

**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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REPLY COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

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On the Comments:  
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August 1, 2008

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**I. INTRODUCTION**

The New Jersey Division of Rate Counsel (“Rate Counsel”), with this filing, replies to comments submitted in response to the *Report and Order and Further Notice of Proposed Rulemaking* (“FNPRM”) issued June 12, 2008,<sup>1</sup> in which the Federal Communications Commission (“FCC” or “Commission”) seeks comment on its proposed broadband mapping program.<sup>2</sup> Diverse entities submitted initial comments about broadband mapping, including incumbent local exchange carriers (“ILECs”), (e.g., AT&T, Inc. (“AT&T”), Verizon and Verizon Wireless (“Verizon”), Qwest

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<sup>1</sup> / *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, Report And Order And Further Notice Of Proposed Rulemaking, FCC 08-89, released June 12, 2008 (“Form 477 Order and FNPRM”).

<sup>2</sup> / Rate Counsel submitted initial comments about mapping on July 17, 2007 and is also submitting initial comments regarding other aspects of broadband data gathering in initial comments being filed today.

Communications International Inc. (“Qwest”)), trade associations (National Cable and Telecommunications Associations (“NCTA”) and American Cable Association (“ACA”)), small municipal utilities,<sup>3</sup> consumer advocates (e.g., Consumers’ Union, Consumer Federation of America, Free Press and Public Knowledge (“CU, *et al*”)),<sup>4</sup> state regulators (e.g., California Public Utilities Commission and the People of the State of California (“CA PUC”), Kentucky Public Service Commission (“KY PSC”)), and regional development authorities (e.g., Green River Area Development District, City of Monterey, Kentucky).

## II. DISCUSSION

### **Data is essential to furthering the goal of broadband access for all Americans.**

Contrary to AT&T’s assertion that the goal of broadband mapping is ambiguous,<sup>5</sup> the Commission set forth clearly the goal of a nationwide broadband mapping program. According to the Commission, the ConnectKentucky broadband mapping program “has facilitated identification of areas without broadband service, and that this identification has resulted in public and private resources being focused to provide service to unserved areas.”<sup>6</sup> The Commission continued:

In order to provide an information resource that will facilitate similar focus nationwide, *we seek comment on the adoption of a*

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<sup>3</sup> / American Public Power Association filed comments together with The Kentucky Municipal Power Association, Barbourville Utility Commission, Bardstown Municipal Utilities, Frankfort Plant Board, Franklin Electric Plant Board, Glasgow Electric Plant Board, Hopkinsville Electric System, Mayfield Electric and Water System, Murray Electric System, Owensboro Municipal Utilities, Paducah Power System, Princeton Electric Plant Board, Russellville Electric Plant Board, and City of Williamstown, Kentucky. Their comments are referred to here as “Municipal Utilities.”

<sup>4</sup> / Rate Counsel cautions the Commission against construing the relative silence by consumer advocates in this proceeding as disinterest in, or opposition to, broadband mapping. Rather, the relative paucity of comments from consumer advocates may be simply an indication of the many issues competing for scarce resources.

<sup>5</sup> / AT&T, at 1.

<sup>6</sup> / *FNPRM*, at para. 34.

*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>7</sup> (emphasis added)

Rate Counsel agrees with the Commission that gathering broadband availability data is an essential element of achieving the goal of ensuring that every American has access to broadband technology, arguably one of the most important technologies of the 21<sup>st</sup> Century.<sup>8</sup> An important consequence of mapping broadband availability is the identification of inhabited areas that have not yet benefited from private investment to offer broadband service.

**Federal efforts can enhance rather than duplicate state data gathering efforts.**

Some commenters suggest that federal efforts would duplicate or crowd out those occurring at the state level.<sup>9</sup> Rate Counsel urges the Commission to dismiss these concerns because, if the Commission collaborates with states and mapping experts in designing its data collection and data dissemination efforts, its broadband mapping endeavor could enhance rather than duplicate state efforts and public-private partnerships.

Although California regulators have already achieved some success in mapping deployment, CA PUC nonetheless asserts that “the FCC should use its unique position to

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<sup>7</sup> / *Id.*

<sup>8</sup> / Several commenters agree that more data on broadband deployment is essential. See KY PSC, at 2; American Library Association (“ALA”), at 2; Illinois, at 5 and 10-12; and Maine Public Utility Commission (“ME PUC”), at 2.

<sup>9</sup> / *See, e.g.*, AT&T, at 6, Verizon, at 2, and National Cable & Telecommunications Association (“NCTA”), at 5-6, Connected Nation, at 3-5.

foster the development of a solid factual foundation regarding all aspects of broadband service.”<sup>10</sup> CA PUC further explains:

While various states in addition to California may be engaged in broadband mapping efforts, differences in definitions, data collection methodology and granularity would likely prevent an accurate comparison of the status of infrastructure development between and among them. A national approach to mapping by the FCC would facilitate such a comparison, and help identify the success of various infrastructure policies in the various states.<sup>11</sup>

The Maine Public Utilities Commission (“ME PUC”) states that it has “had difficulty collecting data from providers.”<sup>12</sup> ME PUC explains further:

Many of the larger providers are the most reluctant to provide information. A federal requirement to provide data and a uniform format for the data would go a long way in alleviating our difficulties.<sup>13</sup>

Commission efforts to establish uniform data collection guidelines and to direct providers to submit relevant information would make states’ work *easier*, not more difficult. Therefore, Rate Counsel urges the Commission to forge ahead with its well-timed and essential plan to solicit and aggregate data.

Furthermore, only a minimal amount of additional effort is required for service providers to report broadband data to state regulators concurrently with reporting such data to the FCC. Accordingly, the Commission should require service providers to submit all Form 477 data, as well as any additional broadband data that the Commission requires as a result of its decisions rendered in this proceeding, to state regulators at the same time that providers report these data to the Commission.

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<sup>10</sup> / CA PUC, at 2.

<sup>11</sup> / *Id.*, at 3.

<sup>12</sup> / ME PUC, at 2.

<sup>13</sup> / *Id.*

**Rate Counsel urges the Commission to provide leadership in broadband mapping, but to delegate authority to the states.**

Rate Counsel reiterates its position that the Commission should provide leadership in collecting data on broadband availability.<sup>14</sup> Furthermore, the Commission should set the standards for data collection and the timeline for project completion, and serve as the central repository of collected national data. The Commission should also affirmatively delegate to the states the authority to seek broadband deployment data and also establish states' authority to retain access to the data if collected by a third party. The Commission should also take steps to verify that the data collected is accurate, complete, and updated frequently. The Commission's national broadband mapping program will assist the Commission, in collaboration with states and public-private partnerships, to determine how to reach unserved Americans with broadband technology.<sup>15</sup>

**The FCC should collaborate with mapping experts to establish uniform data reporting standards.**

Contrary to Verizon's recommendation, the Commission can and should take on a role significantly greater than that of Verizon's proposed FCC responsibilities of serving as a "clearinghouse" of maps and best practices.<sup>16</sup> Rate Counsel urges the FCC, in consultation with national and state mapping experts, to establish explicit standard data

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<sup>14</sup> / See Rate Counsel, at 9.

<sup>15</sup> / Rate Counsel has argued elsewhere that actual and planned broadband deployment mapping be incorporated into the obligations of those receiving Universal Service funds. See *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-22, rel. January 29, 2008, *Rate Counsel Initial Comments*, April 17, 2008, at 25-26.

<sup>16</sup> / Verizon, at 2. See also *Connected Nation July 14, 2008 Ex Parte – Connected Nation's Proposal for National Broadband Availability Mapping ("Connected Nation Ex Parte")*, at 5.

reporting requirements for all broadband providers.<sup>17</sup> The Commission should establish immediately an ad hoc working group to establish data reporting requirements that will be compatible with state and federal mapping programs, with the specific objective of determining standards that can be included in the FCC's order to be issued within the FCC's intended 4-month period.<sup>18</sup> Alternatively, *en banc* hearings may assist the FCC in identifying data standards. It is critically important that if any ad hoc group is formed, it focus on identifying underserved and unserved areas, and that it include mapping experts, state regulators, and consumer advocates as well as industry representatives.

**Telecommunications service providers should submit requisite data to the FCC and to the states.**

In order to gauge the nation's success in broadband deployment, the Commission must elicit data from service providers. The best data will allow the Commission to determine with pinpoint precision where broadband is available, and where it is not. This requires services providers to submit geocodings of all addresses where broadband is deployed and available to consumers.

Another method of creating the map of broadband availability would be for the Commission to collect network architecture data from service providers. This would allow the Commission to determine where equipment essential to broadband, such as DSLAMs, are located, as well as where obstructions, such as bridge taps, hinder broadband availability. The Commission would also be able to determine what areas are too far from a central office to receive DSL service.

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<sup>17</sup> / See also Rate Counsel, at 10-11.

<sup>18</sup> / FNPRM, at para. 35.

Less optimal would be the use of broadband subscribership as a proxy for availability. Rate Counsel concurs with Verizon that broadband subscribership lists provide a useful telltale for broadband availability,<sup>19</sup> but because the Form 477 data will correspond with a potentially large geographic area,<sup>20</sup> the lists may not be sufficient. Therefore, ideally, providers would submit geocoded lists of their broadband subscribers, which the FCC can match against a master address list of all potential residential broadband subscribers.

A master database consisting of the geocoded addresses of all potential residential broadband subscribers would assist states and the Commission in measuring national success in achieving ubiquitous broadband deployment. Rate Counsel acknowledges that such an undertaking could be formidable. A preliminary master database could be based on state's E-911 databases (particularly for those states for which such databases have been geocoded already)<sup>21</sup> and also could be populated by carriers' customer lists, by requiring telecommunications and cable companies to geocode the location of their residential customers (including customers of basic telephone service, DSL, cable Internet access, and cable television service). Through such efforts, the

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<sup>19</sup> / Verizon, at 1.

<sup>20</sup> / CU, *et al* points out that in some rural areas, Census Tracts are so large that they encompass several ZIP codes. Thus, in some cases, moving from reporting on the level of the ZIP code to reporting on the Census Tract level will result in *less specific* data. In contrast, reporting at the Census Block level will result in the same or greater granularity as reporting at the ZIP code level. *See* CU, *et al*, at 14-15.

<sup>21</sup> / The FCC should require those telecommunications service providers that are responsible for maintaining E911 databases to make them available to the FCC. Although states' E911 databases represent a reasonable foundation for a master address database, locations of "cord cutters" may not be included in the E911 database.

telecommunications and cable industry could assist the Commission in establishing a national database of potential broadband subscribers.<sup>22</sup>

The recent Form 477 reporting changes will take effect with the March 2009 reporting of 2008 year-end data. However, contrary to Verizon's recommendation,<sup>23</sup> the Commission should not postpone its mapping efforts until March 2009, but rather should take steps now to design uniform mapping requirements. There is necessarily a delay between issuing new reporting requirements and analyzing the first batch of the resulting data. The Commission cannot afford to take a "wait and see" attitude toward the collection of broadband deployment data.

Rate Counsel also urges the Commission to coordinate its national broadband availability map with the data it gathers as a result of its new Form 477 reporting requirements, but not to rely solely on subscribership data to show availability. The Commission made its broadband reporting requirements more granular by requiring broadband service providers (wireline, terrestrial fixed wireless, and satellite) to submit subscriber counts by Census Tract.<sup>24</sup> Census Tracts, however, can cover large geographic areas, particularly in the nation's more remote regions where broadband is more likely to be lacking. Therefore, the Form 477 data, although instructive, likely will

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<sup>22</sup> / Such a database would fail to reflect those households that are entirely "disconnected" from the information age, that is those who do not subscribe to basic telephone, DSL, cable-based Internet, or cable television.

<sup>23</sup> / See Verizon, at 4-5.

<sup>24</sup> / *Form 477 Order*, at para. 14. Previously, broadband service providers provided subscribership data at the state level, and listed all ZIP codes with at least one customer. Also, broadband service providers will report residential customers separately from business customers, and will group customers by the upload and download speeds of service provided. *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, *Order on Reconsideration*, rel. June 12, 2008, at para. 7 and n. 16.

not be sufficient to target unserved areas. Therefore, Rate Counsel agrees with CU, *et al* that broadband availability should be reported at the more granular level of Census Block, or even better, at the address level.<sup>25</sup>

**Data should be transparent and available for public review.**

Broadband is rapidly becoming an *essential* utility, on par in importance with voice telephone service, electricity, water, and sanitation. Unfortunately, though, much of the nation remains underserved by broadband access providers, often with the choice of broadband providers limited to the local ILEC and the local cable company. In isolated or rural areas, or areas lacking “profitable demographics,” no one at all offers broadband access. This is a clear example of a market imperfection.

By definition, those markets that are not attracting private capital for broadband deployment require public intervention just as national efforts were needed in the past to extend highways, and to encourage rural electrification. Effective policy design depends on quality information, which also supports economically efficient transactions. As such, Commission involvement, specifically seeking and distributing essential broadband deployment information, will assist in ensuring that all Americans have access to broadband technology.

The Commission’s first step in achieving ubiquitous broadband availability must be to ascertain what areas are unserved. Contrary to the concerns raised by industry,<sup>26</sup> such broadband availability data should be transparent and verifiable by interested

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<sup>25</sup> / CU, *et al*, at 2 and 15.

<sup>26</sup> / CTIA – The Wireless Association ® (“CTIA”), at 6-7; Frontier Communications, at 1-2; NCTA, at 6-7. Those urging more transparency include KY PSC, at 2; Municipal Utilities, at 5-7; National Association of Telecommunications Officers and Advisers (“NATOA”), at 9; CU, at 3.

parties. Comments in this proceeding show broad support for making the maps and analyses publicly available.<sup>27</sup>

**The methods employed by Connected Nation have proved useful in collecting data that the Commission requires.**

Rate Counsel urges the Commission to analyze the methods Connected Nation has used to gather the data necessary for statewide broadband availability maps.<sup>28</sup> Connected Nation takes a field-based approach, customizing data collection to the conditions at hand, and to the limitations of service providers. This approach directly addresses and overcomes the obstacles cited by some commenters – that the data is difficult or burdensome to gather, and that the data is unavailable.<sup>29</sup> In its comments Connected Nation provides a detailed description of the steps it takes in working with service providers – steps that take the pain out of reporting.<sup>30</sup>

The Connected Nation methodology largely achieves the goals that the Commission should require. Connected Nation 1) collects granular data, 2) solicits corrections from consumers as conditions change, and 3) makes the final product available to all.

In addition to Kentucky, Connected Nation apparently has already achieved some success in Tennessee, Ohio, West Virginia, and South Carolina. Connected Nation’s

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<sup>27</sup> / See KY PSC, at 2; ALA, at 2; NATOA, at 2 and 9; U.S. Chamber of Commerce, at 2.  
<sup>28</sup> / Connected Nation provides a summary of its methods in its initial comments at pages 9-11.  
<sup>29</sup> / See, for example, AT&T, at 2-4, CTIA, at 5-6, Texas Statewide Telephone Cooperative, Inc. (“TSTCI”), at 2, Windstream, at 2. Connected Nation Ex Parte, at 2.  
<sup>30</sup> / Connected Nation, at 9-11.

results in each state are accessible on their respective websites.<sup>31</sup> The South Carolina website shows three types of maps – a basic broadband availability map, a map showing the number of households unserved by a broadband provider in each census block, and another map showing the density of households unserved by a broadband provider in each census block. The first map is the most important for the purpose of determining where broadband is unavailable. The other two maps, however, add valuable demographic context to the raw data. By color-coding the map according to the number of unserved households by census block, Connected Nation pinpoints areas that are ripe for broadband development. The map showing density of households without broadband access highlights the areas where new deployment can have immediate impact on the largest number of households.

The Connected Nation projects in Kentucky, Tennessee, Ohio, and West Virginia go a step further in achieving detailed information about broadband availability. These websites include not only the static maps like those produced for South Carolina, but also interactive maps that allow users to zoom in to street level, choose an exact point, and then determine which carriers provide service to the area. The user interface provides direct links to the websites of the companies providing service. Users can also enter an address in text form to determine which carriers provide service. The ConnectedTennessee website also features maps showing residential upload and download speed. The ConnectOhio website shows broadband adoption rate by county compared to the statewide average. Connected Nation demonstrates clearly through its

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<sup>31</sup> / See <http://www.connectkentucky.org/>, <http://www.connectedtennessee.org/>, <http://www.connectohio.org/>, <http://www.connectwestvirginia.org/>, [http://www.connectednation.com/state\\_programs/south\\_carolina.php](http://www.connectednation.com/state_programs/south_carolina.php).

five statewide projects the feasibility of obtaining in-depth knowledge about broadband deployment, adoption, and speed tiers.

**Simple improvements to Connected Nation’s methodology can provide the Commission with more complete broadband data.**

Connected Nation’s maps still lack some of the detail that Rate Counsel encourages the Commission to obtain. For example, instead of providing any sort of coding as to how many carriers provide service in an area, Connected Nation’s maps simply label areas as “broadband available,” “mobile wireless available,” and “broadband likely available.” The Commission should endeavor to determine not only those areas that lack broadband altogether, but also those that are served only by a monopoly or duopoly. A coding showing the number of providers would be a useful improvement.<sup>32</sup>

As Rate Counsel noted in initial comments, the most useful mapping program would incorporate data about service speed and pricing, as well as availability. The speed maps for Tennessee represent a step in the right direction, but could be improved further by displaying more granular data (the map simply compares speeds for the county averages with the statewide average).

Another concern with the methods employed by Connected Nation is the confidential treatment of the underlying data. Rate Counsel echoes the concerns of Municipal Utilities who argue that broadband availability data should not be “privatized.”<sup>33</sup> Indeed, it is important for the Commission, as well as state regulators, to

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<sup>32</sup> / See, e.g., Joint Comments of The Massachusetts Department of Telecommunications and Cable and The Maine Public Utilities Commission, June 15, 2007, Attachment, in Docket No. 07-38.

<sup>33</sup> / See Municipal Utilities, at 3; KY PSC, at 3; NATOA, at 2; ME PUC, at 2-4. Referencing the confidential treatment of broadband data submitted to the FCC, ALA stated, “To be blunt, keeping this information cloistered within the FCC or a small select group will do nothing to help the very organizations, like ALA, that are working to solve the connectivity crisis for their constituent groups.” (ALA, at 2.)

know where broadband is available, and where it is not. The Commission should not allow any third party (including Connected Nation) to become the sole repository of broadband deployment data.

In addition, Rate Counsel echoes ME PUC's request that the FCC "reconsider its decision finding that all information submitted pursuant to Form 477 be considered confidential. The availability of a broadband provider's services, in a specific geographic area, is the quintessential piece of information required by a potential customer."<sup>34</sup>

If, however, contrary to Rate Counsel's and others' recommendation, the Commission treats broadband deployment data as confidential information, it should at the very least allow state regulators and consumer advocates to obtain the data for review. State regulators and consumer advocates have no financial interest in allegedly proprietary information, and have a long tradition of handling proprietary information properly. The Commission should not hamstring state officials even as it makes progress in promoting ubiquitous broadband service.<sup>35</sup>

Rate Counsel also recommends that the Commission investigate the concerns that have been raised about the way in which the success of Connected Nation is being measured and about Connected Nation's "privatization" of broadband mapping. For example, CU, *et al*, while seeing some value in Connected Nation's efforts, questions the degree of success attributable to Connected Nation.<sup>36</sup> Municipal Utilities express concern that Connected Nation's practices allow for broadband availability information to be

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<sup>34</sup> / ME PUC, at 4.

<sup>35</sup> / See Rate Counsel's initial comments filed August 1, 2008 in the parallel phase of this proceeding.

<sup>36</sup> / CU, *et al*, at footnote 4.

“privatized,” Connected Nation is not subject to significant oversight, and Connected Nation is under no obligation to share data with local, state, or federal governments.<sup>37</sup>

Rate Counsel welcomes public-private mapping collaboration. However, Connected Nation should be subject to some type of outside evaluation before the Commission embraces it wholeheartedly. Furthermore, the Commission should also seek the views of state government agencies as it establishes its blueprint for broadband mapping.<sup>38</sup>

**The Commission should reject Verizon’s recommendation to “wait and see.”**

As Rate Counsel explains above, delay in data gathering would only delay efforts to target affordable broadband service where it is now lacking. The Commission should also discourage industry from using the “wait and see” reasoning as a way to avoid reporting obligations. As NATOA stated, the role of the FCC is not to protect the industry, but rather to “ensure the development of a competitive broadband market by working to ensure that the public has full access to relevant information about the providers and their offerings.”<sup>39</sup>

**III. CONCLUSION**

Rate Counsel fully supports the Commission’s efforts to using mapping technology to determine unserved or underserved areas in the United States. The progress made by Connected Nation in working through the difficult task of collected and organizing huge quantities of data from many sources is proof that nationwide broadband mapping is possible. In summary, Rate Counsel recommends that the Commission:

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<sup>37</sup> / Municipal Utilities, at 4.

<sup>38</sup> / CA PUC provides examples of its progress in mapping broadband services.

<sup>39</sup> / NATOA, at 8.

- Meet the expedited four-month schedule that it set forth in the FNPRM.
- Not await federal legislation, but rather move forward in a timely manner;
- In consultation with national and state mapping experts, establish standard data reporting requirements: The FCC could establish an ad hoc working committee in a timely manner to enable an order to be issued within the 4-month period contemplated by the FCC that sets forth explicit data reporting requirements.
- Require all broadband providers to submit geocoded information not only to the FCC but also to state regulators and consumer advocates;
- Reject the industry's arguments about the purportedly burdensome nature of reporting.
- Coordinate with the appropriate state and federal agencies to incorporate relevant data layers in the broadband mapping data base (e.g., socioeconomic factors, political boundaries, open space boundaries, etc.).
- Capture the Form 477 information that will be forthcoming in the data layers that are created in the national broadband mapping data base.
- Make the national broadband map available to the public.
- Update the map at least semiannually.<sup>40</sup>

Respectfully submitted,

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August 1, 2008

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<sup>40</sup> / Rate Counsel disagrees with CTIA's assertion that the time gap between data reporting and the Commission's finished product would make the mapping immediately out of date and would confuse consumers. CTIA, at 4. Form 477 data is reported semiannually, and would provide valuable information.