

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Establishing the Digital Opportunity Data Collection	)	WC Docket No. 19-195
	)	
Modernizing the FCC Form 477 Data Program	)	WC Docket No. 11-10

**REPLY COMMENTS OF  
ACA CONNECTS – AMERICA’S COMMUNICATIONS ASSOCIATION  
ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**



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**I. INTRODUCTION AND SUMMARY**

ACA Connects – America’s Communications Association (“ACA Connects”) hereby submits reply comments in response to the Federal Communications Commission’s (“Commission’s”) Second Further Notice of Proposed Rulemaking regarding the implementation of the Digital Opportunity Data Collection (“DODC”).<sup>1</sup> By collecting polygons of fixed broadband coverage, the DODC has the potential to increase the granularity and accuracy of areas where

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<sup>1</sup> *Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79 (Aug. 6, 2019). The Report and Order (“*DODC Report and Order*”) is contained in paras. 10-75. The Second Further Notice of Proposed Rulemaking (“*FNPRM*”) is contained in paras. 76-135.

ACA Connects filed initial comments in response to the *FNPRM*. See Comments of ACA Connects – America’s Communications Association on the Second Further Notice of Proposed Rulemaking, WC Docket Nos. 19-195, 11-10 (Sept. 23, 2019) (“ACA Connects Comments”).

providers make service available, especially when coupled with the use of crowdsourcing. At the same time, the development of polygons by providers and use of third-party inputs are a new and somewhat unknown undertaking, both for the Commission and for providers.<sup>2</sup>

Accordingly, to account for the benefits and costs of the new collection, ACA Connects urged in its initial comments that the Commission establish a regulatory regime that gives providers flexibility in creating polygons and provides assistance to smaller providers, encourages all providers to submit complete and accurate data, and permits providers to respond appropriately to certified crowdsourced submissions. As we discuss herein, most commenters agreed with some or all aspects of ACA Connects' approach.<sup>3</sup> For instance, fixed service providers recommended the Commission either not prescribe or prescribe limited requirements at most for creating polygons because the technical characteristics of network technologies vary materially, as do network deployments using the same technology. In addition, the data that providers have about the availability of their networks differ significantly. Further, many commenters noted that smaller providers will be challenged in complying with any requirements for creating polygons because of their limited capabilities and resources.

Commenters also made clear that crowdsourcing can be valuable only where it is credible, and they called on the Commission to establish a process to properly vet all crowdsourced filings. Moreover, even where the information is credible, many commenters explained that it would be burdensome for providers to respond immediately to such third-party

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<sup>2</sup> In addition, the DODC imposes a mandate on providers to report polygons, but provides them with no direct benefit.

<sup>3</sup> See, e.g., Comments of NCTA – The Internet & Television Association, WC Docket Nos. 19-195, 11-10 (Sept. 23, 2019) (“NCTA Comments”); Comments of Verizon, WC Docket Nos. 19-195, 11-10 (Sept. 23, 2019) (“Verizon Comments”); Comments of WTA – Advocates for Rural Broadband, WC Docket Nos. 19-195, 11-10 (Sept. 23, 2019) (“WTA Comments”); Joint Comments of USTelecom Association – The Broadband Association, ITTA – The Voice of America’s Broadband Providers and the Wireless Internet Service Providers Association, WC Docket Nos. 19-195, 11-10 (Sept. 23, 2019) (“Joint Providers Comments”).

input, especially because crowdsourcing imposes an unfunded mandate on providers. As such, they urged the Commission to balance the benefits of collecting crowdsourced information with the burdens placed on providers in responding to them, including by giving providers more time and flexibility in how to respond.

Additionally, stakeholders, including ACA Connects, supported the concept of developing geolocation information; however, many commenters agreed with ACA Connects that there are still many unanswered questions about the nature of a geolocation data collection and that the costs to the Commission and providers appear to be great – running into tens of millions of dollars initially and many millions annually. Further, nothing in the comments of the proponents of the geolocation data collection ameliorated these concerns. As such, ACA Connects continues to urge the Commission to proceed deliberately before adopting this additional collection.

Finally, most commenters agreed that the Commission should eliminate the Form 477 collection once the DODC is well-underway. ACA Connects therefore stands by its proposal that the Form 477 collection end two years after the DODC has been initiated unless the Commission makes an affirmative determination that the benefits of the collection continue to outweigh the costs.

## **II. ADDITIONAL TECHNICAL STANDARDS FOR FIXED BROADBAND REPORTING**

The *FNPRM* seeks comment on measures the Commission should adopt to ensure it collects quality data about broadband coverage while minimizing reporting burdens and on an enforcement regime that reflects these objectives.<sup>4</sup> Below, ACA Connects discusses the key elements of a DODC implementation regime as informed by the comments filed by other stakeholders.

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<sup>4</sup> *FNPRM* at paras. 77, 83.

## **A. Relief for Smaller Fixed Providers**

In the *FNPRM*, the Commission cites to Connected Nation's concern that smaller fixed service providers "will struggle to comply" with the DODC "unless they get assistance in creating broadband coverage polygons."<sup>5</sup> From reports from its members, only a limited number of smaller fixed providers broadband today produce (or have software with the capability to produce) polygons and can dedicate personnel and resources to this task. Other commenters too highlighted these concerns.<sup>6</sup> For instance, WTA, in calling for the Commission to assist smaller providers in complying, noted that even for rural local exchange carriers that have invested in geospatial mapping technologies, the new collection "will likely take time and could put a strain on limited staff and financial resources."<sup>7</sup> Additionally, Smithville Telephone Company explained in its comments that, based on its experience in developing geospatial information, it would take most providers many months to collect the data required to represent a service area in a shapefile format.<sup>8</sup>

To address part of this problem, in its initial comments, ACA Connects proposed that the Commission give very small providers the option of taking an additional six months to comply, which will enable them to understand and adjust to the new requirements and learn from the experiences of providers that have already filed.<sup>9</sup> It also will ensure that they will have access to

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<sup>5</sup> *Id.* at para. 78.

<sup>6</sup> See also H.R. 3162, the Broadband Data Improvement Act of 2019, introduced by Representative Rodgers, which directs the Commission to collect broadband coverage data in shapefile format and authorizes expenditures of approximately \$30 million annually by the Commission for a third party to, among other things, "provide geographic information system data processing assistance to providers that require assistance."

<sup>7</sup> WTA Comments at 4.

<sup>8</sup> Comments of the Smithville Telephone Company, WC Docket Nos. 19-195, 11-90, at 11 (Sept. 23, 2019).

<sup>9</sup> ACA Connects distinguished among smaller providers, noting that smaller providers who are not filing High Cost Service Broadband ("HUBB") data do not have personnel that

help from the limited number of “mapping” vendors in the market who are expected to dedicate their own limited resources on their larger customers first. ACA Connects also recommended that the Commission define very small providers as those with fewer than 1,500 subscribers<sup>10</sup> – as opposed to 250 subscribers – because, based on discussions with ACA Connects members, providers with such a small subscriber base do not have staff dedicated solely to regulatory compliance or cannot afford to hire consultants or counsel to handle this work, and thus cannot expeditiously undertake the new collection without sacrificing work on other projects.

In addition to giving very smaller providers additional time to file, the Commission should permit all smaller providers to file in the KMZ format.<sup>11</sup> As ACA Connects explained in its initial comments, providers with fewer than 100,000 subscribers are more likely to lack the resources necessary to report in the ESRI format and should be given the option file in the KMZ format.<sup>12</sup> ACA Connects therefore recommends the Commission permit providers with fewer than 100,000 subscribers to file in formats of their choosing and without having to include attributes.

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could be dedicated to overseeing the data collection and the work of third parties and to reporting the polygons.

<sup>10</sup> The Commission suggests that a very small provider have “less than 250 subscribers.” *DODC Report and Order* at para. 17.

<sup>11</sup> ACA Connects Comments at 6. ACA Connects thus opposes NCTA’s call for the Commission to require all fixed providers to use compatible GIS technology. NCTA Comments at 5. For similar reasons, ACA Connects opposes a request from the North Carolina Department of Information Technology Broadband Infrastructure Office. Reply Comments of North Carolina Department of Information Technology Broadband Infrastructure Office, WC Docket Nos. 11-10, 19-195, at 2 (Sept. 20, 2019) (“[A]cceptable formats should only be shapefile or file geodatabase, both being fully attributed. Accepting KML, CAD, or other formats becomes problematic.”).

<sup>12</sup> ACA Connects Comments at 6. ACA Connects also requests that the Commission ease restrictions for these smaller providers associated with the inclusion of attributes of polygons. ACA Connects notes that broadband mapping legislation introduced in Congress – S. 1822 and H.R. 4229 (the Broadband Deployment Accuracy and Technological Availability Act) – provides assistance to providers with fewer than 100,000 broadband connections.

Further, ACA Connects supports the Commission’s proposal to provide help-desk assistance and clear instructions to fixed broadband providers.<sup>13</sup> However, a help-desk will only be useful for smaller providers (those with fewer than 100,000 subscribers as noted above), if it provides technical assistance in helping them create shapefiles.

As Connected Nation recommended in its comments, based on its experience in Kansas – where “more than 50% of providers required some level of GIS processing assistance” – to “ensur[e] the accuracy of small provider reporting and to minimize the burden,” the Commission should provide GIS processing assistance to providers with fewer than 20,000 connections.<sup>14</sup> Connect Nation asserted that, without such assistance, there will be much more unintentional misreporting, leading to a more inaccurate map of broadband coverage.<sup>15</sup> ACA Connects agrees with Connected Nation that such an outcome is unacceptable, especially where the fix is known and straightforward to implement. ACA Connects therefore supports providing such assistance, although such help should be extended to all providers with fewer than 100,000 subscribers.

## **B. Creating “Consistent” Fixed Broadband Polygons**

To help ensure it obtains consistent reports from fixed broadband providers, the *FNPRM* requests comment on whether and how it should prescribe rules for reporting fixed broadband coverage.<sup>16</sup> Yet, the Commission also recognizes that it will face challenges in establishing any such requirements because determining the area where service is available “is highly

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<sup>13</sup> *FNPRM* at para. 78.

<sup>14</sup> Comments of Connected Nation, Inc., WC Docket Nos. 19-195, 11-90, at 4-5 (Sept. 23, 2019) (“Connected Nation Comments”).

<sup>15</sup> *Id.* The Commission also would be required by pending legislation in the House of Representatives (H.R. 3162) to collect broadband coverage data in shapefile format and “provide geographic information system data processing assistance to providers that require assistance.”

<sup>16</sup> *FNPRM* at para. 79.



idiosyncratic and determined by multiple factors.”<sup>17</sup> In addition, as ACA Connects commented, because the DODC is a completely new undertaking, neither the Commission nor providers are certain what issues may arise as polygons are created.<sup>18</sup> ACA Connects therefore proposed in its initial comments that the Commission should only indicate that providers can:

- rely on homes passed databases or network maps to create polygons so long as they make good-faith efforts to ensure they are reasonably accurate; and
- make reasonable predictive judgments about where service is available and the performance attributes of such service.<sup>19</sup>

The Commission can then use crowdsourcing and challenge processes to make polygons more granular and accurate.

Many other commenters concurred in this approach or one relatively similar. NCTA explained that, because providers have the burden to show their polygons accurately represent where they make service available, the Commission need not mandate how providers create them, including by restricting the type of source data used or the buffer distance.<sup>20</sup> Verizon submitted similar comments, urging the Commission to not apply “an imposed framework that does not align with how their systems are designed, or how they determine their own coverage

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<sup>17</sup> *Id.*

<sup>18</sup> ACA Connects Comments at 7.

<sup>19</sup> *Id.*

<sup>20</sup> NCTA Comments at 5-6. NCTA also requested that the Commission make clear that it has authority “to require a provider to explain how its shapefiles were created.” *Id.* at 6. Connected Nation also relied on this Commission authority in its comments, stating “[s]ince service providers will justifiably be held accountable for the accuracy of the information they report, this fact alone will force great attention to detail and internal scrutiny of the coverage polygons.” Connected Nation Comments at 2. WTA too opposed Commission adoption of a fixed distance for a buffer, explaining it was “dependent on multiple factors including technology, geography, and provider resources.” WTA Comments at 5.

areas for their own business purposes.”<sup>21</sup> Alexicon commented that adding any of the contemplated specifications raised in the *FNPRM* would “serve to increase cost and burden for reporting carriers, and will add little, if any, benefit in terms of broadband accuracy.”<sup>22</sup>

NTCA, however, advocated for a somewhat different approach. It averred in its comments that a weakness in the Form 477 reports is the “lack of clear norms or direction with respect to how availability is to be measured.”<sup>23</sup> It therefore proposed the Commission adopt “clearly articulated common technical standards applicable to specific technologies used to provide service.”<sup>24</sup> For fixed providers, NTCA set forth examples of standards that would apply to wireline providers, fixed wireless providers, and satellite providers.<sup>25</sup>

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<sup>21</sup> Verizon Comments at 2-3. Accordingly, Verizon argued that the Commission permit providers to develop polygons based on either service locations or network topology and use “the same reasonable buffers that they already use internally for commercial purposes.” *Id.* at 3.

<sup>22</sup> Comments of Alexicon Consulting, WC Docket Nos. 19-195, 11-10, at 4-5 (Sept. 23, 2019) (“Alexicon Comments”). Alexicon instead argued that the Commission should rely on providers accurately reporting and verifying, review by the Universal Service Administrative Corporation (“USAC”), and crowdsourcing. *Id.* Alexicon was particularly concerned about the harm to smaller providers and urged all providers be permitted to report “subject to a determined margin of error.” *Id.* at 5.

<sup>23</sup> Comments of NTCA—The Rural Broadband Association, WC Docket Nos. 19-195, 11-10, at 3 (Sept. 23, 2019) (“NTCA Comments”). See also Comments of GVNW Consulting, Inc., WC Docket Nos. 19-195, 11-10, at 3 (Sept. 23, 2019) (“[A] carrier...should base that reporting on its network design and standard engineering specifications and the type of technology the carrier is using to provide the broadband service.”). The Joint Providers Comments proposed a somewhat different approach, requesting the Commission establish “safe harbor” buffer zones based on the density of the areas, but provide flexibility in the types of polygons a provider can create based on the technology used to provide the service. Joint Providers Comments at 21.

<sup>24</sup> NTCA Comments at 3. Even while noting the natural incentive for providers to file accurate information, Connected Nation too called for the Commission adopt “a limited set of standards for polygon generation for each service delivery technology type (fixed wireless, coaxial cable, DSL, fiber to the premises, etc.)—a metaphorical ‘funnel’ for each technology type that provides limited flexibility on the techniques that can be used to generate location-specific polygons.” Connected Nation Comments at 3.

<sup>25</sup> NTCA Comments at 4. NTCA also emphasized that the Commission prohibits a provider from claiming an area is served unless it assumes adoption by “*each and every serviceable location*” in that area. *Id.* (emphasis in original).

Other commenters sought an even more restrictive approach. The City of New York, for example, argued that “the Commission should specify and standardize the technical parameters for the various broadband providers’ deployment and availability data.”<sup>26</sup> The City supported inclusion of “any and all” technical parameters raised in the *FNPRM*.<sup>27</sup>

ACA Connects appreciates the requests by NTCA, the City of New York, and other stakeholders for the Commission to adopt some type of more prescriptive requirements for creating and reporting polygons. However, because the Commission has no experience with the new collection, it is premature to assert that fixed providers will not make all reasonable efforts to submit polygons that accurately indicate where they make service available. It also is premature because the Commission has no indication of what problems may arise with creating and reporting polygons. Moreover, should there be issues, they may be addressed by crowdsourcing and by using a challenge process before determining eligible areas for universal service funding. Finally, no stakeholder seeking prescriptive rules discusses the burdens that would be imposed on providers and how the benefits they contend will flow from prescriptive

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<sup>26</sup> Comments of the City of New York, WC Docket Nos. 19-195, 11-10, at 2 (Sept. 23, 2019) (“City of New York Comments”).

<sup>27</sup> *Id.* Other commenters called for the Commission to require providers to submit polygons that “incorporate assessors’ parcels,” Comments of the California Public Utilities Commission, WC Docket Nos. 19-195, 11-10, at 4 (Sept. 24, 2019) (“CPUC Comments”), or pricing data, e.g., Comments of New America’s Open Technology Institute and Public Knowledge, WC Docket Nos. 19-195, 11-10, at 2-5 (Sept. 23, 2019). ACA Connects submits that incorporating assessors’ parcels would impose a material burden on smaller providers, even if they only needed to submit “a flat file of Assessor Parcel Numbers.” See CPUC Comments at 5. As for including pricing data in the collection, providers already make this information publicly available pursuant to the Transparency Rule. 47 C.F.R. § 8.1. In addition, the West Virginia Broadband Enhancement Council “suggests requiring ISPs to validate the accuracy of its [sic] address data.” Comments of the West Virginia Broadband Enhancement Council, WC Docket Nos. 19-195, 11-10, at 5 (Sept. 23, 2019) (“WVBEC Comments”). However, this is a needless step because the Commission already requires providers to bear the burden of submitting accurate data. Further, many small providers will not use address databases, but rather network maps, to create their polygons.

rules will outweigh these costs.<sup>28</sup> In sum, the Commission may someday need to establish additional mandates for how providers are to create and report polygons, but these mandates should be based on proven problems instead of hypothetical concerns.

### **C. Enforcing the Collection**

In its initial comments, ACA Connects explained that the Commission's regime for enforcing the DODC should reflect that the collection represents a major change for providers in collecting data and reporting polygons. In addition, although the DODC is mandatory like the Form 477 broadband deployment collection, for many providers, it does not result in any benefit.<sup>29</sup> Accordingly, ACA Connects asserted that it would be more productive for the Commission to encourage and facilitate compliance than adopt a strict enforcement regime and that severe penalties should only be imposed where a provider's reports were intentionally and persistently inaccurate.<sup>30</sup>

Many commenters supported ACA Connects' enforcement approach, if not in detail then at least in concept. NCTA, for instance, urged the Commission to focus on correcting errors in reports rather than "punishing providers for good-faith mistakes."<sup>31</sup> The Joint Providers Comments also supported an enforcement regime that would not sanction providers for flawed reports submitted in good faith, but would impose sanctions against those that "fail to take their reporting obligations seriously or affirmatively manipulate the data being reported."<sup>32</sup> These

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<sup>28</sup> Highly prescriptive requirements also could result in providers reporting less information to the Commission.

<sup>29</sup> The DODC thus stands in contrast, for instance, to the HUBB collection, where providers receiving high-cost support linked to deployment obligations are required to file detailed deployment data. The DODC may indirectly benefit unsubsidized providers in high-cost areas where the Commission might provide support by preventing overbuilding.

<sup>30</sup> ACA Connects Comments at 9.

<sup>31</sup> NCTA Comments at 5.

<sup>32</sup> Joint Provider Comments at 25.

commenters further explained that such a regime will encourage providers to submit data promptly “rather than delaying submission for fear of making a costly error.”<sup>33</sup>

By contrast, Next Century Cities *et al.*, in their comments, asked the Commission to provide more intensive oversight.<sup>34</sup> This group of stakeholders proposed the Commission establish a “threshold for errors” (e.g., “fewer than one half of one percent of the number of premises covered”) and sanction providers that continuously exceed this threshold.<sup>35</sup> As discussed above, ACA Connects does not disagree with sanctioning providers that intentionally and persistently submit inaccurate data. However, there may be legitimate disputes about what constitutes an “error” and, even if this were agreed on, the Commission has no basis upon which to establish any numerical threshold for errors. As such, their proposal at least needs much more development. The Commission should table it for consideration at another time.

The City of New York recommends an even more severe enforcement regime, proposing that the Commission impose penalties for both intentional and unintentional reporting errors.<sup>36</sup> The City argues that errors that overstate coverage “significantly impact the City’s ability to accurately assess adoption and address gaps in service...and deter private investment from potential competitors.”<sup>37</sup> The City, however, provides no evidence to support its claim. In addition, the City seems to seek penalties of equal severity regardless of whether a provider overstates or understates coverage.

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<sup>33</sup> *Id.*

<sup>34</sup> Comments of Next Century Cities, *et al.*, WC Docket Nos. 19-195, 11-10 (Sept. 23, 2019).

<sup>35</sup> *Id.* at 5-6. Their proposed enforcement regime is somewhat similar to Alexicon’s “margin of error” approach the Commission chose not to adopt in the *DODC Report and Order*. See *DODC Report and Order* at para. 23. ACA Connects appreciates that these stakeholders recognize that smaller providers should be given additional time to correct errors.

<sup>36</sup> City of New York Comments at 3.

<sup>37</sup> *Id.*

Accordingly, ACA Connects continues to believe that the Commission can best achieve its goal of collecting quality data by encouraging and facilitating compliance and should target its enforcement regime to providers that intentionally and persistently fail to submit accurate data.

### III. USE OF CROWDSOURCING

There was substantial comment about the Commission's use of crowdsourcing to supplement broadband coverage polygons, especially on how to ensure such information is credible and does not impose onerous burdens on providers. ACA Connects submitted that crowdsourcing would be of no use unless the Commission ensured that public submissions raise accurate and legitimate complaints about a location or locations in a provider's polygon.<sup>38</sup> Thus, it proposed that the Commission require complainants disputing coverage (or coverage at a certain performance level) to certify that they have requested service (including, where appropriate, service at a specific reported performance level) and service was not provided within 10 business days of the request.<sup>39</sup> Moreover, it proposed that complainants disputing performance (e.g., speed), should be required to certify that they have service and have run industry-standard tests from their modem to the network at peak and other times over a period of a week or longer that indicate the performance is not as indicated by the provider's polygon.<sup>40</sup>

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<sup>38</sup> See ACA Connects Comments at 11-14 for a complete discussion of its crowdsourcing proposals.

<sup>39</sup> See *FNPRM* at para. 91. ACA Connects also recommended that each individual complaint that a third party may wish to bundle with other complaints and file in bulk should meet the requirements proposed herein. See *id.* at para. 97.

<sup>40</sup> ACA Connects also supported the Commission's proposal that complainants provide, in addition to their contact information, the address where the test occurred or the location of the test by geolocation if the address does not precisely indicate the location and other location-related information, the identity of the fixed provider, the relevant subscription's performance attributes, and the network technology. See *also* WVBEC Comments at 3 (calling on the Commission to create "a common set of criteria for submitting crowdsourced data," including verified location information, whether service is available, the identity of the providers, average speed test results taken at different times over a week, and the contracted speed).

In addition, ACA Connects set forth a three-step process for the Commission to address crowdsourced filings – one that balances giving credence to these filings with encouraging providers to comply with the DODC regime. First, for a valid individual complaint asserting a significant error exists for reported data for a particular location, the provider should, within at most six months of receipt of the complaint, either fix the error or file a response disputing the complaint. Where a provider disputes the complaint, the complainant then has the option of either resubmitting its complaint with additional information or escalating it by filing a formal complaint. Second, where there is a critical mass of complaints indicating a material problem exists about a distinct and similar issue in the reported data from a provider, USAC, after consultation with and assent from the Wireline Competition Bureau (“WCB”), should inform the provider and indicate that, within 60 days, the provider should inform the WCB and USAC that it has either fixed the errors or disputes the complaints. Where a provider disputes the complaints, the WCB can decide whether to investigate further.<sup>41</sup> Third, whenever the Commission has sufficient reason to believe a provider has intentionally and persistently filed inaccurate data, it should investigate further and bring a formal enforcement action.

Many other stakeholders urged the Commission to proceed with care in addressing crowdsourced filings. Like ACA Connects, NCTA explained that crowdsourcing can be useful so long as the data are reliable and relevant.<sup>42</sup> More specifically, NCTA noted that a crowdsourced filing could be most useful in indicating that service was not available to a location if it provided evidence that a request for service was actually denied.<sup>43</sup> NCTA,

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Additionally, a complainant currently taking service from a provider could allege that she/he has requested the higher performance service that is indicated by the provider’s polygon and was told such service is not available.

<sup>41</sup> In addition, a complainant can decide to file a formal complaint under existing Commission procedures.

<sup>42</sup> NCTA Comments at 9.

<sup>43</sup> *Id.* at 10.

however, cautioned against relying on crowdsourced information concerning the speed of service because online speed tests may not “control for factors outside the control of the provider.”<sup>44</sup> NTCA expressed similar, if not greater, concern about the use of crowdsourcing, recommending that it be treated “as informative, but not dispositive, in assessing the validity of claimed coverage.”<sup>45</sup> NTCA also discounted the value of crowdsourced speed tests.<sup>46</sup> Similar comments about the limits of crowdsourcing were filed by Verizon<sup>47</sup> and Connected Nation.<sup>48</sup>

Many of these stakeholders also addressed how providers should respond to crowdsourced filings. NCTA called for a two-tier process.<sup>49</sup> One tier would be a more formal “evidence-based challenge process” that could lead to a Commission decision if the parties did not resolve the issue. The other tier would be a more informal process where complaints would be sent to providers, who would not be required to respond, but which could lead to further inspection by the Commission where there were many complaints about a particular provider’s service in a well-defined area. NCTA also recommended that providers correct any errors uncovered by crowdsourced filings in their next scheduled report. Verizon urged an even simpler process, where providers would not be required to respond to each complaint, as is required under the current informal complaint process, but would correct errors in their next submission.<sup>50</sup> Connected Nation supported such an approach, but it recommended that

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<sup>44</sup> *Id.* at 10-11.

<sup>45</sup> NTCA Comments at 11.

<sup>46</sup> *Id.*

<sup>47</sup> Verizon Comments at 5-6 (“The Commission should consider other ways to ensure that its process to make its maps more informed does not become consumed by bad data or open the door to unnecessary or cumbersome procedures.”).

<sup>48</sup> See Connected Nation Comments at 6-7.

<sup>49</sup> See NCTA Comments at 12-17 for a discussion of its proposal.

<sup>50</sup> Verizon Comments at 6-7. NTCA also opposed requiring providers to respond to every complaint, but called for USAC to investigate if trends indicated a provider was providing inaccurate data. NTCA Comments at 11-12. In the Joint Providers Comments, they argued that crowdsourcing should not be considered as complaints but as more of a



providers be required to respond to bulk challenges from state, local, and tribal governments as well as certain other entities.<sup>51</sup>

ACA Connects agrees that the approaches offered by these many stakeholders have significant value for furthering the objectives of the DODC without imposing unreasonable burdens. Moreover, ACA Connects finds that there is substantial commonality among the positions of these stakeholders, which should provide direction on how the Commission should use crowdsourcing:

- To be valuable, crowdsourced filings need to be credible. Accordingly, the Commission should require individuals submitting filings – as well as bulk filers – to provide sufficient information to determine their validity. In addition, the Commission should be very careful about finding that online speed test data are valid.
- USAC should send validated filings to providers, and providers should have the option of responding to individual filings but, in all instances, should correct any errors as part of their next submission.<sup>52</sup>
- Individuals or bulk filers that are not satisfied with a provider's response to a valid complaint should be permitted to file a formal complaint.
- If the WCB finds that there is a critical mass of valid filings over a limited time about a particular provider on a specific issue, it should investigate further.

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challenge process, and that providers should correct errors in their next submission. Joint Providers Comments at 26-31.

<sup>51</sup> Connected Nation Comments at 6-7. The West Virginia Broadband Enhancement Council also “supports the FCC’s proposal to collect and use ‘crowdsourced’ data...from state governments...and local and Tribal governmental entities, as well as members of the public, about the accuracy of coverage polygons.” WVBE Comments at 2.

<sup>52</sup> Complainants, of course, may contact providers directly to raise issues and ACA Connects expects providers will make good-faith attempts to address these issues, as they do when dealing with issues raised by customers and potential customers.

- The Commission should sanction severely any provider that intentionally and persistently submits inaccurate data.

In addition, ACA Connects recommends the Commission make clear that it alone will enforce the DODC regulatory regime and that neither customers nor any other party can bring a private right of action for errors in a provider's report. ACA Connects urges the Commission to adopt a crowdsourcing regime consistent with these measures.

#### **IV. INCORPORATING LOCATION INFORMATION**

Overall, commenters were supportive of creating a geolocation information collection but differed significantly on the details. The groups filing the Joint Providers Comments, which, as the Broadband Mapping Consortium ("BMC"), have taken the lead and invested considerable resources to establish the viability of the Broadband Serviceable Location Fabric ("BSLF"), elaborated on the value of their approach and supported immediate adoption of its approach in parallel with the DODC.<sup>53</sup> Yet, even in doing so, the groups raised issues that are unresolved. For instance, the groups supported the use of proprietary data to create the geolocation database because it "would result in a superior product at a lower estimated cost."<sup>54</sup> However, later in their comments they stated "[n]o provider data is required to create the initial BSLF database," although it would be helpful if providers "were given the opportunity to submit their address databases."<sup>55</sup> The groups never discuss why providers would or would not take advantage of this opportunity or how the collection would proceed if they do not. In addition, the

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<sup>53</sup> Joint Providers Comments at 3, 4-20. Verizon noted that it "supported USTelecom's work to pilot a detailed location fabric." Verizon Comments at 1. Connected Nation and WTA also supported the creation of BSLF. Connected Nation Comments at 8-9; WTA Comments at 5. WTA added that "[o]nce the fabric is completed, the Commission must allow for a period of review to validate the map with 'boots on the ground.'" WTA Comments at 6.

<sup>54</sup> Joint Providers Comments at 12.

<sup>55</sup> *Id.* at 19.

groups do not directly discuss the costs a geolocation data collection would impose on providers, other than to support the Commission “allocating and/or providing resources to help small providers prepare their polygon filings so that they can be properly anchored to the BSLF.”<sup>56</sup> They do not discuss the size or source of those resources. Further, the groups, for example, admit that there are still challenges in determining what locations (and what kind of locations) are serviceable<sup>57</sup> and how to ensure the data are accurate.<sup>58</sup> It is for these and other reasons that ACA Connects commented that the Commission should proceed deliberately in adopting a geolocation data collection and should not hold up establishment of the DODC portal for filing polygons.<sup>59</sup>

NCTA expressed concerns similar to, and even more extensive than, those of ACA Connects in its comments. It first called for “much greater transparency and visibility into the development of the broadband serviceable location tool” by the BMC.<sup>60</sup> It argued that this would permit the Commission and stakeholders to verify claims about the BMC’s success in identifying locations and the flaws in the Commission’s location counts.<sup>61</sup> NCTA further contended that more needs to be known about how the BMC decided which structures to count and how geocoordinates were determined in light of flaws in the source data, and about how the location tool will be updated.<sup>62</sup> Finally, NCTA asserted that more detail is needed about the potential costs to create and operate the location tool.<sup>63</sup> Alexicon also commented that, while there was

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 13-17.

<sup>58</sup> *Id.* at 17-18.

<sup>59</sup> ACA Connects Comments at 15.

<sup>60</sup> NCTA Comments at 20.

<sup>61</sup> *Id.* at 21.

<sup>62</sup> *Id.* at 21-22.

<sup>63</sup> *Id.* at 22.

value in creating a geolocation data collection, it “should be undertaken with a measure of caution.”<sup>64</sup> Alexicon explained that there were not only technical and practical issues, but it had concerns about developing data in Tribal areas and in Alaska.<sup>65</sup>

ACA Connects thus stands by its position that more needs to be known before the Commission can adopt a geolocation data collection, and it continues to propose that the Commission conduct a benefit-cost analysis before proceeding and, should it proceed, provide sufficient flexibility and assistance for smaller providers.<sup>66</sup>

## **V. SUNSETTING FORM 477**

In its initial comments, ACA Connects proposed that the Commission should not sunset the Form 477 broadband deployment collection immediately upon the date the DODC begins, but rather should do so two years after the DODC begins, unless it finds, after issuing a public notice, that the DODC is not performing as expected and the data collection by Form 477 is still required for important purposes.<sup>67</sup> NCTA also proposed a phase-out of the Form 477 collection – “after the first full year” of the DODC – arguing that this approach would balance the Commission’s interest in using the current collection as a baseline for comparing data with the burdens placed on providers to file multiple reports.<sup>68</sup> Verizon recommended that once the DODC begins, the Commission should eliminate Form 477 requirements that overlap with the DODC requirements,<sup>69</sup> and in the Joint Providers Comments, the groups called on the

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<sup>64</sup> Alexicon Comments at 8.

<sup>65</sup> *Id.*

<sup>66</sup> See ACA Connects Comments at 17.

<sup>67</sup> *Id.* at 18-19.

<sup>68</sup> NCTA Comments at 25.

<sup>69</sup> Verizon Comments at 13.

Commission to eliminate Form 477 requirements “that no longer serve a continuing need and are outweighed by the burden on providers and the Commission to maintain.”<sup>70</sup>

Some non-provider stakeholders also addressed ending the Form 477 collection – or at least parts of the collection – outright. The City of New York stated that it does not support ending the Form 477 collection “until the Commission’s new data collection is well-established.”<sup>71</sup> At the same time, Free Press<sup>72</sup> and the California Public Utilities Commission<sup>73</sup> maintained that the Form 477 collection should continue, although Free Press requested that if it is eliminated, the Commission “must take each ISPs’ shapefiles and do the QGIS conversions itself, then release the underlying data in Census Block-level database format.”<sup>74</sup>

ACA Connects again sees commonality in stakeholders’ comments on whether to eliminate the Form 477 collection. It continues to assert that once the DODC is underway, the benefits of the current collection will diminish significantly, such that they will be outweighed by the costs. Consequently, the Commission should sunset the collection unless it makes an affirmative determination that this premise is incorrect.

## **VI. CONCLUSION**

In these reply comments, ACA Connects joins other stakeholders in urging the Commission to establish a regulatory regime that gives service providers flexibility in creating coverage polygons and provides assistance to smaller providers, encourages all providers to submit complete and accurate data, and allows service providers to respond appropriately to valid crowdsourced submissions. ACA Connects also agrees with other commenters that the

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<sup>70</sup> Joint Providers Comments at 38.

<sup>71</sup> City of New York Comments at 5.

<sup>72</sup> Comments of Free Press, WC Docket Nos. 19-195, 11-10, at 22 (Sept. 23, 2019) (“Free Press Comments”).

<sup>73</sup> CPUC Comments at 19.

<sup>74</sup> Free Press Comments at 23.

Commission should proceed deliberately before adopting any geolocation data collection in light of the many unanswered questions regarding both the process and costs of such a collection. Finally, the record shows that the benefits of the Form 477 data collection will diminish significantly once the DODC is underway and the Commission should ultimately sunset the collection.

Respectfully submitted,

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