

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Development of Nationwide Broadband Data)	WC Docket No. 07-38
to Evaluate Reasonable and Timely)	DA 08-1586
Deployment of Advanced Services to All)	
Americans, Improvement of Wireless)	
Broadband Subscribership Data, and)	
Development of Data on Interconnected)	
Voice over Internet Protocol (VoIP))	
Subscribership)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS – Section IV(B)**

The National Telecommunications Cooperative Association (NTCA)¹ files these reply comments in response to initial comments filed July 17, 2008, regarding the Federal Communications Commission’s (Commission’s or FCC’s) June 12, 2008, Report and Order and Further Notice of Proposed Rulemaking (NPRM) on Section IV(B) regarding the development of nationwide broadband data through broadband availability mapping.² NTCA maintains that the FCC should analyze its new broadband census tract data before imposing additional reporting requirements. Implementing an address-by-address availability system for customers will prove problematic. The Commission should allow state mapping involvement and efforts to proceed

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents over 580 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In 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, Further Notice of Proposed Rulemaking, (rel. June 12, 2008) (FNPRM), ¶ 34.

while collecting additional broadband mapping data only for specific, reasonable purposes, and protecting privacy and build-out plans. Finally, the Commission should allow a one-year mitigation for small rural broadband providers.

I. The Commission Should Analyze Its New Broadband Census Tract Data Before Imposing Additional Reporting Requirements.

Beginning with the March 2009 filing of year-end connection data as of December 31, 2008, all facilities-based providers of wired, terrestrial fixed wireless, and satellite broadband connections must report the number of connections in service to households and businesses by census tract, separated by category and eight tiers of service speed.³ Terrestrial mobile wireless broadband providers must provide the census tract that best represents their service footprint.⁴ Alternatively, reporting entities can file a list of service addresses or GIS coordinates, with the speed and broadband connection technology by address.⁵ Called a means to collect a “rich trove of data,” the new Form 477 will glean broadband information at the census tract level, instead of the former five-digit zip code system.⁶

Many small rural carriers will find it difficult to revise their Form 477 databases to track availability by census tract since their systems currently use the five-digit zip code system. NTCA cited several examples in its June 15 initial comments of the difficulties that small rural carriers will face in changing their Form 477 reporting systems to accommodate a 9-digit zip code system.⁷ NTCA applauds the Commission for stepping away from that mapping method;

³ NPRM, ¶¶ 14, 20.

⁴ *Id.* at ¶ 16.

⁵ *Id.* at ¶¶ 15, 32.

⁶ Independent Telephone & Telecommunications Alliance (ITTA) Comment, p. 3.

⁷ NTCA Initial Comments (filed June 15, 2007), pp. 5-9.

still, the fact remains that many rural carriers will have to make changes in their systems to accommodate census tract data.

Texas Statewide Telephone Cooperative (TSTCI) said that none of its members currently use census tract information, so each member will have to develop new methods to create, retain and update census tract information.⁸ “This will be expensive in terms of time, resources, and database changes ... [which] will be passed along to ... the consumers,” according to TSTCI, and NTCA concurs in that assessment.⁹ Small rural carriers will need to find an efficient way to associate each specific street address with a particular census tract and develop the means to track the information. This is likely to entail the creation/modification and verification of software plus data input, which will take time. Noted in NTCA’s previous comments is one member’s view that it would take his software provider at least six months to provide the software enhancements and at least two weeks to enter and verify data in the new format.¹⁰ The Commission’s March 2009 deadline may not provide enough time for him or other small entities to comply with this mapping mandate.

The Commission should allow rural broadband providers to focus on implementing the new reporting census tract system, and should analyze the results of those efforts, before the Commission imposes any further requirements as suggested in Section IV(B) of the NPRM.¹¹ NTCA agrees with AT&T that the Commission should review the purposes for new regulations on broadband mapping.¹² Verizon Wireless correctly said that the new census-tract-based

⁸ Texas Statewide Telephone Cooperative (TSTCI) Comment, p. 3.

⁹ *Ibid.*

¹⁰ NTCA Initial Comments (filed June 15, 2007), pp. 7-8.

¹¹ NPRM, ¶¶ 34, 35.

¹² AT&T Comment, p. 4.

mapping collection system for the revised Form 477 will “obviate the need for additional, burdensome reporting requirements” such as those necessary to build and maintain a national map of broadband availability.¹³ CTIA and Frontier also question the necessity of additional broadband action and any merit in collecting data beyond the existing Form 477 parameters.¹⁴ The commission should first allow small rural broadband providers to adapt to the new census tract reporting system before the Commission imposes additional requirements.

II. Implementing An Address-By-Address Availability System For Prospective Customers Will Prove Problematic For Small Carriers.

The Commission’s tentative conclusion in Section IV(B) of the NPRM that it should require broadband providers to collect address-by-address service availability information for prospective customers will pose new problems for all broadband providers.¹⁵ A new mapping requirement for prospective customers will harshly affect small rural broadband providers who do not currently populate their databases with this level of information.¹⁶ CTIA acknowledges this problem in its comments, reminding the Commission that its members’ broadband availability maps are *representative* maps, not actual depictions, of service availability.¹⁷ Frontier also admits that it does not collect address-by-address data for prospective customers.¹⁸ Questions arise in regards to this tentative conclusion: What is the address to be used – the billing address, the residential address? What is the geographic location to be used? Identifying

¹³ Verizon Communications Inc. and Verizon Wireless Comment, p. 1.

¹⁴ CTIA Comment, pp. 1, 5; Frontier Comment, p. 3.

¹⁵ NPRM, ¶ 35.

¹⁶ *In accord*, ITTA Comment, p. 4.

¹⁷ CTIA Comment, p. 2.

¹⁸ Frontier Comment, p. 3.

the appropriate address in a technology-neutral yet consistent manner for all broadband providers will be difficult, as will be implementing new reporting systems.

The American Cable Association insightfully observed that the proposed reporting requirements involving an address-by-address information system “will significantly add to the cost of serving subscribers in these low-density areas.”¹⁹ Connected Nation, the non-profit organization that is coordinating more than five public-private partnerships in developing state-level broadband maps, observed that an address-by-address mapping information system will be difficult for small rural areas because few rural broadband providers have that level of data readily available.²⁰ The California Public Utility Commission accurately predicts that the Commission would be adopting a huge administrative burden on itself, as well as on broadband providers, if the Commission proceeds with an address-by-address reporting system.²¹

III. Allow State Involvement Efforts To Proceed.

The Commission seeks 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.”²² Any Commission efforts to create a nationwide broadband mapping program should not be designed to hinder states that want to implement their own state-specific version of a broadband deployment map. Statewide maps, rather than a nationwide map, will produce more accurate and granular deployment and availability maps due to the reduced scale. TSTCI concurs.²³

¹⁹ American Cable Association Comment, p. 2.

²⁰ Connected Nation Comment, pp. 9, 10.

²¹ CA PUC Comment, p. 18.

²² NPRM, ¶ 35.

²³ TSTCI Comment, p. 4.

Kentucky is a well-known example of state broadband mapping through the efforts of ConnectKentucky. Ohio, Massachusetts, West Virginia, Maine and Tennessee reportedly have ConnectKentucky-style or other statewide mapping programs under way.²⁴ While a ConnectKentucky-style mapping system may not work in every state, these states and others should not be hindered from proceeding by a national program.

California reportedly has two separate broadband mapping projects in place, both designed to examine the number of broadband providers in each census tract, the broadband penetration by county.²⁵ North Carolina and Wyoming also have mapping studies occurring in their states.²⁶ Any new reporting measures the Commission chooses to adopt should not hinder these and other statewide mapping efforts.

IV. Collect Broadband Mapping Data For Specific, Reasonable Purposes.

The Commission also asks in Section IV(B) of the NPRM “whether there are other sources from which the Commission should collect data to improve the output of the broadband service availability mapping program.”²⁷ The purpose of a broadband mapping program is to comply with the Commission’s obligations under Section 706 of the Act to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”²⁸ Another stated purpose for mapping is to allow the Commission to better work with the United States Department of Agriculture’s Rural Utility Service in targeting areas

²⁴ CTIA Comment, p. 4; Connected Nation Comment, p. 5; Frontier Comment, p. 2; Joint Comments of the Maine Public Utilities Commission and Connect Maine Authority Comment, p. 1; New Jersey Division of Rate Counsel Comment, p. 7.

²⁵ “State Regulators Compare Methods To Implement Broadband Mapping,” TR Daily, July 22, 2008.

²⁶ *Ibid.*

²⁷ NPRM, ¶ 35.

²⁸ 47 USC Sec. 157.

that need broadband deployment.²⁹ Data garnered from FCC Form 477 are intended for those purposes. Frontier's position that only Form 477 data should be collected, rather than other types of broadband deployment data, has merit.³⁰ The Commission should not implement any new rules that gather broadband mapping data from sources outside FCC Form 477 unless the Commission reasonably approves the purposes for which the additional data are gathered and the foreseeable uses of the data.

TSTCI acutely observes that a nationwide mapping program will be a "mammoth and expensive undertaking for the Commission or any other agency involved, as well as for broadband providers."³¹ A heavy share of this burden will fall squarely on the shoulders of small rural carriers and their customers. Any additional burden in terms of producing or reporting additional information will increase that burden. Before increasing the burden, the Commission should examine what it (and others) will do with the data.

V. Protect Privacy And Build-Out Plans.

The Commission may share the mapping data with other federal and state agencies, local governments, and public-private partnerships.³² NTCA affirms its position that the FCC should protect broadband consumers' privacy interests and broadband providers' competitive interests by shielding proprietary information, especially carrier build-out plans, that may be provided on the FCC Form 477 and through statewide mapping efforts from public disclosure.³³ ITTA urges

²⁹ NPRM, ¶ 35.

³⁰ Frontier Comment, pp. 2-3.

³¹ TSTCI Comment, p. 2.

³² NPRM, ¶ 35.

³³ NTCA Initial Comment (filed June 15, 2007), pp. 12-13; ITTA Comment, p. 5.

the Commission not to allow others to use the broadband mapping data to glean a competitor's build-out plans.³⁴ NTCA agrees.

Commenters such as the American Public Power Association, who dismiss the privacy concerns that NTCA and other telcos advance, clearly do not care whether certain telco commercially sensitive information, such as telco carrier build-out plans, are revealed.³⁵ Indeed, municipal utilities, who may compete against telcos using municipal networks and/or broadband over power line (BPL) technologies and through pole attachment negotiations, may gain a corporate advantage by seeing their competitors' fiber, wireless and DSL build-out intentions. Other commenters who do not have a vested interest in competing against telcos may not realize that there may be no limit on the amount of data that could be sought under the NPRM, even a carrier's build-out plans.³⁶ Revealing these intentions do not illuminate broadband availability but may cause carriers to retract broadband deployment plans.

The Commission recognizes its obligation to protect proprietary and commercially sensitive information from public disclosure pursuant to 5 U.S.C. § 552, 47 C.F.R. § 0.457(d), 0.459(d) while subject to Freedom of Information Act disclosure rules. Broadband providers will be reluctant to submit private consumer information and confidential commercial data unless the providers and consumers are assured their data will remain confidential. ITTA agrees.³⁷ Data validity is critical to the overall success of broadband mapping. The FCC is authorized to share its information with other government agencies, as demonstrated when the United States Department of Justice, Antitrust Division, seeks carrier-specific local number portability (LNP)

³⁴ ITTA Comment, p. 5.

³⁵ American Public Power Association, et al. Comments, p. 7.

³⁶ Illinois Attorney General Comment, pp. 2, 10.

³⁷ ITTA Comment, p. 5.

data in the context of a merger review.³⁸ The Commission should keep these disclosure sensitivities in any distribution of aggregate or disaggregated data that may result from the newly-revised Form 477.

VI. A One-Year Mitigation for Small Rural Broadband Providers Is Necessary.

NTCA renews its request that the Commission adopt mitigation measures for any increased broadband reporting regulatory burdens, including a one-year implementation time. Commission has already declined to consider exempting small rural providers from the burdens of census tract mapping. As discussed earlier in this paper, many rural broadband providers do not currently use or can implement an address-by-address database for prospective customers.

The Commission's obligations under the Regulatory Flexibility Act of 1980 (as amended) (RFA) require the Commission to examine ways to reduce regulatory burdens on small entities, such as NTCA's members.³⁹ The NPRM's Final Regulatory Flexibility Act analysis refers to the Commission's efforts at compromise by permitting census tract hardship cases to provide an address-by-address list of broadband service by speed and technology.⁴⁰ The Commission states its new census tract rules are appropriate because of the absence of data regarding the number of employee hours or monetary costs required to comply with 9-digit zip code data, which the Commission originally sought.⁴¹ This RFA analysis will not obviate the

³⁸ 44 U.S.C. § 3510, 47 C.F.R. § 0.442(d); *Notice of Request for Access to Carrier Data Filed in the Numbering Resource Utilization and Forecast Reports (NRUF)*, CC Docket No. 99-200, DA 08-1583 (rel. July 2, 2008) (FCC seeks comment on release of disaggregated carrier-specific wireless data in proposed ALLTEL corporation acquisition by Verizon).

³⁹ 5 U.S.C. § 603.

⁴⁰ NPRM, Appendix D, ¶ 4.

⁴¹ *Ibid.*

regulatory burdens (both expected and unanticipated) that compliance with new census tract data reporting systems will cost small entities time and money.

Compliance with the new census tract provisions and any new broadband mapping requirements will strain small rural broadband providers' resources and divert deployment efforts away from providing new and improved broadband services to their customers in rural America. The Commission, if it adopts any further broadband mapping directives, should include at least a year's implementation time for small rural broadband providers.

VII. Conclusion.

For these reasons, the Commission should analyze its new broadband census tract data before imposing additional reporting requirements. Implementing an address-by-address availability system for customers will prove problematic. The Commission should allow state mapping efforts to proceed while collecting additional broadband mapping data only for specific, reasonable purposes, and protecting privacy and build-out plans. Finally, the Commission should allow a one-year mitigation for small rural broadband providers.

Respectfully submitted,

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August 1, 2008

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 07-38, DA 08-1586, was served on this 1st day of August, 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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