

In the Matter of )  
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Modernizing the FCC Form 477 Data Program ) WC Docket No. 11-10

Windstream Services, LLC, on behalf of its affiliates, respectfully submits these comments in response to the Further Notice of Proposed Rulemaking on modernizing the Form 477 data collection.<sup>1</sup> Windstream supports the Commission’s efforts to evaluate the current data collection and to make changes that would increase the data’s usefulness to the Commission, Congress, the industry, and the public. To that end, Windstream urges the Commission to retain the separate reporting of contractual or guaranteed data throughput rates for business/enterprise/government services, and to expand this reporting to include information on the numbers of connections per census block at various committed information rates. These data are essential for the Commission to evaluate over time whether its predictions regarding competition in the business data services (BDS) markets—predictions that underlay the massive deregulation of the BDS markets earlier this year—prove true, or whether a different approach will be needed to ensure that small and medium businesses, health care providers, schools and libraries, and nonprofits see the benefits of increased choice. In addition, the Commission’s inquiries about data on mobile services underscore the need for the Commission to renew its

<sup>1</sup> *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Further Notice of Proposed Rulemaking, FCC 17-103 (rel. August 4, 2017) (“*FNPRM*”).

efforts to establish a structured sample data methodology for mobile performance testing, analogous to the Measuring Broadband America program for fixed broadband.

**I. THE COMMISSION SHOULD RETAIN AND ENHANCE REPORTING OF DEDICATED BUSINESS/ENTERPRISE/GOVERNMENT SERVICES.**

It is essential for the Commission to retain, and to enhance, the separate reporting of contractually guaranteed data throughput rates (committed information rates or CIRs) of business/enterprise/government services, because such data enable the Commission to evaluate trends in the competitive landscape for the provision of BDS. Earlier this year, the Commission mandated the near-total deregulation of BDS even though incumbent LECs hold overwhelming market power, particularly to locations with lower-bandwidth demand. The Commission's own data show that 86 percent of locations with total BDS demand of 50 Mbps or below are served by the incumbent LEC alone, and another 13 percent are served by a duopoly, leaving fewer than 1 percent of such locations with any meaningful competitive choice.<sup>2</sup> Despite this clear evidence of market concentration, the Commission enacted a broadly deregulatory framework for BDS based largely on its own predictions about the future state of BDS competition. In particular, the Commission prophesied:

- "nearby" competitors are likely to become actual competitive entrants for lower-bandwidth BDS "over the medium term;"<sup>3</sup>
- for locations with higher bandwidth demands, competition will grow in the medium term even where there is no nearby facilities-based competitor;<sup>4</sup> and

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<sup>2</sup> Letter from John T. Nakahata, Counsel to Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 05-25, RM-10593, at 3 (Oct. 21, 2016).

<sup>3</sup> *See Business Data Services in an Internet Protocol Environment; Technology Transitions; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 16-143, GN Docket No. 13-5, WC Docket No. 05-25, RM-10593, Report and Order, FCC 17-43, ¶¶ 13, 15 (2017) ("*BDS Order*").

<sup>4</sup> *See id.* at ¶ 16.

- a cable provider offering best-efforts broadband service in a census block is likely to provide dedicated BDS in that census block over the medium term.<sup>5</sup>

Form 477 currently provides, and can be modified better to provide, data that can inform whether the Commission's predictions about increased BDS competition over the medium term will come true. In fact, Form 477 is the only way the Commission will gather data relevant to these predictions absent other, more onerous mandatory data collections.

Therefore, the Commission should not eliminate the separate reporting of CIRs for business/enterprise/government service,<sup>6</sup> and instead should expand Form 477 to require reporting on the number of connections in each census block for contractually guaranteed business/enterprise/government service at various CIR ranges, such as (1) 10 Mbps and below; (2) 11 to 50 Mbps; (3) 51 to 100 Mbps; (4) 101 Mbps to 1 GB; and (5) above 1GB. While collection of these data will impose an incremental burden on filers, this burden is justified because these data are crucial for the Commission to evaluate whether its predictions prove accurate or whether different action is necessary to ensure competitive BDS markets. The fact that "filers may be reporting CIR data incorrectly in some cases"<sup>7</sup> is not a reason not to collect such data. Instead, the Commission should offer clear guidance to ensure that filers accurately characterize their services as best-efforts or contractually guaranteed and accurately report bandwidth information in each case.

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<sup>5</sup> See *id.* at ¶ 133.

<sup>6</sup> See *FNPRM* at ¶ 31.

<sup>7</sup> *Id.* at ¶ 32.

## **II. THE COMMISSION SHOULD RENEW EFFORTS TO ESTABLISH A MOBILE TESTING METHODOLOGY ANALOGOUS TO THE FIXED MEASURING BROADBAND AMERICA PROGRAM.**

Windstream agrees with the Commission that there is significant room for improvement in Form 477 data on deployment of mobile broadband services.<sup>8</sup> In particular, the Commission's discussion of the shortcomings of the current Form 477 mobile data underscores the need for the Commission to renew its efforts to establish a structured sample data methodology for mobile performance testing, analogous to the Measuring Broadband America program for fixed broadband. Alternatively, if there is some valid reason not to subject mobile broadband to this type of performance testing, the Commission should do away with the expectation that fixed providers should accede to this testing through the Measuring Broadband America program.

In 2011 and 2012, following the first iteration of the Measuring Broadband America testing and report for fixed broadband, the Commission appropriately entered into discussions with mobile providers about how analogous testing could be performed to evaluate the performance of mobile broadband networks. Inexplicably, however, the Commission abandoned this effort in favor of adoption of an FCC Speed Test application to collect crowdsourced data from volunteers. This is despite the fact that, as the Commission notes in its most recent Mobile Competition Report, crowdsourced data are "often not collected pursuant to statistical sampling techniques," and "there often is little control regarding such parameters" as the time and place of testing and the "vintage of the consumer's device."<sup>9</sup>

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<sup>8</sup> *Id.* at ¶ 10.

<sup>9</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Nineteenth Report, 31 FCC Rcd 10534, 10609, ¶ 105 (2016).

As a result, the Commission possesses no mobile broadband data collected pursuant to a standardized, structured sample methodology. In this *FNPRM*, the Commission notes that it “to date has not systematically examined the precise underlying methodologies that are used by service providers in generating their data,” and that “methodologies tend to vary among providers.” In short, the Commission lacks valid statistical data concerning the actual customer experience on mobile broadband—information it has been gathering for eight years from all of the largest fixed broadband providers. Particularly as the Commission is increasingly viewing mobile broadband as a substitute for fixed broadband,<sup>10</sup> it is essential that both technologies should be subject to the same accountability regimes. Thus, to the extent the Commission sees fit to continue the fixed Measuring Broadband America program, it should renew its efforts to develop an analogous structured sample data methodology for mobile performance testing. Alternatively, if there is some valid reason not to subject mobile broadband to this type of performance testing, the FCC should do away as well with the expectation that fixed broadband providers should participate in this testing.

### **CONCLUSION**

Windstream supports the Commission’s efforts to evaluate the current data collection and to make changes that would increase the data’s usefulness to the Commission, Congress, the industry, and the public. To that end, Windstream urges the Commission to retain and expand the separate reporting of contractual or guaranteed data throughput rates for

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<sup>10</sup> See *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, Thirteenth Section 706 Report Notice of Inquiry, FCC 17-109, at ¶ 9 (August 8, 2017) (seeking comment on whether it should focus “this Section 706 *Inquiry* on whether *some form* of advanced telecommunications capability, be it fixed *or* mobile, is being deployed to all Americans in a reasonable and timely fashion”) (emphasis in original).

business/enterprise/government services. These data are essential for the Commission to evaluate over time whether the its predictions regarding competition in the business data services (BDS) markets—predictions that underlay the massive deregulation of the BDS markets earlier this year—prove true. Moreover, the Commission’s inquiries about data on mobile services underscore the need for the Commission to renew its efforts to establish a structured sample data methodology for mobile performance testing, analogous to the Measuring Broadband America program for fixed broadband.

Respectfully submitted,

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