

**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. 14-126
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)

To: The Commission

**REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, hereby replies to certain Comments filed in response to the Notice of Inquiry in the above-captioned proceeding.¹

Discussion

WISPA wholeheartedly concurs with the numerous commenters that consider unjustifiable the *NOI*’s suggestion that the Commission should measure consumers’ current ability “to originate and receive high-quality . . . telecommunications”² by: 1) boosting the broadband speed measurement benchmark, and 2) focusing myopically on the hypothetical broadband usage habits of the most demanding “high use” consumer households – those with multiple users simultaneously employing multiple devices, all drawing on the most data-intensive applications available, during peak Internet usage periods. As one commenter

¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Tenth Broadband Progress Notice of Inquiry, GN Docket No. 14-126, FCC 14-113 (rel. Aug. 5, 2014) (“*NOI*”).

² *Id.* at ¶ 19, quoting 47 U.S.C. § 1302(d)(1).

succinctly summarized: “[t]he issue here is broadband *deployment*”³ – not whether “every member of a household can use multiple devices simultaneously”⁴ or how many users in a household can watch “super HD movies”⁵ while others simultaneously make “HD video calls.”⁶

In determining whether advanced telecommunications technology is being adequately deployed “to *all* Americans,”⁷ the Commission should, quite logically, focus on ensuring that *all* citizens have access to broadband service adequate to allow them to “originate and receive”⁸ modern telecommunications. A connection providing 4 Mbps download/1 Mbps upload speeds, “using any technology”⁹ to provide it, is more than adequate for that task, and thus represents a reasonable benchmark. While the Commission may wish to track the availability and adoption of broadband offerings that exceed the 4/1 Mbps standard, it should not alter the 4/1 Mbps benchmark standard – on which it and service providers have relied as a steady benchmark since 2011 – until *all* Americans first have access to 4/1 Mbps service.¹⁰

Furthermore, the Commission must remain mindful of the millions of dollars of private (as opposed to government-subsidized) investments that have been made, and continue to be invested, in reliance on the 4/1 Mbps service standard. As one commenter accurately stated, “[h]istory and experience has shown that the bulk of the investment that leads to wider broadband penetration comes *from the private sector* . . . [and] private sector companies will be incentivized to invest further in broadband *when there is certainty about the future of the*

³ Comments of Verizon, GN Docket No. 14-126 (filed Sept. 4, 2014) (“Verizon Comments”), at 29 (emphasis in original).

⁴ *NOI* at ¶ 9.

⁵ *Id.* (Table 2)

⁶ *Id.*

⁷ 47 U.S.C. § 1302(b).

⁸ *Id.* at § 1302(d)(1).

⁹ *Id.*

¹⁰ See Verizon Comments at 30 (“the Commission should maintain a relatively stable benchmark for defining broadband, even if the Commission also seeks a benefit of tracking the availability and adoption of higher-speed services”).

industry, which is facilitated by policies that enable, rather than restrict, providers’ options to economize their business.”¹¹

I. THE COMMISSION SHOULD NOT CHANGE THE MINIMUM SPEED THRESHOLD FOR BROADBAND.

In the *NOI*, the Commission appears enamored by the prospect of a large family gathered around the kitchen table, each family member clutching the latest generation smart phone in one hand while fixated on a computer tablet in the other. Meanwhile, multiple televisions stream internet-transported HD video in the background (as opposed to receiving broadcast and cable television programming, which still accounts for the overwhelming majority of television viewing). This family is, in the words of the *NOI*, “simultaneously us[ing] multiple high-bandwidth services – e.g., streaming video, interactive service such as Skype or online gaming – and low-bandwidth services – e.g., paying bills online, sending and receiving emails, viewing web pages, or streaming audio.”¹²

While this narrative may well represent what the Commission hopes is the “typical” family of today or the future, the *NOI* presents no evidence that most, or even many, American households use broadband services in this manner. Regardless, the scenario portrayed by the Commission has nothing to do with whether broadband capability – let alone “reasonable” broadband capability – is being deployed to “all Americans.” As AT&T correctly notes, Section 706 “does *not* define advanced capabilities with reference solely to the needs or desires of the most intense broadband users; rather, it includes those capabilities that enable a typical user to obtain a ‘high-quality transmission.’”¹³ Most broadband subscribers use their connections in a

¹¹ Comments of the Telecommunications Industry Association, GN Docket No. 14-126 (filed Sept. 4, 2014), at 10-11 (emphases added).

¹² *NOI* at ¶ 10.

¹³ Comments of AT&T, GN Docket No. 14-126 (filed Sept. 4, 2014) (“AT&T Comments”), at 7-8 (emphasis in original).

much more modest and moderate manner than portrayed by the Commission; thus, “services providing 4 Mbps/1 Mbps are still popular and meaningful to consumers.”¹⁴ Moreover, 4/1 Mbps service is entirely adequate “to perform the primary functions identified in section 706 – high-quality voice, video, and data.”¹⁵ In making its determination under Section 706, the Commission should conduct its analysis “in light of the *range* of uses that all Americans would need to access high-quality services, not what the most affluent or most usage-intensive Americans may be choosing to buy for their own purposes.”¹⁶

There are still areas of the country where 4/1 Mbps broadband service – or broadband service of any kind – is not available. If the Commission truly wishes to “take immediate action to accelerate deployment of such capability”¹⁷ in these areas, it should advance the Connect America Fund (“CAF”) programs, while opening these programs to providers other than just the price cap carriers that, so far, have been the only recipients of CAF funds for fixed broadband. As NCTA stated perfectly: rather than raising the baseline speed threshold, “[t]he 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, that the Commission already has found are well suited for the most remote portions of the country that today are completely unserved by broadband.*”¹⁸

Plainly, the Commission must reject the argument of the Fiber to the Home Council Americas claiming that the only “relevant metric” that should be used in evaluating broadband deployment progress under Section 706 is whether “all-fiber networks [are] being deployed to all

¹⁴ Verizon Comments at 30.

¹⁵ Comments of the National Cable & Telecommunications Association, GN Docket No. 14-126 (filed Sept. 4, 2014), at 5 (“NCTA Comments”).

¹⁶ AT&T Comments at 14.

¹⁷ 47 U.S.C. § 1302(b).

¹⁸ NCTA Comments at 8-9 (emphasis added).

Americans in a reasonable and timely fashion.”¹⁹ The Commission has never endorsed, and should not now adopt, a standard that looks *solely* at deployment of one type of broadband infrastructure, to the absolute exclusion of other competing and complementary technologies especially where, as here, other technologies can be deployed in a more cost-effective manner.

Instead, the Commission and its state counterparts should take steps to encourage private investment based on the right technology solution for the particular policy objective.²⁰ In commenting on the efforts of two municipalities seeking preemption of state laws imposing geographical constraints on municipal broadband deployment, WISPA detailed many of the proceedings where the Commission and states can adopt rules and laws that would facilitate expansion of privately funded networks and lower barriers to entry for new broadband providers.²¹ For example, the Commission could conclude rulemaking proceedings making additional unlicensed spectrum available for fixed wireless broadband and other services. States can budget funds for technology-neutral broadband deployment in areas that are unserved.

In suggesting that it should “read section 706 as requiring that every broadband connection be capable of supporting simultaneous video streaming by multiple people using multiple devices”²² and, as a consequence, boost the threshold speed measurement standard for determining whether consumers are being served with “high-quality” broadband, the Commission puts the cart before the horse. The Commission must remain true to the plain language and intent of the statute and first ensure that *all* Americans have access to a minimum of 4/1 Mbps broadband – a service level fully capable of providing the level of service contemplated by the statute. As Commissioner O’Rielly perfectly summarized:

¹⁹ See Comments of the Fiber to the Home Council Americas, GN Docket No. 14-126 (filed Sept. 4, 2014), at 2.

²⁰ See TIA Comments at 10-11.

²¹ See Comments of WISPA, WCB Docket Nos. 14-115 and 14-116 (filed Aug. 29, 2014), at 7-13.

²² NCTA Comments at 6.

[The FCC] should perform an honest and straightforward assessment of “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion,” which does not mean whether “each person in every household across America can simultaneously stream video while using Skype during peak hours on weeknights.” After all, the term “reasonable” has to carry at least some weight since it is actually in the statute.²³

To conduct the broadband assessment in the manner proposed by the *NOI* – referencing hypothetical ultra-high use households and making “casual, back-of-the-envelope calculation[s] of bandwidth requirements of the highest volume households that are simultaneously using multiple bandwidth intensive applications,”²⁴ equates to pure “analytical acrobatics”²⁵ for which there is no basis in the statute and no Commission precedent.

II. ANY BENCHMARK SPEED ADJUSTMENT MUST NOT BECOME A CONDUIT FOR MORE FEDERAL SUBSIDIES TO PRICE CAP CARRIERS.

If the Commission does determine to raise the broadband speed benchmark standard, it must *not* allow implementation of the new standard to become yet another method of awarding governmental funding solely to price cap carriers. The Commission should be especially mindful of those many areas currently served by unsubsidized competitors that established service and operate today in reliance on the 4/1 Mbps standard. In other words, if a new benchmark – beyond 4/1 Mbps – is adopted, areas that are currently served by unsubsidized competitors providing 4/1 Mbps service must not be reclassified as “unserved” under the newly adopted standard. To do so would allow price cap carriers yet another opportunity to obtain more funding, while upsetting the established reliance interests of private investors that have devoted their hard-earned capital to the effort to bring 4/1 Mbps broadband service to previously unserved subscribers. Broadband speed benchmarks should not be moving targets that put the

²³ *NOI, Statement of Commissioner Michael O’Rielly Approving in Part and Concurring in Part (“O’Rielly Statement”)*.

²⁴ AT&T Comments at 9.

²⁵ O’Reilly Statement.

Commission in the position of choosing “winners” – carriers that can apply for more and more government subsidies – and “losers” – private concerns that have built out broadband networks in reliance on the Commission’s pledge that it would not fund price-cap carriers in areas served by unsubsidized competitors who provide service meeting the 4/1 Mbps standard.

Conclusion

In undertaking its Section 706 obligations, the Commission must stay true to the intent and purpose of the Telecommunications Act and must not place at risk those privately funded broadband providers that have, in good faith, adhered to the established benchmarks. The Commission should press forward with its CAF reforms and also take steps to encourage privately funded broadband deployment.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

September 19, 2014

By: */s/ Chuck Hogg, President*
/s/ Alex Phillips, FCC Committee Chair
/s/ Jack Unger, Technical Consultant

Stephen E. Coran
F. Scott Pippin
Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006-1809
(202) 416-6744
Counsel to the Wireless Internet Service Providers Association