

TESTIMONY OF KYLE McSLARROW  
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on

BROADBAND MAPPING AND DATA COLLECTION

before the

COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

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Good morning Chairman Markey, Ranking Member Upton, and Members of the Subcommittee. My name is Kyle McSlarrow and I serve as the President and Chief Executive Officer of the National Cable & Telecommunications Association. NCTA is the principal trade association for the cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest broadband provider of high-speed Internet access after investing \$110 billion over ten years to build out a two-way interactive network with fiber optic technology. Cable companies also provide state-of-the-art digital telephone service to over 10 million American consumers.

Mr. Chairman, thank you for inviting me here to testify on your legislative proposal to improve the quality of information on broadband deployment and broadband adoption rates in this country. As you know, the cable industry supports sensible and targeted federal initiatives designed to spur broadband deployment in rural areas of the country where absent some help, no private party would find it viable to build a high-speed broadband network. We believe that the government can and should play a role in making certain that the incredible economic and social benefits of broadband connectivity are extended to households and small businesses in those unserved areas. In order to do that, it is vitally important to identify areas that lack access to broadband service. Identifying communities that lack broadband access and obtaining information about the factors that have inhibited broadband deployment to these areas can assist

policy makers and the private sector in developing initiatives that will extend broadband service to all Americans. We therefore support your legislative initiative to collect data regarding the availability of broadband services across the country.

However, federal assistance for broadband deployment must be carefully targeted to unserved communities. Federal subsidies for broadband deployment in rural areas where private sector businesses are already offering service are unfair to those companies that take the risk to deploy service. Such market-tilting subsidies deter those who have invested from investing more, and they are a waste of limited federal resources. Better, more meaningful data should allow us to avoid those unfortunate consequences.

We believe that a nationwide survey of broadband service will show the significant progress that has been made in this country with respect to both broadband deployment and adoption. I outlined cable's perspective on broadband deployment in a recent letter to you and the Members of this Committee.

In our view, America's current Organization for Economic Co-operation and Development (OECD) ranking does not tell the full story. And it should sound a cautionary note that we are currently examining how to ensure better data that actually provides the basis for sound policy decision-making in the United States, but are often prepared to credulously assume that the same infirmities won't appear in international data.

Mr. Chairman, broadband deployment in this country continues to grow at a robust rate. And the total number of consumers who have signed up for high-speed Internet service in the U.S. far exceeds that in any other country in the world – in fact, U.S. broadband users represent more than 30 percent of all the broadband connections in OECD countries.

With respect to cable, which is the largest provider of broadband services in the United States, deployment is the result of our massive investment of risk capital in the last decade making it possible for us to provide high-speed Internet access, competitive voice service, and other advanced services. In fact, a recent report by Kagan Research shows that cable broadband service is now available to more than 94 percent of all U.S. homes.

Due to a highly competitive marketplace, the availability of broadband service continues to grow while the price-per-megabit continues to drop. And more broadband competition and investment is imminent. Research and Markets estimates that within five years, there may be as many as 20 million high-speed wireless subscribers, and Parks Associates estimates that by the year 2011 there will be 2.5 million broadband-over-power line subscribers.

While the price-per-megabit declines, broadband speeds continue to increase. When cable first offered high-speed Internet service as an always on alternative to dial-up access in the mid-'90s, we offered speeds of about 1-1.5 Mbps. Today, most cable operators offer broadband speeds of up to 5 Mbps and greater – and some, like Cablevision, offer speeds up to 50 Mbps. Other cable operators offer a service that provides for “boosts” of higher speeds ranging from as high as 10-

20 Mbps on an on-demand, capacity-available basis. In addition, many cable operators will soon deploy a new architecture (DOCSIS 3.0) which will allow speeds above 100 Mbps.

As we stated at the outset, the cable industry supports legislation to collect data on broadband deployment in the U.S. We have some suggestions that we believe could further strengthen and clarify the Discussion Draft.

1. **Sec. 2 (a) Definition of High-Speed Transmission**—The current FCC definition of broadband—200 kbps downstream and 200 kbps upstream—is clearly antiquated given the speeds that most broadband providers are offering consumers today. Most cable operators offer download speeds that exceed 5 Mbps. Some cable operators offer even higher download speeds while others offer tiers of service with different levels of downstream and upstream speeds. However, cable broadband is an asymmetrical service. What that means is that upstream speeds are usually lower than downstream speeds, which conforms to the way most consumers use the Internet today. For example a consumer needs very little bandwidth to send a command to a website which typically results in a large amount of data being downloaded to the consumer. As such, some operators that offer download speeds from 5 to 10 Mbps may well offer upload speeds that are less than 1 Mbps.

The Discussion Draft would revise the definition of “advanced telecommunications capability” to say that “high speed” means allowing the user to download at not less than 2 Mbps and upload at not less than 1 Mbps. Under that definition, a high-speed Internet

service that offers incredibly fast download speeds approaching 10 Mbps, but upload speeds less than 1 Mbps, would not qualify as a broadband service.

We do not believe the definition in the Discussion Draft accurately reflects the broadband marketplace. In fact, given the continuing rapid advances in technology and changes in the way broadband service providers may configure their systems in order to meet consumer demand in a competitive marketplace, it probably makes little sense to include an exact definition of “high-speed” in the statute -- the definition could be outdated before the bill becomes law. Instead, Congress should encourage or mandate the FCC to periodically update its definition of broadband service, taking into account technology and marketplace trends.

In any event, Congress should make clear that the FCC’s obligation under section 706 is to promote broadband deployment by all providers, regardless of technology, and that the Commission must utilize the appropriate mix of deregulatory measures to fulfill that obligation.

2. **Sec. 3 (g) Protection of Information**—As I indicated earlier, broadband is a hotly competitive marketplace, and therefore deployment data is extremely sensitive. We appreciate that you have included a provision to clarify that the bill may not be “construed to authorize or require the NTIA to make publicly available any proprietary information” gathered in creating a comprehensive nationwide inventory of existing broadband service and infrastructure. We would urge the Committee to strengthen that

provision to state unambiguously that proprietary information submitted to the NTIA is protected against disclosure, including disclosure pursuant to Freedom of Information Act requests. To the extent States and localities are given access to this data, they should also be made responsible for protecting it against disclosure as well.

**3. Sec. 4 Grants to States and Communities for Broadband Map Development—**

Section 4 authorizes NTIA to make grants to States and local governments to “assist in providing the NTIA with information to facilitate the development of the broadband inventory map.” Grants could be used by States and localities for “developing and obtaining information regarding the geographic extent of broadband services deployment and public availability.” While we recognize that States and localities will have more direct knowledge of levels of broadband deployment that may be useful in helping to create the broadband inventory map, we are concerned that this provision could be read to authorize these governmental units to engage in their own broadband data collection efforts. These efforts may not be consistent with the FCC's reporting requirements, imposing duplicative and unnecessary burdens on broadband providers. To the extent the States and localities are permitted to play a role under this legislation, they should be required to use FCC data in order to assist the NTIA in developing a broadband inventory map.

**4. Sec. 5 Broadband Service Survey—**Sec. 5(a)(2) would require periodic surveys of the “advertised and the actual transmission speeds” of broadband service in urban, suburban and rural areas. Cable companies make it very clear in all of their advertising materials

that maximum advertised speeds are not guaranteed at all times, and that actual speeds are governed by many factors that are beyond the operator's control. Actual transmission speeds can vary significantly depending upon traffic anywhere on the Internet, both globally and locally. Heavy usage of peer-to-peer services or extensive use of full-motion video downloads and video streaming by just a few users in a neighborhood can result in slower download speeds for all users.

Of course, cable operators employ network management tools to try to ensure the best possible Internet experience for the greatest number of customers. But there is no way for any Internet service provider to account for everything that might happen on the Internet that might affect download or upload speeds at any given moment in time. So the real issue should not be to compare so-called "advertised" speeds with so-called "actual" speeds, but rather to make sure that disclosure to consumers is uniform and sufficient to ensure that they know what they're paying for. Any attempt by the Commission to get a reliable picture of "actual" network speeds must be based on monitoring over a period time that includes periods of maximum demand and peak usage and periods when usage is lower and user applications require less bandwidth.

Congresswoman Doris Matsui recognizes the need to account for such variations in her bill H.R. 1818, the Broadband Deployment Acceleration Act. The Congresswoman would also set a statutory definition of current generation broadband service – a notion with which we disagree – but H.R. 1818 does recognize that speeds should be gauged based on what is available "at least a majority of the time during periods of maximum

demand to each subscriber who is utilizing such services.” Should the Committee decide to include language directing the Commission to establish criteria for determining broadband transmission speeds, it should do so as proposed in H.R. 1818.

Finally, if the Commission is being asked to compare broadband speeds available in America with speeds available in other countries, the Commission should be directed to find a way to compare apples to apples – that is, it should apply the same standard that takes into account speed variations that affect users in other countries, so that we are not accepting without proof that average download speeds in other nations are greater than they are here.

Thank you again, Mr. Chairman, for the opportunity to testify. We look forward to working with you and the Members of the Subcommittee on legislation to establish a reliable nationwide inventory of the availability of existing broadband service. I would be happy to answer any questions you may have.