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A Failure to Communicate at the FCC

by

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Remember that famous line from the 1967 movie, *Cool Hand Luke*, starring Paul Newman, “[What we’ve got here is failure to communicate](#)“?

I couldn’t get this line out of my mind last week in thinking about the FCC. Yes, that’s the Federal *Communications* Commission.

But, as is often the case with the FCC, what we had on display – at best – was a “failure to communicate.” (I’ll explain the “at best” soon enough.)

Here’s what I mean.

In an [International Broadband Data Report](#) released on August 21, the Chief of the FCC’s International Bureau had this to say about the state of broadband in the United States:

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“In the past year, both fixed and mobile broadband providers have made significant progress in their efforts to expand broadband networks and improve service quality. As noted in the Eighth 706 Report released today, the market is responding to the needs of Americans for increased broadband capabilities. In 2011, U.S. investment in wired and wireless network infrastructure rose 24%. Some recent trends show that providers are offering higher speeds, more data under their usage limits, and more advanced technology in both fixed and mobile broadband. For example, cable operators have increased their deployment of DOCSIS 3.0-based data networks, which are capable of providing 100 megabits per second or faster (Mbps) speeds. In the last three years, the percentage of households passed by DOCSIS 3.0 broadband infrastructure has risen from 20% to 82%. Advances in broadband technology and initiatives to promote greater deployment and adoption of broadband services have led to broadband-enabled innovation in other fields such as health care, education, and energy efficiency. Consumers all over the world are using applications and services created by U.S. companies, including social networks, search engines, and e-commerce....”

Wireless providers are deploying new, faster, and more spectrally-efficient technologies for mobile broadband, known as 4G LTE. American consumers have been quick to adopt 4G LTE technology, securing the United States’ position as the world leader in LTE adoption. In the 15th Annual Mobile Wireless Competition Report, the Commission observed that there were no commercial LTE launches in the United States as of August 2010. By the end of 2011 though, U.S. LTE subscribers numbered 5.6 million, accounting for 64% of the roughly 9 million LTE subscribers worldwide. Deloitte predicts that U.S. investment in 4G networks during 2012-2016 could be \$25-\$53 billion. Aggressive LTE network build-out by U.S. providers has been a driving force in customer take-up and we anticipate that this trend will continue....”

With this progress, the United States has regained its role as a global leader in and around mobile broadband. More than 80% of smartphones sold globally run on U.S. operating systems, up from less than 25% three years ago. As the first adopters of 4G LTE, the U.S. is the global test bed for wireless technology and services. In 2011, venture investment in Internet start-ups reached its highest levels since 2001. The apps economy, a \$20 billion industry that barely existed five years ago, has created nearly 500,000 jobs.”

On the very same day, the full FCC released its [Eighth Section 706 Broadband Progress Report](#). Remarkably – and read the above excerpt again if in doubt that it is remarkable – the Commission’s three Democrats determined that broadband is not being deployed in “a reasonable and timely fashion.”

Despite the fact of same day release, there is an obvious disconnect between the hard data concerning broadband deployment and usage, broadband capabilities, and broadband investment set forth in the FCC International Bureau Chief’s report and the full Commission’s *Section 706 Broadband Progress Report*.

I guess that Cool Hand Luke might say, “What we’ve got here is failure to communicate.” And this by the Federal *Communications* Commission.

But recall up front I said “at best” we have a “failure to communicate.”

Because I think “at worse” what we have is a Commission majority that, as Commissioner Robert McDowell explains in his [dissent](#), ignores the data to use the *Section 706 Broadband Progress Report* “as an opportunity to create a pretext to justify more regulation.” Indeed, the Commission’s Democrat majority already has used the Section 706 report finding to justify its net neutrality mandates on Internet providers – and expect more to come.

There is no dispute, as Commissioner McDowell points out, that between 2003 and 2009 broadband deployment steadily increased from reaching 15% to 95% of Americans. But, as Commissioner Ajit Pai explains in his [dissent](#), the Commission’s majority, while not denying the substantial progress made in such a short time, has re-interpreted the statute to mean there must be “total achievement” of deployment before it would declare the “reasonable and timely” standard has been met.

The Commission’s majority also re-interprets the statutory language — “available” and “deployed” – to require some undetermined “adoption” metric to be met. This tactic simply is used to detract attention from the deployment achievement.

Finally, despite the hard data contained in the FCC Bureau Chief’s *International Broadband* report concerning the rapidly increasing deployment and usage of wireless broadband facilities and services – thus “securing the United States’ position as the world leader” – the FCC’s majority refuses in its *Section 706 Broadband Progress Report* to take into account wireless broadband in assessing progress.

So, you might conclude, charitably, “What we’ve got at the Federal *Communications* Commission is failure to communicate.”

Or, you might conclude instead, what we’ve got is a Federal Communications Commission that is not, as it likes to claim, data-driven, but rather philosophy-driven. And the driving philosophy is pro-regulatory.

Neither conclusion is good for America.

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