

**DISSENTING STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

*Re: 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; A National Broadband Plan for Our Future, GN Docket Nos. 09-137, 09-51, Sixth Broadband Deployment Report*

Section 706 of the Telecommunications Act of 1996 requires that the FCC determine whether “advanced telecommunications capability is being *deployed* to all Americans in a reasonable and timely fashion.” In all previous reports dating back to 1999, the FCC has answered “yes” to that question. In this Report, however, the answer is “no” for the first time. This 180 degree reversal is unsettling considering that since the issuance of the Commission’s first Section 706 Report, America has made impressive improvements in developing and deploying broadband infrastructure and services. In fact, referencing findings from the National Broadband Plan, this Report even states that “95% of the U.S. population lives in housing units with access to terrestrial, fixed broadband infrastructure capable of supporting actual download speeds of at least 4 Mbps.” I am concerned that this Report fails to provide sufficient justification as to why the Commission is reversing course from previous reports.

Instead of focusing on the great strides that America has made in broadband *deployment*, as the Act requires, this Report emphasizes subscribership. Collecting granular data, including subscribership numbers, is important. But, subscribership data does not equate to the “*availability*” of broadband, which is what Congress requires the Commission to assess under Section 706. In many instances the Report confuses the facts by substituting the terms “deployment” and “subscribership” as if they were synonymous and interchangeable. They are not. “Deployment” and “subscribership” are two distinct concepts with different attributes and areas for improvement. Our task is to focus on Congress’ explicit directive to analyze deployment progress for purposes of the Section 706 Report. Today, however, the majority is sidelining the deployment figure of 95 percent in favor of a seemingly smaller subscribership number. It is only reasonable to question the rationale behind this confusing pivot.

The plain language of Section 706 was written with a deregulatory bent, but I am concerned that regulating with a light touch is not what this current Report will be used for in the future. In Section 706(b), Congress stated that “[i]f the Commission’s determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.” Today’s Report concludes that the Commission will meet this statutory requirement by addressing the National Broadband Plan’s proposals. It is unclear where that conclusion will lead, however. As a result of proceedings recently initiated by the Commission – such as the Notice of Inquiry asking whether the Commission should regulate 21<sup>st</sup> Century broadband Internet access services under old common carrier rules – I question whether this Report will be used to justify additional regulation, contrary to the Act’s goal of “removing barriers to infrastructure investment.”

The Commission should focus its resources and energy on connecting the 7 million households that currently do not have access to high-speed Internet. Although broadband has proliferated across America faster than any other transformative modern technology, the small percentage of Americans who do not have access to it deserve our highest priority. Not only does connecting the unserved make for sound public policy, it is also Congress’ mandate to us as

explicitly called for in the Act. Reforming our Universal Service subsidy program coupled with opening windows of opportunity for the construction of new delivery platforms, such as wireless broadband, can be accomplished without contorting data and conclusions or laying a predicate for more regulation. Doing the latter only undermines the pursuit of our Congressional directives.

Therefore, I respectfully dissent.