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FCC Back on Track Promoting Broadband Deployment to All Americans

by

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On February 2 the FCC released its *2018 Broadband Progress Report*. Although report data indicates that “[i]n the wake of the *2015 Title II Order*” broadband deployment “slowed dramatically,” nonetheless progress continued through the end of 2016. Since that time, the Commission has repealed investment-inhibiting public utility-like regulation of broadband services. And it has redirected its policies toward accelerating deployment of next-generation broadband services to underserved and unserved Americans.

Given the pro-investment reforms undertaken by the FCC since 2017 and the decidedly improved prospects for next-generation infrastructure deployment in the near future, the *2018 Broadband Progress Report* states fittingly: “[W]e are back on the right track when it comes to deployment.”

Section 706 of the Telecommunications Act of 1996 requires the FCC to issue annually a report in which it must “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.” In its last broadband progress or so-called “Section 706 report,” the Commission found that broadband capability was not being reasonably and timely deployed to all Americans. Anti-investment effects of recently repealed public utility regulation of broadband Internet access services perhaps lend support for that prior negative finding.

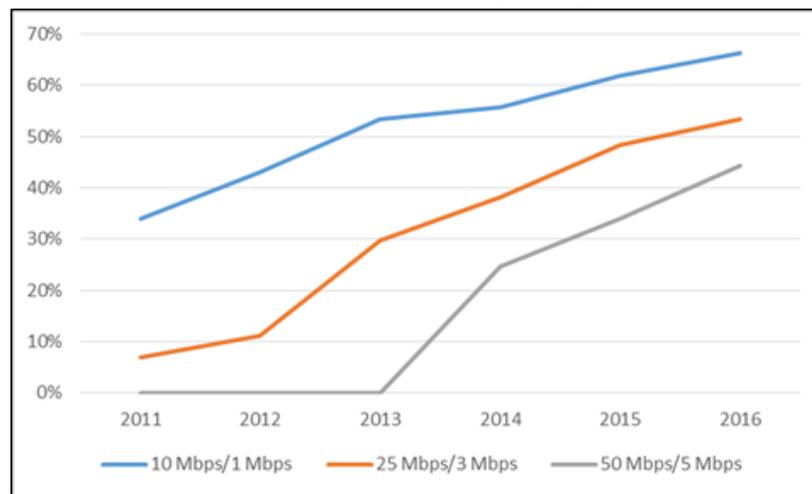
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As the *2018 Broadband Progress Report* explained:

In the wake of the 2015 *Title II Order*, the deployment of advanced telecommunications capability slowed dramatically. From 2012 to 2014, the two years preceding the *Title II Order*, fixed terrestrial broadband Internet access was deployed to 29.9 million people who never had it before, including 1 million people on Tribal lands. In the following two years, new deployments dropped 55 percent, reaching only 13.5 million people, including only 330,000 people on Tribal lands. From 2012 to 2014, mobile LTE broadband was newly deployed to 34.2 million people, including 21.5 million rural Americans. In the following two years, new mobile deployments dropped 83 percent, reaching only 5.8 million more Americans, including only 2.3 million more rural Americans. And from 2012 to 2014, the number of Americans without access to both fixed terrestrial broadband and mobile broadband fell by more than half—from 72.1 million to 34.5 million. But the pace was nearly three times slower after the adoption of the 2015 *Title II Order*, with only 13.9 million Americans newly getting access to both over the next two years.

Increase in Adoption of Fixed Terrestrial Broadband Services from 2011 to 2016
(from the *2018 Broadband Progress Report*)

The bad news about Title-II related slowdowns in broadband deployment isn't new news. Market data, empirical studies, and economic theory have all pointed to the harmful effects on investment in broadband infrastructure of the FCC's 2015 public utility-like regulation.



Yet despite the lamentable deployment reductions that followed the *Title II Order*, the *2018 Broadband Progress Report* reveal unmistakable increases in broadband service availability through different platforms. According to report data, here are the percentages of the U.S. population with access to broadband Internet access services at the end of 2016:

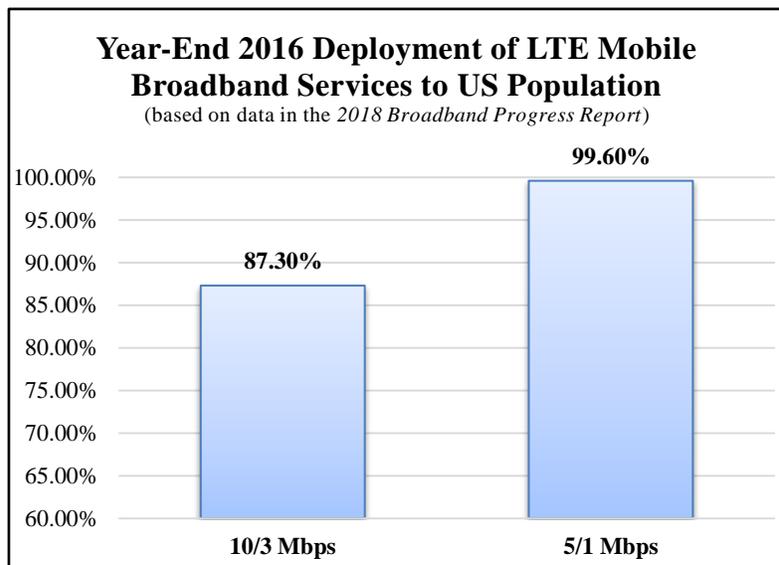
- 92.3% had access to fixed broadband services – that is, fixed services meeting a download/upload benchmark speeds of 25Mbps/3Mbps.
- 95.6% had access to fixed broadband services when satellite broadband services are included.
- 99% had access to LTE mobile broadband with download/upload speeds of 5Mbps/1Mbps.
- 87.3% had access to LTE mobile broadband with speeds of 10Mbps/3Mbps.

- 95.4% had access to fixed broadband services and to LTE mobile broadband services with speeds of 5Mbps/1Mbps, including 80.7% in rural areas and 99% in urban areas.
- 85.3% had access to fixed broadband services and to LTE mobile broadband services with speeds of 10Mbps/3Mbps, including 61% in rural areas and 89.8% in urban areas.

Additional positive data points contained in the report are noteworthy:

- “[A]doption of service at 25 Mbps/3 Mbps...grew from just under 10 percent in 2011 to just over 50 percent in 2016, an increase of approximately 40 percentage points in just five years”.
- “[S]martphone penetration rates have almost doubled over the past five years, from approximately 42 percent in 2011 to approximately 81 percent in 2016.”

Recognizing the inherent tension in trying to evaluate ongoing deployment of advanced services with ever-increasing speeds while maintaining a baseline for measuring improvement over time, the *2018 Broadband Progress Report* sensibly retained its 25Mbps/3Mbps benchmark for fixed broadband services. And the report included speed thresholds of 10Mbps/3Mbps and 5Mbps/1Mbps for measuring progress in LTE mobile broadband services. In doing so, the report thereby provided context that is necessary for any responsible look at deployment in the broadband service market. Undoubtedly, fixed and mobile LTE speeds are faster in early 2018 than they were in late 2016.



However, the *2018 Broadband Progress Report*'s express disagreement with the idea “that mobile services are currently full substitutes for fixed services” deserves closer scrutiny. The report maintained that fixed and mobile broadband services are not “full substitutes” because they “provide different functionalities” and are “tailored to serve different consumer needs.” Yet Commissioner Michael O’Reilly disputed the report’s treatment of mobile substitution in his written statement: “Given the choice between gigabit speed wireline broadband and slower, data-capped wireless service, consumers that I have met with and providers deploying service in neighborhoods will make clear that the wireless service is preferable – by far.” Commissioner O’Reilly also observed: “[C]onsumers, especially in the less affluent and younger populations, are willing to trade speed for flexibility.” Indeed, [comments filed by the Free State Foundation](#) in the FCC’s report proceeding similarly argued that fixed and mobile broadband are “competing and potentially substitutable services” with data indicating that “many consumers view the two as substitutes.” Specifically, those comments cite a [2016 study](#) by the National

Telecommunications and Information Administration indicating that 29% of low income consumers, 18% of middle-income consumers and 15% of high-income consumers are mobile-only broadband users. In short, rejecting “full substitution” fails to fully take stock of the substitution-related data that exists. Future FCC reports on broadband progress should take a more incisive look at the competitive effects of mobile substitutability and varying consumer habits.

Laudably, the *2018 Broadband Progress Report* departed from the regrettable prior practice of suddenly redefining broadband services in ways seemingly intended to produce pre-determined negative deployment findings. Previously, the Commission invoked such negative findings to prop up proposals for tighter regulation of the market – such as public utility-like regulation of broadband Internet access services. But the *Restoring Internet Freedom Order* rightly concluded “section 706 does not constitute an affirmative grant of regulatory authority, but instead simply provides guidance to this Commission and the state commissions on how to use any authority conferred by other provisions of federal and state law.”

Additionally, the *2018 Broadband Progress Report* points out the potential for satellite broadband in expanding access and choices for consumers: “2016 marked the first instance where 25 Mbps/3 Mbps satellite service was reported” in the FCC’s Form 477 data, and “[t]he 2017 launches of the high throughput Jupiter 2 and ViaSat 2 satellites by Hughes and ViaSat, respectively, could further increase 25 Mbps/3 Mbps satellite offerings in the future.”

Importantly, since early 2017, the Commission has taken pro-active steps to remove barriers to investment and accelerate deployment of next-generation broadband services, including high-speed gigabit networks, 5G fixed and mobile wireless networks, as well as advanced satellite broadband services. As the report states:

[W]e are hard at work facilitating deployment—for instance, by [1] reducing regulatory barriers to the deployment of wireline and wireless infrastructure, [2] reforming the universal service program to make it more efficient and accessible to new entrants, [3] modernizing the business data service rules to facilitate facilities-based competition, [4] freeing up additional spectrum for terrestrial and satellite services, and [5] ending the adverse impact on investment caused by the *Title II Order*.

Although the data under examination is for the time period running through December 2016, the report observes “the marketplace is already responding to the more deployment-friendly regulatory environment now in place.” It points to the commencement or announcement of new deployments by broadband services providers such as AT&T, Verizon, Frontier, and Alaska Communications. The report therefore anticipates acceleration in investment and deployment to result from the recent refocus of Commission priorities from stringent regulation to promoting deployment. Primarily on the basis of those policy changes and their likely near-future effects, the report positively finds “the Commission’s policy efforts are now encouraging the deployment on a reasonable and timely basis of advanced telecommunications capability.”

Although some have criticized the *2018 Broadband Progress Report*'s positive deployment finding for being based primarily on forward-looking considerations, those predictions can be put to the test. The next report will provide data that will analyze the broadband deployment effects of the Commission's policy reforms.

Pro-investment results consistently were realized under the Commission's light-touch Title I regulatory approach to broadband services. As the *Restoring Internet Freedom Order* points out, "ISP capital investment increased each year from the end of the recession in 2009 until 2014, when it peaked." The Commission's reinstatement of the Title I policy, plus other reforms aimed at accelerating deployment and closing the digital divide, offer strong reasons for confidence in the report's optimistic outlook.

In all, the *2018 Broadband Progress Report* provides a straightforward snapshot of the data about progress in broadband deployment between 2014 and 2016, refuses to make deployment findings the basis of agency power grabs, and points to the potential benefits soon to be realized from reorienting its policies toward removing regulatory barriers to broadband infrastructure investment and accelerating timely deployment to all Americans. For those reasons, the Commission's report is surely correct in concluding "we are back on the right track when it comes to deployment."

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Further Readings

[Comments of the Free State Foundation](#) – *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket 17-199 (September 21, 2017).

[Reply Comments of the Free State Foundation](#) – *Restoring Internet Freedom*, WC Docket 17-108 (August 30, 2017).

[Comments of the Free State Foundation](#) – *Restoring Internet Freedom*, WC Docket 17-108 (July 17, 2017).

[Comments of the Free State Foundation](#) – *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79 (June 15, 2017).

Michael Horney, "[Broadband Investment Slowed \\$5.6 Billion Since Open Internet Order](#)," *FSF Blog* (May 5, 2017).

[Reply Comments of the Free State Foundation](#) – *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies*; *Mobilitie, LLC Petition for Declaratory Ruling*, WT Docket No. 16-421 (April 7, 2017).

Seth L. Cooper, "[FCC Must Quit Twisting Section 706 Reports](#)," *Perspectives from FSF Scholars*, Vol. 9, No. 35 (October 8, 2014).