

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

_____)	
In the Matter of)	
)	
National Telecommunications and)	WC Docket No. 11-3
Information Administration's)	
Request for Access to Form 477)	
Broadband Data)	
_____)	

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

USTelecom files these brief comments in response to the Commission's Public Notice of January 7, 2011 concerning the request of the National Telecommunications and Information Administration (NTIA) for access to data collected on the Commission's Form 477.¹ USTelecom's member companies are incumbent telephone companies—large and small—that provide broadband services and, accordingly, file Form 477 broadband data twice a year as required by Commission rules.

According to the *Public Notice*, NTIA has requested access to data on Internet access connections as of June 30, 2010 which companies were to have reported to the Commission by September 1, 2010. The *Public Notice* explains that NTIA intends to use this data “as a baseline for comparison with the data collected by the eligible entity in each State pursuant to the [State Broadband Data and Development] Program and may include non-confidential Form 477 data in the National Broadband Map website.”

¹ *Notice of Request for Access to Form 477 Broadband Data Pleading Cycle Established*, Public Notice, (DA 11-29 January 7, 2011) (“*Public Notice*”).

DISCUSSION

In the Broadband Data Improvement Act (BDIA), Congress gave NTIA and the Commission roles with respect to improving federal government data on the deployment and adoption of broadband services.² And, in particular, NTIA has a clearly defined role that includes gathering and evaluating broadband data that might benefit from comparison with data filed at the Commission as part of Form 477. Accordingly, USTelecom does not object to the Commission sharing this information with NTIA subject to appropriate confidentiality safeguards.

Under the provisions of 47 CFR §0.442 and 44 U.S.C §3510(b), any agency with which the Commission shares confidential information are subject to the same obligations against the disclosure of such information as the Commission itself. When filing broadband data, the Commission affords companies confidential treatment under its rules by providing a “check box” in the electronic filing process through which filers can request confidential treatment of all of the data being submitted on that form. The Commission has, in fact, previously recognized that information it requires be reported on Form 477 is competitively sensitive.³ Moreover, the Commission has recognized that broad confidentiality treatment will encourage broadband provider compliance with the Form 477 reporting requirements.⁴ The Commission’s confidential treatment of this data has also been upheld by the courts, which have recognized that disclosure of granular

² Broadband Data Improvement Act, Title I of Public Law No. 110-385, 122 Stat. 4096 (Oct.10, 2008).

³ *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7758-59 (2000).

⁴ *Id.*

broadband data of this type would likely cause competitive harm given the existing competition for broadband in most places.⁵

For these reasons, it is important that the Commission take appropriate steps to ensure that data provided to it in reliance upon its commitment to confidentiality be shared with other agencies only where subject to the same commitment. Accordingly, while USTelecom does not object to the Commission sharing this data with NTIA for that agency's internal use "as a baseline for comparison" with data collected pursuant to BDIA, NTIA should not publicly disclose any data in a manner that allows company-specific information to be identified or calculated by competitors.

Respectfully submitted,



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⁵ *Center for Public Integrity v. FCC*, 505 F.Supp.2d 106 (D.D.C. 2007).