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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 Subscribership Data, and
Development of Data on Interconnected Voice over
Internet Protocol (VoIP) Subscribership

WC Docket No. 07-38

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FCC

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Martin issuing a statement; Commissioners Copps, Adelstein, and Tate
concurring in part, and issuing separate statements; Commissioner McDowell approving in part,
dissenting in part, and issuing a statement.

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## I. INTRODUCTION

1. In this Report and Order (Order) and Further Notice of Proposed Rulemaking (Further Notice), we amend the FCC Form 477 data collection in several respects to collect additional data on broadband service subscriptions. These changes will greatly improve the ability of the Commission to understand the extent of broadband deployment, and will enable the Commission to continue to develop and maintain appropriate broadband policies, in particular to carry out its obligation under section 706 of the Telecommunications Act of 1996 to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”<sup>1</sup>

2. To increase the precision and utility of our collected data, we revise our current methods and procedures for collecting information on broadband services. We modify Form 477 to require broadband providers to report the number of broadband connections in service in individual Census Tracts.<sup>2</sup> In order to generate an even more complete picture of broadband adoption in the United States, we propose additional methods to add to the data reported by Form 477 filers, including a voluntary household self-reporting system, and a recommendation to the Census Bureau that the American Community Survey questionnaire be modified to gather information about broadband availability and subscription in households.<sup>3</sup>

3. To further improve the quality of collected data, we adopt three additional changes to FCC Form 477. First, we require providers to report broadband service speed data in conjunction with subscriber counts according to new categories for download and upload speeds.<sup>4</sup> These new speed tiers will better identify services that support advanced applications. Second, we amend reporting requirements for mobile wireless broadband providers to require them to report the number of subscribers whose data plans allow them to browse the Internet and access the Internet content of their choice.<sup>5</sup> Finally, we require providers of interconnected Voice over Internet Protocol (interconnected VoIP) service to report subscribership information on Form 477.<sup>6</sup>

4. Additionally, in a Further Notice of Proposed Rulemaking, we seek comment on developing a

<sup>1</sup> 47 U.S.C. § 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996)). Appendix A contains a list of the revised rules.

<sup>2</sup> Paras. 10-16, *infra*.

<sup>3</sup> Paras. 17-18, *infra*.

<sup>4</sup> Paras. 19-22, *infra*.

<sup>5</sup> Paras. 23-24, *infra*.

<sup>6</sup> Paras. 25-31, *infra*.

nationwide broadband availability mapping program.<sup>7</sup> We also seek comment on ways in which we might effectively capture information about actual, delivered speeds of broadband Internet access services,<sup>8</sup> and about prices of broadband services.<sup>9</sup> In addition, we seek comment on whether to require Form 477 filers to report the number of voice telephone service connections either at the ZIP Code level or on the basis of another geographic unit.<sup>10</sup> Finally, we seek comment on methodologies for consumer broadband surveys,<sup>11</sup> and on methods for preserving confidentiality when sharing the information collected on Form 477.<sup>12</sup>

## II. BACKGROUND

5. The FCC began collecting data from broadband Internet service providers using Form 477 in May 2000 as a means to help the Commission and the public understand the extent of broadband deployment nationwide. Broadband service providers and local telephone service providers have reported data numerous times since then.<sup>13</sup> The reporting entities include incumbent and competitive local exchange carriers (LECs), operators of terrestrial and satellite wireless facilities, cable companies, municipalities, and any other facilities-based providers of broadband connections to end users.<sup>14</sup>

6. To date, facilities-based providers of broadband connections have reported state-level information about the number of broadband connections in service, and incumbent LECs and cable companies have reported the extent to which they offer broadband connections to households in the areas where they provide local telephone or cable TV service.<sup>15</sup> In addition, providers of wired and fixed wireless broadband connections have reported technology-specific lists of the 5-digit ZIP Codes in which the provider has at least one broadband service subscriber, while mobile wireless broadband providers have reported lists of the ZIP Codes that best represent their broadband service areas.<sup>16</sup>

7. Based in large part on analysis of Form 477 data, reports published by the Commission have demonstrated significant and steady progress in broadband deployment and adoption nationwide.<sup>17</sup> As of June 2007, Form 477 data show that more than 99% of all ZIP Codes had some broadband connections in service, and that 100.9 million broadband connections were in service, of which 65.9 million connections were designed to serve primarily residential end users.<sup>18</sup> When compared to similar data gathered for

<sup>7</sup> Paras. 34-35, *infra*.

<sup>8</sup> Para. 36, *infra*.

<sup>9</sup> Paras. 37-38, *infra*.

<sup>10</sup> Para. 33, *infra*.

<sup>11</sup> Para. 40, *infra*.

<sup>12</sup> Para. 39, *infra*.

<sup>13</sup> Service providers filed Form 477 data for the first time on May 15, 2000, to report connections as of December 31, 1999. Since then, providers have filed mid-year data each September 1 and year-end data each March 1.

<sup>14</sup> *Local Telephone Competition and Broadband Reporting*, Report and Order, WC Docket No. 04-141, 19 FCC Rcd 22340, 22384 (2004) (*2004 Order*).

<sup>15</sup> *2004 Order*, 19 FCC Rcd at 22384-90 (instructions for Part I of Form 477).

<sup>16</sup> *2004 Order*, 19 FCC Rcd at 22393-94 (instructions for Part V of Form 477).

<sup>17</sup> See, e.g., Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of June 30, 2007* (rel. Mar. 19, 2008) (*June 2007 High-Speed Services Report*), available at <http://www.fcc.gov/wcb/iatd/comp.html>.

<sup>18</sup> *Id.* at 2-4.

December 1999, which show 2.5 million broadband connections of which 1.8 million were reported as residential.<sup>19</sup> The June 2007 data demonstrates the explosive growth in broadband availability over the past seven and a half years. From June 2006 through June 2007 alone, the number of reported broadband connections increased by 55%, from 65.3 million to 100.9 million.<sup>20</sup> Additionally, the June 2007 data indicate that broadband DSL connections were available to 82% of households to whom incumbent LECs could provide local telephone service, and that broadband cable modem service was available to 96% of the households to whom cable companies could provide cable TV service.<sup>21</sup>

8. In April of 2007, we issued a Notice of Proposed Rulemaking (the "Data Gathering Notice") in which we questioned whether the information collected by Form 477 provides a sufficiently complete and accurate picture of broadband deployment, particularly with regard to deployment and adoption in rural areas, and the increasing use of wireless broadband and VoIP applications.<sup>22</sup> In the Data Gathering Notice, we proposed to modify Form 477 in several respects to improve the quality of the data collected. Information about broadband availability and deployment throughout the nation, in all its forms, is essential to the Commission to assess the success of our broadband policies, and to fulfill our obligations under section 706 of the Telecommunications Act of 1996.<sup>23</sup> Accordingly, in the Data Gathering Notice, we solicited comment about options for collecting broadband deployment information in finer geographic detail.<sup>24</sup> The Data Gathering Notice sought comment on ways to improve the quality of data collection concerning wireless broadband Internet access service,<sup>25</sup> asked if alternative speed tier information should be collected,<sup>26</sup> and asked how best to collect information about subscribership to interconnected VoIP service.<sup>27</sup> Generally, the Data Gathering Notice solicited comment about the balance between the benefits of these additional data collections and any burdens such collections may impose.

### III. REPORT AND ORDER

9. In this Order, we amend our local telephone competition and broadband data collection (FCC Form 477) to refine and expand the information collected in a variety of ways. Enhancing the granularity in the data we currently collect, and combining that data with new information about subscribership, will

<sup>19</sup> See, e.g., Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of December 31, 2006* (rel. Oct. 31, 2007) at Tbl. 1, Tbl. 3, available at <http://www.fcc.gov/wcb/iatd/comp.html> (containing the December 1999 data).

<sup>20</sup> *June 2007 High-Speed Services Report* at Tbl. 1.

<sup>21</sup> *Id.* at Tbl. 14.

<sup>22</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*, WC Docket No. 07-38, Notice of Proposed Rulemaking, 22 FCC Rcd 7760, 7765-66, paras. 10-12, 22 (2007) (*Data Gathering Notice*). Also, the United States Government Accountability Office (GAO) has reviewed the strengths and weaknesses of data about broadband availability, including data collected using FCC Form 477, and has concluded that, while broadband deployment is extensive nationwide, it remains very difficult to assess the extent of deployment gaps in rural areas. *Id.* at 7764, para. 6.

<sup>23</sup> 47 U.S.C. § 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996)).

<sup>24</sup> *Data Gathering Notice*, 22 FCC Rcd at 7774, para. 31.

<sup>25</sup> *Id.* at 7766-69, paras. 11-17.

<sup>26</sup> *Id.* at 7769-70, paras. 18-21.

<sup>27</sup> *Id.* at 7770, para. 22.

*greatly improve our own understanding of the state of broadband services in this country and enable us to assist others in fostering broadband deployment.*

**A. Reporting Broadband Connection Information by Census Tract**

10. *Wired, Terrestrial Fixed Wireless, and Satellite Broadband – Subscriber Counts.* As noted above, currently Form 477 requires covered providers to report the number of broadband connections they provide at the state level. In addition, to measure general service availability, Form 477 requires providers to report the 5-digit ZIP Codes in which they have at least one customer.<sup>28</sup> In the Data Gathering Notice, we questioned whether these requirements were sufficient to capture the actual extent of broadband deployment, particularly in rural areas where a 5-digit ZIP Code may cover a large and varied region.<sup>29</sup> Thus, in the Data Gathering Notice the Commission sought comment on ways to collect more detailed, accurate information that would better capture broadband deployment to assist us in our policy objectives. As discussed below, we agree with those commenters who argue that collecting actual subscribership numbers in Census Tract areas will significantly improve the quality of the information collected, and that the value of these more detailed, informative reports outweighs the burdens of additional costs, if any, imposed on providers by this requirement.

11. In the Data Gathering Notice, we invited comment on requiring facilities-based providers to report customer numbers in geographic units smaller than the state level (e.g., ZIP Codes, as one alternative) and, in order to measure broadband availability, to report the number of homes “passed” by their broadband-enabled infrastructure.<sup>30</sup> In response, certain commenters argue that changing the geographic unit of reporting subscribers to 9-digit ZIP Codes would increase the granularity of reported information significantly, enabling policymakers to pinpoint unserved or underserved areas.<sup>31</sup> Commenters opposing 9-digit ZIP Codes argue that reporting broadband subscribership information at

<sup>28</sup> 2004 Order, 19 FCC Rcd at 22393-94 (instructions for Part V).

<sup>29</sup> See *Data Gathering Notice*, 22 FCC Rcd at 7773, para. 10.

<sup>30</sup> *Id.* at 27-28.

<sup>31</sup> Numerous filers commented on the need for additional granularity beyond 5-digit ZIP Codes. See, e.g., Letter from Sharon E. Gillett, Commissioner of the Commonwealth of Massachusetts Department of Telecommunications and Cable, and Vendean V. Vafiades, Commissioner of the Maine Public Utilities Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 8, filed June 15, 2007 (MA/ME Joint Comments) (“[B]roadband subscribership based on the current five-digit ZIP Code level, particularly in rural and other hard to serve areas, is a misleading indicator of broadband deployment and availability.”). Some commenters note that, as compared to other potential measures, 9-digit ZIP Code information offers sufficient granularity at a minimum of additional reporting difficulty. See, e.g., Letter from Marc J. Lawrence-Apfelbaum, Time Warner Cable, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 3-4, filed June 15, 2007 (TWC Comments) (“Of the various improvements considered in the NPRM, collecting 9-digit ZIP Code data would deliver the most bang for the buck.”); Letter from Daniel L. Brenner, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 6, filed June 15, 2007 (NCTA Comments); Letter from Debbie Goldman, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 3-4, filed June 18, 2007 (CWA Comments); Letter from David Bergmann, National Association of State Utility Consumer Advocates, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 18, filed June 15, 2007 (NASUCA Comments); Letter from Lisa Madigan, Attorney General, Illinois, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 4, filed June 15, 2007 (IL AG Comments) (“Identifying the number of customers by 9-digit ZIP Code should be a straight-forward electronic sorting operation that can be done with a simple spread-sheet or data base program.”); Letter from Derek Turner, Free Press, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 36, filed June 15, 2007 (Consumers Union et al. Comments) (“[K]nowing the market concentration and household penetration at the 9-digit ZIP Code [level] will enable geophysical mapping of where gaps in adoption and competition are.”). Appendix C contains a list of all commenters in this proceeding.

that level would be inappropriate, would result in confidentiality problems, or would simply be too expensive.<sup>32</sup> Still other commenters propose the use of geocoded data<sup>33</sup> or of census-based data instead of 9-digit ZIP Codes.<sup>34</sup>

12. We agree with those commenters who argue that census-based units provide more useful information for our policy purposes,<sup>35</sup> and will thus require providers to report numbers of subscribers on the Census Tract level.<sup>36</sup> Census-based units are more stable and static than ZIP Codes and thus will

<sup>32</sup> Verizon and others argue that 9-digit ZIP Codes are inappropriate because they were designed for postal service usage. *See, e.g.*, Letter from Edward Shakin, Verizon, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 15-16, filed June 15, 2007 (Verizon Comments) (“9-digit ZIP Codes correlate even less meaningfully with geographic and political boundaries because 9-digit ZIP Codes are designed primarily to benefit business mailers....”); Letter from Kevin Rupy, United States Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 13, filed June 15, 2007 (US Telecom Comments); Letter from Jouett K. Brenzel, Cincinnati Bell Telephone Company LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 4, filed June 15, 2007 (CBT Comments); Reply Letter from Jack Zinman, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 13-14, filed July 16, 2007 (AT&T Reply Comments); Reply Letter from Laura H. Carter, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 1-2, filed July 16, 2007 (Sprint Reply Comments) (emphasizing wireless communications). AT&T and others are concerned about the privacy and confidentiality of reported data at the 9-digit ZIP Code level, fearing that detailed knowledge of a competitor’s subscriber coverage might be problematic. *See, e.g.*, AT&T Reply Comments at 8-11; Letter from Daniel Mitchell, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 12-13, filed June 15, 2007 (NTCA Comments); CBT Comments, 3-4. However, the Consumers Union and others note the current option of requesting confidentiality of the data in Form 477 itself, as well as the Commission’s ongoing interest in and protection of the privacy of reporting companies. *See, e.g.*, Consumers Union et al. Comments at 5; NCTA Comments at 13; IL AG Comments at 5. Finally, some service providers are concerned about the cost and time required to report data at the 9-digit ZIP Code level. *See, e.g.*, Letter from Stephen Pastorkovich, OPASTCO, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 5-7, filed June 15, 2007 (OPASTCO Comments); Verizon Comments at 16-17; NTCA Comments at 4-9; Letter from Matthew M. Polka, American Cable Association, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 4-5, filed June 15, 2007 (ACA Comments); AT&T Reply Comments at 13-14; Sprint Reply Comments at 1-2.

<sup>33</sup> The National Association of Telecommunications Officers and Advisors et al. expressed support for using geocoded data instead of 9-digit ZIP Codes because of its greater value, particularly to local communities. Letter from Libby Beaty, National Association of Telecommunications Officers and Advisors, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 7, filed June 18, 2007 (NATOA et al. Comments) (“[Geocoded data] gives local governments the best opportunity to help improve deployment in each community.... The costs may be greater than other suggestions offered here, but given the importance of this initiative, cost should not be an overriding factor in selecting a method for measuring deployment.”). Some providers argue that the costs of such an approach would far exceed the costs of a 9-digit ZIP Code system. *See, e.g.*, OPASTCO Comments at 5-7; Verizon Comments at 18-20; Letter from Andrew Krieg, The Wireless Communications Association International, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 8, filed June 15, 2007 (WCA Comments) (noting the difficulties of collecting geocoded data for wireless devices in particular).

<sup>34</sup> Reply Letter from Derek Turner, Free Press, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 6, filed July 16, 2007 (Consumers Union et al. Reply Comments); Letter from Natalie Wales, California Public Utilities Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 6-7, filed June 18, 2007 (CPUC Comments); IL AG Comments at 2, 6; Letter from Loris Ann Taylor, Native Public Media, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 6, filed June 15, 2007 (NPM Comments at 6); Letter from Christopher J. White, Deputy Public Advocate, New Jersey Division of Rate Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 4, filed July 16, 2007 (New Jersey Rate Counsel Reply Comments).

<sup>35</sup> *See* Consumers Union et al. Reply Comments at 8.

<sup>36</sup> The Census bureau defines a Census Tract as a “small, relatively permanent statistical subdivision of a county delineated by a local committee of census data users for the purpose of presenting data. Census tract boundaries (continued....)”

enable to Commission to measure change over time more effectively.<sup>37</sup> Additionally, census-based units correspond more consistently to actual locations,<sup>38</sup> are less likely to reveal individual identifiable information about consumers,<sup>39</sup> and can be correlated with valuable demographic data (including race, income, education, and tribal land status), giving policymakers additional tools with which to analyze broadband uptake.<sup>40</sup> By contrast, because ZIP Codes are designed for a different purpose than census-based units, namely to deliver efficiently the nation's mail, ZIP Codes are less useful for our purposes.<sup>41</sup> In addition, 9-digit ZIP Codes "do not correspond to any commonly recognized geographic boundaries, such as state or county lines, Congressional districts or service territories."<sup>42</sup>

13. Although some commenters urge us to select the smaller Census Block as the geographic unit for reporting subscriber numbers,<sup>43</sup> we find that the larger Census Tract is more appropriate for our purposes. Census Tract numbers provide the beneficial census characteristics listed above, and because a Census Tract is larger than a Census Block, requiring providers to report at the Census Tract level rather than the Census Block level will be less burdensome. For this reason, among others, we disagree with commenters that reporting by census-based units is overly burdensome compared to the benefits of this reporting.<sup>44</sup> The California Public Utilities Commission comments that the California legislature recently enacted a statute requiring statewide video franchise applicants to report subscribers on a census basis.<sup>45</sup> Commenters argue that this statute has provided California with valuable information from three large

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normally follow visible features, but may follow governmental unit boundaries and other non-visible features in some instances; they always nest within counties. Designed to be relatively homogeneous units with respect to population characteristics, economic status, and living conditions at the time of establishment, census tracts average about 4,000 inhabitants. They may be split by any sub-county geographic entity." U.S. Census Bureau, [http://factfinder.census.gov/home/en/epss/glossary\\_c.html](http://factfinder.census.gov/home/en/epss/glossary_c.html) (viewed March 12, 2008).

<sup>37</sup> Consumers Union et al. Reply Comments at 6; CPUC Comments at 7.

<sup>38</sup> See, e.g., Letter from Eric Einhorn, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 2, filed March 10, 2008 (Windstream Mar. 10, 2008 *Ex Parte*); Consumers Union et al. Reply Comments at 6.

<sup>39</sup> See Windstream Mar. 10, 2008 *Ex Parte*.

<sup>40</sup> CPUC Comments at 6-9 (mentioning race, income, education); Consumers Union et al. Comments at 6 ("household income, race, urbanicity, age, [and] gender"); NPM Comments at 6-7 (such information would better identify adoption and availability for populations on tribal lands and Native Americans living in other communities); New Jersey Rate Counsel Reply Comments at 4; IL AG Comments at 6 (easier to view demographic variables).

<sup>41</sup> See CPUC Comments at 7 n.13 (quoting the United States Postal Service) ("The Zip Code system was created and designed to provide an efficient postal distribution and delivery network... [Therefore], delivery growth and changing demographics can necessitate adjustments to ZIP Code boundaries in order to achieve United States Postal Service objectives.") (citation omitted).

<sup>42</sup> US Telecom Comments at 13.

<sup>43</sup> See Consumers Union et al. Reply Comments at 6; CPUC Comments at 6-7; IL AG Comments at 2, 6. The Census Bureau defines a Census Block as a "subdivision of a census tract (or, prior to 2000, a block numbering area), a block is the smallest geographic unit for which the Census Bureau tabulates 100-percent data. Many blocks correspond to individual city blocks bounded by streets, but blocks -- especially in rural areas - may include many square miles and may have some boundaries that are not streets. The Census Bureau established blocks covering the entire nation for the first time in 1990. Previous censuses back to 1940 had blocks established only for part of the nation. Over 8 million blocks are identified for Census 2000." U.S. Census Bureau, [http://factfinder.census.gov/home/en/epss/glossary\\_c.html](http://factfinder.census.gov/home/en/epss/glossary_c.html) (viewed March 13, 2008).

<sup>44</sup> See, e.g., AT&T Reply Comments at 14 n.38.

<sup>45</sup> CPUC Comments at 7-8.

providers with minimal burden on the providers.<sup>46</sup>

14. We therefore require facilities-based providers of wired, terrestrial fixed wireless, and satellite broadband connections to report the number of connections that they have in service to households and businesses in each of the Census Tracts in which they operate.<sup>47</sup> We require these providers to report subscriptions in separate categories based on the speeds of the services.<sup>48</sup> This information will provide us with a highly detailed and reliable account of broadband subscription and deployment nationwide, enabling us to make more informed policy determinations and to support more effectively the efforts of states and others seeking to promote broadband services. Because of the volume of information being reported, we require providers to supply, in a standardized database format, the number of subscribers in each Census Tract, broken down by technology type and upload and download speed.

15. We disagree with commenters that reporting by census-based units is, in general, overly burdensome compared to the benefits of this reporting.<sup>49</sup> Nevertheless, we will permit reporting entities to report data in an alternative format under limited circumstances, recognizing that some entities might suffer undue hardship in reporting on a census level. Specifically, upon a showing of significant hardship, entities will be permitted to report a list of service addresses or GIS coordinates of service, along with the speed and technology of the broadband connection in service at each address, in lieu of reporting subscriber counts by Census Tract.<sup>50</sup>

16. *Terrestrial Mobile Wireless Broadband – Subscriber Counts.* In the current Form 477 data collection process, mobile wireless broadband service providers report the number of connections they provide in particular states, and they report the 5-digit ZIP Codes that best represent their broadband service footprint. Because mobile service subscribers may move within and among broadband service areas, we will continue to require them to report only the number of connections they provide in individual states. For the reasons set forth in Paragraphs 12-14 above, we find that the benefits of reporting service footprints at the Census Tract level outweigh the costs of the additional reporting. Therefore, we require mobile wireless broadband service providers to report the Census Tracts that best represent their broadband service footprint for each of the speed tiers in which they offer service.<sup>51</sup> For purposes of Form 477, entities that use unlicensed devices to provide a commercial broadband Internet access service that can be received at any location within a service footprint, e.g., throughout a town, adjoining towns, or portion of a metropolitan area,<sup>52</sup> will continue to report subscriber information in the

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<sup>46</sup> See Consumers Union et al. Reply Comments at 7 (referencing Verizon, AT&T, and Cox); CPUC Reply Comments at 10 (“It is a relatively simple task for broadband providers to convert their street-level data to... Census Tracts.”).

<sup>47</sup> This change will take effect with the March 2009 filing by providers of year-end connection data as of December 31, 2008. Additionally, we retain the current requirement to report the percentage of total broadband connections in service in a state that are residential connections. See *Data Gathering Notice*, 22 FCC Rcd at 7773, para. 28.

<sup>48</sup> See paras. 19-22, *infra*.

<sup>49</sup> See, e.g., AT&T Reply Comments at 14 n.38.

<sup>50</sup> See CPUC Reply Comments at 10 (“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.”).

<sup>51</sup> This requirement replaces the current requirement to report broadband service footprint by 5-digit ZIP Codes.

“terrestrial mobile wireless” category. By contrast, entities that use unlicensed devices to provide broadband Internet access connections to dispersed, fixed end user premises locations are required to report information in the “terrestrial fixed wireless” category of Form 477.

17. *Collecting Additional Information on Broadband Deployment and Adoption.* In the Data Gathering Notice, we sought comment on additional methods, outside the scope of Form 477, that could enable us to further enrich and use the data collected from reporting companies.<sup>53</sup> The Data Gathering Notice sought comment on the creation of a voluntary self-reporting system for non-served households.<sup>54</sup> Comments in the record indicate strong support for creating a self-reporting system, at least as a supplement to other information collection methods.<sup>55</sup>

18. The Commission will design and implement a voluntary system that households may use to report availability and speed of broadband Internet access service at their premises. The voluntary registry will enable households to use the telephone, mail, email, or the Internet to report apparent unavailability of broadband service for their location and information about existing service, such as the type and actual speed of Internet access service they use. The information collected through the voluntary registry will be shared with public-private partnerships and with the Telecommunications Program of the United States Department of Agriculture (USDA) Rural Development Agency.<sup>56</sup> In the accompanying Further Notice we seek comment on ways in which to share information gathered while at the same time preserving confidentiality.<sup>57</sup> Furthermore, in order to obtain data on broadband services at an even more granular level than the information collected by the changes we adopt in this Order, we will recommend to the Census Bureau that the question in Appendix B be added to the American Community Survey and the Puerto Rico Community Survey.<sup>58</sup>

#### **B. New Broadband Connection Speed Categories**

19. Form 477 currently gathers information within “speed tiers” in which providers categorize the maximum speeds of connections offered to customers.<sup>59</sup> The lowest of these tiers includes connections with information transfer rates that exceed 200 kbps in both directions and are less than 2.5

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<sup>52</sup> An example would be a wireless Internet service provider (“WISP”) that has installed wireless access points throughout a town or adjacent towns, or in a portion of a city or metropolitan area. Such service configurations are sometimes called “portable” or “nomadic,” as subscribers are expected to use the service at various locations within the service footprint.

<sup>53</sup> *Data Gathering Notice*, 22 FCC Rcd at 7772-73, para. 26.

<sup>54</sup> *Data Gathering Notice*, 22 FCC Rcd at 7775-76, para. 34.

<sup>55</sup> See, e.g., NPM Comments at 8 (“Although such self-reporting will not be a substitute for changes to the Commission's current data gathering efforts, it could serve as a useful supplement to those efforts, and might provide the Commission with better information about why broadband is not being adopted in areas where it is available.”); NASUCA Comments at 20-21. *But see* Letter from Jeffrey Lanning, Embarq, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 10, filed June 15, 2007 (Embarq Comments) (raising concerns about reliability of the information).

<sup>56</sup> See generally <http://www.usda.gov/rus/telecom/index.htm>. We intend to share granular information only for purposes relating directly to Commission and intergovernmental programs and planning. We do not intend to make the raw information gathered publicly available.

<sup>57</sup> See para. 39, *infra*.

<sup>58</sup> The American Community Survey collects a variety of information on communities and is designed to fill in the gaps between each official 10-year Census. See <http://www.census.gov/acs/www/>.

<sup>59</sup> *2004 Order*, 19 FCC Rcd at 22388-89 (instructions for Part I.A of Form 477).

mbps in the faster direction. The next tier includes connections with information transfer rates that exceed 200 kbps in both directions and are greater than or equal to 2.5 mbps and less than 10.0 mbps in the faster direction.<sup>60</sup> In the Data Gathering Notice, we sought comment on modifying these tiers, offering as one possible approach the creation of a new, separate tier that includes those connections with information transfer rates greater than 200 kbps and less than 1.0 mbps.<sup>61</sup> As many commenters noted, the range of information transfer capacities included in the current lowest tier of 200 kbps to 2.5 mbps captures a wide variety of services, ranging from services capable of transmitting real time video to simple always-on connections not suitable for more than basic email or web browsing activities.<sup>62</sup> We find that requiring providers to report data in more detailed speed tiers will better identify services that support advanced applications, creating distinctions that reflect different capacities for transmitting high quality video and similar high bandwidth communications.<sup>63</sup> We also find that, as technologies and services evolve, upload speeds are an increasingly significant aspect of broadband services, and increased granularity in reporting both download and upload speed data will assist us in understanding the broadband services market.<sup>64</sup>

20. Accordingly, in order to gather more detailed and therefore useful information about subscription to broadband services, we revise Form 477 to establish an increased number of transfer speed categories, applicable to both download and upload service speeds. Specifically, the reporting tiers applicable to the reporting of both download and upload transfer rates under the new Form 477 collection are: (1) greater than 200 kbps but less than 768 kbps; (2) equal to or greater than 768 kbps but less than 1.5 mbps; (3) equal to or greater than 1.5 mbps but less than 3.0 mbps; (4) equal to or greater than 3.0 mbps but less than 6.0 mbps, (5) equal to or greater than 6.0 mbps but less than 10.0 mbps; (6) equal to or greater than 10.0 mbps but less than 25.0 mbps; (7) equal to or greater than 25.0 mbps but less than 100.0 mbps; and (8) equal to or greater than 100 mbps. As discussed in our *Fifth Report*, pursuant to section 706 of the Telecommunications Act of 1996, we find it appropriate to continue to evaluate broadband deployment by monitoring the migration of customers and services to higher speed tiers by continuing to collect information beginning at the 200 kbps threshold that is appropriately considered "first generation."<sup>65</sup> Additionally, we will retain the requirement that providers report connections with

<sup>60</sup> *Id.*

<sup>61</sup> *Data Gathering Notice*, 22 FCC Rcd at 7769, paras. 18-19 (seeking comment broadly on "whether the Commission should develop a higher or more varied measurement of broadband speed").

<sup>62</sup> *See, e.g.*, Letter from Scott Blake Harris, Counsel to Vonage Holdings Corp., et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 3-4, filed June 15, 2007 (Vonage Comments) ("For instance, depending on its actual capacity, a broadband connection currently reported in the 200 kbps - 2.5 mbps tier could either barely support standard web-browsing or it could enable real-time two-way video conferencing.").

<sup>63</sup> *See, e.g.*, Consumers Union et al. Reply Comments at 12 (noting that 1.0-2.0 mbps is a minimum requirement for transmitting real time VHS-quality video using MPEG-2 encoding, and that at least 384 kbps is needed for low quality video conferencing using MPEG-4 encoding).

<sup>64</sup> *See, e.g.*, Consumers Union et al. Comments at 21-27 (arguing that the current download speed tiers do not reflect the market for broadband services, and that measuring upload speed of services would allow them to be evaluated on their potential for originating high-quality video).

<sup>65</sup> As many commenters noted, this benchmark includes services that remain valuable to consumers because of their "always-on" nature and their capacity for more basic Internet services. *See, e.g.*, US Telecom Comments at 14-15 ("For many consumers and businesses, the 200 Kbps capability is more than sufficient to meet their current needs, which often consists of basic e-mail use, access to general information (e.g. government websites and news) and the transmission of standard digital media such as pictures and documents."); AT&T Comments at 7-9; Verizon Comments at 22; NPM Comments at 5; TWC Comments at 6; Letter from David J. Redl, CTIA - The Wireless Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 14, filed June 15, 2007. (CTIA (continued....))

download transfer rates above 200 kbps and upload speeds of less than or equal to 200 kbps, because upload services in this category continue to be a common offering in the broadband services market. Filers will report the number of subscribers for each type of technology of service they offer, in each combination of download and upload speed categories, within each Census Tract in which the providers have subscribers.<sup>66</sup> Figure 1 provides an illustration of the data that Form 477 filers will be required to provide for each Census Tract and technology type.<sup>67</sup>

Number of Broadband Subscribers

Upload Speed	Download Speed							
	Greater than 200 kbps and less than 768 kbps	Greater than or equal to 768 kbps and less than 1.5 mbps	Greater than or equal to 1.5 mbps and less than 3 mbps	Greater than or equal to 3 mbps and less than 6 mbps	Greater than or equal to 6 mbps and less than 10 mbps	Greater than or equal to 10 mbps and less than 25 mbps	Greater than or equal to 25 mbps and less than 100 mbps	Greater than or equal to 100 mbps
Less than or equal to 200 kbps								
Greater than 200 kbps and less than 768 kbps								
Greater than or equal to 768 kbps and less than 1.5 mbps								
Greater than or equal to 1.5 mbps and less than 3 mbps								
Greater than or equal to 3 mbps and less than 6 mbps								
Greater than or equal to 6 mbps and less than 10 mbps								
Greater than or equal to 10 mbps and less than 25 mbps								
Greater than or equal to 25 mbps and less than 100 mbps								
Greater than or equal to 100 mbps								

Figure 1: Data elements of reporting for one provider, in one Census Tract, for one type of technology

21. The action we take in this Order will help ensure that the Commission gathers the data it requires in order to carry out its obligations under section 706 of the Act.<sup>68</sup> While these changes may increase reporting requirements for some service providers, and require new methods for comparison of

(Continued from previous page) \_\_\_\_\_  
 Comments); CWA Comments at 6-7; Consumers Union et al. Comments at 34-35; ITIF Comments at 2-3; NASUCA Comments at 11-12. Additionally, collecting data at these speeds allows for greater consistency with past data collection, and thus greater tracking of broadband deployment over time. See, e.g., AT&T Comments at 10; TWC Comments at 6.

<sup>66</sup> We will use the terms “first generation data” to refer to those services with information transfer rates greater than 200 kbps but less than 768 kbps in the faster direction, and “basic broadband tier 1” to refer to services equal to or greater than 768 kbps but less than 1.5 mbps in the faster direction. Subsequent tiers will be labeled “broadband tier 2” through “broadband tier 7”. These terms are evolving definitions that could change over time based on advances in technology.

<sup>67</sup> This figure is only an illustration of the types of data that will be collected and is not an example of an actual filing format or form to be used for filing. Under the new requirements, filers will submit data in a database format, the details of which will be specified in a subsequent Commission release. As with all other information collections, before this reporting requirement can take effect, approval from the Office of Management and Budget must be received.

<sup>68</sup> 47 U.S.C. § 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996)).

new data to old data,<sup>69</sup> we agree with commenters who note that such changes will improve the Commission's understanding of the market for broadband services.<sup>70</sup> Through these adjustments, we continue and extend the Commission's efforts to collect data to assess broadband deployment based on tiered speeds.<sup>71</sup> It is our intention to revisit these speed thresholds every two years to assess whether advances in technology warrant further refinements.

22. In the Data Gathering Notice, we requested comment on two additional changes to Form 477 data collection concerning broadband speed – the creation of speed tiers that adjust automatically with changes in technology,<sup>72</sup> and a requirement for service providers to report actual measured speed, rather than the maximum possible speed, for each broadband connection.<sup>73</sup> We choose not to adopt a method to adjust speed tiers automatically at this time. While adjusting speed tiers may be necessary in time as technology changes, and while creating a mechanism to make these adjustments automatically might streamline the regulatory process,<sup>74</sup> it is likely impracticable to construct a mechanism for updating speed tiers that can automatically adjust to all possible future technological changes.<sup>75</sup> We agree with commenters who suggest that considerable potential value exists in knowing actual broadband connection speeds that consumers experience,<sup>76</sup> but we note that the record indicates that collecting such information directly from providers may impose significant burdens,<sup>77</sup> and that other methods for gathering this information may exist.<sup>78</sup> As noted above, we intend to establish a voluntary registry that, among other things, will allow broadband service customers to report actual speeds of service received, as a tool to

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<sup>69</sup> See, e.g., Letter from Laura Holloway Carter, Sprint Nextel Corporation to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 7, filed June 15, 2007 (Sprint Comments).

<sup>70</sup> See, e.g., Verizon Comments at 23; Vonage Comments at 3-4; WCA Comments at 4; NATOA et al. Comments at 10; CWA Comments at 5; Letter from Robert Atkinson, Information Technology and Innovation Foundation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 2, filed May 25, 2007 (ITIF Comments); NASUCA Comments at 11; Letter from Emily Sheketoff, American Library Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 2, filed June 15, 2007 (ALA Comments). But see AT&T Comments at 7.

<sup>71</sup> See, e.g., 2004 Order, 19 FCC Rcd 22340.

<sup>72</sup> Data Gathering Notice, 22 FCC Rcd at 7769-70, para. 20.

<sup>73</sup> Id. at 7770, para. 21.

<sup>74</sup> See, e.g., Vonage Comments at 4, NATOA et al. Comments at 10-11, ITIF Comments at 4-5.

<sup>75</sup> See, e.g., AT&T Comments at 10 (“any attempt to predict the future with some sort of “automatic” adjustment mechanism would virtually guarantee a disconnect between the reporting thresholds and actual marketplace conditions”); WCA Comments at 4-5. Commenters observe that such a change would also make tracking to past data more difficult. See, e.g., TWC Comments at 6; NCTA Comments at 12-13. The factor-of-10 proposal of Massachusetts et al., MA/ME Joint Comments at 12, for example, would require a complete adjustment to the current tiers, and would render tracking to past data more difficult. Commenters indicate that an auto-adjusting speed tier system is “premature” at this time. See, e.g. NASUCA Comments at 12-13.

<sup>76</sup> See, e.g., Reply Letter from Debbie Goldman, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 7-8, filed July 13, 2007 (CWA Reply Comments).

<sup>77</sup> See, e.g., AT&T Comments at 11 (“Point in time measurements of individual users’ broadband experiences would not produce meaningful results because the ‘actual’ information transfer speed that a particular customer experiences at any time is a function of myriad factors, many of which are beyond the broadband service provider’s control and mask the true capabilities of the service...”); Verizon Comments at 21-22; OPASTCO Comments at 7-8; TWC Comments at 7.

<sup>78</sup> See, e.g., ITIF Comments at 5-6.

assist us in monitoring the deployment of broadband services.<sup>79</sup> We also seek comment in the Further Notice accompanying this Order on additional ways to capture information on actual speeds of service experienced by consumers.<sup>80</sup>

### C. Other Reporting Requirements for Mobile Wireless Broadband Providers

23. *Distinguishing Subscribers by Service Usage.* In the Data Gathering Notice, we noted that providers of mobile wireless broadband service are currently required to “report the number of end users whose mobile device, such as wireless modem laptop cards, smartphones, or handsets, are capable of sending or receiving data at speeds in excess of 200 kbps....”<sup>81</sup> This information is valuable in that it represents, in the broadest sense, those mobile wireless users with the capacity to access broadband services.<sup>82</sup> We also sought comment on requiring mobile wireless broadband providers to report the number of subscriptions which include a data plan, separate from the information about broadband capable devices that we currently collect.<sup>83</sup> Commenters note that tracking those users with a month-to-month or longer plan for broadband data transfer produces more accurate information about mobile broadband usage than simply tracking users who are capable of such use.<sup>84</sup> We agree with these commenters and conclude that the benefits of gathering separate information about mobile broadband subscriptions that contain a data plan, including the increased ability of the Commission to understand the level of mobile wireless usage, outweigh any additional reporting costs. We therefore revise Form 477 to add a second reporting category in which mobile service providers will report the number of subscribers whose device and subscription permit them to access the lawful Internet content of their choice.<sup>85</sup> When counting such subscribers, we direct providers to exclude subscribers whose choice of content is restricted to only customized-for-mobile content,<sup>86</sup> and to exclude subscribers whose subscription does not include,

<sup>79</sup> See para. 18, *supra*.

<sup>80</sup> See para. 36, *infra*.

<sup>81</sup> *Data Gathering Notice*, 22 FCC Rcd at 7766, para. 12 (quoting *2004 Data Gathering Order*, 19 FCC Rcd at 22387, instructions for Line A.I-8).

<sup>82</sup> See, e.g., AT&T Comments at 20-21 (“This capability gives customers the flexibility to use such services “on-demand” without the expense of ongoing monthly payments and thus provides an important mechanism for encouraging greater broadband adoption in the U.S.”). *But see* Consumers Union et al. Comments at 13-17 (arguing that because wireless broadband services are not equivalent to wireline, in particular by not complying with open access principles, they should not be counted as broadband technologies in FCC statistical reports).

<sup>83</sup> *Data Gathering Notice*, 22 FCC Rcd at 7767, para. 14.

<sup>84</sup> See, e.g., NPM Comments at 4 (noting that “absent such a distinction, the Commission's data may over-report the extent of wireless broadband adoption, thereby hindering the efforts of the Commission and other policy makers to make well-informed legal, policy, and regulatory decisions.”); NASUCA Comments at 9 (“The Commission’s proposals are entirely appropriate given that it is otherwise difficult to determine whether mobile wireless broadband subscription numbers are inflated because of onetime downloads; a customer purchase of broadband-capable handset, but not a broadband service plan; or other reasons.”); Sprint Comments at 3 (noting the feasibility of reporting such information); NJ Rate Counsel Comments at 6.

<sup>85</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, FCC 05-151, 20 F.C.C.R. 14986 (2005). In particular, a device which can access only a limited set of websites optimized for wireless device usage, such as a device which can only download ringtones and games or send messages, does not permit access to the full Internet.

<sup>86</sup> Customized-for-mobile content includes, for example, text and multimedia messaging, as well as the capacity to download ringtones and games. It also includes content which encapsulates and packages a limited set of websites optimized solely for wireless device usage. *Data Gathering Notice*, 22 FCC Rcd at 7766-67, paras. 13-14.

either in a bundle or as a feature added to a voice subscription, a data plan providing the ability to transfer, on a monthly basis, either a specified or an unlimited amount of data to and from Internet sites of the subscriber's choice.

24. *Residential Subscribers.* We modify the Form 477 instructions for counting certain mobile wireless broadband subscribers as residential subscribers. In the Data Gathering Notice, we mentioned that only approximately 11 percent of mobile wireless broadband subscribers are reported as residential subscribers in the aggregated Form 477 data, and that this information could understate residential subscribership.<sup>87</sup> Commenters note that many individuals who use a mobile device for business purposes also use it for personal purposes, and that employers variously underwrite employees' business-related use of mobile wireless services.<sup>88</sup> Commenters also note that mobile wireless providers may differ in their marketing strategies and how they distinguish market segments.<sup>89</sup> Nevertheless, we wish to obtain greater Form 477 reporting consistency and accuracy.<sup>90</sup> Therefore, we direct mobile wireless broadband providers to report as residential subscriptions those subscriptions that are not billed to a corporate account, to a non-corporate business customer account, or to a government or institutional account.<sup>91</sup>

#### D. Reporting Requirements for Interconnected VoIP Service Providers

25. In the Data Gathering Notice, we noted that only some providers of interconnected VoIP services were required to report information on Form 477.<sup>92</sup> In order to gather complete information on interconnected VoIP service adoption, the Data Gathering Notice sought comment on how to collect information on the number of interconnected VoIP subscribers in the least burdensome manner.<sup>93</sup> Specifically, the Data Gathering Notice sought comment on whether to require providers of interconnected VoIP service to report information on the number of end-user subscribers in individual states, on the percentage of the subscribers who are residential, and on whether or not the service is provided over a broadband connection provided by the filer or by the filer's affiliate.<sup>94</sup>

26. Interconnected VoIP service subscribers represent an important and rapidly growing part of

<sup>87</sup> *Data Gathering Notice*, 22 FCC Rcd at 7768, para. 16.

<sup>88</sup> *See, e.g.*, Verizon Comments at 13-14 (“[T]his reporting rule would produce misleading estimates of residential use...broadband providers have no way to accurately determine if the subscriber is a business or a residential user.”); NASUCA Comments at 10-11 (“Many of those consumers have wireless broadband for work purposes, but also rely on the service for other purposes.”).

<sup>89</sup> *See, e.g.*, Sprint Comments at 4 (requesting that the Commission “provide carriers flexibility in how they report this information because the residential vs. business reporting methodology varies from carrier to carrier”).

<sup>90</sup> The benefits of this change are clear, and outweigh the costs. *See, e.g.*, AT&T Comments at 24 (noting the feasibility and value of identifying customers who receive a corporate or government plan yet use the devices for personal purposes, on the basis of not being billed to the corporation or government entity).

<sup>91</sup> For purposes of Form 477, subscriptions billed to a federal government department or agency, for example, will not be “residential” subscriptions, while subscriptions to a service plan offered to all federal government employees will be considered to be residential subscriptions.

<sup>92</sup> *Data Gathering Notice*, 22 FCC Rcd at 7770, para. 22. Interconnected VoIP service is a service that enables real-time, two-way voice communications; requires a broadband connection from the user's location; requires Internet-protocol compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. *See* 47 C.F.R. § 9.3.

<sup>93</sup> *Data Gathering Notice*, 22 FCC Rcd at 7770, para. 22.

<sup>94</sup> *Id.*

the U.S. voice service market, and interconnected VoIP services are becoming increasingly competitive with other forms of local telephone service. Under the Commission's current reporting rules, end-user subscriptions to interconnected VoIP services are substantially underreported, which distorts the Commission's view of the extent of interconnected VoIP service deployment and uptake, and potentially distorts the Commission's picture of the U.S. voice service market. Our predictive judgment is that, if we did nothing to update our reporting rules, these distortions would continue to grow.

27. We conclude that we have the authority under Title I of the Act to impose reporting obligations on providers of interconnected VoIP service, and are justified in exercising this authority.<sup>95</sup> Ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated<sup>96</sup> and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities."<sup>97</sup> Both predicates for ancillary jurisdiction are satisfied here.

28. First, as we concluded in previous orders, interconnected VoIP services fall within the subject matter jurisdiction granted to the Commission in the Act.<sup>98</sup> Second, our analysis requires us to evaluate whether imposing reporting obligations is reasonably ancillary to the effective performance of the Commission's various responsibilities. Based on the record in this matter, we find that requiring interconnected VoIP service providers to report the number of subscribers they serve (both end user and for resale), the percentage of these who are residential, and whether the interconnected VoIP service is provided over a broadband connection provided by the filer or by the filer's affiliate is reasonably ancillary to the effective performance of the Commission's various responsibilities under the Act.<sup>99</sup> The

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<sup>95</sup> Our decision today does not constitute a finding that interconnected VoIP services are either "telecommunications services" or "information services." See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4893-94, paras. 43-44 (2004) (seeking comment on the proper classification of particular IP-enabled services as "telecommunications services" or "information services" under the definitions of the Act).

<sup>96</sup> See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*). *Southwestern Cable*, the lead case on the ancillary jurisdiction doctrine, upheld certain regulations applied to cable television systems at a time before the Commission had an express congressional grant of regulatory authority over that medium. See *id.* at 170-71. In *Midwest Video I*, the Supreme Court expanded upon its holding in *Southwestern Cable*. The plurality stated that "the critical question in this case is whether the Commission has reasonably determined that its origination rule will 'further the achievement of long-established regulatory goals in the field of television broadcasting by increasing the number of outlets for community self-expression and augmenting the public's choice of programs and types of services.'" *United States v. Midwest Video Corp.*, 406 U.S. 649, 667-68 (1972) (*Midwest Video I*) (quoting *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals*, Docket No. 18397, First Report and Order, 20 FCC 2d 201, 202 (1969) (*CATV First Report and Order*)). The Court later restricted the scope of *Midwest Video I* by finding that if the basis for jurisdiction over cable is that the authority is ancillary to the regulation of broadcasting, the cable regulation cannot be antithetical to a basic regulatory parameter established for broadcast. See *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979) (*Midwest Video II*).

<sup>97</sup> *Southwestern Cable*, 392 U.S. at 178.

<sup>98</sup> See, e.g., *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 47; *VoIP 911 Order*, 20 FCC Rcd at 10261-62, para. 28 ("[I]nterconnected VoIP services are covered by the statutory definitions of 'wire communication' and/or 'radio communication' because they involve 'transmission of [voice] by aid of wire, cable, or other like connection . . .' and/or 'transmission by radio . . .' of voice. Therefore, these services come within the scope of the Commission's subject matter jurisdiction granted in section 2(a) of the Act.").

<sup>99</sup> See 47 U.S.C. §§ 157 nt, 211, 218, 219, 220.

Commission has a responsibility under section 706 of the Telecommunications Act of 1996 to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability.<sup>100</sup> Furthermore, the Act specifically authorizes the Commission to require annual reports from all carriers subject to the Act,<sup>101</sup> as well as to require the production of other information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.<sup>102</sup>

29. The Commission's primary goal underlying the reporting requirements is the identification of unserved and underserved areas with respect to advanced telecommunications capability. Our ability to perform the Commission's functions related to this objective depends upon our having adequate information about deployment and uptake of advanced telecommunications capability. As explained above, we do not believe it is possible to obtain an accurate view of the U.S. voice service market without gathering data about interconnected VoIP service subscribers. Thus, the Commission's continued ability to exercise its responsibilities – such as identifying unserved and underserved markets – depends in part on requiring interconnected VoIP providers to report the number of end-user and resale subscribers they serve, the percentage of these who are residential, and whether the interconnected VoIP service is used over a broadband connection provided by the filer or by the filer's affiliate. Thus, we conclude that imposing these reporting obligations is reasonably ancillary to the effective performance of our responsibilities.

30. Commenters noted that interconnected VoIP services are becoming increasingly competitive with local telephone service, and that it is appropriate to collect information on subscriptions, including the number of connections and the percentage of those connections that are residential, in order to determine the extent of competition posed by the services.<sup>103</sup> Verizon filed the lone objection to recording this information.<sup>104</sup> We conclude that gathering the number of end-user and resale subscribers to interconnected VoIP service and the percentage of those subscribers who are residential would provide valuable information that would enable the Commission to track deployment and adoption of interconnected VoIP service across the nation. Accordingly, we modify Form 477 to require providers of interconnected VoIP service to report information about the number of end-user and resale subscribers they have in individual states, and the percentage of the subscribers who purchase the provider's residential grade service plan.<sup>105</sup> Additionally, to collect useful information as set forth in the Data

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<sup>100</sup> 47 U.S.C. § 157 nt.

<sup>101</sup> 47 U.S.C. § 219 (authorizing the Commission to require annual and other reports); *see also* 47 U.S.C. § 211 (authorizing the Commission to require the filing of contracts, agreements, and arrangements related to any traffic affected by the provisions of the Act); 47 U.S.C. § 220 (authorizing the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the Act, including regarding the movement of traffic and the receipt of moneys, and to obtain access to such records).

<sup>102</sup> 47 U.S.C. § 218 (directing the Commission to “keep itself informed . . . as to technical developments and improvements in wire and radio communication and radio transmission of energy” and to obtain from “carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created”).

<sup>103</sup> *See, e.g.*, AT&T Comments at 25; NCTA Comments at 15; IL AG Comments at 8.

<sup>104</sup> Verizon Comments at 26-27.

<sup>105</sup> Entities that provide interconnected VoIP service to end users in conjunction with a broadband connection will report information about the interconnected VoIP subscription separately from other providers of interconnected VoIP service to end users. Entities that provide interconnected VoIP service for resale will report this information separately as well. Because some interconnected VoIP service subscribers may be able to use the service at different locations where a broadband connection is available, if the interconnected VoIP provider also provides a broadband connection to the end user, then the interconnected VoIP subscriber will be reported in the same state as the (continued....)

Gathering Notice, we modify Form 477 to require providers of interconnected VoIP service to report a list of 5-digit ZIP Codes within each state in which they have at least one subscriber.<sup>106</sup> This requirement achieves regulatory parity across technologies that offer voice-grade equivalent lines or channels.<sup>107</sup>

31. Furthermore, as mentioned above, the Data Gathering Notice sought comment on whether to require providers of end-user interconnected VoIP service to report whether the service is provided over a broadband connection provided by the filer or the filer's affiliate.<sup>108</sup> Commenters noted that providing this information can enable the Commission to detect any competitive concerns resulting from the bundling of broadband and interconnected VoIP services.<sup>109</sup> Because of the nomadic nature of certain VoIP services, AT&T contends that collection of this information would be impossible, or at least meaningless, as users of the interconnected VoIP service are able to use it over other connections as well as the associated broadband connection.<sup>110</sup> We conclude that gathering information regarding the number of subscribers who receive broadband service in conjunction with interconnected VoIP service, and the share of interconnected VoIP service subscribers who can use the service over any broadband connection, would provide valuable information on the deployment of interconnected VoIP service.<sup>111</sup> We therefore require interconnected VoIP providers to report information about the type(s) of broadband connections, if any, they or their affiliates provide in conjunction with interconnected VoIP service, and to report whether the interconnected VoIP service must be used over a single predetermined broadband connection or can be used over any broadband connection.

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broadband connection, and if not, the interconnected VoIP subscriber will be reported in the state of the subscriber's "Registered Location" as of the data-collection date (*i.e.*, June 30 or December 31). The end user's "Registered Location" is the most recent information obtained by an interconnected VoIP service provider that identifies the physical location of the end user. *See* 47 C.F.R. § 9.3.

<sup>106</sup> Interconnected VoIP service providers who do not also provide a broadband connection to the subscriber will report the ZIP Code of the subscriber's Registered Location. While this is not within the specific information listed in the Data Gathering Notice, it is nevertheless within the general request "to collect useful information about the number of interconnected VoIP service subscribers," as this information is necessary to achieve neutrality across technologies, and to identify in detail those unserved and underserved areas which require special attention. Form 477 connects the ZIP Code listing requirement to the basic reporting of the number of subscribers per state, so that providers who report the latter must also report the former. *See* 2004 Order, 19 FCC Rcd at 22380 ("If in Part II you report voice-grade equivalent lines or voice-grade equivalent wireless channels for service provided to end users, you must provide in Part V a list containing the 5-digit ZIP Codes of the locations to which you provide those lines or channels.").

<sup>107</sup> In this Order we make a number of changes to broadband service offerings which modify the information collected in Form 477. We do not at this time adopt similar changes for local exchange carriers and interconnected VoIP service providers, who will continue to list those 5-digit ZIP Codes in which they have at least one end-user subscriber.

<sup>108</sup> *See* Data Gathering Notice, 22 FCC Rcd at 7770, para. 22.

<sup>109</sup> *See* Vonage Comments at 5; IL AG Comments at 9; Reply Letter from David Bergmann, National Association of State Utility Consumer Advocates, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 17, filed July 16, 2007 (NASUCA Reply Comments).

<sup>110</sup> AT&T Comments at 25-26.

<sup>111</sup> In response to AT&T's concern, we do not at this time ask providers to track or report when the nomadic users of interconnected VoIP service actually are using the service over the associated broadband connection. We merely ask filers that provide both services to the same consumer, and filers whose service can or cannot be used nomadically, to report this information.

## E. Other Matters

32. *Alternate Reporting Methodology in Cases of Significant Hardship.* The changes to our Form 477 information collection will significantly increase the Commission's ability to carry out its statutory duties under section 706 of the Communications act to monitor broadband deployment. The new information gathered by Form 477 will enable the Commission, the industry, and other parties to realize many benefits, including forming a more detailed understanding of the scope of broadband adoption, connecting data on broadband services to demographic data collected by the Census Bureau, and pinpointing areas that are currently unserved or underserved. Some commenters suggest that small and medium sized carriers should be exempt from the modified reporting requirements that we adopt in this Order.<sup>112</sup> We disagree. Creating a blanket exemption for small and medium sized carriers would undercut the benefits of our revised information collection by depriving the Commission and other parties of adequate information on broadband deployment and adoption in rural, unserved, and underserved areas of the nation, the areas where additional information is most needed and would be likely to have the greatest impact. However, as mentioned above,<sup>113</sup> in order to ease the process of this transition in reporting methodology, upon a showing of significant hardship, reporting entities may report a list of service addresses or GIS coordinates of service, along with the speed and technology of service offered at each address, in lieu of producing and reporting subscribership counts by Census Tract.

## IV. FURTHER NOTICE OF PROPOSED RULEMAKING

### A. Reporting Number of Lines and Channels

33. Currently, local exchange carriers that file Form 477 are required to report the total number of voice-grade equivalent lines and wireless channels provided to end users.<sup>114</sup> This information is provided on a state-by-state basis.<sup>115</sup> In the Order above, we extended this obligation to providers of interconnected VoIP service.<sup>116</sup> In this Further Notice we seek comment on whether to require local exchange carriers and interconnected VoIP service providers to report the number of voice telephone service connections, and the percentage of these that are residential, at the 5-digit ZIP Code or Census Tract level. This increased granularity of data would enable the Commission to better assess adoption of particular technologies and competition using particular technologies in localized areas. We seek comment on the benefits and burdens associated with this additional reporting requirement.

### B. Broadband Availability Mapping

34. In the Data Gathering Notice, we sought comment on methods to better use the data collected by Form 477.<sup>117</sup> We acknowledged the success of the ConnectKentucky initiative and its interactive mapping program.<sup>118</sup> We note that the ConnectKentucky program, along with other efforts at the state level, has facilitated identification of areas without broadband service, and that this identification has

<sup>112</sup> See ACA Comments at 4-5; COMPTTEL Comments at 1-4; Reply Letter from Karlen Reed, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 7, filed July 16, 2007 (NTCA Reply Comments).

<sup>113</sup> See para. 13, *supra*.

<sup>114</sup> 2004 Order, 19 FCC Rcd at 22380.

<sup>115</sup> The form requires filers to fill out only the total number of lines and channels, and one form is filed per state. 2004 Order, 19 FCC Rcd at 22384-90.

<sup>116</sup> See paras. 25-31, *supra*.

<sup>117</sup> Data Gathering Notice, 22 FCC Rcd at 7771-74, paras. 25-29.

<sup>118</sup> Data Gathering Notice, 22 FCC Rcd at 7772-73, para. 26

resulted in public and private resources being focused to provide service to unserved areas.<sup>119</sup> In order to provide an information resource that will facilitate similar focus nationwide, we seek comment on the adoption of a national broadband mapping program with the objective of creating a highly detailed map of broadband availability nationwide. We seek comment on ways such a program can provide useful information to other broadband initiatives undertaken by federal and state agencies and public-private partnerships, such as ConnectKentucky.<sup>120</sup> We seek comment on whether and to what extent we might work with the Department of Agriculture's Rural Utilities Service in developing and using this mapping program, so as to combine the expertise of the Commission and its staff with that of the RUS in supporting rural infrastructure deployment.

35. We tentatively conclude that the Commission should collect information that providers use to respond to prospective customers to determine on an address-by-address basis whether service is available. We seek comment on this conclusion, and on what standardized formats could be used to collect the information. We seek comment on whether and how a nationwide broadband mapping program can incorporate the data collected on Form 477, including information on broadband service subscriptions by Census Tract and by speed tier.<sup>121</sup> We also seek comment on whether there are other sources from which the Commission should collect data to improve the output of the broadband service availability mapping program. We seek comment on how to maintain the confidentiality of broadband service information while still providing a rich resource for use by other federal agencies, states, localities, and public-private partnerships in focusing resources on expanding broadband availability in a manner similar to the focusing of resources enabled by the Connect Kentucky project.<sup>122</sup> We will apply an expedited comment cycle on this issue, and we intend to issue a responsive Order within 4 months.

### C. Delivered Speed Information Gathering

36. As discussed in the Order above, in the Data Gathering Notice we sought comment on whether to require reporting of actual broadband connection speeds experienced by customers rather than the theoretical maximum that a given network can support or the particular service configuration allows.<sup>123</sup> The record indicates that factors beyond the control of service providers may compromise the ability of service providers to report actual speeds experienced by consumers.<sup>124</sup> Also, comments in the

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<sup>119</sup> Letter from Laura M. Taylor, Vice President of Research, Connected Nation, to Marlene H. Dortch, Secretary, FCC, WC Docket 07-38, at 1, filed October 24, 2007 (ConnectKentucky Comments). According to Connected Nation, the ConnectKentucky initiative gathers voluntary data from providers of broadband services in a variety of formats, verifies this data through the assistance of community working groups within each of Kentucky's 120 counties, and plots the information on a single multi-layer interactive map covering the entire state. *Id.*

<sup>120</sup> Comments in the record indicate substantial support for public-private partnerships. *See, e.g.* Letter from Jack Zinman, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 16, filed June 15, 2007 (AT&T Comments) (“[T]he Commission should, where appropriate, coordinate with the private industry partnerships, such as ConnectKentucky, that have conducted detailed analyses of broadband availability in particular geographic areas.”); Verizon Comments at 4-6 (“[T]he Commission should encourage current efforts by Congress to establish grant programs or other types of funding to establish these types of public-private initiatives.”).

<sup>121</sup> *See* paras. 14-16, *infra*.

<sup>122</sup> ConnectKentucky Comments at 1-2. ConnectKentucky collects its information in a variety of ways; the granular information we will collect will enable states to have access to a “comprehensive national data set which is consistent across states.” *See id.* at 2.

<sup>123</sup> *See* para. 22, *supra*; *Data Gathering Notice*, 22 FCC Red at 7770, para. 21.

<sup>124</sup> *See* para. 22, *supra*.

record point to the existence of other methods of collecting this information.<sup>125</sup> In this Further Notice, we seek comment on how we might require service providers to report this information, and any alternative means, in addition to or other than requiring such service provider reporting, for effectively capturing meaningful information about actual speeds of Internet access services experienced by consumers.

#### D. Broadband Price Information

37. In the Data Gathering Notice, we sought comment on whether and how we could collect price information for broadband services.<sup>126</sup> Among other questions, we asked how to compare price information in introductory offers and bundled services.<sup>127</sup> In the record in this proceeding, commenters note that such price information is helpful in understanding broadband uptake, particularly when viewed across regions and in comparison to demographic information.<sup>128</sup> Comments from state entities also emphasized the value of gathering price information, particularly for low-cost broadband services, to assist the state entities with ensuring availability of broadband service and monitoring competition.<sup>129</sup> Commenters note, however, that price information is complex due to promotions, bundling discounts, contract terms, multi-part tariffs, and other contextual information, and that price fluctuations can be frequent and have the potential to render data gathering meaningless or even misleading.<sup>130</sup> Some commenters suggest collecting pricing information on a price-per-bit basis to simplify reporting and comparison.<sup>131</sup> Others question the need for or utility of collecting this information on Form 477 at all

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<sup>125</sup> *Id.*

<sup>126</sup> *Data Gathering Notice*, 22 FCC Rcd at 7779, paras. 45-47.

<sup>127</sup> *Id.*

<sup>128</sup> *See, e.g.*, MA/ME Joint Comments at 13 (“In order for the FCC and state commissions to make informed policy decisions regarding telecommunications and broadband, factors affecting consumer demand and uptake, such as demographic information, adoption rates, price and non-price information, and the relationship between these factors, must be collected and analyzed.”); Consumers Union et al. Comments at 36-37 (“Numerous surveys indicate that price and perceived value are the key reasons why consumers who could purchase broadband choose to not do so.”).

<sup>129</sup> *See* MA/ME Joint Comments at 13 (“In particular, price information is essential for state commissions to ensure affordability.”); IL AG Comments at 9-11 (noting that gathering price information would enable the Commission to “track the competitive options customers have for broadband service as well as whether customers are being discouraged through pricing policies to purchase more than one service from their broadband provider.”); Letter from John Ridgway, Iowa Utilities Board, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 4, filed June 15, 2007 (IUB Comments) (“Although it may be challenging to analyze on a national basis, the Commission may find the data helpful when it performs more granular analysis.”).

<sup>130</sup> *See, e.g.*, Verizon Comments at 23-26 (“[T]he specific prices that consumers pay vary based on factors such as promotions, bundled discounts, term commitments, and the unique circumstances of prospective customers.”); TWC Comments at 9 (“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.”); NCTA Comments at 9; Sprint Comments at 10-11.

<sup>131</sup> *See* NATOA et al. Comments at 11-12 (“Price-per-bit provides a fair assessment of the value being afforded the consumer and, when calculated using optimum speed, allows for level comparisons among providers.”); Letter from Representative Tom Sloan to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 5, filed May 16, 2007 (Sloan Comments). *But see* AT&T Reply Comments at 20-22 (“Such price conversions [as price-per-bit] would not only be burdensome to produce, but the results would be meaningless and misleading data that would have no corollary in the real world and that would thus be useless for any regulatory purpose.”).

and note that other entities are already gathering pricing information on broadband services.<sup>132</sup> One commenter suggests that any meaningful standards or comparisons need to somehow account for non-speed differences in service features.<sup>133</sup> Another states that the lack of low-cost, standalone broadband service itself may be indicative of a lack of competition.<sup>134</sup>

38. We seek to supplement and enrich the record on broadband price information. We seek comment on requiring providers to report, for each state or each Census Tract in which they offer service, the monthly price the provider charges for standalone broadband service in each of the speed tiers used for Form 477 reporting,<sup>135</sup> not including any temporary promotional price discounts or any discounts for bundled services. If a provider offers multiple broadband services with different service characteristics within a speed tier (e.g. services that include either a static or a dynamic IP address), or charges different prices for a service for customers in different portions of a state or Census Tract, we seek comment on whether we should require the provider to report the lowest and the highest prices available to consumers within the state or Census Tract, in order to identify the range of prices that a consumer may have to pay. In the alternative, we seek comment on whether we should require providers to report the lowest price for standalone service available to consumers within the state or Census Tract within each speed tier. If a provider has only national pricing for a service, we seek comment on permitting the provider to report the monthly national price for such a service, in lieu of individual state reports. We also seek comment on whether there are any methods to derive a standalone price for broadband service when only bundled services are offered by a provider. Specifically, if a provider does not offer standalone service, but does offer bundled service, we seek comment on whether we should require the provider to report the total monthly price of the least expensive bundle of services that includes the broadband service. We seek comment on whether we should also require providers to report the Average Revenue Per User, or ARPU, for their services. We seek comment on any additional metrics or standards that we may adopt to collect meaningful comparative broadband price information in the presence of widespread service bundling, promotional pricing, flux and variability in broadband service prices, and the variety of optional features associated with services. And finally, we seek comment on whether and in what form the Commission should use the reported service price information.

#### **E. Preserving Confidentiality**

39. In the Further Notice above, we seek comment on a national broadband availability mapping program, and on how we can provide information gathered by that program to other broadband initiatives undertaken by federal and state agencies and by public-private partnerships.<sup>136</sup> Comments in the record indicate concern for the confidentiality of reported data.<sup>137</sup> In this Further Notice, we seek comment on ways in which we can preserve confidentiality when sharing the information collected on Form 477, the voluntary registry, and other sources with agencies such as the Department of Agriculture's Rural

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<sup>132</sup> See, e.g., AT&T Comments at 27-28 (“[B]roadband pricing trend information is readily available to the Commission from a variety of sources and that most providers offer the same broadband packages at the same or similar pricing throughout their service areas.”); Reply Letter from Edward Shakin, Verizon, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 15-17, filed July 16, 2007 (Verizon Reply Comments) (“Other parties who report on this information on a more frequent basis, including private analysts, are better positioned to collect pricing data and already provide reports on exactly this topic.”).

<sup>133</sup> See AT&T Reply Comments at 20-22.

<sup>134</sup> See Vonage Comments at 6.

<sup>135</sup> See paras. 19-22, *supra*.

<sup>136</sup> See paras. 34-35, *supra*.

<sup>137</sup> See, e.g., AT&T Reply Comments at 8-11; NTCA Comments at 12-13; CBT Comments 3-4.

*Utilities Service and with public-private partnerships such as ConnectKentucky and similar ventures, for example by sharing the data in a less granular or aggregated form than the level at which it is collected.*

**F. Broadband Customer Surveys**

40. We seek comment on whether the Commission should conduct and publish periodic surveys of broadband customers to obtain information about the price, technology, and speed of their connections and to obtain information about the applications and services that they use over the connections. We ask commenters to provide information on the appropriate methodology for conducting such surveys.

**V. PROCEDURAL MATTERS**

**A. Final Regulatory Flexibility Analysis**

41. Pursuant to the Regulatory Flexibility Act ("RFA"),<sup>138</sup> the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") for the Order concerning the possible significant economic impact on small entities by the policies and actions considered in the Order. The text of the FRFA is included in Appendix D.

**B. Initial Regulatory Flexibility Analysis**

42. Pursuant to the Regulatory Flexibility Act ("RFA"),<sup>139</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") for the Further Notice of Proposed Rulemaking for the possible significant economic impact on small entities by the policies and actions considered in this Notice. The text of the IRFA is set forth in Appendix E.

**C. Ex Parte Presentations**

43. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.<sup>140</sup> Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.<sup>141</sup> Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules as well.

**D. Comment Filing Procedures**

44. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

<sup>138</sup> See 5 U.S.C. § 603. The RFA, *see* U.S.C. §601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("Small Business Act").

<sup>139</sup> See 5 U.S.C. § 603. The RFA, *see* U.S.C. §601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("Small Business Act").

<sup>140</sup> 47 C.F.R. §§ 1.1200, 1.1206; *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No. 95-21, Report and Order, FCC 97-92, 12 FCC Rcd 7348 (1997).

<sup>141</sup> 47 C.F.R. § 1.1206(b)(2).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number referenced. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.
- **People with Disabilities:** To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

45. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile (202) 488-5563, or via e-mail at [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM). The pleadings also will be available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C. 20554 and through the ECFS, accessible on the Commission's World Wide Website, <http://www.fcc.gov/cgb/ecfs>.

46. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov), and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 via the Internet to

Kristy\_L.\_LaLonde@omb.eop.gov or by fax to (202) 395-5167.

47. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments also must comply with section 1.49 and all other applicable sections of the Commission's rules.<sup>142</sup> All parties are encouraged to utilize a table of contents, and to include the name of the filing party and the date of the filing on each page of their submission. We also strongly encourage that parties track the organization set forth in this Further Notice in order to facilitate our internal review process.

48. Commenters who file information that they believe is proprietary may request confidential treatment pursuant to section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order, 13 FCC Rcd 24816 (1998), Order on Reconsideration, FCC 99-262, 14 FCC Rcd 20128 (1999)*. Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act ("FOIA") must be publicly disclosed pursuant to an appropriate request. See 47 C.F.R. § 0.461; 5 U.S.C. § 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

#### **E. Paperwork Reduction Act**

49. *Paperwork Reduction Act – Report and Order.* The Report and Order portion of this document contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new and modified information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2005, Public Law No. 107-198, see 44 U.S.C. § 3506(c)(4), we have considered how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." We find that the new and modified requirements must apply fully to small entities (as well as to others) to protect consumers and further other goals, as described in the Order. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law No. 107-198, see 44 U.S.C. § 3506(c)(4), we will seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

50. *Paperwork Reduction Act – Further Notice.* The Further Notice of Proposed Rulemaking contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law No. 107-198, see 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

#### **F. Congressional Review Act**

51. The Commission will include a copy of this Report and Order and Further Notice in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review

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<sup>142</sup> 47 C.F.R. § 1.49.

Act. See 5 U.S.C. § 801(a)(1)(A).

#### **G. Accessible Formats**

52. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov); phone: 202-418-0530 or TTY: 202-418-0432.

#### **H. Contact Persons**

53. For further information about this rulemaking proceeding, please contact Alan Feldman, Industry Analysis and Technology Division, Wireline Competition Bureau at (202) 418-0940.

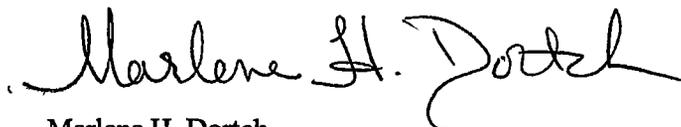
### **VI. ORDERING CLAUSES**

54. Accordingly, IT IS ORDERED that, pursuant to sections 1-5, 11, 201-205, 211, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 161, 201-205, 211, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt, this Report and Order and Further Notice, with all attachments, IS ADOPTED.

55. IT IS FURTHER ORDERED, pursuant to sections 1.103(a) and 1.427(b) of the Commission's rules, 47 C.F.R. §§ 1.103(a), 1.427(b), that this Report and Order and Further Notice SHALL BE EFFECTIVE 30 days after publication of notice of the Report and Order and Further Notice in the FEDERAL REGISTER, subject to Office of Management and Budget (OMB) approval for new or modified information collection requirements.

56. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order and the Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

**APPENDIX A****Rules Amended****AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS****PART 1 – PRACTICE AND PROCEDURE**

Part 1 of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

1. Section 1.7001 of the Commission's rules is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 1.7001 Scope and Content of Filed Reports**

(a) *Definitions.* Terms used in this subpart have the following meanings:

(1) *Facilities-based providers.* Those entities that provide broadband services over their own facilities or over Unbundled Network Elements (UNEs), special access lines, and other leased lines and wireless channels that the entity obtains from a communications service provider and equips as broadband.

(2) *Own facilities.* Lines and wireless channels the entity actually owns and facilities that it obtained the right to use from other entities as dark fiber or satellite transponder capacity.

(b) All commercial and government-controlled entities, including but not limited to common carriers and their affiliates (as defined in 47 U.S.C. § 153 (1)), cable television companies, fixed wireless providers, terrestrial and satellite mobile wireless providers, utilities and others, that are facilities-based providers, shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they provide service.

(c) Respondents identified in paragraph (b) of this section shall include in each report a certification signed by an appropriate official of the respondent (as specified in the instructions to FCC Form 477).

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**PART 43 – REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES**

Part 43 of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

1. Section 43.11 of the Commission's rules is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 43.11 Reports of Local Exchange Competition Data**

(a) All common carriers and their affiliates (as defined in 47 U.S.C. § 153 (1)) providing telephone exchange or exchange access service (as defined in 47 U.S.C. § 153 (16) and (47)), commercial mobile radio service (CMRS) providers offering mobile telephony (as defined in § 20.15(b)(1) of this chapter), and Interconnected Voice over IP service providers (as defined in § 9.3 of this chapter), shall file with the