

**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	)	
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	)	

**COMMENTS OF TIME WARNER CABLE**

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June 15, 2007

**TABLE OF CONTENTS**

	<b>PAGE</b>
INTRODUCTION AND SUMMARY .....	1
DISCUSSION.....	3
I. TWC SUPPORTS THE COMMISSION’S EFFORTS TO COLLECT MORE GRANULAR SUBSCRIBER DATA.....	3
A. The Commission Can Significantly Improve Its Understanding of Broadband Availability by Requiring Reporting of 9-Digit Zip Codes. ....	3
B. The Commission Should Not Modify the Existing Speed Tiers or Require the Reporting of Actual Transmission Speeds.....	6
II. THE COMMISSION SHOULD NOT REQUIRE SERVICE PROVIDERS TO DEVELOP MAPS OF THEIR BROADBAND-ENABLED SERVICE TERRITORIES.....	7
III. THE REPORTING OF PRICING INFORMATION IS UNNECESSARY TO ADVANCE THE GOALS IN THIS PROCEEDING. ....	9
CONCLUSION.....	10

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**COMMENTS OF TIME WARNER CABLE**

Time Warner Cable Inc. (“TWC”) submits these comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned docket.<sup>1</sup> TWC is the nation’s second largest cable operator and owns or manages cable systems passing more than 26 million homes and serving more than 14 million subscribers. In addition to its basic and digital cable services, TWC offers broadband Internet access and a facilities-based VoIP service called Digital Phone. As of March 31, 2007, TWC served more than 7 million broadband data subscribers and more than 2 million Digital Phone subscribers.

**INTRODUCTION AND SUMMARY**

TWC applauds the Commission’s steadfast efforts to promote the deployment of broadband services and agrees that the collection of more refined broadband data is important to furthering that objective. The nationwide deployment of broadband services has been a

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<sup>1</sup> *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*, Notice of Proposed Rulemaking, WC Docket No. 07-38, FCC 07-17 (rel. Apr. 16, 2007) (“*NPRM*”).

remarkable success story; indeed, “broadband has had the fastest penetration rate of any technology in modern history.”<sup>2</sup> For its part, TWC has invested billions of dollars to build state-of-the-art broadband networks and offers broadband Internet access to the overwhelming majority of households in the areas it serves, and cable operators overall have invested more than \$100 billion in the last decade and make broadband services available to 94 percent of U.S. households.<sup>3</sup> Nevertheless, some remote areas of the country lack access to affordable broadband service. The Commission’s broadband data-reporting program is vital to identifying such areas and enabling the federal government to develop appropriately targeted measures to encourage further infrastructure investment.

TWC accordingly supports the Commission’s goal of collecting more granular data regarding the availability of broadband services, particularly in rural and other high-cost areas. Specifically, TWC believes that the reporting of 9-digit Zip Codes served by each broadband provider would significantly improve the Commission’s understanding of broadband availability. The use of 9-digit Zip Codes—together with any other commercially available data—also would obviate the need to collect geocoded information about subscriber locations; in TWC’s view, that approach would be more burdensome and would not yield more meaningful data. Nor does TWC support self-reporting by consumers, as such information is likely to be unreliable, particularly in a dynamic marketplace.

With respect to speed tiers, TWC does not believe that the Commission should raise the minimum reporting threshold of 200 kbps. While TWC’s services generally far exceed that minimum speed threshold, raising the floor could result in the underreporting of alternative

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<sup>2</sup> Remarks of FCC Commissioner Robert M. McDowell, Catholic University, Columbus School of Law Symposium, at 10 (March 15, 2007) (available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-271555A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-271555A1.pdf)).

<sup>3</sup> Kagan Research LLC, *Broadband Cable Financial Databooks*, at 11-12 (2007).

service offerings and thereby produce a distorted picture of the competitive marketplace.

Changing the tiers would make comparisons with prior periods much more difficult, and thus would compromise the Commission's ability to track increasing speeds over time.

The Commission should not require broadband providers to develop detailed maps of their service territories. There are ongoing state and local initiatives to map broadband availability by determining the extent of each service provider's offerings, and such efforts are extremely resource-intensive and could not efficiently be performed at the national level. By their nature, such mapping initiatives require ongoing interaction among industry and state and local officials.

Finally, the Commission should not require broadband providers to report pricing information. The Commission and consumers would be better served by continued reliance on advertisements, service providers' websites, and similar avenues to convey current pricing information.

## **DISCUSSION**

### **I. TWC SUPPORTS THE COMMISSION'S EFFORTS TO COLLECT MORE GRANULAR SUBSCRIBER DATA.**

#### **A. The Commission Can Significantly Improve Its Understanding of Broadband Availability by Requiring Reporting of 9-Digit Zip Codes.**

TWC supports the proposal to require reporting entities to submit all 9-digit Zip Codes they serve.<sup>4</sup> Of the various improvements considered in the *NPRM*, collecting 9-digit Zip Code data would deliver the most bang for the buck: It would provide much more granular information than is available today without unduly burdening service providers. As the *NPRM* notes, because filers report Zip Codes where they have at least one subscriber, it is difficult to

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<sup>4</sup> *NPRM* ¶ 31.

determine whether and to what extent there is truly broadband deployment in rural areas where one Zip Code could encompass a large portion of a state.<sup>5</sup> Shifting to reporting based on 9-digit Zip Codes would largely eliminate that problem, because such areas are far smaller than 5-digit Zip Codes. Requiring reporting based on 9-digit Zip Codes also would be consistent with reform proposals under consideration in Congress. Legislation recently introduced in the Senate would direct broadband providers to report broadband connections within 9-digit Zip Codes, and the House Committee on Energy and Commerce recently held a hearing in connection with a similar bill.<sup>6</sup>

The use of 9-digit Zip Codes is by no means perfect. Such designations change relatively often and have been criticized as failing to correspond to commonly recognized geographic boundaries.<sup>7</sup> Nevertheless, reporting based on 9-digit Zip Codes would represent a significant improvement over the status quo, and compiling this data should require only modest modifications to most reporting entities' customer service records. Indeed, TWC does not currently maintain information regarding the 9-digit Zip Codes it serves, but such data can be obtained based on billing addresses through a variety of software applications. Therefore, this proposal "most efficiently produces additional information that would materially advance [the Commission's] understanding of broadband availability."<sup>8</sup>

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<sup>5</sup> See *id.* ¶ 10; GAO Report No. 06-426, *Broadband Deployment Is Extensive Throughout the United States, But It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas* (May 2006) (noting that existing data "may overstate deployment in the sense that it can be taken to imply that there is deployment throughout the zip code, even if deployment is very localized").

<sup>6</sup> *Broadband Data Improvement Act*, S. 1492 (introduced May 24, 2007)); see also *Value of High-Speed Data Challenged by Lawmakers*, TECH DAILY (May 17, 2007) (reporting on House hearing and anticipated bill).

<sup>7</sup> See *Zip Code Controversy, Industry Backs Broadband Mapping Bill—Some*, COMMUNICATIONS DAILY (May 18, 2007).

<sup>8</sup> *NPRM* ¶ 33.

To the extent that the Commission requires reporting of customer counts by Zip Code or related information,<sup>9</sup> it must continue to preserve the confidentiality of this data. Information regarding customer counts or the number of homes passed in any given geographic area is competitively sensitive. The Commission appropriately has allowed providers to request confidentiality for the Form 477 filings by checking a box and has consistently refused to make Form 477 data available in response to FOIA requests.<sup>10</sup> Maintaining strict confidentiality will be all the more vital if the Commission requires submission of customer counts and related information on an even more granular basis.

In addition to collecting more granular information, the Commission should explore whether commercially available data would create a more complete picture of broadband availability.<sup>11</sup> As the Commission seeks to bring the promise of affordable broadband service to all Americans, it should make use of all available resources.

Implementing these improvements would obviate the need to require service providers to report geocoded information (*i.e.*, latitude and longitude) indicating subscriber locations.<sup>12</sup> As the Commission recognizes, new reporting requirements “could impose an increased burden on reporting entities,” and as such should be “tailored to minimize costs imposed on subject providers.”<sup>13</sup> Because the use of 9-digit Zip Codes and geocoded information are different ways to get at the same objective—gathering better data on broadband availability—the Commission

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<sup>9</sup> *See id.* at ¶ 28.

<sup>10</sup> *See, e.g.*, Letter from Kirk Burgee, Associate Chief, Wireline Competition Bureau, to Drew Clark, Senior Fellow and Project Manager, The Center for Public Integrity, FOIA Control No. 2006-493 (Sept. 26, 2006).

<sup>11</sup> *See NPRM* ¶ 32. By the same token, the Commission should analyze existing data to identify areas for additional study. *See id.* ¶ 25.

<sup>12</sup> *See id.* ¶ 33.

<sup>13</sup> *See id.* ¶ 2.

should not impose duplicative requirements. As the *NPRM* implicitly recognizes, generating geocoded data for subscribers would be more complex and burdensome than generating 9-digit Zip Codes, without yielding a materially better picture of broadband deployment.<sup>14</sup>

**B. The Commission Should Not Modify the Existing Speed Tiers or Require the Reporting of Actual Transmission Speeds.**

In addition to seeking to improve the granularity of subscribership data, the *NPRM* requests comment on modifying the speed tiers on Form 477 in various respects.<sup>15</sup> These proposals, while attractive in theory, likely would be counterproductive in practice.

First, increasing the minimum threshold of 200 kbps in one direction, or requiring greater than 200 kbps in both directions, would result in undercounting services that some consumers may regard as functional substitutes for higher-speed services. As a result, instructing service providers to stop reporting such connections could understate the degree of broadband deployment and competition, at least at the margins. Moreover, curtailing the reporting of such connections would make comparisons to prior periods more difficult, thus undermining the Commission's goal of tracking consumer uptake over time.<sup>16</sup>

By the same token, adjusting the speed tiers (either in one step or through automatic adjustments over time) would prevent the Commission from using historical data to make meaningful comparisons.<sup>17</sup> Changing the tiers from one filing period to the next also would significantly increase the burdens on service providers.

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<sup>14</sup> See *id.* ¶ 33 (characterizing the reporting of Zip Codes as “the least costly and most feasible” option).

<sup>15</sup> *NPRM* ¶¶ 18-21.

<sup>16</sup> See, e.g., *id.* ¶ 28.

<sup>17</sup> See Testimony of Dr. George Ford, Chief Economist, Phoenix Center for Advanced Legal and Economic Public Policy Studies, before the House Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, at 6 (May 17, 2007).

Nor should the Commission require reporting entities to categorize broadband connections based on actual download and upload connection speeds, as opposed to maximum available speeds. The actual speeds experienced by a customer at any given time are difficult to measure and problematic to report because actual speeds vary based on numerous factors, such as the number of users on-line in a given area and the applications and equipment used by the customer. As a result, the reporting of actual connection speeds is unlikely to provide reliable information about the service provider's network. Market forces compel providers to deliver the best possible service, and the Commission should rely on the marketplace (including a variety of performance-measurement tools available to consumers) to determine whether performance promises are being fulfilled.

**II. THE COMMISSION SHOULD NOT REQUIRE SERVICE PROVIDERS TO DEVELOP MAPS OF THEIR BROADBAND-ENABLED SERVICE TERRITORIES.**

The Commission should focus on proposals to improve the granularity of subscribership data, rather than seeking to develop a nationwide map delineating each service provider's broadband-enabled service territory.<sup>18</sup> While some states and localities are examining different tracking mechanisms, it is unlikely that such efforts could be scaled effectively to the national level. In contrast to reporting Zip Codes, the details of service territory boundaries cannot be generated on an automatic basis through commercial programs. Rather, as the *NPRM* recognizes, such an undertaking requires street-by-street or even block-by-block determinations of service availability, and thus imposes significant burdens.<sup>19</sup>

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<sup>18</sup> See *NPRM* ¶ 35 (seeking comment on the reporting of “the specific geographic area[s], which might include only parts of particular Zip Codes . . . where [providers] offer and/or currently deploy broadband services”).

<sup>19</sup> *Id.* ¶ 36.

As a result, projects like the Kentucky Cable Telecommunications Association's collaboration with ConnectKentucky have required intensive, ongoing interaction between service providers and state and local officials.<sup>20</sup> Such efforts, to the extent that they are undertaken, are better managed at the state and local level, where the participants can engage in a specific dialogue and coordination. Apart from Kentucky, many other states have already instituted their own data collection programs. For example, TWC has responded to specific data requests from California, Florida, Missouri, Nebraska, Tennessee, Texas and Wisconsin with varying levels of information requested. The proposed Senate Bill would continue this state-led process by establishing a five-year, \$40 million dollar annual program that would provide matching grants to non-profit organizations and public-private partnerships in support of efforts to identify barriers to broadband adoption.<sup>21</sup>

The Commission could not address these concerns about scalability by collecting detailed information about a selected area and extrapolating more broadly based on demographic variables such as income, education, race, and disability status.<sup>22</sup> Even assuming that such demographic variables would reliably correlate with broadband purchasing decisions—which is far from clear—service providers do not have access to such information and should not be required to request it from subscribers. Collecting such information implicates a host of privacy-related concerns. There are far less sensitive and more reliable ways for the Commission to determine broadband availability.

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<sup>20</sup> *See id.*; *see generally* <http://www.connectkentucky.org/>.

<sup>21</sup> *Broadband Data Improvement Act, S. 1492*, § 6 (May 24, 2007).

<sup>22</sup> *See NPRM* ¶ 40.

The Commission also should refrain from pursuing mapping by implementing voluntary self-reporting by consumers.<sup>23</sup> It would be difficult to obtain reliable and accurate information on broadband deployment in this manner. A large number of consumers almost certainly would report that they are not served by a particular provider, when services in fact are available (or vice versa). Moreover, even if a subscriber were unserved at one point during a reporting cycle, that status might well change before the Commission relied on self-reported data, particularly in light of the remarkable growth in the deployment of broadband. In light of the serious questions about reliability, the Commission should not undertake the costs of gathering and processing such information.

### **III. THE REPORTING OF PRICING INFORMATION IS UNNECESSARY TO ADVANCE THE GOALS IN THIS PROCEEDING.**

Finally, the Commission should not require reporting of pricing information in the interest of depicting competitive choice in representative areas.<sup>24</sup> Prices are constantly in flux in the dynamic broadband marketplace, rendering annual reporting uninformative, and potentially even misleading because customers have numerous pricing options, including temporary promotional rates and bundling discounts. Instead, the Commission should continue to rely on advertisements, service providers' websites, and similar marketplace mechanisms to communicate pricing information to consumers.

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<sup>23</sup> *See id.* ¶ 34.

<sup>24</sup> *See id.* ¶¶ 45-46.

**CONCLUSION**

For the foregoing reasons, the Commission should improve the granularity of its broadband data gathering, and in doing so should focus on obtaining 9-digit Zip Codes.

Respectfully submitted,

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