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
REPLY COMMENTS

The National Telecommunications Cooperative Association (NTCA)[1] files these reply comments in response to initial comments filed June 15, 2007, regarding 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]

NTCA maintains that 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

[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.

and reporting of a revised FCC Form 477.[3] The FCC and state commissions should protect broadband consumers' privacy interests and broadband providers' competitive interests by shielding proprietary information provided on the FCC Form 477 and through statewide mapping efforts from public disclosure. Finally, the Commission should adopt mitigation measures for any increased broadband reporting regulatory burdens, including a one-year implementation time and exemptions for rural ILECs.

I. Commenters Agree That The Nine-Digit Zip Code Approach Will Be Burdensome And May Not Be The Best Tool To Reveal Broadband Deployment and Availability.

Using the proposed 9-digit zip code system will create burdens for some carriers, especially rural ILECs. As NTCA presented in its initial comments, changing billing and mapping systems, verifying addresses with 9-digit zip codes, loading the initial 9-digit data, planning, verifying and validating the data, implementing new software, and the costs associated with using commercial 9-digit zip code listings all require additional time and expense to implement.[4] Many rural carriers, including those with wireless CLEC subsidiaries, will find it difficult and expensive to accommodate changes in their systems to meet a 9-digit zip code reporting system for FCC Form 477.

Other commenters agreed. The American Cable Association correctly noted that "the suggested data is not readily available from existing billing systems" and claimed that there is no corresponding benefit to the operator or customers in using a 9-digit zip code system.[5] AT&T asserted that there is no valid business concern for adopting new national broadband reporting

[3] NTCA comments, p. 2. NTCA silence on any positions or proposals raised by other commenters in this proceeding connotes neither agreement nor disagreement by NTCA with those positions or proposals.

[4] NTCA comments, pp. 5-9.

[5] American Cable Association (ACA) comments, pp. 2, 3, 5.

requirements at this time.[6] Verizon and Verizon Wireless acknowledged that reporting customer counts by 9-digit zip codes "would unduly burden broadband providers, and require the disclosure of even more competitively sensitive information, without significantly improving the Commission's understanding of the broadband marketplace."[7] These carriers also assert that some 9-digit zip codes are "vanity" zip codes that reflect a business' sales products rather than its location.[8]

The Alliance for Public Technology assumes that by using the 9-digit zip code system, the FCC will be able to identify broadband deployment by individual homes and small businesses.[9] This is not the case, however, as one can see by manipulating the U.S. Postal Service's 9-digit zip code website.[10] The 9-digit zip code system is not capable of such a granular examination. The California Public Utilities Commission recognized this shortcoming and recommended the Commission use Census Block Group (CBG) data rather than 9-digit zip code data, in part because of the availability of corresponding demographic data that are available at the CBG level.[11]

Cincinnati Bell urged the Commission to consider using the location of broadband facilities instead of the 9-digit zip code system as a better way to show broadband availability.[12] This approach has some merit. Connected Nation, the national company who sponsored the

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[6] AT&T comments, p. 3.

[7] Verizon and Verizon Wireless comments, pp. 3, 15.

[8] *Id.* at 16.

[9] Alliance for Public Technology comments, p. 4.

[10] *See* NTCA comments, p. 4; www.usps.com.

[11] California Public Utilities Commission comments, p. 6.

[12] Cincinnati Bell Telephone comments, p. 4.

ConnectKentucky program, contended that zip code systems will not adequately portray broadband deployment.[13] USTA added that the 9-digit zip code system will offer little clarity on broadband penetration.[14]

While several commenters urged the FCC to use the 9-digit system to gain more granular data, these commenters did not address how small rural carriers are going to cope with the financial burdens and time constraints caused by using 9-digit reporting on Form 477.[15] Other commenters want to expand the data collected through Form 477. The Iowa Utilities Board urged the Commission to seek stand-alone product and bundled product data as part of the Form 477.[16] NTCA maintains that modifying FCC Form 477 to reflect a 9-digit zip code system or to obtain previously-unreported data will impose substantial burdens on rural ILECs to collect, maintain and report broadband deployment.

II. Broadband Information Gathered Through Statewide Broadband Mapping Efforts and Form 477 Must Be Protected From Public Disclosure.

Several commenters supported the use of the ConnectKentucky broadband mapping experience as a model for statewide and nationwide broadband deployment reports.[17] The Commission should hesitate before requiring states to use Connected Nation's Kentucky-based model. ConnectKentucky is/was a multiple-year project involving a public and private partnership to identify broadband deployment in Kentucky, but this model may not translate well

[13] Connected Nation comments, pp. 2-3.

[14] USTA comments, p. 13.

[15] Consumers Union *et al.* comments, pp. 4, 5; State of Illinois comments, pp. 2, 4, 6; Information Technology Industry Council comments, p. 3; New York State Department of Public Service comments, p. 2; NASUCA comments, p. 17; Time Warner Cable comments, p. 3.

[16] Iowa Utilities Board comments, p. 3.

[17] Alliance for Public Technology comments, p. 5; AT&T comments, pp. 4, 16; Communications Workers of America comments, p. 4; Embarq comments, p. 11; USTA comments, pp. 6, 7.

to other states and should not be mandated on a nationwide scale. The comments by Connected Nation reflect a huge commitment of time and expense by Kentucky and its carriers to create a statewide broadband mapping program.[18] Not all states and not all broadband providers may be willing or able to sustain the commitment necessary to create and update a nationwide or statewide broadband deployment maps.

Furthermore, broadband providers will be reluctant to submit private consumer information and confidential commercial data unless the providers and consumers are assured their data will remain confidential. Data validity is critical to the overall success of broadband mapping. Statewide maps, rather than nationwide efforts, will produce more accurate and granular deployment and availability maps due to the reduced scale.

States that want to implement their own state-specific version of a broadband deployment map should not be discouraged from proceeding (or continuing their existing efforts) but should be encouraged to use non-disclosure agreements that can legally shield the providers' confidential data from public view under state and federal laws. Alternatively, states should use the assistance of private entities who not subject to public disclosure laws to gather and analyze the raw data. As AT&T observed, ConnectKentucky could enter into strict non-disclosure agreements and thus completely shield such information with third parties because it is not subject to the Freedom of Information Act (FOIA) public disclosure laws.[19]

The Commission may discover, however, that it cannot guarantee confidentiality under federal law as it is now litigating that issue in federal court.[20] Until that litigation (and any

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[18] Connected Nation comments, p. 4.

[19] AT&T comments, p. 17,

[20] *Center for Public Integrity v. Federal Communications Commission*, U.S. Dist. Ct. (D. C.) Civ. Act. No. 06-1644 (RMC) (pending).

subsequent appeal and/or remand) is concluded, the Commission cannot guarantee that broadband customers' and broadband providers' data are protected from FOIA disclosure or the state equivalent.

The same confidentiality challenges face broadband providers on the state level. For example, Iowa, Massachusetts and Maine are already collecting broadband availability and deployment data.[21] The Massachusetts Department of Telecommunications and Cable (MA DTC) recently denied Verizon's request to withhold from public view the statewide and municipality-specific numbers of its FiOS subscribers contained in its state Form 500 Annual Report of Complaint Data.[22] The basis for this ruling appears to be a perceived need for equivalent treatment of cable-modem and DSL broadband data, and the cable providers' corresponding subscribership data were already accessible by the public.[23]

Other commenters agree with NTCA that the Commission and state public service commission must prevent the inappropriate disclosure of confidential consumer information and commercially sensitive competitive data contained in the Form 477 and other broadband mapping efforts.[24] The FCC and state commissions should protect broadband consumers' privacy interests and broadband providers' competitive interests by shielding proprietary

[21] Iowa Utilities Board comments, p. 2; Massachusetts Department of Telecommunications and Cable (MA DTC) and the Maine Public Utilities Commission comments, Attachment map (Mass. Tech. Collaborative June 2007).

[22] The MA DTC held that Verizon did not meet its burden of proof under state law that the information is a trade secret or is competitively sensitive under state law in part because the information was already available on the municipal level. Massachusetts Department of Telecommunications and Cable, *Ruling on Motions for Confidential Treatment Filed By Verizon New England, Inc*. (filed June 7, 2007). This ruling is available at: http://www.mass.gov/Eoca/docs/dte/catv/orders/6707rulmct.pdf.

[23] *Ibid*.

[24] NTCA comments, p. 13; AT&T comments, pp. 2-4.

information provided on the FCC Form 477 and through statewide mapping efforts from public disclosure.

III. Mitigation Measures May Be Necessary For Rural Carriers.

NTCA and others have stressed that new broadband regulatory reporting burdens, created either by revising FCC Form 477 or by initiating statewide broadband mapping programs, must be reduced as much as possible and that the Commission must proceed cautiously when implementing new reporting requirements.[25] COMPTEL discussed the burdens small entities will face with enhanced reporting requirements and supported using a reporting threshold to reduce the impact of the new requirement on small companies.[26] This approach has merit and should be considered. The ACA advocated exempting small and medium-sized operators from additional reporting requirements.[27] Even AT&T admitted that its billing systems do not contain 9-digit zip code reporting data for many of its subscribers.[28] Verizon asserted that it would face "significant costs" in reporting 9-digit zip code level data.[29]

Regulatory burdens will arise through statewide broadband mapping efforts, as well. Cincinnati Bell Telephone, one of the participants in the ConnectKentucky project, asserted in its comments that the personnel resources devoted to the developing the longitude and latitude information for project were considerable.[30] Cincinnati Bell recommended the Commission

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[25] NTCA comments, p. 5; Embarq comments, p. 14; USTA comments, p. 11.

[26] COMPTEL comments, pp. 1-4.

[27] ACA comments, p. 6.

[28] AT&T comments, p. 18.

[29] Verizon and Verizon Wireless comments, p. 17.

[30] Cincinnati Bell Telephone comments, p. 3.

allow carriers up to 18 months to comply with any replicated studies of ConnectKentucky, and to keep the broadband data gathered confidential.[31]

Rural providers faced with new expenses arising from reporting regimes will have to redirect valuable resources in order to comply with the new rules. NTCA has detailed some of the extent of the burdens that would arise using a 9-digit zip code system and has proposed two mitigation measures – a one-year implementation time and exemptions where 9-digit zip codes have not been assigned – that the Commission could use to reduce or eliminate the burdens created by using a 9-digit zip code system. The Commission should adopt NTCA's suggestions and encourage state commissions to adjust their statewide broadband mapping efforts to reflect rural carriers' needs.

IV. Conclusion.

For these reasons, the Commission should realize that using a 9-digit zip code system to map broadband deployment will impose substantial burdens on rural ILECs to collect, maintain and report data, especially in the initial population and reporting of a revised FCC Form 477. The FCC and state commissions should protect broadband consumers' private information and broadband providers' competitive interests by shielding proprietary information provided on the FCC Form 477 and through statewide mapping efforts from public disclosure. Finally, the

[31] Cincinnati Bell Telephone comments, p. 3.

Commission should adopt mitigation measures for any increased broadband reporting regulatory burdens, including a one-year implementation time and exemptions for rural ILECs.

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July 16, 2007

CERTIFICATE OF SERVICE

I, Adrienne Rolls, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 07-38, FCC 07-17, was served on this 16th day of July 2007 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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