
**Before the
Department of Commerce
National Telecommunications and Information Administration
and the
Department of Agriculture
Rural Development
Washington, DC**

In the Matter of:)
)
Broadband Opportunity Council Notice) **Docket No. 1540414365-5365-01**
and Request for Comment)
)

Comments of ITTA, the Voice of Mid-Size Communications Companies

ITTA, the voice of mid-size communications companies (“ITTA”), is pleased to submit comments in response to the Request for Comment (“RFC”) issued by the Department of Agriculture and the Department of Commerce seeking input on the formation of the Broadband Opportunity Council (“Council”).¹ The Council’s goals are to: “(i) Engage with industry and other stakeholders to understand ways the government can better support the need of communities seeking to expand broadband access and adoption, (ii) identify regulatory barriers unduly impeding broadband deployment, adoption, or competition; (iii) survey and report back on existing programs that currently support or could be modified to support broadband competition, deployment, or adoption; and (iv) take all necessary actions to remove these barriers and realign existing programs to increase broadband competition, deployment, and adoption.”²

¹ *Broadband Opportunity Council Notice and Request for Comment*, Department of Agriculture and Department of Commerce, Docket No. 1540414365-5365-01, 80 Fed. Reg. 23785 (April 29, 2015) (“RFC”).

² RFC at 1.

INTRODUCTION AND SUMMARY

ITTA represents mid-size communications companies who offer a wide range of wired communications services including voice, data, and video to millions of consumers in 45 states.³ In addition to residential and small business communications services, ITTA members provide high-capacity data connections and transport to a variety of entities, including local and federal government agencies, schools, private financial service institutions, investor-owned utilities, healthcare providers, and numerous others who depend daily on the reliability and security of ITTA members' wired communications networks.

ITTA member companies provide communications services to millions of customers in some of the most rural and remote areas of America, and have demonstrated a commitment to providing the highest quality service possible despite the economic difficulties inherent in providing service to rural and remote parts of our country. ITTA's members and other companies providing service in rural America must rely on existing federal and state loan, grant and universal service programs in order to construct and maintain their broadband networks. For this reason, ITTA welcomes the opportunity to provide comment on the newly created Broadband Opportunity Council. The Council provides the opportunity for the federal government to be more responsive to the needs and concerns of ITTA members providing broadband service to rural America.

ITTA's comments will focus primarily on issues relating to the harm that current government agency policies and regulations may have on broadband deployment to rural America. In addition, ITTA will offer suggestions on how the federal government can

³ ITTA members include CenturyLink, Cincinnati Bell, Comporium Communications, Consolidated Communications, FairPoint Communications, Frontier Communications, Great Plains Communications, Hargray Communications, and TDS Telecom.

incentivize private service providers to invest more in broadband while also encouraging greater broadband adoption among consumers.

I. PROMOTING COORDINATION AND USE OF FEDERALLY-FUNDED BROADBAND ASSETS

The federal government should in the first instance focus its efforts to promote broadband deployment on unserved parts of the country where, absent outside support, broadband deployment and continued investment would not occur. Investing taxpayer resources in areas that already have broadband will stifle private investment and undermine competition. By focusing attention on high-cost areas, the federal Universal Service Fund (“USF”) has succeeded in bringing basic voice service to nearly every American. Today, the Connect America Fund (“CAF”) focuses on bringing high-speed broadband services to those same areas. Just as access to affordable basic voice service was essential in rural America going back to the 1930s, access to affordable broadband service is equally important to today’s rural consumers.

To the extent administrative agencies have the ability to issue grants or loans that can be used to build broadband networks, these agencies should direct those resources to areas lacking broadband service at speeds defined by the Federal Communications Commission (“FCC”). In addition, limiting federal funding to a single provider in each area will ensure that limited federal dollars will be used most wisely and will not be used to artificially support competition.

Although it is not an administrative agency, the policies adopted by the FCC impact the demand and success of many, if not all, of the administrative agencies’ broadband programs. For this reason, when changes to any existing regulation are made by the FCC, each administrative agency should reevaluate and make necessary changes to their broadband programs to ensure

that entities are not burdened with multiple, differing standards or regulations which could create confusion that leads to abandonment or delay in broadband investment.

In addition, the FCC should consult with an affected government agency if changes to an existing FCC regulation could negatively impact that agency's broadband strategy. For example, in 2011 the FCC made significant changes to the federal USF⁴. According to the Government Accountability Office ("GAO"), since that time, a majority of Rural Utilities Service ("RUS") broadband borrowers have seen reductions in the amount of USF revenue they receive. In one example provided by GAO, 18 RUS borrowers lost an average of 31 percent of their USF support between 2011 and 2013, significantly impacting their ability to repay outstanding program loans.⁵

Such consultation between administrative and independent agencies will better ensure that agency policies do not restrict competition or hinder a provider's ability to offer broadband services. ITTA recommends that, at a minimum, RUS (and perhaps other federal administrative agencies) and the FCC should meet quarterly to share information that would enable more efficient agency action.

II. WHAT REGULATORY BARRIERS OR SPECIFIC REGULATIONS EXIST WITHIN THE AGENCIES OF THE EXECUTIVE BRANCH TO THE DEPLOYMENT OF BROADBAND INFRASTRUCTURE?

⁴ In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform-Mobility Fund. WC Docket No. 10-90 GN Docket No. 09-51 WC Docket No. 07-135 WC Docket No. 05-337 CC Docket No. 01-92 CC Docket No. 96-45 WC Docket No. 03-109 WT Docket No. 10-208 (Released November 18, 2011)("Public Notice").

⁵ GAO, Report: USDA Should Evaluate the Performance of the Rural Broadband Loan Program, GAO-14-471 (May, 2014)

In June 2012, President Obama issued an Executive Order (“EO”) 13616 – *Accelerating Broadband Infrastructure Deployment*, which directed federal agencies to find ways to better facilitate broadband deployment on federal lands, buildings, and rights of ways, federal highways, and tribal lands.⁶

While EO 13616 was intended to streamline the permit process for broadband construction projects, many ITTA member companies have found that delays of 12-18 months are still common while waiting for necessary permits. Such delays frustrate investment and reduce deployment of broadband on federal lands, especially when considering that in many parts of the country the construction season is very short. It is not uncommon in the upper midwest and northern states for the construction season to be limited to just 3-6 months of the year.

ITTA suggests that federal agencies prioritize projects that will bring broadband to previously unserved communities, boost overall broadband speeds to a community, and provide additional fiber capacity to communication towers. In addition, federal agencies must recognize that not all federal land is identical nor does it have the same environmental impact if disturbed. Most federal land that ITTA companies need permits to access rests within public highway or railroad rights-of-way. Such land should not require the same amount of permitting as more protected lands like national parks.

The Department of Transportation (“DOT”) provides a good example of how a federal agency can prioritize or streamline a permit for construction when construction is being done in a previously-disturbed right-of-way. However, as noted above, not all construction occurs in a previously-disturbed right-of-way and federal agencies should have more flexibility to judge

⁶ See Exec. Order No. 13616, 77 Fed. Reg 26903 (June 14, 2012).

each project and streamline the permit process if the federal land at issue is not protected or where there would be no environmental impact if the land is disturbed.

III. HOW CAN COMMUNITIES AND REGIONS INCENTIVIZE SERVICE PROVIDERS TO OFFER BROADBAND SERVICES, EITHER WIRED OR WIRELESS, IN RURAL AND REMOTE AREAS?

ITTA member companies have found that offering a “triple-play” bundle that includes voice, broadband, and video service not only encourages continued investment in broadband infrastructure, it drives broadband adoption as well.⁷ Many ITTA member companies offer video services through an Internet Protocol Television (“IPTV”) platform that requires a robust broadband infrastructure. Consumers in the service areas of ITTA’s members that offer an IPTV product benefit from a faster and more robust broadband network regardless of whether they subscribe to the member’s IPTV product or not.

However, before an ITTA member company can deploy IPTV service and compete with the incumbent cable company, it must receive permission from the applicable local franchising authority (“LFA”). Twenty-five states currently employ a statewide franchising system, which has streamlined the franchising process.⁸ This has made it easier for ITTA members and other new entrant video providers to enter the market and compete with the incumbent cable provider in those states.

⁷ In a 2009 study, the National Exchange Carrier Association found that members offering Internet along with a video component had broadband adoption rates nearly 24 percent higher than those companies offering Internet without access to subscription video services. *See* NECA Comments, GN Docket Nos. 09-47, 09-51, 09-137, p. 6 (filed Dec. 7, 2009), *available at*:

<http://apps.fcc.gov/ecfs/document/view?id=7020351566>.

⁸ Statewide Video Franchising Statutes, National Conference of State Legislatures (November 2014) available at <http://www.ncsl.org/research/telecommunications-and-information-technology/statewide-video-franchising-statutes.aspx>

In states that do not have a statewide franchising system, the local franchising process can be so burdensome that competitors often choose not to offer IPTV services in that community. And, as stated earlier, when a company decides not to provide IPTV service in a particular community, the overall result can be reduced investment in broadband infrastructure in that community to the detriment of consumers. Therefore, ITTA recommends that the Broadband Opportunity Council work with state and local governments to encourage them to either adopt a statewide franchising process or reduce the burdens local communities place on companies through LFA agreements.

Communities can also help in the area of broadband adoption. Local anchor institutions such as schools and libraries can host digital literacy classes that emphasize the practical benefits of subscribing to broadband. Recently, GAO found that as more low-income households subscribe to broadband, the greater demand leads service providers to invest in more broadband infrastructure.⁹

ITTA also encourages the Broadband Opportunity Council and the Administration to use their influence to call for reform of the 1992 Cable Act, specifically, provisions relating to retransmission consent. As mentioned above, when an ITTA member offers video service, consumers benefit from increased investment and faster broadband speeds. However, the rapid increases in retransmission consent fees charged by broadcasters for video programming are hindering competition in the video distribution market. In 2001, providers paid broadcasters \$11 million in retransmission fees. By 2005, that number had spiked to \$128 million. In 2010, it had

⁹GAO, Report: FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program, GAO-15-3335 (March, 2015)

reached a staggering \$1.034 billion. This year it is estimated at \$3.282 billion.¹⁰ The exponential increase in retransmission consent fee is deterring broadband investment. Google Fiber has said that the “single biggest impediment” to its Google Fiber deployment is the cost of video content.¹¹

Rural communities suffer more under the current retransmission consent fee regime than more urban communities. Most rural communities are outside of a broadcaster’s digital contour, meaning they are too far away from the broadcaster’s tower to receive the free over-the-air signal. In those communities, consumers depend on a cable operator or a satellite provider to deliver those local signals. However, local consumers often pay an exorbitant amount through their cable bill for the local broadcast signal that should otherwise be available free over-the-air.

Lastly, communities should be encouraged to work with their existing service providers to find opportunities through the RUS Broadband Loan Program or other federally funded broadband asset programs to build or improve their local communications infrastructure. TDS Telecom, an ITTA member, received a number of grants and loans through the RUS Broadband Stimulus Program. TDS worked with its local communities and petitioned their customers, local elected officials, and community leaders to send letters supporting TDS’s application for RUS Broadband Stimulus funding.¹² Encouraging local communities and regions to work with existing service providers to obtain broadband program funds will increase the opportunity to achieve faster broadband networks without putting local taxpayer dollars at risk.

¹⁰ Katerina Matsa, Time Warner vs. CBS: The High Stakes of their fight over fees available at <http://www.pewresearch.org/fact-tank/2013/08/21/time-warner-vs-cbs-the-high-stakes-of-their-fight-over-fees/>

¹¹ Brian Fung, *Here’s the single biggest thing holding Google Fiber Back* (Oct, 6 2014), available at <http://www.washingtonpost.com/blogs/the-switch/wp/2014/10/06/video-is-holding-google-fiber-back/>.

¹²Letter from Jim Batey, Executive Director, Somerset Economic Development Corporation, to Perry Speaker, TDS Telecommunications Corp. (May 20, 2009) (on file with author).

IV. WHAT CAN THE FEDERAL GOVERNMENT DO TO MAKE IT EASIER FOR STATE, LOCAL, AND TRIBAL GOVERNMENTS OR ORGANIZATIONS TO ACCESS FUNDING FOR BROADBAND?

First, the role of the federal government should not be to pick winners and losers or to do anything that would undermine private investment in broadband infrastructure. Where federal funds are being used to support broadband networks, policymakers should consider which technology has the best capability to provide the fastest and most reliable connection. In addition, the federal government should facilitate use of limited federal broadband assets in areas of the country that are unserved or where broadband deployment would not happen absent ongoing support.

Second, the authority of the federal government is limited when it comes to preempting state laws that regulate municipal broadband entry. As ITTA commented before the FCC:

[T]he Supreme Court precedent requires that Congress make its intent unmistakably clear if it wishes to upset the constitutional balance between the federal government and the states or preempt states' historic powers. Dual sovereignty and right of the states, not the federal government, to use the powers reserved to them to govern municipalities within their borders as they see fit is a fundamental tenet of our system of government. Because of this, as we noted recently by former FCC General Counsel, "Congress is presumed to legislate with federalism in mind," and the FCC and the courts are bound by the "clear statement rule" in interpreting whether Congress intended for the federal government to override powers entrusted to the states in their absolute discretion.¹³

¹³ "In the Matter of Wilson, North Carolina pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition, Electric Power board of Chattanooga Tennessee, Petition Pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition" WB Docket Nos. 14-115, and 14-116 (released August 29, 2014) ("Public Notice").

Moreover, a National Taxpayer Union (“NTU”) Policy Paper on Municipal Broadband highlights some of the results of Municipal Broadband programs, and FCC Chairman Wheeler has concurred, that “the experience with community broadband is mixed” and “there have been both success and failures.”¹⁴ In a time when both the federal government and state and local municipalities are tightening their fiscal belts, investing federal or local money in public broadband networks that overbuild private networks is a risky proposition that, more times than not, leaves the taxpayer holding the bill.

As mentioned earlier, local communities can play a vital role by working with their local service providers to ensure that broadband is available in their community. Whether it is local communities weighing in in support of a private company’s application for federal or state broadband funds or generating local demand for broadband adoption which will drive investment, ITTA member companies stand ready to work with local community leaders and federal policymakers to help make broadband a reality for every American.

CONCLUSION

The Broadband Opportunity Council represents a unique opportunity for the private sector, the federal government, and local communities to come together in a collaborative effort that can draw upon the specific resources of dozens of federal agencies, while providing the opportunity for industry input. ITTA and its members look forward to working with all the stakeholders in this regard.

Please feel free to contact Paul Raak, ITTA’s Vice President of Legislative Affairs, by email at praak@itta.us or by phone at 202.898.1514 with any questions.

¹⁴ See Andrew Moylan and Brent Mead, NTU Policy Paper #129: Municipal Broadband “Wired to Waste”, NTU, (April 9th 2012), see also Remarks of Tom Wheeler, Chairman, Federal Communications Commission, National Cable & Telecommunications Association, April 30, 2014.

