



PUBLIC NOTICE

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COMMENT SOUGHT ON PROVIDING ELIGIBLE ENTITIES ACCESS TO AGGREGATE FORM 477 DATA AS REQUIRED BY THE BROADBAND DATA IMPROVEMENT ACT

PLEADING CYCLE ESTABLISHED

WC Docket No. 07-38;
GN Docket Nos. 09-47, 09-51

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Comments: [Seven days after publication in the Federal Register]
Reply Comments: [Twelve days after publication in the Federal Register]

In this public notice, we seek comment on how to interpret and implement sections 106(h)(1) and 106(h)(2) of the Broadband Data Improvement Act (BDIA).¹

Since 2000, the Commission has collected basic service information from broadband service providers using Form 477. In 2008, the Commission adopted revisions to the Form 477, which would result in the collection of more detailed and granular data. At the same time, the Commission issued a further notice of proposed rulemaking, which, among other things, sought comment on the issue of how to provide Form 477 information to other broadband initiatives, including those undertaken by state agencies and public-private partnerships, and on how to preserve confidentiality when sharing the information collected on Form 477.² On October 10, 2008, the BDIA became law. Section 106(h)(1) of the BDIA requires the Commission to “provide eligible entities access . . . to aggregate data collected by the Commission based on the Form 477 submissions of broadband service providers.”³ Section 106(h)(2) of the BDIA imposes certain confidentiality requirements on eligible entities that receive the FCC Form

¹ Broadband Data Improvement Act of 2008, Pub. L. No. 110-385, 122 Stat. 4097 (codified at 47 U.S.C. §§ 1301-04).

² See *2008 Broadband Data Gathering Order and Further Notice*, 23 FCC Rcd at 9711-12, para. 39 (“In this Further Notice, we seek comment on ways in which we can preserve confidentiality when sharing the information collected on Form 477, the voluntary registry, and other sources with agencies such as the Department of Agriculture’s Rural Utilities Service and with public-private partnerships such as ConnectKentucky and similar ventures, for example by sharing the data in a less granular or aggregated form than the level at which it is collected.”) (footnotes omitted).

³ 47 U.S.C. §§ 1304(h)(1). Section 106(i)(2) of the BDIA defines “eligible entity” as: (A) an entity that is either (i) an agency or instrumentality of a State, or a municipality or other subdivision (or agency or instrumentality of a municipality or other subdivision) of a State; (ii) a nonprofit organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code; or (iii) an independent agency or commission in which an office of a State is a member on behalf of the State; and (B) is the single eligible entity in the State that has been designated by the State to receive a grant under this section. BDIA § 106(i)(2); 47 U.S.C. § 1304(i)(2).

477 “aggregate data.”⁴ In this Public Notice, we seek comment on how the Commission should implement these statutory provisions.

First, we seek comment on how we should interpret the term “aggregate” in Section 106(h)(1). Particularly, to what extent does the adjective “aggregate” require the Commission to provide to eligible entities data that is more aggregated than the raw data submitted by Form 477 filers. We also seek comment on whether the confidentiality provisions of section 106(h)(2) indicate that the Commission should provide access to data that is more disaggregated than the Form 477 filing-based data that it makes available to the public in various periodic statistical reports released by the Bureau.⁵ More generally, we seek comment on how much the Commission should aggregate the data that it provides to eligible entities, and what factors it should consider in determining the appropriate level of aggregation.

We also seek comment on section 106(h)(2) of the BDIA, which requires eligible entities to treat “any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the eligible entity.” In particular, we seek comment on whether that section is self-effectuating or whether the Commission should take any measures to ensure eligible entities’ compliance with section 106(h)(2). If parties believe that the Commission should adopt safeguards to ensure compliance with section 106(h)(2), then we ask that they describe with specificity the nature of their proposed safeguards.

We recognize that the periods we are establishing for commenting on these issues are short but note also that the timeframes connected with the grant programs under BDIA require us to make the Form 477 information available in an expedited fashion. Furthermore, while the BDIA was enacted after the 2008 Broadband *Data Gathering Order* and *Further Notice* was adopted, we note that the data-sharing issues raised by section 106(h) of the BDIA clearly fall within the scope of the more general data-sharing issues raised in the further notice, on which we previously received comment.

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission’s rules, 47 C.F.R. § 1.1206(b).

All comments should refer to WC Docket No. **07-38**; and GN Docket Nos. **09-47** and **09-51**. Comments may be filed using (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.⁶

⁴ Specifically, section 106(h)(2) provides that an eligible entity “shall treat any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the eligible entity. BDIA § 106(h)(2); 47 U.S.C. § 1304(h)(2).

⁵ See, e.g., Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of December 31, 2007* (rel. Jan. 16, 2008), available at <http://www.fcc.gov/wcb/iatd/comp.html>.

⁶ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.⁷ Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530, (202) 418-0432 (TTY).

For further information about this Public Notice, please contact Jeremy Miller, Industry Analysis and Technology Division, Wireline Competition Bureau at (202) 418-0940.

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⁷ Filers should follow the instructions provided on the Federal eRulemaking Portal website for submitting comments.