

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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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
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)	GN Docket No. 14-126
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ORDER

Adopted: January 29, 2015

Released: February 4, 2015

By the Commission: Chairman Wheeler and Commissioner Rosenworcel issuing separate statements; Commissioner O’Rielly dissenting and issuing a statement.

I. INTRODUCTION

1. In this Order, we announce the conclusion of the inquiry begun by the *Ninth Broadband Progress Notice of Inquiry*.¹

2. Section 706(b) of the Telecommunications Act of 1996, as amended in 2008 by the Broadband Data Improvement Act, provides that the Commission shall, annually, “initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation.”² It further provides that, “[i]n the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”³

3. In the August 2014 *Tenth Broadband Progress Notice of Inquiry*,⁴ the Commission noted that it had circulated internally but had not adopted a report concluding the *Ninth NOI*. It sought comment on the extent to which questions raised in the *Ninth NOI* remained relevant or needed to be resolved.⁵ The *Tenth NOI* noted that there had been “numerous noteworthy developments” both in the broadband market and in the efforts the Commission had taken to accelerate the deployment of modern

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. 12-228, Ninth Broadband Progress Notice of Inquiry, 27 FCC Rcd 10523 (2012) (*Ninth NOI*).

² 47 U.S.C. § 1302(b).

³ *Id.*

⁴ *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. 14-126, Tenth Broadband Progress Notice of Inquiry, 29 FCC Rcd 9747 (2014) (*Tenth NOI*).

⁵ *See id.* at 9748, para. 2 & n.5.

telecommunications networks,⁶ and it started its own inquiry “anew by analyzing current data and seeking information that will enable the Commission to conduct an updated analysis for purposes of its next report.”⁷

4. No commenter asserted, in response to the *Tenth NOI*, that the inquiry initiated by the *Ninth NOI* remained relevant or needed to be resolved.⁸ The Commission has now completed the inquiry initiated by the *Tenth NOI* in August 2014.⁹ In light of that action, we conclude that the inquiry initiated by the *Ninth NOI* is moot and has been concluded. No meaningful purpose would be served by issuing a report limited to the issues raised by the *Ninth NOI* now that the Commission has completed a subsequent inquiry, has compiled a more current list of geographic areas not served by any provider of advanced telecommunications capability, has enhanced its data collection to gather more useful data, and has issued a determination based upon additional data and a revised analysis. Having concluded in the *2015 Broadband Progress Report* that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion, the Commission is under an obligation to “take immediate action to accelerate deployment of such capability”¹⁰ regardless of what the conclusion of the *Ninth NOI* would have been. The inquiry begun by the *Ninth NOI* has therefore been superseded and the Commission would not be justified in spending its limited resources on issuing a report that disregards the more recent inquiry and record. Accordingly, the inquiry begun by the *Ninth NOI* is concluded, and we terminate that proceeding.

5. Accordingly, IT IS ORDERED that, pursuant to section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. § 1302, and subsections (i) and (j) of section 4 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), (j), the proceeding in GN Docket No. 12-228 IS TERMINATED and its docket SHALL BE CLOSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶ *Id.*

⁷ *Id.* at 9748, para. 3.

⁸ *See, e.g.*, NCTA Comments, GN Docket No. 14-126, at 2 (“Putting aside any statutory concerns, it is clear that the Commission cannot adequately track the state of broadband deployment in such a fast-paced environment if there is a 2-3 year gap between reports.”) (footnote omitted); TechFreedom Comments, GN Docket No. 14-126, at 9.

⁹ *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. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, FCC 15-10 (rel. Feb. 3, 2015) (*2015 Broadband Progress Report*).

¹⁰ 47 U.S.C. § 1302(b).

**STATEMENT OF
CHAIRMAN TOM WHEELER**

Re: *Inquiry Concerning the Development 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 Nos. 14-126 and 12-228.

Earlier this month, I was in Las Vegas for the annual Consumer Electronics Show, along with almost everyone else in this room. As usual, I saw innovators pushing the envelope of what is technologically possible even further than the year before. As diverse as this year's offerings were, one common element was that almost every device on display requires high-speed connectivity. The more sophisticated and powerful these products and services get, the more bandwidth they require. Our challenge at the FCC is making sure that the U.S. has continually improving fast and open broadband networks that enhance growth in this vital sector of our economy and will enable *all* Americans to enjoy the Internet-powered innovations of today and tomorrow.

In 1996, Congress had the wisdom to require the FCC to ask regularly how we are doing toward that goal. More specifically, they asked the Commission to "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion."

Today, by issuing the first Broadband Progress Report of my chairmanship, the Commission offers its assessment of where we stand. We found that we have made notable progress, but many challenges remain. Perhaps most significantly, we found that to get the right answers we needed to update the question.

First, the good news. Private industry continues to invest billions of dollars to expand America's broadband -- \$75 billion a year by one analysis. Both fixed and mobile providers continue to improve broadband speeds, and current and new entrants to the market are investing and expanding broadband availability to many Americans with speeds in some locations exceeding 1 gigabit per second (Gbps).

No doubt, we have seen improvements in our wired and wireless broadband infrastructure that are delivering real benefits for our economy and the American people. But remember what Congress asked: are "*advanced* telecommunications ... being deployed to *all* Americans in a reasonable and timely fashion?" The first step to answering that question is to define "advanced telecommunications" in 2015. As this report makes clear, it ain't what it used to be.

For starters, "advanced" means at the forefront, progressive, cutting-edge. It doesn't mean the average or the happy medium. The current benchmark of 4 megabits per second (Mbps) was established in 2010, before the iPad had even been introduced. Safe to say, consumer behavior and the marketplace has changed.

Four Mbps is less than the recommended capacity to stream a single HD video. Now consider that the average connected household has seven Internet-connected devices -- including televisions, desktops, laptops, tablets, and smartphones. On any given evening, it would not be surprising to see one child doing online homework, another streaming a movie, one parent uploading data files for work, and another parent paying bills or downloading photos while also streaming music or video. That's not just tough to do with a 4 Mbps connection, it's pretty much impossible without taking turns being online, which is a non-starter. In 2015, taking turns to share the Internet bandwidth is as absurd as taking turns to use the electricity.

As I saw at the Consumer Electronics Show and during my travels across the country, true high-speed connections are crucial not only for delivering today's entertainment and basic communications, but tomorrow's innovations that will educate our children, deliver quality health care, improve energy efficiency, fill the employment ranks, and maintain the United States as the world's innovation leader for the 21st Century.

A 25 Mbps connection has become "table stakes" in 21st century communications. That's why today's report increases the benchmark for "advanced telecommunications" to 25 Mbps down, 3 Mbps up.

Why 25 Mbps?

Application and service providers, consumers, and the broadband providers are all pointing to 25/3 as the new standard. Content providers are increasingly offering high-quality video online, which uses a lot of bandwidth and could use a lot more as 4K video emerges. If you were to look at the ISPs marketing materials, most recommend speeds of 25 Mbps or higher if you plan on using multiple connected devices at the same time. Connections under 10 Mbps are marketed as "best for 1 device" and uses like sharing photos or downloading music.

Consumers are flocking to 25/3 when they have the opportunity. The percentage of consumers adopting 25/3 has quadrupled since 2011 and 2013 – from 7 percent to 29 percent.

So, today's report sets the standard for advanced telecommunications as 25 Mbps broadband service. That leads to the follow up question: Are those services being "deployed to all Americans in a reasonable and timely fashion?" Simply put, no.

Nationwide, 17 percent of U.S. households -- about 1 in 6 Americans -- don't have access to 25 megabit broadband.

There is a large, and unacceptable, disparity in broadband access between urban Americans and Americans in rural areas and Tribal lands.

In rural areas, more than half – 53 percent – lack access to broadband at the new benchmark; in Tribal lands, it's almost two thirds – 63 percent – that lack access. The disparity persists at all speeds. For example, at our previous benchmark of 4 Mbps/1 Mbps, 20 percent of Americans in rural areas cannot get that level of service. In urban areas, only 1 percent lack access to that service. Sadly, we wouldn't be where we need to be on broadband deployment to all Americans, even if we hadn't increased the benchmark speed.

Despite the billions in network investment, progress in deployment of faster networks to underserved areas is too slow. The percentage of Americans without access to 25/3 service came down only 3 percentage points between 2012 and 2013, and improvement was even slower in rural areas.

The FCC doesn't just have a statutory obligation to report on the status of broadband deployment; we have a duty to take immediate action if we assess that the goal of deployment to all Americans is not being met. And act we have.

We have many ongoing efforts to remove barriers to infrastructure investment and promote competition. For example:

- In June and December, the Commission issued two Connect America Fund orders that will disburse \$11 billion to support build-out to Americans in rural areas without broadband;

- The Commission is well underway to provide support to mobile providers that will extend voice and broadband services to unserved areas;
- We have allocated \$75 million and provisionally selected participants for the Rural Broadband Experiments, which will bring next generation service to rural, high cost, and Tribal areas; and
- Our E-rate Modernization efforts are expected to support the deployment of fiber to schools that need it to support digital learning.

But we acknowledge that more efforts may be needed. Today, we are issuing a Notice of Inquiry seeking comment on additional ways to bring 25 megabit broadband to all Americans in a reasonable and timely fashion, beyond what we have done to date.

There's an old adage from my days in the private sector that, "What gets measured gets managed." Today's report offers a valuable assessment of U.S. broadband and will hopefully serve as an impetus for meaningful improvements in the speed and availability of true high-speed networks for all Americans. We know where we need to be. Now we need to do the hard work to get there.

Thank you to the members of the FCC staff who worked on this report, notably Julie Veach and her team in the Wireline Bureau. This team has done a great public service by raising the bar for broadband in America.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Inquiry Concerning the Development 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 Nos. 14-126 and 12-228.

Broadband is not just a technology, it's a platform for opportunity. Extending its reach across this country is our new manifest destiny because it is an essential part of modern civic and commercial life. No matter who you are or where you live, you need access to modern communications to have a fair shot at prosperity in the 21st century.

Our report today is our most comprehensive snapshot of where we stand in bringing broadband to all Americans. I am pleased that the report shows that we are making some headway in extending the reach of this service, thanks in no small part to the tremendous investment that communications providers are making to deploy broadband across the country. At the same time, the report highlights places where we have more work to do, namely in rural and Tribal areas.

It was just five years ago that the Commission changed our downstream broadband speed threshold from 200 kilobits to 4 Megabits. Today, we up the ante and change that threshold to 25 Megabits. Chairman Wheeler has pressed for this change—and I am pleased to support it.

But I, for one, am tired of dreaming small. It's time to dream big. This is the country that put a man on the moon. We invented the Internet. We can do audacious things—if we set big goals. I think our new threshold should be 100 Megabits. I think anything short of that shortchanges our children, our future, and our digital economy.

I don't think reaching a benchmark like this is easy—but nothing worthwhile ever is. Still, the history of technological innovation is rife with examples of the great depths of American know-how. It is time to put that know-how to work and use it to bring really big broadband everywhere.

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Inquiry Concerning the Development 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 Nos. 14-126 and 12-228.

I cannot support today's order announcing the conclusion of the Ninth Broadband Progress Notice of Inquiry under section 706 of the Telecommunications Act (Ninth NOI). I am at a loss to see where in the statute Congress authorizes the Commission to miss a statutory deadline or to conclude an inquiry without making the required determination. To the contrary, Congress could not have made its directions any clearer:

“The Commission shall, within 30 months after February 8, 1996, and annually thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and *shall complete the inquiry within 180 days after its initiation*. In the inquiry, the Commission *shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion*.” (emphasis added)

It seems that the Commission parses every word of section 706 to try to wring out non-existent authority for questionable or objectionable purposes. Yet, in this instance, it so blithely ignores the *actual* instructions contained in the provision. It is not the Commission's place to decide that “No meaningful purpose would be served by issuing [the] report”

Moreover, it is of no consequence that the Commission did not receive comments on whether the Ninth NOI needed to be resolved. Comments (or the lack thereof) cannot override what the statute itself requires.

Nor is there an exception for when the Commission is really busy. Perhaps instead of devoting its “limited resources” to prophylactic rules addressing hypothetical problems, the Commission should do the jobs explicitly set forth by Congress.

I realize that this problem is mostly caused by a previous Chairman. But we have no right or authority to compound this error in judgment by failing to do as the law requires. A partial solution would have been to incorporate the draft Ninth Report into the Tenth Report, although this still would not rectify the failure to meet the statutory deadline.

For all of these reasons, I dissent.