

**Before the
Federal Communications Commission
Washington, DC 20554**

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 Subscribership Data, and Development of Data on Interconnected Voice Over Internet Protocol (VoIP) Subscribership)	WC Docket No. 07-38
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Providing Eligible Entities Access to Aggregate Form 477 Data as Required by the Broadband Data Improvement Act)	GN Docket No. 09-47
)	
Notice of Request to Access Form 477 Data)	WC Docket 11-3

To: The Commission

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® (“CTIA”) submits the following comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice¹ establishing a pleading cycle for the request from the National Telecommunications and Information Administration (“NTIA”) for FCC Form 477 data for the administration of the State Broadband Data and Development Program (“SBDD”).²

¹ *Notice of Request for Access to Form 477 Broadband Data; Pleading Cycle Established*, WC Docket No. 11-3, Public Notice, DA 11-29 (rel. Jan. 7, 2011) (“*Public Notice*”).

² *See* 47 U.S.C. § 1305; 47 U.S.C. §§ 1301-04. The SBDD Program implements the joint purposes of the Recovery Act and the Broadband Data Improvement Act (“BDIA”).

As discussed in more detail below, CTIA urges the Commission, in the event it decides to grant NTIA's request for access to carrier FCC Form 477 data, to do so with the utmost care to protect commercially sensitive data. First, the FCC should only release aggregate, non-carrier-specific data. Second, the FCC must ensure that any confidential information released is not made public, whether through the National Broadband Maps website or by any other means.

I. THE COMMISSION SHOULD ONLY RELEASE AGGREGATE DATA IN ORDER TO PROTECT COMMERCIALY SENSITIVE INFORMATION.

NTIA, pursuant to its administration of the SBDD Program, seeks information on Internet access connections as of June 30, 2010. If the FCC decides to release this information, it should release only aggregate data (*i.e.*, not on an individual carrier basis), as this would violate the terms of the BDIA and potentially compromise commercially sensitive information. The BDIA provides the Commission with specific direction regarding the release of FCC Form 477 data to the eligible entity selected by each state to collect broadband data: The Commission may release *aggregate* data, to the designated *eligible entity*, and it must do so subject to strict *confidentiality* protections, unless otherwise agreed between the service provider submitting the data and the state eligible entity.³

³ 47 U.S.C. § 1304(h) provides as follows:

(h) Access to aggregate data.

(1) In general. Subject to paragraph (2), the Commission shall provide eligible entities access, in electronic form, to aggregate data collected by the Commission based on the Form 477 submissions of broadband service providers.

(2) Limitation. Notwithstanding any provision of Federal or State law to the contrary, an eligible entity shall treat any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the eligible entity. This paragraph applies only to information submitted by the Commission or a broadband provider to

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In its April 2010 Order, the FCC interpreted “aggregate data” to mean “data that are combined in a manner that involves providing utility to eligible entities in carrying out activities under Section 106(e), while protecting the confidentiality interests of providers submitting the data.”⁴ The Commission’s approach to aggregating confidential FCC Form 477 data is consistent with its approach to aggregating data in other contexts, such as the Form 502 Numbering Resource Utilization and Forecast data,⁵ the broadband data collected pursuant to the Commission’s obligations under Section 706 of the Act,⁶ and other regulatory provisions.⁷ In all these contexts, data are combined so that no company-specific information can be discerned.

The Commission must continue to protect such company-specific information. Therefore, if it grants NTIA’s request to release FCC Form 477 data, the Commission must only release aggregate broadband data to NTIA. This is consistent with the BDIA, as well as past FCC precedent, to ensure the protection of commercially sensitive information.

carry out the provisions of this title and shall not otherwise limit or affect the rules governing public disclosure of information collected by any Federal or State entity under any other Federal or State law or regulation.

⁴ FCC Order, WC Docket 07-38, GN Docket 09-47, GN Docket 09-51, (Rel. Apr. 26, 2010) at ¶ 16 (“Order”).

⁵ See *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7604 ¶ 78 (2000) (“disaggregated, carrier-specific [numbering] forecast and utilization data should be treated as confidential”).

⁶ *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*, GN Docket No. 07-45, Fifth Report, 23 FCC Rcd 9615 (2008) at Tables 5, 6, 9, 10-14, *passim* (redacting data to protect firm confidentiality).

⁷ See, e.g., NCTA comments at 2-3 & n.5 (citing CPNI rules and cable price survey data).

II. THE COMMISSION MUST ENSURE THAT CONFIDENTIAL INFORMATION IS PROTECTED AND NOT MADE PUBLIC.

The Commission must ensure that any confidential information given to NTIA is protected and not released to the public. The FCC previously acknowledged that competitively sensitive information will be shared with eligible entities through NTIA,⁸ but concluded that confidential information will not become available to the public because of the protections under Section 106(h)(2) of the BDIA.⁹ The BDIA recognizes that even aggregate data can be competitively sensitive and is entitled to confidentiality protection.¹⁰ Specifically, Section 106(h)(2) requires eligible entities who obtain confidential information to treat “any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure” unless providers expressly agree to disclosure.¹¹ This provision applies to NTIA and designated eligible entities.

CTIA urges the Commission to ensure that NTIA and other entities seeking the data have in place strong protections to safeguard the confidentiality of commercially sensitive information. NTIA represents that it intends to use the FCC Form 477 data as a baseline for comparison with information collected by each state’s eligible entity and may put

⁸ *Order* at ¶ 17.

⁹ *Order* at ¶ 31.

¹⁰ As the expert competition agencies have observed, “... [w]ithout appropriate safeguards, however, information exchanges among competing providers may facilitate collusion or otherwise reduce competition on prices or compensation, resulting in increased prices, or reduced quality and availability of ... services.” *See Statements of Antitrust Enforcement Policy in Health Care Issued by the U.S. Department of Justice and the Federal Trade Commission: Enforcement Policy on Provider Participation in Exchanges of Price and Cost Information* (Aug., 1996). http://www.justice.gov/atr/public/guidelines/1791.htm#CONTNUM_49 (last visited, Jan. 18, 2011).

¹¹ BDIA § 106(h)(2); 47 U.S.C. § 1304(h)(2).

non-confidential data on the National Broadband Maps website.¹² Particularly where NTIA contemplates making certain data public, the Commission must be vigilant in confirming that any confidential information released does not become public, either through eligible entities or NTIA.

Finally, the existence of the confidentiality provisions in the statute in no way eliminates the need for aggregation of the data. Congress clearly required *both* aggregation *and* confidential treatment, and it would violate elementary principles of statutory construction to read either provision out of the statute¹³ or not apply these provisions to the release of information requested by NTIA at this time.

¹² *Public Notice* at 1.

¹³ *See, e.g., TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”); *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

III. CONCLUSION

For the foregoing reasons, if the Commission grants NTIA's request, it must only release aggregate FCC Form 477 data to NTIA and eligible entities. Furthermore, even aggregate data is competitively sensitive and the Commission must ensure it receives sufficient protection through reasonable confidentiality provisions. The Commission should ensure that confidential information is not released to the public through any means.

Respectfully submitted,

CTIA - The Wireless Association®

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