

The key issue in this proceeding relates to the mechanics of measuring broadband deployment. As NCTA has explained previously, there should be a connection between the goals established in the National Broadband Plan, the metrics used to measure progress toward those goals, and the data collected and reported by the federal government. All of these activities should take account of established definitions and build on both the data the Commission already collects and the data that will be collected by NTIA in creating a national broadband map.

As NCTA has recently reported to the Commission, 92 percent of American households currently have access to cable operator-provided high-speed Internet access over broadband networks.² The speeds offered by these broadband Internet services are steadily increasing and, as noted below, major cable operators will soon be capable of delivering downstream speeds faster than 100 Mbps and greater upstream speeds as well. In addition, the vast majority of American households have broadband choices, including access to broadband provided by a telephone company, wireless carriers, and satellite providers, in addition to cable. Based on these facts, the Commission should conclude that broadband is being deployed to all Americans in a reasonable and timely fashion.

Achieving the congressional goal of universal access to broadband will require the Commission to take a much closer look at the limited areas where broadband has not yet been deployed. Compiling a list of unserved areas as part of this Section 706 Report is a critical step in the Commission's development of a National Broadband Plan that aims to achieve universal access. In addition, as NCTA has explained previously, it is critical that the Commission's

² National Cable & Telecommunications Association, Industry Data, *available at* <http://www.ncta.com/StatsGroup/Availability.aspx> (reporting national data for June 2009).

National Broadband Plan examine potential reasons for low adoption rates, such as low rates of computer ownership.³

I. THE COMMISSION SHOULD APPLY METRICS AND USE DEFINITIONS CONSISTENT WITH PAST COMMISSION DECISIONS AND DECISIONS MADE BY OTHER FEDERAL AGENCIES

In addition to questions regarding whether broadband deployment is taking place in a “reasonable and timely” manner, the *NOI* includes a number of questions focused on the appropriate definitions and mechanics of measuring broadband deployment.⁴ As NCTA has explained previously (most recently in the attached comments filed earlier this week on the definition of “broadband”), there should be a connection between the goals established in the National Broadband Plan, the metrics used to measure progress toward those goals, and the data collected and reported by the federal government.⁵ To be most useful, all of these should take account of, and build from, the data the Commission already collects through the Form 477 and the data that will be collected by NTIA in creating the national broadband map required by the Broadband Data Improvement Act (BDIA).⁶

If the Commission incorporates specific speed metrics as part of the definition of “broadband,” it should continue to use its recently updated definition and tier designations as

³ With the Section 706 mandate, Congress directed the Commission to focus on *deployment* and *availability* of advanced telecommunications capability. See *NOI* ¶ 3 (citing 47 U.S.C. § 1302(b), which requires the Commission to “initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans” and requires the Commission to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion”). Thus, although issues regarding broadband *adoption* are clearly important, and NCTA has addressed these issues elsewhere, these comments do not address adoption issues. See, e.g., Comments of the National Cable & Telecommunications Association, GN Docket No. 09-51 (filed June 8, 2009) at 26-29, 37-38 (NCTA Broadband Plan Comments).

⁴ See *NOI* ¶¶ 34-43.

⁵ See Reply Comments of the National Cable & Telecommunications Association, GN Docket No. 09-51 (filed July 21, 2009) at 6-12 (NCTA Broadband Plan Reply Comments); Comments of the National Cable & Telecommunications Association, GN Docket Nos. 09-137, 09-51, and 09-47 (filed Aug. 31, 2009) at 3-5 (NCTA Broadband Definition Comments) (attached).

⁶ See Broadband Data Improvement Act, Pub. L. No. 110-385, § 106(e)(10), (g), 122 Stat. 4096, 4101-02 (2008) (BDIA) (codified at 47 U.S.C. § 1304(e)(10), (g)).

adopted for the Form 477 and incorporated by NTIA in its mapping Notice of Funds

Availability. For those purposes, broadband is defined as:

Data transmission technology that provides two-way data transmission to and from the Internet with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users within the project area.⁷

As explained previously by NCTA, such an approach would be advantageous because it would enable the Commission to compare a consistent set of data across time; it would avoid the need for the Commission to make additional changes to the recently revised Form 477 reporting process; and it would coordinate definitions across federal agencies.⁸ Furthermore, as explained in the attached comments, for now the Commission should continue to look at maximum advertised speed rather than some measure of “actual” speed.⁹

The process of defining broadband should not be used as a vehicle for imposing substantive obligations, such as standards or mandates for speed, price, “openness,” and the like, on competitive providers of broadband services. Instead, the Commission should adopt a generic definition that focuses on the core functionality of the service.¹⁰ It should address separately what obligations, if any, should be imposed on providers of the service.

⁷ Department of Commerce, NTIA State Broadband Data and Development Grant Program, Notice of Funds Availability and Solicitation of Applications, 74 Fed. Reg. 32545, 32548 (July 8, 2009) (*NTIA Mapping NOFA*). This definition is consistent with the Commission’s definition of broadband. *See Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data*, Report & Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, ¶¶ 20 & n.66 (2008). NTIA similarly adopted speed tiers consistent with the Commission’s approach. *See id.* ¶¶ 20-22; *NTIA Mapping NOFA* at 32559.

⁸ *See* NCTA Broadband Definition Comments at 5-6.

⁹ *See id.* at 6-7. NCTA encouraged the Commission to work with the Internet engineering community to develop a consistent, reliable method of measuring “actual” speed.

¹⁰ *See* NCTA Broadband Definition Comments at 3-4.

The Commission also sought comment on how it should protect the confidentiality of the broadband information it collects.¹¹ As NCTA has explained previously, the Commission should continue its approach of vigorously protecting the confidentiality of broadband data.¹²

Broadband providers do not generally disclose detailed information regarding the capabilities of their broadband networks or the details of the success of any particular service. Congress recognized the importance of confidentiality protection in adopting the BDIA,¹³ and NTIA reaffirmed the importance of confidentiality in its implementation of the BDIA requirements.¹⁴

The Commission should not depart from these well-established principles.

II. THE COMMISSION SHOULD CONCLUDE THAT BROADBAND IS BEING DEPLOYED TO ALL AMERICANS IN A REASONABLE AND TIMELY FASHION

Although Congress was clear in Section 706 and in the American Recovery and Reinvestment Act (Recovery Act) that the *ultimate* goal is for all Americans to have access to broadband capability,¹⁵ the Commission is not required to find that all Americans have broadband access to conclude, pursuant to Section 706, that broadband “is being deployed to all Americans in a reasonable and timely fashion.” Unless and until the Commission decides to revise the definition of “broadband,” under the current standard (cited above), it must find that broadband deployment is “reasonable and timely.” Although a small percentage of Americans do not have access to broadband capability, the record demonstrates that hundreds of providers,

¹¹ See *NOI* ¶ 49.

¹² See NCTA Broadband Plan Reply Comments at 11-12.

¹³ See BDIA § 103(e); 47 U.S.C. §1303(e).

¹⁴ See *NTIA Mapping NOFA* at 32550; Department of Commerce, NTIA State Broadband Data and Development Grant Program, Notice of Funds Availability; Clarification, 74 Fed. Reg. 40569, 40570 (Aug. 12, 2009).

¹⁵ See Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996) (directing the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans”); American Recovery & Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2), 123 Stat. 115, 516 (2009) (Recovery Act) (“The national broadband plan required by this section shall seek to ensure that all people of the United States have access to broadband capability.”).

using a range of technologies, continue to invest billions of dollars expanding the reach and speed of their broadband networks. Consequently, the Commission should conclude that broadband deployment is reasonable and timely.

As NCTA noted in prior comments in the National Broadband Plan proceeding and the Rural Broadband proceeding, cable operators offer high-speed Internet access over broadband networks to 92 percent of American households.¹⁶ The speeds available with these services have steadily increased over time. Major cable operators already offer, or soon plan to introduce, services based on DOCSIS 3.0 technology, which is capable of delivering downstream speeds faster than 100 Mbps and much faster upstream speeds than have been available.¹⁷ Just some examples include: Suddenlink Communications recently deployed DOCSIS 3.0 to areas in Texas serving nearly 100,000 customers;¹⁸ Cox intends to have more than two thirds of its network of 5.3 million subscribers DOCSIS 3.0-ready by the end of 2010;¹⁹ and Comcast reports that currently more than half of the 50 million homes it passes already have access to DOCSIS 3.0, and that it plans to upgrade 80% of its homes to DOCSIS 3.0 by the end of 2009.²⁰ Data to

¹⁶ NCTA Broadband Plan Comments at 10; Comments of the National Cable & Telecommunications Association, GN Docket No. 09-29 (filed Mar. 25, 2009) at 4.

¹⁷ See NCTA Broadband Plan Comments at 11, 16-17.

¹⁸ See Todd Spangler, *Suddenlink Takes DOCSIS 3.0 to Texas*, Multichannel News, Aug. 13, 2009, available at http://www.multichannel.com/article/327579-Suddenlink_Takes_DOCSIS_3_0_To_Texas.php.

¹⁹ See Jeff Baumgartner, *Cox Kicks at Qwest*, Cable Digital News, Aug. 20, 2009 (noting that Cox has deployed DOCSIS 3.0 in parts of Arizona, California, Rhode Island, Virginia, and Louisiana), available at http://www.lightreading.com/document.asp?doc_id=180758&site=cdn&.

²⁰ See John Eggerton, *Columbia Institute For Tele-Info Tapped by FCC For Broadband Vetting*, Multichannel News, Aug. 6, 2009 (noting that Comcast “plans to upgrade 80% of its homes passed to the higher-speed service by year’s end, up from its earlier projection of 65%”), available at http://www.multichannel.com/article/326779-Columbia_Institute_For_Tele_Info_Tapped_by_FCC_For_Broadband_Vetting.php.

be gathered for the Commission by the Columbia Institute for Tele-Information (CITI) will confirm that cable operators are rolling out DOCSIS 3.0 at an aggressive pace.²¹

In addition to the services offered by cable operators, almost all of these households are offered additional broadband options by telephone companies, wireless carriers, and satellite providers. As Time Warner Cable recently explained to the Commission:

The broadband services marketplace has thrived in its relatively brief history. Broadband services are offered over a diverse array of platforms, including cable, DSL, fiber-to-the-home, satellite, fixed and mobile wireless, and broadband over power lines (“BPL”), and consumers have enthusiastically embraced these technologies.²²

Detailed information about broadband offerings has been provided to the Commission in response to the *National Broadband Plan Notice of Inquiry* and other recent proceedings.²³

Based on the facts recently amassed by the Commission, and consistent with the conclusion of its

²¹ See News Release, FCC, *Columbia Institute for Tele-Information to Conduct Independent Review of Telecom Capital Expenditures to Assist FCC* (Aug. 6, 2009) (noting that “CITI will provide an analysis of the public statements of companies as to their future plans to deploy and upgrade broadband networks as well as an historical evaluation of the relationship between previous such announcements and actual deployment”), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292598A1.pdf.

²² Comments of Time Warner Cable, GN Docket No. 09-51 (filed June 8, 2009) at 7; see also Comments of Sprint Nextel, GN Docket No. 09-51 (filed June 8, 2009) at 1 (“Access to broadband service over multiple technologies – each of which offers particular benefits such as mobility, speed, and scope – is currently available to hundreds of millions of people across the nation, with wireless, wireline and satellite providers collectively spending billions of dollars each year to expand and improve their networks.”).

²³ See, e.g., Joint Comments of Hughes Network Systems & WildBlue Communications, GN Docket No. 09-51 (filed June 8, 2009) at 4 (explaining that “[s]atellite networks offer the broadest of all possible broadband access, which is available *now* and which includes coverage throughout the 48 contiguous states, the District of Columbia, Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands”) (emphasis in original); Comments of CTIA-The Wireless Ass’n, GN Docket No. 09-51 (filed June 8, 2009) at 4-12 (describing the many wireless broadband options available and reporting that less than 10% of the population is without access to wireless broadband services); Comments of the United States Telecom Ass’n, GN docket No. 09-51 (filed June 8, 2009) at 3-4 (noting that “an overwhelming majority of Americans today can choose among *multiple* broadband platform providers” and that “[o]ver 90% of U.S. households can choose from either a wireline or a cable broadband service and approximately four-fifths of U.S. households have access to both”) (emphasis in original).

five prior Section 706 reports,²⁴ the Commission should conclude that broadband “is being deployed to all Americans in a reasonable and timely fashion.”

III. THE COMMISSION SHOULD FOCUS ITS EFFORTS ON IDENTIFYING AREAS THAT DO NOT HAVE BROADBAND AND ON DEVELOPING POLICIES TO PROMOTE INVESTMENT IN THOSE UNSERVED AREAS, IN COOPERATION WITH OTHER FEDERAL AGENCIES

Section 706 requires more than a simple conclusion regarding whether broadband is being deployed in a reasonable and timely fashion. Since the Commission issued the Fifth Section 706 Report in 2008,²⁵ Congress expanded the Commission’s obligations with enactment of the BDIA.²⁶ Among other things, the BDIA requires the Commission to develop a list of unserved areas as part of the Section 706 Report.²⁷ The development of such a list is a critical step which should greatly facilitate the Commission’s ability to develop a National Broadband Plan that can identify strategies for encouraging deployment and adoption in those areas that do not yet have broadband. The degree to which the size of the list shrinks over time will be a simple, yet effective, measure of the success of the Commission’s National Broadband Plan.

In the *NOI*, the Commission asks how it should define “geographical area” in the context of developing this list of unserved areas.²⁸ For purposes of the Sixth Section 706 Report, the Commission should define “geographical area” in terms of Census Tracts, as it currently does for

²⁴ *NOI* ¶ 1 (noting that, in each report, “the Commission concluded that broadband was being deployed to all Americans in a reasonable and timely fashion”).

²⁵ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fifth Report, 23 FCC Rcd 9615 (2008).

²⁶ *See generally* BDIA.

²⁷ *See* BDIA § 103(a)(3); 47 U.S.C. § 1302(c).

²⁸ *See NOI* ¶ 54.

Form 477.²⁹ For the Seventh Section 706 Report and going forward, the Commission should consider using Census Block data, in coordination with NTIA and its broadband mapping effort.

Once the list is compiled, the Commission should consider further proceedings, as part of the National Broadband Plan, to identify specific steps to promote investment in broadband facilities.³⁰ As part of that process, the Commission should determine the amount of government support that these unserved areas are receiving through NTIA and RUS grants and through the Universal Service Fund. In many areas, particularly those receiving grants from NTIA and RUS, existing federal funding may already be sufficient to encourage investment in broadband facilities.

²⁹ In particular, the Commission should use the Census Tract data submitted to it by broadband providers on Form 477 on September 1, 2009.

³⁰ *See, e.g.*, Blair Levin, Executive Director, Omnibus Broadband Initiative, FCC, A Framework for Universal Broadband, Speech at the Udwin Breakfast Group (Sept. 2, 2009) (“[O]ne size will not fit all. Whether we are looking [at] deployment, adoption or the utiliz[ation of] broadband to advance the dozen plus national purposes specified by Congress, we have to do what any serious analytic work would do – break the problem down into meaningful pieces. The problems of deployment in the rural prairies are different than the problems of deploying in rural West Virginia. The low adoption rates among Spanish dominant Hispanics have a different cause and remedy than the low adoption rates among rural low-income persons.”), *available at* http://blog.broadband.gov/?page_id=185.

CONCLUSION

For the reasons explained above, the Commission should conclude that broadband is being deployed to all Americans in a reasonable and timely fashion. Equally important, there should be a connection between the goals established in the National Broadband Plan, the metrics used to measure progress toward those goals, and the data collected and reported by the federal government. To be most useful, all of these should take account of, and build from, the data the Commission already collects and the data that will be collected by NTIA in creating the national broadband map. The Commission should focus its efforts on creation of a list of the limited areas where broadband has not been deployed. Such a list is key to the Commission's effort to promote investment and deployment in unserved areas, as part of the National Broadband Plan.

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ATTACHMENT

interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to over 20 million customers.

In the *Notice*, the Commission seeks “tailored comment on defining ‘broadband’ for purposes of the Commission’s development of a National Broadband Plan (Plan) pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act), and for related purposes.”² In particular, the *Notice* identifies three aspects of this definitional issue upon which further comment is sought: (1) the general form, characteristics, and performance indicators that should be included in the definition; (2) the thresholds that should be assigned to these indicators today; and (3) how the definition should be reevaluated over time.³

The question of how to define the term “broadband” is not a new one for the Commission. The Commission adopted a new definition just last year in connection with changes to the Form 477 broadband reporting process.⁴ In that order, the Commission found that services with download speeds of more than 768 kbps and upload speeds of more than 200 kbps will be defined as “broadband” services.⁵ Subsequently Congress passed the Recovery Act and gave the Commission a consultative role with respect to the interpretation of certain statutory terms, including the term “broadband,” to be used by NTIA and RUS in their broadband funding programs.⁶ All three agencies sought comment on these definitions and NTIA and RUS

² *Id.*

³ *Id.* at 2.

⁴ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Service to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnection Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691 (2008).

⁵ *Id.* at 9700-01, ¶ 20.

⁶ American Recovery and Reinvestment Act, Pub. L. No. 111-5 (2009) (Recovery Act), § 6001(a); Public Notice, *Comment Period Established Regarding The Commission’s Consultative Role In The Broadband Provisions Of The Recovery Act*, GN Docket No. 09-40, DA 09-668 (rel. Mar. 24, 2009).

ultimately adopted the current FCC definition of “broadband” as updated last year.⁷ The Commission again asked for comment on the definition of “broadband” in the *Notice of Inquiry* regarding the Plan.⁸

THE COMMISSION SHOULD USE ITS EXISTING DEFINITION OF BROADBAND

NCTA agrees with the Commission that establishing a single definition of the term “broadband” for regulatory and policy purposes is a crucial issue. It has immediate implications with respect to the development of the Plan, as well as for any subsequent data collection and reporting efforts that are needed to measure progress in achieving the goals and benchmarks identified in the Plan. It also may have a variety of other significant consequences, *e.g.*, the definition of “broadband” could be very important if the Commission decides to use universal service support to subsidize broadband facilities and services.

As important as the definition of “broadband” is, however, the Commission should recognize the limited nature of such an effort. In earlier comments on the Plan, many parties attempted to incorporate *substantive* requirements regarding speed, price, or “openness” into their proposed definition of “broadband.”⁹ The Commission should not use the process of defining “broadband” as a vehicle for imposing substantive obligations on providers of broadband services. Rather, as Congress did in defining terms like “cable service,” “telecommunications service,” and “information service,” the Commission should adopt a more

⁷ See Department of Agriculture, Rural Utilities Service, Broadband Initiatives Program, RIN: 0572-ZA01; Department of Commerce, National Telecommunications and Information Administration, Broadband Technology Opportunities Program, RIN: 0660-ZA28, Notice of Funds Availability, 74 Fed. Reg. 33104 (July 9, 2009) (*RUS/NTIA NOFA*); Department of Commerce, National Telecommunications and Information Administration, State Broadband Data and Development Grant Program, RIN No. 0660-ZA29, Notice of Funds Availability, 74 Fed. Reg. 32545 (July 8, 2009) (*NTIA Mapping NOFA*).

⁸ *A National Broadband Plan For Our Future*, GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd 4342 (2009).

⁹ See, *e.g.*, Comments of Free Press, GN Docket No. 09-51 (filed June 8, 2009) at 227 (latency should be part of broadband definition); Comments of Microsoft, GN Docket No. 09-51 (filed June 8, 2009) at 5 (caps on consumption should be part of broadband definition).

generic definition that focuses on the core functionality of the service.¹⁰ It should address separately what obligations, if any, should be imposed on providers of the service.

Following this approach, NCTA previously argued that, for purposes of the Plan, consumers have “access to broadband capability” whenever they have the opportunity to purchase services and equipment that enable them to access the Internet at any time and use the types of applications that are most commonly used today, such as e-mail and web browsing.¹¹ It is this basic “always on” functionality that is most relevant for definitional purposes, more so than the presence or absence of the various detailed characteristics (*e.g.*, latency, jitter, symmetry, mobility) mentioned in the Commission in the *Notice*.¹²

Undoubtedly these factors all affect the quality and usefulness of a particular service for a particular customer, but their presence or absence is not the defining characteristic of “broadband” service. For example, some parties have advocated that “broadband” be defined as a service with symmetrical upload and download speeds to ensure that consumers are able to upload video.¹³ In response, NCTA explained that most broadband networks, including cable networks, are typically engineered to provide higher speeds for downloads than for uploads based on consumer preferences and behavior.¹⁴ The fact that the network is designed to deliver higher download speeds than upload speeds does not necessarily mean that upload speeds are insufficient for the applications, services, and content consumers may want to use. The fact that

¹⁰ See 47 U.S.C. §§ 153(46) (telecommunications service); 153(20) (information service); 522(6) (cable service).

¹¹ Comments of the National Cable & Telecommunications Association, GN Docket No. 09-51 (filed June 8, 2009) at 6.

¹² *Notice* at 2-3.

¹³ See, *e.g.*, Comments of Google, GN Docket No. 09-51 (filed June 8, 2009) at 21; Comments of NASUCA, GN Docket No. 09-51 (filed June 8, 2009) at 15-16.

¹⁴ Reply Comments of the National Cable & Telecommunications Association, GN Docket No. 09-51 (filed July 21, 2009) at 6.

there are a variety of services and capabilities available to meet the varied needs of consumers is one of the great strengths of the broadband marketplace. Rather than adopting a restrictive definition that includes substantive obligations, the Commission should be encouraging the widest assortment and differentiation of technologies and capabilities so that consumers can choose the services that best meet their needs.

If the Commission incorporates specific speed metrics as part of the definition of “broadband,” it should continue to use its recently updated definition and tier designations as adopted for the Form 477 and incorporated by NTIA in its recent mapping Notice of Funds Availability.¹⁵ Such an approach offers numerous advantages. First, it will enable the Commission to compare a consistent set of data across time. The desire for continual improvement in national broadband performance is a worthy goal, but a constantly evolving definition of “broadband” is not necessary or helpful to achieving that goal. Rather than changing the definition of “broadband” every year, the Commission should incorporate the existing definition and speed tiers into goals based on the percentage of households and businesses with access to service in a particular tier.

Second, using the existing definition and speed tiers will avoid the need for the Commission to make additional changes to the Form 477 reporting process. The changes the Commission made to the Form 477 last year – adding new speed tiers and moving from zip code reporting to census tract reporting – placed significant new information collection burdens on the Commission and on broadband providers. The Office of Management and Budget (OMB) was sufficiently concerned about the burden imposed by the new requirements that it approved the

¹⁵ *NTIA Mapping NOFA*, 74 Fed. Reg. at 32548 (“Data transmission technology that provides two-way data transmission to and from the Internet with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users within the project area.”); *id.* at 32559 (adopting speed tiers).

collection of this data for only one year.¹⁶ Moreover, notwithstanding the diligent efforts of Commission staff, the Commission has yet to issue a report summarizing the year-end 2008 data submitted by broadband providers in March 2009. Adopting yet another new definition of “broadband” that requires providers and the Commission to revise the Form 477 process yet again could lead to a repeat of these problems in the future.

Third, as NCTA has explained previously, it would be extremely helpful for the government to use a consistent set of definitions across agencies.¹⁷ For example, NTIA is in the process of developing a nationwide broadband map as required by the Broadband Data Improvement Act. If the Commission adopts a different definition of broadband than the one that NTIA is using in creating the map, it will be difficult to reconcile any reports issued by the Commission with the map created by NTIA. Presumably Congress required NTIA to consult with the Commission on definitions precisely to avoid this sort of disconnect.

For these same reasons, the Commission should continue to look at maximum advertised speed rather than some measure of “actual” speed. In the *Notice*, the Commission observes that advertised speeds “generally differ from actual rates, are not uniformly measured, and have different constraints over different technologies.”¹⁸ As the Commission suggests, the speed of any particular broadband connection varies for a number of reasons, some that are controlled by the provider (*e.g.*, the distance between a DSL customer and the closest central office or remote terminal) and some that are not (*e.g.*, the network backbone equipment and routing, the type of computers and routers used in the home). Because of this variability, it is extremely difficult to

¹⁶ See Notice of Office of Management and Budget Act, OMB Control No. 3060-0816 (Jan. 30, 2009), available at <http://www.reginfo.gov/public/do/DownloadNOA?requestID=215359>. After the September 1, 2009 filing is complete, the Commission must obtain new approval from OMB to continue the Form 477 collection.

¹⁷ Comments of the National Cable & Telecommunications Association, GN Docket No. 09-29 (filed Mar. 25, 2009) at 7-8.

¹⁸ *Notice* at 2.

develop a single figure that consistently and reliably describes the “actual” speed of all types of broadband connections for all purposes. In light of these challenges, the Commission should not change the current system at this time.¹⁹ In the future, the Commission should work with the Internet engineering community to develop an approach that would produce consistent, reliable, and accurate results.

CONCLUSION

The Commission should not lose sight of the forest for the trees. Attempting to incorporate all of the potential considerations of a broadband customer into the definition of “broadband” is unnecessary and could prove counterproductive. The better approach is for the Commission to define broadband in a simple, straightforward manner – using its previously adopted definition – and establish a set of goals and metrics that build on this definitional framework.

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¹⁹ We note that there are a number of “speed test” tools in the marketplace that enable consumers to test their own connections. Although there are limits to the reliability and accuracy of these tools, they do serve to provide additional data to consumers about their broadband connections. As part of the broadband mapping exercise that NTIA is performing, state mapping entities may use these speed tests or similar third-party sources to gather information on the “typical” speed of broadband connections which eliminates any need for immediate FCC action on this issue.