



Federal Communications Commission
Washington, D.C. 20554

May 4, 2007

Mr. Bruce Kushnick
Chairman
Teletruth
568 Broadway
Suite 404
New York, NY 10012

Re: Teletruth Data Quality Act Complaint submitted February 18, 2007

Dear Mr. Kushnick:

We have received your February 18, 2007 Data Quality Act Complaint,¹ which asserts that the Commission is violating the statutory requirements of section 706 of the Telecommunications Act of 1996² “because it has defined broadband as 200K in one direction....”³ The Complaint also requests that a proceeding be opened regarding this definition.⁴ On behalf of the Commission, I have reviewed the Complaint and deny your request for the reasons set forth below.

The 200 kbps standard to which your Complaint refers was developed in the Commission’s *Data Gathering Order* rulemaking as a benchmark for reporting entities to use when submitting data to the Commission.⁵ A benchmark adopted as a matter of policy is not “data” or “information” subject to the Data Quality Act.⁶ Accordingly, the proper vehicle to challenge a Commission policy decision of this type is not through a Data Quality Act Complaint, but rather through participation in Commission rulemakings that address the policy issue.⁷

In this regard, the Commission has recently released a Notice of Inquiry pursuant to Section 706 of the Telecommunications Act of 1996 in which the Commission requests comment on its definitional

¹ E-mail from Bruce Kushnick, Teletruth and New Networks Institute, to Karen Wheelless, Office of the Managing Director, Federal Communications Commission, February 18, 2007 (Complaint).

² 47 U.S.C. §706nt.

³ Complaint at p. 1.

⁴ *Id.*

⁵ *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7731 (2000).

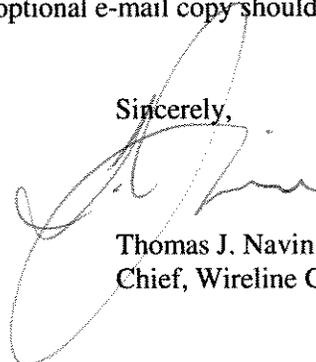
⁶ See Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 (2000), reprinted at 44 U.S.C.A. §3516 Historical and Statutory Notes (*Data Quality Act*). See also *Implementation of Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Pursuant to Section 515 of Public Law No. 105-554*, Report on Information Quality Guidelines, 17 FCC Rcd 19890, 19895, paras. II.4 and II.7 (2002) (*Information Quality Guidelines*) (defining “data” and “information”).

⁷ See *Information Quality Guidelines*, 17 FCC Rcd at 19898, para. IV.1.b. (“Affected persons seeking correction of information disseminated in the context of a rulemaking proceeding should raise concerns [about the information] in accordance with the procedures for public comment in the rulemaking process rather than the complaint process set forth in these guidelines.”)

framework for high-speed and advanced services, including the 200 kbps standard referenced in your Complaint.⁸ The Commission has also recently released a Notice of Proposed Rulemaking directed at the Commission's broadband data collection practices. This NPRM specifically requests comment on the speed-tier information the Commission currently collects on its Form 477, including the 200 kbps standard.⁹ You may wish to express the concerns referenced in your Complaint by participating in either or both of these proceedings.

For the reasons explained above, your March 18, 2007 Complaint under the Data Quality Act is denied in its entirety. If you wish to appeal this decision, under the terms of the Data Quality Act your application for review must be submitted in writing to the Federal Communications Commission, Office of the Managing Director/Data Quality Appeal, 445 12th Street, S.W., Washington, D.C. 20554, within thirty (30) days of the date of this letter. The written appeal must include a copy of the original complaint and the response thereto, and an explanation of how the initial resolution of the complaint or the corrective action was contrary to the Commission's or OMB's information quality guidelines. You may also submit an e-mail copy of the written appeal if you wish. This optional e-mail copy should be sent directly to DataQualityAppeal@fcc.gov.

Sincerely,



Thomas J. Navin
Chief, Wireline Competition Bureau

⁸ *In the Matter of 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*, GN Docket No. 07- 45 (rel. April 16, 2007).

⁹ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*, WC Docket No. 07-38 (rel. April 16, 2007).



Complaint:

The FCC's 200K Definition of Broadband Harms America's Digital Future: America's Video Barrier.

FCC is Violating the Statutory Requirements Under Section 706 of the Telecommunications Act of 1996 --- High-Quality Video in Both Directions.

Details: Comments: FCC Proposed Cable Franchise & FCC Chairman Martin's Speech. <http://www.newnetworks.com/summaryfranchise.htm>

Chairman market writes:

“The Commission has noted that telephone company entry into the video marketplace has the potential to advance both the goals of broadband deployment and video competition.”

COMPLAINT: The FCC is violating the statutory requirements under section 706 of the Telecommunications Act of 1996 because it has defined broadband as 200K in one direction – a speed that can not originate and receive high-quality video. Moreover, the definition the FCC has accepted contradicts the definition of broadband used by state laws since 1992 – 45mbps capable of high-definition video.

Without the proper definitions in place, the FCC has presented a distorted, biased, and inaccurate picture of broadband in America. Tied to the definition, the FCC has neglected to properly examine the entire history of fiber optic broadband and has covered over the fact advanced networks were not deployed in a timely and reasonable fashion.

Obviously by redefining broadband, the FCC has been able to include inferior services to bulk up their 'broadband penetration' numbers to the detriment of the American economy. Had the FCC used the actual definition of broadband, it would have highlighted how America's phone companies had been able to pull a bait-and-switch – selling DSL over copper wiring as America's standard---A service that was considered inferior in 1992 because it can not handle high-definition video signals.

We are requesting that the FCC immediately open a proceeding to receive input fixing the FCC's definition.

1) The FCC has defines broadband as 200K in one direction – 1/5 of the speed of 1 mbps. From the Section 706 Fourth report: <http://www.fcc.gov/broadband/706.html>

“The FCC retains its existing definition of advanced telecommunications capability for purposes of this report. The terms “advanced telecommunications capability” and “advanced services” are used to describe services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) of 200 kilobits per second (kbps) or greater. The term “high speed” is used to describe services with more than 200 kbps capability in at least one direction. “

This definition fails to meet the statutory requirement of the Telecommunications Act, Section 706, which defines broadband as the ability to offer high-quality video in both directions --- Video the operative word.

2) The Telecommunications Act of 1996 states that advanced telecommunications is defined as being able to “originate and receive high-quality voice, data, graphics, and video telecommunications”.

SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES.

(c) DEFINITIONS- For purposes of this subsection: (1) ADVANCED TELECOMMUNICATIONS CAPABILITY- The term `advanced telecommunications capability' is defined, 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.

<http://www.newnetworks.com/FCCfilings.html#706>

This is as compared to the definition of most state laws, which defined broadband as capable of “(45mps) and higher... that will allow residential and business customers to receive high definition video and to send and receive interactive (i.e., two way) video signals.” (NJ state law written 1993)

"Broadband Digital Service — Switching capabilities matched with transmission capabilities supporting data rates up to 45,000,000 bits per second (45mps) and higher, which enables services, for example, that will allow residential and business customers to receive high definition video and to send and receive interactive (i.e., two way) video signals."

Section 706 of the Telecom Act required the FCC to see if advanced telecommunications capability was being deployed on a timely basis.

SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES.

(b) INQUIRY- The Commission shall, within 30 months after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

3) Failure to properly track advanced capabilities happened on multiple levels.

The FCC has not taken this definition seriously. It is now using a sub-standard definition of broadband, 200K in one direction to inflate the broadband numbers. This definitional redo has had dire consequences on America's broadband. We are currently 15th in broadband because the standard by which we judge broadband has essentially cost us a generation of economic technological growth.

According to an op-ed in the San Francisco Chronicle , “The Internet accelerates while U.S. trails behind”, by Charles H. Giancarlo of Cisco, Thursday, December 14, 2006, other the international organization, OECD, has defined broadband as faster than 1.5 mbps.

“According to the Organization for Economic Co-operation and Development (OECD), the United States is no better than middle-of-the-pack regarding the availability of broadband network access. "Broadband" is loosely defined as any high-speed network connection typically faster than 1.5 megabits per second....”

Korea, Japan and other Asian countries are already deploying 100 Mbps in both directions for about \$40. Thus, 200Kbps is 500 times slower than what is already available in Asia. (Most US customers' DSL is less than 1 mbps which is about the same price as Asia and is 100 times slower.)

As Teletruth has pointed out multiple times, the FCC has failed to examine the “timely and reasonable’ deployment of advanced networks, which is defined as “originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.”

If the FCC examined this criteria as laid out by the Telecom Act of 1996, it would find that the US has less than 1 million fiber optic services capable of this standard. AT&T, Verizon, BellSouth, Qwest and the other incumbents have both been allowed ignore this critical difference – HD quality video in both directions.

Worse, the Bells’ current plans still fall short of the commitments and standards they had promised in 1992! By 2006, America should have had 86 million households rewired with fiber to the home.

Current law in New Jersey is Commitments for 80% to be done by 2006, 100%, by 2010.<http://www.newnetworks.com/OpportunityNewJerseyFiber.htm>

Pacific Bell was to have 5.5 million homes by 2000. <http://www.newnetworks.com/cabroadbandpacbell.htm>

Had the previous administrations' of the FCC administered the definition of broadband as defined in the Telecom Act, America would have had a bar to reach. Now we have a dump-all definition that helps only the phone companies who haven't deployed.

In another adjacent complaint we outline the FCC's Second Video Competition report in 1995, outlines millions of households that should have been rewired.

<http://www.teletruth.org/docs/FCCvideocompetition1995.doc>

We can not blame this current administration for the mistakes of the past --- i.e., that the FCC ignored thousands of documents to claim that deployment was being doing in a timely and reasonable manner. But it is now time to move America into the 21st century. Having both accurate data as well as fixing the definitional underpinnings is essential.

From: Bruce Kushnick [dataqualityform@fcc.gov]
Sent: Sunday, February 18, 2007 3:42 AM
To: Karen Wheelless
Subject: Data Quality Comment

DATE SENT:
Sun Feb 18 03:42:16 2007

NAME:
Bruce Kushnick

INFORMATION PRODUCT TITLE:
All Broadband Reports, Trends in Telephone Service, every broadband press release.

INFORMATION PRODUCT DATE:
1998-2007

SPECIFIC COMMENT:
200K is not 'advanced network' it fails the definition as set forth for advanced network services in section 706 of the telecom act which clearly states that the service must be capable of high quality video in both directions. 200K can no supply high quality video.

SPECIFIC DATA QUALITY GUIDELINE VIOLATED:
It is a) not accurate, b) not objective, c) not reliable to create new policies. It is alloed for bad policy to be created and therefore it's utility is harmful.

ACTION FCC NEEDS TO TAKE:
Redo the definition to a speed that can handle high-quality video in both directions.

Our complaint can be viewed at:
<http://www.newnetworks.com/fcccomplaint200k.htm>

PREFERRED METHOD OF RESPONSE:
email

POSTAL ADDRESS:

EMAIL ADDRESS:
bruce@teletruth.org