

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

In the Matter of	)	
	)	WC Docket No. 07-38
Providing Eligible Entities Access to	)	
Aggregate Form 477 Data As Required	)	GN Docket No. 09-47
By the Broadband Data Improvement Act	)	
	)	GN Docket No. 09-51
	)	
	)	

**COMMENTS OF VERIZON AND VERIZON WIRELESS**

Verizon<sup>1</sup> supports the Commission’s efforts to share broadband data with state-level broadband mapping initiatives, consistent with the congressional directive in Sections 106(h)(1) and 106(h)(2) of the Broadband Data Improvement Act (“BDIA”).<sup>2</sup> As Congress recognized in the BDIA, by sharing aggregated data collected through the use of FCC Form 477 with “eligible entities,” the Commission can assist these state-level initiatives in their task of mapping broadband availability and analyzing broadband adoption in a granular and accurate manner while also minimizing the need for unnecessary and redundant reporting by providers. Congress also recognized that appropriate safeguards – including the aggregation of providers’ data and robust protections by state-level initiatives – are necessary in order to protect the vast amounts of

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<sup>1</sup> In addition to Verizon Wireless, the Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> 47 U.S.C. §§ 1304(h)(1) & (2) (“ . . . the Commission shall provide eligible entities access, in electronic form, to aggregate data collected by the Commission based on the Form 477 submissions of broadband service providers. . . Notwithstanding any provision of Federal or State law to the contrary, 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.”).

competitively sensitive and confidential information that broadband providers report to the Commission on the Form 477.

In order to strike an appropriate balance, the Commission should provide to eligible entities broadband subscriber counts for each Census Tract that aggregate all broadband providers (broken down by wireline/fixed wireless vs. mobile broadband). The Commission could also provide these entities with information concerning the speed tiers of connections within each Census Tract. But if the Commission decides to provide speed data, it should combine certain of the speed tiers for these purposes in order to ensure adequate protection to confidential data. This level of aggregation would protect sensitive data while also providing state-level entities with useful and granular data concerning the broadband services provided in each Census Tract.

In addition, the Commission should require any eligible entity receiving Form 477 data to agree to abide by the confidentiality protections and procedures that attach to the Commission when it receives the data. These protections should be at least as stringent as when the data is held by the Commission, and should apply to all employees, vendors, consultants or others working with the state-level initiatives.

These modest steps will provide state-level broadband mapping initiatives with the benefit of the data collected by the Commission without unreasonably compromising providers' sensitive data.

**I. THE COMMISSION SHOULD CONTINUE TO PROTECT THE COMPETITIVELY SENSITIVE AND CONFIDENTIAL INFORMATION REPORTED BY BROADBAND PROVIDERS ON THE FORM 477.**

Although the Commission can play an important role in assisting state-level broadband initiatives as they seek to quickly collect broadband data, it is equally important for both the Commission and these initiatives to protect broadband providers' competitively sensitive and confidential data in order to ensure that the public use of providers' data does not harm competition or threaten the security of broadband networks.

The Commission has long recognized that providers' Form 477 filings contain substantial amounts of data that is competitively sensitive or proprietary. Among other things, these filings provide information concerning providers subscriber counts in particular areas, as well as information concerning the technology used and the speeds subscribed to by customers. This type of information can allow competitors a detailed view of where and how a provider is offering services, as well as the success of its offerings and the nature of its customers' demand. With recent changes ratcheting up the level of detail that is required on the Form 477, increasing the detail of the reported information and the granularity of the geographic areas covered, these concerns have become all the more significant. With this insight into a competitor's offerings and market success, a provider is able to tailor its own approach and offerings, thus gaining a competitive leg-up. As the Commission has acknowledged, providers could be harmed by release of the gathered data concerning broadband because as competitors could "take the data submitted and tailor market strategies to quash nascent competition, protect areas that are being subjected to increased competition, or deploy facilities to defend strongholds."<sup>3</sup>

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<sup>3</sup> See *Local Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd 7717, ¶ 88 (2000) ("2000 Broadband Reporting Order").

In order to avoid such distortions to the competitive process – as Congress, the Commission, NTIA and the courts already have found – any public reports or disclosures based on broadband providers’ data, such as the public version of broadband maps or reports based on the Form 477 filings, should not reflect the competitively sensitive or confidential information of broadband providers, including the specific boundaries of service territories of particular providers, the exact location and details of network infrastructure, the particular technology being used to provision service at specific locations, granular detail on the available speed tiers (which could reveal technology), or pricing information.

As an initial matter, in the BDIA, Congress already recognized the need to protect sensitive data. Not only did Congress specifically require that any Commission data shared with state-level entities be “aggregate[d],” but it also required any state-level broadband mapping initiatives to “enter into voluntary nondisclosure agreements as necessary to prevent the unauthorized disclosure of confidential and proprietary information provided by broadband service providers” and to protect from public disclosure “any matter that is a trade secret, commercial or financial information, or privileged or confidential.” 47 U.S.C. §§ 1301(d)(2)(C), (h)(2).

Both the courts and the Commission have likewise consistently recognized the confidentiality of broadband providers’ data. As the courts have recognized, disclosure of a provider’s granular broadband data would likely cause competitive harm given the existing competition for broadband in most places. *See, e.g., Center for Public Integrity v. FCC*, 505 F. Supp. 2d 106 (D.D.C. 2007). Likewise, as noted above, the Commission consistently has acknowledged that providers and competition could be harmed by release of this competitively

sensitive and proprietary data.<sup>4</sup> Moreover, detailed disclosures concerning the location of broadband facilities would create risks to network integrity and security, and could facilitate the bad acts of any parties seeking to make mischief. For such reasons, the Commission and courts consistently have taken steps to protect such data. *Id.* Protecting competitively sensitive or confidential information will not undermine the usefulness or availability of broadband data to policymakers or the public, but is necessary to protect the competitive process, to promote speedy cooperation by broadband providers, and to protect broadband facilities.

**II. THE COMMISSION SHOULD GIVE EFFECT TO THE BDIA’S AGGREGATION MANDATE TO REQUIRE AGGREGATION OF FORM 477 DATA AT THE CENSUS TRACT LEVEL PRIOR TO SHARING WITH ELIGIBLE ENTITIES.**

Prior to sharing Form 477 data with state-level mapping initiatives, the Commission should aggregate the data in a manner that keeps confidential broadband provider’s competitively sensitive, confidential or proprietary information, while providing useful and detailed geographic information about where broadband is being used and the speeds selected by broadband subscribers. The BDIA specifies that 477 data may be shared only in aggregate, rather than raw, form. 47 U.S.C. § 1304(h)(1) (requiring the Commission to “provide eligible entities access, in electronic form, to aggregate data collected by the Commission based on the Form 477 submissions of broadband service providers.”). As the Commission has explained in the past, the aggregation of data serves an important function in protecting sensitive information by ensuring that such data “does not identify the individual provider.”<sup>5</sup>

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<sup>4</sup> 2000 *Broadband Reporting Order*, ¶ 88.

<sup>5</sup> *See id.*, ¶ 91.

In order to provide state-level initiatives with useful data relevant to their mission, the Commission should give effect to the BDIA's requirements by sharing Form 477 data at the granular Census Tract level, while taking certain steps to shield the data of individual providers. The Commission's revised Form 477 reporting requires broadband service providers to report the number of broadband connections in service in each Census Tract.<sup>6</sup> Accordingly, aggregation at this level requires no new data manipulation either by the Commission or broadband providers, yet will provide state-level entities with extremely granular information about broadband adoption within their territories.

Given the granularity of this data – and their competitive sensitivity – the Commission should aggregate this Census Tract data in a couple of ways. First, the Commission should aggregate the number of broadband connections across all broadband providers in the Census tract. Doing so would help shield particular provider's subscriber count within these areas, while still providing state-level initiatives with the information they need to assess broadband adoption within the Census Tract. At the same time, in order to allow a more detailed view, the Commission should break down these aggregate numbers between wireline/fixed wireless providers and mobile wireless providers.

Second, the Commission should also provide state-level initiatives with data concerning the speeds of services subscribed to within each Census Tract. Such data would provide additional insight into the nature of demand within particular areas. At the same time, in order to protect data that is highly competitively sensitive – such as the relative success of particular

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<sup>6</sup> See *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, 23 FCC Rcd 9691 (2008).

speed offerings – the Commission should both aggregate this data in two ways. First, speed tier data should be provided to state-level initiatives only in an aggregate fashion, without breaking down the number of connections within a speed tier that are attributable to any particular provider. Second, given the narrowness of the revised tiers and likelihood that subscriber counts within these tiers could be easily attributable to a particular provider, the Commission should combine certain of the speed tiers for these purposes in order to create somewhat broader ranges that better shield particular providers' subscriber counts for offerings of particular speeds.

In particular, rather than providing subscriber counts for each of the 72 tiers that the Commission currently tracks, the Commission should instead provide aggregate subscriber counts for services based only on downstream tiers and using tiers with maximum authorized downstream speeds of: (1) less than 1.5 Mbps, (2) at least 1.5 Mbps but less than 6 Mbps, (3) at least 6 Mbps but less than 10 Mbps, (4) at least 10 Mbps but less than 25 Mbps, and (5) 25 Mbps or faster. Providing data at a greater level of granularity than these combined speed tiers would risk disclosing the particular provider's performance and technology being used, given the publicly available information concerning the speeds and capabilities of particular technologies and of the providers in a particular area associated with particular technological platforms. Release of such information could result in competitive harm. At the same time, this aggregate approach would still permit state-level initiatives to distinguish between entry-level broadband services (less than 1.5 Mbps), those capable of supporting most video services (6-10 Mbps), and those capable of supporting more advanced applications and services (above 10 Mbps). Moreover, by aggregating certain speed tiers for these narrow purposes, the Commission could minimize the risk of reporting errors and avoid overwhelming or slowing down state-level mapping initiatives with voluminous, unnecessary data.

**III. THE COMMISSION SHOULD GIVE EFFECT TO THE BDIA’S CONFIDENTIALITY MANDATE TO REQUIRE ELIGIBLE ENTITIES AND THEIR AGENTS TO ABIDE BY THE SAME CONFIDENTIALITY SAFEGUARDING REQUIREMENTS AS THE COMMISSION.**

Just as the Commission itself adheres to an obligation to maintain the confidentiality of the Form 477 data submitted by broadband providers, eligible entities and their agents should also be required to abide by such a commitment and should, at a minimum, be required to provide protections equivalent to those of the Commission. The BDIA provides for the protection of confidential information supplied by a broadband provider when disclosed to an eligible entity. 47 U.S.C. § 1304(h)(2) (“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.”). The Commission should give effect to this provision by requiring eligible entities and their agents to provide a broadband provider with notice and an opportunity to object before information for which a broadband provider has sought confidential treatment is disclosed – the same standard the Commission applies to itself under Section 0.459 of its rules.

The Commission itself has acknowledged the competitively sensitive nature of the information collected on FCC Form 477 and adopted confidentiality safeguards. To protect against such the misuse of Form 477 data in ways that could harm competition or threaten network security, the Commission has consistently published broadband data only in an aggregate form – typically at the state level. Moreover, since adopting the Form 477 reporting requirements, the Commission has recognized that its rules for requesting non-disclosure of confidential information – including Section 0.459 of the Commission’s rules – were in effect and available to all Form 477 filers.<sup>7</sup> Consistent with these rules, providers may request

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<sup>7</sup> See *2000 Broadband Reporting Order*, ¶ 87.

confidential treatment of the data submitted on the Form 477, and are provided an opportunity to object before any such data is provided to a third party. As the Commission has periodically revised its Form 477 reporting requirements, it has consistently maintained these protections. *See, e.g., Local Telephone Competition and Broadband Reporting*, 19 FCC Rcd 22340, ¶¶ 24, 39 (2004) (“We will retain our current policies and procedures regarding the confidential treatment of submitted Form 477 data, including the exclusive use of aggregated data in our published reports.”). As discussed above, the courts have upheld the Commission’s decisions to protect providers’ data pursuant to these procedures. *See, e.g., Center for Public Integrity*, 505 F. Supp. 2d 106.

Consistent with the BDIA’s terms, the Commission should require that all eligible entities and their agents who receive Form 477 data abide by the safeguarding regimes at least as robust as the Commission’s.<sup>8</sup> For eligible entities that are non-governmental entities, the Commission should follow the BDIA’s approach, and standard practice with existing public-private partnerships, by requiring the signing of a non-disclosure agreement that is mutually agreeable to the mapping entity and to each broadband provider. These agreements should, among other things, provide that sensitive data not be publicly reported and that both the Commission and any affected broadband providers receive notice and have an opportunity to appear and object prior to the publication or sharing of any such data.

If the eligible entity is a governmental unit subject to state FOIA laws, then the Commission should receive confirmation that those laws will provide protections at least as strong as those available under the federal FOIA and traditionally provided by the Commission in protecting providers’ confidential broadband data. Among other things, the Commission

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<sup>8</sup> *See* 47 C.F.R. § 0.459.

should require that any applicable state processes afford both the Commission and any affected broadband providers notice and an opportunity to appear and object before any data is disclosed publicly or shared with any third party. The Commission should also require that, in any state action for disclosure of the Form 477 data, the eligible entity at a minimum will support the standard for disclosure traditionally applied by the Commission or federal courts in the context of similar data. The Commission should take whatever steps it can to avoid having multiple and potentially conflicting disclosure standards applied to the same broadband data.<sup>9</sup>

#### **IV. CONCLUSION**

For the foregoing reasons the Commission should afford eligible entities access to Form 477 data consistent with the BDIA, subject to the aggregation and confidentiality safeguards discussed herein.

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<sup>9</sup> Such steps would be particularly important if the Commission ultimately decides to provide eligible entities Form 477 data at a more granular level than outlined herein.

Respectfully submitted,

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