

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matters of

Inquiry Concerning the Deployment of
Advanced Telecommunications Capability
to All Americans in a Reasonable and
Timely Fashion, and Possible Steps to
Accelerate Such Deployment Pursuant to
Section 706 of the Telecommunications
Act of 1996, as Amended by the
Broadband Data Improvement Act

A National Broadband Plan for Our Future

GN Docket No. 09-137

GN Docket No. 09-51

**REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA**

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I. INTRODUCTION

The California Public Utilities Commission and the People of the State of California (California or CPUC) submit these reply comments in response to the Federal Communications Commission’s (FCC or Commission) Notice of Inquiry (NOI) Concerning Deployment of Advanced Telecommunications Capability Pursuant to Section 706 of the Telecommunications Act of 1996, as amended by the Broadband Data Improvement Act (2008), released August 7, 2009.¹

California comments here on some, but not all, of the issues raised in the NOI, and makes the following recommendations:

1. The FCC should adopt definitions of “broadband” and “advanced services capability” based on the data and improved granularity generated by the revised Form 477 data collection and the data being made available to the National Telecommunications and Information Administration (NTIA) as part of the Recovery Act’s Broadband Technology and Opportunity Program (BTOP), and its state mapping efforts;
2. The FCC should not equate availability of broadband with customer subscribership or adoption of broadband;
3. The FCC should not defer assessment of the level of deployment and demand for broadband services until after benchmarks are established for the National Broadband Plan – the data regarding demand and deployment should inform the development of benchmarks;
4. In defining a “geographic area” for purposes of Section 706 Reports, the FCC should use the most granular geographic area available from the NTIA data collection, that is, Census Blocks for blocks 2 square miles and smaller, and Street Segments for larger blocks;

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

5. The FCC should consider in its data collection the broadband services offered by satellite providers when determining whether a given area has access to broadband services, and should collect availability and connection data by speed tier for that purpose; and
6. The FCC should share with state commissions, on a timely basis, the raw data on broadband availability and subscribership it receives from broadband providers and other entities.

Silence on any other issue raised in the opening round of comments signifies neither agreement nor disagreement with the positions taken.

II. DISCUSSION

A. Definitions of Broadband and Advanced Services Should Be Based on Available Data and Analysis of Broadband Services That Consumers Choose

The FCC seeks comment on how to define “advanced telecommunications capability” and “broadband” for purposes of its sixth section 706 report.² The CPUC recommends that whatever definition the FCC adopts should be flexible, not rigid, in order to accommodate constant changes in technology and deployment.

California suggests that the FCC look to the data collected via the revised Form 477,³ and the data being made available to the NTIA as part of the Recovery Act’s Broadband Technology and Opportunity Grant Program (BTOP) and the BDIA’s State Broadband Data and Development Grant Program. Taken together, these data will inform the FCC about the location, speed, and technology of broadband services.

² *NOI*, ¶¶ 34 – 41.

³ The CPUC understands that the FCC is continuing to revise Form 477.

As noted in our comments filed with the Commission on July 30, 2009,⁴ state-specific raw Form 477 data-- in addition to other sources of information -- will be crucial for tracking the full measure of broadband demand and supply. Here we emphasize the relationship of this data to the practical understanding consumers have as to what constitutes broadband and advanced services. Service offered at 50Mbps will soon be available in large areas of the country. Yet, if most subscribers choose only 10 or 20 Mbps service, those choices may indicate what subscribers consider at the moment to be the optimum broadband speed.⁵ Further, while affordability may drive broadband choices in many instances, a consumer's choice not to subscribe, made for reasons other than affordability of the service offering, may show that the consumer does find broadband relevant to his or her life, does not own a computer or know how to use one.⁶ What consumers choose to buy, based on the options available to them, will help the FCC determine what types of service should be included within the definition of what consumers consider acceptable broadband services.

⁴ Comments of the California Public Utilities Commission and the People of the State of California on Public Notice on Providing Eligible Entities Access to Aggregate Form 477 Data as Required by the Broadband Data Improvement Act, *In the Matter of 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*, WC Docket No. 07-38, *International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act*, GN Docket No. 09-47, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, July 30, 2009, p. 4 (CPUC Form 477 Comments).

⁵ California recognizes that many other countries offer much higher speeds to all users. The FCC must balance, however, the costs of deploying facilities capable of higher speeds against the reality of true consumer demand.

⁶ FCC staff presented a status report at the Commission's September 29, 2009 open meeting, indicating that the FCC expects to conduct an extensive survey and segmentation analysis to obtain more data on the reasons that consumers choose to adopt broadband services, or choose not to do so.

B. Determining Broadband Availability to All Americans Should Not Rely Exclusively or Predominantly on Subscriberhip Data

The FCC seeks comment on whether it should rely on subscribership data to determine availability, as it has previously done.⁷ As the FCC notes, it has historically used subscribership data collected through Form 477 “as an indicator of availability.”⁸ The CPUC recommends that the FCC *not* use subscribership data as a proxy for broadband availability. Availability data, or infrastructure data, shows where broadband is available. Meanwhile, subscribership data denotes where consumers are choosing to purchase broadband service. These two types of data are profoundly different and should, as the FCC suggests, act as counterpoints.⁹ In other words, where facilities are deployed, and where customers are subscribing to broadband are two separate sets of data. The relationship between those two sets of data can be instructive to the FCC in determining where subscribership may be dependent on factors other than availability. Similarly, how applications and the popularity of broadband-capable devices, especially wireless devices, shape infrastructure deployment and subscribership rates will affect subscribership and customer adoption.

The Commission also asks whether it would be useful to assess the level of demand for broadband services in its § 706 inquiry or whether it should defer such inquiry until benchmarks for the National Broadband Plan have been established.¹⁰ The

⁷ *NOI*, ¶ 45.

⁸ *Id.*, ¶ 43.

⁹ *Id.*, ¶ 45.

¹⁰ *Id.*, ¶ 46.

CPUC recommends that the FCC not defer assessment of the level of demand or deployment; rather, the FCC should assess the data regarding demand and deployment first, and that data will inform the development of benchmarks for the National Broadband Plan.

C. The Reasonableness and Timeliness of Deployment Should Reference the Smallest and Largest Geographic Areas

The Commission seeks comment on how it should define “geographic area” in the context of served and unserved. “In particular, we seek comment on how to define ‘geographic area’ in the context of deployment of broadband, and its relationship to Census Bureau data.”¹¹ This area must be defined in two ways: 1) the smallest geographic area possible to determine accurately where broadband service is available; and 2) the largest geographic area in which broadband customers are served by a single provider.

California previously recommended to the FCC that Form 477 data be collected at the street address level.¹² Thus, we agree with New Jersey Division of Rate Counsel that the Commission should “reconsider its decision to adopt the census tract as the relevant geographic area for Form 477 data...”¹³ While we still hope that street address level data be collected, broadband availability is currently being collected by the NTIA at the census block level for blocks 2 square miles or smaller and at the street segment level for

¹¹ *Id.*, ¶54.

¹² CPUC Form 477 Comments, p. 10.

¹³ Comments of the New Jersey Division of Rate Counsel, at p. 13.

larger blocks. In defining an appropriate “geographic area” for purposes of § 706 Reports and data collection, the FCC should use the most granular geographic area for which data are becoming available – that is, census blocks for blocks 2 square miles, and smaller and street segments for larger blocks.

In addition to this small geographic area, the Commission should also focus on the largest area to which a single service provider offers broadband service. The FCC notes that the NTIA and RUS “exclude satellite broadband service when determining whether an area is unserved...”¹⁴ In a footnote the FCC acknowledges the NTIA rationale: “Because the general reach of satellite service can extend to the entire country, it is excluded as a factor in the unserved definition to avoid a finding that no area in the United States would be considered unserved.”¹⁵ But in that very note, the question of satellite service turns on the matter of latency, a technical issue subject to change and one that the FCC should track in its data collection. Moreover, the issue of whether the alleged deficiencies of satellite service constitute grounds for the label “unserved” – as the NTIA’s Notice of Funds Availability declares -- or whether “underserved” would be more apt, should likewise be a matter of fact based in the data collected. The CPUC is of the view that the FCC should include the broadband services offered by satellite providers when determining whether a given area has access to broadband services. The Commission also should collect availability and connection data by speed tier for that

¹⁴ *NOI*, ¶ 54.

¹⁵ *Id.*, Fn. 161, citing the NTIA-RUS Broadband Technologies Opportunity Program Notice of Funding Availability, 74 Fed. Reg. at 32549.

purpose. We note the Wireless Internet Service Providers Association (WISPA) comments to that effect:

WISPA submits that advanced telecommunications capability is not ‘available’ for all Americans because in many locations, affordable broadband has not been deployed. Some WISPs report that in their areas, 60 percent of the households have no broadband option *other than satellite*.¹⁶

WISPA’s qualification respecting satellite service can only be known if data regarding satellite service is collected and measured by the indices applied when measuring other technologies. Therefore, the FCC should look to this technology, serving the largest geographic area possible, to determine where broadband is available. This, paired with granular data collected at the smallest geographic areas possible, will allow the FCC to understand accurately whether broadband is being deployed in a reasonable and timely manner.

D. The FCC’s Regular Broadband Data Collection Should Include Sharing of the Collected Data

The FCC seeks comment on what actions it should take to improve its regular data collections.¹⁷ The Commission further notes that improved data collection will assure that it “will have rich information to inform our policymaking activities, to support the activities of other agencies and *other levels of government*, and provide to consumers, researchers, and industry about the state of broadband in our nations.”¹⁸ Accordingly, the

¹⁶ Comments of the Wireless Internet Service Providers Association, at p. 7; emphasis added.

¹⁷ *NOI*, ¶ 67.

¹⁸ *Id.*; emphasis added.

State Members of the Federal-State Joint Conference on Advanced Services have recommended that the FCC, in conjunction with its revision of Form 477 data collection, share that data with the states. The State Members cite the National Association of Regulatory Utility Commissioners (NARUC) resolution recognizing the need for states to have timely access to data on service locations, speeds, prices, technology and infrastructure from both wireline and wireless broadband service providers.¹⁹ The District of Columbia Public Service Commission (DCPSC) likewise treats the FCC’s data collection as necessarily involving “*sharing* of the collected data with states.”²⁰ The DSPSC applauds:

[T]he use of so-called data sharing arrangements by which the FCC releases to state public utility commissions information which falls within the common interest and jurisdiction of the Commission and the states. This data sharing, which takes place pursuant to formal ‘Data Sharing Agreements’ with confidentiality protections, can be of great help to states in developing plans for the deployment and adoption of broadband, provided the information found on Form 477 is timely shared. We urge the Commission to encourage the widespread use of these data sharing arrangements.

We agree. The FCC should share with state commissions, on a timely basis, the raw data on broadband availability and subscribership it receives from broadband providers. Moreover, data that the FCC obtains on its own from such consulting firms as American Roamer should also be shared with state commissions and state mapping entities in a timely way.²¹ Sharing data with the states is especially important if the data

¹⁹ Comments of The State Members of the Federal-State Joint Conference on Advanced Services, at p. 4.

²⁰ Comments of the District of Columbia Public Service Commission, at p. 8 (emphasis added).

²¹ *NOI*, ¶ 22.

gathered “tracks service provision for mobile service and mobile data services,”²² which is otherwise difficult for states to collect independently. California has previously recommended that the FCC require broadband infrastructure and service providers to file *simultaneously* future Form 477 reports with *both* the FCC and the respective state utility commissions and state mapping authorities.²³

III. CONCLUSION

The CPUC offers these recommendations to the Commission in its clean slate approach to the § 706 Report against the backdrop of recent and extraordinary statutory and policy changes and major improvements in broadband data gathering.²⁴

Respectfully submitted,

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²² *Id.*, ¶ 7, Fn. 79.

²³ CPUC Form 477 Comments, p. 7.

²⁴ *NOI*, ¶ 2.