

**Before the
Federal Communications Commission
Washington DC 20554**

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

**JOINT REPLY COMMENTS OF VERIZON¹ AND VERIZON WIRELESS
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

I. Introduction and Summary.

The record on the Commission’s *Further Notice*² confirms that the Commission should not adopt the proposed additional reporting requirements on broadband providers, including data concerning the “actual” speeds or prices of broadband services. Such data would be burdensome to collect and difficult (if not impossible) to report in an accurate and useful manner, and are, in any event, unnecessary given the data already available to the public and the Commission and in light of the competitive nature of the broadband marketplace. At a minimum, the Commission should wait until it collects and analyzes the wealth of new data that will be available pursuant to the recent revisions to the Form 477 before determining whether additional broadband reporting requirements are appropriate and

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² *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*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 07-38 (rel. June 12, 2008) (“*Further Notice*”).

justified in light of the associated burdens.³ Finally, the record here confirms the importance of preserving the confidentiality of the competitively sensitive information that broadband providers report to the Commission.

II. The Commission Should Not Require Broadband Providers To Report “Actual” Broadband Speeds.

The record here broadly confirms the Commission’s previous conclusions concerning the difficulty and impracticality of requiring broadband providers report the “actual” or achieved broadband speeds delivered to specific customers.⁴ The vast majority of commenters echo Verizon’s comments – and the Commission’s earlier recognition – that broadband speeds actually experienced by a customer are affected by numerous factors – such as the quality of the wiring in the customer’s home, the network equipment used by the customer, the applications in use, speeds of other backbone Internet providers, and server performance for web-based transactions – none of which could be accurately captured or reported by broadband providers. *See, e.g.,* Verizon Comments at 6-7.

³ *See, e.g.,* Comments of the Wireless Communications Association International, Inc. (“WCA Comments”) at 2-3; Comments of Embarq Corporation (“Embarq Comments”) at 3; Comments of Time Warner Cable Inc. (“Time Warner Comments”) at 2-4; Comments of Verizon and Verizon Wireless (“Verizon Comments”) at 3-4.

⁴ *See Local Competition and Broadband Reporting*, Report and Order, 19 FCC Red 22340 ¶ 27 (2004) (declining to require the reporting of actual broadband speeds because “[t]he record of this proceeding does not identify a methodology or practice that currently could be applied, consistently and by all types of broadband filers, to measure the information transfer rates actually observed by end users”); *Further Notice* ¶ 36 (noting that “factors beyond the control of service providers may compromise the ability of service providers to report actual speeds experienced by consumers”); Comments of AT&T Inc. (“AT&T Comments”) at 3-5; Comments of Qwest Communications International, Inc. (“Qwest Comments”) at 2-3; Comments of Frontier Communications (“Frontier Comments”) at 2-3; Embarq Comments at 7; Time Warner Comments at 5-6; Comments of CTIA – The Wireless Association® (“CTIA Comments”) at 2-3; Comments of the Independent Telephone & Telecommunications Alliance (“ITTA Comments”) at 3; Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance (“OPASTCO Comments”) at 5-6; Comments of the National Cable & Telecommunications Association (“NCTA Comments”) at 4-5.

Indeed, even parties that are generally in favor of additional reporting requirements seem to acknowledge the problems with reporting “actual” or “achieved” speeds. As the Communications Workers of America (“CWA”) correctly notes, “Broadband providers do not know the actual speed with which customers connect to the Internet at a particular time and place.” CWA Comments at 8. Likewise, various consumer groups concede that determining actual broadband speeds is “incredibly subjective” and that collecting speed data “is difficult even under controlled conditions.”⁵

To the extent that the Commission seeks to collect information concerning speeds achieved by consumers, it should focus its efforts on voluntary “speed tests” that consumers could use to determine the speed that they are experiencing at a particular point in time. For example, CWA recommends that the Commission collect data on actual broadband speeds by means of a “voluntary registry” that consumers would use to self report the broadband speeds they experience. CWA Comments at 8; Verizon Comments at 7-8.⁶

The Commission should not, however, follow the suggestion of some consumer groups to require the reporting of “contention ratio information” in place of speed reporting.

⁵ Further Comments of Consumers Union, *et al.* (“Consumers Union Comments”) at 14.

⁶ That consumers may “not always know what speeds they are actually experiencing,” Comments of the New Jersey Division of Rate Counsel (“NJRC Comments”) at 11, ignores the variety of tools available to consumers to ascertain that information. For example, the “highly-popular Internet speed test” sponsored by CWA (www.speedmatters.org) allows consumers to test the speed of their broadband connection and to “zoom down to see median speeds by county and zip code.” CWA Comments at 7-8; *see also* Comments of the American Library Association at 2 (noting the availability of www.broadbandcensus.com website, which “allows visitors to conduct a broadband speed test ...”). Furthermore, a customer’s lack of knowledge about the broadband speeds he or she actually experiences is hardly justification for requiring broadband providers to report such information, as the New Jersey Rate Counsel advocates, particularly when broadband providers do not know the speeds actually experienced by customers and given the numerous technical limitations on their ability to collect and report such information. *See Further Notice* ¶ 36.

Consumers Union Comments at 15-16. As described by these groups, a “contention ratio” would purport to reflect the “oversubscription level” of a broadband network by dividing “the amount of bandwidth devoted to broadband” by “the number of broadband subscribers.” *Id.* at 15, n.38. Putting aside the obvious challenges in determining which facilities are devoted to which subscribers and which services, a “contention ratio” would mean nothing to the typical consumer and little, if anything, to policymakers. Indeed, given the different technologies used to provide broadband, and many variables that would go into determining a “contention ratio,” the resulting data are unlikely to be of any practical use or relevance. The laborious task of ascertaining contention ratio data, presumably at a central office or even more granular level such as a remote terminal or a neighborhood cable node, moreover, would be inconsistent with the Commission’s larger broadband objectives. Requiring providers to collect and report granular data about the architecture of their broadband networks – such as having telephone providers identify and describe the broadband capacity of every trunk in every central office – would drain significant time and resources better devoted to expanding broadband service.

Given the difficulties, burdens and dubious practical value of requiring the reporting of “actual” speeds – or proxies such as “contention ratios” – the Commission should decline to impose additional reporting requirements on broadband providers.

III. The Commission Should Not Require Broadband Price Reporting.

The Commission should also decline to require providers in the competitive broadband marketplace to report prices. Such a reporting obligation would be difficult to satisfy in a way that accurately reflects the prices that consumers pay for their broadband services. And in any event, price reporting is unnecessary in a competitive marketplace like broadband. Indeed, in light of robust and emerging competition, the Commission has

eliminated broadband price regulation, noting that doing so would allow broadband providers to respond to competitive demands in “an efficient, effective and timely manner” and would remove an “unnecessary constraint” in order to “promote competitive market conditions.”

Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Report and Order, 20 FCC Rcd 14853, ¶¶ 19, 93 (2005), *aff'd Time Warner Telecom v. FCC*, 507 F.3d 205 (3d Cir. 2007) (“*Wireline Broadband Order*”). To the extent the Commission is concerned about broadband prices, it has a wealth of existing resources from both public and private entities that currently collect and report data regarding broadband prices.⁷

The majority of commenters agree that various proposals to require broadband providers to report pricing information are flawed and would not provide either the Commission or consumers with meaningful information.⁸ Given the variety of offers and pricing plans available and the dynamics of broadband pricing, it is impractical and unduly burdensome to impose on broadband providers the obligation to report broadband prices, given the rapid pace of change in the marketplace and the variety of offerings and benefits offered to consumers. While a handful of commenters argue otherwise, their positions are internally inconsistent, and the burdensome broadband price reporting requirements they advocate cannot be reconciled with Congress’s mandate that the broadband market be “unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(2).

⁷ See, e.g., Home Broadband Adoption 2008, Pew Internet & American Life Project at 7 (July 2008) (available at http://www.pewinternet.org/pdfs/PIP_Broadband_2008.pdf); BEN MACKLIN, BROADBAND PRICES & BUNDLES: INTERNATIONAL TRENDS (July 2006) (http://www.emarketer.com/Reports/All/Bband_pricing_aug06.aspx); 2006 U.S. BROADBAND USAGE AND ATTITUDES SURVEY (2007) (http://www.reportbuyer.com/teelcoms/broadband/2006_u_s_broadband_usage_attitudes_survey.html).

⁸ AT&T Comments at 6-14; Embarq Comments at 7; Frontier Comments at 3-4; Qwest Comments at 3-4; Time Warner Comments at 6-7; CTIA Comments at 3-5; ITTA Comments at 4; NCTA Comments at 2-4; OPASTCO Comments at 6; WCA Comments at 4-5.

For example, the New Jersey Rate Counsel endorses a requirement that broadband providers report broadband pricing information, but suggests that the reported prices be calculated in a way that ignores many of the benefits and discounts available to consumers. NJRC Comments at 13 (arguing that reported prices should not reflect the benefit of promotions or introductory prices and should reflect “the lowest (non-promotional) price available for broadband service within each speed tier”). This approach would provide a distorted view of this competitive marketplace, contrary to the Rate Counsel’s avowed interest in securing “a more complete picture about the affordability of broadband.” *Id.*

Similarly, some consumer groups urge the Commission to adopt price reporting requirements that would necessitate the manipulation of pricing data in a manner not reflective of the actual broadband prices paid by customers. For example, these consumer groups propose that the Commission ignore discounts broadband customers receive for entering into long-term contracts and add to the cost of broadband service any “cancellation fee” on an amortized basis (whether or not a customer ever incurs this fee). Consumers Union Comments at 10-12. Here again, such proposals would distort broadband prices by overstating the prices broadband customers actually pay and would not result in information reflective of “the true cost of purchasing broadband service.” *Id.* at 3.

Even some advocates of a requirement that broadband providers report pricing information concede that such information would be “useless” given that broadband prices change “so rapidly.” Comments of the American Library Association at 2. But their “solution” – that the Commission build and maintain a website or database “to capture near real-time changes in broadband prices” – also should be rejected. *Id.*; NJRC Comments at 14. Such a reporting regime would resemble common-carrier regulation by imposing tariff-like filing requirements on broadband providers – a regime inconsistent with the

Commission's deregulatory policies. *See, e.g., Wireline Broadband Order*, 20 FCC Rcd 14853, ¶¶ 19 & 93. As the Commission has recognized previously, such tariff-like requirements are not only unnecessary in a competitive marketplace, they are affirmatively harmful. By mandating that broadband providers "provide advance notice of changes in their prices, terms, and conditions of service for these services," a tariffing regime allows competitors "to counter innovative product and service offerings even before they are made available to the public." *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements; Petition of the Frontier and Citizens ILECs for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 19478, ¶ 32 (2007).

Given the robust competition in the broadband marketplace – including evidence of increased speeds for the consumer dollar – there is no reason for the Commission to backslide from its successful deregulatory policies by requiring price reporting by broadband providers.

IV. The Commission Must Ensure and Preserve the Confidentiality of Commercially Sensitive Information.

Finally, the record here again confirms what the Commission has long recognized – the broadband data reported by network providers on Form 477 are competitively sensitive and must continue to be protected.⁹ Indeed, the more granular reporting requirements recently adopted by the Commission increase the need for the protection of this data.

⁹ AT&T Comments at 14-16; Embarq Comments at 8-9; Frontier Comments at 4-5; Time Warner Comments at 7-8; CTIA Comments at 5-6; ITTA Comments at 5; NCTA Comments at 5-6; OPASTCO Comments at 7.

As in the comments of the Commission’s broadband mapping proposals, broadband providers of all shapes and sizes uniformly recognize the competitive sensitivity of the data that they report to the Commission.¹⁰ These parties are in the best position to judge competitive sensitivity and are the ones likely to suffer the harm from overly broad disclosures. But these parties are not the only ones recognizing the sensitivity of providers’ granular broadband data. For example, as CWA correctly notes, “address-specific broadband availability data” is commercially sensitive information, the disclosure of which should be limited and the confidentiality of which should be maintained. CWA Comments at 7.

Contrary arguments by a limited number of commenters are unavailing. For example, the New Jersey Rate Counsel’s proposal that Form 477 data be disclosed to state regulators and consumer advocates and “not be considered confidential,” NJRC Comments at 15, is contrary to federal law, which prohibits the disclosure of competitively sensitive information reported on Form 477 that is exempt from disclosure under the Freedom of Information Act (“FOIA”). *See Canadian Commercial Corp. v. Dep’t of the Air Force*, 514 F.3d 37, 39 (D.C. Cir. 2008) (a federal agency is precluded under the Trade Secrets Act from releasing confidential materials subject to FOIA Exemption 4); *Center for Public Integrity v. FCC*, 505 F. Supp. 2d 106, 116 (D.D.C. 2007) (upholding the Commission’s determination that

¹⁰ *See, e.g.*, Comments of Independent Telephone & Telecommunications Alliance at 5 (noting that “distribution would undermine carrier efforts to deploy broadband by laying open proprietary strategies and plans”); Comments of Qwest Communications, Int’l at 5-6 (noting that data “essentially becomes a map of which areas the carrier is targeting and with which services”); Comments of Texas State Telephone Cooperative, Inc. at 4-5; Comments of Sprint Nextel Corp. at 4-5; Comments of Windstream Communications, Inc. at 6-7; Comments of AT&T Inc. at 11-12.

certain data on Form 477 was exempt from disclosure under FOIA Exemption 4 because disclosure of such data “would likely cause substantial competitive harm to filers”).¹¹

Similarly, some commenters erroneously suggest that the disclosure of information on the Form 477 would be consistent with the Commission’s disclosure of “infrastructure investments and architecture through the Automated Reporting Management Information System (ARMIS).” Consumers Union Comments at 8. But this is wrong for at least two reasons. First, the data from ARMIS Report 43-07 that are available to the public do not reveal the location of a network provider’s infrastructure or the availability of services – information that is reported on Form 477. Rather, publicly available data from Report 43-07 merely reflect the quantity of switching and transmission facilities of certain providers by study area or within a Metropolitan Statistical Area.¹² Second, the Commission consistently has shielded from public disclosure competitively sensitive information regardless of the

¹¹ The New Jersey Rate Counsel also erroneously relies upon a Massachusetts agency decision rejecting the confidential treatment of the number of subscribers to Verizon’s FiOS TV service in each municipality in which Verizon offers service in Massachusetts. NJRC Comments at 15-16. First, the case did not address federal law, but rather involved state law that is not binding on the Commission. Second, the information at issue – the number of *video* subscribers served by a cable operator – is not the same data at issue here. Third, the Massachusetts decision was based in large part on a unique situation under state law that the state agency found made the data otherwise publicly available elsewhere since, under Massachusetts law, a cable operator must annually pay each licensing municipality a license fee that is assessed in Massachusetts on a per subscriber basis. There is no similar routine disclosure of the type of commercially sensitive information reported on Form 477. In any event, Verizon disagrees with Massachusetts’s assessment of the sensitivity of subscribership data in the context of competitive services and is seeking additional relief with respect to its video subscriber data.

¹² As Verizon has explained in other proceedings, ARMIS Report 43-07 and the other ARMIS reporting requirements were developed under rate-of-return regulation and have no place in today’s vibrantly competitive communications marketplace, particularly when they apply only to a limited number of competitors. Accordingly, consistent with the Commission’s duty and authority under 47 U.S.C. § 160, the Commission should forbear from continued application of the anachronistic ARMIS reporting requirements. *See Petition of Verizon for Forbearance Under 47 U.S.C § 160(c) From Certain of the Commission’s Recordkeeping and Reporting Requirements*, WC Docket No. 07-273.

form on which such information is reported, including information reported on Form 477. See *Local Telephone Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd 7717, 7758 ¶¶ 87-88 & 91 (2000); *Local Telephone Competition and Broadband Reporting*, Report and Order, 19 FCC Rcd 22340, 22352 ¶ 24 & n.56 (2004).

In order to prevent harm to competition and encourage broadband providers to cooperate with data collection efforts, the Commission must continue to ensure that competitively sensitive broadband data are protected, notwithstanding claims by certain commenters to the contrary.

CONCLUSION

The Commission should decline to adopt the additional reporting requirements set forth in the *Further Notice* and must protect the confidentiality of commercially sensitive information it collects.

Respectfully submitted,

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