

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of

A National Broadband Plan for Our Future

GN Docket No. 09-51

**REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES  
COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA  
ON NOTICE OF INQUIRY ON DEVELOPMENT OF A NATIONAL  
BROADBAND PLAN**

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## **I. INTRODUCTION**

The California Public Utilities Commission and the People of the State of California (California or CPUC) submit these Reply Comments on the Notice of Inquiry (NOI) issued by the FCC on April 8, 2009.<sup>1</sup> In the NOI, the FCC requested that parties comment on the development of a plan to ensure that all Americans have access to broadband capability, and to establish benchmarks to meet these goals, as required by the American Recovery and Reinvestment Act of 2009 (ARRA).<sup>2</sup> As stated in our June 8, 2009 Comments in this proceeding, California strongly favors development of a national broadband plan,<sup>3</sup> and we commend the FCC for seeking input from all interested parties on the wide array of to be considered in accomplishing the Commission's goal.

These Reply Comments address just three issues: 1) the scope of California's universal service support for broadband infrastructure deployment; 2) open networks and reasonable network management; and 3) broadband data gathering and mapping.

## **II. CPUC UNIVERSAL SERVICE SUPPORT FOR BROADBAND INFRASTRUCTURE DEPLOYMENT**

In the NOI, the FCC sought comment on the potential impact of broadband on existing universal service programs, and asked if universal service should be modified to include broadband in its definition.<sup>4</sup> In our June Comments, we noted that California has no settled view on broadband as an element of universal service at this time. Rather, the CPUC has approached broadband as a dimension of universal service gingerly given the likely high costs of 100% broadband access.<sup>5</sup> In addition, the limited ability of states to regulate broadband service providers complicates the inclusion of broadband as a

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<sup>1</sup> *In the Matter of a National Broadband Plan for Our Future*, Notice of Inquiry (GN Docket No. 09-51) (2009) (NOI).

<sup>2</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Recovery Act) § 600 (k).

<sup>3</sup> Comments of The California Public Utilities Commission And The People Of The State Of California on Notice Of Inquiry On Development Of A National Broadband Plan, In the Matter of a National Broadband Plan for Our Future, GN Docket No. 09-51, June 8, 2009 (CPUC Comments) at p. 4.

<sup>4</sup> NOI at ¶ 39.

<sup>5</sup> CPUC Comments at pp. 20-21.

mandatory component of a state's universal service offerings. As a way to gauge the costs of expanding universal service to include broadband, California supports a limited federal Lifeline/Link-up Pilot Program that would provide computers and discounts for monthly Internet access service to low-income consumers. Once the results of such a pilot were achieved and evaluated, the FCC and the states would have a factual basis on which to assess the impact of adding broadband to universal service at the federal and/or state level.

In its comments filed on the NOI, the *BroadBand Institute of California (BBIC)* stated that California “has made broadband a ‘supported service’ eligible to receive support from their high cost and low income programs.”<sup>6</sup> In a footnote to this statement *BBIC* references the California Advanced Services Fund and the Rural Telecommunications Infrastructure Grant Program.<sup>7</sup> We find it necessary to correct and to clarify *BBIC*'s statement that broadband is a “supported service” under California's high-cost and low-income universal service programs.

It is correct that California currently administers a new program, the California Advanced Service Fund Program (CASF), which provides up to 40 percent in matching funds to telephone corporations to deploy broadband infrastructure in unserved and underserved areas of the state. The CASF is one means the CPUC has adopted to actively encourage broadband deployment and to help attract risk capital in areas that are and otherwise might remain, unserved or underserved by the market. (We discussed the CASF program at length in our June Comments.)

Mindful of costs to ratepayers, however, the CPUC authorized the collection of \$100 million from ratepayers over a limited period of two years to provide state support for the CASF program to assist in the deployment of broadband services. The CASF is funded by a surcharge on the end-user intrastate billings of customers of all telecommunications service providers in California. The CASF surcharge is specific to the CASF program, which is *not* funded out of either of California's universal service high-cost funds. In contrast, our high-cost support funds – the California High Cost Fund A (CHCF-A) and the California High Cost Fund B (CHCF-B) – provide subsidies for the

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<sup>6</sup> *BBIC* Comments at pp. 6-7.

<sup>7</sup> *BBIC* Comments at p. 7, Fn 20.

delivery of wireline voice telephone service to carriers of last resort operating in high-cost areas. Neither the CHCF-A nor the CHCF-B “support” the delivery of Broadband Internet access to Californians living in the high-cost areas those programs cover.

California has another grant program - the Rural Telecommunications Infrastructure Grant Program (RTI) which is funded through the CHCF-A. The RTI is a limited program – capped at a total value of \$40 million over four years – to provide grants of up to \$5 million each to subsidize the provision of voice telephone service to unserved areas.<sup>8</sup> In contrast to the CASF, the RTI program was not designed to subsidize broadband deployment.

*BBIC* also stated incorrectly that California has made broadband a “supported service” eligible to receive support from California’s low-income universal service program. California has its own LifeLine program which subsidizes monthly residential basic exchange service for eligible low-income subscribers. The California LifeLine program does not subsidize broadband deployment or broadband Internet access service.<sup>9</sup>

As we noted in our Comments, it is not only useful, but necessary, for policymakers to understand the costs of deploying broadband networks to unserved and underserved areas if we are going to recommend public funding to ensure broadband access in areas where the private market alone is not likely to provide service. Although we strongly support the goal to deploy broadband nationwide, a cost/benefit analysis is still a legitimate tool in determining how and over what time period the national plan should strive to meet that goal.<sup>10</sup> The need to properly determine program costs to ratepayers is equally as important when evaluating proposals to subsidize monthly Internet access service for low-income subscribers. The adoption of a limited pilot program is one way to identify the costs of such proposals. As the New York Public Service Commission (NYPSC) observed in its opening comments, programs to increase

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<sup>8</sup> Unlike the CHCF-A and the CHCF-B, which at present are limited to incumbent local exchange carriers, the RTI has entertained, and in one case granted, funding requests from providers using a wireless platform.

<sup>9</sup> At the urging of the California Legislature, the CPUC has considered including broadband service, specifically DSL, in its LifeLine program. The CPUC has been thwarted by its inability to compel broadband providers to offer the service at a subsidized rate, given the FCC’s pre-emption of most state regulation of both DSL and cable modem service.

<sup>10</sup> CPUC Comments at p. 18.

deployment or adoption must do so in a way that is targeted, coordinated, efficient, and fiscally responsible.<sup>11</sup>

### **III. OPEN NETWORKS AND REASONABLE NETWORK MANAGEMENT**

The NOI sought comment on the value of open networks as an effective and efficient mechanism for ensuring broadband access for all Americans, and how the term “open” should be defined.<sup>12</sup> The Commission referenced the four principles contained in its *Internet Policy Statement* and noted that some have suggested the need for a “fifth principle” on nondiscrimination. The Commission asked for comments on what would be the definition of “nondiscrimination” in such a case.

In its opening comments Free Press recommends “adopting firm, clear and specific Network Neutrality rules...”<sup>13</sup> It states that “FCC inaction on this central issue will only serve to embolden incumbent efforts to seize control of the content and application markets...”<sup>14</sup> Free Press contends that “[t]here is a constant tension between the perspective that the Internet is a common good, as embodied in the 1996 Act, and the desire of the network owners to earn maximum profits from selling Internet access.”<sup>15</sup>

Given this alleged incentive, Free Press offers the following:

[N]etwork operators have a strong incentive to assert control over the content flowing across their infrastructure, and to try to capture ‘economic rents’ from across the value chain of the network. These incentives are amplified when the network owner itself has a stake in the traditional content distribution business – like cable television – that the open Internet threatens to undermine.”<sup>16</sup>

Accordingly, Free Press agrees with the FCC’s *Internet Policy Statement* but finds them inadequate: “[b]ecause the four principles of the FCC’s *Internet Policy Statement* are ‘subject to reasonable network management,’ a carrier can get around these consumer

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<sup>11</sup> NYPSC Comments at p. 9.

<sup>12</sup> NOI at ¶ 47.

<sup>13</sup> Free Press Comments at p. 27.

<sup>14</sup> *Id* at p. 27.

<sup>15</sup> *Id* at p. 134.

<sup>16</sup> *Id* at p. 135.

protections by building up the perception of a threat and then using network management as an excuse to justify discriminatory practices.”<sup>17</sup>

Free Press suggests that the FCC should address this concern by adding a fifth principle of nondiscrimination which Free Press describes as follows:

1. Prohibiting Internet access providers from blocking, discriminating against, or otherwise degrading any lawful content, applications or services.
2. Prohibiting network operators from selling or offering any capacity to prioritize some Internet packets over others.
3. Prohibiting Internet access providers from charging additional fees to allow specific types of Internet content, applications or services to be used.<sup>18</sup>

The CPUC is concerned that the second of these suggested prohibitions could implicate what Free Press identifies as “reasonable network management.” Although California takes no position at this time on the issue of whether a “nondiscrimination” principle should be adopted by the Commission, we urge the FCC to evaluate carefully any requirements that would effectively bar necessary and reasonable network management techniques. Specifically, reasonable network management must allow for prioritizing of “some Internet packets over others.” While the CPUC is not advocating here which user(s) should have priority, we consider it in the public interest for emergency services and public safety traffic, such as access to 911 facilities, to have priority treatment on the Internet. The same is true for voice telephone traffic riding the broadband network (where latency and echo are crucial considerations).

These priorities need do little to compromise the allocation of bandwidth to other services, since they are low bandwidth capabilities. But they must nevertheless be allowed – indeed, required -- and the FCC should expect providers to make E-911 access, other emergency notifications and access, and high-quality voice telephone traffic a high priority of any broadband network relied upon by the public.

As Google points out in its Comments, “[m]any practices help enhance network utility rather than impede it...”<sup>19</sup> Google cites “content-neutral practices that halt

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<sup>17</sup> *Id* at p. 154.

<sup>18</sup> *Id* at pp. 159 -165.

<sup>19</sup> Comments of Google Inc. (Google Comments) at p. 3 0.

harmful denial of service (‘DOS’) attacks, prioritize packets of a certain application type due to latency concerns (e.g., VoIP or streaming video), and block IP address sources due to objective network harms, such as viruses or worms.”<sup>20</sup>

California agrees with the NYPSC that “[i]n times of emergency or high volume use, the need to throttle high capacity users and applications might exist ... If such controls are disclosed to subscribers then they could constitute reasonable network management practices.”<sup>21</sup> The NYPSC also suggests “[r]egarding prioritization of traffic, the Commission should consider the model established by the Telecommunications Service Priority (TSP) Program which provides national security and emergency preparedness (NS/EP) users’ priority authorization of telecommunications services that are vital to coordinating and responding to crises.”<sup>22</sup> The Communications Workers of America (CWA) also identify the need to permit reasonable network management.<sup>23</sup>

Free Press may not have considered these broader implications of its recommendation or more specifically the impact of this one aspect of its proposed prohibition on public safety. Such network management techniques are essential to protect consumers. Consequently, the CPUC urges the FCC to proceed cautiously in evaluating prohibitions that ultimately could be deleterious to public safety.

#### **IV. BROADBAND DATA GATHERING AND MAPPING**

In the NOI, the FCC sought comment on how it can use broadband subscribership data, collected via Form 477 at the census tract level, to report on the status of broadband deployment, including any benefits and limitations inherent in these data.<sup>24</sup> Many commenters weighed in on this issue, some suggesting ways to revise the Form 477 data collection method in order to collect more useful data and make better use of that data. The CPUC responds here to comments provided to the FCC regarding broadband mapping and the collection of subscribership data.

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<sup>20</sup> *Id.*

<sup>21</sup> NYPSC Comments at p. 11.

<sup>22</sup> *Id.* at p. 24.

<sup>23</sup> CWA Comments at p. 19. “Any consideration of a ‘fifth principle’ to prohibit unreasonable discrimination must not deter private sector investment in a robust network and must be consistent with the public interest in reasonable network management.”

<sup>24</sup> NOI at ¶ 61.

As stated in our Comments, California recommends that the FCC use the already-established Form 477 process to collect broadband data from service providers. The Form 477 data collection process has inherent benefits that can be carried over to the implementation of a national broadband plan.<sup>25</sup> However, we strongly urge the FCC to make necessary and important revisions to the type of data collected via Form 477.

Contrary to the comments some parties submitted, the data currently collected via Form 477 is not as meaningful as suggested. Time Warner, for example, states that, “[w]ith these resources already at its disposal, the Commission can proceed expeditiously to articulate a plan for expanding broadband to unserved areas.”<sup>26</sup>

The problem, however, is that the data the FCC currently collects via Form 477 is neither extensive enough nor collected at a small enough level of granularity to allow for the most accurate mapping and thorough broadband analysis. Using data as currently collected will overestimate the areas where broadband is available. To remedy this problem, the method by which this data is collected should be revised. As the CPUC urged in our Comments, the scope of the FCC’s data collection under its Form 477 must be revised to collect both availability and subscribership data and such data should be collected at the street address level.<sup>27</sup>

#### **A. FCC Should Collect Broadband Availability Data**

In the NOI, the FCC asked whether availability data should be part of the National Broadband plan.<sup>28</sup> As California stated in our Comments, it is imperative that broadband maps be capable of showing levels of broadband service capability and availability in as accurate a method as possible.<sup>29</sup> The National Telecommunications Information Administration’s (NTIA) recent Notice of Funds Availability (NOFA) for the State Broadband Data and Development Grant Program requires wireline grant awardees to “provide NTIA with a list of all addresses at which broadband service is

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<sup>25</sup> CPUC Comments at p. 31.

<sup>26</sup> Comments of Time Warner Cable Inc., (Time Warner Comments) at p.18.

<sup>27</sup> CPUC Comments at pp. 31 - 33.

<sup>28</sup> NOI, at ¶ 61.

<sup>29</sup> CPUC Comments at p. 13.

available to end users in the provider’s service area.”<sup>30</sup> We recommend the FCC require the same from broadband service providers as part of its National Broadband Plan.

As Comcast Corporation (Comcast) points out, mapping of both availability and adoption is a necessary prerequisite to increasing broadband adoption because, “you can’t evaluate what you don’t measure.”<sup>31</sup> The Vermont Public Service Board and the Vermont Department of Public Service (Vermont) also recommend that a requirement be instituted for companies to submit complete and accurate information, and at a higher level of detail than is currently defined for census-tract level information in FCC Form 477. Vermont urges the NTIA and the FCC to work collaboratively to modify rules and regulations pertaining to reporting requirements for broadband and telecommunications providers. Ideally, “data collection should be undertaken at the address level.”<sup>32</sup> The Massachusetts Broadband Institute And The Massachusetts Department Of Telecommunications And Cable (Massachusetts ) state in their opening comments: “[w]ith regard to broadband data collection, the best format level would be standardized digital Geographic Information System (“GIS”) coverage maps or, alternatively, at the range-of-address or individual address level.... . . . [I]f information is collected at the street and address level, utilized through GIS layers and overlays, then the data can be aggregated more accurately in different forms (such as through town, county, area code, legislative district, political subdivision, Census Tract level, etc...) and be utilized more efficiently when it is represented on a map.”<sup>33</sup> The National Association of Telecommunications Officers and Advisors (NATOA) states that the greatest degree of granularity is essential.<sup>34</sup>

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<sup>30</sup> State Broadband Data and Development Grant Program, Notice of Funds Availability (NOFA) and Solicitation of Applications, 74 Fed. Reg. 32,545, 32,565 (July 8, 2009) (State Broadband NOFA), at p. 32557. Wireless grant awardees are required to provide availability data, as well. However, these providers may report availability by shapefile instead of by address. This difference is because wireless service areas are not as dependent on infrastructure location as with wireline providers.

<sup>31</sup> Comcast Comments at p. 80.

<sup>32</sup> Vermont Comments at p. 56.

<sup>33</sup> Massachusetts Comments at pp. 10-11.

<sup>34</sup> NATOA Comments at p. 17.

We urge the FCC to require broadband service providers to report broadband availability data at the street address level as part of its Form 477 data collection.

As a secondary option to revising Form 477 to collect availability data, the CPUC recommends coordinating with the state-designated mapping entities that receive broadband mapping grants from NTIA pursuant to the Recovery Act and the Broadband Data Improvement Act (BDIA).<sup>35</sup> As noted above, the State Broadband Data and Development Grant Program NOFA requires these entities to collect and remit to the NTIA broadband availability data from broadband service providers within their states. Using this option, the FCC would continue to collect subscribership data via Form 477 and the state-designated mapping entities would collect availability data. While it would be optimal for the FCC to collect both broadband availability and subscribership data itself in order to assure consistency of data, we appreciate the time-saving benefits to be realized if these various parties shared their collected data. The CPUC urges the FCC to consider this option should it conclude that collecting availability data itself at the street level is too burdensome.

The CPUC considers it is necessary to know not only where broadband service is available but also what type of broadband infrastructure is available. The NTIA's State Broadband Data and Development Grant Program NOFA requires state broadband grant awardees to provide NTIA with a list of last-mile connection points and middle-mile and backbone interconnection points of broadband service providers within the state.<sup>36</sup> Several commenters in this proceeding support this requirement.<sup>37</sup> Such data will help the NTIA determine whether grant dollars for broadband deployment programs are being

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<sup>35</sup> See Title I of Public Law No. 110-385, 122 Stat. 4096 (Oct.10, 2008).

<sup>36</sup> State Broadband NOFA, Technical Appendix, at 74 Fed. Reg. 32561-32563.

<sup>37</sup> See Comments of NATOA, Alliance For Community Media, National Capital Association Of Telecommunications Officers and Advisors, Clackamas County, OR, City Of Eugene, OR, Greater Metro Telecommunications Commission, County of Los Angeles, CA, Marin Telecommunications Agency, Metropolitan Area Communications Commission, Montgomery County, MD, North Suburban Communications Commission, City Of Philadelphia, Pa, City Of Portland, Or, City Of Rockville, MD, City Of Salisbury, NC, Southeastern Association of Telecommunications Officers and Advisors , City of Seattle, WA, City of Takoma Park, MD, (Comments of NATOA), at p. 56, "maps should include last mile and middle mile deployments." See Public Knowledge Comments at, p. 41, "Mapping of broadband networks should include last mile and middle mile facilities. See also Free Press Comments at p. 270.

used to support comprehensive deployment, not just segments of what remains an incomplete network.

**B. Data Collection Should Be At Street Address Level**

When pinpointing funding and policy for broadband deployment projects, it is imperative to know the exact locations where broadband is available, where it is subscribed to, at what speeds it is available, and where infrastructure build out is needed. As discussed in our comments, the CPUC recommends that in order to effectively determine these factors, data must be presented at the smallest level of granularity possible. Our experience indicates that the optimal level of granularity is at the street address level. Consequently, California recommends that, as part of its comprehensive broadband plan, the FCC revise its Form 477 to collect data at the street address level.

Using a level of granularity larger than the street address level will unavoidably lead to an overestimation of broadband availability and service. Data collected at the census tract level vastly overestimates the areas where broadband is being used.<sup>38</sup> In addition, data collected by census tract does not give any indication of where within a census tract (some of which, in California, are as big as 8007 sq. miles)<sup>39</sup> broadband is available or at what speed.<sup>40</sup> This overestimation can lead to misappropriated funds and wasted hours devoted to conjecture that could hinder the goals of a national broadband mapping program by obscuring the actual availability of broadband. Connected Nation, Inc. explained this concept best in its comments:

For example, Connect Minnesota has found, through a detailed and granular method of broadband mapping at the household level, that broadband is available to 94 percent of Minnesota households. If Minnesota's broadband service availability were mapped at the level of census block groups, broadband deployment would be grossly overstated at 99.6 percent. Even at the most granular census block level, Minnesota would appear to have 96.4 percent broadband deployment – again, compared to Connect Minnesota's household level mapping which shows 94 percent availability. Even going down to the census block level, this

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<sup>38</sup> See CPUC Comments at p. 36.

<sup>39</sup> Tract in San Bernardino County.

<sup>40</sup> Collecting data by census block groups results in overestimation, as well. See CPUC Comments at p. 36.

type of general mapping would assume that nearly 45,000 Minnesota households are served when they are in fact unserved.<sup>41</sup>

In its State Broadband Data and Development Grant Program NOFA, the NTIA states that the majority of commenters in its proceeding regarding the Broadband Technology Opportunities Program (BTOP) supported street address level granularity.<sup>42</sup> As a result, the NOFA requires that availability data collected from broadband grant awardees be submitted on a street address basis.<sup>43</sup> This recommendation is echoed by several commenting parties in this proceeding as well.<sup>44</sup> Vermont recommends that companies “submit complete and accurate information, and at a higher level of detail than is currently defined for census-tract level information in FCC Form 477... Ideally, data collection should be undertaken at the address level.”<sup>45</sup> Broadband mapping must be detailed and comprehensive enough to indicate where providers offer broadband service and where they do not, at a household level. The Michigan Public Service Commission (MPSC) “recommends that the national broadband plan include data collection sufficient to monitor the status of deployment at street-level granularity and that collected data be accessible to the states.”<sup>46</sup> Further, the National Association of State Utility Consumer Advocates (NASUCA) states that the FCC should “strive for the utmost granularity and detail in maps and data developed in accordance with both the BDIA and Recovery Act.”<sup>47</sup> The CPUC agrees, and urges the FCC to revise Form 477 to require broadband service providers to submit broadband data by street address.

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<sup>41</sup> Comments of Connected Nation, Inc. (Connected Nation Comments) at pp. 10-11.

<sup>42</sup> State Broadband NOFA , Policy Justification Appendix, at 74 Fed. Reg. 32563, FN 8.

<sup>43</sup> See State Broadband NOFA, Technical Appendix, at 74 Fed. Reg. 32557.

<sup>44</sup> See: Connected Nation Comments, at p. 9; CWA Comments at p. 9; NASUCA Comments at p. 73; National Conference of Black Mayors, Notice of *Ex Parte* Communication, G.N. Docket No. 09-51, at p.1; Google Comments at pp. 13-14.

<sup>45</sup> Vermont Comments at p. 17.

<sup>46</sup> MPSC Comments at p. 6.

<sup>47</sup> NASUCA Comments at p. 73.

### C. Collection of Data Must Be Consistent Across All Providers

Some commenters in this proceeding suggest different granularity for different areas. For example, the NYPSC and National the NSGIC suggest that Form 477 data reporting be done at the Census Block Group level for areas meeting the USDA RUS rural definition, and at the Census Tract level for reporting in non-rural areas.<sup>48</sup> The NSGIC further states that “[s]uch an approach would provide the additional granularity in areas where it is most important and most needed.<sup>49</sup> The CPUC disagrees, and finds this approach seriously flawed, primarily because it would *not* provide the consistency necessary for effective data analysis.

Census tracts and census block groups differ greatly, especially for comparison purposes.<sup>50</sup> The U.S. Census Bureau developed a hierarchy of census areas to measure different levels of population, different socioeconomic status, and various other factors. Census tracts are subdivisions of counties, while census block groups are subdivisions of census tracts. Tracts have an average population of about 4,000 people (approximately 1,500 housing units)<sup>51</sup> and are intended to contain (if possible) a population whose housing and socioeconomic characteristics are similar. This means that census block groups represent areas with smaller populations, different socioeconomic factors, and fewer households than do census tracts.

The reasoning behind the NYPSC’s recommendation is that rural census block groups and urban census tracts provide for better *geographic* comparisons.<sup>52</sup> Geographic size, however, does not make the two types of areas the same for the purposes of comparing *other factors*. Comparing these two types of granular units would lead to development of misleading maps showing areas that are the same size as equivalent when, in fact, they will represent very different data sets. Treating these different census

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<sup>48</sup> NYPSC Comments at p. 18; NSGIC Comments at p. 3.

<sup>49</sup> NSGIC Comments at p. 3.

<sup>50</sup> *Geographic Areas Reference Manual*, Chapter 10: Census Tracts and Block Numbering Areas, U.S. Dept of Commerce, Bureau of the Census, Issued Nov. 1994, available at <http://www.census.gov/geo/www/GARM/Ch10GARM.pdf>.

<sup>51</sup> *Id.*

<sup>52</sup> NYPSC Comments at p. 18; *See also* NSGIC Comments at p. 3.

units as if they are equivalent because they are of the same physical size will make accurate broadband penetration analysis impossible. California urges the FCC to require consistency in data reporting to assure accurate comparison of areas based on census-based data, not on geographical area. In particular, we recommend that the Commission require providers to submit data at the street-address level only.

**D. States Must Be Given Timely Access to Form 477 Data**

Several commenters urge the Commission to allow states access to data collected via a revised Form 477 in a timely manner. The FCC currently releases Form 477 data to the states but not until after the data has been “scrubbed.” This usually means that states do not have access to the Form 477 data for up to a year after it is reported, limiting its value. In many cases, the data that the states receive is obsolete.

The NYPSC notes that the “timely release of the Form 477 data will be critical to its use in assessing the effectiveness of grant projects under the ARRA broadband programs.”<sup>53</sup> Vermont contends that “states must be able to compel and receive the same information about broadband deployment as is available to federal authorities...”<sup>54</sup> The CPUC agrees, and recommends that this data should also be shared with state-designated mapping entities as defined by the NTIA’s State Broadband Data and Development Grant Program NOFA.

In its State Broadband Data and Development Grant Program NOFA, the NTIA stated that “[i]nsofar as awardees are unwilling or unable to obtain requested data, NTIA reserves the right to request that the FCC exercise its authority to compel data production from any broadband service provider subject to its jurisdiction.”<sup>55</sup> The CPUC recommends that the FCC not wait until the need for such a request arises. An understanding of the actual physical infrastructure of service providers’ existing networks is essential to evaluating the need to spend precious public dollars deploying new infrastructure. Rather, the CPUC urges the Commission *now* to grant the states the ability to compel data from all entities deploying broadband infrastructure and/or providing broadband service within their states. This immediate authority would allow

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<sup>53</sup> NYPSC Comments at p. 14.

<sup>54</sup> Vermont Comments at p. 17.

<sup>55</sup> State Broadband NOFA, at 74 Fed. Reg. 32555.

states and state-designated mapping entities to quickly assess gaps in broadband availability and service within their borders as well as to save the administrative resources and time necessary to submit such requests to the FCC via NTIA. The states should know what the FCC knows about broadband deployment and availability when the FCC knows it.

The CPUC urges the Commission to provide to states and state-designated mapping entities, that so request them, copies of the latest Form 477 submissions by wireline and wireless broadband service providers from their states, the FCC also should require broadband infrastructure and service providers to simultaneously file future Form 477 reports with both the FCC and the respective state utility commissions and state mapping authorities.

#### **E. Treatment of Confidential and/or Proprietary Information**

Any Form 477 data information submitted to the Commission should also be available in its raw form to the states. Many states have statutes protecting confidential data, while others can operate under Non Disclosure Agreements. In both cases, the state regulators must keep confidential information private companies consider proprietary.

The NTIA requires that a national map be searchable by address.<sup>56</sup> Provider identity need not be available unless that provider wishes. The NTIA emphasizes that service areas of individual providers will be aggregated with other providers of the same technology type. Mapped data available to the public would thus be aggregated so that individual provider data cannot be identified from the national map.

Some commenters propose that Form 477 data should be released publically. The NYPSC, for example, encourages the FCC to “publicly release the Form 477 data in its entirety and without use restrictions at the earliest possible date following the twice-annual submission deadlines.”<sup>57</sup> Broadbandcensus.com (BBC) suggests that address-by-address broadband data should be made publicly available.<sup>58</sup> We disagree.

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<sup>56</sup> State Broadband NOFA at 47 Fed. Reg. 32547.

<sup>57</sup> NYPSC Comments at p. 14.

<sup>58</sup> BBC Comments at p. 14.

While California favors broadband data being made publicly available in interactive maps, as the BDIA requires, we have recognized, in our CASF program, carriers' interest in protecting information they consider proprietary, generally for competitive reasons. As Comcast explains, "the Commission should act as a clearinghouse for data and mapping efforts and ensure that the confidential data of providers are adequately protected."<sup>59</sup> The CPUC recommends that the FCC follow the lead of the NTIA in developing requirements to protect proprietary information when drafting rules for its National Mapping program. Raw Form 477 data should not be released to the public; mapped data should be done in a way that protects legitimately confidential information.

#### **F. States Should Play a Large Role in Mapping**

The CPUC urges the FCC to develop a cooperative data sharing and deployment strategy that partners with the states in bringing broadband service to unserved and underserved areas. Many states have developed unrivaled expertise about their own territories, geography, and broadband needs. As Vermont points out, "[s]tates are generally more capable of performing mapping tasks."<sup>60</sup> California agrees. Further, we agree with Massachusetts that the FCC should obtain maps and data already garnered by states, develop policies to improve that mapping, and devise methods to share mapping resources across regions.<sup>61</sup> We support these proposals and hope the Commission will partner with the states in these endeavors.

#### **V. CONCLUSION**

The CPUC supports the FCC's efforts to develop a broad-based and cohesive national plan for deployment of a broadband network to serve all Americans. The CPUC has offered these Comments based in large measure on its own experience with various California universal service programs intended to deploy both traditional wireline and new broadband networks. We hope that our experiences are of some use to the FCC as it works towards the national plan.

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<sup>59</sup> Comcast Comments at p. 48.

<sup>60</sup> Vermont Comments at p. 16.

<sup>61</sup> Massachusetts Comments, at p. 4.

Respectfully submitted,

By: /s/ HELEN M. MICKIEWICZ

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