

**STATEMENT OF
COMMISSIONER AJIT PAI**

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*, GN Docket No. 12-228

Pursuant to section 706 of the Telecommunications Act of 1996, as amended by the Broadband Data Improvement Act, we launch today our annual notice inquiring about the “availability of advanced telecommunications capability to all Americans.”¹ Because Congress has directed us to make this inquiry each year and because my colleagues were willing to incorporate some important suggestions for improving this item, I have voted to approve it.

The most significant improvement is that the notice does not contain proposals or tentative conclusions, but instead only seeks comment on a wide variety of issues. I also appreciate that my colleagues were willing to incorporate other suggestions that I offered, including a paragraph seeking comment on the unique challenges to deployment facing Americans living in insular areas and U.S. territories.²

To be clear, my approval of this notice should not be seen in any way as an endorsement of the Eighth Report, from which I dissented. And given this notice’s extensive reliance on the Eighth Report, I offer a few thoughts on the next iteration in this series.

First, I hope that our benchmarks with respect to broadband speed (and any revisions thereto) will be driven by concrete facts regarding consumer preferences. Just two years ago, the National Broadband Plan established an “aggressive” target: universal access to broadband at 4 Mbps download speed and 1 Mbps upload speed by 2020.³ The Plan further recommended that we review this target in 2014 and every four years thereafter.⁴ These are valuable goals, but a realistic assessment responsive to Congress’ request requires that the Commission keep abreast of actual consumer demand and changes in the communications marketplace. For example, this year’s report contains interesting information about the broadband speeds consumers choose to purchase in light of availability,⁵ and I look forward to reviewing comments shedding light on how we should incorporate this information into our benchmarking analysis. I especially look forward to public input regarding a question we asked in last year’s notice: “[W]ould the benefits of potential revisions to the threshold outweigh the benefits of having ‘a relatively static point at which to gauge the progress and growth in the [broadband] market from one Report to the next?’”⁶

Second, I am quite skeptical of the relevance of data usage policies to our determination of

¹ 47 U.S.C. § 1302(b) (codifying Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 153 (as amended)).

² See *Ninth Broadband Progress Notice of Inquiry* at para. 39.

³ FCC, *Connecting America: The National Broadband Plan*, at 135 & Exh. 8-A (rel. Mar. 16, 2010) (National Broadband Plan).

⁴ *Id.* at 135 & Box 8-1.

⁵ See Eighth Report, Section IV.D.

⁶ *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. 11-121, Eighth Broadband Progress Notice of Inquiry, 26 FCC Rcd 11800, 11804, para. 7 (2011) (second alteration in original).

whether any given service qualifies as “advanced telecommunications capability,” *i.e.*, broadband.⁷ After all, the statute speaks in terms of “capability,” and if a service otherwise qualifies, I do not see how tying the cost of the service to usage makes a consumer any less capable of “originat[ing] and receiv[ing] high-quality voice, data, graphics, and video telecommunications.”⁸ An analogy: The Communications Act and our rules define interconnected voice over Internet Protocol (VoIP) service as one that “[e]nables real-time, two-way voice communications.”⁹ Yet I tend to doubt that we would let VoIP providers escape their E911 obligations¹⁰ or universal service contribution obligations¹¹ if they imposed usage limits on their customers (and then claimed that they were not really offering interconnected VoIP service).

Third, I am pleased that the notice seeks to incorporate mobile broadband and satellite services into its deployment determination, all the more so considering the Commission’s repeated neglect of the statutory requirement to evaluate broadband deployed “using any technology.”¹² I will be paying close attention to record evidence of how consumers are using these services and how the marketplace is supplying them. I will be especially wary of setting benchmarks that might vitiate the investments the private sector has made in such broadband technologies. I also do not believe that an area should be considered served by “advanced telecommunications capability” only if both fixed and mobile broadband services are available. Such a standard, in my view, is at odds with the letter and spirit of section 706.

Fourth, section 706 requires us to “encourage” broadband deployment by “remov[ing] barriers to infrastructure investment” regardless of our determination in any given deployment report.¹³ Accordingly, I am keenly interested in identifying how the Commission can clear obstacles to deployment, including but not limited to regulatory uncertainty; costs and delays associated with rights-of-way, pole attachments, and tower siting; overlapping and conflicting permitting processes at the federal, state, and/or local levels; and the diversion of capital from research and deployment to compliance with legacy regulation. And I hope stakeholders also pinpoint our statutory authority for taking such actions, since we must act within the legal boundaries Congress has outlined.

Fifth and finally, I caution that we must be humble in our expectations for this next report. After all, compiling the data and conducting the analysis using our existing benchmarks and datasets already has strained the Commission’s resources—and that does not even account for the difficulties we have had acquiring data to draw appropriate comparisons between deployments in America and abroad. The task we now undertake is even more resource-intensive, and Congress has given us only 180 days to complete it.¹⁴ Although Congress is considering legislation giving the Commission additional time and flexibility

⁷ See *Ninth Broadband Progress Notice of Inquiry* at paras. 18–21, 29.

⁸ 47 U.S.C. § 1302(d)(1).

⁹ *Id.* § 3(25); 47 C.F.R. § 9.3.

¹⁰ See 47 C.F.R. § 9.5.

¹¹ *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006).

¹² 47 U.S.C. § 1302(d)(1); see also *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. 11-121, Eighth Broadband Progress Report, FCC 12-90 (2012) (Dissenting Statement of Commissioner Ajit Pai) (“[W]e should consider all broadband services meeting the statutory definition regardless of the technologies used to deploy them.”).

¹³ 47 U.S.C. § 1302(a).

¹⁴ *Id.* § 1302(b).

to evaluate broadband deployment,¹⁵ we must work with the law as it is. That means we must adjust our expectations appropriately.

¹⁵ See Federal Communications Commission Consolidated Reporting Act of 2012, H.R. 3310 (passed U.S. House of Representatives May 30, 2012).