

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

TICKET FILE COPY ORIGINAL
RECEIVED
APR 2 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Local Competition and Broadband)
Reporting)
)

CC Docket No. 99-301

REPLY COMMENTS OF HUGHES NETWORK SYSTEMS

John P. Janka
Lee Ann Bambach
LATHAM & WATKINS
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
(202) 637-2200

April 2, 2001

CC Docket No. 99-301
HNS Reply Comments
April 2, 2001

No. of Copies rec'd 014
LHABCDE

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

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

REPLY COMMENTS OF HUGHES NETWORK SYSTEMS

Hughes Network Systems (“HNS”), a division of Hughes Electronics Corporation, hereby submits these reply comments on the Second Notice of Proposed Rulemaking in the above-referenced proceeding,¹ which seeks comment on whether the Commission should refine or improve its methods of gathering data on the degree of deployment of broadband services and the development of local competition.

As the comments filed by HNS and the other broadband providers participating in the proceeding unanimously indicate, the Commission’s proposals in this proceeding would reduce the degree of confidentiality afforded the data submitted on the Local Competition and Broadband Reporting Form (Form 477), increase the burden on providers by requiring even more detailed data be submitted than currently required, and provide little additional useful information to the Commission or state and local commissions that seek to monitor and report on the state of broadband deployment in their communities. Because the burdens that these proposals would impose on providers – as well as the risk of compromising the confidentiality of

¹ *Second Notice of Proposed Rulemaking, In the Matter of Local Competition and Broadband Reporting*, CC Docket No. 99-301, FCC 1-19 (rel. January 19, 2001) (“NPRM”).

commercially sensitive information and negatively impacting the broadband market – greatly outweighs any potential benefits, the Commission should not institute the proposed changes. Rather, the Commission should keep the required data elements the same but reduce the burden on respondents by streamlining the data collection form and reducing the frequency of filing to annually.

Every broadband service provider that filed comments in this proceeding, without exception, expressed serious concern over the Commission’s proposal to establish a new presumption that the data in Form 477 does not typically met the Commission’s standards for competitively sensitive information. Providers noted that “Form 477 provides a roadmap of carriers’ competitive entry strategies, strategic market positions, and current abilities to provide particular services in specific geographic areas.”² The data submitted is therefore proprietary, commercially sensitive information that must be fully protected from disclosure. If competitors are able to access this information – or even to infer it from the way data is disclosed – they can use it to target service areas in which there is heavy demand.³ This could have the effect, certainly undesired by the Commission, of distorting the broadband market by leading to increased competition for consumers in already well-served areas at the expense of consumers who have been, and will remain, underserved.

² AT&T Corp. Comments at 19; *see also* Worldcom, Inc. Comments at 8 (“The information currently requested by the Commission potentially reveals where a carrier’s customers are located, how many there are, and even a carrier’s capabilities.”).

³ *See, e.g.*, National Cable Television Association Comments at 11 (making data from Form 477 publicly available would “make the Commission the unwitting agent and ally of companies wishing to pursue cream-skimming strategies”); *accord* Advanced TelCom Group, Inc. Comments at 6; Sprint Corporation Comments at 5; Teligent, Inc. Comments at 4.

In addition, as several commenters observed, if broadband services providers are not sure that the competitively sensitive data that they submit to the FCC on Form 477 will be kept confidential, they will be reluctant to share such data with the Commission.⁴ Broadband providers' unwillingness to submit the requested data "fully and promptly, with a minimum of procedural challenges,"⁵ could undermine the Commission's data-gathering efforts, making it more difficult for the Commission to monitor and encourage the deployment of broadband services. Therefore, at a minimum, the Commission should maintain its current presumption of confidentiality and continue to protect the proprietary data it gathers through Form 477.

Broadband providers who filed comments also came out strongly against the Commission's proposals to increase the level of detail required in Form 477, either by requiring separate categories by residential and small business subscribers, by reporting actual counts by zip codes, or by reporting private lines. Even though, in theory, highly detailed information about types of subscribers and their locations would be useful in assessing the state of broadband deployment in specific areas – and state and local commissions have asked that the Commission gather even *more* detailed information than currently proposed⁶ – in actual fact, very little additional useful or reliable information would be obtained through the Commission's proposals than is currently available. Providers generally market their services otherwise than by the proposed regulatory classifications. For example, HNS markets its services by product;⁷

⁴ See, e.g., United States Telecom Association Comments at 6; Winstar Communications, Inc. Comments at 8.

⁵ NPRM at ¶ 26.

⁶ See, e.g., Public Utility Commission of Texas Comments at 2; State Corporation Commission of the State of Kansas Comments at 2; King County, Washington Comments at 6-8.

⁷ See Hughes Network Systems Comments ("*HNS Comments*") at 5.

Worldcom by costs, capacity, and customer usage.⁸ Providers therefore are unable to ascertain whether a particular customer is residential or business. Forcing providers to collect data they do not otherwise collect – such as the Commission’s proposals would require – is inefficient and burdensome. Nor are proposals to allow providers to provide estimates, rather than actual counts, for customer categories a viable solution⁹ – any such estimates would be so inaccurate so as to be virtually meaningless. Furthermore, requiring actual counts by zip codes (or even ranges rather than actual counts¹⁰), to be broken down according to the proposed categories, would also increase the reporting burden on providers and – much more significantly – increase the risk of competitive harm and market distortions discussed above by making even more detailed information potentially available to competitors.

Regarding the Commission’s proposal to collect information regarding private lines, the general consensus in the comments filed by providers supports HNS’s view that current providers records would be unlikely to provide the information requested,¹¹ and that it is unnecessary for the Commission to collect this information in order to fulfill its stated policy goals of determining if broadband services are generally deployed to all Americans.¹²

The comments filed also reveal that the Commission’s proposal to gather data regarding the availability of services is problematic. As HNS stated in its comments, none of the measures of gauging availability proposed in the NPRM is appropriate for satellite-based

⁸ Worldcom Comments at 4.

⁹ See General Service Administration Comments at 5-6; Qwest Communications International Inc. Comments at 4.

¹⁰ See General Service Administration Comments at 6.

¹¹ See, e.g., Worldcom Comments at 6; HNS Comments at 7.

¹² See, e.g., Sprint Comments at 4; HNS Comments at 8.

services.¹³ Clearly, in order for information on “availability” to have any meaning at all, the Commission must “devise an ‘availability’ metric that provide comparability and administrative efficiency among all reporting broadband providers.”¹⁴ No workable metric has been suggested yet, however, either by the Commission or the commenters.

As a final point, several broadband providers suggested that one way in which the Commission could fulfill its stated aim of reducing the burden on respondents would be to reduce the number of Form 477 filings to one per year.¹⁵ An annual filing would provide a reasonable balance between the burden on broadband service providers and the data required by the Commission to fulfill its annual reporting obligation. In addition, in order to decrease the burden on providers while increasing the accuracy of the filing, the Commission should substitute a single master form for the current state-by-state filing requirement and allow respondents to file electronically.¹⁶

In conclusion, the Commission should not institute its proposed changes to the presumption of confidentiality and reporting categories for Form 477. Such changes would threaten to disturb the currently competitive market forces within the broadband market, and significantly increase the burden on broadband services providers, without providing a concomitant increase in the amount of useful data made available to the Commission.

¹³ See HNS Comments at 6-7.

¹⁴ Worldcom Comments at 4.

¹⁵ See AT&T Comments at 12; Global Crossing North America, Inc. Comments at 3 (“*Global Crossing Comments*”); HNS Comments at 11; Sprint Comments at 4; Time Warner Telecom Comments at 4; Verizon Wireless Comments at 8; Worldcom Comments at 9.

¹⁶ See Global Crossing Comments at 4-5 (urging Commission to change Form 477 format and permit electronic filing); Verizon Wireless at 8 (Commission should allow electronic filing rather than requiring awkward disk-based submission).

Respectfully submitted,

HUGHES NETWORK SYSTEMS

By: 

John P. Janka
Lee Ann Bambach
LATHAM & WATKINS
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004
(202) 637-220

April 2, 2001

DC_DOCS\369733.2 [W97]