

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

## I. INTRODUCTION

<sup>1</sup> *Modernizing the FCC Form 477 Data Program*, Further Notice of Proposed Rulemaking, 32 FCC Rcd. 6329 (2017).

## II. THE COMMISSION SHOULD CONSIDER ITS SPECIFIC DATA NEEDS AND HOW THOSE CAN BE MET WITH THE LEAST BURDEN TO FILERS

Before imposing a regulatory burden, an agency must assess whether those burdens are justified by the benefit gained. This principle is codified in the Paperwork Reduction Act, as to all entities, and the Regulatory Flexibility Act, as to small entities, and has been re-affirmed as good policy by sitting Commissioners.<sup>2</sup> Agencies are also required to consider less burdensome alternatives for small entities.<sup>3</sup> In the context of data collection, the principle has a unique significance in that there is no direct benefit to data collection. The benefits come from the specific ways that the data inform *other* decisions—such as assessing the progress of broadband deployment, evaluating the competitive impact of a proposed merger or rule, or pinpointing where universal service support is needed to fill gaps in coverage.

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<sup>2</sup> 44 U.S.C. § 3506(b)(1)(A) (requiring agencies to “reduce information collection burdens on the public”); 5 C.F.R. § 1320.9 (requiring that an agency certify, when it submits a proposed information collection to the Office of Management and Budget for approval, that the proposed collection “[i]s necessary for the proper performance of the functions of the agency” and “reduces to the extent practical and appropriate the burden on persons who shall provide information to or for the agency”); 5 U.S.C. § 604; Remarks of FCC Chairman Ajit Pai at the Hudson Institute, *The Importance of Economic Analysis at the FCC*, at 3 (Apr. 5, 2017) (noting the importance of rigorous cost-benefit analysis); Remarks of FCC Commissioner Michael O’Rielly, TPRC 44: Research Conference on Communications, Information and Internet Policy, at 1 (Sept. 30, 2016) (“[I]t is incumbent on every federal agency to determine whether the rules it proposes will result in costs to providers, consumers or society as a whole that outweigh the purported benefits.”).

<sup>3</sup> 5 U.S.C. § 604(a)(6) (requiring agencies to describe “the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”). Compliance with Section 604 of the Regulatory Flexibility Act is subject to judicial review. *See* 5 U.S.C. § 611(a)(1).

As the Commission considers changes to the Form 477 program, it accordingly must conduct a cost-benefit analysis to determine whether the costs to filers (and to the Commission) of proposed changes are justified by the benefits. Before the Commission can perform that analysis, though, it must identify the specific benefits to be gained.<sup>4</sup> GCI and others believe that in many cases, the Commission will be able to achieve its benefits by using Form 477 data as a “baseline” understanding of service availability, and supplementing the Form 477 data as needed with targeted, one-time collections to inform specific decisions.<sup>5</sup>

For example, the Commission may want a specific type of data to inform a universal service decision. One option for obtaining that data is to conduct a one-time, targeted data collection limited to the relevant geography and services. The other option is to require the submission of sufficiently granular data by every filer in the country in every Form 477 filing. There is no need to incur the costs of the latter when the one-time data collection meets the Commission’s specific need. The same rationale applies to competition reports, merger review, and other uses. The Commission should avoid attempting to collect highly specific data to cover

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<sup>4</sup> Comments of NCTA – The Internet & Television Association at 2, WC Docket No. 11-10 (filed Oct. 10, 2017) (“NCTA Comments”) (recommending that the Commission “focus its efforts on identifying more targeted approaches to gathering such data where the benefits are clearer and the cost less onerous.”); Comments of NTCA–The Rural Broadband Association at 2-3, WC Docket No. 11-10 (filed Oct. 10, 2017) (“NTCA Comments”) (“NTCA recommends the Commission confirm the data sets that are necessary to inform sound policy decisions, and to limit collections to those data for which the Commission has a legitimate statutory or regulatory need.”).

<sup>5</sup> See Comments of the American Cable Association on the Further Notice of Proposed Rulemaking at 3-5, WC Docket No. 11-10 (filed Oct. 10, 2017) (“ACA Comments”) (describing how the Commission can use Form 477 data as a “baseline,” and that “the Commission would collect more extensive and more granular data through other mechanisms on an ‘as needed’ basis to achieve specific purposes.”); *see also* Comments of AT&T at 2, WC Docket No. 11-10 (filed Oct. 10, 2017) (“AT&T Comments”).

every conceivable future need when less burdensome alternatives will meet its needs without the substantial increases in cost to filers.

### **III. GATHERING MORE GRANULAR FIXED DEPLOYMENT DATA WOULD BE EXPENSIVE AND UNNECESSARY**

The record is clear that collecting more granular fixed deployment data would be very costly, whether done by submitting street addresses or geolocations.<sup>6</sup> Indeed, as noted by multiple commenters, in some cases it may not even be possible: many areas of Alaska, as well as some areas in the Lower 48, lack street addresses, which obviously precludes submitting street addresses and significantly raises the burden, and may in some cases prevent the provision of accurate geolocation data.<sup>7</sup>

The parties who support collecting more granular fixed deployment data are, notably, not the entities that would bear the costs of collecting the information. For example, one commenter suggests that anything less than location-specific accuracy will not allow “informed decisions for stakeholders.”<sup>8</sup> But the Commission should not impose substantial ongoing costs on filers unless

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<sup>6</sup> See, e.g., Comments of Alaska Communications at 5, WC Docket No. 11-10 (filed Oct. 10, 2017) (“ACS Comments”); NCTA Comments at 4-8; Comments of Sacred Wind Communications at 4-5, WC Docket No. 11-10 (filed Oct. 10, 2017); Comments of Verizon at 10-13, WC Docket No. 11-10 (filed Oct. 10, 2017) (“Verizon Comments”); Comments of the Wireless Internet Service Providers Association at 8, 12, WC Docket No. 11-10 (filed Oct. 10, 2017) (“WISPA Comments”).

<sup>7</sup> See ACS Comments at 5 (noting that in Alaska “[m]any customer locations do not even have street addresses, and when they do, federal, state and municipal records often are inconsistent”); WISPA Comments at 12 n.40 (noting the extra expense in converting rural routes to street addresses); Comments of WTA – Advocates for Rural Broadband at 8, WC Docket No. 11-10 (filed Oct. 10, 2017) (“WTA Comments”) (noting lack of street addresses in portions of Alaska as well as in some rural areas of the Lower 48).

<sup>8</sup> See Comments of Broadband Census LLC (BroadbandCensus.com) and Microbrand Media LLC (BroadbandNow.com) at 7, WC Docket No. 11-10 (filed Oct. 10, 2017); *see also* Comments of the Institute for Local Self-Reliance at 3, WC Docket No. 11-10 (filed Oct. 10, 2017). *But see* Comments of the California Public Utilities Commission at 4, WC Docket

the data are needed for a specific need that cannot be met through less burdensome means. The Commission must carefully consider the costs to filers, as well as any benefits, as it considers changing the reporting obligations.

#### **IV. THE COMMISSION SHOULD BE CAUTIOUS ABOUT CHANGING THE COLLECTION OF MOBILE DEPLOYMENT**

GCI agrees with the numerous commenters who urged the Commission to tread cautiously in adding new requirements that strive for a greater level of detail in the reported Form 477 wireless deployment data.<sup>9</sup> Although a very limited number of marginal improvements may be possible with little additional burden (*e.g.*, adoption of a standardized cell-edge probability), many of the possibilities raised in the *Further Notice* would radically increase the burdens on filers and, in most cases, would only offer additional granularity at the expense of accuracy.

A number of commenters also indicated that some of the techniques the Commission has used in the ongoing Mobility Fund II special data collection in an attempt to improve uniformity could also be adapted to the Form 477 context. GCI agrees, although it is not clear whether *all* of those techniques will prove beneficial, and some may be too burdensome to reasonably form a part of a regular reporting requirement. Regardless, however, the Commission should not pass up the unusual opportunity to learn from experience. It should wait until the Mobility Fund II special data collection and challenge process is complete. This will allow the Commission and

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No. 11-10 (filed Sept. 25, 2017) (encouraging the Commission to collect address-level data but noting that the Commission has obtained necessary data outside the Form 477 program).

<sup>9</sup> See, *e.g.*, Comments of CTIA at 2, WC Docket No. 11-10 (filed Oct. 10, 2017) (“CTIA Comments”); NCTA Comments at 3; NTCA Comments at 8-11; Comments of T-Mobile USA, Inc. at 7-8, WC Docket No. 11-10 (filed Oct. 10, 2017) (“T-Mobile Comments”); Verizon Comments at 2.

all interested parties to most effectively assess the benefits and burdens of the Commission's approach to that data collection, and its suitability to the periodic Form 477 collection.

Finally, some commenters have raised the issue of mandatory reporting of Wi-Fi coverage as part of either the fixed or mobile component of the Form 477.<sup>10</sup> GCI agrees with these commenters that mandatory reporting of Wi-Fi coverage as part of either the fixed or mobile component of the Form 477 would be inappropriate. Most fundamentally, this requirement—which the Commission has not proposed—would threaten to fundamentally change the character of Wi-Fi and Wi-Fi deployments in the United States. Wi-Fi's widespread adoption comes in large part from its unlicensed status, and its freedom from burdensome regulatory obligations. Adding Wi-Fi to the Commission's Form 477 data collection could chill deployment by adding a burdensome regulatory requirement to this unlicensed service.

More practically, such data is likely unnecessary. Carrier Wi-Fi deployments are typically ancillary to existing fixed or mobile deployments. For fixed deployments, Wi-Fi is commonly used to bridge the last few feet between the modem or cable box and the user's device. In mobile deployments, Wi-Fi is commonly used to increase capacity, not to expand the coverage footprint. In either case, Wi-Fi deployment data would tell the Commission nothing new about the reach of a carrier's fixed and mobile services.

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<sup>10</sup> NCTA Comments at 11-13 (emphasizing that “[n]othing about the current packaging of Wi-Fi capability with resold mobile service converts the Wi-Fi capability into a mobile service that would need to be reported on the Form 477.”); Comments of Comcast Corporation at 3-7, WC Docket No. 11-10 (filed Oct. 10, 2017) (“Comcast Comments”) (“Comcast’s Wi-Fi hotspots: (1) provide access to the company’s wireline broadband Internet access service; (2) in the vast majority of cases are provided over wireline broadband facilities that already are reported on Form 477; and (3) cannot be converted from a portable to a mobile service.”).

## **V. ANNUAL FILINGS WILL REDUCE PROVIDERS' BURDENS WITHOUT SIGNIFICANT LOSS OF VALUE**

The record reflects broad support for shifting from a semi-annual filing to an annual filing of Form 477 data.<sup>11</sup> Moving to an annual filing will reduce the overall burden on filers with little change in the value of the data. It is not correct that the Commission needs semi-annual filings to make universal funding decisions, for example;<sup>12</sup> to date, when the Commission has needed specific information to make funding decisions, it has initiated a one-time collection

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<sup>11</sup> See ACS Comments at 3-4 (“Form 477 should be filed once per year.”); ACA Comments at 14-15 (“ACA supports amending the collection process so that Form 477 is submitted annually.”); AT&T Comments at 16-18 (“[I]t is now appropriate for the Commission to transition to an annual filing requirement.”); Comcast Comments at 16 (“[T]he Commission should change the Form 477 filing requirement to an annual obligation.”); CTIA Comments at 7-8 (“CTIA agrees that the Commission can reduce the burden of the filing requirement by shifting to an annual collection for all filers.”); Comments of Hughes Network Systems, LLC at 7, WC Docket No. 11-10 (filed Oct. 10, 2017) (“Hughes Comments”) (“Hughes supports the Commission’s proposal to adopt an annual Form 477.”); Initial Comments of Lightower Fiber Networks at 6, WC Docket No. 11-10 (filed Oct. 10, 2017) (“Lightower supports changing the filing frequency from semi-annual to annual.”); NCTA Comments at 15-16 (“[T]he Commission should adopt the proposal in the Notice to transition the Form 477 to an annual reporting obligation.”); NTCA Comments at 4 (“[C]ommenters who either file Form 477 or who represent entities that file Form 477 demonstrated . . . support for a proposal to reduce the semi-annual obligation to an annual requirement.”); Comments of the Rural Wireless Association at 6-7, WC Docket No. 11-10 (filed Oct. 10, 2017) (“RWA urges the Commission to collect Form 477 data annually.”); Comments of the Small Company Coalition at 3-4, WC Docket No. 11-10 (filed Oct. 10, 2017) (“The SCC continues to recommend annual filings for small carriers.”); T-Mobile Comments at 5-6 (“T-Mobile encourages the Commission to move to an annual collection for all filers.”); Comments of the USTelecom Association at 14, WC Docket No. 11-10 (filed Oct. 10, 2017) (“USTelecom Comments”) (“USTelecom supports making the Form 477 an annual filing.”); Verizon Comments at 9 (“The Commission should change the frequency of its required Form 477 data from twice a year to once per year.”); Comments of ViaSat, Inc. at 2, WC Docket No. 11-10 (filed Oct. 10, 2017) (“ViaSat endorses the Commission’s proposal to transition to an annual collection of Form 477 data.”); WTA Comments at 3-6 (“WTA believes that a single annual FCC Form 477 data collection is more than sufficient.”).

<sup>12</sup> WISPA Comments at 15-16.

or a supplemental process to meet those needs.<sup>13</sup> Similarly, the Commission can time its various annual reports to capitalize on the most recent available data. Moreover, as many commenters pointed out, the data are often a year or more old by the time the Commission releases them. Based on recent trends, if the Commission were able to accelerate its own processes by two months, the data on average would be approximately as current as they are today even if filed only once a year.<sup>14</sup> Annual filing can meet the Commission's needs at a reduced burden to filers.

## **VI. SUBSCRIBERSHIP DATA SHOULD NOT BE PUBLICLY RELEASED**

GCI agrees with commenters who oppose the release of subscribership data.<sup>15</sup>

Subscribership data even at the state level is competitively sensitive and could be used by competitors to assess market conditions and develop marketing plans that target or avoid specific areas. The Form 477 data should not be used for private entities' marketing purposes, as opposed to informing policymakers and the public about the availability of service.

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<sup>13</sup> See, e.g., *Connect America Fund et al.*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd. 6282 (2017); *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 3087, 3015 ¶ 71 (2017).

<sup>14</sup> GCI derived these figures by calculating the age of fixed and mobile data in months for each of the last 24 months. Data are 10 months old in October 2016, for example, if the most recently released data are "as of" December 2015. Over the last 24 months, the average age of the most recently released data was 13 months. If the data had been collected only once a year as of December 31, the average age would have been 14.75 months. If the Commission had made its initial releases two months sooner, the average age of the data, with annual filing as of December 31, would have been 13.25 months.

<sup>15</sup> See, e.g., AT&T Comments at 12-13 ("[T]he Commission has recognized the competitive sensitivities associated with granular subscription reporting and granted the procedural protections provided by the Commission's confidentiality rules to protect these data."); Hughes Comments at 5-6 ("[T]he risks to service and competition from disclosure [of subscribership data] far outweigh the minimal benefit that can be ascribed."); Comments of ITTA – The Voice of America's Broadband Providers at 8-9, WC Docket No. 11-10 (filed Oct. 10, 2017) ("[The Commission] must vigilantly safeguard the competitive sensitivity of disaggregated deployment data.").

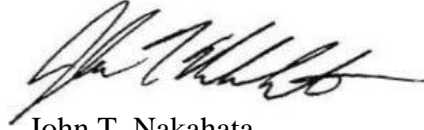


## VII. CONCLUSION

The Commission should carefully consider both its specific needs and the costs to filers before making any changes to the Form 477 program. GCI believes that the Commission's needs can be met in ways that do not impose substantial burdens on service providers.

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