



INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

December 7, 2009

Via ECFS

Marlene H. Dortch
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Notice of Request for Access to Form 477 Broadband
Data Pleading Cycle Established
WC Docket No. 09-214**

Dear Ms. Dortch:

The Independent Telephone & Telecommunications Alliance (ITTA) responds to the Commission's recent "Notice of Request for Access to Form 477 Broadband Data Pleading Cycle Established" (Public Notice DA 09-2502, WC Docket No. 09-214 (Nov. 25, 2009)). ITTA members are mid-size local exchange carriers that provide a broad range of high-quality wireline and wireless voice, data, Internet, and video services to 30 million access lines in 44 states. The Commission explains that the National Telecommunications and Information Administration (NTIA) has requested access to the Form 477 data in order to facilitate administration of the Broadband Technology Opportunities Program (BTOP). ITTA supports efforts to ensure proper implementation of the BTOP program, and acknowledges that NTIA receipt of Form 477 data will enable more accurate and comprehensive review of the BTOP applications. This should result in proper implementation of the ARRA in a manner that fulfills the statutory intent to bring broadband to unserved areas. ITTA, however, urges the Commission and NTIA to ensure that competitively sensitive provider data is handled appropriately and guarded to the full measure of applicable regulations.

Form 477 is used to collect information about broadband connections to end-user locations, wired and wireless local telephone connections, and interconnected Voice over Internet Protocol (VoIP) services. Broadband providers submit granular information about their offerings, categorized on the basis of technology, geographic basis where services are provided, connections served, and other data that are competitively sensitive. The Commission has already recognized the competitively sensitive nature of this data by providing a "check box" on the cover page of the Form 477 by which filers can request confidential treatment of their data (See, *i.e.*, Form 477 Tutorial, at 9 (<http://www.fcc.gov/Forms/Form477/477tutorial.pdf>) (last viewed Dec. 7, 2009, 19:19). The Commission also has expressed its confidence that robust confidentiality protections will encourage broadband provider compliance with Form 477 reporting requirements, stating that streamlined procedures for requesting confidential treatment "will lead to a greater level of compliance with this information collection and will give providers confidence that protectable data will not be published" (*Local Competition and Broadband Reporting: Report and Order*, CC Docket No. 99-301, FCC 00-114, at para. 90 (2000)). It is critical that these safeguards are not

diluted as information is shared across agency lines to a wider audience, including potential third-party BTOP application reviewers.

Under the Commission's rules, 47 CFR § 0.442, "[i]nformation submitted to the Commission in confidence . . . will be disclosed to other agencies of the Federal government upon request." ITTA recognizes the role NTIA will play in broadband deployment, and the usefulness of the Form 477 data to NTIA review of BTOP applications. Broadband service providers, however, face intense competition, and improper public disclosure of Form 477 data could undermine broadband providers' network investments. The Commission, along with the NTIA, must ensure that the proprietary nature of the data is maintained as its reviewing audience grows. The impressive investments that incumbent providers have made in broadband networks must not be placed at risk due to inadvertent or improper disclosure of sensitive data.

ITTA members employ various means to determine deployment strategies that serve both the public interest and the interest of their shareholders. These include comprehensive analyses of technologies, end-user preferences, and market analyses that inform bundling and pricing strategies. The cumulative results of these analyses are the deployment of networks and offering of particular services, in specific regions, at defined rates. ITTA members employ and contract with economists, engineers, and other experts to create detailed strategies that lead to efficient deployment and service offerings. Improper disclosure of Form 477 data could offer a damaging and inappropriately intimate look at these internal processes. It cannot, and must not, be assumed that, by way of example, contract BTOP reviewers for the NTIA will possess either the experience or expertise to control confidential information appropriately. A single inadvertent error could have significant adverse effects upon a broadband provider's investment and ability to serve an area. Among the safeguards the agencies may consider are contractual obligations that bind third-party entities to uphold and protect the confidentiality of the information. The contractual obligations should run between the contractor and the Federal agencies, but should not preclude recovery by broadband providers against the contractors or their agents should proprietary information be released.

In closing, ITTA supports efforts to ensure proper implementation of the BTOP program, and urges the Commission and NTIA to ensure that competitively sensitive provider data is handled appropriately and guarded to the full measure of applicable regulations.

Respectfully submitted,



Joshua Seidemann
Vice President, Regulatory Affairs

cc: Jeremy Miller