

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Development of Nationwide Broadband Data to)	
Evaluate Reasonable and Timely Deployment of)	
Advanced Services to All Americans,)	WC Docket No. 07-38
Improvement of Wireless Broadband)	
Subscribership Data, and Development of Data on)	
Interconnected Voice over Internet Protocol)	
(VoIP) Subscribership)	
)	
International Comparison and Consumer)	
Survey Requirements in the Broadband)	GN Docket No. 09-47
Data Improvement Act)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	

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I. INTRODUCTION

As the NTIA begins to implement the State Broadband Data and Development Grant Program, it is critical that the Commission completely fulfills its responsibilities as defined by the Broadband Data Improvement Act (BDIA). Commission action is critical to ensure that the \$350 million in taxpayer dollars allocated for this program are spent wisely.

II. DISCUSSION

A. A Variety of Commenters Recognize the Role Required of the Commission

In their July 30th filings, many commenters recognized the role the Commission must play in order to ensure successful implementation of the BDIA. The record reflects near-universal consensus that the BDIA affirmed the Commission's role as the nation's primary collector of broadband data.¹ The record also reflects consensus that the overall success of the numerous local, state and Federal broadband-focused programs depends upon access to highly granular and accurate data. Commenters recognized that the Commission's current Form 477 broadband subscribership data, as well as the availability data that will eventually be gathered, could -- *right now* -- serve as this indispensable information source.

Broadband providers were among those who recognized the Commission's essential role. Time Warner Cable states, "particularly for states that have yet to begin their individual broadband mapping efforts... the currently available Form 477 raw data

¹ See Comments of Free Press at 4-9. See also Comments of California Public Utility Commission at 10.

may be extremely timely and most beneficial."² Verizon recognized the language included in the BDIA directed the Commission "to assist these state-level initiatives... while also minimizing the need for unnecessary and redundant reporting by providers."³ The States also looked to the Commission for broadband data. The National Association of Regulatory Utility Commissioners (NARUC) told the Commission that any "[d]elay in the release of complete data....**will undermine State efforts.**"⁴ The California Public Utility Commission (CPUC) notes that Section 106(h) was specifically included "in order to avoid duplication of data gathering and to facilitate state collection of data from broadband providers".⁵ The CPUC goes on to state that "it is imperative that the FCC require Form 477 to be given to these eligible entities, and that the data be as detailed as possible to enable the necessary analysis for fulfilling the BDIA's requirements."⁶

Support for a strong FCC role expressed by providers, states and consumer groups,⁷ along with clear instruction from Congress in the BDIA itself, leaves no doubt as to the appropriate path forward -- the Commission must act on the proposal set forth in our initial comments and release current Census Tract data while simultaneously completing the pending *Further Notice* on availability data. It is time for *this* Commission to live up to the expectations placed upon it by local and state governments, consumer groups, ISPs and Congress.

² Comments of Time Warner Cable at 4.

³ Comments of Verizon and Verizon Wireless at 1.

⁴ Comments of the National Association of Regulatory Utility Commissioners at 7 (emphasis in original).

⁵ Comments of the CPUC at 2.

⁶ *Ibid.* at 6.

⁷ See e.g. Joint Comments of the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel at 6-7. (*Comments of NASUCA and NJRC*).

B. Providers Fail to Make a Compelling Case that Form 477 Data Should Be Kept From the Public

In their initial comments, providers were once again near unanimous in requesting the Commission not disclose -- to the state-designated entities or the public -- *any* granular Form 477 data.⁸ Yet no detailed explanation was offered that could be considered a demonstration of the "substantial competitive harm" that would result from the public disclosure of data, nor from the sharing of that data with state-designated entities operating pursuant to the terms of the BDIA.⁹ As a matter of ongoing policy, absent such a showing, the Commission should always release granular Form 477 to the public.

While the States promise to abide by any Commission-imposed confidentiality conditions, they also request that the Commission first obtain a specific explanation from providers that justify such secretive treatment. The New Jersey Division of Rate Counsel (NJDRRC) urged the Commission to "require providers to demonstrate that particular levels of aggregation merit confidential treatment."¹⁰ The Missouri Public Service Commission (MoPSC) recognized the value that granular broadband information will have, stating, "clearly disaggregated data will be vital in the development of a national broadband map."¹¹

Even Clearwire, a company deploying an emerging technology (whose information would inevitably be more sensitive than established providers), publicly

⁸ See *e.g.* Comments of Qwest Communications International at 2.

⁹ 47 U.S.C. § 0.459(b)(5).

¹⁰ Comments of NASUCA and NJRC at 7.

¹¹ Comments of the Public Service Commission of the State of Missouri at 3.

discloses deployment plans months *before* the service is actually offered.¹² This stands in stark contrast to Commission data, which would provide information that is *already at least eight months old*.¹³ This rarely mentioned but basic reality defies the carrier's doom and fear mongering surrounding the issue of public disclosure. Further, as many commenters pointed out, Tract-level data is already itself, by definition, aggregated data. Given the geographically large nature of tracts, and that the typical Tract contains about 1,600 households, it is almost impossible to conceive of how public release of this already outdated Form 477 data could cause any competitive harm.

We encourage the Commission to cast a skeptical eye towards these attempts at thwarting public participation. As the Commission found in revising the confidentiality rules, entities will repeatedly submit frivolous non-disclosure requests.¹⁴ With the growing importance of broadband policymaking, the public deserves transparency in the data used to justify countless Commission decisions, as well as decisions that will be made by RUS and NTIA in the awarding of billions of taxpayer dollars.

¹² See Clearwire, "Clearwire to Officially Launch CLEAR 4G Service in 10 Markets on September 1, 2009," Press Release, Aug. 3, 2009. For a more thorough review of the information already publicly disclosed by providers, See Comments of Free Press, In the Matter of *A National Broadband Plan for Our Future*, GN Docket No. 09-51, at 297-301.

¹³ The Census Tract-based data reported on Form 477 by carriers to the Commission on March 16 2009 was information as of December 31 2008.

¹⁴ In revising the rules governing confidential treatment, the Commission stated "We believe, as do several of the parties, that specifically identifying types of information we need to evaluate requests for confidentiality will reduce the number of unsubstantiated requests that we receive". *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 (1998), para. 12.

III. CONCLUSION

With the duties placed on it by the BDIA, the new FCC has an opportunity to demonstrate its commitment to promoting the deployment and adoption of affordable broadband. To show this commitment, the Commission need only utilize and expand the data collected through Form 477 -- a tentative conclusion already reached in a 14 month-old *Further Notice of Proposed Rulemaking* -- a proceeding that received extensive public comment. With the collection and release of accurate, verifiable and authoritative broadband data, the public can have some assurance that stimulus monies devoted to the broadband deployment and adoption are being put to their most efficient and effective use.

Respectfully submitted,

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