

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>Inquiry Concerning Deployment of</b>	)	<b>GN Docket No. 18-238</b>
<b>Advanced Telecommunications</b>	)	
<b>Capability to All Americans in a</b>	)	
<b>Reasonable and Timely Fashion</b>	)	
	)	

**COMMENTS OF  
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

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**COMMENTS OF  
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ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits its comments in response to the *NOI* initiating the next annual assessment of whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

This broadband deployment inquiry comes amidst a time of opportunity regarding next steps for deploying fixed broadband to unserved areas. The Commission just concluded the Connect America Phase II (Phase II) auction for unserved areas in price cap carrier territories. The Remote Areas Fund auction, which will provide support for deployment in the costliest price cap areas to serve, should now be less than one year away.<sup>2</sup> With the Phase II auction now complete, the Commission should be poised to address Remote Areas Fund implementation

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<sup>1</sup> *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fourteenth Broadband Deployment Report Notice of Inquiry, FCC 18-119, para. 1 (Aug. 9, 2018) (*NOI*) (quoting 47 U.S.C. § 1302, which codifies, within Title 47 of the United States Code, Section 706 of the Telecommunications Act of 1996).

<sup>2</sup> *See Connect America Fund; ETC Annual Reports and Certifications*, Report and Order and Order on Reconsideration, 32 FCC Rcd 1624, 1641, para. 43 (2017) (*CAF II Weights Order*) (“reaffirm[ing] that the Commission will seek to commence the Remote Areas Fund auction no later than one year after the commencement of the Phase II auction,” which occurred on July 24, 2018).

issues based on its observations of the outcomes of the Phase II auction.<sup>3</sup> The Commission also is currently evaluating the record in response to a Notice of Proposed Rulemaking seeking comment on the budget(s) for rate-of-return carrier high-cost support.<sup>4</sup> That proceeding presents the Commission with an excellent opportunity to establish the budgetary needs of various rate-of-return carrier high-cost support mechanisms, untethered to a predetermined budgetary cap.

It is against this backdrop that the Commission has honored its statutory duty to commence an inquiry into the state of availability of advanced telecommunications capability to all Americans. Despite all the progress the Commission has made in recent years towards fulfilling the national policy goal of universal broadband access by all Americans, in all regions of the nation, the fact remains that 24 million Americans – the vast majority of them living in rural areas or on Tribal lands – continue to lack access to advanced telecommunications capability.<sup>5</sup> Deployment facilitated by the universal service high-cost program funding mechanisms discussed above, as well as by other funding programs designed to foster broadband deployment,<sup>6</sup> needs to come to fruition to enable the Americans heretofore left stranded on the wrong side of the digital divide to benefit from 21<sup>st</sup> Century services and opportunities. While aggressive speed goals are laudable – and should be pursued in the longer term – now is not the

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<sup>3</sup> *See id.* at 1626, 1641, paras. 7 n.10, 43 (noting that the Commission withheld decision on a number of issues needing to be resolved before the Remote Areas Fund can be implemented, but that they would be decided “once it has observed the outcomes of the Phase II auction”).

<sup>4</sup> *See generally Connect America Fund et al.*, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (Mar. 23, 2018) (*Rate-of-Return Budget Order and NPRM*).

<sup>5</sup> *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2018 Broadband Deployment Report, 33 FCC Rcd 1660, 1681, para. 50 (2018) (*2018 Report*).

<sup>6</sup> *See, e.g.*, Rural Utilities Service, U.S. Department of Agriculture, Broadband e-Connectivity Pilot Program, 83 Fed. Reg. 35609 (July 27, 2018) (seeking comment on implementation of RUS pilot broadband program to expand rural broadband infrastructure in unserved rural areas and on Tribal lands).

time to raise the stakes by reinterpreting what speed benchmark constitutes “advanced telecommunications capability.”

The Commission should maintain the current speed benchmark of 25 Mbps download and 3 Mbps upload (25/3 Mbps) for fixed broadband, insofar as it enables “advanced” telecommunications capability. The Commission also should continue to evaluate broadband deployment examining both fixed and mobile services, and continue to conduct its broadband deployment inquiries utilizing Form 477 data to evaluate fixed broadband deployment. With those parameters, as well as the Commission’s analysis focusing on the progress made year-over-year in the deployment of broadband services, the Commission may find that advanced telecommunications capability is being deployed in a reasonable and timely fashion, notwithstanding the continual lag of broadband deployment in rural areas. Nevertheless, as the *NOI* concedes, until all Americans have access to advanced telecommunications capability, the Commission must continue its efforts to close the digital divide. The Commission should do so by allocating additional, sufficient funds to its universal service high-cost program, particularly addressing in the near-term the shortfall in funding both for model-based and legacy rate-of-return support mechanisms.

## **II. THE COMMISSION SHOULD MAINTAIN THE 25/3 Mbps SPEED BENCHMARK FOR FIXED BROADBAND**

The *NOI* proposes to continue use of the current 25/3 Mbps benchmark for fixed broadband in assessing whether fixed services provide advanced telecommunications capability.<sup>7</sup> ITTA supports this proposal.

Retaining the 25/3 Mbps benchmark will better align Commission policies and practices. 25/3 Mbps was the “baseline” performance tier for the Phase II auction,<sup>8</sup> and it also constitutes a

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<sup>7</sup> See *NOI* at para. 8.

<sup>8</sup> See *CAF II Weights Order*, 32 FCC Rcd at 1626, para. 10.

significant component of the speed deployment commitment for rate-of-return carriers electing model-based support.<sup>9</sup> It was confusing when, barely one month after establishing 10 Mbps download and 1 Mbps upload (10/1 Mbps) as the speed threshold for price cap carriers to accept a state-level commitment for model-based funding for broadband deployment,<sup>10</sup> the Commission declared 25/3 Mbps to be the speed benchmark for evaluating whether advanced telecommunications capability is being deployed in a reasonable and timely manner.<sup>11</sup> With 25/3 Mbps currently being routinely used as a benchmark for fixed broadband in the universal service context, raising the benchmark to a new level is not advisable.

This would be particularly inadvisable because 25/3 Mbps broadband continues to enable myriad advanced features, functions and applications. In establishing the 25/3 Mbps benchmark, the Commission found that availability of advanced telecommunications capability necessitated access to broadband services capable of providing that throughput in order to accommodate demand, for example, for online video services, high definition (HD) video streaming, video chat, and online gaming.<sup>12</sup> As the Commission concluded earlier this year in the *2018 Report*,

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<sup>9</sup> See *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3097-98, para. 25 (2016) (*Rate-of-Return Reform Order*).

<sup>10</sup> See *Connect America Fund; ETC Annual Reports and Certifications; Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, Report and Order, 29 FCC Rcd 15644, 15649, para. 15 (2014) (*December 2014 Connect America Order*).

<sup>11</sup> See *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*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, 1403-08, paras. 45-55 (2015) (*2015 Report*).

<sup>12</sup> See *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*, 2016 Broadband Progress Report, 31 FCC Rcd 699, 721,

(continued...)

25/3 Mbps “meets the statutory definition of what constitutes advanced telecommunications capability; that is, such services ‘enable[] users to originate and receive high-quality voice, data, graphics, and video telecommunications.’”<sup>13</sup> Furthermore, the Commission found that 25/3 Mbps “reflects consumer demand for high-speed broadband services,” as expressed through, for example, video and gaming applications over multiple devices.”<sup>14</sup>

The calculus remains the same today. Section 706’s definition of “advanced telecommunications capability” to encompass “high-quality” telecommunications does not require a failing grade if the broadband service is not capable of providing each and every new function and application to reach the market. Nor does it command an assessment of whether the “most” advanced telecommunications capability is being deployed on a reasonable and timely basis.<sup>15</sup> By any reasonable account, the features, functions, and applications enabled by 25/3 Mbps broadband still qualify as “advanced” and “high-quality.”

There are also pragmatic reasons why the Commission should retain 25/3 Mbps as the benchmark. As an analytical matter, because 25/3 Mbps was the benchmark in the *2015*, *2016*, and *2018 Reports*, maintaining it as such in the context of the current inquiry provides the best vehicle for truly evaluating the progress of broadband deployment.<sup>16</sup> If the Commission were to change the benchmark every few years, it would no longer provide the reference point that is the

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722, paras. 49, 53 nn.165, 176 (2016) (*2016 Report*) (citing *2015 Report*, 30 FCC Rcd at 1394, 1399-1401, paras. 27, 37-40).

<sup>13</sup> *2018 Report*, 33 FCC Rcd at 1668, para. 21 (citing 47 U.S.C. § 1302(d)(1)).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1669, para. 23 (“the definition of advanced telecommunications capability in section 706 nowhere suggests that ‘advanced’ necessarily means the highest quality service possible”).

<sup>16</sup> *See id.* at 1667, para. 20 (“As long as the benchmark continues to accurately define a service that satisfies the section 706(d)(1) definition of advanced telecommunications capability, we believe it is beneficial to report on the progress against that benchmark.”).

essence of a “benchmark.”<sup>17</sup> Of course, this is not to suggest that the definition of what constitutes “advanced” remain static merely for the sake of longitudinal analysis. However, given that the current 25/3 Mbps benchmark still qualifies as “advanced” and “high-quality” by any reasonable account, maintaining that benchmark will assist the Commission in fulfilling its statutory obligation to “determine” whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.

In addition, as a matter of policy, especially in light of the myriad advanced functionalities enabled by 25/3 Mbps broadband service, the Commission should maintain that benchmark as an ambitious deployment target for the millions of Americans who remain unserved by advanced telecommunications capability. As ITTA has emphasized before, in an environment of finite funding for broadband deployment, the Commission’s primary policy should be to maximize the coverage breadth of a good broadband service.<sup>18</sup> There will be a time down the road when more audacious benchmarks, such as 100 Mbps downstream, more

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<sup>17</sup> *Id.* at 1744, Statement of Commissioner Michael O’Rielly (maintaining the 25/3 Mbps benchmark “allows an apples-to-apples comparison over previous years”).

<sup>18</sup> See ITTA Comments, WC Docket Nos. 10-90, 14-58, and 14-259, at 2-4 (July 21, 2016) (ITTA CAF II Weights Comments); see also *December 2014 Connect America Order*, 29 FCC Rcd at 15649-50, para. 17 (“Our objective with high-cost support is to extend broadband-capable infrastructure to as many high-cost locations as efficiently as possible, and at the same time ensure that we are best utilizing the funds that consumers and businesses pay into the universal service system.”); *Rate-of-Return Reform Order*, 31 FCC Rcd at 3132, para. 120 (in order to utilize available universal service funds “to extend broadband to high-cost and rural areas where the marketplace alone does not currently provide a minimum level of broadband connectivity, the Commission has emphasized its desire to ‘distribute universal funds as efficiently and effectively as possible’” (quoting *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17673, para. 20 (2011) (*USF/ICC Transformation Order*))); Commissioner Michael O’Rielly, Federal Broadband Infrastructure Spending: Potential Pitfalls (Feb. 1, 2017), <https://www.fcc.gov/news-events/blog/2017/02/01/federal-broadband-infrastructure-spending-potential-pitfalls> (“focusing on artificial speeds diverts attention and resources from establishing service to those lacking any broadband service. . . . [W]e should strive to ensure that broadband of a realistic speed and quality is available for as many as possible, knowing it will be far exceeded in most circumstances.”).

appropriately represent what is needed to realize contemporary broadband applications as well as realistic consumer demand for them. However, the current market is not there yet,<sup>19</sup> and it won't be in the near term. In light of that, in furtherance of the principle “to connect the maximum number of people with the limited dollars available under [the Commission's] budget,” the Commission “should buy fewer Lamborghinis and more Chevys.”<sup>20</sup>

### **III. THE COMMISSION SHOULD EVALUATE BROADBAND DEPLOYMENT EXAMINING BOTH FIXED AND MOBILE SERVICES**

The *NOI* seeks comment on whether and to what extent fixed and mobile broadband services of similar functionality are substitutes for each other.<sup>21</sup> ITTA submits that they remain not, and that the Commission should evaluate the deployment of advanced telecommunications capability based on the presence of fixed and mobile services “both individually and in conjunction with one another” just as it did in the *2018 Report*.<sup>22</sup> This accords with the Commission's finding last year that they are not “currently full substitutes” for each other, and that “there are clear variations in consumer preferences and demands for fixed and mobile services. Each clearly provides capabilities that satisfy the statutory definition of advanced telecommunications capability, and are important services that provide different functionalities, tailored to serve different consumer needs.”<sup>23</sup> These same rationales apply just as much now as they did earlier this year and in 2016.

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<sup>19</sup> See *2018 Report*, 33 FCC Rcd at 1668-69, para. 23.

<sup>20</sup> ITTA CAF II Weights Comments at 8 (quoting *Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6111, Statement of Commissioner Michael O'Rielly Approving in Part and Dissenting in Part (2016) (*CAF II Auction Order*)).

<sup>21</sup> See *NOI* at para. 11.

<sup>22</sup> See *2018 Report*, 33 FCC Rcd at 1667, para. 18.

<sup>23</sup> *Id.* at 1666. See *2016 Report*, 32 FCC Rcd at 701, para. 2:

[C]onsumers use *fixed* broadband service for high capacity home use, including streaming high definition (HD) video, uploading large files and certain web

(continued...)

As the Commission has explained, “the technologically neutral language used by Congress to frame section 706 requires the Commission to focus on end-user functionality in lieu of the particular transmission media used by a service. Although fixed and mobile broadband may utilize different network technologies, the salient differences between the two service types are found not in their technological differences, but in the distinct capabilities that they provide consumers.”<sup>24</sup> The Commission should stay the course it established just last year, and continue to examine the deployment of fixed and mobile service, both individually and in conjunction with each other.

#### **IV. UNDER THE *NOI*'S PROPOSED FRAMEWORK FOR ANALYSIS OF PROGRESS IN DEPLOYMENT, THE COMMISSION MAY FIND THAT BROADBAND IS BEING DEPLOYED IN A REASONABLE AND TIMELY MANNER**

##### **A. The Commission Recently Has Made Marked Progress in Actions Facilitating Broadband Deployment**

As the *NOI* depicts, in the *2018 Report*, the Commission “refocused its analysis” of broadband deployment to “the progress made year-over-year in the deployment of fixed and mobile services.”<sup>25</sup> The *NOI* proposes to use this progress-based approach for the next broadband deployment report.

The roster of Commission actions in 2017 and thus far in 2018 “to accelerate deployment of [advanced telecommunications] capability by removing barriers to infrastructure investment

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services, but also increasingly rely on *mobile* broadband services for activities like navigation, communicating with family and friends and on social media, and receiving timely news updates away from home. . . . We recognize that fixed and mobile services can provide some similar functionalities in certain applications and circumstances. This does not, however, change the inherent differences in key capabilities provided by the two services.

<sup>24</sup> *2016 Report*, 32 FCC Rcd at 718, para. 43. *Accord 2018 Report*, 33 FCC Rcd at 1666, para. 18 (discussing the “salient differences” between the two technologies); *see* 47 U.S.C. § 1302(d)(1) (defining advanced telecommunications capability “without regard to any transmission media or technology”).

<sup>25</sup> *NOI* at para. 3 (citing *2018 Report*, 33 FCC Rcd at 1663-64, paras. 10-12).

and by promoting competition in the telecommunications market”<sup>26</sup> is impressive. As the Commission proclaimed in the *2018 Report*, in 2017 it was “hard at work facilitating deployment—for instance, by reducing regulatory barriers to the deployment of wireline and wireless infrastructure, reforming the universal service program to make it more efficient and accessible to new entrants, modernizing the business data service rules to facilitate facilities-based competition,” and “ending the adverse impact on investment” of the prior Commission order applying Title II of the Communications Act of 1934, as amended (Act), to broadband Internet access services (BIAS).<sup>27</sup>

The Commission has not stepped off the gas in 2018.<sup>28</sup> This summer, it adopted two more major orders further reducing regulatory barriers to the deployment of wireline and wireless infrastructure.<sup>29</sup> On the universal service front, it just concluded the Phase II auction for unserved areas in price cap territories, with over 100 winning bidders for approximately \$1.5 billion in 10-year support for over 700,000 locations.<sup>30</sup> It also devoted some additional measure of funding to rate-of-return carrier model-based support (A-CAM plan), and mitigated the effect of the budget control mechanism for legacy rate-of-return carriers from July 2017 through June

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<sup>26</sup> 47 U.S.C. § 1302(b).

<sup>27</sup> *2018 Report*, 33 FCC Rcd at 1708, para. 96.

<sup>28</sup> See *NOI* at para. 23 (“The next report will examine the Commission’s actions since issuing the *2018 Report* to spur broadband deployment and close the digital divide.”).

<sup>29</sup> See generally *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, FCC 18-74 (June 8, 2018); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, FCC 18-111 (Aug. 3, 2018).

<sup>30</sup> See *Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018*, Public Notice, DA 18-887 (RBATF/WTB/WCB Aug. 28, 2018).

2018.<sup>31</sup> In June, the rules releasing BIAS from the shackles of utility-style regulation went into effect.

These measures to facilitate broadband deployment are going to be augmented by actions that are likely to come to fruition by the end of 2018 or shortly thereafter. The Commission is actively reviewing the record in response to the *Rate-of-Return Budget Order and NPRM*, and Chairman Pai has publicly committed to at least circulate an order in that proceeding by the end of the year.<sup>32</sup> Earlier this year, the Commission released a notice of proposed rulemaking seeking comment on moving model-based rate-of-return carriers to incentive-based regulation of their provision of business data services, which would facilitate facilities-based competition in that segment of the business data services market.<sup>33</sup> And just over one month ago, the Commission established procedures for the auction, scheduled to commence on November 14, 2018, of nearly six thousand licenses in the 24 GHz and 28 GHz bands, which the Commission declared “will help ensure continued American leadership in wireless broadband.”<sup>34</sup>

Furthermore, the Commission has initiated several other proceedings that will especially stimulate wireless broadband deployment.<sup>35</sup> It launched the Mobility Fund Phase II (MF-II)

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<sup>31</sup> See generally *Rate-of-Return Budget Order and NPRM*.

<sup>32</sup> See, e.g., Letter from Ajit Pai, Chairman, FCC, to the Hon. Kevin Cramer, U.S. House of Representatives (July 23, 2018).

<sup>33</sup> See *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, Notice of Proposed Rulemaking, FCC 18-46, at 2, para. 1 (Apr. 18, 2018).

<sup>34</sup> *Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auctions 101 (28 GHz) and 102 (24 GHz); Bidding in Auction 101 Scheduled to Begin November 14, 2018*, Public Notice, FCC 18-109, at 3, para. 1 (Aug. 3, 2018). See also *id.* at 98, Statement of Commissioner Brendan Carr (“what this [auction] means for our country in plain terms is more broadband”).

<sup>35</sup> See *NOI* at para. 23 n.63 (“Consistent with RAY BAUM’S Act of 2018, the next report will ‘describe the agenda of the Commission for the next 2-year period’ to spur the deployment of communications capability, including advanced telecommunications capability.”) (citing 47 U.S.C. § 163(b)(4)).

challenge process, which is set to conclude at the end of November 2018, and is a monumental step towards the reverse auction that will direct up to \$4.5 billion of MF-II support towards expanded mobile broadband to unserved areas.<sup>36</sup> Within the past couple of months, it has issued notices of proposed rulemaking seeking to identify opportunities for additional terrestrial use of mid-band spectrum particularly for wireless broadband services – “another step in the Commission’s efforts to close the digital divide by providing wireless broadband connectivity across the nation”<sup>37</sup> – and striving to reconfigure 39 GHz spectrum holdings into spectrum blocks that are conducive to wireless broadband deployment.<sup>38</sup> At its September Open Meeting, the Commission is scheduled to consider a declaratory ruling and order that, if adopted, will promote the timely buildout of wireless broadband infrastructure by eliminating regulatory impediments that add unnecessary delays and costs to bringing advanced wireless services to market.<sup>39</sup>

In light of all the foregoing, the Commission has ample grounds to once again find that it is “on the right track when it comes to deployment.”<sup>40</sup>

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<sup>36</sup> *Connect America Fund; Universal Service Reform – Mobility Fund*, Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 18-124 (Aug. 21, 2018); Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282 (2017).

<sup>37</sup> *Expanding Flexible Use of the 3.7 to 4.2 GHz Band et al.*, Order and Notice of Proposed Rulemaking, FCC 18-91, at 2, para. 1 (July 13, 2018).

<sup>38</sup> *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Fourth Further Notice of Proposed Rulemaking, FCC 18-110, at 1, para. 2 (Aug. 3, 2018).

<sup>39</sup> See generally *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC-CIRC1809-02 (public draft Sept. 5, 2018).

<sup>40</sup> *2018 Report*, 33 FCC Rcd at 1708, para. 94.

**B. The Commission Should Continue to Use Form 477 Data to Inform Its Broadband Deployment Inquiries**

The *NOI* proposes to use Form 477 deployment data for 2014 and later, and, as the Commission did in the *2018 Report*, rely on State Broadband Initiative data for prior to 2014.<sup>41</sup> ITTA supports this proposal. As the *NOI* recounts, the *2018 Report* found Form 477 deployment data for fixed services to be the most reliable and comprehensive data to assess the availability of advanced telecommunications capability.<sup>42</sup> The Commission also determined the deployment of fixed advanced telecommunications capability by analyzing Form 477 deployment data in formulating the *2016 Report*.<sup>43</sup> Thus, continuing to utilize Form 477 data presents the analytical advantage of enabling longitudinal comparisons. While Form 477 data is not perfect,<sup>44</sup> it is still “currently the most accurate data available to the Commission” for analyzing deployment of fixed broadband services.<sup>45</sup>

**V. EVEN WITH A FINDING OF REASONABLE AND TIMELY DEPLOYMENT, THE COMMISSION MUST CONTINUE VIGOUROUS EFFORTS TO ACCELERATE BROADBAND DEPLOYMENT**

As described by the *NOI*, although the *2018 Report* found that advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion, it “also found that too many Americans remain unable to access high-speed broadband and that, absent universal deployment, [the Commission] must continue [its] efforts to close the digital divide. . . . Thus, the *2018 Report* reasoned, a finding that deployment of advanced telecommunications capability is reasonable and timely does not suggest that [the Commission]

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<sup>41</sup> See *NOI* at para. 16.

<sup>42</sup> See *id.*; *2018 Report*, 33 FCC Rcd at 1677, 1678, paras. 43, 45.

<sup>43</sup> See *2016 Report*, 31 FCC Rcd at 730, para. 75.

<sup>44</sup> See *NOI* at para. 16.

<sup>45</sup> *2018 Report*, 33 FCC Rcd at 1677, para. 43.

should lessen [its] efforts to enable further gains in deployment.”<sup>46</sup> ITTA wholeheartedly endorses this corollary to the Commission’s “progress-based approach” towards evaluating the reasonableness and timeliness of broadband deployment.

In addition, in rendering its finding in the *2018 Report* that advanced telecommunications capability is being reasonably and timely deployed, the Commission found that since the *2016 Report*, it has acted aggressively “to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”<sup>47</sup> Notably, this is the “immediate action” the Commission is required to take under Section 706 if it finds that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion.<sup>48</sup> To the extent the *2018 Report* suggests that, the Commission is bound by Section 706 to take actions to accelerate broadband deployment even in the presence of a finding that advanced telecommunications capability is being reasonably and timely deployed, ITTA supports that position. Above, ITTA describes numerous pending Commission proceedings that hold the promise of resulting in increased broadband deployment

## **VI. CONCLUSION**

The Commission should stay the course it followed in formulating the *2018 Report*, conducting its analysis utilizing Form 477 data and a 25/3 Mbps speed benchmark, and examining the availability of fixed and mobile broadband service, both individually and in conjunction with each other. With these parameters and the progress-based framework of analysis that the Commission applied in the *2018 Report* and proposes to do so again in this proceeding, the Commission may find that the rate of broadband deployment in rural areas

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<sup>46</sup> *NOI* at para. 4 (citing *2018 Report*, 33 FCC Rcd at 1662, 1664, 1708, 1709, paras. 6, 13, 94, 98).

<sup>47</sup> *2018 Report*, 33 FCC Rcd at 1708, para. 96 (citing 47 U.S.C. § 1302(b)).

<sup>48</sup> *See* 47 U.S.C. § 1302(b).

militates towards the conclusion that advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. Because 24 million Americans still lack broadband access, however, the Commission must, as it explicitly recognizes, continue to arduously pursue actions to accelerate broadband deployment.

Respectfully submitted,

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