

Refocusing the FCC's Section 706 Reports

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Introduction

Section 706(b) of the Communications Act requires the Federal Communications Commission ("FCC") to conduct an annual inquiry to "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion."¹ If the Commission's determination is negative, then the statute directs the agency to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."²

In carrying out this statutory mandate, the FCC's *Section 706 Reports* serve two primary purposes. First, the FCC's annual inquiry provides a citable source of data on the current state broadband deployment each year. Second, as the Commission is the ultimate arbiter of how to interpret these data, these *Reports* have provided the Commission with the opportunity to use Section 706 as an independent source of statutory authority to regulate broadband by finding that broadband is not being deployed on a reasonable and timely basis. The latter use is stereotypical in political terms—no Democratic chairman after William Kennard has found that broadband is being deployed on a reasonable and timely basis, and every Republican chairman, since 1996, has.³ But with the Supreme Court's recent decisions in *West Virginia v. EPA*, 597 U.S. 697 (2022) and *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), along with the Sixth Circuit's recent ruling in *FCC v. FCC (In re MCP)*, 124 F.4th 993 (6th Cir.), *reh'g denied*, *Ohio Telecom Ass'n v. FCC (In re MCP No.*

185), 2025 U.S. App. LEXIS 5666 (2025), striking down the Biden Administration's attempt to resurrect Net Neutrality rules, the Commission's ability to use Section 706 for regulatory overreach is surely curtailed.

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While the Commission has used its *Section 706 Reports* off and on over the last two decades to engage in regulatory chicanery, in my view the FCC's *Section 706 Reports* have never satisfied the actual analytical tasks required by the statute. First, the FCC has yet to formulate reasonable and consistent definitions of the terms "reasonable" and "timely." Republicans tend to view reasonable and timely deployment as a process, while Democrats view it as endpoint. Second, because of the first failure, the Commission has never sensibly linked what "immediate actions" might be required if broadband is not being deployed on a reasonably and timely basis. Yet, a plain reading of Section 706 seems to demand that the Commission do these very things.

To ensure the Commission's Section 706 inquiries serve a useful purpose, this PERSPECTIVE proposes to reframe the Section 706 inquiry in a manner consistent with the underlying economics and broadband deployment policies. As explained below, the classification of "reasonable and timely" deployment under Section 706 should be a question of whether *government policy* effectively and promptly enhances economic incentives in areas where the market alone won't support deployment.

Since the government identifies unserved areas and sets the subsidy level, a deployment gap is a policy failure, not a market failure.

Reasonable and Timely

Profit-maximizing broadband providers deploy broadband networks when it is profitable to do so. That is, under prevailing economic and regulatory conditions, broadband is deployed to location i when (the present value of) expected revenue equals or exceeds expected cost, or $R_i - C_i \geq 0$, or more simply $M_i \geq 0$. There are geographic locations in the U.S., usually rural areas where revenues are low and costs are high, where this condition cannot be satisfied ($M_i < 0$), leaving some locations without private broadband services. From the perspective of private incentives, these deployment gaps are expected and reflect reasonable behavior under prevailing conditions.

For decades now, federal, state and local governments have focused on getting broadband services to unserved locations with schemes such as the FCC's Connect America Fund ("CAF"), the Rural Digital Opportunity Fund ("RDOF") and, more recently, the forty-billion-dollar Broadband Equity, Access and Deployment ("BEAD") program managed by the NTIA. There are others; the GAO counted more than 133 funding programs administered by 15 different agencies.⁴

The FCC and NTIA programs more-or-less follow a similar procedure:

1. Locations where private incentives are insufficient to deploy broadband services are identified (unserved areas);
2. Subsidy dollars are given to broadband providers to close the revenue-cost gap for those unserved locations.

That is, in all areas where $M_i < 0$, the government aims to alter the economic incentives with subsidy (S_i) such that $M_i + S_i \geq 0$ (and ideally = 0). We can think of the subsidy term S_i as being broader than a simple subsidy; it might include some other regulatory intervention that improves the deployment margin, or maybe even reduce it. In any case, S_i represents an action by the government to move an unserved area into served status.

This description of the government's efforts to close the broadband gap is important. I am unaware of any scenario where an unserved location was excluded from subsidies because the government concluded the location was unserved because private sector providers were being unreasonable or dragging their feet. In effect, the government has taken responsibility for unserved areas.

What, then, is the difference in incentives between an unserved and served area? When $M_i < 0$, the relevant case, then either $M_i + S_i \geq 0$ or $M_i + S_i < 0$. So what's the problem? The problem is the choice of S_i .⁵ Since the government identifies unserved areas and sets the subsidy level, a deployment gap is a *policy failure*, not a market failure.

Section 706(a), in my reading, makes this clear by stating,

The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans....⁶

It is the “Commission” and the “State Commission(s)” that “shall encourage the deployment.” Since “price cap regulation” and “competition” shrink margins (and subsidizing competition is welfare reducing), the relevant policy prescriptions are “regulatory forbearance” and “remov[ing] barriers to infrastructure investment,” the latter of which includes subsidized deployment, as the fixed cost of deployment may be construed as a barrier to entry (though some might contest that fact).⁷

If broadband is not being deployed in a reasonable and timely manner, then the explanation for that shortfall must be found through a comprehensive examination of the public policies shaping broadband deployment incentives—subsidies and regulations. This perspective shifts accountability from private sector decision-making to the government programs designed to bridge economic gaps where market forces alone prove insufficient.

Considering all of this, here is a draft definition of “reasonable and timely” that may help redirect the Section 706 inquiry in a useful direction:

Broadband deployment is reasonable and timely when it occurs as quickly as prevailing economic incentives permit, and when government action promptly and efficaciously enhances economic incentives in areas where private investment alone is not economically viable.

The first part is near axiomatic—we can trust broadband providers to seek profit and do what is reasonable and timely under that objective. The second part targets the government actions responsible for getting deployment to uneconomic areas. Such subsidy (and regulatory efforts) should be “prompt” (*i.e.*, timely) and efficacious (*i.e.*, reasonable). That is, subsidies should be adequate to ensure deployment at specific locations, subsidies should not exceed (some sensible measure of) the net present value of a broadband connection, even if some locations are unserved, and subsidized modalities should be the most cost-effective solutions considering the cost-quality tradeoff.

Since the government sets both the subsidy level, the schedule, and the service modality, as well as what regulations influence deployment incentives, if broadband is not deployed in a reasonable and timely fashion, then that’s a policy failure.

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Thus, going forward, the FCC’s *Section 706 Reports* should focus on the study of government programs, lingering regulatory entry barriers, and market shrinking interventions—such things that impede the deployment of broadband to unserved areas where private incentives are inadequate. Any “immediate action” should target policy failures and their remedies and not impose margin-shrinking policies like Title II regulation. Past decisions the government has made, even if today seemingly imprudent, might be determined to be “reasonable” and “timely” at the time, and the FCC can and should make that assessment.

Reasonable Subsidy Levels

The word “reasonable” is sensibly assigned an economic meaning, and my definition requires the “efficacious” (efficient and effective) enhancement of economic incentives. The subsidy should not exceed the expected net benefits of providing access, especially when subsidy budgets are limited. What are the expected benefits of a broadband connection? Despite billions of dollars spent to deploy broadband, the FCC, the RUS, or the NTIA have never provided an estimate of the benefit of

deployment to compare to the subsidies provided. It's all benefits and no costs, which of course is untrue.

Was the USDA's grant of \$3.9 million per unserved location a reasonable thing to do?⁸ Of course not. The nine homes affected by the USDA grant could have been given free Starlink service for 10 years for only about \$133,000; instead, the USDA gave \$34.9 million for a hybrid fiber-coax network. (Starlink service would cost 0.4% of the fiber-coax build.)

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Is it reasonable to spend \$150,000 to provide broadband to a single household?⁹ No. On the positive side, state organizations charged with assigning BEAD funds must set an "Extremely High-Cost Per Location Threshold," and that is a sensible start (but not an end) to a better subsidy policy.¹⁰ It may be reasonable to cap the spending at the equivalent price of LEO satellite services for some number of years where adequate capacity is now (or soon to be) available. Subsidizing LEO networks to increase capacity is a reasonable option if the costs remain below alternative modalities.

An economic meaning of "reasonable" points to the efficient and effective use of what subsidy dollars are available. Say the total subsidy amount is \$40 billion. If fiber is required for a subsidy, then the subsidy amount might be exhausted if 70% of unserved homes are served. Alternately, 90% of unserved homes can be

served if other modalities are used in especially high-cost areas. It is "reasonable," therefore, to subsidize the most efficient modalities, irrespective of whether a particular modality can satisfy some arbitrary definition of "broadband." A 90/10 Mbps connection is better than having no connection at all (and 90/10 Mbps satisfies nearly all use cases of activities with some social relevance that would justify a subsidy).

If Congress provides insufficient funds to complete the task, then the FCC may (or must) determine that broadband deployment to unserved areas is "reasonable" even if the task is unfinished—unless, of course, it wants to declare that Congress's choices, or its own, were unreasonable.

Also, if Congress intended all Americans to have broadband today, then it would have provided sufficient subsidy dollars and demanded reduced regulation (which, it has, though this has largely fallen on deaf ears) to make that happen. Even BEAD's \$42.5 billion, on top of CAF, RDOF, and a host of other billion-dollar broadband subsidy programs, appear insufficient to complete that task (a bit shocking, honestly). We might interpret Congress' allocated funding as being the "reasonable" level of funding to get the job done. If Congress provides insufficient funds to complete the task, then the FCC may (or must) determine that broadband deployment to unserved areas is "reasonable" even if the task is unfinished—unless, of course, it wants to declare that Congress's choices, or its own, were unreasonable.

Timely Deployment

As for "timely," this goes to the pace at which the subsidy dollars are converted into connections for unserved locations. On this point, let's review

the past. In 2014, the FCC established the CAF to comprehensively reform

... its Universal Service Fund (USF) and Intercarrier Compensation (ICC) systems to accelerate broadband build-out to the approximately 23 million Americans (as of December 31, 2013) who lack access....¹¹

The \$10 billion fund subsidized the deployment 10/1 Mbps broadband. Six weeks after the CAF II was finalized, the FCC raised the definition of broadband to 25/3 Mbps. As a result, the connections to be subsidized by the program would not be “broadband” connections from that date forward.¹² Former ranking FCC leadership now refer to the program as “graft” and “a mistake,” opinions never mentioned in a *Section 706 Report*.¹³

Then, in 2020, the FCC established its \$20.4 billion RDOF program to close the broadband gap.¹⁴ This was a 10-year program with completion milestones (depending on some conditions). In the cleanest cases, 100% deployment to unserved locations was required by the sixth year (or eight years if location counts change).¹⁵ These milestones provide some context for “timely.” Again, the minimum service level was 25/3 Mbps, which was later updated to 100/20 Mbps. Making matters worse, about 36% of RDOF funding is in default – that’s 1.9 million connections (nearly 5 million people) stuck in the unserved bucket, which may be attributed, in part, to a flawed mechanism for selecting subsidy recipients.¹⁶ That’s a policy failure, not a market failure.

In 2021, Congress allocated \$42.5 billion to the BEAD program to close the broadband gap. Four years later, few if any dollars have been spent to build broadband network. It is reasonable to question whether this has been a “timely” process, but it is the government’s timeline. Also, the BEAD program imposed all sorts of non-statutory demands on BEAD funding, raising the cost of deployment, thus reducing the effectiveness of subsidy dollars.¹⁷ Thus, the NTIA is also guilty of policy failures.

Section 706 Reports should account for the fact that the money has been allocated—believed at the time to be sufficient to provide service to all households—and the government controls the timeline when it determines whether broadband has or has not been deployed in a reasonably and timely fashion. The FCC’s most recent *Section 706 Report* (2024) certainly did not do so.¹⁸

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These programs are just a sample. Billions more have been spent to close the broadband gap by both federal and state governments. Nonetheless, the FCC’s 2024 *Section 706 Report* observes,

As of 2022, [] approximately 24 million Americans lack access to fixed broadband¹⁹

That’s up a million since 2013. Nowhere in the Commission’s 339-page 2024 *Section 706 Report* is a mention, much less a thorough evaluation, of why, despite several multi-billion-dollar programs to close the broadband gap, the number of Americans without broadband has risen by nearly 5% since 2013.²⁰

It is easy to look at the FCC’s efforts, along with the RUS and NTIA, as failed policies. In many cases, it would be hard to argue against that interpretation. Yet, the FCC (and others) will subsidize broadband at some service level that is both available and cost-effective at the time. Over time, these service levels may fall short of new standards.

Such transitions need not be a failure. In fact, any subsidized broadband connection brought into service should qualify as being deployed in a reasonable and timely manner, perhaps for a decade or more, irrespective of its speeds. The subsidy decision was “reasonable” at the time it was made. Perhaps in the case of CAF, where those close to the issue felt the speed limits were too low at the time, the FCC may view such actions as a failure, but such decisions were made under the prevailing constraints at the time.

Given the billions of government subsidies splashed around over the years and the number of unserved people rising, perhaps the purpose of Section 706 Reports deserves reconsideration. The partisan back-and-forth regarding reasonable and timely deployment is as evident as it is silly.

Immediate Action

The FCC’s 2024 Section 706 Report concludes that “advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion” because

... although deployment of advanced telecommunications capability continues to increase overall, these advancements are not occurring quickly enough to bring such capability to all Americans. Broadband has not been deployed to far too many Americans, particularly when evaluated under our long-overdue new benchmark of 100/20 Mbps.²¹

Given the above, we must ask—whose responsibility is that? Who decided it was the government’s responsibility to close the broadband gap? Who picked the dollar amounts of the subsidy programs? Who set the decade-long schedules for the RDOF program? Who failed to properly vet the subsidy recipients?

Who chose the subsidized speed level and then changed the speed threshold? Who sets the dollar amount for BEAD? Who postpones the spending of subsidy dollars for years? Who gave \$34.9 million to serve nine homes? Who imposed (and has tried to impose) policies that hurt economic incentives? And who said CAF would “accelerate broadband build-out to the approximately 23 million Americans [] who lack access,” yet apparently failed? Congress and the administrative agencies did. All this should be sorted out in the *Section 706 Reports*.

The government has taken on the responsibility (and Section 706 requires it do so) for closing the digital divide by enhancing the economic incentives to deploy networks in otherwise uneconomic areas. That responsibility should be made explicit, as does my definition of “reasonable and timely.” If the government’s choices are not “reasonable and timely,” then the FCC should make clear that it believes that to be the case and set forth a strategy about how it plans to do better. The FCC’s *Section 706 Reports* would be more useful for doing so.

As for the speed thresholds, the FCC needs to develop a framework for quantifying the economic value of higher speeds. What’s the dollar-equivalent of a move from 25/3 Mbps to 100/20 Mbps? Does that increase in value, which is likely small, worth some subsidy level S_i to remedy? These are the sorts of questions the *Section 706 Reports* should contemplate.

The conclusion of the FCC’s 2024 *Section 706 Report* exposes the absurdity of the current approach. Based on its determination of unreasonable and untimely deployment, where a portion of those connections have been subsidized in the past, the FCC says it will “take immediate action,” yet all the Commission can come up with is to say “[w]e intend to do just that.”²² *That sentence ends the 2024 Report*. The FCC has no serious plan to address the real cause of a lack of broadband deployment because it has no operative concept about real causes. My

approach hopefully will nudge the government into the correct mindset.

Conclusion

Given the billions of government subsidies splashed around over the years and the number of unserved people rising, perhaps the purpose of *Section 706 Reports* deserves reconsideration. The partisan back-and-forth regarding reasonable and timely deployment is as evident as it is silly. This PERSPECTIVE provides a framework with which to reframe the discussion toward the ineffectiveness of government programs and policies designed to extend broadband to economically challenging areas. With billions of dollars allocated to the task of closing the gap, and with all unserved areas being the target of such subsidies, whether broadband is deployed on a reasonable and timely basis is the responsibility of the government. The fact it is taking years to start spending BEAD money, largely because of extraneous and partisan nonsense, is certainly may be viewed as “untimely,” but those failures were the government’s failures.

With billions of dollars allocated to the task of closing the gap, and with all unserved areas being the target of such subsidies, whether broadband is deployed on a reasonable and timely basis is the responsibility of the government.

Future *Section 706 Reports* would better serve policymakers and the public by providing a clearer picture of where government intervention is succeeding or failing in bridging the digital divide, since the government is fully responsible for doing so, as its subsidy programs acknowledge. What the government views as “reasonable” is established in the dollars allocated to the task and how they are spent, and what it views as “timely” is set by its own timeline and definitions of broadband service.

NOTES:

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¹ 47 U.S.C. § 1302(b).

² *Id.*

³ See, e.g., L.J. Spiwak, *What Are the Bounds of the FCC's Authority over Broadband Service Providers? – A Review of the Recent Case Law*, 18 JOURNAL OF INTERNET LAW 1 (2015); L.J. Spiwak, *UStelecom and its Aftermath*, 71 FEDERAL COMMUNICATIONS LAW JOURNAL 39 (2019).

⁴ *A National Strategy Needed to Coordinate Fragmented, Overlapping Federal Programs*, Government Accountability Office GAO-23-106818 (May 10, 2023) (available at: <https://www.gao.gov/assets/gao-23-106818.pdf>).

⁵ The same sort of logic could be applied to government-induced entry barriers.

⁶ 47 U.S. Code § 1302(a).

⁷ See, e.g., P.R. Fee, H.M. Mialon, and M.A. Williams, *What is a Barrier to Entry?* 94 AMERICAN ECONOMIC REVIEW 461-465 (2004); G.J. Stigler, *THE ORGANIZATION OF INDUSTRY* (1968).

⁸ The USDA gave Cordova Telephone Cooperative, Inc. (Alaska) \$34,905,000 to serve 9 households (28 people). Data available at: <https://www.usda.gov/sustainability/infrastructure/broadband/reconnect-loan-and-grant-program/reconnect-announcements/reconnect-program-fy-2023-funding-opportunity-announcement-awardees>.

⁹ Yet, such a high expenditure, and even higher, have been observed. Testimony of Phoenix Center Chief Economist Dr. George S. Ford before the House of Representatives Committee on Energy and Commerce - Subcommittee on Oversight and Investigations, HEARING ON “CLOSING THE DIGITAL DIVIDE: OVERSEEING FEDERAL FUNDS FOR BROADBAND DEPLOYMENT” (May 10, 2023) (available at: <https://phoenix-center.org/Ford-Testimony-ClosingDigitalDivide-20230510.pdf>).

¹⁰ H. Farrow, *About NTIA's BEAD Funding High-Cost Threshold*, CostQuest (April 27, 2023) (available at: <https://www.costquest.com/resources/articles/about-ntias-bead-funding-high-cost-threshold>).

¹¹ *Connect America Fund (CAF)*, Federal Communications Commission (available at: <https://www.fcc.gov/general/connect-america-fund-caf>).

¹² J. Neenan, *'It Was Graft': How the FCC's CAF II Program Became a Money Sink*, BROADBANDBREAKFAST (November 9, 2023) (available at: <https://broadbandbreakfast.com/it-was-graft-how-the-fccs-caf-ii-program-became-a-money-sink>).

¹³ *Id.*

¹⁴ *Auction 904: Rural Digital Opportunity Fund*, Federal Communications Commission (available at: <https://www.fcc.gov/auction/904>); *Successful Rural Digital Opportunity Fund Auction to Expand Broadband to Over 10 Million Rural Americans*, Federal Communications Commission (December 7, 2020) (available at: <https://docs.fcc.gov/public/attachments/doc-368588a1.pdf>).

¹⁵ *Rural Digital Opportunity Fund*, Universal Service Administrative Co. (Last visited: February 21, 2025) (available at: <https://www.usac.org/high-cost/funds/rural-digital-opportunity-fund>).

¹⁶ M. Abarinova, *A Rocky Road Lies Ahead for RDOF as Money Drains Away*, FIERCENETWORK (February 20, 2025) (available at: <https://www.fierce-network.com/broadband/rocky-road-lies-ahead-rdof-money-drains-away>).

¹⁷ See, e.g., G.S. Ford, *Economic Benefits of Fiber Deployment: A Review of The Brattle Group Study*, PHOENIX CENTER POLICY BULLETIN NO. 73 (March 2025) (available at: <https://phoenix-center.org/PolicyBulletin/PCPB73Final.pdf>); G.S. Ford, *Middle-Class Affordability of Broadband: An Empirical Look at the Threshold Question*, PHOENIX CENTER POLICY BULLETIN NO. 61 (October 2022) (<https://phoenix-center.org/PolicyBulletin/PCPB61Final.pdf>).

¹⁸ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, FCC 24-27, 2024 SECTION 706 REPORT, ___ FCC Rcd. __ (rel. March 18, 2024) (available at: <https://docs.fcc.gov/public/attachments/FCC-24-27A1.pdf>).

NOTES CONTINUED:

¹⁹ *Id.* at ¶61.

²⁰ Moreover, a part of the broadband gap arises from the definition of “being served.” The FCC determines this threshold, and it does so somewhat arbitrarily. How does the broadband definition link to availability, to subsidy requirements, and to the pace of deployment? What is the definition’s impact on past programs with lower thresholds? These are important questions the FCC should be answering. Yet, such things largely go unmentioned. There’s barely a mention of CAF or RDOF in the 2024 Section 706 Report.

²¹ 2024 Section 706 Report, *supra* n. 18 at ¶222.

²² *Id.* at ¶226.