

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Modernizing the FCC Form 477 Data Program)	WC Docket No. 11-10
)	
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
)	
Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering)	WC Docket No. 08-190
)	
Review of Wireline Competition Bureau Data Practices)	WC Docket No. 10-132
)	

**COMMENTS OF
THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES,
THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
AND
THE WESTERN TELECOMMUNICATIONS ALLIANCE**

I. INTRODUCTION AND SUMMARY

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO),¹ the National Telecommunications Cooperative Association (NTCA),² and the Western Telecommunications Alliance (WTA)³ (collectively, the Associations) hereby

¹ OPASTCO is a national trade association representing approximately 470 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

² NTCA is a national association of more than 560 full-service rural telecommunications providers. All of NTCA's members are Rural Telephone Companies as that term is defined by the Communications Act of 1934, as amended.

³ WTA is a trade association that represents approximately 250 rural telephone companies operating throughout the 24 states west of the Mississippi River. Most members serve fewer than 3,000 access lines overall, and fewer than 500 access lines per exchange.

submit comments in the above-captioned proceedings and their accompanying Regulatory Flexibility Analysis.⁴ In its NPRM, the Federal Communications Commission (the Commission) asks about whether and how to reform the Form 477 data program to improve its ability to carry out its statutory duties, while streamlining and minimizing the overall costs of the program, including the burdens imposed on service providers.

Notwithstanding its laudable objectives, a number of the Commission's proposals would appreciably expand the scope of its Form 477 reporting requirements, significantly increasing the burden on small businesses, including rural local exchange carriers (RLECs). While the Associations appreciate and understand the need for accurate data, the Commission should narrow its efforts and collect only that information for which it has a legitimate statutory or regulatory need. In addition, to the extent that other avenues for gathering information exist, the Commission should use them in order to eliminate duplicative filing requirements for service providers.

The expansion of the Form 477 data collection should be geared toward helping to determine whether "reasonably comparable" voice and broadband services and rates are available to rural consumers, and should not request data on other services and rates. Further, the Commission's preservation of the confidentiality of the submitted data is paramount. Filers will be asked to provide competitively sensitive data and should receive assurances that it will not be disclosed. Finally, filers should not be expected to collect or file information on their subscribers' social, racial, or economic status.

⁴ In the Matter of *Modernizing the FCC Form 477 Data Program*, WC Docket 11-10, *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data*, WC Docket No. 07-38, *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190, *Review of Wireline Competition Bureau Data Practices*, WC Docket No. 10-32, Notice of Proposed Rulemaking (Released Feb. 8, 2011) (NPRM).

II. TO THE EXTENT POSSIBLE, THE COMMISSION SHOULD RELY ON EXISTING REPORTING MECHANISMS TO GATHER DATA NEEDED TO ACHIEVE ITS STATUTORY UNIVERSAL SERVICE GOALS

The NPRM illustrates that the Commission must achieve a balance between its need to gather accurate data required to fulfill its statutory goals,⁵ while minimizing burdens on providers.⁶ As the NPRM observes, among the most important of its statutory goals is the availability of affordable, reasonably comparable services and rates in all areas of the country.⁷ The NPRM also inquires whether the use of other publically available data could augment Form 477 submissions and help reduce burdens on filers.⁸

The NPRM recognizes that streamlining data collections “must be a top priority for the Commission.”⁹ Therefore, the Commission should take advantage of any opportunities to eliminate duplicative filing requirements for service providers. For example, the NPRM logically suggests coordinating Form 477 filings with other data collections, notably the data filed in connection with the State Broadband Data and Development Grant Program (SBDD) administered by the National Telecommunications and Information Administration (NTIA).¹⁰ The Commission is considering similar proposals in its Universal Service Fund(USF)/Intercarrier Compensation (ICC) Transformation NPRM.¹¹ In particular, the USF/ICC Transformation NPRM reasonably proposes that in order to minimize the cost and reporting burden on carriers, those that are required to file financial reports with the Securities and Exchange Commission or

⁵ NPRM, ¶22.

⁶ *Id.*, ¶38.

⁷ *Id.*, ¶23-25.

⁸ *Id.*, ¶41.

⁹ *Id.*, ¶38.

¹⁰ *Id.*, ¶53.

¹¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Linkup*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Further Notice of Proposed Rulemaking, FCC 11-13 (adopted Feb. 8, 2011) (USF/ICC Transformation NPRM).

the Rural Utilities Service (RUS) could satisfy reporting requirements by providing copies of these reports.¹²

The USF/ICC Transformation NPRM also considers using data from the Universal Service Administrative Company (USAC) to facilitate the inclusion of broadband as a supported service.¹³ In a similar vein, as universal service funding is transitioned to support broadband services, appropriate changes to FCC Form 499 could result in the Commission obtaining data sets related to broadband deployment and subscription that would not have to be duplicated on Form 477. All of these sources will provide the Commission with data it needs to fulfill its statutory duties, and enable it to minimize the burden that Form 477 imposes on service providers.¹⁴

Indeed, as the Commission considers new rules, it must remain mindful of the burdens new requirements could impose on small providers like RLECs. Specifically, detailed new reporting requirements could prove difficult for small providers that manually maintain physical plant records, instead of using sophisticated computerized systems.¹⁵ The NPRM displays a reliance on a suggestion, originally made several years ago, that an option to report at the subscriber address level could reduce burdens on small providers.¹⁶ While reporting options for small providers are welcome and encouraged, it should be noted that when the address-level

¹² USF/ICC Transformation NPRM, ¶463. In addition, providers that are required to file reports through NTIA funding programs could provide copies of these reports in lieu of repetitive filings.

¹³ USF/ICC Transformation NPRM, ¶467; *see also* ¶¶457-478.

¹⁴ Many companies report that the NTIA Broadband Availability map is fatally fraught with inaccuracies in its current condition. To the extent that the Commission will rely on outside data, there must be confidence in its accuracy.

¹⁵ It should be noted that the ability of RLECs to use a sophisticated computerized system to comply with reporting requirements is threatened by the USF/ICC Transformation NPRM's proposal to eliminate or restrict the recovery of corporate operations expenses through high-cost universal service support (USF/ICC Transformation NPRM, ¶¶194-207).

¹⁶ NPRM, ¶¶39, 56, 57, 81, 110-112; NPRM, Initial Regulatory Flexibility Analysis, ¶62.

option was initially proposed,¹⁷ providers were not required to submit data at the Census Tract level and, at that time, did not maintain this data in their normal course of business. Now that this requirement is in place, the benefits of an address-level reporting option may not be as pronounced today. In any event, it is appropriate for the Commission to contemplate additional alternatives for small providers, including options to report by study area or wire center.¹⁸ These reporting alternatives, coupled with the use of existing reporting mechanisms to the extent possible, will provide the Commission with the data it needs while reasonably reducing burdens on small service providers.¹⁹

III. CONSISTENT WITH THE USF/ICC TRANSFORMATION NPRM, DATA COLLECTIONS SHOULD FACILITATE THE DETERMINATION OF WHETHER REASONABLY COMPARABLE VOICE AND BROADBAND SERVICES AND RATES ARE AVAILABLE TO RURAL CONSUMERS, AND SHOULD NOT INCLUDE DATA ON OTHER SERVICES

The NPRM seeks comment on whether it is necessary to collect price data to ensure universal service by determining whether rural consumers are paying affordable and reasonably comparable rates to those in urban areas.²⁰ How this question is answered depends largely on the disposition of related questions asked in the USF/ICC Transformation NPRM.

Specifically, the USF/ICC Transformation NPRM asks if comparability should be measured based on: (1) whether rural Americans devote a similar percentage of their disposable household income to similar services as urban Americans, (2) the percentage of total household income devoted to those services, or (3) the relative actual prices of these services in rural and

¹⁷ OPASTCO-RICA Nov. 24, 2008 Paperwork Reduction Act Comments, WC Docket No. 07-38, OMB Control No. 3060-0816.

¹⁸ NPRM, ¶106.

¹⁹ The Commission should promulgate specific potential cost and burden estimates in a timely manner, so that relevant comment on these estimates may be offered per the requirements of the Paperwork Reduction Act and Regulatory Flexibility Act.

²⁰ NPRM, ¶66.

urban areas.²¹ The Commission's approach to this question should be guided by section 254(b)(3) of the Communications Act of 1934, as amended, which explicitly states that rural consumers should have access to advanced telecommunications and information services and rates that are reasonably comparable to those available in urban areas.²² The plain language of section 254(b)(3) – referencing *rates* rather than disposable or household income – should lead the Commission to conclude that reasonable comparability is to be determined based on the rates paid by rural and urban consumers. Thus, Form 477 should collect data on the rates that consumers pay for voice and broadband services.²³

The NPRM also asks whether providers should be required to report total revenues associated with all offerings (including voice, video, and broadband Internet access services), and identify the attributes associated with that revenue, such as the types of services provided (*e.g.*, voice, video, and broadband) and key descriptors of those services (*e.g.*, basic video, extended video, very high speed Internet access).²⁴ The NPRM further suggests that the Commission could then determine the average effective price for each attribute in a given area by performing a statistical analysis on aggregate revenue and attribute data across areas large enough to generate a significant number of measurements.²⁵

This proposal appears to be administratively complex for both the Commission and small providers, and may not reflect the wide range of services that various providers offer. For example, while some rural providers offer only voice and broadband services, others may offer a myriad of additional services, including but not limited to home security monitoring, data

²¹ USF/ICC Transformation NPRM, ¶486.

²² 47 U.S.C. Sec. 254(b)(3) (emphasis added).

²³ This is not to suggest that any regulation of retail broadband services is warranted. Retail price data should be collected only to evaluate the effectiveness of broadband rate benchmarks established in conjunction with the Connect America Fund (CAF).

²⁴ NPRM, ¶72.

²⁵ *Id.*

backup, residential and/or business networking assistance, and wireless service. It is unclear how the Commission would account for the wide range of services that are available in different areas. Therefore, the Commission should limit its data collections to those needed to determine whether consumers in rural areas have access to voice and broadband services that are reasonably comparable to those available to urban consumers.²⁶

In a broadband context, the rates paid by consumers are also relative to the speed tiers available. The NPRM asks if there should be a broadband speed tier that is specifically tied to any speed benchmark that may be required to receive USF or CAF support.²⁷ As noted above, the NPRM recognizes that the availability of reasonably comparable advanced services and rates in all areas of the country is among the Commission's most important statutory objectives.²⁸ Therefore, one of the speed tiers the Commission chooses to measure should be based upon the speed requirements established for USF or CAF eligibility. In addition, as reasonably suggested by the NPRM,²⁹ the speed tiers and reporting methods used by NTIA and the Commission should be coordinated to enhance uniformity and ease reporting burdens.

The NPRM further inquires whether the Commission should continue to collect data only on advertised speeds, or whether, for example, providers should supply information about actual speeds.³⁰ Due to their small staffs and lack of resources, RLECs should, for the near term, continue to report advertised speeds. However, once an RLEC becomes eligible for CAF support that provides explicit cost recovery to provide broadband service throughout its area at a

²⁶ The NPRM also seeks comment on whether, and to what extent, wireless and Voice over Internet Protocol (VoIP) providers should submit Form 477 data (NPRM, ¶¶45, 61-62). While the details of the reporting requirements for these providers can be modified to reflect the nature of the services they offer, the Commission should require data from wireless and VoIP providers that is comparable in detail with the data submitted by wireline providers. Otherwise, the Commission's understanding of what is available to consumers would be incomplete.

²⁷ NPRM ¶60, citing USF/ICC Transformation NPRM, ¶¶108-109; *see also* USF/ICC Transformation NPRM, ¶139.

²⁸ *Id.*, ¶23-25.

²⁹ *Id.*, ¶60.

³⁰ *Id.*, ¶59.

specific minimum speed,³¹ it would be reasonable at that point to require the carrier to report actual speeds on Form 477. However, RLECs receiving CAF funding should only be required to report the actual speeds of the portions of the network (such as the last mile or middle mile) that are supported.³² As the USF/ICC Transformation NPRM recognizes, a consistent and reliable means to measure broadband speeds must be developed.³³

IV. THE COMMISSION MUST PRESERVE THE CONFIDENTIALITY OF DATA IN ORDER TO MAINTAIN RLECS' ABILITY AND INCENTIVE TO INVEST IN BROADBAND INFRASTRUCTURE

The NPRM recognizes the sensitivity of the data collected by Form 477 and inquires about the continuing need to retain the data's confidentiality.³⁴ The Commission should retain the current method of allowing Form 477 filers to check a box to request the confidential treatment of sensitive data. Retention of this option is necessary to preserve the ability and incentive of smaller carriers, such as RLECs, to continue investing in broadband infrastructure. RLECs, especially those offering voice, data and other services in competition with large providers, have found predatory pricing to be an all too common occurrence.³⁵ Predatory pricing drives service providers out of the marketplace, reduces customer choice, and has a chilling effect on network investment.

Potential and existing competitors to an RLEC who obtained the RLECs' 477 data would be able to plot their progress at broadband provision by comparing past deployments and

³¹ USF/ICC Transformation NPRM, ¶113.

³² Data speed is one of the most effective measurements of service quality, and the best metric to establish whether rural consumers have access to advanced services that are reasonably comparable to those in urban areas, per section 254(b)(3) of the Communications Act of 1934, as amended (NPRM, ¶¶88-99).

³³ USF/ICC Transformation NPRM, ¶¶115-118. Efforts to develop methods to measure data speeds must account for the fact that they are influenced by many factors that often lie beyond the network and control of RLECs, including topography, network usage at a given moment, middle mile capacity, and backbone choke points, among others.

³⁴ NPRM ¶¶108-109.

³⁵ See, e.g., OPASTCO reply comments, MB Docket No. 06-189 (fil. Dec. 29, 2006), pp. 13-14; OPASTCO reply comments, MB Docket No. 05-255 (fil. Oct. 11, 2005), p. 6.

offerings with current information. The trends revealed by this data could offer competitively damaging insight into the RLEC's business strategies. Consequently, RLECs would be dissuaded from making new investments in broadband infrastructure if competitively sensitive data is not protected. Therefore, it is imperative that RLECs retain the ability to easily request confidential treatment of submitted data.

V. THE COMMISSION SHOULD NOT REQUIRE SERVICE PROVIDERS TO COLLECT SOCIAL, RACIAL, OR ECONOMIC DATA FROM THEIR CUSTOMERS

The Commission asks whether it should adopt suggestions that it collect via Form 477 “socioeconomic data” and “social metrics.”³⁶ In their normal course of business, RLECs do not collect or track information on their subscribers’ income levels, race, or other social metrics. Requiring an RLEC to engage in an information collection of this sort would require extraordinary resources, and many consumers would understandably find some of these data collections to be inappropriate and invasive. RLECs would have to survey every customer and ask for answers that many in a small rural community would almost certainly be uncomfortable providing.³⁷ There are other means for the Commission and other parties to gather social, racial, and economic data if needed to fulfill a valid statutory purpose. However, it is not appropriate to require communications service providers to collect this type of information from their customers.

VI. CONCLUSION

It is critical that the Commission’s need for accurate and sufficient data be balanced with the importance of minimizing the reporting burdens imposed on small service providers such as

³⁶ NPRM, ¶105.

³⁷ The likely prospect of customers refusing to answer such questions would immediately implicate the statistical validity of any partial data an RLEC could collect. Moreover, the proposal would need to address whether an RLEC is required to seek recourse if a customer refuses to answer the survey; would service be refused in the absence of customer answers?

RLECs. Therefore, the data collected via Form 477 should be harmonized and coordinated with other governmental data requests. It should also be limited to information for which there is a legitimate statutory or regulatory purpose, most notably ensuring reasonably comparable voice and broadband services and rates throughout the nation. In addition, the Commission should retain the current method of allowing 477 filers to easily request the confidential treatment of the competitively sensitive data that they submit. Finally, the Commission should not require RLECs to collect extraneous socioeconomic data on their customers.

Respectfully submitted,

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