

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 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

**JOINT COMMENTS OF USTELECOM ASSOCIATION – THE BROADBAND
ASSOCIATION AND THE WIRELESS INTERNET SERVICE PROVIDERS
ASSOCIATION**

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EXECUTIVE SUMMARY

As leaders of the Broadband Mapping Coalition, USTelecom – The Broadband Association and the Wireless Internet Service Providers Association (“WISPA”) (collectively, “Joint Commenters”) support the adoption, implementation and ongoing maintenance of the proposed Broadband Serviceable Location Fabric into the Digital Opportunity Data Collection as the new gold standard for fixed broadband data collection. Joint Commenters offer several recommendations and refinements to the Commission’s proposals to facilitate successful and timely implementation of the Fabric in a manner that balances the benefits of more accurate and granular broadband data reporting with the burdens on providers to collect, assemble and report their deployment information. Specific recommendations include the following:

Standards For Reporting Service Quality Standards

- Do not require providers to report latency data in the context of this collection which is focused on availability, or in the alternative make it a low burden “check the box” requirement.
- Do not require providers to supply any testing or other verification of latency.
- Exclude non-mass market business-only services from reporting requirements due to the confidentiality and antitrust issues.
- Create only a single category for reporting that includes mass market residential and business customers as it is irrelevant from a service availability standpoint to separate them.
- Require providers to report the maximum advertised download and upload speeds associated with the services that a provider *offers* in an area.

Verification of Data

- Verification can be achieved via the challenge and crowdsourcing resources; however, if the Commission does find that there needs to be a separate type of verification such as verification against existing resources such as the HUBB, the timing of this is dependent upon the creation of the Fabric.
- Any verification needs to wait for the creation of the Fabric. The purpose of creating the locations database was to ensure that when referring to locations there is a singular set of uniform reference data.
- No data is in essence “verifiable” until the Fabric is created. That will be the dataset against which all other data is checked.
- Do not require a separate engineering certification with providers’ biannual filings.
- The geocoordinates in the Fabric should become the standard format when evaluating any outside data including data provided by third party and government entities.

Enforcement

- At the outset, no enforcement should be taken until the Fabric is complete and there has been at least one full year of reporting on top of the Fabric and accompanying challenges and crowdsourcing have taken place.

Broadband Serviceable Location Fabric

- Record each serviceable structure as a single point and build on the Commission's existing guidance by applying the definition of "location" across multiple USF platforms.
- Mobile homes should be counted individually if they are fixed structures with their own address and/or receive electricity. In these instances, residents typically subscribe independently for service and therefore reside in "housing units."
- Use existing guidance for high-cost programs for MTEs/MDUs – it is a single location with multiple units.
- Each location should reflect a single point that has fixed harmonious latitude and longitude. An address is helpful as an informative reference and for determining which structures are their own locations but can be inconsistent as a label for a location.
- The Fabric will undoubtedly be an ever-changing dataset as structures are built and torn down – as such ensuring it is updated regularly with data from the underlying data vendors as well as information gathered through crowdsourcing and the challenge process should be sufficient to ensure quality is maintained. The Commission could use statistical sampling.

Carefully Craft the Commission's Proposed Public Challenge Regime

- Automatically notify providers of challenges to their data and allow them 60 days to respond.
- Provide clarity on the challenge categories to avoid incomplete and frivolous challenges.
- Ensure the challenge process is rigorous so the Commission and providers are not burdened with illegitimate challenges. The Commission should review all challenges to determine whether they meet a prima facie test for accuracy and completeness before seeking a response from the provider.
- Only allow governmental and tribal entities or third parties that are challenging on behalf of a customer to submit bulk challenges

Sunset FCC Form 477

- Discontinue the broadband deployment data collection that is part of the FCC Form 477 no later than one year after the new data collection process has been established.

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USTelecom – The Broadband Association (“USTelecom”) and the Wireless Internet Service Providers Association (“WISPA”) (collectively, “Joint Commenters”) hereby submit their joint comments in the above-captioned proceeding to inform the Federal Communications Commission’s (“FCC” or “Commission”) efforts to improve the accuracy and granularity of fixed broadband reporting.¹

I. INTRODUCTION

Joint Commenters remain committed to supporting the Commission’s continuing effort to develop robust new data collection tools to more accurately identify and depict broadband service availability. More accurate and more granular broadband mapping will better define the areas where broadband is available and where it is not. This information should serve as the foundation for directing scarce resources where they can be most effective. As leaders of the

¹ *Digital Opportunity Data Collection*, Second Report and Order and Third Further Notice of Proposed Rulemaking, WC Docket Nos. 19-195 and 10-90, FCC 20-94 (rel. July 17, 2020) (“*Second Report and Order*” or “*FNPRM*”).

Broadband Mapping Coalition (“BMC”) that initiated a two-state mapping pilot program (“Pilot”) demonstrating the ability to efficiently create a highly granular, scalable, national Broadband Serviceable Location Fabric (“Fabric”), Joint Commenters appreciate the Commission’s quick work in adopting the Fabric and implementing the Digital Opportunity Data Collection (“DODC”) rules and the requirements of the Broadband Deployment Accuracy and Technological Availability Act (“Broadband DATA Act”).²

To that end, Joint Commenters generally support the Commission’s proposals in the *FNPRM*. Informed by the Pilot and their members’ experiences with FCC Form 477 deployment and subscription data reporting and High Cost Universal Broadband (“HUBB”) portal locations reporting, Joint Commenters offer several recommendations to facilitate successful and timely implementation of the Fabric, the challenge process and other aspects of the reporting requirements in a manner that balances the benefits of more accurate and granular broadband data reporting with the burdens on providers to collect, assemble and report their deployment information. Joint Commenters also offer a number of recommendations similar to those they submitted previously in this proceeding to help facilitate these objectives and are committed to working with each other and the Commission to provide greater certainty and clarity.³

Joint Commenters support the Commission’s proposals to utilize the definition of “location” currently used for the Commission’s high-cost programs in creating the Fabric.⁴ To

² Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (“Broadband DATA Act”).

³ See Joint Comments of USTelecom, WISPA and ITTA, WC Docket Nos. 19-195 and 10-90 (filed Sept. 23, 2019) (“2nd FNPRM Joint Comments”); Joint Reply Comments of USTelecom, WISPA and ITTA, WC Docket Nos. 19-195 and 10-90 (filed Oct. 7, 2019) (“2nd FNPRM Joint Reply Comments”).

⁴ See Public Notice, *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding their Broadband Location Reporting Obligations*, DA 16-1363 (rel. Dec. 8, 2016) (“December 2016 PN”).

ensure consistency and to enhance broadband availability accuracy, the definition should be used for DODC reporting purposes and across the Commission’s fixed service USF programs that have reporting and buildout obligations. Once created, the Fabric will establish the definitive set of geographic coordinates for locations against which all other data is verified. As such, the Commission should suspend enforcement actions against broadband providers for at least one full year after providers begin reporting availability on top of the Fabric and accompanying challenges and crowdsourcing have taken place.

The Commission also should carefully craft its public challenge process and, in doing so, ensure that all of the fields of requested information be completed in order for a challenge to be considered viable for response by providers. This is true both for consumer challenges and challenges by state, local, and tribal governments as well as other entities. In particular, the Commission should use a rigorous process to review non-consumer challenges for compliance with the rules and apply a “clear and convincing proof” evidentiary standard so that the Commission and service providers are not inundated with incomplete and frivolous challenges and the Commission can avoid the potential arbitrariness that is inherent in a lower “preponderance of the evidence” standard. For these same reasons, Joint Commenters support USTelecom’s recent request that Commission staff consider screening out challenges at the initial stage that do not meet *prima facie* acceptance standards so that frivolous challenges do not require a response from the service provider.⁵

⁵ See Letter from B. Lynn Follansbee, USTelecom Vice President – Policy and Advocacy, to Marlene H. Dortch, FCC Secretary, Docket Nos. 19-195 and 10-90 (filed Aug. 14, 2020) (“*USTelecom Ex Parte Letter*”).

II. STANDARDS FOR REPORTING AVAILABILITY AND QUALITY OF SERVICE DATA FOR FIXED BROADBAND INTERNET ACCESS SERVICE

The Commission states that the rules it adopted in the *2019 DODC Order* for fixed broadband reporting are consistent with the Broadband DATA Act and seeks comment on excluding from the DODC “business-only” service, instead requiring only a distinction between fixed providers’ residential-only and business-and-residential services.⁶ Joint Commenters support the Commission’s proposal to limit the DODC reporting requirements to “facilities-based providers,” as defined in 47 CFR § 1.7001(a)(2),⁷ but also support the *exclusion* of non-mass market business-only services from reporting requirements due to the confidentiality and antitrust issues USTelecom has previously expressed.⁸ In responding to the Petition for Reconsideration filed by INCOMPAS in this proceeding,⁹ USTelecom explained that, “in no enterprise business services arrangement can a business request service and have service provided within 10 days due to the length of time it takes to work through the often customized contract and provisioning processes.... [t]hese arrangements are currently confidential and include both commercial and government customer facilities....[and,] [i]f polygons are required to be reported by specific technology and specific speed and then are overlaid on the Broadband Serviceable Location Fabric as is proposed by the Commission in this proceeding,¹⁰ actual customer information and the details of those proprietary contractual arrangements would likely

⁶ *2nd Report and Order* at ¶¶ 89-90, citing *Establishing the Digital Opportunity Data Collection*, Report and Order and Second Further Notice of Proposed Rulemaking, WC Docket No. 19-195, 34 FCC Rcd 7505, 7510, ¶ 12 (2019) (“*DODC Order*” or “*2nd FNPRM*”).

⁷ *FNPRM* at ¶88.

⁸ See *USTelecom Ex Parte Letter* at 1.

⁹ See INCOMPAS Petition for Reconsideration, WC Docket Nos. 19-195 and 11-10, at 9 (filed Sep. 23, 2019).

¹⁰ *FNPRM* at ¶ 101.

be disclosed.”¹¹ All of these facts remain true and validate the reasons for excluding the reporting of non-mass market services.

Outside of these types of contractual services, Joint Commenters support requiring only a single category of reporting such as “mass market services” as opposed to requiring providers to distinguish between residential and residential-and-business locations.¹² Not only is this distinction irrelevant from a service availability standpoint, it would be unduly burdensome because providers do not typically record deployment capability, either in the normal course of business or for Form 477 reporting, according to how it could be used by the subscriber. In many cases, consumers purchase broadband service for their residential use, yet the provider has no basis on which to determine if the service is being used for consumer purposes or “work from home” purposes. And, as the COVID-19 experience makes clear, broadband services purchased primarily for residential consumer use are increasingly being used for business purposes. The ability to connect a consumer and provide service at a given location is either possible or not, regardless of whether the consumer wishes to utilize the service in their home or their business, or both. As such, it is unnecessary and irrelevant to add the burden of coding these consumers in a different way when there is no additional value to the data.

With respect to the service quality standards of speed and latency, the Commission proposes to require all fixed broadband providers to report both the maximum advertised download and upload speeds associated with the service a provider offers in an area¹³ and latency data by indicating whether the network round-trip latency associated with the service offered by each technology and each maximum speed combination in a particular geographic

¹¹ USTelecom Opposition to INCOMPAS Petition for Reconsideration, WC Docket Nos. 19-195, 11-10 at 6-7 (filed Feb. 14, 2020).

¹² *FNPRM* at ¶90.

¹³ *Id.* at ¶91.

area is less than or equal to a particular threshold (100 milliseconds).¹⁴ Joint Commenters have no objection to the proposal to report minimum and maximum *advertised* speed. It is reasonable for service providers to report what they hold out as a mass market offering; however, this requirement should not include any additional performance testing unless the provider is subject to, or becomes subject to, testing requirements by virtue of being a high-cost support recipient. Adding such burdens to other providers that are not high-cost support recipients would significantly increase costs and burdens while doing little to further the benefits and objectives of the Broadband DATA Act.

The Commission also seeks comment on whether and to what extent it should require providers to report latency data and, if so, which providers should be required to report and how should the information be reported.¹⁵ Unlike reporting of upload and download speeds, the Broadband DATA Act does not specifically mandate latency reporting. Rather, Section 642(b)(2)(A)(ii) includes the phrase “if applicable” in qualifying the latency reporting obligation, affording the Commission discretion to not require latency reporting at all.¹⁶ As Joint Commenters previously stated in this proceeding,

Although latency may be a relevant metric when assessing broadband performance, the Joint Commenters oppose the inclusion of latency as a reportable metric for broadband *availability*. The Commission has consistently rejected latency reporting as a fundamental measure of broadband availability, and the burdens of requiring latency reporting outweigh whatever marginal benefits could be gained from attempting to collect this data from broadband providers.¹⁷

¹⁴ *Id.* at ¶92.

¹⁵ *Id.* at ¶¶92-93.

¹⁶ 47 U.S.C. §§ 642(b)(2)(A)(ii).

¹⁷ See 2nd FNPRM Joint Comments at 4, citing *2019 Broadband Deployment Report* (“Applying a latency benchmark for all broadband services, whether fixed terrestrial, satellite, or mobile broadband, that would exclude from our section 706 analysis any consideration of broadband services that, on their face, would appear to provide consumers with the relevant capabilities articulated in section 706(d)(1), would prevent a reliable or complete assessment of the deployment of advanced telecommunications capability.”)

Nevertheless, if the Commission chooses to require fixed providers to report latency, then all fixed providers should have to meet the requirement with respect to the type of service they provide. Joint Commenters advocate that any latency reporting should be a “check the box” exercise requiring the provider to report whether its broadband service is less than or equal to 100 milliseconds. Requiring more precision would increase burdens on providers. In addition, the Commission should not require providers to supply any testing or other verification of their latency data.

III. PROCESSES FOR VERIFYING BROADBAND AVAILABILITY DATA SUBMITTED BY PROVIDERS

The Commission seeks comment on the Broadband DATA Act’s requirement that it issue final rules establishing processes to “verify the accuracy and reliability” of data submitted by providers.¹⁸ Joint Commenters believe that this can be achieved via the challenge and crowdsourcing resources. However, if the Commission finds that there should be a separate type of verification, any fixed broadband verification should take place only after the Fabric is in place. The purpose of creating the locations database depicted by the Fabric is to ensure that there is a single set of uniform reference data. Given the lack of consistency among commercial geocoders that may assign different geographic coordinates to the same location,¹⁹ this underlying dataset of harmoniously geocoded data is necessary to check for accuracy. Thus, by definition, no data is verifiable until the baseline Fabric is created. Once the Fabric is created, it will be the dataset against which all other data is checked and the geographic coordinates in the

¹⁸ *FNPRM* at ¶103.

¹⁹ *See* Letter from Jonathan Spalter, President & CEO, USTelecom, Genevieve Morelli, President, ITTA, Claude Aiken, President & CEO, WISPA to Marlene H. Dortch, FCC Secretary, Docket Nos. 19-195, 11-10, 10-90 and 19-126 (filed Aug. 20, 2019) and accompanying report (“*BCM Pilot Report*”).

Fabric should become the standard format when evaluating any outside data. Therefore, the Commission should make available an application so that all parties can quickly autogenerate the proper coordinates associated with a particular location. Then, third party and government entities can check their coordinates against the Fabric prior to filing a challenge in order to resolve inconsistencies. This will avoid challenges founded on differing data sets that should not be filed in the first place.

Joint Commenters strongly believe that the Commission should *not* require fixed broadband providers to include engineering certifications with their biannual reports.²⁰ Consistent with Form 477 and high-cost reports (e.g., Form 481, location reporting), the Broadband DATA Act does not require such a separate certification from an engineer. Moreover, implicit in the required officer's certification is reliance on engineering expertise and data developed as part of the provider's development of the reporting methodology. The Commission has not analyzed the purported benefits and costs, especially for small providers, of engaging an engineer from outside the company to provide a certification, or any assessment of the rigor that would be required. The engineering certification could have the perverse effect of discouraging DODC reporting by small entities that lack the resources to engage an outside engineer, especially at a time when they are learning and investing time and resources into the new DODC process. There is no evidence that an engineering certification "would improve the accuracy of data," as the Commission surmises,²¹ and it therefore should reject this proposal.

The Commission asks how it can best implement the Broadband DATA Act's requirement to collect and use "verified" data from third parties and government entities, and

²⁰ *FNPRM* at ¶112.

²¹ *Id.*

what constitutes “verified” data.²² Joint Commenters propose requiring third party and governmental entities to attempt to resolve any inconsistent data with the providers.²³

IV. CHALLENGE PROCESS

A. Online Tracking System

The Broadband DATA Act requires the Commission to implement a “user-friendly challenge process through which consumers, state, local, and tribal governmental entities, and other entities or individuals may submit coverage data to the Commission to challenge the accuracy” of coverage maps, broadband availability data submitted by parties and the Fabric.²⁴ The Commission proposes that the online mechanism for receiving and tracking challenges be accessible through the same portal it proposes to use for crowdsourced submissions, and that it provide easy, direct access to the challenge data as well as broadband availability data the Commission collects from providers, including speed and latency data.²⁵ Joint Commenters support the concept that the Commission utilize the same online mechanism for accepting challenges as it does crowdsourcing so long as it is clear what data is crowdsourced and what is a challenge. Using the same portal will promote ease of access to information the Commission collects and can be accomplished through clear instructions and a drop-down menu that requires the filer to identify the purpose of its data submission.

B. Consumer Challenge Process

The Commission anticipates the issues raised in individual consumer challenges may differ from those raised by entities, and proposes to establish separate sets of requirements and

²² *Id.* at ¶113.

²³ *Id.* at ¶114.

²⁴ Broadband DATA Act at § 642(b)(5); *FNPRM* at ¶127.

²⁵ *FNPRM* at ¶128.

procedures.²⁶ Joint Commenters agree that consumer challenges will likely be different in scope from challenges by other entities and therefore support separate requirements and procedures. As a guiding principle, the consumer challenge process must be receptive only to good faith challenges predicated on appropriate rigor and diligence and designed in a manner that discourages incomplete and frivolous challenges. Joint Commenters generally support the Commission’s proposals, and offer targeted recommendations on how it can balance earnest public participation and the resources of providers and the Commission in addressing challenges. These recommendations are designed to foster the objectives of the Broadband DATA Act and the Commission’s goal of “minimizing burdens on the parties and conserving valuable Commission resources to the maximum extent possible.”²⁷

Consumer Challenges of Fixed Data. Joint Commenters support the Commission’s proposal to collect the following information from consumers seeking to challenge coverage map data or the availability of service at a particular location: (1) the name and contact information of the challenger; (2) the street address and geographic coordinates of the location(s) at which the consumer is challenging the availability of broadband internet access service; (3) a representation that the challenger owns or resides at the location or is authorized to request and receive service there; (4) the name of the provider whose coverage is being disputed; (5) a category of availability dispute; and (6) text and documentary evidence and details of a request for service (or attempted request for service).²⁸ The Commission also seeks comment on what level of specificity it should require for contact information, and whether there are any privacy concerns with requesting this information.²⁹ Joint Commenters suggest that the Commission

²⁶ *Id.* at ¶129.

²⁷ *Id.* at ¶139.

²⁸ *Id.* at ¶130.

²⁹ *Id.* at ¶133.

collect name, address and contact information in the form of either a phone number or email address. While service providers will need access to such contact information to respond to a challenge, the Commission should give the consumer the option to keep this information private, or the Commission should de-identify that type of personally identifiable information prior to public availability.

The requirements for consumer challenges should, however, consider that the inability to connect a customer within ten business days of a request may be the result of the prospective customer not being available or the inability to coordinate scheduling with the provider. As explained in USTelecom’s recent *ex parte* letter, “these options could result in unfounded challenges unrelated to availability and mapping when the service provider is able to provide service within ten business days as required, but circumstances such as the inability to schedule installation with the consumer delays the actual installation.”³⁰ Similarly, an “unsuccessful installation” could be the result of extenuating circumstances such as dangerous weather conditions or other factors beyond the control of the provider and its installer. Joint Commenters suggest that these examples be removed from the list of pre-established options for the category of the challenge.

The Commission asks if it should collect additional information or if any of the proposed types of information are not needed to present a clear picture of a challenge to fixed service availability and coverage data, or if the information as proposed is comprehensive enough to cover all challenges considered by the Broadband DATA Act.³¹ Joint Commenters agree with the Commission that the information it proposes to collect is detailed enough to support a challenge and also to discourage the submission of frivolous or malicious filings, or those that

³⁰ See *USTelecom Ex Parte Letter* at 2.

³¹ *FNPRM* at ¶132.

are not founded on adequate due diligence by the consumer. However, as discussed above, if the Commission were to create a quick application for challengers and other parties to use to generate geographic coordinates associated with locations in the Fabric, it would assist in reducing the number of challenges that are predicated solely on commercial geocoding inconsistencies. Furthermore, consumers submitting challenges also should be required to certify that the evidence submitted is accurate. In addition, Joint Commenters recommend that the text of footnote 344 of the *FNPRM* appear on the first page of the portal to help ensure that only documented challenges related to broadband availability are submitted.³²

Joint Commenters agree that automatic notification to providers is appropriate³³ and support NTCA's proposal to allow service providers 60 days to respond to a challenge.³⁴ The Commission proposes only 30 days,³⁵ but some service providers may need to analyze a great deal of data to respond to a large number of challenges, especially within the first few years of establishing this new process. Other smaller providers may lack the resources to analyze the challenge and provide a complete and accurate response within 30 days. Overall, affording providers 60 days should minimize the need for the Commission to consider extension requests and result in more accurate broadband mapping, which is the ultimate objective of the new mapping initiative. As the Commission rightly notes, "any timetable for a provider response must balance the burdens on the provider versus the public's interest in rapid resolution of

³² *Id.* at ¶132, n.344 ("The challenge process proposed for fixed service availability and coverage map data is designed to allow consumers and other parties to challenge whether coverage maps accurately reflect the availability of broadband service from a particular provider using the technology and at the maximum advertised speeds reported by the provider. This challenge process is not meant to address disputes that subscribers have with their broadband provider about quality of service issues, such as actual speeds and latencies received at a particular location.").

³³ *Id.* at ¶134.

³⁴ See NTCA Comments, WC Docket Nos. 19-195 and 11-20 (filed Sep. 23, 2019) at 9-10.

³⁵ *FNPRM* at ¶136.

disputes so that the Commission has the best broadband Internet access service deployment data available for funding decisions and reporting.”³⁶ Given that the purpose of the challenge process is to improve the data about broadband service availability, it is imperative that this process be designed to improve mapping accuracy and not just to meet a particular deadline.

Joint Commenters support the Commission’s proposed multi-step resolution process.³⁷ However, Joint Commenters ask the Commission to take the additional initial step of screening out challenges that identify locations that are not included in providers’ service coverage maps or fail to meet other *prima facie* requirements for acceptability (e.g., lack required information, not certified, not filed through the portal). Such a measure would avoid the need for providers to expend time and resources to respond to challenges that are facially incomplete or inapposite.

In addition, Joint Commenters reiterate their position that, instead of applying a “preponderance of the evidence” standard in this process,³⁸ the Commission should utilize a “clear and convincing evidence” standard. As Joint Commenters stated in their earlier-filed Comments,

The clear and convincing standard of evidence “is intermediate, being more than mere preponderance, but not to extent of such certainty as is required beyond reasonable doubt as in criminal cases.” It properly balances the Commission’s interest in avoiding unreliable or malicious challenges to coverage data with its interest in obtaining public feedback to enhance accuracy of the Commission’s broadband coverage data and maps.³⁹

Joint Commenters also believe that a preponderance of the evidence test would be more difficult for Commission staff to adjudicate, and a clear and convincing evidentiary standard would mitigate the potential for uneven line-drawing as Commission staff weighs the evidence.

³⁶ *Id.*

³⁷ *Id.* at ¶137.

³⁸ *Id.* at ¶138. The maps should say “subject to challenge/pending resolution,” which is less pejorative than the “in dispute/pending resolution” language the Commission proposes. *See id.*

³⁹ 2nd FNPRM Joint Comments at 33 (footnotes omitted).

Furthermore, the burden of proof must reside with the consumer or entity filing the challenge. The challenge process must, as a general principle, recognize that the provider is much more likely to have better mapping data because of the detailed requirements the Commission adopted in the *Second Report and Order*. Placing the burden on consumer challengers also will serve as another safeguard against bad faith or malicious challenges to coverage data.⁴⁰

The Commission anticipates that challenges to location information in the Fabric generally would not require the involvement of a broadband provider, although challenges to the Fabric data would be filed on the same portal as challenges of availability and coverage map data.⁴¹ Joint Commenters agree that once the Fabric is created, it will establish the definitive set of geographic coordinates for locations so that in a coordinate challenge, the Fabric should be deemed to have the correct set of coordinates – another reason why Joint Commenters have advocated for the use of a “clear and convincing” evidentiary standard.⁴² Furthermore, due to the inconsistencies in commercial geocoders, the Commission should create a single, consistent application for challengers to use.

Finally, Joint Commenters emphasize that the Commission should employ the same definition of “location” across all platforms – DODC reporting as well as the Rural Broadband Experiment, Connect America Fund and Rural Digital Opportunity Fund programs. Providers that participate in these programs can use a single definition instead of having different reporting units depending on the purpose, and the consistency of the data will enable it to be more easily compared and measured over time.

⁴⁰ The provider would automatically be successful where it submits evidence showing prior service to the newly challenged location.

⁴¹ *FNPRM* at ¶141.

⁴² *See* 2nd *FNPRM* Joint Comments at 27.

Challenges by Governmental and Other Entities to Fixed Data. Pursuant to the Broadband DATA Act requirement that state, local, or tribal governmental entities or other entities be authorized to submit challenges, the Commission proposes to establish two processes for challenges to fixed data by state, local, or tribal governmental entities or other entities: one for availability and coverage map challenges, and one for challenges to Fabric data that requires generally the same information as proposed for the consumer availability challenges.⁴³

Joint Commenters agree that challenges from these entities could be useful in gaining a more accurate picture of where broadband is available. However, as Joint Commenters have stated before in this proceeding, it is appropriate to allow only governmental and tribal entities to submit bulk challenges.⁴⁴ The Commission itself acknowledged that one of its goals is to avoid bad faith challenges, and opening the door for anyone to file a bulk challenge anywhere would jeopardize this objective.⁴⁵ Joint Commenters do not believe that groups, individuals or businesses with no connection to a particular area or a provider have a legitimate interest in bulk-challenging a provider's service. Moreover, bulk challenges from other third parties have the grave potential to be motivated by bad faith and could become the source of an overwhelming number of challenges, both for the Commission and service providers. Taken to its logical extreme, the bulk filing of challenges by groups, individuals or businesses having no connection to the area or even to the provider could open the door for "proxy challenges" that could overtake the system and upset the balance of burdens and benefits that the Commission seeks to establish. Joint Commenters believe the best way to avoid these results is to limit bulk challenges to governmental and tribal entities or third party entities that are filing on behalf of a

⁴³ *FNPRM* at ¶¶145-146.

⁴⁴ *See* 2nd *FNPRM* Comments at 36-37.

⁴⁵ *FNPRM* at ¶97.

consumer or group of consumers that have evidence that they have tried and failed to obtain service in a particular area.

For any challenge, the Commission should assign the burden of proof to the challenging entities. In order to maintain the integrity of the process, it is important that the challenge review standards be as uniform as possible so that there is no equivocation about what is “clear and convincing evidence.”⁴⁶ In addition, for these challenges in particular, the rules should require that all of the proposed fields of requested information must be accurately completed in order for a challenge to be accepted. It is necessary for the Commission to use a rigorous process for reviewing non-consumer challenges, and there must be a clear and convincing evidentiary standard particularly for bulk challenges so that the Commission and service providers are not inundated with challenges not filed in good faith.

Public Availability of Information Filed in the Challenge Process Joint Commenters support the Commission’s proposal to make publicly available and searchable, information about the location that is the subject of the challenge, the name of the provider, and any relevant details concerning the basis for challenging the reported broadband coverage.⁴⁷ Joint Commenters do not believe it is necessary for the Commission to regularly issue public notices with this information. By making the information available by search, those parties who are inclined to participate in the process can access it. There is no need to create another administrative layer for Commission staff by compiling and releasing it in a public notice.

⁴⁶ In turn, uniformity will be facilitated by such reviews being limited to Commission staff, who will receive the same training and be poised to develop a relatively uniform *modus operandi* for review through case studies, “comparing of notes” regarding the challenge process, and shared management reviews of implementation of the process.

⁴⁷ *FNPRM* at ¶165.

V. BROADBAND SERVICEABLE LOCATION FABRIC DATABASE

In the *FNPRM*, the Commission seeks additional comment on how to define a “location for purposes of creating the Fabric, and proposes to adopt the approach from its *December 2016 PN* for defining “locations.”⁴⁸ Joint Commenters support this approach with a few clarifying refinements. As Joint Commenters previously emphasized in this docket, “[t]he Commission should build on its existing guidance in the high-cost programs to take a clear position on this issue as it has important implications for a number of USF proceedings....⁴⁹ Joint Commenters believe that the Commission’s 2016 guidance should serve as the starting point for the current inquiry.⁵⁰ Joint Commenters ask the Commission to clarify its definition here so that ideally, the definition can be used across the Commission’s fixed service USF programs that have reporting and/or buildout obligations to ensure consistency and to enhance accuracy across the board.

Although Joint Commenters are not asking the Commission to deviate from its 2016 guidance, we seek clarification of mobile homes as “housing units” where those homes are stationary with unique addresses and/or receive electricity service. In these instances, an individual typically subscribes independently for broadband service and therefore those locations should be considered as “housing units” and thus a broadband serviceable location. During the BMC Pilot process, while the BMC’s vendor, CostQuest Associates, was building the Fabric, it discovered that the purpose or use of a given structure is available in the land use and tax

⁴⁸ *Id.* at ¶169.

⁴⁹ See 2nd FNPRM Joint Comments at 14-15, *citing*, *CAF II Locations Discrepancies Public Notice*; *Public Notice, Wireline Competition Bureau Issues Corrected Alternative Connect America Model II Offers to 37 Companies, Extends the Election Deadline, and Seeks Comments on Location Adjustment Procedures*, WC Docket No. 10-90, Public Notice, DA 19-504 (rel. June 5, 2019); *Petition for Clarification or Declaratory Ruling on the Definition of Location for Home Offices Under the Connect America Fund – Alternative Connect America Cost Model*, WC Docket No. 10-90 (filed May 6, 2019); *Public Notice, Comments Sought on Petition for Declaratory Ruling of Northeast Telephone Company and Western Iowa Telephone Association*, DA 19-579, (Jun. 20, 2019) (“Northeast Iowa Declaratory Ruling Petition”).

⁵⁰ See 2nd FNPRM Joint Comments at 15, *citing* *December 2016 PN*.

assessments for many counties, which is helpful in identifying these types of structures. However, where there is a lack of clarity, additional data (e.g., an address database or other third party data such as the mobile home association data) can be utilized to confirm whether the structure is stationary in a trailer park or simply a vacation recreational vehicle. In this same way, where there is a business and a residence on the same parcel of property, the deciding factor should be whether they are separate structures with separate addresses as indicated by the land use, tax assessment or other available data.⁵¹

The Commission also asks specifically if it should use the *December 2016 PN*'s approach to multi-tenant environments ("MTE").⁵² Given that there is often a lack of clarity on the number of units in large MTEs, Joint Commenters support the Commission's proposal to consider an MTE to be a single location and, where possible, to require reporting of the number of units associated with that location.⁵³ Use of this definition aids in consistency with the high-cost programs and, because the high-cost programs will ultimately utilize the availability data gathered as a result of this proceeding to make funding determinations, Joint Commenters ask the Commission to keep its definitions consistent across high-cost and reporting programs.

Joint Commenters also agree that the Fabric should reflect a location as a single point, defined by both geographic coordinates (latitude and longitude) and street address.⁵⁴ That said, it is important to remember that while an address is helpful as an informative reference and is the plain language way of describing a location and determining whether a structure is a separate location, addresses are textual and thus can be inconsistent as a label for a location, and therefore an address does not necessarily serve as an accurate descriptor of where a location actually

⁵¹ See *USTelecom Ex Parte Letter* at 3.

⁵² *FNPRM* at ¶¶170-171.

⁵³ *Id.*

⁵⁴ *Id.* at ¶170.

exists. On the other hand, latitude and longitude, while not the typical way most people use to describe a location, is both machine readable and standardized and, therefore, should be the most definitive descriptor of a location.

The Commission also seeks input on how it can maintain the quality of the Fabric.⁵⁵ Joint Commenters note that the Fabric will be an ever-changing dataset as structures are built and torn down. Therefore, it is of the utmost importance to ensure that the Fabric is updated regularly with data from the underlying data vendors as well as information gathered through crowdsourcing and the challenge process. Joint Commenters believe this should be sufficient to ensure that the quality of the Fabric is maintained, and support the use of statistical sampling as a check on quality and over time new data resources may become available that could also be included to continually improve the dataset.

VI. ENFORCEMENT

A critical component of the new broadband mapping regime is how the Commission should implement enforcement. The *Second Report and Order* and the Broadband DATA Act provide the framework, and the *FNPRM* seeks comment on definitions and standards the Commission should use.⁵⁶ As is the case with the challenge process, the enforcement regime must be guided by overarching principles that distinguish good faith efforts of providers to help develop and submit accurate and granular data from situations where a service provider has not expended reasonable time and effort to comply. The Commission also must recognize that, in the early years of implementation of this new form of reporting, providers, Commission staff and USAC will all need time to familiarize themselves with the new process. As such, the

⁵⁵ *Id.* at ¶174.

⁵⁶ *Id.*

Commission should focus on improving the Fabric and the resulting broadband map and encouraging compliance and participation, and not on enforcing noncompliance.

The Commission seeks comment on how it should define certain terms for purposes of enforcement.⁵⁷ Joint Commenters agree that the Commission should, to promote consistency, adopt its proposal to define “willfully and knowingly” as requiring intent, i.e., “where a false statement is ‘coupled with proof that the party . . . [knew] of its falsity.’”⁵⁸ The term “recklessly” does, as the Commission states, “suggest[] something less than intent yet more than mere negligence.”⁵⁹ Joint Commenters suggest that “recklessly” could be defined as “without any reasonable effort to determine the accuracy of the data submitted” – in other words, the submission lacks evidence that the provider followed the instructions in the portal or the basic obligations imposed by the new rules.

The Commission also seeks comment on how it should define the statutorily required term “materially inaccurate or incomplete.”⁶⁰ Because the polygon submission cannot easily be measured from a quantitative standpoint, Joint Commenters suggest that, consistent with Section 1.17(a)(2) of the Commission’s rules, the Commission employ a qualitative analysis that considers whether the data lacks sufficient information for the Commission to determine its accuracy or completeness.

Joint Commenters also believe that the scope of any enforcement should be limited to the availability and quality of broadband services which, as the Commission acknowledges, are the only two types of information the Broadband DATA Act requires.⁶¹ Accordingly, the

⁵⁷ *Id.* at ¶¶175-176.

⁵⁸ *Id.* at ¶175 (citation omitted).

⁵⁹ *Id.*

⁶⁰ *Id.* at ¶176.

⁶¹ *Id.* at ¶177.

Commission should not expand the scope of enforcement beyond the required DODC submissions and corresponding challenges.

Penalties for the submission of materially inaccurate or materially incomplete data. The DODC reporting requirements and the implementing rules for the Broadband DATA Act constitute a sea change in how providers report information, introduce a novel challenge process and alter the way in which data is aggregated and analyzed. The overhauled regime will require different tools and impose burdens on providers, the public and Commission staff. Joint Commenters, who have supported these efforts from the outset despite the additional resources they will require, are optimistic that this approach will be successful and, over time, become routine. But Joint Commenters are also realistic in acknowledging that it will take time for data submissions to improve and become more routine. It is therefore necessary to ensure that the regulatory regime take these factors into account to encourage transparency, education and compliance over enforcement. Joint Commenters recommend the following rules.

First, the Commission should not impose any enforcement penalties sooner than the first two reporting periods after the Fabric has been created and is in use. This will encourage providers to submit their polygons and work through issues regarding their fixed wireless propagation methodologies. The Commission also will gain valuable insight into what constitutes “willfully and knowingly,” “recklessly,” and “materially inaccurate or incomplete,” and the Commission can provide guidance to providers and challengers that will improve reporting without fear of enforcement.⁶² There would also be the added benefit of having a standard to determine accuracy as defined by the geocoordinates of the Fabric. This “dress

⁶² See *USTelecom Ex Parte Letter* at 2.

rehearsal” will avoid uneven enforcement and promote consistency and transparency that will, in turn, create greater accuracy in reporting.

Second, Joint Commenters agree with Next Century Cities that there should be a “simple and transparent standard that offers multiple warnings before an escalating set of sanctions that takes into account the geographic reach of the provider.”⁶³ In addition to the geographic reach, the Commission also should consider whether the errors are made in good faith, or if the same errors are being repeated by the same provider, and are material. Joint Commenters strongly disagree with any proposal that enforcement actions should disqualify a provider from receiving USF support or require a forfeiture of support.⁶⁴ High-cost recipients already face substantial penalties, including the loss of support and a draw on letters of credit, if they fail to meet buildout obligations to “locations” they are required to serve. Assuming the Commission uses the same definition of “location” across all platforms, as Joint Commenters urge, there should be no reason to impose double jeopardy on high-cost recipients that also will be making DODC submissions for the first time.

Penalties for failure to file. Joint Commenters agree that harsher penalties should be reserved for those providers that do not make any DODC submissions at all.⁶⁵ That said, the Commission should be lenient with respect to those that do not file in the first two reporting periods, but rather reach out to providers and provide technical assistance, as described below, to encourage participation.

Filing corrected data. The Commission proposes that providers file corrections within 45 days of the discovery of errors or incompleteness.⁶⁶ Joint Commenters recommend a slightly

⁶³ *FNPRM* at ¶178.

⁶⁴ *Id.*

⁶⁵ *Id.* at ¶181.

⁶⁶ *Id.* at ¶182.

longer period of 60 days to afford providers more time to work through the reasons for reporting errors. At this time, it cannot be known whether errors will be common, small and easily correctable, or whether methodologies need to be re-created, a process that would take longer. Small providers may lack the significant resources it may take, and large providers may have more geographic areas where corrections must be made. Over time, as errors become less common and the means of correction become easier, the Commission can consider shortening the time period to 45 days.

Scope of required corrections. Joint Commenters agree with the Commission's proposal that corrections should be forward-looking only, with corrections reflected in the next biannual filing.⁶⁷

VII. TECHNICAL ASSISTANCE

The Broadband DATA Act requires the Commission to provide technical assistance upon request to providers with fewer than 100,000 active broadband connections.⁶⁸ Joint Commenters recommend that the Commission designate staff within the Wireline Competition Bureau to provide periodic workshops and webinars, and to have a help desk available for small providers to contact for questions and assistance.

VIII. SUNSET OF FORM 477

Once the new reporting process is in place, Joint Commenters are optimistic that it will be sufficient to replace Form 477 for broadband reporting. Joint Commenters agree that there should be no more than two cycles (one year), and preferably one cycle of overlap, as the

⁶⁷ *Id.* at ¶183.

⁶⁸ *Id.* at ¶186.

Commission proposes, between the new reporting regime and Form 477, at which time Form 477 should sunset automatically with respect to broadband reporting.⁶⁹

IX. CONCLUSION

The Commission should promptly adopt the proposals described herein so that the Commission can move quickly to improve the accuracy and granularity of broadband availability. In doing so, the Commission should rely on the Fabric, once complete, as the definitive set of coordinates for identifying locations against which all other data is verified. The Commission should also carefully craft its challenge process to ensure it is rigorous enough to prevent frivolous and illegitimate challenges.

Respectfully submitted,

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⁶⁹ *Id.* at ¶191.