

**STATEMENT OF
COMMISSIONER BRENDAN CARR
APPROVING IN PART AND CONCURRING IN PART**

Re: *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 22-270, Notice of Inquiry (October 25, 2023).

In the years leading up to 2018, the FCC used the Section 706 proceeding to ask whether 100% of Americans already have access to advanced telecommunications capability. Of course, this answers the wrong question—or, more specifically, it fails to answer the question Congress posed to the Commission in Section 706 of the Telecommunications Act of 1996. The Commission corrected this error with the inquiries we conducted from 2018 to 2020.

In Section 706, Congress determined that the Commission “shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.” It then directs the Commission to conduct an inquiry to determine “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.” If it is not, Section 706 states that the Commission “shall take immediate action to accelerate deployment of such capability.”

During the prior Administration, the FCC’s Section 706 reports properly read the statute as directing the Commission to measure the *progress* that providers of advanced telecommunications capability are making in deploying those capabilities to all Americans and to determine whether such progress is reasonable and timely. Reading Section 706 as directing the Commission to determine whether advanced telecommunications capability has already been deployed to 100% of Americans reads the “reasonable and timely” language out of the statute and is inconsistent with Congress’s use of the present progressive tense “is being deployed.” This conclusion is further reinforced by the language Congress used for FCC inquiries that result in a negative determination. In such cases, Congress states that the Commission “shall take immediate action to accelerate deployment,” thus confirming Congress’s focus in Section 706 on the pace of deployment and the progress that providers are making.

As a policy matter, it makes sense that Congress would task the Commission with this type of progress-based inquiry. Assessing the pace at which advanced telecommunications capability is being deployed provides far more—and more helpful—information to Congress and to the public than a binary inquiry into whether or not 100% of Americans already have access to such capability. In fact, it makes no sense to read the statute as requiring the FCC to answer that latter question. There is simply no need to run an entire administrative proceeding to answer it.

In the Section 706 reports issued under the prior Administration, the Commission reoriented the inquiry to align with our statutory directive—namely, whether broadband “is being deployed . . . in a reasonable and timely fashion.” Those reports rightly focused on the *pace* of deployment, not whether the U.S. has already achieved “universal availability of advanced telecommunications capability.”

So, I was disappointed but not surprised to see that this NOI proposes to torture the language of Section 706 once again by focusing on whether or not 100% of Americans have access to advanced telecommunications capability—an inquiry that plainly does not require a record. But of course, that is the point. We all know where this is going. The FCC is not going to use this proceeding to shed light on the pace of broadband build—although, I have to say, it will be interesting to see how this FCC grades the Biden Administration on the progress it is making towards its promised goal of “Internet for all.”

As for the item before us today, I do appreciate that my colleagues agreed to make some meaningful changes to the draft to improve the scope of the inquiry.

For one, the NOI now seeks specific comment on whether the agency should maintain its focus on the pace of progress that covered providers are making. In doing so, the NOI now solicits additional data to quantify recent builds and new service offerings.

For another, the NOI now takes a more holistic approach to the question of setting broadband speed metrics and other benchmarks. I have no objection to identifying aggressive speed or other goals. By all means, let's shoot for the moon. As we do so, we must, consistent with Section 706 itself, not define advanced telecommunications capability in a manner that narrowly focuses on one specific technology. Indeed, the statute requires the FCC to proceed "without regard to any transmission media or technology." As Section 706 indicates, the FCC should be looking first to identify the voice, video, and data applications that consumers are demanding and then, as a second step, adopt metrics that define advanced telecommunications capability based on that determination. Not the other way around. So I am pleased that the NOI now asks for comment along these lines.

For yet another, the NOI now seeks more even-handed comment in several places. For instance, it now seeks comment on whether or not competing mobile and fixed technologies should be viewed as substitutes, rather than proposing a conclusion here.

Finally, the NOI now includes new lines of inquiry. It asks whether the government should adopt a national coordinating strategy that covers the various federal broadband programs, as GAO recommended last year. It asks whether the FCC should remove barriers to broadband builds. And it asks whether the FCC should include new protections against waste, fraud, and abuse in the agency's USF programs as a means of advancing the Commission's Section 706 goals.

Ultimately, while I still have serious concerns regarding the orientation of this Section 706 inquiry, I believe these revisions will help create a robust record. As a result, I approve in part and concur in part.