

FEDERAL COMMUNICATIONS COMMISSION SEEKS COMMENT ON BROADBAND DEPLOYMENT

The Federal Communications Commission (FCC) released a Notice of Inquiry (NOI) as required by Section 706 of the Telecommunications Act of 1996, seeking comment on whether broadband is being deployed to all Americans in a reasonable and timely fashion.¹ Comments in response to the NOI and reply comments are due September 4, 2009 and October 2, 2009, respectively. The purpose of the NOI is to collect information for the FCC's sixth Section 706 report on broadband deployment in the US, due to Congress on February 3, 2010.² This current inquiry was released against a backdrop of statutory and policy changes concerning broadband, including improvements in broadband data gathering, and comes at a time when broadband deployment is a top priority at the Commission FCC.³

The NOI notes that the framework and analysis of the five prior Section 706 reports increasingly has been called into question and that none was based on data providing an accurate picture of broadband deployment in terms of geography, service capabilities, or other characteristics. The NOI explains that the current Section 706 inquiry will benefit from the FCC's new broadband data collection activities. Since the last Section 706 report, Congress enacted the Broadband Data Improvement Act (BDIA) in October 2008, which, in part, amended Section 706. The BDIA, *inter alia*, requires the FCC to compile information on unserved areas, include an international comparison of broadband deployment, and publish Section 706 reports annually. The FCC solicits information in this NOI according to the Section 706 framework, as amended by the BDIA.

- ¹ In accordance with Section 706 of the Telecommunications Act of 1996, the FCC must "initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans." For purposes of the NOI, the FCC uses the word "broadband" synonymously with "advanced telecommunications capability." However, the FCC did not foreclose the possibility that it might later define "broadband" to be different from "advanced telecommunications capability" or "advanced services."
- ² While the Section 706 report is a statutory requirement separate from the National Broadband Plan, required by the recent stimulus legislation and due February 17, 2010, comments and other materials received for the National Broadband Plan relevant to the NOI will be incorporated in the Section 706 report and the proceedings largely will be considered together.
- ³ For background purposes, the NOI reviews the various activities being conducted by the FCC and other agencies to enhance broadband data collection including improving the FCC's form used to collect subscribership data from broadband service providers; mapping network coverage for mobile broadband; collecting data on cable systems; creating a voluntary consumer broadband registry; creating a comprehensive inventory map of existing broadband service; conducting periodic consumer surveys; and studying broadband metrics.

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The FCC breaks down the NOI into five component parts with each component consisting of more detailed inquiries.

(1) HOW SHOULD THE FCC DEFINE “ADVANCED TELECOMMUNICATIONS CAPABILITY” OR “BROADBAND?”

The FCC seeks comment on how to define such terms as “advanced telecommunications capability,” “broadband,” and “high speed services,” and whether those terms should have a unified definition. The FCC also seeks comment on: whether the definitions should be the same across agencies and to what extent the FCC should consult definitions from the international community; whether the minimum speed threshold for “broadband” should be raised, including the upstream and downstream links, and account for different technologies; whether “broadband” should include “special access” and how to define the “middle mile”; and how the definitions can remain flexible as technology evolves.

(2) IS BROADBAND AVAILABLE TO ALL AMERICANS?

In particular, the FCC seeks comment on how to define availability, how the FCC can use existing data, including broadband mapping efforts, to determine availability, and how to use subscribership levels to determine availability. The FCC also seeks comment on how to factor in “community anchor” institutions like hotspots, public libraries, and Internet cafes, their effect on broadband adoption, and reasons people decide to either subscribe or not subscribe to a broadband service. Furthermore, the FCC seeks comment on the technologies being used for broadband, the extent of their deployment, and any innovative broadband technologies which have not yet been deployed.

(3) IS THE CURRENT LEVEL OF BROADBAND DEPLOYMENT REASONABLE AND TIMELY?

The FCC generally seeks comment on whether broadband is being deployed to all Americans in a reasonable and timely fashion and asks commenters to describe the basis for their conclusions. Specifically, the FCC seeks comment on how to define a “geographic area” not served by advanced telecommunications services, the extent of broadband deployment to schools, and how to define or categorize “all

Americans.” The FCC also seeks comment on deployment to rural areas, tribal lands, low income individuals, minorities, and persons with disabilities. Furthermore, the FCC seeks comment on how to use international comparisons to determine if broadband in the US is being deployed in a timely fashion.

(4) WHAT ACTIONS, IF ANY, SHOULD THE FCC TAKE TO ACCELERATE BROADBAND DEPLOYMENT?

If the FCC finds that broadband is not being deployed in a reasonable and timely manner, it must take action to accelerate deployment. The FCC seeks comment on what, if any, barriers exist to deployment, and how to combat those barriers. The FCC asks commenters to take into account the *Rural Broadband Report*, submitted to Congress by the US Department of Agriculture/USDA.

(5) WHAT ACTIONS SHOULD THE FCC TAKE TO IMPROVE ITS REGULAR BROADBAND DATA COLLECTION EFFORTS?

In light of the recent actions taken by Congress and the FCC to improve data collection, the FCC seeks comment on any ways to further enhance data collection.

We hope that you have found this advisory useful. If you have additional questions, please contact your Arnold & Porter attorney or:

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