

September 21, 2018

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation: *In the Matter of Modernizing the Form 477 Data Program*, WC Docket No. 11-10.

Dear Ms. Dortch:

On September 19, 2018, I met separately with Travis Litman, Chief of Staff for Commissioner Rosenworcel, and Will Adams, Legal Advisor for Commissioner Carr. In each meeting, I expressed CCIA's concerns that, pursuant to the *FNPRM* on modernizing the Commission's Form 477 data collection in the proceeding referenced above,¹ the Commission would eliminate its ability to assess the level of competition in the marketplace for Business Data Services.

CCIA maintains that the Commission's action last year² was severely misguided.³ As CCIA stated previously, that *BDS Report and Order* was based on the flawed premise that the mere presence of a "single BDS competitor" "nearby" would be "substantial" and effectively "discipline rates, terms, and conditions to just and reasonable levels."⁴ However, if the Commission were to "eliminate the separate reporting of available contractual or guaranteed data throughput rates for business/enterprise/government services",⁵ it could no longer assess whether competition has developed under its new scheme, and, at worst, it would have to conduct another data collection like the massive undertaking that precipitated the *Tariff Investigation Order and FNPRM*.⁶

¹ See *In the Matter of Modernizing the FCC Form 477 Data Program*, Further Notice of Proposed Rulemaking, WC Docket No. 11-10 (rel. Aug. 4, 2017) ("*FNPRM*").

² See *In the Matter of Business Data Services in an Internet Protocol Environment*, Report and Order, WC Docket No. 16-243, GN Docket No. 13-5, WC Docket No. 05-25, RM-10593 (rel. Apr. 28, 2017) ("*BDS Report and Order*").

³ See generally Notice of *Ex Parte* Letter of CCIA, WC Docket No. 16-143, WC Docket No. 05-25, RM-10593 (filed Apr. 12, 2017).

⁴ *Id.* at 2-3.

⁵ *FNPRM* at ¶ 27.

⁶ *In the matter of Business Data Services in an Internet Protocol Environment*, WC Dkt. No. 16-143; *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Dkt. No. 15-27; *Special Access Rates for Price Cap Local Exchange Carriers*, WC Dkt. No. 05-25; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, *Tariff Investigation Order and Further Notice of Proposed Rulemaking* (rel. May 2, 2016).

CCIA encourages the Commission to look beyond similar messages conveyed by certain incumbent broadband providers.⁷ Although it is unclear from these disclosures which “alternatives” they “support” or for which they advocated, CCIA believes that the Commission should continue to collect data on BDS so it can properly address the lack of competition in this marketplace and practice “reasoned decisionmaking”.⁸ In contrast to what these incumbents have suggested, INCOMPAS, which counts smaller, competitive carriers among its members, stated in its Comments in this proceeding that “[BDS] data would not be burdensome to collect via Form 477; carriers can use widely available geocoding software to map BDS locations to census blocks. For smaller carriers without the commercial software, a Geocoder tool is available on census.gov that allows batch entry of addresses to obtain census block groups (“CBGs”).”⁹

As Senator Wicker said at a recent hearing where the Senate Commerce Committee conducted oversight of the Commission, “The maps are a real problem.”¹⁰ Senator Tester went further: “The maps stink.”¹¹ By the Commission’s own admission, Form 477 is its “principal tool . . . to gather data on communications services, including broadband services, to help inform policymaking.”¹² Although there are significant issues with the collection of Form 477 data, which the Commission has acknowledged, for the Commission to assess its predictions in the *BDS Report and Order* and produce accurate maps, it must have a data set that it can review. The Commission should continue collecting information on BDS.

⁷ Compare Notice of *Ex Parte* of USTelecom, WT Docket No. 11-10 (filed Sept. 7, 2018) (“During the meeting, USTelecom and its members expressed support for the Commission’s efforts to identify unserved areas through the collection and mapping of data from the existing Form 477 while at the same time discussed the challenges presented by various types of reporting methods. We encouraged the Commission to focus on alternatives that would avoid unnecessary administrative and financial burdens for broadband providers and for the Commission itself.”) with Notice of *Ex Parte* of NCTA – The Internet & Television Association, WT Docket No. 11-10 (filed July 16, 2018) (“In the meeting, we expressed support for the Commission’s efforts to identify unserved areas through the collection and mapping of data from the existing Form 477. In assessing proposed changes to the Form 477, we encouraged the Commission to focus on alternatives that would avoid unnecessary administrative and financial burdens for broadband providers and for the Commission itself.”).

⁸ *Motor Vehicles Mfrs. Ass’n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 52 (1983).

⁹ Comments of INCOMPAS at 6, WT Docket No. 11-10 (filed Oct. 10, 2017).

¹⁰ *Oversight of the Federal Communications Commission: Hearing Before the S. Comm. on Commerce, Science, and Transportation*, 115th Cong. (2018).

¹¹ *Id.*

¹² *FNPRM* at ¶ 1.

This letter is provided to your office in accordance with Section 1.1206 of the Commission's rules.

Respectfully submitted,

/s/ John A. Howes, Jr.

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