

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
) CC Docket No. 99-301
Local Competition and Broadband Reporting)

**COMMENTS
OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association¹ (“USTA”) hereby files its comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-referenced proceeding. USTA supports the Commission’s effort to gather information about the scope of competition in narrowband, wireless and broadband telecommunications markets. With information provided by competitive telecommunications service providers, coupled with existing reports from ILECs, the Commission can move forward to promote regulatory forbearance set forth in Section 10,² eliminate regulations pursuant to the biennial review process in Section 11³ of the Act, and eliminate further regulations regarding ILEC deployment of broadband services consistent with Section 706 of the Act.

**I. ANNUAL REPORTING OF DATA
ON A STATEWIDE BASIS IS SUFFICIENT**

¹ The trade association formally known as the United States Telephone Association.

² 47 U.S.C. §160.

USTA supports annual reporting of competitive data. As USTA commented in the Local Competition Public Notice in this proceeding, the Commission has reviewed the scope of competition in the wireless and cable industry on an annual basis.⁴ There is clearly no regulatory, or public policy reason, to burden carriers providing data on the scope of narrowband, wireless and broadband competition with more frequent reporting obligations. In addition, given that Section 11 of the Act requires biennial review of Commission regulations, annual reporting obligations are more than adequate. Section 706 of the act requires the Commission to “regularly... initiate a notice of inquiry concerning the availability of advanced telecommunications” Under these circumstances, annual reporting suffices.

USTA supports annual reporting of data on a statewide basis. Statewide data on the status of local competition will provide the Commission and interested parties with a thorough

⁴ USTA Comments at 10 (June 8, 1998)(“[T]he Commission [should] measure the scope of local competition in a manner that is not burdensome to ILECs and others providing information”), FCC NOI CC Docket No. 91-141, CCB-IAD File No. 98-102 (“Local Competition Public Notice”); USTA Reply Comments at 7 (June 22, 1998) (“[T]he Commission’s information gathering effort must comport with the regulatory forbearance requirements of Section 10, and the biennial review effort to eliminate needless regulations pursuant to Section 11 of the Act If annual reporting on competition in the video and CMRS markets is sufficient for Congress, an annual filing on local competition should be more than adequate for the Commission.”), FCC NOI CC Docket No. 91-141, CCB-IAD File No. 98-102 (“Local Competition Public Notice”).

assessment of narrowband, wireless and broadband competition without imposing unnecessary reporting burdens on carriers.

USTA also supports the Commission's efforts to eliminate duplication of reporting obligations between the Commission and State PUCs. As stated in the NPRM, the Commission has "directed ... staff to work closely with state staffs to develop a system of tracking local competition and broadband information that will eliminate as much duplication as possible. Ideally, using one data base, a carrier serving multiple states will be able to comply with our filing requirements and those of the individual states it serves."⁵ USTA proposes that the Commission and the states adopt the Commission's report for state filing purposes or commit to an annual review of reporting obligations to ensure that duplicative regulations are eliminated.

II. PROPOSED REPORTING THRESHOLDS WILL PROVIDE SUFFICIENT DATA TO MEASURE THE SCOPE OF LOCAL COMPETITION

⁵ *Local Competition and Broadband Reporting Notice of Proposed Rulemaking* ("NPRM") at 10, ¶15.

The Commission proposes that entities with at least 50,000 access lines, channels or subscribers,⁶ or 50,000 wireless customers⁷ nationwide, would be required to meet the reporting obligation. In addition, the Commission proposes that any entity that provides 1,000 full broadband service lines or wireless channels, or has at least 1,000 full broadband subscribers, would be required to file reports on broadband deployments.⁸ Entities meeting these thresholds would be required to file reports in accordance with the Commission's form.⁹ The Commission asks whether these thresholds are sufficient to meet its requirement for information, and should ILECs and CLECs falling below these thresholds be exempt from these reporting obligations.¹⁰

The proposed reporting thresholds will provide the Commission with the broad range of information necessary to accurately assess the level of narrowband and broadband competition. USTA supports the Commission's proposal to exempt carriers under these thresholds from reporting obligations. As USTA commented in response to the Local Competition Public Notice "USTA urges the Commission not to impose filing requirements on small, rural and midsize ILECs who should not bear the financial and administrative costs of responding to a Commission

⁶ *NPRM* at 12-13, ¶24.

⁷ *NPRM* at 15, ¶29.

⁸ *NPRM* at 15-16, ¶30.

⁹ *NPRM* at 22-23, ¶42.

¹⁰ *NPRM* at 18-19, ¶37.

inquiry, particularly where there is no competition.”¹¹ Clearly, “[t]he cost and administrative burdens that the Commission’s proposed reporting requirements would place on these companies are not supported by overriding public policy reasons”¹² For these reasons, USTA supports the Commission’s suggestion that an ILEC of any size may file a brief letter in lieu of reporting local competition and broadband deployment data for states where the ILEC does not face competition for voice grade telecommunications services and provides *de minimis* broadband lines.¹³

¹¹ USTA Comments at 8 (June 8, 1998).

¹² USTA Reply Comments at 5 (June 22, 1998).

¹³ *NPRM* at 23, ¶44. Presumptively, *de minimis* broadband lines would be defined as an amount below the Commission’s proposed 1,000 full broadband lines. *Id.*

USTA urges the Commission to slightly modify the reporting obligations for broadband deployment. Both one-way and full broadband services represent significant segments of the broadband market which the Commission must consider to get an accurate view of the competitive landscape. In fact, the most popular Asymmetric Digital Subscriber Line ("ADSL") service offerings, which are primarily used for Internet access, are "one-way" broadband services under the Commission's definition, because their upstream data rates are less than 200 Kbps.¹⁴ Likewise, providers of cable high-speed modem services, which compete directly with ADSL in providing Internet access, would be exempt, because those services provide broadband service in only one direction. If such services were not counted in determining reporting thresholds, the Commission will not receive a total picture of the extent of deployment of ADSL, cable modem service, and other services that are used for Internet access, because many entities offering those services would not need to report. Consequently, the Commission should include both full and one-way broadband lines and subscribers in the broadband deployment threshold.¹⁵ Thus, an entity with either 1,000 or more full broadband lines, wireless channels or customers, or 1,000 or

¹⁴ *NPRM* at 15-16, ¶30.

¹⁵ The Commission requests that reporting entities provide information about the "number of one-way broadband lines in service." *NPRM* at 34, ¶65. Under the Commission's broadband definition, one way providers of telecommunications services would not have to report data on broadband deployment because they fall under the proposed threshold for full broadband deployment.

more one way broadband lines, channels or customers should also be required to meet the reporting obligations.

III. BIENNIAL REVIEW OF THESE REPORTING OBLIGATIONS IS REQUIRED BY THE 1996 ACT

The Commission seeks comment on whether to sunset its proposed regulations in five years or review these regulations every three years.¹⁶ Section 11 of the 1996 Act requires the Commission in every even numbered year to review all regulations to determine “whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition between providers of such service” and to “repeal or modify any regulation it determines to be no longer necessary in the public interest.”¹⁷ Congressional intent is clear. The Commission “shall review all regulations” at least biennially to determine if any regulations should be modified or repealed.¹⁸ Any effort to extend the time for Commission review of these reporting obligations would be inconsistent with the intent of Congress that the Commission review the need to impose regulations at least every two years.

¹⁶ *NPRM* at 40, ¶82.

¹⁷ 47 U.S.C. §161.

¹⁸ “Generally speaking, courts have read “shall” as a more direct statutory command than words such as “should” and “may” in the context of interpreting the intent of Congress regarding agency action.” *See Texas Office of Public Utility Counsel, et al. v. FCC*, 183 F.3d 393 (5th Cir. 1999), No. 97-60421, slip op. at 11 (July 30 1999), *citing MCI v. FCC*, 765 F.2d 1186, 1191 (D.C. Cir. 1985)(holding that “shall” is the “language of command”).

Respectfully submitted,

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Date: December 3, 1999

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