

February 6, 2002

**Separate Statement of
Commissioner Michael J. Copps, Dissenting**

Re: 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

On the basis of the record before us, I am unable to determine whether the deployment of advanced telecommunications capability to all Americans is or is not reasonable and timely. This is because we have not gathered data of adequate quality or granularity to fulfill our statutory responsibility under Section 706. I cannot therefore endorse the conclusions of the majority and must respectfully dissent from this Report. I impugn no colleague's commitment to broadband deployment and no bureau's enthusiasm and hard work for bringing the wonders of broadband technologies to the American people. I just happen to have a different perspective.

The Importance of Broadband

Congress recognized the importance of broadband access in the Telecommunications Act of 1996. It gave us the statutory mandate to advance the cause of bringing access to advanced telecommunications to each and every citizen of this great country – whether they live in rural areas, on tribal lands or in the inner city; whether they are affluent or of limited income; with or without disabilities. Congressional interest in broadband has only increased in the intervening years, with broadband occupying an increasingly prominent position on the Congressional agenda. Indeed, the nation generally seems to have embarked on a significantly more intensive dialogue about broadband, putting issues on the table that were simply not there just a few months ago. This is a welcome and salutary development.

Broadband is rapidly becoming a key component of our nation's systems of education, commerce, employment, health, government and entertainment. The transformative potential of broadband technologies is, I believe, akin to the major infrastructure developments that built America to greatness. I believe that when the history of our times is written, the broadband transformation will be discussed in the same vein as the building of the roads and ports and harbors that made commerce possible in pre-Civil War America; as the Transcontinental railroads that made us a continental power in the late Nineteenth century; as the national highway system that opened the way for rapid transportation and demographic migration in the last century; and as the first great telecommunications revolution that brought telephone service to the far corners of America, a job mostly, but not yet totally, completed.

Some may argue that broadband infrastructure does not rise to the level of developmental importance I ascribe to it. But the issue does seem to be coming front-

and-center in our national dialogue, and I believe there is sufficient plausibility attached to it to merit, indeed to compel, a significantly broader and deeper analysis of broadband deployment than we have thus far undertaken. We can argue whether the parameters of previous Section 706 reports were sufficiently broad. I think they were not. But circumstances have changed; new questions now need to be asked; and old questions may merit new and very different answers. This is precisely why Congress instructed the Commission to reexamine this issue regularly. New data, new analysis and new perspectives can only nourish the national dialogue we are beginning to have.

Congress gave the Commission the charge to determine whether advanced telecommunications capability -- broadband -- is being deployed to *all* Americans in a reasonable and timely fashion for two reasons. First, Congress required us, as the government's expert agency, to engage in fact finding that would inform the national debate. Second, as the agency that implements Congressional policy, we have been instructed by Congress that, if we find deployment not to be reasonable and timely, we must take immediate action to accelerate it.

Thus, in adopting this section, Congress envisioned that the FCC would actively pursue information each year on broadband deployment. Here, we have not delved as deeply as Congress expects. The data we have and the analysis derived from it are, for me, insufficient for making the critical determination mandated by Congress.

I am further troubled that today's Report neither lays out a plan to obtain these data nor initiates an action for the Commission that would foster a national dialogue and promote broadband deployment. The Commission needs to be more proactive in this pursuit. We need to investigate the availability of broadband to all Americans, including those communities that are at risk of being left behind. We must be willing to ask the hard questions and act according to full and accurate data, rather than conjecture about the state of deployment. This is too important an issue for our nation merely to conduct an incomplete analysis and conclude that everything is proceeding apace.

Inadequacy of the Data

I do not believe the Commission has gathered data of adequate quality or granularity to fulfill its statutory responsibility to determine if deployment of advanced telecommunications capability is reasonable and timely to all Americans. We simply did not have access to the information necessary to carry out our section 706 mandate. It is our statutory duty to obtain this data.

The competition-enhancing portions of the 1996 Act have led to undoubted progress in deploying broadband. We are now seeing competition not only within delivery platforms, but also among delivery platforms. Indeed, we are seeing convergence of industries, convergence of services, and convergence of markets. It is clear that companies are actively deploying advanced technologies in response to competition from other broadband providers. The competition resulting from the 1996 Act unleashed an unprecedented investment in communications infrastructure in many areas of the country.

A detailed analysis of broadband deployment might well have shown that broadband deployment is proceeding as Congress expected. Certainly the number of broadband subscribers and users of the Internet in many communities continues to increase substantially, as every report seems to confirm. And certainly we should not expect broadband to be available to everyone at the exact same instant. But the Commission is obligated to seek specific and concrete data to undergird its conclusions and to ensure that all Americans are obtaining broadband access in a reasonable and timely manner.

To carry out this 706 inquiry, the Commission asks providers to report zip codes in which there is at least one subscriber. Our data leaves the impression that everyone in a zip code has access to broadband merely because one person has it. The Report concedes that “we cannot determine from our data the full extent to which the presence of high-speed service in a given zip code indicates that high-speed services are widely available, or whether they are restricted to a few customers.” In fact, with our data, that zip code might include only large business customers buying facilities that would not be available or affordable to small business or residential customers. It might also include zip codes where only a limited number of customers have access. The majority recognizes these shortcomings, but nevertheless concludes on the basis of the data that deployment is reasonable and timely. By the logic of our current use of these data, rather than counting each zip code with one subscriber as fully connected, perhaps we ought to count each zip code that has one customer without access as *not* connected. I suspect accurate numbers would demonstrate a much smaller percentage of the population with access than the 97 percent contained in our data.

Moreover, the Commission must ensure that communities are not being left behind. Importantly, the Report states that certain citizens – those living in rural or insular areas or on tribal lands, those with low incomes, and those with disabilities – are at significantly greater risk of not having access to broadband. Is deployment reasonable and timely to these Americans? I do not believe that the Commission has adequately explored this question. Without doing so, we have not fulfilled our statutorily mandated responsibilities.

A Broadband Action Plan

Given the importance of broadband deployment for our nation, and without an adequate record to make a determination under section 706, I believe that the Commission should initiate a broadband action plan to obtain concrete, nationwide data, to elicit wider stakeholder input and analysis, and to promote the deployment of broadband to all Americans.

First, the Commission should adopt a specific plan to gather information that would allow a rigorous analysis of broadband deployment. The majority recognizes the limited usefulness of our data, but does not undertake steps to rectify the problem. The Commission issued a Notice of Proposed Rulemaking on this issue over a year ago but

has yet to issue an order. The data we collect should focus on the availability of broadband and should not assume that everyone in a zip code has access to broadband merely because one entity does. Although certainly not an exhaustive list, more granular information, separation of data based on services to residential and small business customers, and statistical sampling can provide a fuller and more accurate picture of deployment patterns. This data is admittedly neither easy nor cheap to come by. It is, however, necessary for the fulfillment of our charge from Congress, and it must have a resource priority here at the Commission commensurate with the developmental priority that broadband has for the nation. The Commission should devote the additional resources necessary to carry out our section 706 mandate as Congress expected.

The states can play a critical role in supplying information, expertise and new perspectives. Indeed, the states are charged with an active role by Section 706. Their more active participation during the Commission's annual Section 706 work would significantly enhance the quantity of our data and the quality of our analysis. Soliciting their more active input should be one of the Commission's first action plan steps.

Second, the Commission has a responsibility to help foster a national dialogue on broadband. The nation's sense of urgency about this issue is heightening as people are asking hard questions about how the infrastructure is to be built. We need to develop answers to these questions. A serious national dialogue about this issue will help frame the policy options. For openers, we should conduct hearings and roundtables around the country – meetings that include other government entities and significant input from both traditional and non-traditional stakeholders. We are of course an independent agency and we implement, rather than make, policy. Nevertheless, it is clear that Congress envisioned a major role for the FCC when it charged us with encouraging reasonable and timely deployment of advanced telecommunications capability to all Americans. Congress did not urge a hands-off policy upon the Commission when it comes to broadband deployment.

As part of the effort, we should devote more adequate resources to looking at what other countries are doing. We don't pay nearly enough attention to this. Interesting broadband initiatives are taking place in numerous countries. They need to be looked at, studied, evaluated. As far as I can tell, all of the industrialized countries, except the United States and Italy, have national plans for broadband deployment. And Italy is in the process of developing one. It's not that we need to emulate what others with different traditions and cultures and economies may be doing, but let's be serious enough to at least look at what they're doing and see if there may not be a lesson or two there for us.

Let's look in more detail at what some communities right here at home are doing. We need to realize that communities across America are already taking steps to supply broadband themselves when industry fails to get it to them. Certainly we need to examine the demand for broadband services; I would be among the last to suggest that we ignore the realities of the marketplace. Indeed, we must examine consumer demand, and whether and when it is appropriate to define advanced telecommunications as a higher transmission speed to take account of evolving technologies and consumer expectations.

But I have been to too many conferences where the definition of broadband and demand are the only questions that are discussed. Shouldn't we also discuss why it is that some communities in America are already floating bond issues and taxing themselves to get broadband deployed to satisfy unmet demand?

Let's look at the many communities that do not have access to broadband. We should undertake a specific accounting of where these places are and what they have in common. We should examine how population density, income level, race, and other factors come into play, and determine if there are market failures that are limiting broadband deployment in these communities. We should focus in particular on rural areas, tribal lands, inner city communities, and on those of our fellow citizens who have disabilities.

Let's look more closely at potential impediments to broadband deployment. As the Report demonstrates, we have initiated a number of proceedings to promote broadband deployment. But we have not committed the resources to evaluate more broadly the impediments to deployment and to consider steps to eliminate those barriers.

And, finally, let's examine the role of government in the deployment effort. The private sector can, should, and will be the lead locomotive in rolling out broadband. But I've asked just about every businessperson I've had the chance to meet if he or she was convinced the market could get the job of deployment done. The vast majority of these business leaders tell me that for that last 10, 15, 20 percent or more of Americans, probably not. One of America's foremost CEO's told us a few months ago that 30 percent could be beyond deployment. Leaving 10 percent behind amounts to about 29 million people, and leaving 20 percent behind abandons 58 million fellow citizens. So the issue has a human face. If we get to 2020 and we have 29 or 58 or 87 million people without broadband, we will have a Broadband Chasm that not only denies many citizens of a precious right but also denies our country of critically needed economic growth.

Historically, business and government worked closely together in all of the great economic infrastructure transformations that I described earlier in these comments. All of these were built with the public and private sectors working together to provide America with the infrastructure we needed to prosper. History doesn't necessarily repeat itself, but there are enough resemblances to merit our close attention. Some may say that broaching such questions stretches the FCC mandate. I answer that examining what works -- in our communities and municipalities, in other countries, in our own historical experience -- is integral to setting out the options for our nation's policy-makers in Congress and the Administration. Our policy makers expect no less of us.

I don't pretend to have all of the answers. I don't even have all of the questions that need to be asked. Nor am I saying these are the only steps we should take. I merely say that we need to take action to get a fuller and more accurate picture of broadband deployment and try to get a handle on meeting one of the most important challenges -- and opportunities -- confronting our country today. America's broadband business is not, I think, business as usual.