

Sept. 21, 2020

Parties Debate Whether Broadband Service Deployment Is Timely

In comments on whether broadband service is being deployed in a timely fashion, incumbent providers conflicted with competitive carriers and public interest entities on what the broadband speed benchmark for fixed service should be and what the FCC's final judgment on the underlying question should be.

Parties were responding to a GN docket 20-269 notice of inquiry (NOI) to gather input for the FCC's 16th broadband deployment report — also known as a section 706 report, after the provision in the 1996 Telecommunications Act that mandated the reports, which the FCC has called by various names through the years. The NOI proposed again taking a “progress-based approach” to evaluate whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion, as it is tasked to do in section 706 (TR Daily, Aug. 19).

It also proposed taking “a holistic view of progress in the deployment of advanced telecommunications capability, and determine whether that progress is occurring in a reasonable and timely fashion. Taking such a holistic view of deployment requires that we consider a range of speeds provided over both fixed and mobile technologies, as opposed to only a single benchmark speed, to best capture the ways Americans are using advanced telecommunications capabilities.”

It proposed to maintain the 25/3 megabits per second benchmark for fixed services; to continue “to measure the availability of advanced telecommunications capability in schools and classrooms by using our short-term goal of 100 Mbps per 1,000 students and staff, and our long-term goal of 1 [gigabyte (sic) per second] per 1,000 students and staff”; and “to continue to use the FCC Form 477 data to evaluate deployment of fixed broadband services.”

USTelecom said it “supports the Commission’s proposal to continue using a holistic, progress-based approach rather than a single snapshot in time. Measuring sustained progress at multiple speed tiers is an appropriate approach to ensure that progress in deployment is occurring. The Commission should continue to use the 25/3 megabits per second (Mbps) benchmark as a goal for fixed broadband service while evaluating multiple speed tiers over a five-year period.”

Until the FCC completes its Digital Opportunity Data Collection proceeding, USTelecom said that “the Form 477 data remains the most comprehensive data on broadband deployment and best tool available to the Commission at this time to answer the question posed by this inquiry. We reiterate again this year, that while the Commission finalizes a better data reporting process via the DODC it should not make any significant changes to the current Form 477 process.”

“USTelecom agrees with the Commission’s proposal to maintain the existing framework for evaluating broadband deployment, a framework that supports a continued finding that broadband is being deployed to all Americans in a reasonable and timely fashion,” it added.

NCTA said that the FCC “should again conclude that deployment continues to be reasonable and timely for purposes of this statutory report.”

It added, “Separate from the report required under Section 706, the Commission also should take the opportunity to identify the remaining gaps in deployment, recognize the substantial progress broadband providers and their partners have made in connecting Americans to broadband (especially low-income families and students), and develop strategies for closing those gaps quickly, either by accelerating existing efforts or establishing new programs and policies targeted at closing specific gaps.”

NCTA supported continued use of the progress-based, multi-speed-tier approach to analyzing deployment.

CTIA said that the FCC should “find that the deployment of mobile broadband services continues to be reasonable and timely, and take steps to promote access to the resources providers need to support the services that consumers increasingly demand.”

It pointed to the wireless industry’s continued network investment, “investing a four-year high of \$29.1 billion, adding more cell sites than the preceding three years combined, and deploying 5G covering more than 200 million people and more than 5,000 cities and towns across the United States by the end of 2019.”

CTIA said, “To ensure that mobile broadband deployment remains reasonable and timely, the Commission should continue its pro-deployment approach and build upon the positive steps it has already taken. The Commission has also worked steadily to remove unnecessary barriers to mobile broadband deployment by modernizing its wireless facility siting policies, and providing the wireless industry with spectrum resources to keep driving investment and deployment. CTIA commends the steady progress the Commission has made to provide flexible-use licenses in low-, mid-, and high-band spectrum, which are central to U.S. 5G success. To further promote deployment and U.S. leadership in the race to 5G, CTIA urges the Commission to adopt and support policies that increase access to additional spectrum resources, particularly mid-band spectrum for exclusive licensed use, continue to streamline its rules to facilitate access to existing wireless infrastructure, and provide incentives, support, and other resources to support mobile broadband deployment.”

The Wireless Internet Service Providers Association said it “supports the view that mobile broadband and fixed broadband are distinct offerings. But this conclusion is even more true today, as demand for broadband connectivity has dramatically increased and shifted to fixed residential environments to accommodate remote learning and work-from-home uses and applications during the ongoing COVID-19 pandemic. Although mobile video traffic is increasing, use of handheld mobile devices for remote learning or teleworking is limited and situational, often a second-choice use when higher throughput fixed broadband is not available on other devices or via fixed wireless connectivity.”

WISPA supported continued use of the 25/3 Mbps benchmark for fixed services. “In a recent survey of its members, WISPs reported that, prior to the coronavirus outbreak, most customers purchased broadband plans with 10/3 Mbps despite the most commonly offered package having speeds of 25/3

Mbps. In addition, the survey found that during the ongoing pandemic the most popular 'speed' package was 25/3 Mbps, with only a small percentage of customers choosing faster speeds even when offered Gigabit download speed," WISPA said.

WISPA also supported continued use of Form 477 data, "despite its flaws," until better data is available.

Hughes Network Systems LLC said that the FCC should conclude that advanced telecommunications capabilities "are being deployed in a reasonable and timely fashion, recognizing the importance of satellite broadband in achieving this goal, particularly to rural, remote, hard-to-reach, and other underserved and unserved areas of the country and to areas affected by natural and manmade disasters and the ongoing COVID-19 pandemic."

It added, "The COVID-19 pandemic will continue to impact broadband usage for years to come. With the planned deployment of JUPITER 3, HUGHES® will bring additional broadband capacity to the United States and has no plans to slow deployment. HUGHES® and other satellite providers have found that broadband adoption is increasing because people across America are working and learning from home. As such, the Commission must include all broadband technologies, including non-terrestrial technologies such as satellite, in the main body of its Section 706 report. Satellite continues to be an important part of the broadband solution across the United States, and the report must reflect this reality."

Incompas urged the FCC "to recognize that the extraordinary circumstances of the last seven months require the agency to more closely examine and assess how the global pandemic is impacting consumers and their adoption of broadband. ... Recognizing that the pandemic will be with us well beyond the publication of this report, the Commission's analysis should include data on not just deployment, but adoption, affordability, and how this health crisis may impact broadband over the next few years."

Incompas urged the FCC to adopt 1 gigabit per second as the fixed broadband benchmark; to "continue to recognize the distinct differences between fixed and mobile broadband networks"; and to speed broadband deployment by taking action in proceedings on preempting duplicative right-of-way fees, equitable allocation of pole replacement fees, and access to multiple tenant environments.

In jointly filed comments, New America's Open Technology Institute and Access Now argued that "the COVID-19 pandemic has revealed that broadband is not being deployed to all Americans."

"Testimonies on how the lack of internet access during the ongoing COVID-19 pandemic is severely affecting people's ability to stay healthy, work, and learn abound, especially for those already living at the margins. Millions of Americans are not being served by high-speed broadband, and this year's Section 706 report is the Commission's chance to face the overwhelming evidence and accurately represent the state of deployment and availability," OTI and Access Now said.

They urged the FCC to increase the fixed broadband speed benchmark, saying that "25 Mbps in download speed and 3 Mbps in upload speed is insufficient for online applications used today, including streaming content, cloud services, and more."

They urged the FCC to "confirm that mobile broadband is not a substitute for fixed broadband. Mobile broadband cannot provide the service fixed broadband does in work and education contexts, and consumers use much more data on fixed broadband than they would be able to with a solely mobile connection."

OTI and Access Now urged the FCC to consider affordability in its section 706 analysis. “Cost is the most significant barrier to broadband adoption — broadband service cannot be considered available if it is too expensive for people to purchase. Adoption rates actually differ depending on a person’s income level, with a significant percentage of lower income individuals lacking a home internet connection, reflecting the impact of price on access. The Commission must collect information on internet service prices to ensure that everyone can afford to get connected,” they said.

“Finally, the Commission cannot rely on Form 477 data alone to assess broadband availability. The failures of Form 477 are widely understood by both political parties, who recognize that using a flawed dataset that overstates broadband availability like Form 477 reports will not lead to an accurate assessment of whether broadband is being deployed to all Americans in a reasonable and timely fashion. Furthermore, the issue with the Form 477 process demonstrates how misguided the Commission’s understanding of deployment is, as assessing deployment in an increased number of connections doesn’t actually help determine whether each and every person is being served. Many independent reports have reflected the inability of Form 477 data on its own to reflect broadband deployment and availability, which has repeatedly failed marginalized communities, including Tribal nations. If the Commission continues to use flawed data to assess telecommunications access across the country, the digital divide will never be closed,” they said.

In joint comments, Common Cause, Next Century Cities, and Public Knowledge said, “Even though Americans nationwide need affordable and reliable broadband connections to comply with remote learning, work from home orders, telemedicine programs, and more, reliable and affordable high-speed connections are still a distant reality for millions.”

They also emphasized the increased need for broadband to carry out a multitude of online activities during the COVID-19 pandemic. “In light of increased network demands, we urge the Commission to update the current benchmark from 25/3 Mbps to a symmetrical speed of 100/100 Mbps. A low standard undermines larger policy goals for widespread, high-speed connectivity and stifles our competitiveness in the global broadband marketplace,” they said.

Common Cause, Next Century Cities, and Public Knowledge said the FCC’s reliance on flawed Form 477 data is “highly problematic.”

“A robust analysis requires the Commission to evaluate additional factors such as pricing data, user demographics, quality of service metrics, actual service speed data, data caps, network vulnerability and resilience data. Overstating whether Americans have access to minimum broadband speeds guarantees that unserved and underserved areas will continue to struggle with connectivity and miss out limited federal resources marked for communities in need. Thus, the FCC should implement a process through which consumers, governmental organizations, and other entities can challenge the accuracy of the 2021 Broadband Deployment Report,” they said.

The joint commenters also urged the FCC to continue separate analysis of fixed and mobile broadband and to “solicit input from Tribal leaders to improve broadband mapping and deployment opportunities.”

“Finally, the Commission should abandon proposals that could inadvertently widen the digital divide. The Commission has introduced a series of proposals that create uncertainty and reduce participation in the Lifeline program instead of using it as a tool. Likewise, the Commission has been reluctant to extend E-Rate benefits to accommodate the millions of students and teachers who were forced out of their traditional classrooms into online portals regardless of whether they were prepared. Still, Americans

remain hopeful that this FCC will use every resource available to accelerate broadband deployment during a time of extraordinary need,” they said.

The Free State Foundation cited network investment and deployment figures in support of a finding of reasonable and timely deployment. It supported retaining the 25/3 Mbps fixed broadband benchmark.

“It also should maintain its LTE standard based on minimum advertised speeds of 5/1 Mbps — supplemented by speed-test data identifying areas with median speeds of at least 10/3 Mbps — for defining mobile broadband services. Those speeds are more than adequate to support popular applications actually demanded by consumers,” FSF said.

“Furthermore, the Commission should continue to focus on year-to-year comparisons to track progress objectively. Such comparisons yield useful data regarding how many additional Americans have gained access to broadband Internet access services during the relevant twelvemonth period and the rate at which unserved Americans are being reached. Jettisoning this proven method for measuring progress likely would open the door to determinations based on ad hoc or arbitrary criteria,” it added. —Lynn Stanton, lynn.stanton@wolterskluwer.com

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