

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of:

Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip

WC Docket No. 07-38

**REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA ON THE DEVELOPMENT OF BROADBAND DATA**

**I. INTRODUCTION**

The California Public Utilities Commission and the People of the State of California (California or CPUC) submit these Reply Comments to the Federal Communications Commission (FCC or Commission) in response to the Notice of Proposed Rulemaking (NPRM) seeking comment on how the FCC should collect broadband data to successfully carry out its broadband policies.<sup>1</sup> California herein responds to some of the issues raised by parties in their Comments.

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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 Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*, WC Docket No. 07-38, *Notice of Proposed Rulemaking*, FCC 07-17 (rel. April 16, 2007) (2007 NPRM).

The initial comments filed in this proceeding reflect a strong interest in the development of more comprehensive broadband data, and a desire for the FCC to modify its Form 477 to collect that data itself. This is a significant shift from the positions expressed by many parties in responding to the Commission’s 2004 *Notice of Proposed Rulemaking* in which the FCC also sought comment on the issue of collecting “more granular data” through Form 477.<sup>2</sup> For example, the objections voiced in 2004 to providing subscriber counts at the 5-digit Zip Code level seem to have diminished substantially.<sup>3</sup> In comments responding to the 2007 *NPRM*, parties reflect the FCC’s own interest in more aggressively capturing the true status of the broadband market.<sup>4</sup> Furthermore, California believes that granular broadband availability data, as well as penetration data, are now essential.

Form 477 should be modified to reflect this general shift towards more specific and granular broadband information. In light of the ever-increasing interest in developing local and national public policies to “bridge the digital divide,” particularly in rural and hard-to-serve areas, the FCC should use its unique position to foster the development of a solid factual foundation regarding all aspects of broadband service – broadband take rates, deployment, speeds, prices, etc. – upon which good public policy must be built.

In these reply comments, California focuses on the importance of adopting a granular, census-based geographic unit for broadband data, a goal that is supported by other commenting parties. California describes in greater detail how its recent video franchising activities have resulted in certain broadband reporting at the census block

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<sup>2</sup> *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, *Notice of Proposed Rulemaking and Order on Reconsideration*, FCC 04-81 (adopted March 31, 2004) (2004 *NPRM*).

<sup>3</sup> See, e.g., Sprint Comments, WC Docket 04-041, CC Docket 99-301 (June 28, 2004) at 5; Comments Of The Organization For The Promotion And Advancement Of Small Telecommunications Companies, WC Docket 04-041, CC Docket 99-301 (June 28, 2004) at 2.

<sup>4</sup> See, e.g., Comments of Sprint Nextel Corporation (Sprint Nextel) at 9; Comments Of The Organization For The Promotion And Advancement Of Small Telecommunications Companies (OPASTCO) at 2. In the 2007 *NPRM*, for example, the FCC observes that data even more granular than the 5-digit Zip Code level is preferable: “Ideally, we would have information about the choices that a customer faces on a house-by-house and business-by-business basis.” 2007 *NPRM* at para. 10.

group (CBG) and census tract levels. Finally, California recommends that companies be required to submit their Form 477 data to state commissions as well as the FCC, and that the FCC delegate authority to the state commissions so that they can directly obtain data from all broadband providers.

## **II. OBTAINING BROADBAND DATA UNDER THE CPUC’S VIDEO FRANCHISING AUTHORITY**

The FCC plays a vital role in collecting comprehensive broadband data across service provider platforms. California, like many other states, has realized the importance of a robust broadband infrastructure to the continued health and development of the state and its residents, and has taken steps to collect broadband deployment and subscription data in addition to using the data heretofore available from the FCC.<sup>5</sup> However, the CPUC and other state commissions have expressed in their initial comments in this docket the fact that they face serious barriers to obtaining meaningful data on their own authority, and look forward to the possibility of gaining access to Form 477 data that will be even more suited than in the past to meeting the policy-making needs of the states.<sup>6</sup>

As the CPUC noted in its initial comments, California is nevertheless beginning to develop the mechanisms for identifying and gathering certain useful broadband data as the technology and industry continue to evolve. In particular, the California Legislature last year enacted the Digital Infrastructure and Video Competition Act (DIVCA) requiring that certain broadband providers – those that obtain a state-issued video

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<sup>5</sup> As discussed in the CPUC’s initial comments, the Governor Schwarzenegger has created a Broadband Task Force. California at 2-3. *See* State of California Office of the Governor. Executive Order S-23-06 by the Governor of the State of California. “Twenty-First Century Government: Expanding Broadband Access and Usage in California (Revised).” <http://gov.ca.gov/index.php?executive-order/4585/> (California Executive Order S-23-06). An important part of the Broadband Task Force’s efforts will be focused on developing data about current broadband deployment in California. *See, e.g.*, California Executive Order S-23-06 at Ordering Paragraph 2 (“Among other responsibilities, BTH [the Business, Transportation and Housing Agency] shall manage broadband data collection, in consultation with the CPUC, and develop a baseline and metrics for measuring broadband usage and benefits within the State.”).

<sup>6</sup> *See, e.g.*, Comments Of The People Of The State Of Illinois (Illinois) at 8; Comments of the New York State Department of Public Service in WC Docket 07-38; Notice of Proposed Rule Making on the Development of Nationwide Broadband Data, et al. (NYDPS) at 1-3.

franchise from the CPUC –submit to the CPUC broadband subscribership information and data about homes passed at the census tract level.<sup>7</sup> Earlier this year, the CPUC adopted implementation rules that specify the nature of the data to be provided, as well as the mechanisms for providing it efficiently in a useful format.<sup>8</sup> As a practical matter, this has meant that the two largest ILECs in California, both of which have sought and obtained state-issued video franchises, have begun submitting detailed data to the CPUC about the video subscribership, broadband subscribership and availability, and certain demographic data associated with those communities, for both the franchise holders and any of their affiliates.<sup>9</sup>

In particular, a company seeking to obtain a state-issued video franchise must: (1) identify its requested franchise area down to the census block group (CGB) level;<sup>10</sup> (2) provide baseline information about the number of total households and low-income households located within the proposed franchise area, and; (3) commit to providing within 90 days extensive information at the census tract level that includes, among other data, both wireline and non-wireline broadband availability and subscribership.<sup>11</sup> Information along the same lines must be submitted on an annual basis.<sup>12</sup> Furthermore, these reporting requirements apply to all of the franchise holder’s affiliates that operate in

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<sup>7</sup> Comments Of The California Public Utilities Commission And Of The People Of The State Of California On The Development Of Broadband Data (California) at 7-9. *See* Decision Adopting a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006, Decision 07-03-014, in Rulemaking 06-10-005 (March 1, 2007) (“D.07-03-014” or “DIVCA Decision”).

<sup>8</sup> *See* California’s State Video Franchise Application, which is included as **Attachment A** to these reply comments. (The State Video Franchise Application is included in the “General Order 169 (Implementing the Digital Infrastructure and Video Competition Act of 2006 (DIVCA).” The CPUC adopted General Order 169 in D.07-03-014, *supra.*). *See also* “Census Tract Basis” Reporting of Broadband and Video Data (D.07-03-014, Appendix D) which is included as **Attachment B** to these reply comments.

<sup>9</sup> *See* Entities Qualified to Become a State Video Franchise Holder, D.07-03-014 at Appendix C.

<sup>10</sup> Applicants have the option of instead submitting a geographic information system digital boundary that meets or exceeds national map accuracy standards. *See* State Video Franchise Application at 6.

<sup>11</sup> State Video Franchise Application at 6-8.

<sup>12</sup> *See* General Order 169, *supra.*, at 16-18.

California.<sup>13</sup> While all new video entrants are subject to these requirements, locally-franchised cable companies will be required to provide the same broadband data only in the future, at such time as their local franchises are replaced by state-issued franchises, either because the incumbents become eligible to and choose to opt out of their local franchises, or their local franchises expire.

As invaluable as this information is and will be, however, it will not truly reflect all of the broadband activities throughout California for quite a while, if ever. This is the case because many local franchises of incumbent cable providers may well continue to be viable for as many as 15 years or more, and there may be no interest in cable operators with such franchises to opt out of them. In addition, broadband providers not providing video services are not subject to DIVCA's reporting requirements.<sup>14</sup> Thus, the data the FCC gathers through Form 477 remains of critical interest.<sup>15</sup>

### **III. FORM 477 SHOULD BE DRAMATICALLY MODIFIED**

#### **A. Inadequacy Of Current Broadband Data**

Several commenters, including the CPUC, discuss in their initial comments the insufficiency of the current Form 477 data in providing an accurate depiction of broadband availability. Currently providers do not report even a statewide count of "homes passed" or "end-user premises with access" or anything similar. For example, the Communications Workers of America (CWA) state that "the FCC's Form 477 data collection tells us where high-speed Internet subscribers are served, not where providers have *deployed* broadband infrastructure."<sup>16</sup> NATOA observes that "[t]he low standard

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<sup>13</sup> See Entities Qualified to Become a State Video Franchise Holder, D.07-03-014 at Appendix C.

<sup>14</sup> The holder of state video franchise and its affiliates are subject to DIVCA reporting requirements for any broadband services offered, regardless of technology. See State Video Franchise Application at 7 (listing the reporting requirement for "non-wireline broadband" services of franchise holders).

<sup>15</sup> Governor Schwarzenegger's Broadband Task Force is also engaged in an effort to obtain certain broadband data on a voluntary basis from industry, but the effectiveness of that effort is not certain at this time. See, e.g. California Executive Order S-23-06, *supra*, at Ordering Paragraphs 2-3.

<sup>16</sup> Comments of Communications Workers of America (CWA) at 3 (emphasis in original). See also Kolko, Jed, "Broadband For All? Gaps in California's Broadband Adoption and Availability," California Economic Policy Vol. 3 No. 2, Public

by which a ZIP Code is considered served as long as there is a single subscriber, along with a lack of detail with some statistics, raises doubts about the validity of...claims [that] broadband has reached 99% of the American population in 99% of ZIP Codes.”<sup>17</sup> ITIF acknowledges that “[u]nderstanding the deployment and take-up patterns of broadband is an important first step in meeting [the] goal [of universal access to high-speed broadband].”<sup>18</sup>

In Joint Comments, the Massachusetts Department of Telecommunications and Cable (Massachusetts) and the Maine Public Utilities Commission (Maine) went further and compared a broadband availability map based on state-collected data with Form 477 data. The parties found significant discrepancies. For example, Massachusetts’ own data showed that 72 percent of its municipalities had access to at least 2 broadband providers, while Form 477 data suggests, for lack of further granularity, that 99 percent of Massachusetts communities have access to at least 2 broadband providers.<sup>19</sup> The joint parties observe that “[t]he need for a more granular approach is critical given the discrepancies between Form 477 data and data collected by the states.”<sup>20</sup>

## **B. Census Block Groups Are Preferable To 9-Digit Zip Codes**

Most commenting parties have expressed support for the collection of broadband data at a more granular level than the current 5-digit Zip Code level.<sup>21</sup> Rather than going

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Policy Institute of California (July 2007) at 1, 10 (available at [http://www.ppic.org/content/pubs/cep/EP\\_707JKEP.pdf](http://www.ppic.org/content/pubs/cep/EP_707JKEP.pdf)).

<sup>17</sup> Comments Of The National Association Of Telecommunications Officers And Advisors, The National Association Of Counties, The U.S. Conference Of Mayors, And The National League Of Cities In Response To The Notice Of Proposed Rulemaking (NATOA) at 3 (footnote omitted).

<sup>18</sup> Comments of the Information Technology And Innovation Foundation (ITIF) at 1.

<sup>19</sup> Map found at [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6519529462](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519529462).

<sup>20</sup> Joint Comments of the Massachusetts Department of Telecommunications and Cable and the Maine Public Utilities Commission (Mass/Maine) at 8.

<sup>21</sup> *See, e.g.*, Comment on FCC Notice of Proposed Rulemaking WC Docket 07-38 Submitted by: Connected Nation Inc. (Connected Nation) at 3-4; Comments of the National Association of State Utility Consumer Advocates (NASUCA) at 18-19; COMPTTEL at 1; NYDPS at 1-2; Illinois at 6; Comments of the American Library Association at 2; Comments of Vonage Holding Corporation at 1-2; CWA at 3-4; Comments of the National Association of Telecommunications Officers and Advisors, National Association of Counties, U.S. Conference of Mayors, and National League of Cities (NATOA et. al.) at

to 9-digit Zip Codes as suggested in the *NPRM*, however, the CPUC continues to urge the Commission to require data reporting by a geographic unit used by the U.S. Census Bureau – namely, the “census block group” (CBG) or, in the alternative, the “census tract,” the larger geographic unit that is an aggregation of CBGs.<sup>22</sup>

The FCC specifically sought comment on whether to modify Form 477 to require customer counts at the 9-digit Zip Code level,<sup>23</sup> and then on “non-Zip Code based approaches” generally, such as geocoded information.<sup>24</sup> While several parties supported the use of 9-digit Zip Codes,<sup>25</sup> it is important to note that the *NPRM* does not specifically propose or seek comment on any census-based such as CBGs or census tracts. Thus, the CPUC urges the FCC to consider that parties supporting 9-digit Zip Codes may be expressing a desire for more granular data, but may not necessarily prefer 9-digit Zip Codes over other geographic units such as CBGs.

While both Zip Codes and CBGs can vary in size, the CPUC provides Figure 1 to illustrate the difference between one Zip Code in the Fresno area of California, and the CBGs that approximate the same area. The central region that is the darkest in color (shown as blue-green on color copies) is the area covered by Zip Code 93706. The lines that appear both inside and outside of the Zip Code reflect the boundaries of CBGs. Because Zip Code boundaries do not coincide with census boundaries, there are parts of Zip Code 93706 that fall only partially in some CBGs. The larger, lightly-shaded region (shown as grey on color copies) that surrounds Zip Code 93706 reflects the full outline of all of the CBGs that contain some part of Zip Code 93706.

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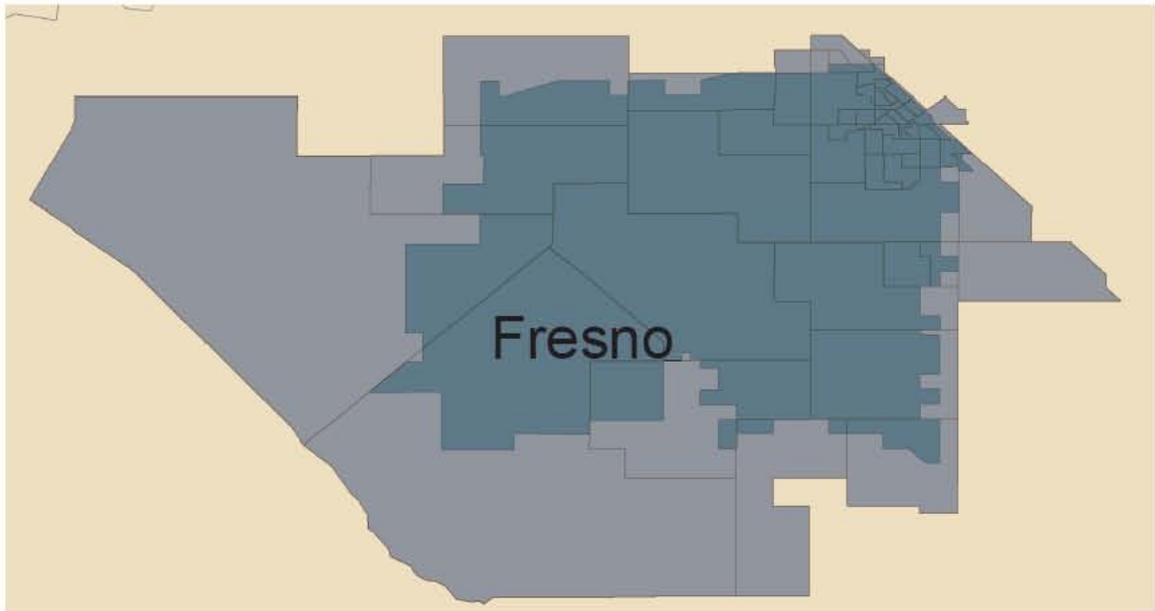
4-7; Comments of Consumers Union, Consumer Federation of America, Free Press (Consumers Union et. al.) at 28-30; Comments of the Information Technology Industry Council (ITIC) at 3-4.

<sup>22</sup> According to the Census Bureau, “a [census] block group is the smallest geographic unit for which the Census Bureau tabulates sample data. A [census] block group consists of all the [census] blocks within a census tract with the same beginning number.” A CBG, in turn, is “a subdivision of a census tract.” Definition of Block Group, U.S. Census Bureau, [http://factfinder.census.gov/home/en/epss/glossary\\_b.html#block](http://factfinder.census.gov/home/en/epss/glossary_b.html#block).

<sup>23</sup> 2007 *NPRM* at para. 31.

<sup>24</sup> 2007 *NPRM* at para. 33.

<sup>25</sup> See, e.g., CWA at 3-4; Illinois at 6; NATOA et al. at 4-7; NYDPS at 2-3.



**Figure 1: Zip Code 93706 (darkest area) and Corresponding CBGs (entire shaded area, including darkest area, with boundaries identified)**

As indicated above, this map is intended to provide an illustration of how the sizes of CBGs can compare to that of a single Zip Code, but the relative sizes of other CBGs and Zip Codes will of course vary. As discussed below, using CBGs as the geographic reporting unit for Form 477 would be feasible for broadband companies, and would offer significant analytical benefits over relying only on 5-digit or 9-digit Zip Codes.

**C. Several Parties Support Using A Census-Based Geographic Unit**

As the CPUC stated in initial comments, collecting data at the CBG level enables use of the vast and invaluable demographic information collected by the Census Bureau.<sup>26</sup> Some of the analytical benefits of using CBGs over Zip Code-based geographies are that they are: consistent with the demographic data (race, income, education) required for uptake analysis; located within municipal boundaries; small enough to be more easily rearranged in multiple configurations (legislative districts,

<sup>26</sup> California at 6-9

neighborhoods, etc.); and standard sizes, with an average population of about 1000-1500 people.<sup>27</sup> Other commenting parties also support using census-based geographic units, for example:

- Illinois advocates “gather[ing] information on broadband availability and subscribership data at a level considerably more detailed than zip code.”<sup>28</sup> Illinois later observes that “[t]he widespread concern that the zip code level overstates the extent of broadband deployment can be addressed by requiring all carriers to report the number of subscribers by 9-digit zip code or some other more precise measure, such as census block.”<sup>29</sup>
- NATOA argues that, “[b]ecause of the expansive geographic and population size inherent with most Zip Codes, to get meaningful data using this methodology, the Commission must modify its current system or apply a new measurement area so that data granularity will improve.”<sup>30</sup> NATOA later states, “Another alternative is to use the Census Bureau’s blocking system. This approach provides the ability to directly mesh collected data with demographic information.”<sup>31</sup>

Embarq opposes asking providers to bear the burden of submitting data at the census block level, but nevertheless acknowledges the value of census-based units in recommending that the FCC itself convert the data it receives to census blocks: “Some of the critical factors influencing broadband deployment, such as population densities and income levels are available on a Census Block basis. Accordingly, the Commission may want to organize the customer and network location data it collects on a Census Block basis.”<sup>32</sup> While Embarq is correct in saying that the data would be most useful to the FCC on a census basis, it is wrong in suggesting that the FCC (or state commissions) can

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<sup>27</sup> Definition of Block Group, U.S. Census Bureau, [http://factfinder.census.gov/home/en/epss/glossary\\_b.html#block](http://factfinder.census.gov/home/en/epss/glossary_b.html#block). See also, Connected Nation Inc. at 3.

<sup>28</sup> Illinois at 2.

<sup>29</sup> Illinois at 4.

<sup>30</sup> NATOA at 5.

<sup>31</sup> NATOA at 6 (also noting that the “major drawback to using the Census block system is the cost and effort necessary to bring providers’ collection techniques in line with an unfamiliar unit of measure and the burden this standard would place on providers.”).

<sup>32</sup> Comments of Embarq on the Notice of Proposed Rulemaking (Embarq) at 9-10.

organize data provided on a Zip Code or Zip+4 basis to census units with any degree of accuracy. As depicted in Figure 1 (Zip Code 93706 and CBGs), CBGs are relatively small. Census blocks are even smaller. As a practical matter, the FCC would not know where, within the reported Zip Code or 9-digit Zip Code area, service is available or customers are located in order to assign those data to a particular census block or CBG. Furthermore, demographic data can vary significantly between adjoining CBGs or census blocks.

It is a relatively simple task for broadband providers to convert their street-level data to census blocks, CBGs, or census tracts. If a company with granular data does not wish to convert the data it has to census units, however, the FCC should consider allowing that company to provide subscriber and availability information at the smallest geographic unit available, such as at street-level or on a geocoded basis. While there is no way to accurately convert data submitted at the Zip Code or Zip+4 level to census units, obtaining the most granular data possible would at least enable the FCC and state to undertake the necessary conversion themselves.

Finally, while USTA recommends using public-private partnerships for data collection rather than requiring providers to submit more granular data, it is particularly critical of 9-digit Zip Codes, which “do not correspond to any commonly recognized geographic boundaries, such as state or county lines, Congressional districts or service territories.”<sup>33</sup> USTA further notes that, “although the Commission favors the idea of integrating its collected data with that obtained by the Census Bureau, the Zip+4 data is incompatible with Census data.”<sup>34</sup> It appears that, while the Census Bureau has developed a “new statistical entity” called a ZIP Code Tabulation Areas (ZCTA) that is intended to approximate 5-digit Zip Code areas, there is no corresponding entity for 9-digit Zip Code areas.<sup>35</sup> While states, including California, are engaging in public-private

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<sup>33</sup> Comments Of The United States Telecom Association (USTA) at 13.

<sup>34</sup> USTA at 13.

<sup>35</sup> “A ZIP Code Tabulation Area is a geographic area that approximates the delivery area for a five-digit or a three-digit ZIP

partnerships, participation by providers is voluntary and it is unclear whether such efforts will be successful in collecting the type of data necessary for effective policy-making. USTA's position supports the arguments, however, that census-based data are both superior analytically.

#### **IV. SIMULTANEOUS REPORTING OF DATA TO STATE COMMISSIONS**

The CPUC reaffirms its support for requiring carriers to simultaneously report Form 477 data both the FCC and the relevant state commissions. This requirement would significantly the ability of state commissions to assess the availability of broadband in a timely manner; moreover, it would be a much more efficient means of disseminating information and would negate the need for states to ask carriers directly for this information.

At the same time, such simultaneous reporting should not be considered an alternative to enabling state commissions to directly collect broadband information from providers themselves. Thus, the CPUC supports the proposal of the Massachusetts Department of Telecommunications and Cable and the Maine Public Utilities Commission that the FCC “grant explicit authority to state commissions to collect granular state broadband data from all broadband providers.”<sup>36</sup> This proposal is consistent with a Draft Resolution that the Telecommunications Committee of the National Association Of Regulatory Utility Commissioners (NARUC) will be considering this July. If passed, the Draft Resolution will recommend to policymakers that “because of the states['] unique relationship with providers within their geographic

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Code. ZCTAs do not precisely depict the area within which mail deliveries associated with that ZIP Code occur.” Definition of ZIP Code Tabulation Area (ZCTA), U.S. Census Bureau, [http://factfinder.census.gov/home/en/epss/glossary\\_z.html](http://factfinder.census.gov/home/en/epss/glossary_z.html). See a further description of ZCTAs at <http://www.census.gov/geo/ZCTA/zcta.html>.

<sup>36</sup> Mass/Maine at 2.

boundaries, States should be delegated specific authority for broadband data collection and analysis purposes.”<sup>37</sup>

## V. CONCLUSION

California recommends that, because access to accurate and robust broadband data is critical to policy making at both the federal and state levels, Form 477 should be modified to require the reporting of broadband data based on census units. Furthermore, California recommends that companies provide their Form 477 responses to state commissions at the same time that they provide their responses to the FCC.

Respectfully submitted,

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<sup>37</sup> TC-2 Resolution on Broadband Data Collection, Section VII. Telecommunications Committee, Draft Resolutions Proposed For Consideration At The July 2007 Summer Meetings of the National Association Of Regulatory Utility Commissioners (as submitted July 5, 2007), [http://www.naruc.org/associations/1773/files/resolutions/summer07/2007Resolutions\\_Telecom.pdf](http://www.naruc.org/associations/1773/files/resolutions/summer07/2007Resolutions_Telecom.pdf) at 9.

CPUC Reply Comments  
WC Docket No. 07-38  
July 16, 2007

**ATTACHMENT A**

**California State Video Franchise Application**



## ATTACHMENT A

### APPLICATION FOR A NEW OR AMENDED CALIFORNIA STATE VIDEO FRANCHISE CALIFORNIA PUBLIC UTILITIES COMMISSION

#### Definitions for the purposes of this Application:

- A. "Access" means that the holder is capable of providing video service at the household address using any technology, other than direct-to-home satellite service, providing two-way broadband Internet capability and video programming, content, and functionality, regardless of whether any customer has ordered service or whether the owner or landlord or other responsible person has granted access to the household. If more than one technology is utilized, the technologies shall provide similar two-way broad band Internet accessibility and similar video programming.
- B. "Affiliate" means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.
- C. "Applicant" means any person or entity that files an application seeking to provide Video Service in the state pursuant to a State Video Franchise.
- D. "Application" means the form prescribed by the Commission through which an Applicant may apply for a State Video Franchise or amend its Video Service Area.
- E. "Application Fee" means any fee that the Commission imposes to recover its actual and reasonable costs of processing an Application.<sup>1</sup>
- F. "Area" means a set of contiguous (i) collections of census block groups or (ii) regions that are mapped using geographic information system technology.
- G. "Broadband" or "Broadband Service" means any service defined as Broadband, or having advanced telecommunications capability, in the most recent Federal Communications

<sup>1</sup> CAL. PUB. UTIL. CODE § 5840(c). This fee is not levied for general revenue purposes, consistent with Public Utilities Code § 5840(c).

## ATTACHMENT A

Commission inquiry pursuant to Section 706 of the Telecommunications Act of 1996 (P.L. 104-104).<sup>2</sup>

- H. “Census Block Group” has the same meaning as used by the U.S. Census Bureau.
- I. “Census Tract” has the same meaning as used by the U.S. Census Bureau.<sup>3</sup>
- J. “Census Tract Basis” means pursuant to the reporting standards articulated in Appendix D and Appendix E, Section II of D.07-03-014.
- K. “Commission” means the Public Utilities Commission.
- L. “Company” means the Applicant and its Affiliates.
- M. “DIVCA” means Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (Ch. 700, Stats. 2006).
- N. “Household” means, consistent with the U.S. Census Bureau, a house, apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters.<sup>4</sup> Separate living quarters are those in which the occupants live and eat separately from any other persons in building and which have direct access from the outside of the building or through a common hall.<sup>5</sup>
- O. “Local Entity” means any city, county, city and county, or joint powers authority within the state within whose jurisdiction a State Video Franchise Holder may provide Video Service.<sup>6</sup>
- P. “Low-Income Household” means a residential Household where the average annual Household income is less than \$35,000, as based on U.S. Census Bureau estimates adjusted annually to reflect rates of change and distribution through January 1, 2007.<sup>7</sup>

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<sup>2</sup> Id. at § 5830(a). The Federal Communications Commission currently uses the term “broadband” and “advanced telecommunications capability” to describe services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second. FEDERAL COMMUNICATIONS COMMISSION, AVAILABILITY OF ADVANCED TELECOMMUNICATIONS CAPABILITY IN THE UNITED STATES, FOURTH REPORT TO CONGRESS, FCC 04-208, 10 (Sept. 9, 2004). This definition, however, is under review by the Commission, and it may evolve in response to rapid technological changes in the marketplace. Id.

<sup>3</sup> CAL. PUB. UTIL. CODE at § 5960(a).

<sup>4</sup> Id. at § 5890(j)(1).

<sup>5</sup> Id.

<sup>6</sup> Id. at § 5830(k).

<sup>7</sup> Id. at § 5890(j)(2) (defining “low-income households” for the purposes of imposing build-out requirements).

## ATTACHMENT A

- Q. “State Video Franchise” means a franchise issued by the Commission pursuant to DIVCA.<sup>8</sup>
- R. “State Video Franchise Holder” means a person or group of persons that has been issued a State Video Franchise from the Commission pursuant to Division 2.5 of DIVCA.<sup>9</sup>
- S. “Telephone Service Area” means the area where the Commission has granted an entity a Certificate of Public Convenience and Necessity to provide telephone service.
- T. “Telephone Corporation” means a telephone corporation as defined in Public Utilities Code § 234.
- U. “Video Service” means video programming services, cable service, or open-video system service provided through facilities located at least in part in public rights-of-way without regard to delivery technology, including Internet protocol or other technology. This definition does not include (1) any video programming provided by a commercial mobile service provider defined in Section 322(d) of Title 47 of the United States Code, or (2) video programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.<sup>10</sup>
- V. “Video Service Area” means the area proposed to be served under a State Video Franchise.
- W. “Video Service Provider” means any entity providing Video Service.<sup>11</sup>

**PLEASE TYPE ALL INFORMATION UNLESS INSTRUCTED OTHERWISE.**

### **Type of Application**

1. Check as appropriate:
- New Franchise     Amended Franchise

### **Applicant Information**

2. Applicant’s State Video Franchise number (if seeking an amended Franchise):
- 

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<sup>8</sup> Id. at § 5830(p).

<sup>9</sup> Id. at § 5830(i).

<sup>10</sup> Id. at § 5830(s).

<sup>11</sup> Id. at § 5830(t).

**ATTACHMENT A**

3. Applicant's full legal name:

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4. Name under which the Applicant does or will do business in California:

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5. Legal name and contact information of Applicant's parent companies, including the ultimate parent:

Parent's Full Legal Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Parent's Full Legal Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Parent's Full Legal Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

6. Applicant's principal place of business:

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

## ATTACHMENT A

7. Contact information for the person responsible for ongoing communication with the Commission about Video Service business:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone (Business and mobile if any): \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

8. Attach as Appendix A the names and titles of the Applicant's principal officers.

### Build-Out Information

*Answer questions 9 through 11 only if the Applicant or one of its Affiliates is a Telephone Corporation. Other Applicants should go to Question 12.*

9. Does the Applicant alone or together with its Affiliates have more than 1,000,000 telephone customers in California?  
 Yes  No
10. Does the Video Service Area include areas outside of the Telephone Service Area of the Applicant and its Affiliates?  
 Yes  No
11. Excluding direct-to-home satellite, is Video Service currently offered by another Video Service Provider in the Video Service Area proposed in this Application?  
 Yes  No

### Existing Local Cable or Video Franchise Holder Information

12. Does the Applicant alone or together with its Affiliates currently hold a local franchise, or has the Applicant held a local franchise in the Video Service Area in the last six months,?  
 Yes  No

*If "Yes," then download and complete the electronic template available at <http://www.cpuc.ca.gov/video/application>.*

## ATTACHMENT A

### Video Service Area Information

13. Utilizing the template provided at <http://www.cpuc.ca.gov/video/application> (as applicable), provide a geographic description of the Video Service Area and input the expected date for the deployment of each Area in the Video Service Area.

The geographic description shall detailed as follows:

- a. A collection of U.S. Census Bureau Census Block Groups, or
  - b. A geographic information system digital boundary meeting or exceeding national map accuracy standards.
    - o *If Applicant chooses "a," then download and complete the electronic template available at <http://www.cpuc.ca.gov/video/application> .*
    - o *If Applicant chooses "b," then submit the geographic information system digital boundary in digital format electronically to the Commission.*
14. Socioeconomic status information of residents within the Video Service Area
- o *If applicable, the Applicant shall provide this information utilizing the templates available at <http://www.cpuc.ca.gov/video/application>.*
  - a. Provide the following baseline description of residents in the Video Service Area:
    - i. *Number of Households:* The number of Households in each Census Tract included in the Video Service Area. Utilize the most recent U.S. Census projections of households available as of January 1 of the year the Application is submitted to determine the number of Households.
    - ii. *Number of Low-Income Households:* The number of Low-Income Households in each Census Tract included in the Video Service Area. Utilize the most recent U.S. Census projections of low-income households available as of January 1, 2007 to determine the number of Low-Income Households.
  - b. Provide or attest in the attached Affidavit that Applicant shall provide, no later than 90 calendar days after the date of the Commission's issuance of a State Video Franchise to the Applicant, the following description of residents in the Video Service Area on a Census Tract Basis:
    - i. *Wireline Broadband:*
      1. The number of Households in each Census Tract to which the Company makes wireline Broadband available.
      2. The number of Households in each Census Tract that subscribe to wireline Broadband that the Company makes available.

## ATTACHMENT A

- ii. *Non-Wireline Broadband:*
    - 1. If the Company uses non-wireline technology to provide Broadband, specify the type(s) of technology used in each Census Tract.
    - 2. The number of customers in each Census Tract that subscribe to non-wireline Broadband that the Company makes available.
    - 3. Using geographic information system digital boundaries that meet or exceed national map accuracy standards, provide maps that delineate (i) Census Tract boundaries and (ii) where the Company typically makes non-wireline Broadband available.
  - iii. *Video service:* The number of Households in each Census Tract that are offered Access by the Company.
  - iv. *Low-Income* (Utilize the most recent U.S. Census projections of low-income households available as of January 1, 2007 to determine the number of Low-Income Households): The number of Low-Income Households that are offered Access by the Company.
15. Socioeconomic status information of residents within the Telephone Service Area
- o *If applicable, the Applicant shall provide this information utilizing the templates available at <http://www.cpuc.ca.gov/video/application>.*
  - a. If the Applicant or any of its Affiliates is a Telephone Corporation, provide the following baseline description of residents in the Telephone Service Area:
    - i. *Number of Households:* The number of Households in each Census Tract included in the Telephone Service Area. Utilize the most recent U.S. Census projections of households available as of January 1 of the year the Application is submitted to determine the number of Households.
    - ii. *Number of Low-Income Households:* The number of Low-Income Households in each Census Tract included in the Telephone Service Area. Utilize the most recent U.S. Census projections of low-income households available as of January 1, 2007 to determine the number of Low-Income Households.
  - b. If the Applicant or any of its Affiliates is a Telephone Corporation, provide or attest in the attached Affidavit that Applicant shall provide, no later than 90 calendar days after the date of the Commission's issuance of a State Video Franchise to the Applicant, the following description of residents in the Telephone Service Area on a Census Tract Basis:

## ATTACHMENT A

- i. *Wireline Broadband:*
  1. The number of Households in each Census Tract to which the Company makes wireline Broadband available.
  2. The number of Households in each Census Tract that subscribe to wireline Broadband that the Company makes available.
- ii. *Non-Wireline Broadband:*
  1. If the Company uses non-wireline technology to provide Broadband, specify the type(s) of technology used in each Census Tract.
  2. The number of customers in each Census Tract that subscribe to non-wireline Broadband that the Company makes available.
  3. Using geographic information system digital boundaries that meet or exceed national map accuracy standards, provide maps that delineate (i) Census Tract boundaries and (ii) where the Company typically makes non-wireline Broadband available.
- iii. *Video service:* The number of Households in each Census Tract that are offered Access by the Company.
- iv. *Low-Income* (Utilize the most recent U.S. Census projections of low-income households available as of January 1, 2007 to determine the number of Low-Income Households): The number of Low-Income Households that are offered Access by the Company.

### **Financial, Legal, and Technical Qualifications**

16. Provide or attest in the attached Affidavit that Applicant shall provide a copy of a fully executed bond in the amount of \$100,000 per 20,000 households in the Video Service Area, with a \$100,000 minimum and a \$500,000 maximum per State Video Franchise Holder, to the Executive Director prior to initiating video service and no later than 5 business days after the date of the Commission's issuance of a State Video Franchise to the Applicant. The bond must list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California.

### **Local Entity Contact Information**

17. Utilizing the template provided at <http://www.cpuc.ca.gov/video/application>, the Applicant shall provide the contact name and information for a representative from each Local Entity within the Video Service Area.

## **ATTACHMENT A**

### **Application Fee**

18. Attach to this Application a check in the amount of \$2,000 made payable to the “California Public Utilities Commission.”

### **Affidavit**

19. Complete and submit the affidavit attached as Appendix B to this Application.

### **A COMPLETE APPLICATION MUST INCLUDE:**

- |   |
|---|
| <ul style="list-style-type: none"><li><input type="checkbox"/> <b>Completed Application form</b></li><li><input type="checkbox"/> <b>CD(s) containing completed templates available on the Commission website</b></li><li><input type="checkbox"/> <b>Appendix A: Applicant’s Principal Officers</b></li><li><input type="checkbox"/> <b>Appendix B: Affidavit</b></li><li><input type="checkbox"/> <b>Check in the amount of \$2,000</b></li></ul> |
|---|

**APPENDIX A**

**APPLICANT'S PRINCIPAL OFFICERS**

<b>NAME</b>	<b>TITLE</b>

**APPENDIX B**

**AFFIDAVIT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

My name is \_\_\_\_\_. I am \_\_\_\_\_(Title) of \_\_\_\_\_(Company). My personal knowledge of the facts stated herein has been derived from my employment with \_\_\_\_\_(Company).

I swear or affirm that I have personal knowledge of the facts stated in this Application for a California State Video Franchise to provide Video Service, I am competent to testify to them, and I have the authority to make this Application on behalf of and to bind the Company.

I further swear or affirm that \_\_\_\_\_ [Name of Applicant] shall fulfill the following requirements:

1. Applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering Video Service in this state.
2. Applicant agrees to comply with all lawful city, county, or city and county regulations regarding the time, place, and manner of using the public rights-of-way, including but not limited to, payment of applicable encroachment, permit, and inspection fees.
3. Applicant will concurrently deliver a copy of this Application to any Local Entity in the Video Service Area.
4. Applicant possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public rights-of-way caused by Applicant.
5. Applicant is not in violation of any final nonappealable order relating to either the Cable Television and Video Providers Customer Service and Information Act (California Public Utilities Code Article 3.5 (commencing with § 53054) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code) or the Video Customer Service Act (California Public Utilities Code Article 4.5 (commencing with § 53088) of Chapter 1 or Part 1 of Division 2 of Title 5 of the Government Code).
6. If it has not done so in the Application, Applicant shall provide the Commission, no later than 90 calendar days after the date of the Commission's issuance of a State Video Franchise to the Applicant, a complete description of residents' socioeconomic status information, as required by and detailed in Questions 14 and 15 of the Application.
7. If it has not done so in the Application, Applicant shall provide a copy of a fully executed bond in the amount of \$\_\_\_\_\_ to the Executive Director prior to initiating video service and no later than 5 business days after the date of Commission issuance of a State

## APPENDIX B

Video Franchise to the Applicant,. The bond shall list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California.

I further swear or affirm that \_\_\_\_\_ [Name of Company] agrees to comply with all federal and state statutes, rules, and regulations, including, but not limited to, the following:

1. As provided in Public Utilities Code § 5890, Applicant will not discriminate in the provision of Video Service.
2. Applicant will abide by all applicable consumer protection laws and rules as provided in Public Utilities Code § 5900.
3. Applicant will remit the fee required by California Public Utilities Code § 5860(a) to the Local Entity.
4. Applicant will provide public, educational, and governmental access channels and the required funding as required by Public Utilities Code § 5870.
5. Applicant and any and all of its Affiliates' operations in California now and in the future shall be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940. Applicant specifically attests to the following:
  - a. Reporting Requirements: Either (i) Applicant or (ii) the parent company of Applicant shall produce Commission-mandated reports for and on behalf of Applicant and any and all of its Affiliates that operate in California.
  - b. Antidiscrimination:
    - i. If Applicant and its Affiliates together have more than 1,000,000 telephone customers in California, Applicant shall satisfy the build-out requirements set forth in Public Utilities Code § 5890(b) & (e).
    - ii. If Applicant and its Affiliates together have less than 1,000,000 telephone customers in California, Applicant shall satisfy any build-out requirements established pursuant in Public Utilities Code § 5890(c).
  - c. Cross-subsidization: If Applicant or its Affiliates provide stand-alone, residential, primary-line basic telephone service, Applicant shall refrain from using any increase of the rate of this service to finance the cost of deploying a network to provide video service.
  - d. "Affiliate," as referenced herein, means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

**APPENDIX B**

6. Applicant shall fulfill all other requirements imposed by the Digital Infrastructure and Video Competition Act.
7. \_\_\_\_\_ [Name of Responsible Entity] is a single identifiable entity that is organized in California and has verifiable assets. This entity shall assume full responsibility for the Applicant's performance of all its obligations under all applicable local, state, and federal laws. The Responsible Entity shall accept service of process and submit to the jurisdiction of California courts.

I swear or affirm that all of the statements and representations made in this Application are true and correct.

\_\_\_\_\_  
Signature and title

\_\_\_\_\_  
Typed or printed name and title

SUBSCRIBED AND SWORN to before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public In and For the State of \_\_\_\_\_.

My Commission expires: \_\_\_\_\_



STATE OF CALIFORNIA  
PUBLIC UTILITIES COMMISSION  
505 Van Ness Avenue San Francisco, CA 94102  
www.cpuc.ca.gov

**CALIFORNIA VIDEO FRANCHISE CERTIFICATE**  
**FRANCHISE NUMBER: \_\_\_\_\_**

- 1) Franchise Holder:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_
- 2) Application Date: \_\_\_\_\_
- 3) Application Number: \_\_\_\_\_
- 4) Franchise Effective Date: \_\_\_\_\_
- 5) Franchise Expiration Date: \_\_\_\_\_
- 6) Affected Local Entities<sup>1</sup> \_\_\_\_\_  
(attach additional sheets if necessary)

Issued at San Francisco this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signed

<sup>1</sup> The state video franchise granted herein may include all or part of the affected local entities' territory. For more information on the video service area covered by this franchise, contact the California Public Utilities Commission.

## **ATTACHMENT B**

### **“Census Tract Basis” Reporting of Broadband and Video Data**

**(from D.07-03-014, Appendix D)**

## APPENDIX D

### “CENSUS TRACT BASIS” REPORTING OF BROADBAND AND VIDEO DATA

#### I. Subscribership Data

Applicants, state video franchise holders, and their affiliates shall assign subscriber addresses to individual Census Block Groups. No further clarification is needed for subscribership reporting.

#### II. Availability Data

We recognize that we need to clarify how communications companies shall produce availability reports. Some companies may keep records that assign their potential customers' addresses to Census Block Groups, while others may catalog these addresses in alternate formulations that do not nest neatly within Census Tracts. For the latter, inherent imprecision is introduced when smaller groupings of spatial data are aggregated into larger Census Tracts.<sup>1</sup> This imprecision must be balanced with the need to maintain appropriate and consistent levels of detailed information required for informing our policy decisions. Thus, this section of the Appendix adopts standards for availability data reporting on a “census tract basis.”

Applicants, state video franchise holders, and their affiliates are deemed to have submitted availability data on a “census tract basis” if the following standards and conditions are fulfilled:

1. Broadband and video data is reported to the Commission in the template(s) created by the Commission, if the Commission's public website provides the template(s) for applicants' or state video franchise holders' use.
2. Broadband and video data is collected either on the basis of:
  - a. Current Census Block Groups: Census Block Groups at the most recent U.S. Census.

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<sup>1</sup> Commonly referred to as the Modifiable Area Unit Problem. See S. Openshaw and S. Alvandies, *Applying Geocomputation to the Analysis of Spatial Distributions*, in 1 GEOGRAPHIC INFORMATION SYSTEMS: PRINCIPLES AND TECHNICAL ISSUES (P. Longley et al. eds., 2d ed. 1999); C. Armhein, *Searching for the Elusive Aggregation Effect: Evidence from Statistical Simulations*, 27 ENV'T & PLAN. 105 (Jan. 1995).

- b. Alternate Geospatial Areas: Geospatial areas that (i) contain on average no more households than the average Current Census Block Group in California and (ii) under no circumstances are greater than 1,000 households.<sup>2</sup>
3. Where Census Tract data provided to the Commission is wholly based upon data that is collected either by (i) Current Census Block Groups or (ii) Alternate Geospatial Areas that are entirely contained within a single Census Tract at the most recent U.S. Census (Current Census Tract), the video service provider shall produce the Current Census Tract number and associated broadband and video data. The video service provider also shall indicate that the data reported falls entirely within a single Current Census Tract (e.g., Aggregate\_Flag = 1).
4. Where Census Tract data provided to the Commission is based upon data that is not collected by areas that are entirely contained within a single Current Census Tract, the video service provider must provide the Commission the following information for each Current Census Tract:
  - a. The Census Tract number.
  - b. Broadband and video data for households in the Census Tract. Broadband and video data shall be assigned to Census Tracts by consistently using one of the two following methods:
    - i. An Alternate Geospatial Area is assigned to a Current Census Tract if that Tract contains the mean population weighted geographic center of Census Block Nodes falling within the Alternate Geospatial Area.
    - ii. An Alternate Geospatial Area is assigned to a Current Census Tract if that Tract contains the highest population of summed Census Block Nodes falling within the Alternate Geospatial Area.

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<sup>2</sup> A household is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room occupied as a separate living quarters, or if vacant, intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other individuals in the building and that have direct access from outside the building or through a common hall. For vacant units, the criteria of separateness and direct access are applied to the intended occupants whenever possible.

- c. A field indicating of method of choice for associating data with the Census Tract (e.g., Aggregate\_Flag = '2' for mean weighted center method, Aggregate\_Flag = '3' for highest population method).
- d. A field indicating the number of Alternate Geospatial Areas that cross over the boundaries of the Census Tract (e.g., Aggregate\_Crossover\_Flag = 2 for a Census Tract that contains two Alternate Geospatial Areas that fall within more than one Census Tract; Aggregate\_Crossover\_Flag = 3 for a Census Tract that contains three Alternate Geospatial Areas that fall within more than one Census Tract).
- e. A field indicating the summed population of all Census Block Nodes contained within Alternate Geospatial Areas that (i) fall within more than one Census Tract and (ii) are assigned to the Census Tract.

For non-wireline broadband data, applicants, state video franchise holders, and their affiliates alternatively are deemed to have submitted availability data on a "census tract basis" if they submit the data in the following format:

Using geographic information system digital boundaries that meet or exceed national map accuracy standards, maps are provided that delineate (i) Current Census Tract boundaries and (ii) where non-wireline Broadband typically is made available.

**(END OF APPENDIX D)**