

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Local Telephone Competition and Broadband Reporting)	WC Docket No. 04-141
)	
Local Competition and Broadband Reporting)	CC Docket No. 99-301
)	
)	

**REPLY COMMENTS OF THE VERMONT PUBLIC SERVICE DEPARTMENT ON
NOTICE OF PROPOSED RULEMAKING**

On March 31, 2004, the Commission adopted a Notice of Proposed Rulemaking (“NPRM”) and an Order on Reconsideration (“Order”) concerning the Commission’s Form 477 local competition and broadband data gathering program. The Commission requested comment on issues related to the design and implementation of its data-gathering program and proposed changes to its Form 477, and on June 25, 2004, the Vermont Public Service Department (“VPSD”) submitted comments. The VPSD is now pleased to have the opportunity to submit the following reply comments in response to comments submitted by other parties in these Dockets.

SUMMARY

The VPSD urges the Commission not to forgo collection of at least some additional information about broadband services by speed tier and by ZIP code, as this information is needed to accurately determine if advanced services are available to all Americans. The VPSD points out where its comments of June 25, 2004, provided

alternatives that may address the concerns, at least in part, of some other parties who provided comment.

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I. ADDITIONAL BROADBAND SPEED TIERS

A number of comments filed in response to the NPRM opposed the proposed expansion of the speed tiers used in Part I of Form 477 as either burdensome or unnecessary (Comments of AT&T Corp., June 28, 2004, at 3; Comments of BellSouth Corporation, June 28, 2004, at 2; Comments of National Cable and Telecommunications Association (NCTA), June 28, 2004, at 12; Sprint Comments, June 28, 2004, at 3-4), while a number of comments either support the speed tier proposal or support a slightly modified version of the proposal (Comments of the California Public Utilities Commission and of the People of the State Of California on the Notice Of Proposed Rulemaking and Order on Reconsideration Regarding Form 477 Local Competition and Broadband Data Gathering Program (CPUC), June 28, 2004, at 3; Comments of SBC Corporation, Inc., June 28, 2004, at 6). The VPSD restates its support for filing of information about broadband services in additional “speed tiers,” at least in Part I of the Form 477. Presumably, service providers ought to be able to identify the number of customers they have by state for their various services. Service providers must currently identify the data transfer speed of these services to determine whether or not they meet

the 200kpbs threshold. It should not represent a substantial burden to identify whether or not the speed of a service meets additional thresholds. The VPSD does not argue that the precise thresholds or the exact number of tiers proposed in the NPRM are essential.

Some adjustment may be reasonable. However, requesting more information about the various levels of broadband service speeds is important and does serve the Commission's section 706 purposes. It allows the Commission to know and understand if over time some parts of the country have available broadband services that are less capable than others.

II. REPORTING BY ZIP CODE

Many of the comments filed by service providers and industry associations did not support various elements of the Commission's proposal related to reporting by ZIP code. Specifically, some comments opposed the filing of broadband customer numbers by ZIP code (Sprint at 5; Comments of Verizon, June 28, 2004, at 10-11). Other comments supported the reporting of broadband customer numbers by ZIP code (CPUC at 3, SBC at 6-7). While the VPSD would agree that reporting customer counts by ZIP code may not be essential, collecting some more information than past Forms 477 did about the extent of service within ZIP codes is essential. OPASTCO, in its comments, urged the Commission to reject the NPRM's proposal to include a greater level of granularity in Form 477, including greater information at the ZIP code level (Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), June 28, 2004, at 3). It also stated that other sources of information about broadband deployment are available, citing its own periodic survey of

members, and surveys by the National Exchange Carrier Association and the National Telecommunications Cooperative Association (OPASTCO at 4-5). The Commission should collect at least some additional information about the extent of service within ZIP codes. To fulfill its section 706 mandate the Commission must inquire as to the availability of advanced telecommunications capacity to all Americans. It is vitally important that the Commission not continue the practice of the past Form 477 with regard to ZIP codes. Misleading data will be the result if the Commission continues to classify a ZIP code as “served” by broadband service when only a small number of customers may have access to the broadband service in question, or if the service made available is not a mass-market service. The alternative information sources offered up by OPASTCO may provide valuable information, but they are necessarily limited to portions of the broadband industry. The greatest value in the Commission’s Form 477 process is in its comprehensiveness. It collects information from all types of service providers across all states. The VPSD submits that its proposal to require reporting by ZIP code on whether broadband services are available throughout the ZIP code, or only throughout part of the ZIP code, represents a middle ground and a more useful alternative. (See Exhibits VPSD-3 and VPSD-4 in the VPSD’s comments of June 25, 2004.)

III. REPORTING BURDENS

Some comments filed in the NPRM urged the Commission to limit the reporting burden imposed by the Form 477. The VPSD submits that it has proposed some specific modifications of the Commission’s proposed Form 477 that would mitigate the reporting burden while still allowing the Commission to collect needed information. The VPSD

agrees with comments filed by NTCA that smaller companies should have the ability to use a streamlined questionnaire, although it disagrees with NTCA's comments against lowering the reporting threshold (Comments of the National Telecommunications Cooperative Association, June 28, 2004, at 2-4). The VPSD submitted an example of a "Form 477EZ" in its comments of June 25, 2004. (See Exhibit VPSD-6.) The VPSD also offers its alternative Part V (see VPSD comments of June 25, 2004, Exhibit VPSD-4) as a way to streamline collection of information by ZIP code. In this alternative, service providers need only describe the characteristics of their three most common broadband services in each state, and then state whether or not they offer those three broadband services or any other broadband service in all or part of a given ZIP code.

IV. CONCLUSION

While the Commission may modify its proposed Form 477 to better account for the concerns of various parties who commented, it should not make changes that do not improve the Commission's ability to analyze key differences in broadband deployment from state to state and within local areas. The Commission has a mandate under Section 706 of the Telecommunications Act of 1996 to determine if advanced telecommunications capability is available to all Americans. To be truly meaningful, this inquiry must include questions that help the Commission determine if availability in some areas is spotty and if available services are inferior. The VPSD has offered some alternatives that can reduce the potential reporting burdens associated with the Commission's original proposal while collecting needed information.

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Respectfully submitted,

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