**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion | ) | GN Docket No. -20-269 |
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**REPLY COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL**

The Utilities Technology Council ("UTC") hereby files the following reply comments in response to the Commission's Notice of Inquiry in the above-referenced proceeding.[1] UTC echoes the comments on the record urging the Commission to continue to consider fixed and mobile broadband services separately and not as substitutes for purposes of its Section 706 analysis. UTC also supports the comments that urge the Commission to increase the benchmark minimum speed of 25/3 Mbps that has become outdated as the definition of broadband service. Instead, UTC reiterates its recommendation that the Commission should adopt a definition of broadband of at least 50 Mbps, and it should include additional metrics, such as symmetrical speeds, low latency, affordability and reliability.

The current pandemic has only further underscored the importance of broadband access, and utilities are responding by deploying robust, reliable and resilient fiber-based infrastructure that is capable of meeting increasing demand for higher speeds at affordable prices. An increasing number of utilities are providing broadband in unserved areas, and the Commission's Connect America Fund and Rural Digital Opportunity Fund policies are helping to make that happen. Utilities are enablers of broadband, and the Commission should continue to pursue pro-competitive deregulatory policies that promote investment in broadband in unserved areas by utilities and others. The Commission should remove regulatory barriers preventing or discouraging utilities from providing broadband and reject comments

[1] *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 20-269, Sixteenth Broadband Deployment Report Notice of Inquiry, FCC 20-112 (rel. Aug. 19, 2020) (NOI).

that would increase pole attachment regulations on utilities.

## I. Introduction and Interest of UTC in the Proceeding

UTC is the international association for the telecommunications and information technology interests of electric, gas and water utilities and other critical infrastructure industries. UTC's members own, manage and control extensive wireline and wireless communications systems that they use to support the safe, reliable and secure delivery of essential energy and water services. Many utilities also have deployed broadband networks and are providing wholesale and retail communications services, including unserved and underserved areas. Utilities are uniquely positioned to provide broadband because they are located in unserved areas and they are committed to the communities they serve. Not only do utilities provide broadband to communities in their own service areas, but they provide broadband services to nearby communities as well. In addition, utilities provide backbone connectivity and infrastructure access, thereby enabling the provision of broadband services to unserved and underserved areas by third parties.

This is the Commission's Sixteenth Broadband Progress Report Notice of Inquiry and UTC has been an active participant in many of the previous inquiries pursuant to Section 706 of the Telecommunications Act. UTC has supported the Commission's efforts to accelerate the deployment of broadband services on a reasonable and timely basis and it continues to do so now. Although the Commission has concluded in its 2020 Broadband Progress Report that broadband deployment is occurring on a reasonable and timely basis, it recognizes that more work needs to be done to close the digital divide in rural and Tribal areas, where 22% and 28% of Americans respectively still lack access to 25/3 Mbps speeds.[2] This disparity is troubling, especially now that Americans are more dependent on broadband, because they are working from home and they need remote health care and distance learning during the pandemic.

[2] *Id.* at ¶5*, citing Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 19-285 at ¶94 (2020) ("2020 Broadband Progress Report").

In order to ensure that broadband is deployed to all Americans on a reasonable and timely basis, UTC urges the Commission to measure broadband using faster broadband speeds, lower latency and greater affordability and reliability. Doing so, will ensure that consumers are getting the broadband services that they want and need, consistent with Congress's directive in Section 254 of the Communications Act that rural areas enjoy access to broadband services that are reasonably comparable in terms of quality and cost to the services that are available in urban areas.

Moreover, the Commission should consider fixed broadband services separately from mobile broadband services for purposes of its Section 706 assessment. Mobile broadband service is not a substitute for fixed broadband services and they are not interchangeable services. Fixed broadband provides greater capacity and is better suited for certain applications such as distance learning and telemedicine. While mobile broadband certainly has its advantages, it also has its limitations in terms of reliability and data caps. Accordingly, the Commission should continue to assess mobile separately from fixed broadband deployment.

As the Commission considers policies to promote broadband deployment, it should consider utilities as the solution and a reliable source of information for broadband access. Utilities around the country are demonstrating that they are enablers of broadband. As the Commission is aware, electric cooperatives and public power utilities are providing broadband in rural areas and isolated communities across the country, and investor-owned utilities are enabling broadband by deploying fiber to unserved areas and partnering with third-party communications services providers who provide retail broadband services. The investments by these utilities is improving the quality of life in the communities they serve by promoting economic development, improving education and health care, and enhancing electric services. Utilities are providing real solutions to the challenges of broadband access, which is why UTC has been an active participant throughout the Commission's various broadband proceedings.

UTC has consistently advocated for policies that promote opportunities for utilities to provide or facilitate broadband deployment, and the results of the Commission's Connect America Fund Phase II auction prove that utilities are leading the way in promoting truly robust broadband access. More than 35

utilities were awarded over $260 million in the CAFII auction, and utilities represented the single largest number of gigabit tier bidders in the auction. Now, as the Commission begins the Rural Digital Opportunity Fund, many more utilities are planning to compete for access to funding to further promote broadband access to unserved areas and to offer gigabit services.

Utilities recognize that deploying fiber-based networks is a cost-effective approach to promoting broadband access, and they are discovering that consumers want and need robust broadband services to work from home and to support the ever-increasing number of digital devices that are accessing the internet. Utilities are uniquely positioned to promote broadband access because many of them are based in the areas that are currently unserved and their service areas extend into remote areas that lack access to broadband. They have been able to deploy broadband networks on a cost-effective and sustainable basis, and they are offering broadband services that are affordable and provide robust speeds, low latency, high reliability and resiliency. Customer take rates and consumer satisfaction are high, and subscriptions to higher-speed packages are the norm even when slower speeds and lower cost packages are offered. Now with the current pandemic, demand is only increasing in terms of both bandwidth and subscriptions. That has led to further deployment and additional investment by utilities.

Rather than imposing regulations on utilities, the Commission should adopt policies that encourage broadband deployment by utilities and remove barriers to investment. In that regard, the Commission should reject comments that demand that utilities pay for the cost of pole replacements that are necessary to accommodate access by third party commercial communications service providers. These pole replacements would not have occurred but for the need to accommodate additional pole attachments, and the costs are attributable to and should be borne by the new attaching entity. This has been the Commission's long standing policy, and it is solidly based upon the clear statutory authority in Section 224(h) with regard to pole modifications. There is no legitimate basis in law or policy for shifting pole replacement costs on to utilities. Doing so will not promote broadband access into unserved areas, and cable television operators have refused to deploy broadband into unserved areas where utilities have offered free pole attachments. The simple fact is that pole attachments (and related make ready costs)

compose a small fraction of the overall cost of broadband deployment and providing service. Pole attachments do not represent a barrier to broadband access, and shifting these costs on to utilities will more likely result in unjust enrichment for cable operators and carriers that replace poles in areas that already have access to broadband services. These kind of promises of broadband access in return for pole attachment regulations have been made before without any corresponding tangible evidence of improving broadband access. The Commission should not allow itself to be misled again and unfairly subsidize the cost of broadband deployment through pole attachment regulations.

## II. The Commission Should Ensure Access to Broadband Services with Faster Symmetrical Speeds, Lower Latency and Greater Affordability and Reliability.

In the NOI, the Commission proposes to take a holistic view of progress in the deployment of advanced telecommunications capability that considers a range of speeds provided over both fixed and mobile technologies, as opposed to only a single benchmark speed.[3] Specifically, the Commission proposes to use the same metrics as it used for the 2020 Broadband Progress Report, including the 25/3 Mbps fixed advanced telecommunications capability speed benchmark, plus 10/1 Mbps, 50/5 Mbps, 100/10 Mbps, and 250/25 Mbps for fixed broadband services.[4] In that regard, the Commission specifically invited comment on its proposal to maintain the 25/3 Mbps benchmark for fixed services.[5]

UTC continues to believe that the Commission should increase the 25/3 Mbps benchmark for fixed services.[6] The comments on the record also support increasing the minimum speeds to meet the Commission's definition of broadband services for purposes of assessing broadband deployment. These comments agree that the Commission's current metrics have become outdated.[7] As NRECA succinctly

[3] *Id.* at ¶6.

[4] *Id.* at ¶9.

[5] *Id.* at ¶11.

[6] *See e*.g. Comments of the Utilities Technology Council in GN Docket No. 16-245 at 4 (filed Sept. 6, 2016) and Comments of the Utilities Technology Council in GN Docket No. 18-238 at 2 (filed Oct. 1, 2018)(suggesting that the minimum speeds for broadband services should be 50 Mbps).

[7] *See e.g.* Comments of Common Cause, Next Century Cities, and Public Knowledge in GN Docket No. 20-269 at

explained, "[r]elying on the five-year-old 25/3 Mbps definition is not appropriate, especially in the current pandemic which has forced a massive migration to remote work, distance learning and telehealth."[8]

Even the Commission recognizes that "the vast majority of Americans, surpassing 85% of the population in 2018, now have access to fixed terrestrial broadband service at 250/25 Mbps."[9] That is clearly at odds with the Commission's current 25/3 Mbps benchmark, and utilities are reporting that 100 Mbps is typically the most popular subscription among consumers in their service territories, further underscoring the need to increase the Commission's benchmark for broadband services.[10] Other comments observe that higher speeds are necessary to support multiple connections within the home and/or video streaming, which would suggest that the Commission increase the benchmark to at least 50 Mbps.[11]

In addition to speed, other comments supported additional metrics. Some supported factoring for symmetrical speeds, which also reflects consumer demand for faster upload speeds for file sharing and similar applications that are becoming increasingly prevalent as more people work from home.[12] Finally, numerous comments support including latency, affordability and reliability as additional metrics for

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18-19 (filed Sept. 18, 2020). *And see* Reply Comments of New America Foundation in GN Docket No. 20-269 at 5-8 (filed Oct. 5, 2020)(underscoring that "increased needs and a faster broadband marketplace demonstrate that the Commission should increase the benchmark for broadband service.")

[8] Comments of the National Rural Electric Cooperative Association in GN Docket No. 20-269 at 9 (filed Sept. 18, 2020).

[9] 2020 Broadband Progress Report, at ¶3.

[10] Utilities have reported to UTC that consumers are trending towards higher speed service offerings, even when lower speed packages are available, and that typically consumers subscribe to 50 Mbps speeds or higher. This indicates that consumers want and need faster services than 25/3 Mbps.

[11] Comments of Adtran in GN Docket No. 20-269 at i and 6 (filed Sept. 18, 2020)(suggesting increasing the speeds to 50/5 Mbps); and Comments of New America's Open Technology Institute and Access Now in GN Docket No. 20-269 at 2, and 9-11 (filed Sept. 18, 2020).

[12] Comments of the Fiber Broadband Association in GN Docket No. 20-269 at 18 (filed Sept. 18, 2020)(emphasizing that the "Commission should set a gigabit symmetric benchmark to ensure all-fiber infrastructure is being deployed to all Americans in a reasonable and timely manner.") *See also* Reply Comments of New America's Open Technology Institute and Access Now in GN Docket No 20-269 at 6 (filed Oct. 5, 2020)(stating "at the very least, symmetrical and higher broadband speeds are required so that consumers can engage in multiple online activities at once.")

assessing broadband deployment in recognition that "quality of service is a key component of access to broadband."[13] UTC supports these comments. Given the widespread availability of higher speeds across the country as well as consumer demand for higher speeds and lower latency, the time has come for the Commission to increase the minimum speed for broadband services to at least 50 Mbps and the benchmark should include other metrics, such as symmetrical speeds, latency, and affordability.

## III. The Commission Should Continue to Assess Fixed Broadband and Mobile Broadband as Separate Services, Not as Substitutes for Each Other.

In the NOI, the Commission invited comment on whether it should continue to evaluate mobile and fixed broadband services separately and not as substitutes for each other.[14] UTC believes that the Commission should continue to assess mobile and fixed broadband services separately for evaluating broadband deployment for purposes of Section 706. Comments on the record also agree that these services are not substitutes for each other. As they explain, fixed services are distinctly different from mobile services in several significant respects, including capacity and pricing.[15] Moreover, the types of use for mobile and fixed services differ as well.[16] As NTCA explains in its comments, "lower capacity mobile services suitable for social media or similar "on-the-go" uses is not as suitable for many, more involved uses at home or work – especially over the course of weeks or months when data caps (or

[13] *See e.g.* Comments of Common Cause, Next Century Cities, and Public Knowledge in GN Docket No. 20-269 (filed Sept. 18, 2020), *citing* GAO, *Broadband Internet FCC's Data Overstate Access on Tribal Lands*, 22 (2018) https://www.gao.gov/assets/700/694386.pdf. (supporting metrics of "latency, data caps, denials of service, and network vulnerability and resilience" when assessing broadband deployment.) *See also* Reply Comments of the Massachusetts Department of Telecommunications and Cable in GN Docket No. 20-269 at 9-10 (filed Oct. 5, 2020)(emphasizing that "the FCC should consider affordability when evaluating the availability of advanced telecommunications capability.")*And see* Comments of NRECA in GN Docket No. 20-269 at 6-7 (stating that "affordability is a key component" for the Commission's assessment and adding that cooperative utilities "collectively serve 93% of persistent poverty counties as identified by the U.S. Census Bureau.")

[14] *NOI* at ¶10.

[15] Comments of NTCA—The Rural Broadband Association in GN Docket No. 20-269 at 2-4 (filed Sept. 18, 2020)(noting that one mobile nationwide provider reports typical download speeds of 5 to 12 Mbps and upload speeds of 2 to 5 Mbps for its 4G LTE depending on location, which is dramatically different from the speeds available on fixed broadband service networks).

[16] *Id.* at 3.

throttling under "unlimited plans") can quickly come into play or when the use requires the security of a wired connection."[17] Therefore UTC echoes the comments on the record that support the Commission's continued treatment of fixed and mobile broadband services as separate and distinct from each other.

[17] *Id.*

**WHEREFORE**, the premises considered, UTC respectfully requests that the Commission adopt rules consistent with these reply comments regarding the Commission's Sixteenth Broadband Deployment Report Notice of Inquiry..

Respectfully,

**Utilities Technology Council**

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