

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

In the Matter of	)	
	)	
Request for Comments on How to	)	WC Docket No. 07-38
Interpret Sections 106(h)(1) and	)	GN Docket Nos. 09-47, 09-51
106(h)(2) of the Broadband Data	)	
Improvement Act	)	

**COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby responds to the Commission’s request for comment on how it should interpret and implement sections 106(h)(1) and 106(h)(2) of the Broadband Data Improvement Act (“BDIA”).<sup>1</sup> NCTA is the principal trade association of the cable industry in the United States. NCTA represents cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks, as well as equipment suppliers and providers of other services to the cable industry. The cable industry is the nation’s largest provider of residential high-speed Internet service after investing more than \$145 billion since 1996 to build two-way, interactive networks with fiber optic technology. NCTA’s members make semi-annual filings on their broadband deployment on FCC Form 477, and they therefore have a keen interest in the

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<sup>1</sup> See Comment Sought on Providing Eligible Entities Access to Aggregate Form 477 Data as Required by the Broadband Data Improvement Act, 74 Fed. Reg. 36446 (July 23, 2009) (“Public Notice”); see also Public Notice, “Dates Established for Comment on Providing Eligible Entities Access to Aggregate Form 477 Data as Required by the Broadband Data Improvement Act,” WC Docket No. 07-38, GN Docket Nos. 09-47, 09-51 (rel. July 24, 2009).

procedures and safeguards that the Commission adopts regarding the provision of FCC Form 477 or any other data to state mapping entities under the BDIA.<sup>2</sup>

NCTA strongly supports the Commission’s efforts to implement the BDIA and, more generally, BDIA’s goal of a national broadband map that will illustrate clearly which areas of the country remain without broadband. Such a map is an essential prerequisite for ongoing and future government efforts to provide support for broadband deployment to unserved areas. Cable operators have worked with state mapping entities in a number of states and we look forward to working with the entities selected to develop maps pursuant to the BDIA.

In determining what data the Commission should provide to state mapping entities, Congress was clear that state mapping entities would only have access to “*aggregate data . . . based on . . . Form 477 submissions.*”<sup>3</sup> In interpreting this provision, the Commission should be guided by the plain, well-recognized meaning of the word “*aggregate.*”<sup>4</sup> Consistent with the Congressional intent reflected in the reference to aggregate data, the Commission should gather the data it collects from providers on Form 477, remove the identities of the providers, and provide that information to state mapping entities on a census tract or statewide basis depending on the particular data involved. This interpretation of “*aggregate*” also comports with the Commission’s application of the term in other contexts.<sup>5</sup>

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<sup>2</sup> Broadband Data Improvement Act of 2008, Public Law 110-385, 122 Stat. 4097 (codified at 47 U.S.C. 1301-04) (“BDIA”).

<sup>3</sup> BDIA § 106(h)(1) (codified at 47 U.S.C. § 1304(h)(1)) (emphasis added).

<sup>4</sup> See Merriam-Webster Dictionary, [http://www.merriam-webster.com/dictionary/aggregate\[1\]](http://www.merriam-webster.com/dictionary/aggregate[1]) (“formed by the collection of units or particles into a body, mass, or amount,” for example, “taking all units as a whole”); Webster’s Dictionary, <http://www.websters-online-dictionary.org/definition/aggregate> (“gathered or tending to gather into a mass or whole”; for example, “aggregate amount of indebtedness”).

<sup>5</sup> See, e.g., Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, 17 FCC Rcd 14860, ¶ 9 (2002) (“CPNI Order”) (“aggregate customer information” means “collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed”); Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, 24

With respect to any data provided by the Commission to state mapping entities, the Commission should implement section 106(h)(2) of the BDIA to require such entities to abide by the Commission's rules applicable to the protection of confidential information and trade secrets.<sup>6</sup> Such an approach will ensure an appropriate and nationally uniform level of protection for sensitive information about broadband deployment. As the Commission itself has recognized, even aggregate data, while it does not offer "individually identifiable information," may "nevertheless [be] valuable to competitors."<sup>7</sup>

Entities that file a Form 477 have the option of indicating whether they want such data to be treated as confidential. If they elect such protection, it should be extended to state mapping entities, "[c]onsistent with [the Commission's] regulations and Form 477 submitters' expectations that information submitted to the Commission with a request for confidential treatment not be made publicly available."<sup>8</sup> To this end, the Commission should also require each state mapping entity that wishes to obtain confidential Form 477 data to agree to an appropriate protective order. Requiring eligible entities to sign a protective order would add a layer of accountability and governance over the review of Form 477 data. The Commission may wish to consider creating a standard protective order for these purposes, subject first to review and comment by the entities that file Form 477 reports.

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FCC Rcd 4518, ¶ 5 (2009) (noting that cable price survey data is reported to the public "in aggregate form as averages representing segments of the industry").

<sup>6</sup> See 47 C.F.R. §§ 0.457, 0.459, 0.461; *id.* § 0457(d) (treating "trade secrets and commercial or financial information obtained from any person and privileged or confidential" as categories of materials not routinely available for public inspection).

<sup>7</sup> CPNI Order ¶ 9. A provider retains the option of agreeing to the public disclosure of confidential information. See BDIA § 106(h)(2) ((codified at 47 U.S.C. § 1304(h)(1)). Likewise, a broadband provider should be able to agree to provide a state mapping entity with the raw Form 477 data it provides to the Commission.

<sup>8</sup> Public Notice, "Notice to Entities Filing Form 477 Data Re: Release of Form 477 Data to General Accounting Office," 20 FCC Rcd 12871 (2005).

## **CONCLUSION**

The Commission has an important role to play in providing information that will lay the groundwork for a national broadband map and national broadband strategy. In fulfilling this role, the Commission should adhere to the requirements of the BDIA and ensure the confidential treatment of information it provides to state mapping entities.

Respectfully submitted,

**/s/ Neal M. Goldberg**

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