

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Information Collection Regarding Local) **WC Docket No. 07-38**
Telephone Competition and Broadband)
Reporting, FCC Form 477)

**PETITION OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE
FOR STAY OF THE MARCH 2, 2009, FORM 477 FILING DEADLINE**

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits this Petition for Stay of the March 2, 2009, filing deadline for the new Federal Communications Commission (FCC or Commission) Form 477. ITTA members are mid-size local exchange carriers that provide a broad range of high-quality wireline and wireless voice, data, Internet, and video services to 30 million access lines in 44 states. Consistent with and incorporating herein the justifications set forth in ITTA's previously-filed comments in the above-captioned docket,¹ as well as the conditions of OMB's approval of the revised Form, ITTA requests a deferral of the filing deadline until at least 45 (forty-five) days after the online interface for the revised Form becomes publicly available.² At absolute minimum, the Commission should forbear from enforcement of the deadline during that period.

¹ See Letter from Joshua Seidemann, ITTA, to Marlene Dortch, FCC, November 24, 2008, and attachment, *Comments of ITTA* (WC Docket No. 07-38, 73 Fed. Reg. 55080, OMB Control No. 3060-0816), Letter from Joshua Seidemann, ITTA, to Marlene Dortch, January 22, 2009, and attachment, Letter from Joshua Seidemann, ITTA, to Nicholas Fraser, OMB, and Judith B. Herman, FCC (WC Docket No. 07-38, 73 Fed. Reg. 73931, OMB Control No. 3060-0816).

² ITTA previously recommended a 120-day extension to the Commission and OMB. The availability of information from the Commission regarding the Form has informed ITTA's assessment that a 45-day extension would in most cases be sufficient.

I. THE COMMISSION'S PRELIMINARY ESTIMATE ALONE WARRANTS A DEFERRAL OF THE MARCH 1, 2009, DEADLINE

Most ITTA members are long-time Form 477 filers, and all are working in good faith to implement and prepare for the broadband data collection changes adopted in the Commission's underlying *Orders*.³ Although the *Orders* provide some guidance for implementing the new requirements, the Form 477 and its instructions remain the most significant guidance to business personnel responsible for collecting and compiling data in the Commission's desired format.⁴ Problematically, however, the online interface for the Form, which must be filed by March 2, 2009, is not yet available, and ITTA understands it may not be released until the last week of February. This creates significant hardship for filers, since the Form may only be completed and filed in electronic form, and much of the work will likely require time-consuming manual data entry. The unavailability of the Form at this late date leaves carriers little leeway to accommodate any manner of unforeseen circumstance, such as unanticipated defects arising out of the Form itself or unexpected unavailability of company personnel assigned to complete the Form.

Moreover, the public interest supports a delay, insofar as the results of the data collection are expected to inform the distribution of significant and costly National resources toward

³ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 07-38, 23 FCC Rcd. 9691 (*Report and Order*), revised sua sponte Order on Reconsideration, 23 FCC Rcd. 9800 (2008) (*Recon Order*) (collectively the *Orders*).

⁴ The Commission's codified rules do not specify in detail the data that Form 477 filers must submit, requiring only that the Form be filed "in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they provide service." See 47 U.S.C. § 1.7001(b).

broadband deployment.⁵ As described below, the brief time between public release of the online Form and the filing deadline, coupled with the new data sets to be collected, may well preempt sufficient opportunity for filers to ensure the accuracy of the filed data. By contrast, an interim delay of the deadline for the Form 477 until at least 45 days after the revised Form becomes publicly available will be consistent with the Paperwork Reduction Act (PRA)⁶ by ensuring that entities required to produce Form 477 reports will have sufficient time to collect, compile, and input broadband data according to the Commission's specifications.

II. THE IMPACT OF NEW FORM 477 INFORMATION REQUIREMENTS UNDERSCORES THE MERITS OF A SHORT-TERM DEFERRAL OF THE MARCH 2, 2009 FILING DEADLINE

The PRA requires that the Commission certify to OMB that its Form has “reduce[d] to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, ... [via] the use of such techniques as ... establishing different compliance or reporting requirements *or timetables* that take into account the resources available to those who are to respond”⁷ A short, one-time deferral of the initial Form 477 deadline is precisely the sort of “timetable” mechanism that could reduce ITTA members’ and other parties’ filing burdens in accordance with Congress’s objectives. Further, ITTA’s request is consistent with OMB’s conditional approval of the Form 477, in which it

⁵ ITTA notes that the recently-enacted American Recovery and Reinvestment Act of 2009 contemplates that monies under the new Broadband Technology Opportunities Program (BTOP) would be granted by the end of *Fiscal Year 2010* (September 30, 2010), still nearly one and a half years from the end of proposed 45-day stay period. To the extent that the Commission envisions that the BTOP grant allocations will be premised at least indirectly on the Form 477 data due March 2nd, then the short, one-time deferral of the filing deadline proposed herein would not compromise those statutory objectives. Nor does the Broadband Data Improvement Act, enacted in October 2008 (Pub. L. 110-385), in any way preclude the requested relief. (Indeed, the Commission did not rely on that legislation in its OMB submission as a statutory basis for the new Form or a reason for denial of ITTA’s initial request.)

⁶ Thus, release of the online version of the revised Form 477 in late February 2009 would result in a filing deadline in mid-April 2009. The next filing would be due by the standard September 1, 2009 deadline.

⁷ See 44 U.S.C. § 3507(c)(3)(C)(i) (emphasis added).

approved the Form solely “on a pilot basis” and required that the Commission “be flexible with and assist respondents who may have difficulty in submitting information in the new format.”⁸

Based on the screen shots and Form instructions, ITTA and its members have begun assessing the extent to which relevant data can be obtained through modifications or add-ons to existing billing and other customer database capabilities. As stated in ITTA’s prior filings, one of the most significant changes adopted in the *Orders* relates to the geographic breakdown of data relating to broadband connections and subscribership. At the request of consumer groups and state regulatory bodies, the Commission determined that filers should report broadband connection information by Census Tract rather than 9-digit zip codes, thus requiring that data be collected and reported at a significantly more granular level.⁹ Based on preliminary information received from ITTA’s members, the extent to which billing and other databases can be easily and timely integrated with U.S. Census Bureau map data (as contemplated in the Form instructions), particularly with respect to rural areas, appears limited at best. ITTA members have confirmed that while some of the additional data can be compiled electronically, other data must be entered manually. Moreover, where electronic mechanisms may be available, system upgrades have been necessary, entailing significant IT investment. While these efforts have been ongoing, carriers have not had an opportunity to “beta test” entry of the information on the actual Form. This creates a critical amount of uncertainty as the filing deadline nears, leaving carriers in the precarious position of hoping for the best outcome when the Form is ultimately released, but with nearly no margin for error or delay.

⁸ See Notice of OMB Action, ICR Reference Number 200807-3060-004, OMB Control Number 3060-0816 (dated Jan. 30, 2009).

⁹ *Report and Order* at paras. 12-14.

Additionally, contrary to the Commission's assertion in its supporting statement submitted to OMB, the particular formats required for the Census Tract-related data were not made clear until the release of the draft Form "screen shots," and any unforeseen (if not inevitable) "glitches" or problems with the data entry process will not be known until the electronic version of the Form is available online.¹⁰ Certain of ITTA members have procured upgrades to new software for purposes of meeting new Form 477 requirements, but have encountered implementation issues. The multiple tasks of checking and retesting data and navigating a new Form place a particular strain on companies with limited staffing. A one-time deferral of the deadline would substantially mitigate the burdens of the new Form 477 while not undermining its underlying policy objectives.

Deferral of the filing deadline will provide additional time to work with vendors and help minimize the degree to which data will need to be input manually, thus "minimiz[ing] the burden" of the Form for LECs.¹¹ As a corollary benefit, where manual input will be required, as would likely be the case for many filers with respect to at least some of their subscribers, deferring the initial filing date would help avoid a last-minute rush, thereby ensuring that the quality of the data is not undermined and easing the short term burden of the new requirements.¹²

Failure to defer the deadline could compel more filers to avail themselves of the "significant hardship" exemption, rather than submit the information in the Commission's

¹⁰ Further, nowhere in its supporting statement submitted to OMB did the Commission acknowledge the possibility that there would be comparatively little time between the online availability of the electronic Form and the March 2nd filing deadline. ITTA submits that this fact, which was not known during the 60- and 30-day comment cycles, rendered the concerns raised by ITTA and other parties even more acute given the Commission's average burden estimate of 337 hours per respondent.

¹¹ See 44 U.S.C. § 3506(c)(2)(A)(iv).

desired format. This exemption included in the *Report and Order* provides that “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.”¹³ For now, ITTA members are committed to submitting data in the required format to the extent possible, so as to avoid the burden of making a “showing of significant hardship,” the standards for which are undefined. To the extent that the initial filing deadline is deferred, it could afford these Form 477 filers additional time to automate their data gathering systems or manually input the data, as necessary, thus improving the quality of the data and “minimiz[ing] the burden ... on those who are to respond, including through the use of automated collection techniques or other forms of information technology.”¹⁴ Deferral of the deadline also preempts the administrative burden that may face the Commission should numerous carriers be compelled to file individual petitions for waiver of the deadline.¹⁵

¹² ITTA expects that resulting vendor-related costs will face little downward pressure as vendors see a short-term compliance deadline and multiple carriers will jockey for vendors’ time and resources. A short deferral of the initial deadline could potentially mitigate some of these costs as well.

¹³ *Report and Order* at para. 15. In its Regulatory Flexibility Analysis, the Commission cited to this provision as one of the “significant alternatives that it has considered” to address the concerns of small entities. *See id.* at App. D para. 59.

¹⁴ *See* 44 U.S.C. § 3506(c)(2)(A)(iv).

¹⁵ Criteria for grant of a stay, the relative importance of which will vary depending upon the circumstances of the case, are met here. *See Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1958); *The 4.9 GHz Band Transferred from Federal Government Use*, Order, 19 FCC Rcd 15270, 15272, at para. 5 (2004). The criteria are: (1) a likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) the issuance of the order will further the public interest. The absence of injury to other parties and the public interest merits of a stay, which are the most relevant factors here, are clearly demonstrated above.

III. CONCLUSION

For the foregoing reasons, the Commission should stay the March 2, 2009 filing deadline for the revised Form 477 for a 45-day period after the online version revised Form 477 becomes publicly available. Such action is consistent with the public interest and the Commission's PRA obligations.

Respectfully submitted,

s/ Joshua Seidemann
Joshua Seidemann
Vice President, Regulatory Affairs
Independent Telephone &
Telecommunications Alliance
1101 Vermont Avenue, NW, Suite 501
Washington, DC 20005
202-898-1550

February 20, 2009