

January 21, 2016

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Wheeler,

We write to note our concern with your recently announced proposal to find that “advanced telecommunications capability”—a phrase you recognize is synonymous with “broadband”—is not being deployed to all Americans in a “reasonable and timely fashion” under Section 706 of the Telecommunications Act. We understand that the basis for your proposal is that, despite the billions of dollars that have been invested in broadband deployment in recent years, which has resulted in ever-increasing broadband speeds, some number of Americans lack access to broadband at the “FCC’s benchmark speed of 25 Mbps for downloads, 3 Mbps for uploads.” We are concerned that this arbitrary 25/3 Mbps benchmark fails to accurately capture what most Americans consider broadband, the use of this benchmark discourages broadband providers from offering speeds at or above the benchmark, the definition contradicts the “broadband” definition the Commission used in its *Open Internet Order*, and that the Commission uses an entirely different benchmark when it comes to rural America.

Looking at the market for broadband applications, we are aware of few applications that require download speeds of 25 Mbps. Netflix, for example, recommends a download speed of 5 Mbps to receive high-definition streaming video, and Amazon recommends a speed of 3.5 Mbps. In addition, according to the FCC’s own data, the majority of Americans who can purchase 25 Mbps service choose not to.

More importantly, you have indicated that because fewer providers offer speeds of 25/3 Mbps or greater, more regulation may be appropriate for providers that offer such speeds. (See Prepared Remarks of FCC Chairman Tom Wheeler “The Facts and Future of Broadband Competition” 1776 Headquarters, Washington, D.C., September 4, 2014.) By suggesting that offering speeds at or above 25/3 Mbps will subject a provider to additional regulation, we fear that you are putting in place disincentives for providers to offer these higher speeds—a result that no one wants.

Lastly, we are perplexed by the Commission’s differing accounts of what constitutes “broadband” with regard to urban and rural America, as well as in the context of different regulatory proceedings. While your 2016 Broadband Progress Report finds a deficiency in deployment at the 25/3 Mbps benchmark, your fact sheet touts the Connect America Fund subsidies – which only require providers to offer speeds of 10 Mbps down/1 Mbps up – as

increasing broadband deployment. While we welcome any increase in broadband penetration in rural America, we would remind you that the FCC is tasked with implementing policies and procedures that advance universal service – ensuring all Americans have access to comparable service at comparable rates.

It is unclear how applying a different definition of broadband to urban and rural areas is consistent with this clear Congressional directive. Nor is it clear how the Commission can justify defining broadband by the 25/3 Mbps benchmark in one context (when assessing the market under section 706), but ignoring this definition when it sought to regulate “broadband” Internet access providers in its *Open Internet Order* -- there, essentially including any service above dial-up as “broadband”. If the Commission concluded that providers are providing a “broadband” service worthy of increased regulatory protections, it seems inconsistent for the Commission to not count all such “broadband” providers in the Commission’s Section 706 analysis.

We look forward to discussing this issue with you in the near future.

Sincerely,



STEVE DAINES  
United States Senator



ROGER WICKER  
United States Senator



ROY BLUNT  
United States Senator



DEB FISCHER  
United States Senator



RON JOHNSON  
United States Senator



CORY GARDNER  
United States Senator