

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

In the Matter of	)	
Inquiry Concerning the Deployment of	)	GN Docket No. 14-126
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	)	

**REPLY COMMENTS OF AT&T**

AT&T respectfully submits these reply comments in response to the Commission’s Notice of Inquiry in the above-captioned docket.<sup>1</sup>

**I. Introduction**

AT&T demonstrated in its Comments that the Commission failed to provide adequate support for its proposal to increase the minimum “advanced” capabilities benchmark from 4 Mbps download speeds to 10 Mbps.<sup>2</sup> Although AT&T recognized that the definition of broadband services should evolve over time, the Commission’s proposed increase is not based on a reasonable analysis of how customer’s actually use broadband services, fails to comport with the language of section 706 as interpreted by the courts, and ignores the way networks are actually engineered. In light of these flaws and lack of support in the record, AT&T suggested

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<sup>1</sup>*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*, Notice of Inquiry, GN-Docket No. 14-126 (released August 5, 2014) (“Notice”).

<sup>2</sup> Comments of AT&T, *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*, Notice of Inquiry, GN-Docket No. 14-126, filed September 4, 2014.

the Commission undertake a rigorous, fact-based and statutory analysis before determining, what, if any, revisions are warranted.<sup>3</sup>

Many commenters agreed with AT&T.<sup>4</sup> Nonetheless, two commenters – Public Knowledge and Netflix suggest that the Commission increase the broadband speed benchmark, by more than twice the Commission’s proposal, up to 25 Mbps. These proposals suffer from the same infirmities as the Commission’s proposal and are even less defensible. Accordingly, they should be rejected.

## **II. Commenters Proposals To Increase the Broadband Download Speed Benchmark Are Baseless.**

Public Knowledge and others propose that the Commission adopt a minimum speed benchmark for broadband of 25 Mbps but offer no support for their proposals. Public Knowledge proposes the 25 Mbps speed benchmark based on a hypothetical average household that watches three HD movies simultaneously while using other basic device and online services.<sup>5</sup> Similarly, Netflix’s recommendation is based on streaming super and ultra HD content.<sup>6</sup>

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<sup>3</sup> In any event, the Commission already includes deployment of higher speed tiers in its Section 706 reports. This is sufficient. The Commission should not redefine broadband when there are still millions of users who choose lower speeds to fit their needs.

<sup>4</sup> See Comments of Competitive Carrier Association, Comments of the National Cable & Telecommunications Association, Comments of TechFreedom, Comments of the Telecommunications Industry Association, Comments of Verizon, *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*, Notice of Inquiry, GN-Docket No. 14-126 (filed Sept. 4, 2014).

<sup>5</sup> Comments of Public Knowledge, *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*, Notice of Inquiry, GN-Docket No. 14-126, (filed Sept. 4, 2014) at pp. 16-18 (Public Knowledge).

<sup>6</sup> Comments of Netflix, Inc., *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*, Notice of Inquiry, GN-Docket No. 14-126 (filed Sept. 4, 2014) at pp. 5-6 (Netflix).

Indeed, Public Knowledge and Netflix make their recommendations without providing any factual data at all on the broadband usage patterns of average American households, much less evidence that consumers “regularly” stream 3 HD movies simultaneously or avail themselves of ultra or super HD video. But, as discussed in AT&T’s Comments, Section 706 has been interpreted as requiring the minimum bandwidth necessary to enable “the most popular forms” of Internet uses and “enough” to permit what consumers “regularly” use.<sup>7</sup> And this is as it should be. Section 706 contains a congressional mandate, and it should be construed with reference to the scope of that mandate. In particular, while it is reasonable to assume that section 706 is intended to ensure that all consumers have access to the bandwidth they need to participate fully and meaningfully in society, it is a stretch, to say the least, to find in Section 706 a congressional mandate to ensure that all American households can simultaneously stream three high definition movies or use ultra or super HD video. For this reason alone, the proposed modifications to the definition of broadband must be rejected.

### **III. There is No Need To Include Latency or Data Usage Plans In the Commission’s Section 706 Analysis.**

AT&T agrees with Verizon and many others that there is no need to incorporate latency or data usage allowances into the analysis of whether advanced telecommunications capability is being deployed to all Americans.<sup>8</sup> With respect to latency, the Commission has already

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<sup>7</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 14 FCC Rcd. 2398, 2406 ¶ 20 (1999) (choosing original 200 Kbps threshold because it was “enough to provide the *most popular* forms of broadband—to change web pages as fast as one can flip through the pages of a book and to transmit full-motion video” (emphasis added)); *Verizon v. FCC*, 740 F.3d 623, 641 (D.C. Cir. 2014) (noting that Commission increased threshold to 4 Mbps to establish a “threshold more appropriate to current consumer behavior and expectations” and that was “enough” to permit what “consumers now regularly use”).

<sup>8</sup> Comments of Verizon *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*, Notice of Inquiry, GN-Docket No. 14-126 (filed Sept. 4, 2014) at pp. 28 – 29; CTIA at pp. 4-5.

conceded that latency “primarily depends upon factors intrinsic to a specific architecture and is largely outside the scope of improvement if networks are properly engineered.”<sup>9</sup> And, as discussed in AT&T’s Comments, the Commission’s most recent Measuring Broadband America report demonstrated that latency is not a critical issue because consumers generally have access to broadband services that exceed the latency requirements necessary for VoIP.<sup>10</sup> Consequently, there is no evidence that latency prevents consumers from using the applications listed in section 706, and thus there is no basis for the Commission to include it in evaluating broadband availability.

Despite Netflix’s assertion that data usage thresholds should be accounted for in the Commission’s deployment benchmarks,<sup>11</sup> the Commission should not utilize pricing plans in its determination of whether advanced capabilities have been deployed to all Americans. As an initial matter, AT&T is not aware of tiered data plans that actually limit the amount of data a customer can use. Rather, to the extent providers use tiered data plans, those plans attach different prices to different buckets of data and require that customers who exceed the allowance associated with their chosen plan to pay for their additional usage. In this respect, tiered data plans are no different from any other pricing model that relates charges to usage. Simply put, as is the case with countless products and services – electricity, gas, food, water, to name a few – those who use more, pay more. No one would ever suggest that electricity, gas, food, and water

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<sup>9</sup> Office of Engineering and Technology, *2012 Measuring Broadband America*, July 2012 Report, p. 30, see: <http://transition.fcc.gov/cgb/measuringbroadbandreport/2012/Measuring-Broadband-America.pdf> (last checked, Sept. 18, 2014).

<sup>10</sup> See Comments of AT&T at p. 14 (Demonstrating the latency of all participating providers averaged around 29.6 ms as compared to the industry standard for VoIP of 100 ms).

<sup>11</sup> Netflix states that data caps should be accounted for in the Commission’s benchmarks for broadband deployment, but fails to include any suggestions on how the Commission should accomplish it. In any event, AT&T does not impose data caps on its broadband subscribers. AT&T Mobility subscribers select a data plan with usage thresholds, but users may exceed the threshold if they elect to pay for the additional usage.

are not available because they are not provided on an unlimited, flat fee basis. The same is true for broadband services.

#### **IV. The Commission Should Adopt Policies That Promote Broadband Deployment.**

Finally, AT&T agrees with Verizon and CTIA that the Commission should facilitate access to rights of way and wireless tower siting. Notwithstanding the steps the Commission has taken to date, AT&T and other providers continue to encounter delays in obtaining access to rights of way and permits for tower sites and modifications, including microcells. These delays adversely affect the pace at which AT&T and other facility-based providers can upgrade their networks. AT&T urges the Commission to complete its work in the *Facilities Siting Policies* docket to help alleviate these issues.<sup>12</sup>

#### **V. Conclusion**

As discussed above and in AT&T's Comments, the record does not support modifying the Section 706 definition of "advanced telecommunications capability" at this time. Instead, the Commission should undertake a rigorous, fact-based analysis of Section 706 to determine what, if any, definitional changes should be made.

Respectfully submitted,

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<sup>12</sup> See Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Notice of Proposed Rulemaking, 28 FCC Rcd 14238 (2013) ("*Facilities Siting Policies*").