



November 23, 2009

Via Electronic and First Class U.S. Mail

Ms. Sharon Gillett
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Request for FCC Form 477 Broadband Data in Support of Broadband
Technology Opportunities Program

Dear Ms. Gillett:

The American Recovery and Reinvestment Act of 2009 (Recovery Act)¹ directs the Federal Communications Commission (FCC) and the National Telecommunications and Information Administration (NTIA), as well as the U.S. Department of Agriculture's Rural Utilities Service (RUS), to implement complementary initiatives to promote expanded access to broadband service. RUS, NTIA, and the FCC have worked closely over the past few months to leverage the authorities and resources provided in the Recovery Act to coordinate efforts to address the challenge of rapidly expanding the access and quality of broadband services across the country. RUS and NTIA developed, in consultation with the FCC, a coordinated federal government approach to achieve the objectives set forth in the Recovery Act, which resulted in the release of a joint Notice of Funds Availability (NOFA) for the Broadband Initiatives Program (BIP) Broadband Technology Opportunities Program (BTOP).²

The Recovery Act requires NTIA to make grants to provide broadband access to unserved and underserved areas of the country.³ The NOFA directs BTOP infrastructure applicants to identify in their applications the proposed funded service areas that meet the criteria set forth in the NOFA for determining unserved or underserved areas.⁴ Additionally, the NOFA

¹ American Recovery and Reinvestment Act of 2009 (Recovery Act), § 6001, Pub. L. No. 111-5, 123 Stat. 115 (2009).

² Notice of Funds Availability and Solicitation of Applications (NOFA), 74 Fed. Reg. 33104 (July 9, 2009).

³ Recovery Act, § 6001(b), 123 Stat. at 512-513.

⁴ NOFA, 74 Fed. Reg. at 33109. In general, an area is "unserved" if at least 90 percent of households in the proposed funded service area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the minimum broadband transmission speed. *Id.* A proposed funded service area is underserved for last mile projects if at least one of the following criteria is satisfied: 1) no more than 50% of the households have access to facilities-based, terrestrial broadband service at greater than the minimum broadband transmission speed; 2) no fixed or mobile broadband service provider advertises broadband transmission speeds of at least 3 mbps downstream; or

directs NTIA to provide existing service providers with a 30-day window to voluntarily submit information regarding the proposed funded service area(s) of BTOP infrastructure applicants to help inform the application review process and ensure that BTOP funds support projects in areas that meet the NOFA definitions of unserved or underserved. NTIA then reviews the submissions made by existing service providers and compares them against the applicant's proposed funded service area designations and the methodology the applicant used to evaluate the unserved or underserved status of the area. The initial public notice filing comment period opened on September 28 and closed on October 28, 2009 and NTIA is in the process of evaluating the comments it received against the NOFA standards.

NTIA is aware that the FCC periodically collects information on the availability of broadband service, as required by Section 706 of the Telecommunications Act of 1996.⁵ Generally, the FCC may share information it has collected with another government agency.⁶ Its regulations provide that information that is submitted to it in confidence will be disclosed to other agencies of the Federal government upon request provided that: (1) specific FCC assurances against such disclosure have not been given; (2) the other agency has established a legitimate need for the information; (3) disclosure is made subject to the provisions of 44 U.S.C. § 3510(b); and (4) disclosure is not prohibited by the Privacy Act or other provisions of law.⁷

NTIA respectfully requests access to the Form 477 data that the FCC collects from broadband service providers. NTIA intends to use this data to help validate the unserved or underserved classifications of the BTOP applicants' proposed funded service areas.⁸ As provided in the NOFA, NTIA will protect confidential and proprietary information from public disclosure to the fullest extent authorized by applicable law, including the Freedom of Information Act (FOIA), as amended (5 U.S.C. § 552), the Trade Secrets Act, as amended (18 U.S.C. § 1905), and the Economic Espionage Act of 1996 (18 U.S.C. § 1831 *et seq.*)⁹ Moreover, in the event of a request by a third party for disclosure under the FOIA of the Form 477 data NTIA has received from the FCC, the Department will act in accordance with its FOIA regulations and will consult with or refer the matter to the FCC as appropriate.¹⁰

3) the rate of broadband subscribership is 40% of households or less. A proposed funded service area is underserved for middle mile projects if at least one interconnection point terminates in an area that qualifies as unserved or underserved for last mile projects. *Id.*

⁵ 47 U.S.C. § 706.

⁶ See 44 U.S.C. § 3510.

⁷ 47 C.F.R. § 0.442(b). The FCC's regulations also make clear that the acceptance of materials in confidence does not provide assurance against their disclosure to other agencies. 47 C.F.R. § 0.442(a).

⁸ The FCC initiated its Form 477 data collection program in 2000 to compile standardized information about subscribership to high-speed, advanced telecommunications services. Recognizing the need for more granular data reporting, the FCC issued an order that implemented substantial improvements in its data collection methods. Notably, effective with the March 2009 reporting of year-end 2008 data, the FCC directed providers of wired broadband, fixed-wireless broadband, and satellite-based broadband providers to report their subscriber counts at the Census Tract level rather than the state level and their broadband connections at an increased number of upload and download transmission speed tiers. *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order, 23 FCC Rcd 9691 (2008); Order on Reconsideration, 23 FCC Rcd 9800 (2008).

⁹ NOFA, 74 Fed. Reg. at 33126.

¹⁰ See 15 C.F.R. § 4.5(b).

I trust that the above information addresses any concerns that you may have about sharing the Form 477 data with NTIA. Please contact Jennifer Duane at 202-482-1763 so that we can make arrangements to obtain this information. Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Wilhelm". The signature is stylized and written in a cursive-like font.

Anthony G. Wilhelm
Director, Broadband Technology Opportunities Program
and Deputy Associate Administrator
Office of Telecommunications and Information
Applications