

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

REPLY COMMENTS OF AT&T CORP

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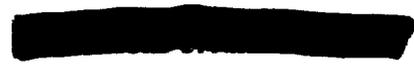


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REPLY COMMENTS OF AT&T CORP.

Pursuant to the Commission’s Second Notice of Proposed Rulemaking, released January 19, 2001, in the above-captioned proceeding,¹ AT&T Corp. (“AT&T”), respectfully submits these reply comments.

INTRODUCTION AND SUMMARY

The comments confirm that the Commission’s current local competition and broadband reporting requirements impose significant costs on reporting entities,² and are more than sufficient to meet the Commission’s statutory mandates.³

The comments further demonstrate that the adoption of the Commission’s proposals in this proceeding would significantly increase the reporting burdens on broadband providers. In addition, these proposals are at odds with the Commission’s stated goals to minimize burdens on reporting entities and to collect data that are maintained in the ordinary course of business or are

¹ Second Notice of Proposed Rulemaking, *Local Competition and Broadband Reporting*, CC Docket 99-301, (rel. Jan. 19, 2001) (“2nd NPRM”).

² See, e.g., AT&T at 1-2; Advanced TelCom Group at 1-2; Hughes at 9-10; OPASTCO 2-3; Time Warner Telecom at 3; Verizon at 3.

³ See, e.g., AT&T at 2; Verizon at 3.

easily derived from existing records.⁴ As Winstar states, the Commission’s proposals for additional reporting requirements “contemplate a level of detailed reporting that would be at worst impossible and at best extremely costly” for reporting entities.⁵ Indeed, Verizon estimates that it would incur non-recurring costs of \$8.2 million and annual recurring costs of \$1.6 million annually to comply with the Commission’s proposals.⁶ Also, the Commission must be mindful of the fact that imposing additional reporting burdens will necessarily result in the diversion of resources used to compete in the marketplace and serve customers to complying with unnecessary regulatory mandates.⁷ AT&T understands and appreciates the desire of several of the state and county commenters to obtain more information than that which is currently collected.⁸ The record evidence, however, demonstrates that these entities underestimate the costs and burdens associated with increased reporting requirements.

The comments also demonstrate that the information sought in the Commission’s proposals would do little to further assist the Commission in its efforts to assess and encourage broadband deployment.⁹ For this reason, the majority of commenters urge the Commission to balance the need for this increased level of detailed information with the real costs associated with its compliance.¹⁰ The cost/benefit analysis supplied in the initial comments demonstrates

⁴ See Hughes at 1-2; Qwest at 1-2; Verizon at 3; Global Crossing at 3; Verizon Wireless at 2.

⁵ Winstar at 4; *see also* AT&T at 2; Qwest at 1-2; Global Crossing at 1-2; Hughes at 1-2; Time Warner Telecom at 4; CompTel at 1; USTA at 4; NCTA at 10; OPASTCO at 6-7.

⁶ Verizon at Attachment 2. OPASTCO estimates that “the amount of time needed to collect the new information proposed in the Second NPRM appears to be closer to 40 hours, and the need to update and track all of the new information on an ongoing basis would be so onerous that it may necessitate the hiring of additional staff.” OPASTCO at 6.

⁷ See AT&T at 1-2; Advanced TelCom Group 2; Covad at 2; CompTel at 1; NTCA at 1.

⁸ See, e.g., King County at 6-23; KCC at 1-2; Texas PUC at 2-7.

⁹ See, e.g., AT&T at 1-2; Global Crossing at 2; Verizon at 2; Hughes at 1-2.

¹⁰ See, e.g., AT&T at 1-2; Teligent at 1; Verizon at 2-3; Focal at 1-2; Covad at 2; Hughes at 1-2; Time Warner Telecom at 3-4; Winstar at 2-3; USTA at 4; NCTA at 10; CompTel at 1.

that the Commission should not adopt any requirement to collect data at increased levels of granularity.

Likewise, the comments filed by carriers demonstrate that Form 477 data contains highly competitively sensitive information that, if released, likely would hinder future competition for both local telephone and broadband services. Moreover, the Commission's proposal to implement additional Form 477 reporting requirements (*e.g.*, by collecting data at the zip code level) would only increase the competitive harm from disclosure. The Commission therefore should not adopt its proposed rebuttable presumption that Form 477 data does not typically meet the Commission's standards for competitively sensitive information.

I. THE COMMISSION'S PROPOSED LOCAL COMPETITION AND BROADBAND REPORTING REQUIREMENTS ARE UNNECESSARILY BURDENSOME

The comments overwhelmingly demonstrate that the Commission should not adopt its proposals to impose additional reporting requirements. For instance, the comments are clear that the Commission should not collect data at a finer level of granularity than that which is currently collected. Specifically, as AT&T discussed in its initial comments, the collection of data at the zip code level would be extremely difficult. Several commenters note that they do not retain information at this level of specificity in the normal course of business or that it would take a massive undertaking to extract this type of data from current systems.¹¹ Sprint (at 2-3) also questions whether measuring subscribers at the zip code level would lead to accurate results. In all events, "[r]equiring detailed reporting of broadband data by zip code will result in a massive

¹¹ See AT&T at 4-6; Verizon at 1; Qwest at 4-6; Focal at 3-4; Covad at 4-5; Hughes at 4; Global Crossing at 3-4; *see also* NCTA at 7-9.

increase in the burden on reporting companies with no comparable gain in the knowledge base that it would provide the Commission.”¹²

Likewise, the Commission should reject its proposal to require reporting entities to report disaggregated data with regard to small business and residential subscribers. As described by AT&T and others, broadband providers generally do not keep separate data on residential and small business customers because small business customers and residential customers have similar patterns of broadband usage.¹³ Therefore, any attempt to distinguish between these categories of users “would result in an arbitrary line-drawing that would be essentially meaningless for data analysis.”¹⁴

AT&T disagrees with, and the comments undermine, GSA’s assertion (at 5) that the “extension to three categories [as proposed by the Commission] should not pose a burden on carriers.” *See also* OCC/NASUCA at 1-2; King County at 14-15. As demonstrated by several commenters, many broadband providers do not currently collect this information, and “it would be administratively difficult, costly, and time consuming for [broadband providers] to obtain such information.”¹⁵ In short, “[b]ecause the potential for additional insights into the deployment of broadband services is outweighed by the potential for competitive harm, market

¹² Verizon at 1. Furthermore, compliance with proposals to collect data on broadband services by “Census tract” (King County at 16-23) would be even more difficult as broadband providers generally do not keep information at the Census tract level in the normal course of business.

¹³ *See, e.g.*, AT&T at 6-7; Focal at 3; Covad at 3-4; Hughes at 5-6; WorldCom at 3-4; NCTA at 6-7.

¹⁴ Hughes at 5; *see also* Verizon at 4; Focal at 3; WorldCom at 6-7; OPASTCO at 6.

¹⁵ Global Crossing at 3; *see also* Focal at 3 (same); Covad at 4 (the three-category proposal “would impose a regulatory cost for the constructive of new systems, hiring and training of new staff, and collection of data that would far outweigh the small benefit of such granularity”); WorldCom at 3-4 (“[t]o comply with all of the requests the Commission may consider here, some carriers would be forced to undertake the monumental task of developing new comprehensive reporting systems from scratch”); OPASTCO at 6 (proposal would “forc[e] carriers to manually examine the name on each account in an attempt to distinguish between business and residential customers”).

distortions, and inaccurate numbers, as well as the burden on broadband providers and consumers ... the Commission [must] refrain from altering its current zip code and customer category requirements.” Hughes at 6.

The Commission also should reject its proposal to collect data on private line customers. As established by AT&T and others, the collection of data on private lines is unnecessary to meet any statutory concern, as the customers of these services (large businesses and institutions) have many available options. Moreover, it would extremely difficult for broadband providers to collect and report accurate and comparable line counts for these services. AT&T at 7-8; Sprint at 3-4; Hughes at 7-8; WorldCom at 6.

In addition, the Commission should not decrease or eliminate its current reporting threshold or it will run the risk of capturing useless data. *See* AT&T at 10-11; Focal at 2-3; Global Crossing at 4; NCTA at 4-6. Indeed, as GSA (at 4) recognizes, “reports by providers with few subscribers have relatively little utility in describing the extent of competition.” Elimination of the reporting threshold would result in increased reporting burdens on new and existing reporting entities while “the benefits to the Commission from eliminating the threshold are minimal.” Global Crossing at 4. The Commission therefore should retain its current reporting threshold and continue to rely on voluntary filings for those entities that fall below the threshold in any given state.

Furthermore, the Commission should move to annual filing of Form 477 to meet its stated goal of minimizing burdens on broadband providers and to fall in line with the Commission’s annual report to Congress on the availability of broadband services to all

Americans.¹⁶ AT&T agrees with Hughes (at 10) in that “an annual filing requirement would better balance the Commission’s need to obtain timely information about the broadband market with the burdens imposed on filers.” In all events, the Commission should not increase the filing requirements to anything more than the current semi-annual requirement. *See Verizon* at 8; *Covad* at 7-8; *GSA* at 8; *USTA* at 6. Such action would serve only to needlessly increase burdens on reporting entities.

Finally, although AT&T and others believe that some measure of availability of broadband services may assist the Commission in its understanding of the broadband market, the comments demonstrate both the difficulty in establishing a proper measurement that could be employed among the various broadband technologies, and the need for the Commission to continue to explore a working definition of availability.¹⁷ Despite the contentions by GSA to the contrary (at 7), the comments show that a homes passed measurement would not be easily obtainable for the vast majority of broadband providers. *See Advanced TelCom Group* at 3-5; *Sprint* at 2; *Covad* at 5-6; *Hughes* at 6-7. Indeed, *Covad* notes (at 6) that “the measure of number of homes passed by broadband-capable infrastructure is a false measure of availability of service as opposed to the actual provision of service to a particular home.” Therefore, AT&T once again respectfully requests that the Commission continue to examine a working definition of “availability,” and ways to ensure that data gathered to measure availability provides an accurate measurement across the differing broadband technologies. *AT&T* at 9-10; *Advanced TelCom Group* at 6; *WorldCom* at 5.

¹⁶ *See AT&T* at 11-12; *Sprint* at 4; *Hughes* at 10; *Global Crossing* at 3; *WorldCom* at 9-10; *see also NCTA* at 3-4.

¹⁷ *See AT&T* at 9-10; *Advanced TelCom Group* at 3-6; *Qwest* at 6-7; *Sprint* at 2; *Covad* at 5-6; *Hughes* at 6-7; *WorldCom* at 4-6; *NCTA* at 9-10.

II. THE DISAGGREGATED DATA CONTAINED IN AN INDIVIDUAL CARRIER'S FORM 477 SUBMISSIONS MUST BE PROTECTED FROM DISCLOSURE

All carriers that responded to the 2nd NPRM oppose the Commission's proposal to create a "rebuttable presumption" that Form 477 data "does not typically meet [the Commission's] standards for competitively-sensitive information." 2nd NPRM ¶ 26.¹⁸ This rare alliance is unsurprising given that the information contained in competitive carriers' Form 477 submissions clearly contains competitively sensitive data that, if disclosed, would give competitors information about submitting carriers' strategic market positions and entry strategies in particular geographic areas.¹⁹ The Commission's proposal to implement additional Form 477 reporting requirements (*e.g.*, by collecting data at the zip code level) would only increase the amount and detail of that data and the competitive harm from disclosure.²⁰

Competitive carriers point out that disaggregated Form 477 data would be especially useful to incumbent LECs in leveraging and maintaining their dominant market positions. Incumbent LECs could use such data to target facility upgrades, new service offers and marketing efforts to areas with the highest concentration of competitive carrier activity or

¹⁸ See Advanced TelCom Group at 6-7; AT&T at 14-34; CompTel at 3; Covad at 6-7; Hughes at 8-9; NCTA at 10-12; OPASTCO at 8; Qwest at 8-11; Sprint at 4-5; Time Warner Telecom at 5-8; Teligent at 1-4; USTA at 4; Verizon at 7-8; Verizon Wireless at 8-9; Winstar at 7-9; WorldCom at 8-9. The GSA (at 9) urges the Commission to reject the proposed presumption "absent a strong showing [in support of that proposal] in the comments submitted by other parties."

¹⁹ See, *e.g.*, Advanced TelCom Group at 6-7; AT&T at 19; Covad at 6-7; NCTA at 11; Qwest at 9-10; Sprint at 5; Teligent at 2-3; Time Warner Telecom at 7; Winstar at 9; WorldCom at 8-9.

²⁰ The KCC claims (at ¶ 2.e) that "reporting the service availability by county, or even locality, would not raise confidentiality concerns . . . because [carriers] . . . are actively marketing and selling their services to the general public." But even if marketing information could be used by competitors to identify the general areas where a carrier is deploying its services – a tenuous assumption in light of the fact that many marketing efforts, like direct mailing and outbound telemarketing, are not easily observed by other carriers – that information would not reveal the capacity or the extent to which carriers have committed to providing service in those areas. As most commenters agree, increasing the granularity of the reporting requirements would necessarily *increase* the confidentiality concerns of reporting carriers. See, *e.g.*,

(footnote continued on next page)

success, thereby frustrating the competitive efforts of new entrants.²¹ Likewise, to the extent that new entrants must purchase or lease an incumbents' facilities, incumbent LECs could use Form 477 data to more accurately identify areas where degrading competitors' service quality would benefit them the most. *See, e.g.*, AT&T at 25. Providing incumbent LECs and others with such powerful new weapons to target competitive offerings would negatively impact entry, causing some competitors to forego entry altogether and others to deploy services only in areas with the heaviest demand (and to avoid rural and other areas where demand is small). *See, e.g.*, Teligent at 4; NCTA at 11.

Disclosure of disaggregated Form 477 data would also almost certainly reduce the timeliness, accuracy and volume of the data that the Commission is able to collect from reporting entities. Time Warner Telecom (at 8) explains that in areas where it currently serves fewer than 250,000 lines, it would not voluntarily submit any of the information requested by Form 477 to the Commission. *See also* USTA at 6-7. And creating a rebuttable presumption that Form 477 data does not meet the Commission's standards for competitively sensitive information almost certainly would delay reporting by inviting court challenges and stay motions. *See, e.g.*, AT&T at 34; CompTel at 3; Hughes at 9; Winstar at 8-9.

These very real harms to carriers and to the Commission's ability to collect Form 477 data on a timely basis are exactly the types of harms that the Commission's confidentiality rules were designed to prevent. *Confidentiality Order* ¶ 4 ("commercial or financial information is confidential if disclosure of the information is likely to . . . either . . . (1) impair the

Covad at 7 ("any increased granularity in subscriber ship information by zip code makes confidentiality even more important"); Time Warner Telecom at 7 (same); Verizon Wireless at 8-9 (same).

²¹ *See, e.g.*, Advanced TelCom Group at 6; AT&T at 21 & 25-27; Covad at 7; OPASTCO at 8; Qwest at 9, Sprint at 5; Time Warner Telecom at 7-8; Verizon Wireless at 8; WorldCom at 8-9.

Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information is obtained.") (internal quotations and citations omitted).²² For that reason, AT&T and other commenters urge the Commission to adopt a presumption that disaggregated Form 477 data *is* competitively sensitive. *See, e.g.*, AT&T at 27; Qwest at 8; Sprint at 5; Winstar at 7; WorldCom at 9.

There is also uniform agreement among carriers that there is no "compelling public interest," *Confidentiality Order* ¶ 8, in disclosing disaggregated Form 477 data to the public, outside academics or any other third parties. *See, e.g.*, AT&T at 27-30; Qwest at 9; Verizon Wireless at 9. The Commission itself has recognized that it "can achieve substantially the same public benefits by releasing this information [only] in an aggregated fashion without any potential risk of competitive harm on the part of the [carriers]."²³

The competitive sensitivity of Form 477 data also militates against its disclosure to states. Accordingly, the Commission should refer states directly to the carriers from whom the information is sought so that the state and the carrier can negotiate appropriate non-disclosure agreements for release of that carrier's competitively sensitive data.²⁴ In this regard, AT&T does not object to the Iowa Department of Justice's proposal to disclose to states the "identities of carriers who file Form 477" to the extent that such information will "assist [states] by enabling

²² See Report and Order, Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, ¶ 4 (rel. Aug. 4, 1998) ("Confidentiality Order").

²³ Report and Order, *Local Competition and Broadband Reporting*, 15 FCC Rcd 7717 ¶91 (2000) ("*Data Gathering Order*").

²⁴ At a minimum, each carrier whose data is requested by a state should receive pre-disclosure notice and an opportunity to be heard, and the Commission should insist that the state grant the carrier third party beneficiary rights to enforce the state's promises of confidentiality. Although this policy would not allow carriers to negotiate the best possible confidentiality terms with the state, it would at least provide some protection to carriers by allowing them to enforce the confidentiality agreements against the state.

[them to] more easily contact the companies who have filed [Form 477] and to negotiate appropriate protective agreements under which the companies will release copies of [Form 477].”²⁵ Although this information is otherwise competitively sensitive, the Commission could properly use its discretion to disclose that limited amount of data because such disclosure would facilitate states’ ability to obtain the data that they need to meet their public policy goals without imposing undue burdens on carriers or the Commission.²⁶

TPUC’s proposal (at 2), on the other hand, that the Commission freely “release Form 477 data” on the grounds that TPUC was previously unable to gather that information “because of confidentiality concerns,” plainly should be rejected. In more frank terms, TPUC seeks to have the Commission provide states with a back-door method of obtaining carriers’ competitively sensitive data. TPUC can obtain the carrier-specific information it seeks by contacting carriers directly and entering into appropriate non-disclosure agreements with those carriers. *Cf.* Iowa DOJ (“We have had success to date obtaining copies of the completed [Form 477] from companies who have filed them [by] . . . negotiating appropriate protective agreements”). Thus, the Commission should decline TPUC’s invitation to become a conduit for states to obtain data that would otherwise be released only under strict non-disclosure agreements.

²⁵ Letter from Craig Graziano, Attorney at Iowa DOJ, Office of Consumer Advocate, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 99-301 (dated January 26, 2001, filed January 30, 2001) (“Iowa DOJ”).

²⁶ This list of states, however, should be marked “confidential” and disclosed only to states that meet the Commission’s rules for disclosure of carriers’ confidential data. *See Data Gathering Order* ¶ 95; *cf.* Covad at 7 (Covad has “no objection to sharing its confidential information with the Department, as long as it may do so with the usual non-disclosure safeguards”). The Commission should not disclose any information other than the fact that a carrier filed Form 477 for a particular state. The Commission should not, for example, identify the portions of Form 477 that were filed by a particular carrier because there are different and significant reporting thresholds for each type of service that would unnecessarily disclose to states additional competitively sensitive information.

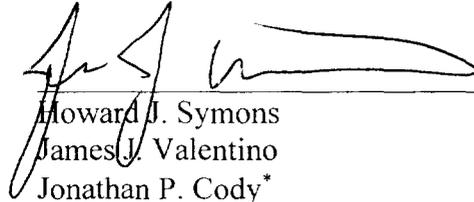
CONCLUSION

For the foregoing reasons, and for the reasons stated in AT&T's initial comments, the Commission should (1) not adopt any proposals that would increase the level of detail that broadband providers must report; (2) not gather data on "availability" of services until it provides and allows comment on a specific workable definition and attendant rules; (3) not eliminate or lower the broadband reporting threshold; (4) move from a semi-annual to an annual reporting period; (5) adopt a policy of releasing Form 477 three months before the filing deadline; and (6) retain its current process allowing allocation of pre-paid subscribers to states on the basis of good faith estimates.

In addition, the Commission should take steps to ensure continued timely and accurate Form 477 filings by (1) adopting a presumption that the data in Form 477 satisfy the Commission's criteria for competitively sensitive information; (2) not disclosing this information *sua sponte* to the public, outside academics or other parties; and (3) ensuring that carriers retain

the right to enforce state promises to keep confidential any Form 477 data that they obtain from the Commission or from the carriers.

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I, Jonathan P. Cody, hereby certify that on this 2nd day of April 2001, I caused true and correct copies of the foregoing Reply Comments of AT&T Corp. to be served on the following persons:

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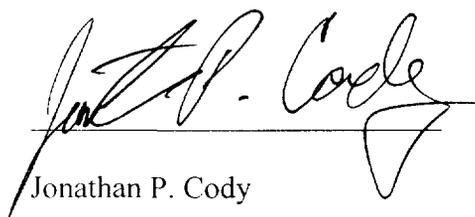
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