly stated that its definition for purposes of section 706 was not controlling in other contexts. *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137, Report, 25 FCC Rcd 9556, 9563, ¶ 11 n46 (2010) ("We emphasize that we are benchmarking broadband in this report solely for purposes of complying with our obligations under section 706. We specifically do not intend this speed threshold to have any other regulatory significance under the Commission's rules absent subsequent Commission action.").

that the Commission already has found are well suited for the most remote portions of the country that today are completely unserved by broadband.¹⁹

IV. THE COMMISSION SHOULD EVALUATE THE EFFECTIVENESS OF ITS EFFORTS TO BRING BROADBAND TO UNSERVED AREAS

The ultimate purpose of the 706 report is to help the Commission identify policies that will promote the availability of broadband services to all Americans. At this stage in the development of the broadband marketplace, the most important federal policy to extend the availability of broadband to unserved areas is high-cost universal service support. Since the *Eighth Report* was released over two years ago, the Commission has taken a number of steps to implement the reforms adopted in the *CAF Order* in 2011.²⁰ But these efforts have been disappointing because, with few exceptions, they have been myopically focused on giving support to incumbent telephone companies through the CAF for price cap areas and through legacy support mechanisms for rate-of-return carriers. The Commission has published no evidence demonstrating that these programs have been effective in reaching areas previously unserved by broadband. To the contrary, so far most of this funding appears to be directed to areas that already have some level of broadband service.²¹

¹⁹ *The Broadband Availability Gap*, OBI Technical Paper No. 1 (Apr. 2010) at 59 (“Fixed wireless networks have favorable economics in most unserved areas.”).

²⁰ *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*CAF Order*).

²¹ *See Over \$255 Million of Connect America Funding Authorized to Connect Unserved Homes and Businesses in 41 States*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 16450, 16456, Attach. 2 (Wireline Comp. Bur. 2013) (majority of locations selected by carriers for CAF Phase I Round 2 funding already have service exceeding 768 kbps downstream/200 kbps upstream). Moreover, in many cases these locations previously had been identified as served with service exceeding 3 Mbps downstream/768 upstream. *See* Letter from Jennifer K. McKee, National Cable & Telecommunications Association, WC Docket No. 10-90 (filed Apr. 12, 2013) (raising concerns about Windstream’s request for funding to upgrade areas where it reported service at 3 Mbps/768 kbps to the federal government but was not delivering that speed).

One significant exception to these concerns is the Commission's recent decision to award funding for rural broadband experiments.²² In that context, the Commission has made clear that this funding is not available exclusively to incumbent phone companies, but all types of providers are welcome to participate and seek funding to build networks in areas not already served by unsubsidized providers.²³ While we would have preferred that the Commission incorporate this common sense approach into the distribution of high-cost universal service support years ago, the decision to embrace competitive and technological neutrality as part of this program is a welcome step that should help the Commission to achieve the universal access goal of section 706.

As part of its analysis of broadband deployment, the Commission should take this opportunity to include in the next section 706 report an evaluation of the policy steps the Commission has taken to extend broadband into unserved areas. Such an analysis should be incorporated into and updated in each annual 706 report going forward.

²² *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98 (rel. July 14, 2014).

²³ *Id.* at ¶21.

CONCLUSION

If done properly, the section 706 report can be a valuable tool for assessing the state of the broadband marketplace and evaluating policies for improving access to broadband in areas where it is unavailable. We encourage the Commission to follow the recommendations in these comments to maximize the effectiveness of this broadband progress report as well as future versions of the report.

Respectfully submitted,

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