

**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

To: The Commission

**REPLY COMMENTS OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”) hereby replies to certain of the initial Comments filed in response to the Commission’s August 6, 2019 Second Further Notice of Proposed Rulemaking regarding the Digital Opportunity Data Collection.<sup>1</sup>

**Discussion**

**I. CONCERNS OVER THE ACCURACY OF FIXED WIRELESS BROADBAND REPORTING ARE MISPLACED**

A few commenters attempt to disparage the fixed wireless broadband industry by alleging that they are inaccurately reporting on Form 477 the census blocks where they make broadband service available. But any lack of precision in reporting is largely due to two features of the current Form 477 instructions. First, the instructions require broadband providers to report the areas where they have deployed where service is “available” at the census block level. As such, Form 477 in its current form lacks granularity because it treats the entire census block as “served” even if service is available only to a portion of the census block – the so-called “one served-all served” problem. For this reason, WISPA joined the Broadband Mapping Coalition,

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<sup>1</sup> *Digital Opportunity Data Collection*, Report and Order and Second Further Notice of Proposed Rulemaking, WC Docket Nos. 19-195 and 10-90, FCC 19-79 (rel. Aug. 6, 2019) (“*R&O*” or “*2<sup>nd</sup> FNPRM*”). WISPA is also filing Joint Reply Comments with USTelecom and ITTA.

and its members participated in the pilot program that exposed deficiencies in geocoding and mapping and, more importantly demonstrated the benefits of the broadband-serviceable location fabric as the solution to the lack of granularity and accuracy inherent in the current reporting regime.<sup>2</sup> The fabric will rely on multiple datasets that combine to overcome mapping deficiencies to depict where broadband service is available and where it is not.

Second, the instructions to Form 477 state that “fixed broadband connections are available in a census block if the provider does, or could, within a service interval that is typical for that type of connection – that is, *without an extraordinary commitment of resources* – provision two-way data transmission to and from the Internet with advertised speeds exceeding 200 kbps in at least one direction to end-user premises in the census block.”<sup>3</sup> Under this definition, fixed providers do not need to actually provide service in the census block or have an actual customer in the census block in order for service to be deemed “available” there. For fixed wireless providers, extending service or upgrading broadband speed within a reasonable interval without incurring extraordinary costs can be accomplished more easily than with fiber or other wireline technologies. In modifying the definition and declining Microsoft’s request to eliminate this part of the definition, the Commission concluded in the *R&O* that “this

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<sup>2</sup> See Comments of USTelecom, ITTTA and WISPA, WC Docket Nos. 19-195 and 11-10 (filed Sept. 23, 2019).

<sup>3</sup> FCC Form 477 Local Telephone Competition and Broadband Reporting (Dec. 5, 2016), available at <https://transition.fcc.gov/form477/477inst.pdf> (last visited Sept. 27, 2019) at 17, 34 (emphasis added). In the *R&O*, the Commission modified this definition to state that “service is actually available in the area if the reporting fixed provider has a current broadband connection or it could provide such a connection within ten business days of a customer request, without an extraordinary commitment of resources, and without construction charges or fees exceeding an ordinary activation fee.” *R&O* at 6, ¶ 13 (footnote omitted).

terminology will help appropriately constrain provider reporting to areas that they can realistically serve within a reasonable timeframe.”<sup>4</sup>

Against this regulatory backdrop, a few commenters allege that fixed wireless broadband providers misstate where they make broadband available. WTA conflates the requirement to report broadband availability in accordance with the Form 477 instructions with its own contrived standard of actual availability.<sup>5</sup> It quotes from WISPA’s 2017 Comments stating that WISPs “often cannot determine with certainty whether [their] service is ‘available’ until a skilled installer is working on the potential customer’s premises.”<sup>6</sup> But this is not the same as saying that service could not be deployed to a particular location within a reasonable period following a customer request. There are a number of ways that service could be made available at a location if an initial attempt is not immediately successful – using a different spectrum band, installing a taller mast, and positioning the customer premise equipment (“CPE”) at a different spot on the rooftop are just three examples of how a fixed wireless broadband provider can certify compliance with the Form 477 reporting obligation. Contrary to WTA’s broad conjecture, it is not “commonplace for some fixed wireless providers to ignore those realities and overstate their coverage.”<sup>7</sup> In fact, providers are not required by Form 477 to report “coverage” at all, but rather where they can meet the Commission’s definition of “available.” Fixed wireless providers have made their own determinations based on propagation, equipment availability, knowledge of the terrain and service area and other factors to comply with current reporting obligations.

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<sup>4</sup> *Id.* at 7, n.25. WISPA notes that Microsoft has sought reconsideration on this issue. *See* Microsoft Petition for Reconsideration, WC Docket Nos. 19-195 and 10-90, FCC 19-79 (filed Sept.23, 2019).

<sup>5</sup> Comments of WTA – Advocates for Rural Broadband, WC Docket Nos. 19-195 and 11-10 (filed Sept. 23, 2019).

<sup>6</sup> *Id.* at 15 (footnote omitted).

<sup>7</sup> *Id.*

The California PUC also alleges that WISPs overstate broadband service availability based on its use of EDX propagation modeling software.<sup>8</sup> The California PUC’s dedication to verifying *coverage* to inform its own funding decisions is admirable, but its findings should not be taken to show misrepresentation of broadband *availability* for Form 477 purposes. First, the California PUC is not using the same definition of availability in its analysis, but rather appears to rely on a definition of “actual current availability.” Second, the Commission has not required any particular propagation model to be used as a standard, so it cannot be said that EDX is more or less accurate or acceptable than other models. And like any propagation model, it is theoretical and may not reflect actual coverage.<sup>9</sup>

Next Century Cities et al. recommend a separate “voluntary” reporting category of where service is not currently “available” but is “feasible” to address situations that otherwise meet the Commission’s definition.<sup>10</sup> Next Century Cities et al. have made no attempt to assess the burdens of voluntary reporting on providers – especially small providers – and, in any event, WISPA does not believe that adding a voluntary category to Form 477 would be effective.

## **II. ANY REQUIREMENT TO SUBMIT FIXED WIRELESS POLYGONS MUST BALANCE COSTS WITH BENEFITS**

In its October 22, 2018 ex parte letter<sup>11</sup> and again in its Comments in response to the 2<sup>nd</sup> FNPRM,<sup>12</sup> WISPA suggested that the Commission adopt “safe harbors” to model fixed wireless

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<sup>8</sup> Comments of the California Public Utilities Commission, WC Docket Nos. 19-195 and 11-10 (filed Sept. 24, 2019) at 9. WISPA does not object to consideration of these late-filed Comments.

<sup>9</sup> WISPA agrees with the State of Colorado that modeling propagation is an appropriate way to measure fixed wireless broadband coverage. *See* Comments of the State of Colorado, WC Docket Nos. 19-195 and 11-10 (filed Sept. 23, 2019) at 7.

<sup>10</sup> Comments of Next Century Cities, et al., WC Docket Nos. 19-195 and 11-10 (filed Sept. 23, 2019) at 4.

<sup>11</sup> *See* Letter from S. Jenell Trigg, Counsel to WISPA, to Marlene H. Dortch, FCC Secretary, WC Docket No. 11-10 (filed Oct. 22, 2018), including attached “FCC Form 477 Propagation Methodology for Fixed Wireless Providers.”

<sup>12</sup> Comments of WISPA, WC Docket Nos. 19-195 and 11-10 (filed Sept. 23, 2019) at 3-5.

coverage. The “safe harbors” incorporate technical inputs such as spectrum band, access point height and CPE height to estimate coverage. In addition to the “safe harbors,” WISPA recommended that providers could rely on a different methodology so long as it is explained in the Form 477 filing. WISPA indicated that its proposal would establish a baseline for estimating propagation that would not unreasonably increase costs and burdens associated with acquiring new software for small providers, but at the same time would afford flexibility to those providers that use different propagation tools. Other commenters supported WISPA’s “safe harbor” approach.<sup>13</sup> Another commenter, Alexicon Telecommunications Consulting, noted that the process to create polygons involves costs and burdens that would disadvantage small providers: “Many small carriers, at least at first, will have to outsource the polygon file generation and other tasks to ensure the submitted data is as accurate as possible. All of this requires resources - for labor *and* outside costs.”<sup>14</sup>

Ignoring WISPA’s proposal and the costs associated with creating polygons, NTCA states that fixed wireless broadband availability reporting

should be based on detailed engineering and propagation standards and capacity constraints specifically tied to the spectrum band utilized to deliver service. How those factors influence the ability to serve every customer within a coverage polygon at the speed claimed should be part of the assumptions as well. Reporting should also be based on oversubscription assumptions so that the effects of any shared capacity within the spectrum and backhaul capacity can be taken into account.<sup>15</sup>

NTCA makes no effort to address WISPA’s specific proposals, provides no substance to its request for “detailed engineering and propagation standards,” and, more importantly, fails to

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<sup>13</sup> See Comments of GeoLinks, WC Docket Nos. 19-195 and 11-10 (filed Sept. 23, 2019) at 2-3; Comments of Alaska Communications, WC Docket Nos. 19-195 and 11-10 (filed Sept. 23, 2019) at 7-8.

<sup>14</sup> Comments of Alexicon Telecommunications Consulting, WC Docket Nos. 19-195 and 11-10 (filed Sept. 23, 2019) at 4 (emphasis in original).

<sup>15</sup> Comments of NTCA – The Rural Broadband Association, WC Docket Nos. 19-195 and 11-10 (filed Sept. 23, 2019) at 4.

consider the costs and burdens that its proposals would require, especially for small providers. The Commission cannot, consistent with its obligations under the Regulatory Flexibility Act, adopt NTCA's vague recommendation without assessing the costs and alternatives that would reduce regulatory burdens on small entities.<sup>16</sup>

Be that as it may, WISPA continues to work with other stakeholders to develop fixed wireless reporting standards that appropriately balance burdens and benefits for all providers, large and small.

### **Conclusion**

Complaints about the reporting of fixed wireless broadband availability conflate actual, current coverage with the Commission's reporting requirements. Any concerns about the lack of precision are a function of the current Form 477 definitions and process, which will be vastly improved with the adoption of the broadband-serviceable location fabric. The Commission also should allow flexibility in how fixed wireless broadband reporting is modeled, taking into account the burdens on small providers.

Respectfully submitted,

### **WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

By: /s/ Louis Peraertz  
Louis Peraertz, Vice President of Policy

Stephen E. Coran  
Lerman Senter PLLC  
2001 L Street, NW, Suite 400  
Washington, DC 20036  
(202) 416-6744

*Counsel to the Wireless Internet Service Providers Association*

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<sup>16</sup> Regulatory Flexibility Act, 5 U.S.C. § 601 et seq.