

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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	)	GN Docket No. 09-137
Such Deployment Pursuant to Section 706 of	)	
the Telecommunications Act of 1996, as	)	
Amended by the Broadband Data	)	
Improvement Act	)	
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
International Comparison and Survey	)	
Requirements in the Broadband Data	)	GN Docket No. 09-47
Improvement Act	)	

**COMMENTS OF FREE PRESS – NBP Public Notice #23**

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**COMMENTS OF FREE PRESS – NBP Public Notice #23**

Free Press respectfully submits these comments in response to the Notice of Inquiry, DA 09-2458, GN Docket Nos. 09-137, 09-51, 09-47 (“NBP Public Notice #23”), released November 20, 2009 by the Federal Communications Commission (“FCC” or Commission”), which sought comment on the Draft Study “Broadband in America – Where It Is and Where It Is Going (According to Broadband Service Providers),” produced by the Columbia Institute for Tele-Information (“CITI”) at Columbia Business School (“CITI study” or “draft study”). On August 6, 2009, the Commission requested CITI “conduct an independent, outside expert review of projected deployment of new and upgraded networks.”<sup>1</sup> This review was to focus on “an analysis

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<sup>1</sup> “Columbia Institute for Tele-Information to Conduct Independent Review of Telecom Capital Expenditures to Assist FCC,” FCC News Release, August 6, 2009.

of the public statements of companies as to their future plans to deploy and upgrade broadband networks, as well as evaluate the relationship between previous such announcements and actual deployment.”<sup>2</sup>

For brevity, our topline answers to the six questions posed in the public notice are below. Further explanation is provided in the subsequent text.

*Q1. Does the study accomplish its intended purposes?*

A1: Yes. The CITI study comprehensively reviews the publicly available information on network deployment, both present and future. The study relies on the financial information provided by publicly traded companies and where possible investment analyst estimates.

*Q2. Does the study provide a complete and objective survey and review of the subject matter?*

A2: Yes. The draft study appears to present the data in an objective format and offers extensive information on the investment plans of Internet access providers. However, we do note certain omissions below.

*Q3. How accurately and comprehensively does the study examine the projected deployment of new and upgraded broadband networks?*

A3: The CITI study compiles the publicly available plans of virtually every large and mid-size broadband provider. For smaller providers, the authors offered aggregated figures where possible.

*Q4. How accurately and comprehensively does the study examine the nature and future of broadband adoption?*

A4: The CITI study does not offer comprehensive information on the nature or future of broadband adoption. The draft study does however offer investment analyst forecasts on future

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<sup>2</sup> *Id.*

adoption of wireline and wireless Internet access but such information cannot be considered comprehensive. The August 6 release did not include any specific request for information related to adoption so we cannot determine whether comprehensive adoption information was meant to be included.

*Q5. How much weight should the Commission give to this study as it develops a National Broadband Plan?*

A5: The Commission should give considerable weight to the CITI study. In doing so, the Commission will gain a deeper understanding on topics such as competition, investment and broadband speeds and pricing. Numerous findings have a direct bearing to the Commission's ongoing Omnibus Broadband Initiative.

*Q6: Please provide any other comments on the CITI study that you deem relevant*

A6: See below.

## **I. The CITI Study Can Inform Commission Decision-Making in Numerous Areas**

The CITI study of network deployment, both past and future, has direct bearing on numerous ongoing Commission proceedings. The questions surrounding deployment, particularly of high-capacity next generation networks, and underlying motivations and incentives are critical. As we and many other commenters have shown in the thousands of pages of comments filed in the instant and past proceedings, the U.S. broadband market is unquestionably a stagnant duopoly that lacks meaningful competition. As a result, upgrades are performed at a leisurely, incremental pace, and prices remain far above the appropriate competitive level. The CITI study confirms this broadband environment and also offers data supporting many of the facts we, and others, have presented to the Commission over the course of these proceedings.

**A. The CITI Study Reinforces the Fact that Broadband Competition Has Not Materialized**

Despite the Commission reviewing and requesting comment on a litany of issues surrounding broadband, one underlies them all – whether the U.S. broadband market is or is not adequately competitive. This matters, because suboptimal competition will lead to delayed investment and deployment, and will result in higher prices along with an overall reduction in consumer surplus.

Over the past three years, we have offered the Commission a mountain of evidence illustrating what consumers know all too well.<sup>3</sup> The average consumer has at best two choices for broadband, and those offerings are marketed in a bundled strategy that downplays and in some cases altogether avoids price competition. As directed, the draft CITI study simply offers reviews of deployment plans for a wide-range of technologies while passing little judgment on their substitutability. The only technology that even presents the appearance of intermodal competition to ADSL or FTTx service and cable modem service is mobile wireless. In this case, the draft study rightly notes that many “analysts expect wireless substitution to have a relatively minor impact on wired broadband adoption”<sup>4</sup> The CITI study’s authors point to a recent Morgan Stanley report offering a number of reasons why this is the case and the prediction that wireless substitution will occur in no more than about 5 percent of households within *five* years.<sup>5</sup> We have previously offered numerous arguments why even this low estimate seems generous.<sup>6</sup>

As the Commission examines and characterizes the broadband market, it should keep in mind that any determination of competition is appropriately performed at the local level. While

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<sup>3</sup> See e.g. Reply Comments of Free Press, In the Matter of *A National Broadband Plan for Our Future*, p. 37, n. 89 (July 21, 2009) (“*NBP Reply Comments*”).

<sup>4</sup> CITI Study at 60.

<sup>5</sup> *Id.* at 61.

<sup>6</sup> See e.g. *NBP Reply Comments* at 40-44.

the draft study spent considerable time discussing the percentage of a company's footprint that would be upgraded, the authors failed to ascertain where these upgrades would overlap.<sup>7</sup> Undoubtedly the primary question is how much of the country will experience both FTTx upgrades from ILECs and DOCSIS 3.0 upgrades from cable operators? One financial analyst finds that 60% of the country will not see phone company fiber upgrades and thus "cable modem service is looking more and more like it will be the only game in town."<sup>8</sup> Our own research confirms that as the market for Internet access moves to higher speeds, cable modem service may become a functionally superior product to both traditional copper DSL and mobile or fixed wireless services.<sup>9</sup> That is, the applications of the future will require a robust infrastructure, one that ADSL and wireless technologies will not be capable of offering. If this is the case, a large portion of the U.S. will move from a broadband duopoly to a broadband monopoly. Something cable companies are quick to point out to investors.<sup>10</sup> As documented in the draft CITI study, the deployment plans and statements from the companies themselves<sup>11</sup> indicate that this outcome is likely. This should be of the utmost concern to the Commission. The majority of consumers

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<sup>7</sup> CITI Study at 51-53.

<sup>8</sup> Eric Savitz, "Cable Vs. Wireless: Guess Which Is Growing Faster," *Barron's Tech Trader Daily*, Aug. 21, 2009.

<sup>9</sup> See e.g. Comments of Free Press, 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, as Amended by the Broadband Data Improvement Act, A National Broadband Plan for Our Future*, GN Docket Nos. 09-137, 09-51, pp. 48-50 (Sept. 4, 2009) ("706 Comments").

<sup>10</sup> See e.g. "Comcast Corporation Q1 2009 Earnings Call Transcript," *Seeking Alpha*, April 30, 2009. ("one of the reasons we think it is so important is for the vast majority of our footprint -- maybe 75 percent to 80 percent of our footprint -- the RBOCs can't compete when we go up to 50 meg and beyond.")

<sup>11</sup> See e.g. Vishesh Kumar, "When Is the Cable 'Buy' Set to Come?" *Wall Street Journal*, April 3, 2008. ("[Verizon's] territory, primarily the Northeast, overlaps with 34% of Comcast's areas and 43% of Time Warner's, and AT&T's U-Verse will overlap with 30% and 42% of each respective cable company's neighborhoods")

may very well be left with a single viable provider of broadband Internet access in the not-so-distant future.

**1. A Direct Effect of Suboptimal Broadband Competition is Reduced Investment**

In previous filings, we supplied the Commission with extensive information concerning the crucial issue of investment, both past and present.<sup>12</sup> The draft study provides the Commission with estimates on future investment. The results are in line with our own analysis. A “sharp decrease” is predicted for Internet access providers’ capital expenditures from 2008 to 2011.<sup>13</sup> The telephone industry will see declines from \$26.3 billion to \$17.4 billion and the cable industry \$13.1 to \$12.2.<sup>14</sup> If the duopoly broadband market structure were poised to experience an explosion of intermodal competitors, as the industry has repeatedly claimed,<sup>15</sup> the incumbents would surely be ramping up investment to compete with these new entrants. Yet, the study finds no such occurrence. Furthermore, the draft study is only looking at the *absolute* levels of investment. That is, the analysis does not consider investment as a percentage of revenues, nor does it consider “net” investment (or gross investment less any necessary replacement investment).

Certainly, Internet access providers, both wireline and mobile, will see continued revenue growth. Thus, if we project investment by the most common metric used by industry – capital expenditures as a percentage of revenue – the data projections would show even steeper declines over the next five years. Additionally, the same metric would provide further insight into the

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<sup>12</sup> See e.g. *NBP Reply Comments* at 13-35.

<sup>13</sup> CITI Study at 64. The study provides further estimates for the years beyond 2011 but these are simply based on average analyst estimated growth rates for prior years and are thus excluded.

<sup>14</sup> *Id.*

<sup>15</sup> See e.g. *NBP Reply Comments* at 38-39.

current investment levels cited in the CITI study.<sup>16</sup> Likewise, the draft study is also quiet on the issue of capital asset depletion, which will continue to occur at a considerable pace. As the Commission determines the details of a National Broadband Plan, it must recognize that the lack of meaningful competition means future investment will continue to be sub-optimal.

The current casual approach to investment is no more apparent than in cable operators upgrades to DOCSIS 3.0. We previously illustrated to the Commission how U.S. operators deliberately slowed the DOCSIS 3.0 implementation process. Unlike their overseas counterparts, U.S. operators had scant need for further upgrades, facing only a single ADSL provider in most markets.<sup>17</sup> We noted further that DOCSIS 3.0 upgrade costs are extremely low, despite offering a considerable increase in advertised speed.<sup>18</sup> The draft study confirms these facts, noting that the upgrade is “a relatively quick and inexpensive task”.<sup>19</sup> The study cites Charter Communications, who estimated the upgrade cost to be “\$8 to \$10 per customer” and an investment analyst pegging the number at \$15.<sup>20</sup> Thus, one month’s cable modem service rate for a typical consumer would more than fully recoup the costs of the upgrade.<sup>21</sup> Nonetheless the pricing for these higher speeds is anything but unchanged.

As cable operators introduce new speed tiers following the “quick and inexpensive task” of upgrading to DOCSIS 3.0, consumers are met with sticker shock. These plans can easily run above \$100.<sup>22</sup> Unfortunately, the draft study failed to note the cost of these new speed tiers.<sup>23</sup>

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<sup>16</sup> *Id.* at 29.

<sup>17</sup> *706 Comments* at 52-54.

<sup>18</sup> *Id.* at 37-41.

<sup>19</sup> CITI Study at 21.

<sup>20</sup> *Id.* at 21-22. These figures exclude the cost of a cable modem rental fee, whose costs are recouped through a separate line on a customer’s bill.

<sup>21</sup> *See 706 Comments* at 41-43.

<sup>22</sup> *See e.g. Id.* at 51.



These high costs are simply an outgrowth of a larger problem – a lack of price competition. We have repeatedly noted this in filings before the Commission.<sup>24</sup> The draft study does offer insight on this larger issue stating, “service providers seem reluctant to compete purely on price...which can lead to higher ARPUs”.<sup>25</sup> A look at the financial material of broadband providers will reveal exactly that. The focus is on increasing the average revenue per user (ARPU). In other words, increasing the monthly bill of consumers. The draft study quotes an investment analyst noting that the “[s]table duopolies structure should ensure rational pricing, and we believe that 4G wireless is unlikely to disrupt wireline market”.<sup>26</sup> That is, the lack of broadband competition will ensure that prices stay high for a population that increasingly views broadband as an absolute necessity.<sup>27</sup>

## **2. Numerous Facts Within the Draft Study Reinforce the Need for a Negative Section 706 Finding**

The CITI study offers further evidence that “advanced telecommunications capability” is not being deployed “in a reasonable and timely fashion.” That is, the CITI study offers data that indicates that the so-called “Section 706 test” is not being met.<sup>28</sup> As we have explained, a plain reading of the law demonstrates the need for the Commission to focus on the *actual* downstream

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<sup>23</sup> CITI Study at 38-39.

<sup>24</sup> See e.g. 706 Comments at 50-52.

<sup>25</sup> CITI Study at 70.

<sup>26</sup> *Id.* at 62.

<sup>27</sup> See e.g. Reply Comments of Free Press, 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, as Amended by the Broadband Data Improvement Act, A National Broadband Plan for Our Future*, GN Docket Nos. 09-137, 09-51, pp. 7-9 (Oct. 2, 2009).

<sup>28</sup> 47 U.S.C. § 1302(b).

and upstream speeds experienced by consumers.<sup>29</sup> The CITI study confirms our long held contention that broadband deployment is neither “reasonable” nor “timely”.<sup>30</sup> This contention takes into account the marketing of broadband capabilities to consumers. One of the strongest findings in the report is that “[s]ervice providers’ claims for broadband speeds should be taken with great skepticism”.<sup>31</sup> The draft study notes that since price competition is not occurring providers “have an incentive to make optimistic claims for broadband speeds.”<sup>32</sup> The National Broadband Plan team has themselves found that average speeds are routinely 50 percent of the advertised rate.<sup>33</sup> With the Telecommunications Act of 1996, Congress indicated its preference for a focus on actual, not advertised, connection capabilities.<sup>34</sup> Thus, broadband providers’ advertised speeds are not an accurate indicator for a Section 706 determination.

In order to ensure the standard set by Congress was forward looking, the definition for “advanced telecommunications capability” included the ability to “originate and receive high-quality...video”<sup>35</sup> The CITI study provides further evidence that the overwhelming majority of current *advertised* upstream speeds offer nowhere near the capability necessary to perform such a task. The authors find that by 2013 “high definition television (HD TV) will require between 9

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<sup>29</sup> *706 Comments* at 15-17.

<sup>30</sup> See e.g. Comments of Consumers Union, Consumer Federation of America, and Free Press, 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 (May 16, 2007).

<sup>31</sup> CITI Study at 69.

<sup>32</sup> *Id.* at 70.

<sup>33</sup> Commission Open Meeting Presentation on the Status of the Commission's Processes for Development of a National Broadband Plan, Sept. 29, 2009, Slide 26.

<sup>34</sup> 7 U.S.C. § 1302(d)(1)

<sup>35</sup> *Id.*

and 19 mbps”.<sup>36</sup> This aligns with our own findings.<sup>37</sup> The *current* failure of the market to meet the Section 706 standard notwithstanding, the increasing trend of Internet multitasking and numerous concurrent Internet users all within a single household indicate that a future failure of the Section 706 test is certain, absent some radical change in the broadband market. As the Commission moves towards a Section 706 determination (along side its formulation of the National Broadband Plan), it should keep in mind the evidence offered by the CITI study illustrating that the standard set in Section 706 is not being met.

The authors of the CITI study delivered what they were asked. Namely, the authors have provided a detailed analysis of network deployment and relevant financial information. The results are not surprising and simply confirm a reality, which has become abundantly clear. Consumers are faced with slow speeds, high prices and few choices. All the while broadband providers continue to earn higher profits while reducing investment. Undoubtedly, industry commenters will attempt to spin the draft study’s data and conclusions. But the Commission must focus on the overarching task at hand -- increasing competition and ensuring that consumers have access to robust affordable broadband Internet access.

Respectfully Submitted,

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<sup>36</sup> CITI Study at 50. This assumes considerable improvements in compression standards.

<sup>37</sup> *706 Comments* at 12.