

March 11, 2008

***Via Electronic Filing***

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: Written *Ex Parte* Presentation  
Broadband Data Proceeding, WC Docket No. 07-38

Dear Ms. Dortch:

On March 10 and 11, 2008, Christopher Guttman-McCabe, Vice President, Paul Garnett, Assistant Vice President, and Brian Josef, Director, Regulatory Affairs, CTIA – The Wireless Association® (“CTIA”), had meetings and teleconferences with Ian Dillner, Legal Advisor to Chairman Kevin Martin, John Hunter, Legal Advisor to Commissioner Robert McDowell, Chris Moore, Legal Advisor, and Wayne Leighton, Advisor to Commissioner Deborah Taylor Tate, Scott Deutchman, Legal Advisor to Commissioner Michael Copps, and Renee Crittendon, Legal Advisor to Commissioner Jonathan Adelstein urging the Commission to act prudently in considering changes to FCC Form 477, used to collect information on broadband availability and subscribership.<sup>1</sup> In particular, the Commission should: (1) refrain from creating new wireless-specific reporting requirements involving arbitrary categories and, in any event, ensure that all wireless broadband customers are appropriately counted as such for FCC Form 477 purposes; (2) refrain from requiring providers to report facilities-specific information; and (3) reject the proposal to adopt 9-digit Zip Code reporting requirements.

***Wireless-Specific Tiering Should Be Rejected.*** The Commission should reject consideration of a wireless-specific tiering approach that would create new reporting categories differentiating among: wireless broadband subscriptions with “full Internet browsing”; wireless broadband subscriptions with “mobile web browsing”; and metered wireless broadband users. As shown below, these categories are arbitrary and impractical, and they could be used to marginalize certain broadband uses and users. Wireless users that rely on any of these broadband offerings must be recognized as broadband customers for reporting purposes.

First, the Commission’s three proposed tiers oversimplify wireless broadband technology and do not accurately depict the wireless user experience. For example, aircard users falling into the first category who rely on a broadband connection to access their Gmail account on-the-go should not be counted differently than broadband-enabled

<sup>1</sup> See *In the Matter 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).

device users who access their GMail accounts through a customized-for-mobile web page. Additionally, many broadband wireless users have the option of using a web browser to access the Internet or relying on a managed “portal,” and they may switch back and forth depending on application or need. In addition, it is unclear whether “mobile web browsing” encompasses access limited to carrier-sponsored content, browsers supporting only mobile enabled websites, or both.

In an open access regime, moreover, it is unclear how the Commission expects a wireless provider to determine whether the customer is using broadband Internet access via “full Internet browsing” or “mobile web browsing.” For example, AT&T has announced a SIM-only service which allows new subscribers to sign up for AT&T’s services without having to purchase a wireless handset from AT&T. Sprint has announced that its Xohm service will enable consumers to connect any WiMAX-enabled product -- bought from anybody. T-Mobile already provides consumers the ability to attach GSM-capable devices to its network. Likewise, Verizon Wireless has announced open access policies that will enable consumers greater flexibility in attaching devices to its network. Other wireless carriers are offering and will offer consumers greater flexibility in the devices they can attach to carriers’ networks. In such an environment, it is unclear how AT&T, Sprint, Verizon Wireless, T-Mobile, or any other carrier would be able track the number of subscribers that fit into the “full Internet browsing” or “mobile web browsing” categories. These are just a few examples demonstrating that the categories themselves are ambiguous, do not align with technology, and will cause numerous reporting problems.

Second, CTIA is concerned that the tiering approach will marginalize broadband access methods and users who access broadband in ways that do not directly correlate to the wired, desktop experience. Unlike traditional wireline Internet access customers, wireless consumers are freed from their tether by the unique benefit of mobility and their usage needs and patterns may be different. By way of comparison, there is no clear-cut qualitative difference between the Commission’s categories of “full Internet browsing” and “mobile web browsing.” In some cases – an application that harnesses a handset’s mobile functionality such as a navigation service, for example – the mobile web browsing experience may be far superior.

Notably, CTIA believes the Commission should embrace the wireless broadband metered usage concept as an important market alternative that affords broadband access to users that otherwise do not have or could not otherwise afford a broadband subscription. The changes to FCC Form 477 under consideration here imply that mobile wireless broadband users who do not subscribe to a month-to-month data service contract should be counted as lesser broadband users.

In sum, the Commission should not single out mobile wireless services for more burdensome reporting requirements – especially requirements that are arbitrary, ambiguous and will cause significant confusion. Ultimately, the Commission should not exclude from a provider’s reported wireless broadband subscriber count *any* wireless broadband customer regardless of which category they may fall into. A policy of

omitting consumers who rely on mobile-web browsing or other consumers not interested or not able to enter a monthly contract would not accurately capture the number of wireless broadband customers or the extent of broadband availability and usage.

***No Transmission Facilities-Specific Information Should Be Reported.*** In the *NPRM*, the Commission sought comment on how and whether to require information about providers' broadband-enabled service territory, including the boundaries of their broadband-enabled service territories. In doing so, the Commission referenced the joint private-public broadband mapping initiative in the State of Kentucky – including its collection of “detailed facilities information” from wireless broadband providers such as latitude and longitude of towers, type of antenna technology, and whether coverage is omni-directional or partial. While the *NPRM* does not contemplate the submission of such facilities-specific data at the federal level – nor should the Commission require such information – it posits that providers can delineate their areas of broadband deployment at much finer levels of detail than the Zip Code based-data now collected.

In a world with heightened national security concerns, CTIA is deeply concerned about any proposal to make available detailed information on the geographic location of wireless communications facilities. As CTIA has pointed out to the Commission in numerous other contexts involving outage reporting and disaster recovery, pinpointing the location of network facilities does not make sense from a homeland security perspective. Providing such data would give terrorists and other criminal elements the blueprint they need to bring down the network. In addition, the specific location of network facilities is highly sensitive commercial information that should be treated with the utmost care.

While such granular facilities-specific data may be useful for deployment planning purposes, it is of only limited value as an indication of the location of subscribers or coverage. This is particularly so in the wireless broadband context, where users are not tethered to a particular geographic location, and a wireless facility's precise coverage is necessarily restricted by surrounding topography and propagation characteristics. Moreover, a wireless provider's precise broadband service territories are constantly expanding, and not always in a uniform manner. With significantly more than 200,000 cell sites nationwide, cataloging and reporting the location and coverage of mobile wireless transmission facilities would be a monumental undertaking. It is not clear that the benefit of such a reporting requirement outweigh the benefits, especially with less burdensome options available. Thus, reporting facility-specific information would not provide “useful data on mobile wireless broadband deployment without imposing an undue burden on the providers.”

Should the Commission desire provider-specific information at a more granular level than 5-digit Zip Codes, providers' coverage maps are more readily available and would likely prove just as useful for the Commission's purposes. Moreover, as the Commission demonstrated in the recent *12<sup>th</sup> CMRS Competition Report*, more granular information on various generations of wireless service availability is already available

through commercial sources, such as American Roamer.<sup>2</sup> Instead of creating burdensome new reporting requirements that raise legitimate national security and competitive concerns, the Commission could just as easily rely on these commercially-available sources to gather the information it needs.

***9-Digit Zip Code-Level Reporting Should Not Be Imposed.*** With respect to the geographic area for reporting broadband data, the Commission should not adopt a 9-digit Zip Code approach. Instead, to the extent the Commission determines that geographic-level area data remains appropriate for FCC Form 477 purposes, it should simply maintain the current practice of reporting broadband data at the level of 5-digit Zip Codes. In any case, the absence of a uniform standard for allocating 9-digit Zip Codes would often provide misleading information regarding the level of broadband subscribership and deployment in certain geographic areas. To the extent the Commission maintains the Zip Code approach, it should simply maintain the current 5-digit Zip Code methodology.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

*/s/ Paul Garnett*

Paul Garnett

cc: Ian Dillner  
Aaron Goldberger  
Scott Deutchman  
Bruce Gottlieb  
Renee Crittendon  
Scott Bergmann  
Chris Moore  
Wayne Leighton  
Angela Giancarlo  
John Hunter

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<sup>2</sup> See *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 07-71, Twelfth Report, FCC 08-28, paras. 35-41 (rel. Feb. 4, 2008).