

In the Matter of )  
 )  
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 Comments filed in the above-captioned proceeding.<sup>1</sup>

## Introduction

The record in this proceeding demonstrates universal agreement among broadband providers that the Commission's proposals to modify Form 477 to require data to be reported at sub-census levels, or to report those potential customers that could be served in a given census block, would be very difficult, time-consuming and expensive to implement, irrespective of technology or size. In some instances, projections regarding future service are simply not possible given the limitations of the service and geographic locations. Moreover, WISPA agrees with the majority of commenters that sub-census level and potential service area data have little, if any, measureable benefit to the Commission or the public and certainly do not outweigh the economic burdens that would be imposed on smaller providers.

WISPA also agrees that any changes to Form 477 must be first subject to a comprehensive cost-benefit analysis (“CBA”) as part of this rulemaking process, which will lay a proper foundation for the Commission’s compliance with the Paperwork Reduction Act, as

<sup>1</sup> *Modernizing the FCC Form 477 Data Program*, Further Notice of Proposed Rulemaking, WC Docket No. 11-10, FCC 17-103, 32 FCC Rcd 6329 (2017) (“*FNPRM*”); *see also Modernizing the FCC Form 477 Data Program*, Order, DA 17-909, WC Docket No. 11-10 (rel. Sept. 19, 2017) (extending the public comment and reply comment deadlines).

amended (“PRA”), the Regulatory Flexibility Act, as amended (“RFA”), and recent Executive Orders. The public interest is better served when the Commission undertakes reasoned rulemaking informed by a full analysis of the impact on all regulatees, especially small entities that do not have the same financial or human resources or the opportunity to recover regulated costs as larger companies have.

## Discussion

### **I. BROADBAND PROVIDERS HAVE DEMONSTRATED THAT THE BURDENS OF MANY OF THE COMMISSION’S PROPOSALS WOULD OUTWEIGH ANY BENEFIT TO THE COMMISSION OR OTHER STAKEHOLDERS**

Universally, commenting broadband providers and their trade associations emphasized that the Commission’s proposals to require data to be reported at sub-census levels such as street address or road segments, or other granular data, or to report what potential customers will be/would be served in a given census block, would be very difficult, time-consuming and expensive, irrespective of technology or size.<sup>2</sup> In some instances, providers are unable to make

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<sup>2</sup> See, e.g., Comments of WISPA, WC Docket No. 11-10 (filed Oct. 10, 2017) (“WISPA Comments”) at 7-14 (detailing the burdens on small fixed wireless providers); Comments of The Small Company Coalition, WC Docket No. 11-10 (filed Oct. 10, 2017) (“SCC Comments”) at 3 (“This proposal could add significantly to the Form 477 filing burden for the average small company that may not currently have the ability or processes in place to generate and report such granular data.”); Comments of Lightower Fiber Networks, WC Docket No. 11-10 (filed Oct. 10, 2017) (“Lightower Comments”) at 5 (“Sub-census-block level reporting would materially increase the filing burden because filers would need to implement a system not currently designed to support that level of granularity and spend a large amount of time correcting data errors.”); Comments of NCTA – The Internet & Television Association, WC Docket No. 11-10 (filed Oct. 10, 2017) (“NCTA Comments”) at 3-12; Comments of CTIA, WC Docket No. 11-10 (filed Oct. 10, 2017) (“CTIA Comments”) at 12 (“Most providers do not currently collect census-tract level subscription information in the ordinary course of business and therefore would have to develop systems to collect and process such data in order to comply with the proposed collection.”); Comments of Competitive Carriers Association, WC Docket No. 11-10 (filed Oct. 10, 2017) (“CCA Comments”) at 3-4 (“FCC should consider the burdens associated with a one-time data collection in the MF II proceeding, in addition to forthcoming Form 477 modifications . . . . [P]roviders will need adequate time and resources to prepare another set of coverage data, especially smaller carriers with limited resources.”); Comments of WTA – Advocates for Rural Broadband, WC Docket No. 11-10 (filed Oct. 10, 2017) (“WTA Comments”) at 2 (“the alternatives under consideration for more granular reporting of census block deployment data are not feasible for rural areas and/or excessively burdensome and expensive to implement at this time”); and Comments of The USTelecom Association, WC Docket No. 11-10 (filed Oct. 10, 2017) (“USTelecom Comments”) at 6-7 (“the proposal to require deployment data be broken down into current deployment, possible future areas and areas where a provider is unable to offer service to additional customers would require the creation of entirely new systems capable of producing dynamic real-time information solely for FCC reporting purposes, and the programming costs would be large, particularly for small rural carriers that can’t even afford to do geocoding currently”).

future projections where service will be provided given the technical limitations of the type of service offered or the geographic area.<sup>3</sup> Commenters also emphasized that proposals to collect more granular data have a speculative or marginal benefit, if any, to the Commission and other stakeholders because the data is available from other resources (as the Commission itself acknowledges), or there is a great likelihood of major inaccuracies in the data.<sup>4</sup> Where, as here, the burdens attendant to the collection and reporting of more granular data are significant and are not shown to provide more meaningful data to inform Commission decision-making, the Commission should heed industry's call and reject the *FNPRM's* proposals. In this way, and as the record overwhelmingly demonstrates, the Commission can better meet its dual objectives of “collect[ing] better and more accurate information on Form 477 . . . and increase its usefulness to

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<sup>3</sup> See WISPA Comments at 9-13; Comments of General Communication, Inc., WC Docket No. 11-10 (filed Oct. 10, 2017) (“GCI Comments”) at 5 (“Two methods for more granular reporting raised in the *Further Notice* – by street address or by geolocation – would be very costly to implement in Alaska to the extent they can be implemented at all.”), 7 (“It is simply not feasible for GCI to provide an accurate dataset of geocodes for every building where service is available (but not subscribed to).”); and Comments of Sacred Wind Communications, Inc., WC Docket No. 11-10 (filed Oct. 10, 2017) (“Sacred Wind Comments”) at 1-2 (“a number of the proposed Form 477 data collection practices would pose significant complications for tribal areas . . . , which are characterized by sparsely populated, expansive geographic territories and physically challenging topography”). WISPA also adds that street addresses in rural areas are likely to be where the mailbox is located, not necessarily where the house or other structure is located. In large parcels or acreage, the house/structure may not be visible from the road. Therefore, it is difficult, if not impossible, for the provider to identify whether a potential new customer would be able to receive a fixed wireless service without knowing the exact location of the house/structure *and* accessing that property for a technical assessment. See WISPA Comments at 12-13; see also GCI Comments at 7. Contrary to some beliefs, this is much more detailed, difficult and burdensome than sending a direct mail advertisement or a bill for services provided. See Comments by the West Virginia Broadband Enhancement Council, WC Docket No. 11-10 (filed Oct. 10, 2017) (“WV BEC Comments”) at 2.

<sup>4</sup> See *FNPRM* at 6341 (acknowledging current receipt of more granular data than census block from USF recipients); see, e.g., USTelecom Comments at 1-2 (“the additional data collection would significantly increase the burden on filers without providing meaningful information to the Commission”), 9 (“Any change to the existing 477 reporting requirements does not enhance the data but skews it.”); Sacred Wind Comments at 4 (“reporting of above-requested information would provide inaccurate data to the Commission”), 6-7 (referencing various state and federal government agencies that can provide household-level point data); Comments of ITTA, WC Docket No. 11-10 (filed Oct. 10, 2017) (“ITTA Comments”) at 5 (“The imbalance of the prospective burdens is further exacerbated by the at-most speculative benefits associated with the endeavor.”); and Comments of Slopeside Internet LLC, WC Docket No. 11-10 (filed Oct. 10, 2017) (“Slopeside Comments”) at 1 (“Currently, we would assert that there is little or no clear coupling between the regulatory or informational need to submit Form 477 data, and the value that said data offers. If there is ‘significant value’ to this data, why does it seem clear that more time, money, & people are ‘spent’ on the data collection than any resulting value the data can create?”).

the Commission, Congress, the industry, and the public . . . while also identifying and eliminating unnecessary or overly burdensome filing requirements.”<sup>5</sup>

The record illustrates the need for the Commission to assess in a comprehensive manner the costs and benefits of proposed changes to information collected in Form 477 as it considers final rules.<sup>6</sup> As NCTA stated, the “costs of collecting more granular information on the Form 477 would exceed the benefits and that such a requirement would not satisfy the requirements imposed by the Paperwork Reduction Act.”<sup>7</sup> WISPA emphasizes that a CBA is also a fundamental requirement of the RFA because it lays a necessary foundation for the required consideration of the significant economic impact of its rules on small providers.<sup>8</sup> As Commissioner O’Rielly has stated, “it 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>9</sup>

In sum, completing a CBA is necessary to aid deliberations *prior* to adopting any final rules, to complete a final regulatory flexibility analysis (“FRFA”) that meets the statutory requirements of the RFA, and to comply with the PRA.

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<sup>5</sup> *FNPRM* at 6329-30.

<sup>6</sup> *See, e.g.*, GCI Comments at 3-4; Comments of NTCA-The Rural Broadband Association, WC Docket No. 11-10 (filed Oct. 10, 2017) (“NTCA Comments”) at 2-3.

<sup>7</sup> NCTA Comments at 2 (citations omitted) and n.6 (citing Executive Orders 13,563; 13,777; and 13,771); *see also* Slopeside Comments at 1 (“innovation and entrepreneurship is something that can be destroyed by regulation”).

<sup>8</sup> 5 U.S.C. §§ 603, 604. The Office of Advocacy, U.S. Small Business Administration provides detailed guidance to federal agencies conducting an analysis of the costs of regulations on small entities. “The agency then must examine the costs and other economic implications for the industry sectors targeted by the rule. . . . Impacts include costs of compliance and economic implications that derive from additional compliance costs such as economic viability (including closure), competitiveness, productivity, and employment. The analysis should identify cost burdens for the industry sector and for the individual small entities affected. Costs might include engineering and hardware acquisition, maintenance and operation, employee skill and training, administrative practices (including recordkeeping and reporting), productivity, and promotion. The agency must also consider alternatives to the proposed regulation that would accomplish the agency’s goals while not disproportionately burdening small businesses.” Office of Advocacy, U.S. Small Business Administration, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (May 2012) at 32.

<sup>9</sup> Remarks of FCC Commissioner Michael O’Rielly, TPRC 44: Research Conference on Communications, Information and Internet Policy (Sept. 30, 2016) at 1.

## **II. IMPOSING STANDARDIZED OR UNIFORM PROCESSES OR TOOLS IS UNREASONABLE AND VERY BURDENSOME FOR SMALL PROVIDERS**

The Commission and commenters suggest that the Commission require uniform and/or standardized practices or tools for the broadband industry to supposedly make interpreting the data easier, to eliminate ambiguity and to allow for more meaningful comparisons.<sup>10</sup> But even assuming the veracity of this conclusion, certain proposals ignore the costs and burdens associated with modifying the many current methods of creating and reporting the data. These costs and burdens stem from the fact that the “industry” consists of providers of all sizes, technical configurations and needs that use different technologies, vendors/service providers, and which have different budgets and human resources.<sup>11</sup> Suggestions to use uniform models and practices do not account for the penalty of increased costs and implementation time to switch from one methodology to another, especially for small providers that already expend considerable resources to complete Form 477.<sup>12</sup> Many small providers have already invested in RF propagation software or services, and should not be required to purchase new software or contract with different providers to report data in a particular way. Some also have agreements with third party vendors, such as billing/payment services, which also provide geocoding

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<sup>10</sup> See *FNPRM* at 6333; see also Comments of Broadband Census LLC and Microband Media LLC, WC Docket No. 11-10 (filed Oct. 10, 2017) (“Broadband Census/Microband Comments”) at 7 (suggesting a standardized geocoding tool); and NTCA Comments at 6 (“all entities required to file Form 477 could be required to geocode and report with respect to new installations as well as upgrades of service at existing locations”).

<sup>11</sup> See, e.g., GCI Comments at 11-12 (“there are real variations from place to place and from network to network in the propagation characteristics of wireless signals, making it impossible to product accurate coverage data nationwide using a single model with uniform parameters . . . . The Commission should also bear in mind, however, that every model is driven by a number of tuning parameters, which reflect variations in local conditions, network design, and other real-world factors.”); CTIA Comments at 3-4 (“Form 477 has afforded providers flexibility to submit data that reflect their unique network characteristics and performance. Such flexibility minimizes the burdens on providers by permitting them to report coverage using the same methods that they use to evaluate their coverage for businesses purposes.”).

<sup>12</sup> See WISPA Comments at 5-6; see also Comments of the American Cable Association, WC Docket No. 11-10 (filed Oct. 10, 2017) (“ACA Comments”) at 2-3.

services for census blocks based on the existing subscriber database.<sup>13</sup> For geocoding, the vendor's ancillary geocoding services are integrated into the provider's billing services.

If the Commission were to impose a specific propagation model or geocoding service/format that is different or not compatible with services/software already used, a small provider will be at a major disadvantage. The small provider's options range from bad to worse, from subsidizing its vendor's additional costs to change its geocoding service or software, to terminating a contract (if possible) with the current vendor and hiring a new vendor (and transitioning its primary billing service, which can inconvenience subscribers as well), or to purchasing its own software (and hiring additional staff or a consultant to input, review and run the data).<sup>14</sup> These costs extend beyond the provider to include vendors that would need to re-write their software to accommodate a new uniform data collection method. WISPA, therefore, does not support any requirement that would impose a particular geocode service or format, an RF propagation model or standard, or any required process or tool on small providers. One size does not fit all.

### **III. THE COMMISSION SHOULD RETAIN A SEMI-ANNUAL FILING SCHEDULE FOR FORM 477 AND RELEASE DATA MORE FREQUENTLY**

WISPA and other commenters supported retaining the semi-annual filing schedule for Form 477 and opposed changing to an annual filing schedule.<sup>15</sup> WISPA recognizes that many

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<sup>13</sup> See ACA Comments at 8.

<sup>14</sup> ACA reported that its members have similar burdens with vendor-provided support. See ACA Comments at 8-10.

<sup>15</sup> See WISPA Comments at 15 (emphasizing that the Commission should preserve semi-annual filing so long as it adopts the proposed recommendations and considers the burdens on small providers detailed in its Comments); see also Broadband Census/Microband Comments at 8; Comments of Comcast Corporation, WC Docket No. 11-10 (filed Oct. 10, 2017) ("Comcast Comments") at 2-3 (proposing annual filing only if Commission requires data reporting at service address level and then for rural areas only); Comments of The Institute for Local Self-Reliance, WC Docket No. 11-10 (filed Oct. 10, 2017) at 4; North Carolina Broadband Infrastructure Office Comments, WC Docket No. 11-10 (filed Oct. 10, 2017) ("NC BIO Comments") at 3; Comments of the Open Technology Institute at New America, WC Docket No. 11-10 (filed Oct. 10, 2017) at 9; and WV BEC Comments at 6.

commenters support an annual filing requirement and appreciate their concerns.<sup>16</sup> However, although annual filing might impose fewer burdens and reduce the amount of time that providers spend to complete and submit Form 477,<sup>17</sup> WISPA is concerned that an annual filing schedule would not keep pace with the continued growth in broadband subscribership.<sup>18</sup> For example, according to the Commission's 2016 Internet Access Services Report, which is based on Form 477 aggregated data, the number of fixed wireless residential connections of at least 10/1 Mbps has increased significantly not just on an annual basis, but semi-annually.<sup>19</sup> Since June 2014, fixed wireless subscribership at 10/1 Mbps or greater has nearly doubled, far and away the largest percentage increase among all broadband technology platforms, with large increases at six-month intervals.<sup>20</sup> Without semi-annual reporting, the Commission will necessarily be required to rely on even less current information when it makes decisions to allocate Connect America Fund support. As a result, there is a greater risk that support will be allocated to locations where eligible broadband service is already deployed with private, at-risk capital – and given the expected growth of fixed wireless subscribership,<sup>21</sup> fixed wireless providers are most likely to be harmed by decisions based on out-of-date information. To avoid

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<sup>16</sup> See, e.g., ACA Comments at 14; NCTA Comments at 16; NTCA Comments at 7; SCC Comments at 4; CTIA Comments at 7-8; Comments of Rural Wireless Association, WC Docket No. 11-10 (filed Oct. 10, 2017) at 6; Comments of T-Mobile USA, Inc., WC Docket No. 11-10 (filed Oct. 10, 2017) at 5; USTelecom Comments at 14; and WTA Comments at 3.

<sup>17</sup> See, e.g., NCTA Comments at 16; ACA Comments at 14-15; and WTA Comments at 3-6.

<sup>18</sup> SCC claims that “for most small companies, the rate of broadband buildout is such that annual updates would be sufficient for the FCC’s needs . . . .” SCC Comments at 4; see also WTA Comments (“WTA and its members know of no rural market where broadband deployment, services and adoption are changing so rapidly and so substantially that semi-annual FCC Form 477 data collections are necessary to keep abreast of and react to such changes.”). The Commission’s own reporting of Form 477 data disproves this blanket conclusion, at least with respect to cost-effective and quickly deployable fixed wireless technology.

<sup>19</sup> See Internet Access Services: Status as of June 2016, Industry Analysis and Technology Division, Wireline Competition Bureau (Apr. 2017), at Fig. 19.

<sup>20</sup> See *id.*

<sup>21</sup> See The Carmel Group, *Ready for Takeoff: Broadband Wireless Access Providers Prepare to Soar with Fixed Wireless* (2017) at 10 (projecting a further doubling of fixed wireless broadband subscribership in the next five years).

this patently unfair result, the Commission should retain its semi-annual Form 477 filing requirement.

WISPA also agrees with several commenters that the Commission should release Form 477 data in a more timely and continuous manner.<sup>22</sup> There should not be a one-year lag in releasing the public report.<sup>23</sup>

### **Conclusion**

WISPA respectfully requests that the Commission retain the semi-annual reporting schedule, and refrain from imposing any standardized process or tool for Form 477 compliance and reporting at a sub-census level. The administrative record overwhelmingly rejects proposals to collect data at a sub-census level and clearly demonstrates that certain providers are not able to report potential customers or areas that would be served. More importantly, the collection of more granular data will make reported information less accurate and less reliable, and would provide only a speculative or marginal benefit to the Commission and other stakeholders. Finally, the Commission is required to conduct a cost-benefit analysis as a foundational part of its deliberations prior to issuing a final rule to reasonably balance the enormous burdens and

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<sup>22</sup> See Broadband Census/Microbrand Media Comments at 8 (“Rather than moving toward less frequent data collection, the FCC should be considering systems and processes for the continuous collection and release of broadband data.”); and NCTA Comments at 15 (“Section 706 and . . . semi-annual Internet Access Services report . . . lack the consistency in timing and substance that would make them valuable to the public.”).

<sup>23</sup> See Broadband Census/Microbrand Media Comments, at 8 (“The freshness of data is especially important to consumers, businesses, and government organizations that use Form 477 . . . . The most frequent complaint from the users of these sites, which have powered more than 13 million searches, is that the data is stale by the time it is publicly published.”); and NC BIO Comments at 3 (“Shortening the frequency of the data releases without addressing the current backlog would negatively affect how states and local governments assess broadband services in their areas. For precision purposes, it is important to find strategies to reduce the backlog of data release.”).

costs with the limited benefits, and to prepare a FRFA that will adequately document the Commission's steps to reduce or eliminate the significant economic impact on small providers.

Respectfully submitted,

**WIRELESS INTERNET SERVICE  
PROVIDERS ASSOCIATION**

October 24, 2017

By: /s/ *Chuck Hogg*, Chairman of the Board  
/s/ *Mark Radabaugh*, FCC Committee Chair  
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