

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Review of Wireline Competition Bureau Data Practices	)	WC Docket No. 10-132
	)	
Review of Media Bureau Data Practices	)	MB Docket No. 10-103
	)	
Review of Wireless Telecommunications Bureau Data Practices	)	WT Docket No. 10-131
	)	

**REPLY COMMENTS OF  
THE UNITED STATES TELECOM ASSOCIATION**

USTelecom provides these reply comments in the above referenced proceeding examining the Federal Communications Commission’s efforts to improve its collection, use and dissemination of data.<sup>1</sup> These proceedings present the Commission with another opportunity to help consumers and increase agency and industry efficiency by removing unnecessary costs. As is clear from the record in this, and other proceedings, telecommunications markets are changing dramatically, particularly as competitors bring new networks and service bundles to market.<sup>2</sup>

The Wireline Competition Bureau, and ultimately the Commission, will find that this increased

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<sup>1</sup> See, Public Notice, *Pleading Cycle Established for Comments on Review of Media Bureau Data Practices*, 25 FCC Rcd. 8236, DA 10-1195 (released June 29, 2010); Public Notice, *Pleading Cycle Established for Comments on Review of Wireline Competition Bureau Data Practices*, 25 FCC Rcd. 8213, DA 10-1189 (released June 29, 2010); Public Notice, *Pleading Cycle Established for Comments on Review of Wireless Telecommunications Bureau Data Practices*, 25 FCC Rcd. 8337, DA 10-1223 (released June 29, 2010).

<sup>2</sup> See e.g., Comments of USTelecom, GN Docket No. 10-127, pp. 1 - 26 (filed July 15, 2010) (discussing the changing telecommunications marketplace which is characterized by increasing competition, expanding choices and increasing consumer value); Comments of USTelecom, GN Docket No. 09-191, pp. 4 - 28 (filed January 14, 2010).

competition and regulatory changes eliminate the usefulness of many of the Commission's data reporting regulations.

**I. There is Strong Support for Elimination of Outdated and Unnecessary Reporting Requirements**

The record in this proceeding demonstrates strong and broad support for the Commission to eliminate outdated data reporting requirements. Across all industries and a broad range of interests, there was shared desire to free up industry and government personnel from the substantial burdens associated with the submission and review of unnecessary data.

As AT&T notes in its comments, while the vigorous competition between ILECs, CLECs, wireless, cable and others, has changed the competitive landscape dramatically, “the regulatory framework has not kept pace with these changes, and, consequently, telecommunications services remain subject to a host of outdated regulations, including outdated data collection requirements.”<sup>3</sup> Verizon similarly encourages the Commission to discontinue “antiquated reporting requirements – in some cases applicable to only a few among many competing providers – that are either no longer useful to consumers (if they ever were) or to the Commission in today's competitive environment or should be changed to reflect the modern communications marketplace.”<sup>4</sup> Free Press also acknowledges that the Commission should not collect “information that truly has no practical utility,” since discontinuance of such obligations “frees up Bureau staff to focus on more productive data analysis.”<sup>5</sup>

In these reply comments, USTelecom does not attempt to delineate all of the outmoded data reporting obligations that the Commission should discontinue. There is ample evidence in

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<sup>3</sup> AT&T Comments, p. 1.

<sup>4</sup> Verizon Comments, p. 2.

<sup>5</sup> Free Press Comments, p. 1.

the record identifying specific instances where such reporting requirements should be suspended or discontinued. However, some commenters propose *increasing* data collection mandates on providers, particularly with respect to those relating to the Automated Reporting Management Information System (ARMIS).<sup>6</sup> Such recommendations ignore the reality of the competitive marketplace and – if adopted – would do more harm than good for both the Commission and consumers. If anything, the Commission should be further reducing ARMIS obligations on existing providers.

USTelecom has commented previously in other forums regarding the outdated nature of many ARMIS reporting obligations. In those proceedings, USTelecom pointed out that many of the existing ARMIS reports had long outlived their intended purpose, obtained data from just a small minority of competitors and were unnecessary for ensuring just and reasonable rates in a price cap regulatory regime, or for protecting consumers.<sup>7</sup>

The Commission's removal of unnecessary regulatory underbrush aligns data collection requirements with the realities of the existing competitive landscape. ILECs today face competition from wireless, cable and VoIP providers, not to mention the numerous competitive local exchange carriers (CLECs) that have built out extensive facilities-based networks that are competing vigorously with ILECs' access services. Information from a subset of this market is of little use for any regulatory purposes in a competitive marketplace. Ultimately, it is the presence of vigorous competition – not the filing of outdated reports – that protects consumers and ensures that rates are just and reasonable. By only collecting data that significantly informs

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<sup>6</sup> See *e.g.*, Free Press Comments, pp. 2-3; CWA Comments, pp. 1-3.

<sup>7</sup> See *e.g.*, Reply Comments of USTelecom, WC Docket No. 06-157 (filed September 15, 2006); Comments of USTelecom, WC Docket No. 07-139, (filed August 20, 2007).

its decision-making processes, the Commission will likewise eliminate data collections that impose unnecessary costs and burdens on carriers with little, if any, utility to the Commission.

## **II. The Commission Has a Statutory Obligation to Eliminate Unnecessary Data Collection Mandates**

In addition to the practical policy considerations discussed above, numerous commenters emphasize the Commission’s statutory responsibility to discontinue redundant and unnecessary reporting obligations. For example, the National Cable & Telecommunications Association notes that minimizing data collection burdens is “not just a matter of good government,” but is instead a statutory mandate for the Commission.<sup>8</sup> The Commission should use this opportunity to ensure that it is meeting its statutory mandate in the area of data collection mandates.

There are at least three distinct congressional mandates requiring the Commission to regularly analyze and eliminate regulatory reporting obligations when no longer necessary. First, several commenters note that two separate sections of the Communications Act establish the Commission’s obligation to discontinue unnecessary reporting obligations. Section 11 of the Communications Act requires the Commission in even-numbered years to review all of its regulations and make an affirmative finding regarding “whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition.”<sup>9</sup> The same section further directs the Commission to “repeal or modify any regulation it determines to be no longer necessary in the public interest.”<sup>10</sup>

The statutory directive in section 11 reflects Congress’ understanding “that any unnecessary regulation places a corresponding, unnecessary burden on the carriers that are

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<sup>8</sup> NCTA Comments, p. 2.

<sup>9</sup> 47 U.S.C. §161(a).

<sup>10</sup> 47 U.S.C. §161(a).

subject to it,”<sup>11</sup> thereby compromising carriers’ efficiency and distorting the very marketplace competition that the 1996 Act was designed to facilitate. Rather than protect consumers, outdated Commission rules are harming consumers by burdening only one of a number of competitors. Moreover, outdated rules are a burden on the FCC, drawing resources away from critical issues such as universal service, intercarrier compensation reform and the Commission’s National Broadband Plan.

Similarly, Section 10 of the Communications Act requires the Commission to forbear from any regulation or provision of the Act unless the regulation is “necessary” to ensure just and reasonable rates or to protect consumers.<sup>12</sup> Finally, the Commission is required under the Paperwork Reduction Act to determine before collecting any data – as well as before seeking Office of Management and Budget approval to renew any data collection – whether the data is truly “necessary” and has “practical utility.”<sup>13</sup>

Unfortunately, several commenters point out that despite the Commission’s mandate to address this important issue, it rarely engages in any meaningful action on this front. As Verizon notes, “the product of the last biennial review conducted in 2008 was a public notice—issued two years later in advance of the next biennial review, which is due to kick off soon—largely just announcing that the Commission had conducted the review and that various bureaus made

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<sup>11</sup> Report and Order, *2000 Biennial Regulatory Review--Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II*, CC Docket 00-199, 16 FCC Rcd 19911, 19913, ¶ 2.

<sup>12</sup> 47 U.S.C. §160.

<sup>13</sup> 44 U.S.C. §3506, et seq. Specifically, the Paperwork Reduction Act requires that the Commission seek comment on 60-days’ notice regarding: 1) whether the collection of information is necessary and has practical utility; 2) the estimate of the burden (in terms of devoted time) of the collection on the industry; 3) whether there are ways to “enhance the quality, utility, and clarity” of the collection; and 4) whether there are ways to “minimize the burden” on those required to respond.

recommendations for further consideration.”<sup>14</sup> Similarly, AT&T notes that while the Commission “routinely seeks comment on this biannual review process,” it has “been too slow to eliminate the obsolete regulations identified in this process, including data collection requirements.”<sup>15</sup> USTelecom therefore urges the Commission to act on its statutory mandate to remove and discontinue unnecessary reporting obligations.

### **III. The Commission Must Ensure that Provider Specific Information Remains Confidential and Secure**

Finally, while USTelecom supports the Commission’s efforts to increase transparency and availability of data, it is imperative that any sensitive materials submitted by companies be subject to the most stringent protection measures. As the Commission has acknowledged in previous proceedings, significant competitive harm could occur from release of such proprietary data.

For example, in *Center for Public Integrity v. FCC*, the Commission articulated core public policy considerations underlying its determination that Form 477 data are confidential.<sup>16</sup> The Commission’s underlying decision, which was affirmed by the court, explained the confidential nature of the data and the competitive harm that could occur from release of the data:

Filers customarily guard this data from their competitors, and release would harm their competitive interests by revealing to competitors their market strategies, their customer identities and counts and where they have deployed their services. For example,

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<sup>14</sup> Verizon Comments, p. 10.

<sup>15</sup> AT&T Comments, p. 2.

<sup>16</sup> *Center for Public Integrity v. Federal Communications Commission*, 505 F.Supp. 2d 106 (D.D.C. 2007).

competitors could use this data to decide where to target their service offerings, facilities construction and marketing, all to the detriment of Form 477 filers.<sup>17</sup>

USTelecom therefore urges the Commission to heed the calls of various commenters that stress the importance of protecting highly confidential data. As AT&T notes, “[i]nappropriate disclosure of such data could adversely impact, and significantly so, the ability of a provider to compete in the telecommunications market, and particularly in the broadband market.”<sup>18</sup> The Commission must therefore be vigilant in safeguarding highly sensitive and confidential broadband data

#### **IV. Conclusion**

In light of the explosive competitive growth in today’s telecommunications marketplace, the Commission should eliminate outdated, redundant and unnecessary reporting requirements. USTelecom urges the Commission to find that outdated and unnecessary reporting requirements are no longer useful and, indeed, are affirmatively detrimental to competition.

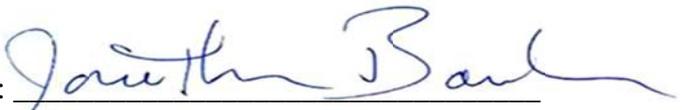
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<sup>17</sup> Letter from Kirk S. Burgee, Associate Bureau Chief, Wireline Competition Bureau, to Drew Clark, Center for Public Integrity, at 3 (Sept. 26, 2006) (available at Center for Public Integrity website: <http://projects.publicintegrity.org/docs/telecom/telecomfoia/Response.pdf>) (visited September 13, 2010).

<sup>18</sup> AT&T Comments, pp. 4-5.

Respectfully submitted,

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