

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

In the Matter of)
)
Development of Nationwide Broadband Data) WC Docket No. 07-38
to Evaluate Reasonable and Timely) FCC 07-17
Deployment of Advanced Services to All)
Americans, Improvement of Wireless)
Broadband Subscribership Data, and)
Development of Data on Interconnected)
Voice over Internet Protocol (VoIP))
Subscribership)

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

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TABLE OF CONTENTS

	PAGE
I. INTRODUCTION AND SUMMARY	2
II. NTCA MEMBERS ARE DEPLOYING BROADBAND IN RURAL AREAS AT A RAPID RATE.	2
III. RURAL ILECS WOULD FACE SIGNIFICANT COSTS IN COLLECTING, MAINTAINING AND REPORTING 9-DIGIT ZIP CODE BROADBAND DATA.....	4
A. History of the 9-digit Zip Code System.	4
B. Requiring Rural ILECs to Use the 9-Digit Zip Code System Will Cause Significant Economic Burdens.	5
C. The RFA Mandates Consideration of Mitigation Measures for Significant Impacts to Rural ILECs.	9
D. One-Year Implementation Time and Exemptions Are Reasonable Mitigation Measures.	11
IV. PRIVACY CONCERNS, CONFIDENTIALITY OF RAW DATA, DATA USE.	12
A. Privacy of the Consumer Must Be Protected.	12
B. Competitive Confidentiality Must Be Protected.	13
V. CONCLUSION.....	13

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INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ files its initial comments in response to the Federal Communications Commission’s (Commission’s or FCC’s) April 16, 2007, Notice of Proposed Rulemaking (NPRM) on how the Commission can acquire the information it needs to develop and maintain appropriate broadband policies.²

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 575 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In re the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Notice of Proposed Rulemaking, (rel. Apr. 16, 2007) (NPRM), ¶ 1.

I. INTRODUCTION AND SUMMARY

NTCA's members are already deploying broadband in rural areas today, as shown in NTCA's 2006 Broadband Survey. The 9-digit zip code system will impose substantial burdens on rural ILECs to collect, maintain and report broadband deployment, especially in the initial population and reporting of a revised FCC Form 477. The Commission should consider mitigation measures of the regulatory burdens, including a one-year implementation time and exemptions for rural ILECs, either entirely or where 9-digit information is not available. Finally, the Commission should protect broadband consumers' privacy interests and broadband providers' competitive interests by shielding proprietary information provided on the FCC Form 477 from public disclosure.

II. NTCA MEMBERS ARE DEPLOYING BROADBAND IN RURAL AREAS AT A RAPID RATE.

The Commission asks how it can better study broadband deployment in rural areas.³ NTCA member companies who provide broadband services to their customers file quarterly FCC Form 477 reports for broadband and Internet. NTCA members also participate in NTCA's annual Broadband/Internet Availability Survey Report, available through NTCA's website at www.ntca.org. NTCA's broadband survey provides unique insights into rural broadband deployment that will help the Commission to formulate its policy decisions that will enhance broadband availability. NTCA has conducted this survey for the past eight years and its 2006 Report reflects some of the trends of broadband deployment in rural areas. NTCA is readying its 2007 Broadband Report for release later this year.

³ NPRM, ¶ 25.

NTCA is a national association of approximately 575 local exchange carriers in 44 states that provide service primarily in rural areas. All NTCA members are small carriers that are “rural telephone companies” as defined in the Telecommunications Act of 1996 (“Act”). While some offer local exchange service to as few as 44 lines and a small handful to 50,000 or more, nearly 50% of NTCA members serve between 1,000 and 5,000 lines. Population density in most member service areas is in the 1 to 5 customers per square mile range. Approximately half of NTCA’s members are organized as cooperatives and the other half are commercial companies.

Of the companies in NTCA’s membership database; 120 members (21%) responded. One hundred percent of the 2006 NTCA survey respondents offer broadband to some part of their customer base, up from 96% in the 2005 survey and a dramatic increase from 58% in 2000. Respondents indicated that they use a variety of technologies to provide broadband to their customers: 98% of those who offer broadband use digital subscriber line (DSL), 28% use fiber to the home (FTTH) or fiber to the curb (FTTC), 22% use unlicensed wireless, 15% use satellite and 13% use licensed wireless. Only 29% of 1999 survey respondents offered DSL service, and none offered wireless broadband.

Dial-up connection to the Internet at 56 kilobits per second (kbps) is available to 100% of NTCA survey respondents’ customers. Eighty-eight percent can receive 200 to 500 kbps service, 88% can receive 1 megabit per second (Mbps; up from 72% in 2005) and 39% can receive 3 Mbps (up from 31%). On average, 19% of respondents’ customers subscribe to 56 kbps service (down from 21% in 2005), 15% subscribe to 200

kbps to 500 kbps service (up from 12%), 6% subscribe to 1 Mbps (up from 5%) and 4% subscribe to 3 Mbps offerings (unchanged). Overall, dial-up take rates declined and broadband take rates rose slightly in 2006. These survey results show that NTCA members are deploying broadband to rural areas at an increasing rate. The Commission can and should use NTCA's survey results in developing the FCC's broadband policy.

III. RURAL ILECS WOULD FACE SIGNIFICANT COSTS IN COLLECTING, MAINTAINING AND REPORTING 9-DIGIT ZIP CODE BROADBAND DATA.

In the NPRM, the Commission asks for comment on burdens arising from the use of the 9-digit zip code to identify broadband deployment, especially in rural and hard-to-serve areas.⁴ Requiring rural ILECs to collect, maintain and report their broadband deployment using a revised FCC Form 477 that incorporates the 9-digit zip code system will cause a significant economic burden to a substantial number of rural ILECs, thus prompting the FCC to implement mitigation measures under the Regulatory Flexibility Act (RFA).

A. History of the 9-digit Zip Code System.

The United States Postal Service (USPS) created the 9-digit (or zip+4) zip code system in 1983.⁵ According to the USPS, "The 4-digit add-on number identifies a geographic segment within the 5-digit delivery area, such as a city block, office building, individual high-volume receiver of mail, or any other unit that would aid efficient mail

⁴ NPRM, ¶ 2.

⁵ www.usps.com, accessed June 12, 2007.

sorting and delivery.”⁶ The USPS and others maintain web-based 9-digit zip code look-up services, either accessible manually for free or via CD-Rom or print-out for a fee.⁷ At the USPS web site, www.usps.com, the user can manually input a street name (with or without number), city and state and locate the 9-digit zip codes.

The 9-digit zip code system allows the user to determine whether a household or business, or a small group of them on the same side of the street, are subscribing to one or more levels of broadband services. For example, four houses with even numbers on the same side of an urban street may have the same 9-digit zip code, while three houses with odd numbers on the other side of the same street may share one 9-digit zip code. While the 9-digit zip code system will not give a household-by-household view of broadband deployment, the 9-digit system is more granular than the current 5-digit system, which can lump 30,000 households in a single zip.

B. Requiring Rural ILECs to Use the 9-Digit Zip Code System Will Cause Significant Economic Burdens.

Recently, several rural broadband providers reported to NTCA their concerns about the complexity, time, energy, labor and cost that would be involved in collecting, maintaining and reporting broadband data using a 9-digit zip code system. One key issue, articulated by a small rural provider, is changing billing and mapping systems: *“Neither our billing system nor our mapping system is currently set-up to capture the 4 extra digits.”* A second issue is verification: *“The billed to address and the physical address could be different so all will have to be cross checked.”* Another rural company

⁶ *Ibid.*

⁷ See, e.g., www.melissadata.com.

manager contacted his local post master for information and discovered that urban and rural areas are treated differently for 9-digit zip purposes: *“After talking with postal service they did not have a good idea on how the 477 report could work with a nine digit zip code. The nine digit code for a city is by the block and in a rural area it is by mile. If you have a postal box it is done with the box number. The more I talked to them it sounded to me that the Post Office really does not use the nine digit system that much anymore. The sorting machine read the five digit zip code, then reads the address line. I would be more concerned about if it would work!”*

One NTCA member described her initial and going-forward concerns: *“Both companies I manage are small 1,000 line companies and I can see the initial load of 9-digit zips to be substantial,”* she said, *“First, because not all 9 digits are populated on the customer billing and it would take several hours to contact customers to gather this info. On a going-forward basis that would be a must to get from customer. Not all customers that have just moved to the area know their 9-digit zip.”* Another NTCA member eloquently summed up the task as: *“Yes, it would be a major problem and cost for us.”*

Another rural provider discussed the complexity: *“Not all the time is spent in determining the zips, but the extra time planning, verifying and validating the procedure and the logistics for the first time reporting in using the 9 digit zip is part of the time. We would also have to verify the locations zips for the bills that are sent to a main office outside of our area or a common billing address.”* He added, *“Also where we provide DSL to a location that does not receive mail would need to be determined for a zip. I can*

see the first time reporting this way would take this time, after that it would be less time. All in all we could be reporting 4,000 9 digit zip codes where DSL is provided.” He also noted, “I already spent about an hour on this and still haven’t officially looked at a 9 digit zip.”

Still another NTCA member looked at the labor involved: *“We would have to use the USPS site to find out what ZIP +4 number is associated with the address of the customer. This means entering every in town DSL customer address into the site to find their number associated with the block they live on.”* Another rural provider, focusing on the labor aspect, said: *“Seems to be more labor intensive. Will have to track USOC along with zip codes which we do not do at this time. Today when we report we just run the USOC report and report the number of subs. With the new proposal we will have to look at each customer. It won’t change the number of subscriptions. It would likely take more time to do the first report.”*

This rural local broadband provider focused on the costs associated with using the USPS commercial data base: *“The US Post Office would need to provide the 9 digit zip code to us at no charge. In the past, there has been a charge for zip code books. I am certain most of our customers do not know their 9 digit zip so we would be forced to work through the Post Office.”*

Another rural company contacted their software dealer for a time estimate on software solutions: *“I have checked with our software people, to comply with this nine digit reporting will require data entry time internally to update all the records and a software enhancement to access the information for reports. The software enhancements*

are on a 6 month release schedule ONCE the program is written. In addition, we would require two of our staff and allow at least two weeks time to enter all data and assure accurate files. I would state that it would be a burdensome process.”

Other NTCA members attempted to estimate how much time it would take to populate their databases with 9-digit zip codes: *“Reporting by nine digit zip codes would be very burdensome. For our company, we estimate we would need to spend about 40 hours of labor to do the nine digit zip report. There could be as many as 2,000 nine digits zips that we would need to list saying that we provide broadband to.”* Another said: *“To run a USP report to extract the data and then manually enter 300 zips on the report could take approximately 3 hours. I cannot come up with any time-saving utilizing spreadsheets to alleviate the work load for the second report cycle. Even in a small company we experience churn that would entail just as much work keeping the spreadsheet current as starting from scratch for each report.”*

A third estimated the time in minutes per subscriber: *“Gathering and confirming the 9 digit zip for the first report could take 2 to 3 minutes for each subscriber. Then an additional 30 seconds per subscriber inputting and proofing the data into the required form. The inputting of data would be a reoccurring expense each time the report was filed. For our small company this would mean an additional 2 to 3 hours preparation time for each report. The number of DSL customers we have increases each reporting period. If the 9 digit zip code becomes required, we would have a continuing burden of maintaining the file with the 9 digit zip code for all our customers, not only the new DSL customers but also recording moves of exiting customers within our area.”*

Another member questioned the manageability of the revised, expanded FCC Form 477: *“If the 9 digit zip code plan goes into effect, will the FCC be able to accept the data timely? The 9 digit zip code will increase the size of the report many fold.”*

Several rural broadband providers expressed their overall skepticism in using 9-digit zip codes to map broadband deployment: *“Our company serves 50-60 zip codes or at least a part of that many. We don't have any way to sort subscriber records by zip code. It would take a software change which could be expensive. In addition, many of the zip codes are not entirely served by our company, so the FCC would not be getting a true picture of the percentage of the area that could be provided DSL or any other service. Even though the current process is time consuming, using zip codes is not the solution.”*

Another said: *“I can't imagine they would want that much info though. It doesn't seem it would be of that much benefit. Wouldn't it be better to have the total number of subs in each zip rather than trying to look at it from a pinpoint view??”* A third rural provider said: *“I am, more than ever, convinced this will create far more work than any one can imagine. And the likelihood that any meaningful and usable results will come of this is slim to non-existent.”*

C. The RFA Mandates Consideration of Mitigation Measures for Significant Impacts to Rural ILECs.

The Regulatory Flexibility Act (RFA), Title 5, Sections 603 (a), (c), requires a federal rule-making agency such as the FCC to: “prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. ... Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which

accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the purpose rule on small entities.”

The NPRM’s initial regulatory flexibility analysis did not provide any estimates of the time and expense involved in complying with the proposed new 9-digit zip code broadband data collection system; rather, the NPRM asserts that it will glean this information through the comment process.⁸

The Commission should examine the economic impact each issue creates for small rural carriers as part of its responsibilities under the RFA.⁹ The RFA requires the Commission to examine the possible significant economic impacts on small entities by the policies and rules proposed in the NPRM; if the economic burden is significant for a substantial number of small businesses, then the Commission must adopt mitigation measures to reduce that burden on small businesses.¹⁰ All NTCA rural member companies qualify as “small entities” and “small businesses” for RFA purposes.

The RFA allows the FCC to adopt various alternatives to the proposed rule if the Commission determines that mitigation measures are necessary. Those mitigation measures include establishing different compliance or reporting requirements or

⁸ NPRM Appendix, Initial Regulatory Flexibility Analysis, ¶ 2.

⁹ *C.f. U.S. Telecom Ass’n v. FCC*, 400 F.3d 29 (D.C. Cir. 2005) (Court of Appeals stayed enforcement of the FCC’s Intermodal LNP Order for failure to consider impacts on two percent carriers and failure to initiate rulemaking proceeding). 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹⁰ *Ibid.*

timetables that reflect the resources available to small entities, and exempting small entities from some or all parts of the proposed rule.¹¹

If the Commission chooses to implement the 9-digit zip code system to create a more granular examination of broadband deployment and availability, the Commission should recognize that the 9-digit zip code system is not an ideal method of collecting data. The economic burden of collecting, recording and maintaining 9-digit zip code data will be significant for a substantial number of rural ILECs, triggering the need for mitigation measures under the Regulatory Flexibility Act. The 9-digit zip code system is designed for mail delivery routes, not for broadband availability assessments. Furthermore, not all areas of land in the U.S. have 9-digit zip code assignments.

D. One-Year Implementation Time and Exemptions Are Reasonable Mitigation Measures.

NTCA rural members have expressed their concerns regarding complexity, time, energy, labor and cost that would be involved in collecting, maintaining and reporting broadband data using a 9-digit zip code system. If the Commission chooses to implement the 9-digit system, the Commission should ensure that the data collection burden is minimized to rural ILECs by considering and implementing appropriate mitigation measures as provided by the RFA.

At the very minimum, one obvious mitigation method that will address some of these NTCA member concerns is to allow an ample amount of time for compliance for the initial filing using a modified Form 477. As one rural provider relayed above, obtaining and implementing software solutions will exceed 6 months; consequently the

¹¹ RFA, 5 USC §§ 603(c)(1), (c)4.

Commission should allow a one-year implementation period for the first Form 477 report using a 9-digit zip code system. This will give rural companies time to obtain new software or update existing software and to revise their databases, either by manual input or by commercial software product. A second mitigation method the Commission should adopt is to exempt rural ILEC broadband providers from 9-digit reporting, either entirely or for areas that do not have 9-digit zip code assignments. These are two ways in which the Commission can reduce the regulatory burden of 9-digit zip code reporting of broadband data on small businesses such as rural ILECs.

IV. PRIVACY CONCERNS, CONFIDENTIALITY OF RAW DATA, DATA USE.

A. Privacy of the Consumer Must Be Protected.

As the Commission knows, researchers have sought and are seeking access to the FCC's Form 477 raw broadband data for their own analyses using the tools provided under the Freedom of Information Act (FOIA).¹² The Commission should not release the raw data garnered from Form 477 and should continue to protect its confidentiality at the Commission level and in the course of judicial actions on FOIA requests. As one NTCA member argued, *"The FCC would be required to never sell or make public the 9 digit zip code list. With the 9 digit zip, the exact location of all DSL subscribers would be identified. This would be an invasion of privacy. Even in our small company, there are several customers that do not want their name, address and phone number published,*

¹² *Center for Public Integrity v. FCC*, U.S. Dist. (DC) Civil Action No. 06-01644 (RMC) (pending). This is a Freedom of Information Act (FOIA) dispute in which the Center for Public Integrity (CPI) seeks information from the FCC contained in the FCC Form 477 using a FOIA request. The Commission is actively engaged in accordance with law to protecting competitively sensitive Form 477 data from wrongful public disclosure.

which they pay extra for this service.” The Commission should protect consumer privacy and the confidential data that can be gleaned from the FCC Form 477 reports.

B. Competitive Confidentiality Must Be Protected.

Carriers who submit data through Form 477 need to have their company-specific identifying information protected so that competitors cannot use that data to target their marketing campaigns and take away customers. Also, collecting data merely for collection sake can be a problem since the data parameters may not address the data needs and uses. To have any usefulness or meaning, the data must be collected in a uniform manner throughout the United States, either by a single entity or by entities operating under the same collection guidelines. The Commission should protect competitively sensitive data from disclosure and should ensure that the revisions to Form 477 provide an adequate framework for the data needed to develop a nationwide broadband policy.

V. CONCLUSION.

For these reasons, the Commission should recognize the burdens that rural ILECs will face in complying with a 9-digit zip code system. The Commission should consider mitigation measures of the regulatory burdens, including a one-year implementation time and exemptions for rural ILECs, either entirely or where 9-digit information is not

available. The Commission should also protect broadband consumers' privacy interests and broadband providers' competitive interests by shielding proprietary information provided on the FCC Form 477 from public disclosure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in WC Docket No. 07-38, FCC 07-17, was served on this 15th day of June 2007 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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