

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Inquiry Concerning the Deployment of Advanced) GN Docket No. 16-245
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)
—

**REPLY COMMENTS
OF
NTCA – THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION

NTCA – The Rural Broadband Association (“NTCA”) hereby submits its reply comments in response to the Federal Communications Commission’s (the “Commission”) Notice of Inquiry (“NOI”) in preparation for its annual assessment of broadband deployment and availability.¹

NTCA supports efforts to assure reasonable and timely deployment of advanced telecommunications services, particularly in the hardest-to-serve reaches of America such as the rural areas served by the more than 800 rate-of-return regulated local exchange carriers (“RLECs”) represented by NTCA. All of NTCA’s members have made substantial progress in deploying advanced networks in their communities, operating as full service local exchange

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*, GN Docket NO 16-245, Twelfth Broadband Progress Notice of Inquiry, FCC 16-100 (rel. Aug. 4, 2016) (“NOI”).

carriers and broadband providers.² Many of NTCA’s members also provide mobile wireless, cable, satellite, and long distance and other competitive services to their communities, and they often operate too as the backbone for mobile services across wide swaths of rural America.

II. THE FCC SHOULD STRIVE FOR CONSISTENCY IN ITS 706 GOALS AND USF PROGRAMS

NTCA agrees the Commission should retain the newly adopted speed benchmark for fixed terrestrial and satellite broadband service of 25 Mbps/3 Mbps for section 706 reporting purposes. However, there remains reason for significant concern given the lingering inconsistency between the 25/3 standard proposed in this proceeding to determine “availability” and the use of lesser “minimum targets” for rural consumers under current high-cost universal service fund (“USF”) support mechanisms.

According to the Commission’s current measuring stick and as proposed in the NOI, broadband availability is determined by reference to broadband speeds of 25/3,³ but pursuant to the Commission’s universal service programs, “reasonable comparability” (of availability) for many rural communities may be deemed achieved at speeds of 10/1 or even less.⁴ This gap, which appears to be driven largely – if not exclusively – by budgetary considerations, creates a situation in which service is deemed “unavailable” by the Commission’s own analysis (because

² See, e.g., NTCA 2015 Broadband/Internet Availability Survey Report (July 2016) (finding that 85 percent of consumers served by 131 RLEC respondents could obtain speeds of 10Mbps or greater downstream, with 71 percent able to receive speeds of 25 Mbps or greater downstream (available at:

<https://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2015ntcabroadbandsurveyreport.pdf>).

³ NOI, ¶¶ 12, 13.

⁴ *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, at ¶¶ 146-155 (rel. March 30, 2016).

it does not meet the Section 706 benchmark 25/3 speeds) even as the Commission’s universal service programs fund and make available such lesser speeds. As the National Cable and Telecommunications Association points out, “funding deployment at speeds lower than its own benchmark places the Commission in the illogical position of incentivizing failure by its own standards.”⁵

Section 254(b)(3) of the Communications Act of 1934, as amended (the “Act”), establishes the public policy principle that high-cost support is intended to ensure consumer access to supported services “that are reasonably comparable to those services provided in urban areas . . . at rates that are reasonably comparable to rates charged for similar services in urban areas.”⁶ Section 254(e) of the Act mandates, among other things, that support must be “sufficient to achieve the purposes of this section.”⁷ Reasonable rural-urban comparability and sufficiency of support to achieve such comparability are the pillars of universal service policy in the United States.

The fact that the Commission established target speeds for universal service purposes well below its benchmark for determining whether service is available for Section 706 purposes highlights that universal service support under current budget controls is by definition insufficient to attain reasonable comparability, contrary to Section 254. The Commission should not and cannot achieve the goals of either Section 706 or Section 254 with its current, contradictory policy positions.

⁵ Comments of the National Cable and Telecommunications Association, p. 5.

⁶ 47 U.S.C. § 254 (b)(3).

⁷ 47 U.S.C. § 254(e); see also *id.* at § 254(b)(5).

The standards for determining whether broadband service is “available” and whether reasonably comparable service is available in rural areas should be measured against the same baseline. Absent steps to ensure the high-cost program can keep better pace with national speed goals, contrary to section 706, rural America risks falling further behind even as urban residents experience significant increases in speeds.

III. SUSTAINABILITY OF NETWORKS AND AVAILABILITY OF SERVICES ARE DIRECTLY AFFECTED BY COMMISSION POLICY

The NOI questions whether the Commission should consider the impact of pricing and affordability of services as part of its analysis of deployment and availability.⁸ It should. Pricing and affordability of service are directly correlated to the consumers’ perception of availability. Consistent with this concept, it must be recognized that the current regulatory construct directly affects – and likely undermines – the long-term affordability of rural broadband services and the sustainability of rural broadband networks. In particular, as NTCA has previously highlighted, the combined effect of a USF budget control and other cuts, caps and constraints on USF recovery, a consumer broadband loop revenue benchmark for standalone broadband regulated loop cost recovery and other costs associated with providing broadband Internet access service to consumers all come together to preclude most rural providers from offering their consumers affordable, reasonably comparable rates for broadband.⁹

Universal service, by design, is not simply a network construction program. It provides for cost recovery for the ongoing operation of the network and maintenance, and is at bottom

⁸ NOI ¶¶ 43, 75, 85

⁹ See Petition for Reconsideration of NTCA – The Rural Broadband Association in *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (filed May 25, 2016).

intended to make sure that prices consumers pay for service in rural areas are affordable (*i.e.*, “reasonably comparable”) to those in urban areas. Private capital, loans and other sources of funding are necessary to build networks, and universal service funding helps to justify the business case for such construction, by helping to make sure that consumers can afford to adopt service and make continuing use of the network over time once built. In essence, regulatory policies that aim for substandard service levels and substitute a simplistic near-term “locations served” focus for a more needed focus on tackling the *ongoing* challenges of ensuring reasonably comparable services at reasonably comparable rates only perpetuate a situation in which broadband service is much more likely to be unaffordable to rural consumers and rural broadband networks will become harder to sustain over time.

IV. COMMON, WELL-DEFINED PERFORMANCE METRICS SHOULD APPLY TO ALLEGEDLY SUBSTITUTABLE SERVICES

As an initial matter, NTCA supports the conclusion that fixed and mobile broadband services should be subject to different metrics and benchmarks. There are significant technical and marketplace differences between fixed and mobile data services such that they cannot not be deemed equivalent or substitutable for policymaking purposes. Fixed broadband services, however, are arguably interchangeable from the consumers’ perspective, whether the delivery mechanism is wired, wireless or satellite based – and the same levels of performance should therefore be expected from each in measuring availability to the consumer.

Speed is an important factor in determining availability of fixed broadband, but it is not the only metric of relevance to the consumer experience. Indeed, voice and many data services that can ride atop broadband networks are time sensitive. Latency can directly affect the end user experience and whether a service experience is “advanced” regardless of the speeds

employed. Specifically, latency limits subscribers from using some real-time applications, Virtual Private Networking (VPN) and online applications (such as Google Docs). In the case of broadband networks used to deliver fixed services to consumers, it is reasonable to apply a latency standard that aligns with the 100 ms benchmark used for CAF Phase II funding.¹⁰

To the extent that there are technical limitations on certain kinds of fixed services that directly affect the end-user experience, that should be part of the analysis of what is truly “available” from the consumer perspective. For example, fixed wireless and satellite services are constrained by spectrum, and quality can be directly affected by distance, terrain, weather and other factors. Insofar as the laws of physics preclude fixed wireless and geostationary satellite services from consistently meeting speed and latency benchmarks, this can and must factor into any analysis.¹¹

The Commission also inquires whether similar standards for “service consistency” in assessing the availability of “advanced telecommunications capability” are appropriate. NTCA is generally supportive of taking stock of factors that affect the full breadth of the customer’s experience and thus measure availability in a meaningful and more precise way, but more definition and standardization is required with respect to how such “consistency” metrics would be tracked and reported to determine the degree to which they might be useful components of the

¹⁰ See, *In the Matter of the Connect America Fund*, Report and Order, WC Docket No. 10-90, DA 13-2115, released October 31, 2013 (the “PC Carrier Standards Order”) at ¶ 20.

¹¹ See *Ex Parte* Letter from Michael R. Romano, Sr. Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket Nos. 10-90 and 05-337 (filed March 10, 2015) (attaching a paper prepared by Vantage Point Solutions comparing technical characteristics of wireless and wireline networks) and *Ex Parte* Letter from Michael R. Romano, Sr. Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Nov. 7, 2013) (attaching a paper prepared by Vantage Point Solutions analyzing technical characteristics of satellite-based telecommunications and broadband services).

Section 706 analysis. Lacking such clarity here, the Commission should undertake to propose more details regarding “service consistency” in subsequent proposals for Section 706 analysis.

V. BROADBAND DATA SOURCES

The Commission seeks comment on the data sources underlying its analysis and how best to assess the availability of broadband using these data sources.¹²

A. The Commission Should Recognize the Limits of the Form 477 Data

In its *2016 Broadband Progress Report* the Commission found that the new FCC Form 477 deployment data were the most reliable data to determine whether Americans had access to fixed broadband services meeting our 25 Mbps/3 Mbps speed threshold.¹³ The Commission now seeks comment on the continued use of FCC Form 477 deployment data for fixed services. Form 477 data are useful as indicators and preliminary tools for analysis, but the Commission must be mindful of their inherent limitations and recognize that such data are hardly conclusive.¹⁴ While the Form requires filers to certify as to the accuracy of their submission, the Form 477 only requires providers to self-report advertised speeds and not actual speeds and it does not purport to show what portions of census blocks are in fact served or unserved by a given operator.¹⁵

¹² NOI ¶¶ 57-72.

¹³ See *2016 Broadband Progress Report*, 31 FCC Rcd at 729-30, paras. 73-75. However, it is important to note that these providers often fail to provide service to the most high-cost “last mile” households and businesses, focusing instead on the concentrated areas of a community or service area.

¹³ NOI ¶¶ 57-72.

¹³ See *2016 Broadband Progress Report*, 31 FCC Rcd at 729-30, paras. 73-75.

¹⁴ See also, Comments of US Cellular and Competitive Carriers Association regarding the limitations of using the data to make determinations about mobile broadband deployment.

¹⁵ See, e.g., Letter from Mary McManus, Comcast to Marlene Dortch, Secretary, *Preliminary Determination of Rate-of-Return Study Areas 100% Overlapped by Unsubsidized Competitors*, WC Docket No. 10-90 (Aug 28, 2015). (“Comcast does not claim it offers broadband to every

Thus, the Commission should not, in fact cannot, draw dispositive conclusions about actual broadband availability or speed thresholds in a given area based on the Form 477 data, which, as the Commission recognizes, may “understate[] or overstate[]” the availability of service.”¹⁶ While Form 477 data may be helpful to map out speeds and footprints of fixed terrestrial broadband for its section 706 analyses, it is essential to note explicitly that the data do not lead to the conclusion that every household, business, and school in an area reported as served can receive broadband service or at any particular speed, and to avoid making decisions that turn upon the conclusive nature of Form 477-reported data. Thus, if and when the Commission desires to use these data for some specific, dispositive purpose in assessing the actual state of deployment in a given area, further inquiry is warranted based upon the starting point of such data to determine actual “facts on the ground” in that area and reach a data-driven conclusion.

B. Unrelated Data Should Not be Considered as Part of this Inquiry

The Commission seeks comment on whether and how concerns unrelated to deployment should be factored into its assessment of whether advanced telecommunications capability is being reasonably and timely deployed. Specifically, it questions whether broadband privacy and security¹⁷ and broadband outage reporting¹⁸ should be considered as part of its 706 inquiry. It

location within each of those census blocks[reported as served on its Form 477].”) *See also, In the Matter of Connect America Fund, WC Docket No. 10-90, Order* (Released July 25, 2016) in which the Commission granted 61 challenges to Form 477 data and denied requests by carriers to correct inaccurately reported data.

¹⁶NOI ¶ 75 n. 234.

¹⁷ NOI ¶ 55

¹⁸ *Id.* ¶ 56

questions whether the data collected would help the Commission fulfill its statutorily-managed goal of accelerating the deployment of advanced telecommunications capability. Both issues are currently being considered as part of separate Notice of Proposed Rulemakings,¹⁹ and their connection to measuring the success or failure of broadband deployment is, at this point, tenuous at best.

In particular, while the Commission has previously asserted that privacy and security concerns could impact consumer adoption, it has never made such a finding based upon an evidentiary record. NTCA is aware of no study or report that suggests such a correlation exists²⁰ and it would be speculative and irresponsible to make such an unsupported assumption in this proceeding. However, if the Commission seeks to use the privacy and security proceeding in manner that is actually relevant to its 706 analysis, as CTIA points out, it should instead focus on the extent to which its proposed rules impose burdens that threaten broadband investment and deployment.²¹

Similarly, the stated purpose of the proposed broadband outage reporting requirements changes is to keep up with technological advancements to “ensure protection of life and property through robust, functioning, reliable, resilient, and secure communications networks.”²²

¹⁹ See, *In the Matter of Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106 (Rel, April 1, 2016), and *In the Matter of Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications New Part 4 of the Commission’s Rules Concerning Disruptions to Communications, The 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*, PS Docket Nos. 15-80, 11-82, ET Docket No. 04-35, Further Notice of Proposed Rulemaking (May 26, 2016) (“Broadband Outage FNPRM”).

²⁰ In fact, CTIA studies have determined that broadband adoption has continued to *increase* despite alleged concerns about privacy and security. See Comments of CTIA, pp. 26-27.

²¹ Comments of CTIA, p. 27

²² Broadband Outage FNPRM at ¶ 50.

Network outages are caused by a variety of circumstances, many of which cannot be foreseen or controlled and may have nothing to do with investment or competition. Indeed, it is a stretch to suggest that outage reportage data is inherently useful for the drafting of a report with respect to the success or shortcomings of network deployment in the first instance.

VI. CONCLUSION

Broadband availability is an essential component of life for all Americans. As the Commission investigates various sources of information to determine the current status of deployment and availability, it should look to not only specific data points to make a static determination, but rather also consider how its own decisions and policy determinations impact the deployment and long term sustainability of broadband networks. It should strive to ensure that, consistent with law, its policies promote reasonable comparability in service quality and price between rural and urban areas.

Respectively submitted,



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