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Lessons From the FCC's Broadband Deployment Report

by

Andrew Long *

I. Introduction and Summary

Are high-speed Internet access providers making advanced telecommunications capability – that is, "broadband" – available to all Americans in a reasonable and timely fashion? Congress directed the Federal Communications Commission to tackle that question on an annual basis. In its latest Section 706 Report, which relies upon year-end 2019 data, the Commission once again appropriately concludes that the answer to that question is yes.

Despite higher per-capita construction costs in those largely rural and low-population-density areas that remain unserved, the number of consumers lacking high-speed access to the Internet continues to decline – even as the pandemic poses practical challenges and prompts increasing calls for government intervention. It is indisputable that progress in deployment continues, fueled by private investment, arguably to an even greater extent than the Commission is willing to acknowledge.

The data the Commission considered in preparing its report necessarily is backward-looking, but sound regulatory oversight focuses on the future. Taking into account only the state of the

marketplace as of a year prior may have the effect of discounting real-world trends – and, thus, may distort the true extent of competition.

So, what does a holistic view of broadband deployment in 2021 reveal? One, that private investment, the historical primary driver of network expansion, continues to connect Americans at an impressive pace. Two, that deployment-specific policy priorities, particularly those motivated by the current public health emergency, best are addressed through subsidies targeting rural and other high-cost areas still unserved. And three, that – thanks to sound spectrum policy and continued private investment – the time is upon us when expanding 5G deployments remove the basis for continuing to distinguish, for purposes of assessing marketplace competition, between fixed and mobile offerings.

First, the 2021 Report proves that broadband providers, as a result of substantial capital expenditures and the assumption of the associated risk, continue to make significant progress in connecting all Americans: "The results … speak for themselves." The percentage of Americans with access to fixed terrestrial "broadband" – defined as providing speeds of at least 25 megabits per second (Mbps) downstream and 3 Mbps upstream (25/3 Mbps) – increased from 94 percent at the end of 2018 to 96 percent a year later. The number of those living in "unserved" areas fell from 18.1 million to less than 14.5 million during that same one-year period. Significantly, rural residents constitute over three quarters of those newly connected, leading to a 14-point decrease in the urban/rural gap – a reduction by nearly half – since 2016.

With respect to mobile broadband, 4G LTE service with advertised speeds of at least 5/1 Mbps reached virtual ubiquity by the end of 2019, and test-confirmed median speeds of 10/3 Mbps were offered to over 97 percent of Americans. As discussed further immediately below, 5G – which is being deployed at a "breakneck pace" – already was available to 60 percent of the population at that time.

Second, it is important to keep in mind that the question posed by Section 706 relates to *progress*: whether advanced telecommunications capability *is being deployed* in a reasonable and timely fashion. Understandably, the impact that the coronavirus has had on the way Americans learn, work, access healthcare, and interact – indeed, the way we live – drives calls for accelerated connectivity, adoption, and affordability. The $2 trillion CARES Act, the $900 billion COVID-19 relief package approved at the end of last year, and additional federal legislation under active consideration are the vehicles by which Congress has, and might in the future, respond to this unprecedented public health crisis, particularly those concerns (such as adoption and affordability) not related directly to the focus of Section 706: deployment.

With respect to broadband deployment, however, it remains the case that government resources are utilized most efficiently and effectively when targeted to those areas that, in fact, truly are unserved. As just one example, winning bidders in the recently concluded and record-breaking Rural Digital Opportunity Fund Phase I reverse auction will leverage $9.2 billion in subsidies to connect over 10 million rural Americans living in unserved census blocks. In particular, direct congressional appropriations, rather than agency-led subsidy programs that further burden the Universal Service Fund, are the optimal solutions moving forward.

Third, from the forward-looking vantage point that effective technology-focused policymaking requires, it is time to declare, from the all-important consumer perspective, that fixed and mobile broadband services serve as viable competitive alternatives. The 2021 Report states that, in 2019, the two were not "full substitutes." That, however, is not the appropriate economic measure. As a general matter, rivals differentiate their offerings on the basis of price, performance attributes, and other features that render them functional substitutes. Particularly in the context of a Section 706 inquiry, the relevant question is whether both fixed and mobile providers deliver "advanced telecommunications capability." The 2021 Report concedes that they do.

5G, meanwhile, changes the competitive landscape even more. During the reporting period, 5G services, which can deliver speeds up to 100 times that of 4G LTE, already were available to 60 percent of the population. Since then, carriers have ramped up their network expansion efforts – and the FCC, in furtherance of then-Chairman Ajit Pai's 5G FAST Plan, has taken laudable steps to make more wireless capacity available, most notably by repurposing 280 MHz of mid-band spectrum in the C-band. Through these deliberate acts, the private sector and policymakers have ensured that the 5G future is upon us. An acknowledgement that 5G – actively marketed to consumers as an in-home alternative – is a viable substitute to fixed broadband service therefore is not "premature." To the contrary, a failure to so conclude will cause regulatory policy to fall behind the competitive reality that actually exists in the marketplace.

II. The 2021 Report Documents Continued Broadband Deployment Progress

One of former FCC Chairman Ajit Pai's last official actions was to release the *Fourteenth Broadband Deployment Report* (the 2021 Report).[1] As part of the 1996 Act, Congress directed the Commission to determine annually whether "advanced telecommunications capability" – what we today refer to as "broadband" – is being deployed to all Americans in a reasonable and timely fashion. The 2021 Report finds "compelling evidence" that it is.[2] As then-Chairman Pai stated:

> From my first day as Chairman, the FCC's top priority has been closing the digital divide. It's heartening to see these numbers, which demonstrate that we've been delivering results for the American people …. These successes resulted from forward-thinking policies that removed barriers to infrastructure investment and promoted competition and innovation.[3]

Data as of year-end 2019 reveals two undeniable truths. One, that broadband is available at the vast majority of locations today. And two, that despite the much higher investment required to connect the largely rural and low-population-density areas that do remain unserved, progress continues at a commendable pace.

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[1] *See generally Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 20-269, Fourteenth Broadband Deployment Report, FCC 21-18 (released January 19, 2021), available at https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf (*2021 Section 706 Report*).

[2] *Id*. at ¶ 103 ("In light of the compelling evidence before us, we conclude, as the Commission has before, that advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.").

[3] News Release, "FCC Annual Broadband Deployment Report Shows Digital Divide Is Rapidly Closing" (January 19, 2021), available at https://docs.fcc.gov/public/attachments/DOC-369393A1.pdf.

The 2021 Report picks up the positive ongoing narrative where the 2020 Report left off.[4] The percentage of Americans able to subscribe to fixed terrestrial Internet service that satisfies the Commission's definition of "broadband" – 25 megabits per second (Mbps) in the downstream direction, 3 Mbps upstream (25/3 Mbps)[5] – at the end of 2019 was 96, up from 94 the year prior.[6] The total number of those unserved fell from above 18.1 million to below 14.5 million. And the urban/rural gap shrank further: over 75 percent of those that gained connectivity in 2019 reside in rural areas. As a result, the percentage difference between urban and rural deployments was only 16 points, compared to 30 points at the end of 2016. In other words, despite the practical challenges and related higher costs, fixed terrestrial broadband nevertheless at the end of 2019 had been deployed to nearly 83 percent of rural Americans.[7]

In addition, virtually all – 99.9 percent – had access to mobile 4G LTE service with a minimum advertised speed of 5/1 Mbps. Over 97 percent were able to subscribe to 4G LTE with a median tested speed of 10/3 Mbps.[8]

Private investment appropriately was the primary driver of network construction. The 2021 Report reveals that mobile providers alone spent $29 billion in 2019, the highest amount since 2015. It notes further that:

> We are not aware of a comprehensive estimate of total fixed and mobile broadband network spending for calendar year 2019. The results, however, speak for themselves, as the increased deployment discussed in this Report would not be possible without substantial investment.[9]

III. Government Subsidies Should Target Unserved Areas

Section 706 directs the FCC to evaluate annually the degree of progress achieved in the deployment of advanced telecommunications capability. Universal connectivity is the ultimate goal, but Congress appreciated that it cannot be achieved overnight. The 2021 Report makes this clear:

> As the Commission has previously stated, the statute requires that we determine whether advanced telecommunications capability '*is being deployed* to all Americans' – not whether it has already been deployed to all Americans – and

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[4] *See generally Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 19-285, 2020 Broadband Deployment Report, FCC 20-50 (released April 24, 2020), available at https://docs.fcc.gov/public/attachments/FCC-20-50A1.pdf. *See also* Seth L. Cooper, "FCC Report Shows Broadband Success Under Pro-Market Policies," *Perspectives from FSF Scholars*, Vol. 15, No. 23 (May 11, 2020), available at https://freestatefoundation.org/wp-content/uploads/2020/05/FCC-Report-Shows-Broadband-Deployment-Success-under-Pro-Market-Policies-050820.pdf.

[5] *See 2021 Section 706 Report* at ¶ 12 ("We conclude that fixed services with speeds of 25/3 Mbps continue to meet the statutory definition of advanced telecommunications capability; that is, such services "enable[] users to originate and receive high-quality voice, data, graphics, and video telecommunications.") (citations omitted).

[6] *Id*. at ¶ 33.

[7] *Id*. at ¶ 2 (citations omitted).

[8] *Id*. at ¶ 34, Fig. 2a.

[9] *Id*. at ¶ 3 n.7.

> reading section 706(b) to require universal availability as a prerequisite for a positive finding would disregard the statute's 'reasonable and timely' language.[10]

Undeniably, 2020 presented unique challenges, challenges that continue into 2021. In response to the ongoing pandemic, policymakers have determined that certain exceptional measures are appropriate. By way of example, (1) the $2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act made $200 million available for an FCC-run telehealth program,[11] and (2) the $900 billion COVID-19 relief package included in the Consolidated Appropriations Act, 2021 included $7 billion for broadband-related initiatives, most significantly a $3.2 billion Emergency Broadband Connectivity Fund to provide a monthly benefit to low-income households and those financially impacted by the coronavirus.[12]

Going forward, targeted government intervention, in furtherance of policy objectives relating specifically to the pace of deployment in high-cost, unserved areas, can help to accelerate network expansion. As noted above, the 2021 Report found that the number of unserved individuals in 2019 fell below 14.5 million. The Rural Digital Opportunity Fund Phase I reverse auction that concluded in December 2020 on its own will help wire over 5.2 million locations – over one million by Charter Communications alone[13] – and thereby expand broadband to over 10 million rural Americans.[14] Simple arithmetic here may not be appropriate – I do not mean to suggest that, as a result, the total number of unserved will fall below 5 million – but even still, the fact remains that substantial progress is ongoing. Other efforts, including the upcoming 5G Fund reverse auction[15] and other initiatives included in the COVID-19 relief package Congress passed at the end of last year,[16] as well as any future legislative efforts,[17] will continue to chip away at the remainder.

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[10] *2021 Section 706 Report* at ¶ 106 (citations omitted) (emphasis in original). *See also* Comments of the Free State Foundation, GN Docket No. 20-269 (filed September 18, 2020), available at https://freestatefoundation.org/wp-content/uploads/2020/09/Section-706-Comments-Final-091820.pdf, at 4 (arguing that "the Commission should continue to focus on year-to-year comparisons to track progress objectively").

[11] *See* CARES Act, Pub. L. No 116-136, 134 Stat. 281 (2020); "COVID-19 Telehealth Program," available at https://www.fcc.gov/covid-19-telehealth-program.

[12] *See* Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020), available at https://www.congress.gov/bill/116th-congress/house-bill/133/text; Andrew Long, "The Emergency Broadband Benefit: A Possible Model for Future Lifeline Funding," *Perspectives from FSF Scholars*, Vol. 16, No. 6 (February 5, 2021), available at https://freestatefoundation.org/wp-content/uploads/2021/02/The-Emergency-Broadband-Benefit-–-A-Possible-Model-for-Future-Lifeline-Funding-020521.pdf, at 6-7 (explaining why direct congressional appropriations are preferable to additional burdens imposed upon the Universal Service Fund).

[13] *See* "Charter Announces $5 Billion Initiative to Connect Unserved Americans," *Charter Communications Policy Blog* (February 5, 2021), available at https://policy.charter.com/blog/charter-announces-5-billion-initiative-to-connect-unserved-americans/ ("To help close the broadband access gap, Charter has announced a $5 billion dollar investment to connect more than a million currently-unserved, mostly rural families and small businesses to reliable broadband service with speeds up to 1 gigabit per second.") (citation omitted) (emphasis omitted).

[14] *See* News Release, "Successful Rural Digital Opportunity Fund Auction to Expand Broadband to Over 10 Million Rural Americans" (December 7, 2020), available at https://docs.fcc.gov/public/attachments/DOC-368588A1.pdf.

[15] *See generally Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, FCC 20-150 (released October 29, 2020), available at https://docs.fcc.gov/public/attachments/FCC-20-150A1.pdf.

[16] *See* Andrew Long, "A Primer: The COVID Relief Bill's Broadband Funding Provisions," *FSF Blog* (December 26, 2020), available at https://freestatefoundation.blogspot.com/2020/12/covid-19-relief-package-provides-682b.html (reporting that "the legislation tasks NTIA with disbursing a total of $1.3 billion for broadband grant programs, $1 billion targeting Tribal lands and $300 million for unserved (including rural) areas" and noting "a $285

IV. The 2021 Report Understates Fixed/Wireless Substitutability

Despite (1) an acknowledgement that both fixed and wireless broadband services satisfy the definition of "advanced telecommunications capability," (2) substantial real-world evidence demonstrating that consumers currently view fixed and 4G LTE wireless broadband offerings as interchangeable,[18] and (3) the existing deployment and ongoing rapid expansion of 5G, the Commission remains unwilling to concede that fixed and mobile broadband technologies are – or will be within the practical near term – substitutes.

For the FCC's 2021 Section 706 analysis to serve as a useful resource for decisionmakers, however, it must not only consider the factual state of the marketplace as of December 2019, but also anticipate how public and private sector actions during the recent past and present will define the future competitive landscape – along with any appropriate regulatory responses thereto. Making these types of informed predictions is one of the fundamental roles that a so-called "expert" regulatory agency such as the FCC is expected to play, particularly in the context of rapidly evolving, technology dependent services.[19]

As Commissioner Brendan Carr argued in a December 2019 speech:

> [T]he challenge on the competition policy side is not to see the world as it was in the 3G past or even how it is today, but to anticipate where competition is going. Put simply, competition authorities must keep pace with the industries they regulate. Failing to do so risks turning the authorities themselves into restraints on competition and denying the public the full benefits that the free market can deliver.[20]

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million pilot program focusing primarily on the broadband needs of Historically Black Colleges and Universities (HBCUs) and their surrounding communities").

[17] *See, e.g.*, Benjamin Kahn, "Representative Pallone Says Committee Charging Through With Broadband Goals," *Broadband Breakfast* (February 10, 2021), available at http://broadbandbreakfast.com/2021/02/representative-pallone-says-committee-charging-through-with-broadband-goals/ ("House Energy and Commerce Committee Chairman Frank Pallone, D-N.J., said the committee he heads will be focusing on broadband expansion, affordability and adoption.").

[18] *See generally Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, FCC 20-188 (December 31, 2020), available at https://docs.fcc.gov/public/attachments/FCC-20-188A1.pdf, at ¶¶ 130-142. *See also id*. at ¶ 134 (noting that "[a]mong the 27% of adults surveyed who indicated that they do not subscribe to home fixed broadband, 45% stated that a smartphone does everything they need") (citation omitted); *id*. at¶ 135 ("Pew data suggest that many smartphone-only subscribers view mobile broadband as a substitute. Specifically, 6 in 10 non-fixed-broadband users say that they have never had fixed high-speed Internet service at home, and 80% say they would not be interested in having fixed broadband at home in the future.") (citation omitted).

[19] *See, e.g.*, *Nat. Broadcasting Co. v. United States*, 319 US 190, 216 (1943) (in which Justice Felix Frankfurter, rejecting a nondelegation doctrine challenge, declared that the public interest standard "is as concrete as the complicated factors for judgment in such a field of delegated authority permit") (citation omitted).

[20] Keynote Remarks of FCC Commissioner Brendan Carr at the Phoenix Center's 19th Annual U.S. Telecoms Symposium, "Keeping Pace with Dynamic Industries," Washington, DC (December 3, 2019), available at https://docs.fcc.gov/public/attachments/DOC-361147A1.pdf, at 1-2.

And yet, while the 2021 Report again recognizes that both fixed and mobile connections satisfy the definition of "advanced telecommunications capability" set forth in Section 706, it nevertheless reiterates objections to a finding that the two are "full substitutes."[21] Instead, it concludes that they are mere complements, as if no middle ground exists between these classification extremes; that there is but "some overlap in functionality"; and that the extent to which consumers regard them as substitutable is limited to certain low-bandwidth applications "like email or social media."[22]

Section 706 defines "advanced telecommunications capability" "without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology."[23] Of these functionalities, video requires the most bandwidth. And there is no question that consumers are consuming more mobile video. According to Ericsson, video made up more than 60 percent of total mobile data traffic in 2019 and "is forecast to grow by around 30 percent annually up to 2025" in large part as a result of "[i]ncreased network performance through evolved 4G deployments."[24]

Further, products need not offer identical feature sets in order to be substitutes,[25] particularly in the context of a Section 706 report and where both fixed and wireless service have been found to provide advanced telecommunications capability. To the contrary, variations in performance, price, and other features simply reveal competitive differentiation and rival value propositions.

Indeed, differences exist between fixed offerings, such as cable, DSL, WISP, and satellite: some of these involve the very elements – such as data caps and access outside the home (via, for example, Wi-Fi hot spots) – to which the 2021 Report points to support its conclusion that fixed and wireless are mere complements. And, of course, each offers service at different speeds and different prices. None of these factors prevent a finding of substitutability between rival fixed offerings, yet they are treated as dispositive when comparing fixed and wireless service.

In addition, as noted above, the 2021 Report reveals that 60 percent of Americans had access to 5G at the end of 2019 – and mobile providers actively market 5G offerings as a replacement for

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[21] *See 2021 Section 706 Report* at ¶ 10 ("Despite both services' meeting the definition of advanced telecommunications capability, we find, consistent with the Commission's findings in past reports, that fixed and mobile services are not full substitutes.") (citations omitted).
[22] *See id*. at ¶¶ 10-11.
[23] 47 U.S.C. § 1302(d)(1).
[24] Ericsson Mobility Report, (June 2020), available at https://www.ericsson.com/49da93/assets/local/mobility-report/documents/2020/june2020-ericsson-mobility-report.pdf, at 18. *See also id*. ("With smartphones and networks improving constantly, streaming in HD (720p) and Full HD (1080p) is becoming more common. More immersive media formats and applications are expected to become a significant factor contributing to mobile data traffic growth, as 5G networks will provide the performance needed for a good user experience.").
[25] *See* Comments of the Free State Foundation, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 20-269 (filed September 18, 2020), available at https://freestatefoundation.org/wp-content/uploads/2020/09/Section-706-Comments-Final-091820.pdf, at 14 (citing Professor Michael E. Porter's book *Competitive Advantage* for the proposition that "key competitive effects of substitution do not depend on a product and a substitute functioning the same way in every respect").

fixed broadband service.[26] Undoubtedly that number significantly is higher today – as the Commission itself remarks, "5G mobile service continues to be rolled out *at a breakneck pace* by multiple providers."[27] Mobile carriers are investing heavily in their networks – the 2021 Report notes that spending in 2019 alone exceeded $29 billion[28] – and as a result, and as one certainly would expect, they have announced additional 5G deployments since that time.[29]

Moreover, the FCC's actions to increase the availability of spectrum for 5G as part of then-Chairman Pai's 5G FAST Plan,[30] including 280 MHz of valuable mid-band spectrum via the recent and record-breaking C-band auction,[31] will accelerate further this well-established trend. This is not mere speculation – and, as a consequence, it would not be "premature" to acknowledge that continued 5G leadership by U.S. mobile carriers, enabled by government spectrum, security, and infrastructure policies, will lead promptly to wireless service on par with existing fixed offerings.[32] To the contrary, it would be a mistake to fail to consider these pending but inevitable developments in making policy decisions today.[33]

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[26] *See, e.g.*, "Verizon 5G Home Internet," available at https://www.verizon.com/5g/home/ ("5G Home Internet is internet reimagined. It sets a new standard for the way home internet works.").

[27] *2021 Section 706 Report* at ¶ 103 (emphasis added).

[28] *See id*. at ¶ 3 ("These strides in mobile broadband deployment were fueled by more than $29 billion of capital expenditures in 2019 (roughly 18% of *global* mobile capital spending), the largest mobile broadband investment since 2015.") (citation omitted) (emphasis in original).

[29] *See, e.g.*, News Release, "Verizon extends Nationwide 5G to cover 230 million people" (December 17, 2020), available at https://www.verizon.com/about/news/verizon-extends-5g-coverage ("Today an additional 24 million customers have access to Verizon's technologically advanced 5G nationwide network …, bringing the total to 230 million people able to access Verizon's 5G capabilities and benefits in over 2,700 cities."); News Release, "ONLY T-Mobile's Network Unlocks the Full Potential of 5G for All" (October 13, 2020), available at https://www.t-mobile.com/news/network/only-t-mobiles-network-unlocks-the-full-potential-of-5g-for-all ("[W]e launched the country's first nationwide 5G network in December of last year, and we haven't slowed down since. Our 5G network is still the largest by far, now covering 260 million people in more than 7,500 cities and towns across 1.3 million square miles."); News Release, "AT&T 5G. Today Nationwide." (July 23, 2020), available at https://about.att.com/story/2020/att_5g_nationwide.html ("AT&T 5G offers nationwide connectivity, so whether you're at home or on-the-go, you'll enjoy coverage in more places.") (emphasis omitted) (citation omitted);

[30] *See* "The FCC's 5G FAST Plan," available at https://docs.fcc.gov/public/attachments/DOC-354326A1.pdf.

[31] *See, e.g.*, Michael Balderston, "C-Band Auction Ends, Generates $80.9B," *TV Tech* (January 15, 2021), available at https://www.tvtechnology.com/news/c-band-auction-ends-generates-dollar809b ("The C-band auction was the FCC's largest spectrum auction ever, with the $80.9 billion far exceeding the previous record of $44.9 billion (FCC's 2014 AWS-3 auction).").

[32] *See 2021 Section 706 Report* at ¶ 11 ("[W]e are optimistic that increased deployment of 5G may allow mobile services to serve as an alternative to fixed services. But we agree with those commenters that indicate that any such assessment is premature, as providers are still rolling out 5G out as a commercial service, and we do not know for certain whether consumers will treat mobile 5G as a substitute for fixed services.") (citations omitted).

[33] Comments of the Free State Foundation, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 20-269 (filed September 18, 2020), available at https://freestatefoundation.org/wp-content/uploads/2020/09/Section-706-Comments-Final-091820.pdf, at 13-14, 15 (arguing that "the rapid nationwide deployment of competing 5G networks provides the strongest case yet for the Commission to acknowledge wireless/wireline broadband substitution"). *See also id*. at 16 ("The Commission's next report should go further. It should track the real-world capabilities of 5G deployments and find that 5G services are substitutes or potential substitutes for fixed wireline broadband services."); Randolph J. May *et al*., "The FCC's *Marketplace Report* Substantiates the Extent of Competition," *Perspectives from FSF Scholars*, Vol. 16, No. 4 (January 25, 2021), available at https://freestatefoundation.org/wp-content/uploads/2021/01/The-Communications-Marketplace-Report-Highlights-Intramodal-–-but-Understates-Intermodal-–-Competition-012521.pdf, at 9 (asserting that the 2020 Communications Marketplace Report

V. Conclusion

The COVID-19 pandemic exposed broadband connectivity as an important lifeline, particularly for students and those who depend on remote healthcare. Congress has responded with initiatives to address affordability and adoption, most significantly the $3.2 Emergency Broadband Connectivity Fund. Further legislation is under consideration. The FCC's annual Section 706 inquiry, by contrast, is more limited in scope. It asks whether reasonable and timely progress is being made to deploy advanced telecommunications capability to all Americans. The 2021 Report analyzed the evidence and rightly came to an affirmative conclusion.

However, the Commission ought to have embraced the marketplace reality that fixed and mobile high-speed Internet services now compete with one another for customers. The utility of these inquiries centers on their ability to inform policy choices, and decisionmaking premised upon outdated findings and assumptions contributes to flawed and inefficient outcomes.

Had the Commission acknowledged that fixed and mobile broadband services are substitutes, the conclusions that (1) 99.9 percent of Americans have access to fixed service at 25/3 Mbps or advertised 5/1 Mbps wireless service, and (2) 99.4 percent have access to 25/3 Mbps fixed service or 10/3 Mbps median tested wireless service[34] would have taken on an appropriately heightened regulatory significance.[35]

* Andrew Long is a Senior Fellow of the Free State Foundation, an independent**,** nonpartisan free market-oriented think tank located in Rockville, Maryland.

Further Readings

Andrew Long, "The Emergency Broadband Benefit: A Possible Model for Future Lifeline Funding," *Perspectives from FSF Scholars*, Vol. 16, No. 6 (February 5, 2021).

Randolph J. May *et al*., "The FCC's *Marketplace Report* Substantiates the Extent of Competition," *Perspectives from FSF Scholars*, Vol. 16, No. 4 (January 25, 2021).

Randolph J. May *et al*., "A PRIMER: COMMUNICATIONS POLICY PRIORITIES FOR 2021 Do's and Don'ts for Policymakers," *Perspectives from FSF Scholars*, Vol. 16, No. 1 (January 6, 2021).

"undoubtedly understates the current and near-term extent to which mobile offerings, in particular 5G services, can satisfy in-home connectivity needs").

[34] *See 2021 Section 706 Report* at ¶ 36, Figs. 3c and 3d.

[35] *See* 47 U.S.C. § 1302(a) ("The Commission … shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.").

Andrew Long, "A Primer: The COVID Relief Bill's Broadband Funding Provisions," *FSF Blog* (December 26, 2020).

Comments of the Free State Foundation, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 20-269 (filed September 18, 2020).

Seth L. Cooper, "Timely Action Will Expand Broadband Amidst the Pandemic," *Perspectives from FSF Scholars*, Vol. 15, No. 44 (August 11, 2020).

Andrew Long, "Legislative 'Best Practices' to Expand and Accelerate Broadband Coverage," *Perspectives from FSF Scholars*, Vol. 15, No. 42 (July 29, 2020).

Seth L. Cooper, "FCC Report Shows Broadband Success Under Pro-Market Policies," *Perspectives from FSF Scholars*, Vol. 15, No. 23 (May 11, 2020).

Comments of the Free State Foundation, *The State of Competition in the Communications Marketplace*, GN Docket No. 20-60 (filed April 27, 2020).