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
	)	
	)	

REPLY COMMENTS OF VERIZON[1] AND VERIZON WIRELESS

The record broadly supports Verizon's proposals regarding Commission implementation of the BDIA's aggregation provision. However, some commenters advance proposals that effectively ignore the aggregation requirement entirely. Such proposals should be rejected as inconsistent with the plain language of the BDIA. With respect to confidentiality, Verizon supports those commenters proposing constructions of the BDIA that require eligible entities to have strict confidentiality safeguards in place. Specifically, the Commission, per the express dictates of the BDIA, should not allow disclosure of Form 477 data by eligible entities absent consent from the relevant broadband provider.

I. THE PLAIN LANGUAGE OF THE BDIA REQUIRES THE COMMISSION TO AGGREGATE THE RAW FORM 477 DATA REPORTED BY BROADBAND PROVIDERS.

Consistent with the plain language of the BDIA, most commenters broadly support a requirement that the Commission aggregate raw Form 477 data before distributing it to eligible

[1] In addition to Verizon Wireless, the Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

entities.[2] Indeed, several commenters echoed Verizon's specific proposal that any data provided to an eligible entity should not be so detailed as to include specific boundaries of service territories, the exact location and details of network infrastructure, the particular technology being used, pricing information, or granular detail regarding speed tiers.[3] However, some commenters choose to ignore the plain language of the BDIA and ask the Commission to release "raw" or "disaggregated" data to eligible entities.[4] The Commission should reject these requests.

The BDIA imposes two explicit requirements before Form 477 data may be disclosed to eligible entities. First, the Commission must aggregate the data. 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") (emphasis added). Second, the Commission must ensure that eligible entities have

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[2] *See* AT&T Comments; Comments of the United States Telecom Association ("USTA Comments"); Comments of the National Cable & Telecommunications Association ("NCTA Comments"); Comments of the Independent Telephone & Telecommunications Alliance and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("ITTA/OPASTCO Comments"); Comments of National Telecommunications Cooperative Association ("NTCA Comments"); Comments of Texas Statewide Telephone Cooperative, Inc. ("TSTC Comments"); XO Comments.

[3] *See* XO Comments at 3-4; ITTA/OPASTCO Comments at 7-8; USTA Comments at 5-6; TSTC Comments at 3.

[4] *See* Comments of the Public Service Commission of the State of Missouri ("Missouri PSC Comments") (supporting the position of NARUC that "disaggregated" data be provided); Comments of National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel ("NASUCA/NJ Comments") (arguing that the term "aggregate" should connote all levels of aggregation, including "raw" data); Comments of the Nebraska Public Service Commission ("Nebraska PSC Comments") (suggesting that Form 477 data should be "disaggregated" by state); Comments of the National Association or Regulatory Utility Commissioners ("NARUC Comments") (stating that the FCC should provide States the "raw data" from Form 477 submissions); Comments of the California Public Utility Commission, at 4 ("California PUC Comments") ("[T]he FCC should provide to each eligible entity in every state the raw data it receives on Forms 477 from all broadband providers…"). It should also be noted that NARUC passed a resolution two weeks ago that stated the FCC should provide all States, upon request, "disaggregated" data from Form 477 submissions.

confidentiality safeguards in place to protect the aggregated data. 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.").

In light of the BDIA's clear language, constructions of the statute that would allow for the release of "raw" or "disaggregated" Form 477 data to eligible entities should be rejected on two independent grounds. First, such constructions conflict with the clear language of the statute. Where the BDIA requires the Commission to "provide eligible entities access, in electronic form, to *aggregate* data,"[5] requests for access to "raw" and "disaggregated" data exceed the bounds of statutory authority. The question properly before the Commission is the *level* of aggregation the BDIA requires, not whether Form 477 data may be shared in its "raw" or "disaggregated" form.

Second, constructions of the BDIA to allow disclosure of "raw" or "disaggregated" Form 477 data fail to give effect to all of the language of the statute in contravention of established norms of statutory construction.[6] The BDIA's aggregation and confidentiality provisions work in tandem, yet each has an independent purpose. The confidentiality requirement imposes an obligation on each eligible entity to safeguard the Form 477 data it receives. The aggregation requirement provides an additional layer of protection by ensuring that particularly sensitive information and information not needed for broadband mapping purposes is never disclosed in

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[5] 47 U.S.C. § 1304(h)(1).

[6] "It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (internal quotations omitted); *see also Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.' ") (internal quotations omitted).

the first instance. Any proposal that the Commission should release raw data to an eligible entity reads one of these protections – the aggregation requirement – out of the BDIA entirely.

By contrast, the construction of the BDIA offered by Verizon, and supported by other commenters, gives effect to the whole statute. Moreover, it ensures that Congress's intent to provide two layers of protection to the highly sensitive and commercially significant Form 477 data is satisfied. Accordingly, the Commission should adopt Verizon's construction and reject proposals that treat the BDIA's aggregation requirement as meaningless surplusage.

For the same reason, proposals that Form 477 filers make data submissions to the FCC and eligible entities simultaneously should be rejected.[7] Such proposals assume that the FCC and eligible entities will receive the same data set – *i.e.*, that no aggregation will occur prior to sharing with eligible entities. As discussed above, such an approach is inconsistent with the clear language of the BDIA and would eliminate one of the levels of data protection required by Congress.

II. THE COMMISSION SHOULD CONSTRUE THE BDIA TO REQUIRE BROADBAND PROVIDER CONSENT PRIOR TO DISCLOSURE OF FORM 477 DATA BY AN ELIGIBLE ENTITY.

The record reflects that multiple parties support Verizon's proposal that eligible entities be subject to, at a minimum, the same confidentiality requirements as the Commission.[8] Indeed, several commenters support more rigorous confidentiality protections.[9] AT&T explains that the confidentiality protections offered by the BDIA should be construed to exceed and supersede

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[7] *See* Missouri PSC Comments at 2; California PUC Comments at 7.

[8] *See, e.g.*, USTA Comments at 2, 4; NCTA Comments at 3; ITTA/OPASTCO Comments at 8.

[9] *See, e.g.*, ITTA/OPASTCO Comments at 8; NCTA Comments at 3; XO Comments at 4; Time Warner Cable Comments, at 3-4.

FOIA. The statutory language supports this view, and the Commission should hold that eligible entities may disclose Form 477 data only with the relevant filer's consent.

The Commission should construe the BDIA's confidentiality provision to allow disclosure of Form 477 data by an eligible entity only with the consent of the relevant filer. As AT&T notes, by its express terms the BDIA supersedes federal and state disclosure laws, such as FOIA, and requires consent of the Form 477 filer prior to any disclosure of Form 477 data by eligible entities.[10] As the plain language of the BDIA makes clear, its confidentiality provision imposes requirements that are independent of and supersede FOIA. Specifically, the BDIA states that: "*[n]otwithstanding 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."[11] The BDIA further provides as the sole exception to its non-disclosure requirement that a filer's Form 477 data shall be safeguarded against public disclosure "except as otherwise mutually agreed to by the broadband service provider and the eligible entity."[12] Even the savings clause that preserves other disclosure requirements is limited, and excludes information submitted to "carry out the provisions" of the BDIA. 47 U.S.C. 1304 (h)(2) (confidentiality limits apply only to information submitted "to carry the provisions of this title" and shall not "otherwise" limit rules governing public disclosure). By the plain terms of the statute, this broadband provider consent requirement then takes precedence over state or federal public disclosure laws. Accordingly, the

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[10] AT&T Comments at 5.

[11] 47 U.S.C. § 1304(h)(2).

[12] *Id.*

Commission should construe the BDIA to require broadband provider consent prior to disclosure of Form 477 data by an eligible entity.

Relatedly, the Commission should reject proposals to allow eligible entities to share data with respect to their states with other eligible entities in other states without provider consent.[13] Such third-party sharing could compromise confidentiality without providing any attendant benefit. The Form 477 data can support mapping, which is done on a state-by-state basis. No purpose would be served by sharing such data among different states. Indeed, doing so would only increase the possibility of inadvertent disclosure and make identifying the source of the disclosure more difficult.

[13] NASUCA/NJ Comments at 7.

CONCLUSION

For the foregoing reasons the Commission should adhere to the plain language of the BDIA and afford eligible entities access to properly aggregated Form 477 data subject to strict confidentiality safeguards.

Respectfully submitted,

By: _____

Edward Shakin
William H. Johnson
VERIZON
1320 North Courthouse Road
9th Floor
Arlington, Virginia 22201
(703) 351-3060

John T. Scott, III
William D. Wallace
VERIZON WIRELESS
1300 I Street N.W.
Suite 400 West
Washington, DC 20005

Michael Glover
Of Counsel

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