

**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)	WC Docket No. 07-38
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)	
)	
Service Quality, Customer Satisfaction,)	WC Docket No. 08-190
Infrastructure and Operating Data Gathering)	
)	
Review of Wireline Competition Bureau Data Practices)	WC Docket No. 10-132

COMMENTS OF AT&T INC.

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March 30, 2011

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I. INTRODUCTION AND SUMMARY

AT&T Inc. on behalf of its affiliated companies (collectively, AT&T) respectfully submits the following comments in response to the Commission’s notice of proposed rulemaking on the Form 477 data gathering program for voice and broadband services (*2011 Data Collection Notice*).¹ AT&T has long supported the Commission’s goal of collecting useful, relevant data on broadband and voice services in the U.S. Our support for that goal, however, has always been premised on the Commission’s longstanding commitments – dating back to the inception of the data gathering program a decade ago – to collect only the data it needs for its policymaking activities; to do so in the least burdensome way possible; and to protect confidential data from public disclosure.

Consistent with these commitments, the first paragraph of the *2011 Data Collection Notice* states that the basic purpose of the *Notice* is “to ensure the Commission has the data it needs, while minimizing the overall burdens of data collection” and “eliminating unnecessary collections where possible.”² Accomplishing these burden-reduction objectives will be critical for the sustainability of the Form 477 program, as the annual, industry-wide paperwork burden that Form 477 imposes on voice and broadband providers has grown by *more than 1 million hours* since 2000. Whereas it once cost voice and broadband providers an annual total of “only” 29,924 hours in lost productivity to fill-out the original 2000 version of Form 477, it now costs them a jaw-dropping 1,034,620 hours in lost productivity each year to complete the current version – an increase of over 3,400 percent.³

¹*Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Notice of Proposed Rulemaking, FCC 11-14 (released Feb. 8, 2011).

² *2011 Data Collection Notice* ¶ 1.

³ Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, 65 Fed. Reg. 33544 (2000); Notice of Public Information Collection Being Submitted for

Unfortunately, the remaining 127 paragraphs of the *Notice* never acknowledge this astounding increase in industry-wide burdens. Instead, the *Notice* proposes a litany of expansive new data collections, many of which had previously been raised – and thoroughly discredited by numerous commenters – in the Commission’s three previous data collection proceedings in 2004, 2007 and 2008. The *2011 Notice* makes virtually no effort to winnow the list of new data collection proposals down to those reasonably necessary to inform legitimate Commission policymaking activities. In fact, the *Notice* seeks comment on so many overbroad proposals that, if adopted, they would require U.S. voice and broadband providers to collectively produce *billions* of new data points to the Commission, thus imposing untold new burdens on the communications industry.⁴ At the same time, the *Notice* fails to propose any meaningful streamlining of the existing data production requirements in the current Form 477. And to make matters worse, the Commission hints at steps it might take to reduce the protections it has traditionally afforded to confidential data submitted by Form 477 filers.

Review and Approval to the Office of Management and Budget (OMB), Comments Requested, 75 Fed. Reg. 8069 (2010). See also Office of Information and Regulatory Affairs (OIRA), OMB, Notice of OMB Action (April 6, 2000), http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200003-3060-021#; Office of Information and Regulatory Affairs (OIRA), OMB, Notice of OMB Action (April 26, 2010), http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200912-3060-012#. Of course, the burden hours associated with Form 477 do *not* include the additional burden hours that broadband providers incur responding to broadband data requests associated with the broadband mapping program administered by the National Telecommunications and Information Administration (NTIA). See Commerce’s NTIA Unveils National Broadband Map and New Broadband Adoption Survey Results, NTIA Press Release (Feb. 17, 2011) (*NTIA Broadband Map Press Release*), http://www.ntia.doc.gov/press/2011/NationalBroadbandMap_02172011.html.

⁴ Currently, voice and broadband providers report a total of approximately 583 million voice and broadband connections on Form 477. Local Telephone Competition: Status as of June 30, 2010, Wireline Competition Bureau, FCC, Figure 1, Table 17 (March 2011) (122,275,000 retail switched access lines; 28,895,000 interconnected VoIP subscriber; 278,918,000 mobile voice subscribers) (*FCC Voice Subscribership Report – Data from June 30, 2010*); Internet Access Service: Status as of June 30, 2010, 2009, Wireline Competition Bureau, FCC, at Table 1 (March 2011) (152,920,000 broadband connections) (*FCC Broadband Subscribership Report – Data from June 30, 2010*). Thus, for *each* new address level reporting requirement proposed in the *Notice* (e.g., subscribership, speed, latency, price, etc.), the Commission would potentially be seeking to collect an additional 583 million data points.

Ironically, just a few days before the *Notice* was adopted, Chairman Genachowski pledged that “all Commission Bureaus and Offices [would] perform their responsibilities consistent with the principles in the three new executive documents” issued by President Obama,⁵ which direct government agencies to use the “least burdensome tools for achieving regulatory ends” and to pursue the “simplification of reporting and compliance requirements.”⁶ As the Chairman explained, although the President’s directives do not apply directly to independent agencies like the Commission, those directives “are consistent with the values and philosophy we apply here at the FCC.”⁷ The Chairman thus committed that the Commission would heed the President’s call for “federal agencies to review their rules and regulations to remove barriers that are needlessly hurting businesses and our economy.”⁸ While AT&T applauds the Chairman’s commitment to abide by the regulatory streamlining principles established by the President, the *Notice* is a disappointing inaugural effort in that regard.⁹

Nonetheless, to the extent the Commission concludes that it needs more data, AT&T would encourage the Commission to consider certain targeted data collection proposals discussed below – provided that the Commission *first* substantially reduces the annual burden

⁵ *Genachowski Endorses Obama Stance on Regulation*, Communications Daily (Feb. 7, 2011) (quoting email from Chairman Genachowski to Commission staff).

⁶ *See Improving Regulation and Regulatory Review*, Executive Order 13563, § 1 (Jan. 18, 2011); *Presidential Memoranda – Regulatory Flexibility, Small Business, and Job Creation*, President Barack Obama, at 1 (Jan. 18, 2011).

⁷ *Genachowski Endorses Obama Stance on Regulation*, Communications Daily (Feb. 7, 2011) (quoting email from Chairman Genachowski to Commission staff).

⁸ Prepared Remarks of Chairman Julius Genachowski, FCC, Broadband Acceleration Conference, Washington, DC, at 4 (Feb. 9, 2011).

⁹ We note that the President’s Executive Order also states that the comment period on agency rulemaking proceedings “should generally be at least 60 days.” Executive Order 13563, § 2(b). In this proceeding, however, the comment period is only 30 days and the reply comment period is a mere 15 days. *2011 Data Collection Notice* at 1.

hours imposed by the Form 477 program, which, as we discuss, could be accomplished by moving from semi-annual to annual data reporting. To be sure, even with such streamlining, the collection of this additional data will undoubtedly impose significant burdens on AT&T and other providers, and we do not pretend otherwise. We respectfully submit, however, that those burdens could be offset, in part, by the streamlining we propose together with the benefits of enhancing the Commission's understanding of the intensely competitive markets for these services, which, we are hopeful, will lead to Commission policymaking that better reflects these market realities.

In particular, if the Commission decides to collect additional data, AT&T would encourage the agency to focus its attention on the following revised data collections:

- Voice subscribership data at the Census Tract level
- A list of the Census Blocks within a given Census Tract where a provider has at least one voice subscriber
- Voice availability data at the Census Block level
- Reporting of voice subscribership and availability data by providers of certain Voice over Internet Protocol (VoIP) services that do not meet the Commission's present definition of interconnected VoIP service
- A list of the Census Blocks within a given Census Tract where a provider has at least one broadband subscriber (in addition to the broadband subscribership data at the Census Tract level as currently required by Form 477)
- Broadband availability data at the Census Block level, but only upon expiration of the broadband mapping program administered by NTIA, which is already collecting this data today
- A separate broadband speed category to capture more precise data about the extent of subscribership to services that meet the Commission's most current definition of "broadband" – greater than or equal to 4 Mbps downstream and greater than or equal to 1 Mbps upstream

In addition to considering these expanded data collections, AT&T recommends that the Commission take the following steps regarding certain administrative aspects of the Form 477 Data collection program: (i) maintain the "checkbox" approach for enabling filers to request confidential treatment of their filings; (ii) maintain the existing methods for estimating the

percentage of business and residential subscribers; (iii) implement an electronic filing interface that permits company-wide (rather than only state-by-state) submissions; and (iv) afford filers an additional month in which to make their Form 477 filings (e.g., December data would be due in April instead of March).

The remaining data collections proposed in the *Notice*, however, either serve no legitimate policymaking purpose; could be obtained far more efficiently and/or reliably from a variety of third-party sources; are unduly burdensome to produce; or in at least one case, would be *unlawful* for the Commission to collect at all. Specifically, AT&T objects to the following major data collections being imposed on service providers via the Form 477 program:

- Pricing Data
- Service Quality and Customer Satisfaction Data
- Address Level Data
- Actual Broadband Speeds
- Contention Ratios
- Spectrum Metrics (Wireless Signal Strength, Spectrum Band Utilized, Mobile Wireless Technology Utilized)
- Expanded Disclosure of Confidential Data

Finally, AT&T urges the Commission not to create reporting exemptions for any voice or broadband providers, particularly the types of smaller or satellite-based providers the Commission proposes exempting in the *Notice*. Only by collecting data from all such providers will the Form 477 program provide the Commission a comprehensive picture of the supply and demand for voice and broadband services. Indeed, given that some of the greatest hurdles to universal deployment and adoption of these services are present in rural or insular areas that are often served by smaller or satellite-based providers, any exemptions for such providers would deprive the Commission of precisely the data it needs most in order to develop policies to overcome those hurdles.

II. DISCUSSION

A. AT&T Supports the Commission's Stated Objective of Collecting Sufficient Data About Voice and Broadband Services Without Unduly Burdening Service Providers.

Since the inception of its Form 477 data gathering program in 2000, the Commission has continuously attempted to balance two competing goals: (i) collecting sufficient information about voice and broadband services to inform its policymaking activities, and (ii) minimizing data collection burdens on broadband providers.¹⁰ Although the Commission needs “reliable and comprehensive data,” it has sought to reduce the burdens of its data requests by “distill[ing] our [data gathering] down to that information which is most essential” to monitoring the development of voice and broadband services and by focusing as much as possible on “easily-quantifiable and readily-available” data sources.¹¹

AT&T believes that, for the most part, the Commission has been earnest in its prior efforts to balance the two competing goals of its Form 477 data gathering program and we have generally supported the Commission in that regard.¹² Notwithstanding our support for prior

¹⁰ *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, FCC 00-114, ¶ 65 (released March 30, 2000) (*2000 Data Collection Order*).

¹¹ *2000 Broadband Data Order* ¶ 6. See also *Local Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, FCC 04-266, ¶ 1 (released Nov. 12, 2004) (*2004 Data Collection Order*); *Deployment 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, Notice of Proposed Rulemaking, FCC 07-17, ¶ 2 (released April 16, 2007) (*2007 Data Collection Notice*). See also *Deployment 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, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89, ¶ 22 (released June 12, 2008) (*2008 Data Collection Order*).

¹² For example, in response to a Commission request made after the adoption of the *2008 Data Collection Order* but before its release, AT&T, working together with Free Press, submitted a proposal to enable the collection of data at the Census Tract level regarding the percentage of broadband connections that are residential. Letter from Frank Simone, AT&T, to Marlene Dortch, FCC, WC Docket No. 07-38 (May 13, 2008). Although the proposal would impose additional burdens on AT&T, *id.* at 2, we recognized that it

Commission decisions regarding the Form 477 program, AT&T is concerned that the *2011 Data Collection Notice* – particularly the proposals to begin collecting price and service quality data, address-level data, contention ratios, signal strength and other spectrum metrics, and data on “actual” broadband speeds – marks a substantial departure from the Commission’s balanced approach to collecting relevant data in the least burdensome manner. Indeed, for each of these proposals (and others that we discuss below), the Commission largely fails to assess the utility of collecting the data in the first place, and then compounds the problem by failing to weigh the purported utility of the data (if any) against the burden such collections would impose.

Such concerns cannot be taken lightly because, as the Commission’s own experience demonstrates, the Office of Management Budget will refuse to approve information collections under the Paperwork Reduction Act when an agency fails to properly minimize and justify burdens on the responding parties.¹³ Given that the burdens imposed by Form 477 have *already* increased more than 3,400 percent since it was first adopted – to more than 1 million hours annually – the Commission should be cautious about imposing any new reporting obligations on service providers, particularly if those obligations are not accompanied by any meaningful

would also provide far more granular data about residential subscribership than the Commission’s pre-existing state level reporting requirement. In a *sua sponte* order on reconsideration issued in conjunction with the *2008 Data Collection Order*, the Commission adopted AT&T’s proposal, finding that it would “improve our understanding of the scope of broadband deployment and will assist the Commission’s ongoing efforts to foster increased deployment of broadband services to residential customers” *Deployment 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, Order on Reconsideration, FCC 08-148, ¶ 7 (released June 12, 2008).

¹³ See Notice of Office of Management and Budget Action, OMB Control Number 3060-0568 (July 9, 2008) (rejecting Commission information collection under cable leased access rules due to failures to justify the need for data and to minimize burdens on respondents); Notice of Office of Management and Budget Action, ICR Reference # 200802-3060-019 (November 28, 2008) (rejecting Commission information collection under Hurricane Katrina back-up power rules due to failure to demonstrate the practical utility of the data to be collected; failure to take reasonable steps to minimize reporting burdens; and failure to demonstrate that the Commission has allocated resources for the efficient and effective use of the data to be collected).

efforts to streamline Form 477. Therefore, before adopting any additional data production obligations, the Commission must more carefully consider their costs and evaluate whether those proposals are truly consistent with its “twin goals of collecting the most useful information while subjecting respondents to the minimum burden.”¹⁴ AT&T submits that this more careful evaluation will demonstrate that the proposals discussed below in Section B may be worthy of further consideration while the proposals described in Section C should be rejected.

B. To the Extent the Commission Decides to Collect Additional Data, the Commission Should Focus Its Attention on the Following Proposals to Improve the Form 477 Data Collection Program.

1. Voice Services

Since the Commission first began the Form 477 data collection program more than a decade ago, the market for voice services in the U.S. has undergone a radical transformation. In December 1999, for example, ILECs served approximately 139.6 million residential switched access lines.¹⁵ A decade later, ILECs had *less than half* that amount – 59.9 million – with subscribership declining at an accelerating pace in recent years.¹⁶ During the same period, competitive residential switched access lines and interconnected VoIP subscriptions increased from 3.3 million in December 1999 to 28.9 million in June 2010.¹⁷

But wireline competition is only one part of the story. Over the last 15 years, the growth of wireless services has been explosive, increasing by 245 million subscribers: from 34 million

¹⁴ 2000 *Broadband Data Order* ¶ 65.

¹⁵ Local Telephone Competition: Status as of December 31, 2009, Wireline Competition Bureau, FCC, Table 2 (Jan. 2011).

¹⁶ *FCC Voice Subscribership Report – Data from June 30, 2010*, at Figure 4.

¹⁷ *FCC Voice Subscribership Report – Data from June 30, 2010*, at Figure 4.

in December 1995 to 279 million in June 2010.¹⁸ Indeed, by some estimates, more than 26 percent of U.S. households are now wireless-only.¹⁹ And more recently, consumers and businesses have started relying heavily on alternative VoIP services, like Skype and Google Voice, that do not meet the Commission’s current definition of interconnected VoIP service. In fact, Skype reported to the Securities and Exchange Commission that it has *20 million* users in the United States – which is nearly *6 million more* users than Verizon currently has for its residential telephone service.²⁰

Yet, despite all of the fundamental changes that have occurred in the market for voice services, the Commission still maintains an implausibly ILEC-centric view of that market. Under the Commission’s rules for traditional circuit-switched voice services, which have changed little since the Form 477 program began in 1999, ILECs are still considered “dominant” and are subject to pervasive federal common carrier regulation of their dwindling voice lines, including tariff filing requirements and rate prescriptions for their interstate end user charges. By contrast, providers like Skype and Google assert that their voice services are subject to no Commission regulation whatsoever.

¹⁸ CTIA Wireless Quick Facts (wireless subscriber connections as of Dec. 1995), available at <http://www.ctia.org/advocacy/research/index.cfm/AID/10323>; *FCC Voice Subscribership Report – Data from June 30, 2010*, at Table 17.

¹⁹ National Health Interview Survey, January-June 2010, Centers for Disease Control, at 1 (Dec. 21, 2010) (“More than one of every four American homes (26.6%) had only wireless telephones . . . during the first half of 2010”), <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201012.pdf>.

²⁰ Skype S.à.r.l., Registration Statement (Form S-1), at 138 (Aug. 9, 2010), available at <http://www.sec.gov/Archives/edgar/data/1498209/000119312510182561/ds1.htm>; Verizon Communications Investor Quarterly 4Q 2010, at 6 (Jan. 25, 2011), available at <http://news.vzw.com/investor/4Q%20financial.pdf>.

As the Commission begins the long overdue process of rationalizing these untenably disparate regulatory regimes,²¹ it could benefit from having more complete data on the deployment of, and subscribership to, the various voice services discussed above. Indeed, the Commission has acknowledged that the lack of such data has already hindered its ability to fulfill the agency's statutory responsibilities to act on license transfer applications and forbearance petitions.²² To ensure that the Commission has the data it needs to perform these statutory functions and also to inform its broader policymaking functions for voice services, without overburdening service providers, the Commission may wish to consider collecting the following data:²³

- **Voice subscribership at the Census Tract level with supplemental Census Block data.** The Commission currently collects voice subscriber line counts (traditional telephony and interconnected VoIP) at the state level, together with a list of Zip Codes in which the provider has at least one customer. While this data has general utility in assessing the state of voice subscribership, more precise data at a more granular level would allow the Commission to make better informed decisions in the types of proceedings mentioned above. Specifically, the Commission may wish to consider collecting voice subscriber line counts at the Census Tract level, together with a list of Census Blocks in which the provider has at least one customer.

Because the Commission already collects voice subscribership data, this Census unit proposal would not involve the collection of a new or novel type of data for which providers would need to develop entirely new data collection mechanisms. Moreover, collecting subscriber line counts at the Census Tract level would synchronize the Commission's approach to voice reporting with its current Census Tract approach to broadband reporting. It would also enable the Commission to more thoroughly analyze Form 477 data using the rich Census unit demographic data sets available from the Census Bureau (income, age, education level, population density, etc.). And by collecting a list of the Census Blocks in which the provider has at least one subscriber, the Commission would obtain a more granular understanding of voice subscribership inside each Census Tract, without forcing providers to produce extremely precise,

²¹ See *Connect America Fund*, WC Docket No. 10-90, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (released Feb. 9, 2011) (seeking comment on reform of universal service and intercarrier compensation).

²² Notice ¶ 29.

²³ As noted above, these proposals are subject to the Commission first substantially reducing the extensive burdens imposed on the industry by the Form 477 program.

commercially sensitive information about their success in attracting a particular number of subscribers on a Block-by-Block basis.

- **Voice availability at the Census Block Level.** Although subscribership data provides important insights into the *demand* for voice services, it is only one side of the story. To make fully informed decisions about the market for voice services, the Commission may also wish to consider the *supply* side of the equation by collecting data on the availability of voice services at the Census Block level. Combined with NTIA’s Census Block level data on broadband data availability, voice availability data at the Census Block level collected through Form 477 would provide the Commission a comprehensive, granular nationwide picture of both voice and broadband services in the U.S. And as with the Census Block subscribership data discussed above, Census Block level voice availability data could be easily combined with other Census Bureau data to provide the Commission with valuable insights into the demographic characteristics of each Census Block where voice service is (or is not) available.
- **Data from VoIP Providers that Do Not Meet the Current Interconnected VoIP Definition.** As noted above, for many years providers like Skype have been offering services that allow residential consumers to send calls to the PSTN *or* receive calls from the PSTN. These so-called “one-way” VoIP services can easily be used in combination by consumers to replicate the basic functionality of interconnected VoIP services, *i.e.*, the ability to send calls to the PSTN *and* receive calls from the PSTN. And they have become incredibly popular with consumers – as noted, Skype alone has more than 20 million customers in the U.S. In fact, aside from AT&T, Skype has *more customers than any other provider of residential wireline voice or interconnected VoIP in the U.S.*, including Verizon, Qwest, Comcast or Time Warner.

But because these “one-way” VoIP services do not meet the current, literal definition of interconnected VoIP service,²⁴ the Commission collects no availability or subscribership data regarding these services through the Form 477 program. Given their immense popularity among residential customers and obvious competitive significance in the voice market, it would be arbitrary and capricious for the Commission to ignore Skype and other providers of one-way VoIP services by exempting them from the Form 477 program while, at the same time, requiring much smaller circuit-switched telephony providers to report data on their voice services.²⁵

²⁴ *But see E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, ¶ 58 (released June 3, 2005) (tentatively concluding that one-way VoIP services should be subject to Commission VoIP 911 rules).

²⁵ Because these types of VoIP services are primarily used by consumers rather than businesses, the Commission should limit its Form 477 data collection for these services to residential offerings.

2. Broadband Services

Under the Form 477 modifications adopted by the Commission in 2008, broadband providers now report their line counts in 72 different speed tiers and 9 different technology categories for each Census Tract in which they have subscribers. The current reporting requirements, which are far more disaggregated than the previous reporting requirements (Zip Code level, in 6 speed tiers), have given the Commission an extensive amount of data about broadband subscribership in the U.S. Indeed, with all of this new data, the Commission's semi-annual broadband data reports have more than tripled in length and now include a wealth of additional analysis using demographic data sets from the Census Bureau.

Nonetheless, the Commission may have a legitimate need to understand the dynamics of broadband subscribership below the Census Tract level in order to more precisely target its broadband policymaking activities, such as in reforming the universal service program to support broadband. To that end, and consistent with our proposal above for voice subscribership data, AT&T proposes that the Commission collect a list of the Census Blocks in which each broadband provider has at least one subscriber. Such Census Block information would give the Commission a more granular understanding of broadband subscribership inside each Census Tract, without forcing providers to produce very commercially-sensitive information about their success in attracting a particular number of subscribers at the granular, Census Block level.

Although the Commission has historically used broadband *subscribership* data as a proxy for broadband availability, it may have a legitimate interest in gaining a more precise understanding of broadband *availability* through a data collection specifically designed for that purpose. Fortunately, the Commission *already* has access to a comprehensive, nationwide set of Census Block level broadband availability data. As the *Notice* recognizes, under the Broadband

Data and Development Grant Program, NTIA has awarded grants to state-designated entities to collect availability data from broadband providers at the Census Block level, which NTIA uses to populate a publicly available national broadband map that is “interactive and searchable.” NTIA has already received this availability data and produced the national map, which it will update on a semi-annual basis.²⁶ This grant program is funded through 2015 and all of the data amassed by NTIA is available to the Commission.²⁷

Under these circumstances, there is simply no conceivable reason for this Commission to establish a separate broadband availability reporting obligation at this time, as doing so would be entirely duplicative of NTIA’s mapping program and would needlessly burden the broadband industry with redundant data production obligations. Indeed, it would be hard to imagine a data collection requirement more at odds with the President’s directive to pursue the “simplification of reporting and compliance requirements.” Instead, the Commission should continue to work with NTIA to obtain the broadband availability data it needs through NTIA’s existing program. As the 2015 expiration of funding for that program grows closer (e.g., early 2014), the Commission should consult with Congress to determine whether the program will be extended. If the answer is no, only then should the Commission seek comment on whether and how to add a broadband availability data collection requirement to the Form 477 program.

In the *Notice* (at ¶ 60), the Commission asks whether it should add a new speed tier to the Form 477 that corresponds to any speed benchmark that may be required to receive universal service support through the new Connect America Fund (CAF). AT&T believes the

²⁶ See National Broadband Map at <http://broadbandmap.gov/>.

²⁷ *Notice* ¶ 19; National Telecommunications and Information Administration, State Broadband Data and Development Grant Program, Notice of Funds Availability, § I.C. (“the awardees will submit all of their collected data to NTIA for use by NTIA and the Federal Communications Commission (FCC) in developing and maintaining the national broadband map”).

Commission should consider the addition of such a tier because it will enable the Commission to obtain data that could better inform the Commission about the areas of the nation that fall below the benchmark. That information, in turn, should enable the Commission to better gauge the appropriate size of the CAF and also more precisely target support from the CAF to those regions of the country where it is most needed, resulting in a more efficient and effective universal service support mechanism for broadband. To prevent confusion among filers and to avoid re-configuring the existing speed tiers in Form 477, however, AT&T recommends that any such new CAF-focused speed tier be placed in its own separately identified section of Form 477. Specifically, in addition to reporting data for each of the existing speed tiers, providers would report in a new section the *total* number of connections, for each technology, that are greater than or equal to the CAF-focused speed definition (e.g., ≥ 4 Mbps downstream and ≥ 1 Mbps upstream).²⁸

The Commission also should correct a technical flaw in the way Form 477 describes the existing speed tiers. As set forth in Form 477, providers are instructed to report the maximum authorized speed for each of their individual service offerings by assigning those offerings to specified speed tiers. Each tier includes an upper and lower speed expressed in Kbps or Mbps. The lower speed in a given tier is described as “greater than or equal to” and the upper speed in the tier described as “less than.” For example, speed tier 4 is described as “Greater than or equal to 1.5 mbps and less than 3 mbps.”

²⁸ AT&T also recommends that the Commission and NTIA conform their speed tiers by eliminating the extra tiers collected by NTIA. *Notice* at ¶ 60. Given the large number of tiers already common to the two agencies (8 tiers of download speeds and 9 tiers of upload speeds, which results in 72 possible speed tier combinations), the additional 2 tiers collected by NTIA (which produce an additional 17 speed tier combinations) are both unnecessary and unduly burdensome.

In AT&T's experience, however, these descriptions are not synchronized with the way broadband providers (particularly xDSL-based providers) provision broadband service today. Specifically, most providers offer broadband services with maximum authorized speeds that are described as up to and including a particular speed, not "less than" a particular speed. AT&T's "DSL Pro" service, for example, is provided at speeds of "1.56 Mbps to 3 Mbps downstream."²⁹ Under one reading of the Form 477 instructions, DSL Pro service may belong in speed tier 5 ("Greater than or equal to 3 mbps and less than 6 mbps") because the maximum authorized speed of the service is "equal to 3 mbps" – even though the "best fit" for this service would appear to be in speed tier 4 ("Greater than or equal to 1.5 mbps and less than 3 mbps"). We do not believe the Commission intended such a result, which would obviously paint an inaccurate picture of the true state of broadband service offerings in the market today. To remove any doubt, however, the Commission should revise its existing speed tiers such that the lower end of each tier is described as "greater than" and the upper end of each tier is described as "less than or equal to."³⁰

3. Filing Frequency

When it first established the Form 477 program in 2000, the Commission adopted a semi-annual (rather than annual) reporting requirement because it "best balance[d] [the agency's] need for timely information with our desire to minimize the reporting burden

²⁹ See AT&T High Speed Internet Terms of Service, <http://www.att.net/csbellsouth/s/s.dll?spage=cg/legal/att.htm&leg=tos>. Unlike many other wired broadband providers that offer only "up to" speeds, AT&T provides service in discrete, non-overlapping tiers. See *id.*; Letter from James W. Cicconi, AT&T, to Chairman Kevin Martin, FCC, WC Docket No. 07-52 (Sept. 11, 2008).

³⁰ We note that Tier 1 does not have a lower end and Tier 9 does not have an upper end. Consistent with the recommendations above, Tier 1 should remain "Less than or equal to 200 kbps" and Tier 9 should be changed to "Greater than 100 mbps."

on respondents.”³¹ At the time, those burdens amounted to a total of nearly 30,000 hours of extra labor each year for filers of Form 477. The Commission emphasized that it chose the more burdensome semi-annual requirement only after the agency first “significantly streamlined” the scope of the information collection compared to what had been originally proposed in an earlier *Notice* and only after it “limited this information collection to readily available data that providers should be able to report with minimal burden.”³²

Today, after significant expansions of the Form 477 data program in 2004 and 2008, the yearly industry-wide burden from that program now exceeds 1 million hours. Without acknowledging this astronomical increase in reporting burdens over the last decade, the *Notice* (at ¶ 46) asks “whether FCC Form 477 should be filed more or less frequently.” And as a signal of the Commission’s apparent preference for the answer to that question, the *Notice* points out that at least one commenter has recommended quarterly filings.

But the last thing the Commission should be contemplating now is an increase in the reporting frequency of Form 477. To the contrary, the Commission should be moving to an annual filing requirement – particularly if the Commission has any intention of expanding the scope of the data it collects. With a semi-annual reporting obligation that has ballooned to more than 1 million burden hours each year, the Form 477 program is now diverting significant industry resources away from the critical task of deploying broadband and voice services to American consumers. Indeed, every hour that is spent filling-out Form 477 is an hour that is *not* being spent building-out networks, developing

³¹ 2000 *Data Collection Order* ¶ 56.

³² 2000 *Data Collection Order* ¶ 57.

new products and services, or improving customer service. Thus, whatever “balance” may have originally existed in a semi-annual reporting requirement, it has long since tipped toward imposing excessive burdens on Form 477 filers. And doubling the reporting frequency to quarterly filings would increase the burden on the industry to more than 2 *million* hours each year – not including any of the additional burdens associated with the multitude of new data collection proposals in the *Notice*.³³ Put simply, increasing the reporting frequency of Form 477 should be a non-starter.

By contrast, moving to an annual filing requirement would cut the current burden in half without impairing the Commission’s ability to fulfill its statutory obligations under the Act. Indeed, in section 332(c)(1)(C) of the Act, Congress directed the Commission to prepare an “annual report” on the state of competition in the mobile wireless market.³⁴ Likewise, in section 706 of the Act, Congress instructed the Commission to conduct an inquiry “annually” into the state of broadband deployment in the U.S.³⁵ Thus, requiring Form 477 to be filed on an annual basis would be fully consistent with Congress’s direction regarding the frequency of Commission reports on the communications marketplace.³⁶

Moreover, switching to an annual filing requirement would give the Commission greater flexibility to collect a modest, targeted amount of additional data that could

³³ See Office of Information and Regulatory Affairs (OIRA), OMB, Information Collection List (April 26, 2010) (multiplying the burden hours for Form 477 by the number of filings per year), http://www.reginfo.gov/public/do/PRAICList?ref_nbr=200912-3060-012.

³⁴ 47 U.S.C. § 332(c)(1)(C).

³⁵ 47 U.S.C. § 1302(b).

³⁶ Of course, to the extent the Commission wanted to obtain updates on the markets for broadband and voice services on a more frequent basis, it would still have access to a wide variety of data from multiple sources, including the Census Bureau, the Pew Internet and American Life Project, and numerous market analysts (e.g., Leichtman Research Group, Parks Associates, Nielsen).

improve Commission policymaking, which would otherwise be extremely difficult to justify given the 1 million plus burden hours *already* imposed on filers by the current semi-annual reporting requirement. Indeed, as noted above, the Commission should *only* consider such additional reporting if the net result of this proceeding is to substantially reduce the total burden hours associated with Form 477 below the current 1 million hour mark. Thus, consistent with the Commission's longstanding commitment to collect only the data it needs in the least burdensome manner possible, AT&T urges the Commission to revise the Form 477 program to require filings on an annual basis.

Irrespective of whether the Commission modifies the frequency of Form 477 submissions, however, it should give service providers an additional 30 days after the close of the reporting period in which to prepare and file their submissions. Under current rules, which have not changed since the Commission first adopted Form 477 in 2000, providers must file their voice and broadband data approximately 60 days after the reporting period ends: March 1 for data as of December 31, and September 1 for data as of June 30.³⁷ While a 60-day deadline may have appeared reasonable when the annual industry burden was less than 30,000 hours per year, that deadline has put increasing strains on provider resources as the annual burden from Form 477 compliance has grown to more than 1 million hours. Indeed, many of the dozens of personnel responsible for amassing and submitting AT&T's Form 477 data are also responsible for performing a variety of other important tasks during the same time frames, not the least of which is the preparation of AT&T's quarterly and annual earnings reports and other filings with the Securities and Exchange Commission. Thus, consistent with its commitment to "minimize

³⁷ Form 477 Instructions at 19.

the reporting burden on respondents,”³⁸ the Commission should extend the due date for Form 477 filings until 90 days after the close of the reporting period.

4. Administrative Issues

In the *Notice*, the Commission seeks comment on a variety of administrative aspects of Form 477 that, if maintained or implemented anew going forward, could in AT&T’s view avoid unnecessary burdens on respondents.

First, the Commission should retain the “checkbox” on Form 477 allowing filers to request confidential treatment of all data submitted on that form. When it adopted the checkbox approach for the original version of Form 477 in 2000, the Commission explained its rationale as follows:³⁹

We also take an additional step to reduce provider concerns about the release of information identified as competitively sensitive by making it easier for providers to request confidential treatment of their data. . . . Thus, where parties seek confidential treatment, they need only check the well-marked box on the first page of the form If the Commission receives a request for, or proposes disclosure of, the information contained in the Form 477, the provider will be notified and required to make the full showing under our rules. Given the unique nature of this data collection, these streamlined procedures for requesting non-disclosure should greatly improve the ability of smaller providers and providers that are less familiar with the Commission’s rules to request confidential treatment of their data. We expect that this will lead to a greater level of compliance with this information collection and will give providers confidence that protectible data will not be published in our regular reports.

This streamlined approach for requesting confidential treatment has been used successfully for more than a decade and the *Notice* offers no reason to change course now. The alternative – requiring the approximately 1,700 entities that file Form 477 to submit a separate, lengthy confidentiality request with each of their semi-annual filings – would serve no purpose other than to needlessly burden both filers and Commission staff

³⁸ *Notice* at ¶ 46.

³⁹ *2000 Broadband Data Order* ¶ 90.

with an avalanche of unnecessary paperwork. The Commission should therefore retain the checkbox approach to requesting confidentiality for Form 477.⁴⁰

Second, the Commission should maintain the current guidance it provides to filers for estimating the percentage of customers that are business vs. residential. As the Form 477 instructions explain, a filer “may provide good faith estimates of percentages based on the best information available to the filer” (e.g., internal service provisioning and/or billing databases) and need not expend additional resources to conduct special studies, unless it cannot provide estimates that it “reasonably expects to be accurate within plus or minus five percentage points.”⁴¹ The Commission’s existing approach thus appropriately balances its desire to obtain relatively accurate information (+/- 5 percentage points) against overburdening filers with the task of undertaking “exhaustive counts performed solely for this task.”⁴²

The only alternative to this approach suggested in the *Notice* (requiring broadband providers to treat all fixed connections with a service-level agreement (SLA) as “business” and all those without one as “residential”) is flawed. Many business customers – including small, medium and large firms – routinely purchase a variety of broadband services (as well as voice services) without an SLA. Under the Commission’s proposal, however, all of these business customers would be erroneously classified as “residential.” Thus, although the current approach may not be perfect, it is significantly more reliable than the alternative proposed in the *Notice*.

⁴⁰ In section II.C.10, we discuss other issues related confidentiality.

⁴¹ Form 477 Instructions at 5.

⁴² Form 477 Instructions at 5.

Third, for similar reasons, the Commission should not require broadband providers to separately identify services provided to “anchor institutions” on Form 477. *Notice* at ¶ 65. The *Notice* does not define what constitutes an “anchor institution” as opposed to a “regular” business customer, thus giving providers no means to distinguish the two for reporting purposes. Even if the Commission developed such a definition, broadband providers would not necessarily have sufficient information in their records to reliably know whether a particular business customer meets that definition. Thus, any data the Commission were to collect regarding anchor institutions via Form 477 would have little (if any) value for the agency’s policymaking activities. And in all events, the Commission already has access to information about anchor institutions from the broadband mapping program administered by NTIA.⁴³

Finally, as the *Notice* acknowledges (at ¶ 38), Form 477 filers have asked the Commission to update the filing interface on the Form 477 website so that filers can submit data for multiple states as a single data file. For companies like AT&T that offer voice and/or broadband service in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, this proposal cannot be implemented soon enough. Filing Form 477 through the existing state-by-state interface is a tedious, burdensome process. And because most Form 477 filers submit their data to the Commission on the due date *en masse*, the current state-by-state approach significantly increases the number of data files being transmitted to the Commission on that date. This, in turn, significantly increases the likelihood that filers will encounter congestion on the Commission’s server.

⁴³ See *NTIA Broadband Map Press Release* (discussing data on community anchor institutions).

Accordingly, AT&T strongly supports the *Notice's* proposal to update the Form 477 filing interface.

C. The Commission Should Reject the Following Unnecessary and Overly Burdensome Proposals to Expand the Form 477 Data Collection Program.

As noted above, given the 1 million burden hours imposed by the existing Form 477 data gathering program, the Commission's first task should be to reduce the burdens imposed by that program. Once that is accomplished, the Commission should only consider adding further data collection requirements to the Form 477 if those data directly further an important Commission interest, are collected in a minimally burdensome manner, and are not available from an alternative source. None of the proposals from the *Notice* discussed below meet those criteria. To the contrary, each of these proposals concerns data that serves no legitimate policymaking purpose; could be obtained far more efficiently and/or reliably from a variety third-party sources; is unduly burdensome to produce; or in one case, would not even be lawful for the Commission to collect. Accordingly, the Commission should reject each of these proposals.

1. Broadband Pricing Data

In the *Notice* (at ¶¶ 66-76), the Commission asks whether it should require broadband providers to report a range of pricing data (e.g., basic services, bundles, a standard basket of services identified by the Commission) for various levels of geography (e.g., Census Block or address level). This not the first time, however, that the Commission has contemplated the collection of broadband pricing data.

In the *2004 Broadband Data Order*, the Commission rejected a proposal "to require broadband providers to report information about the prices at which they offer

broadband services to end users in particular Zip Codes” because the Commission was “not convinced” that the “potential benefits derived from collecting these additional data outweigh their associated costs.”⁴⁴ When the Commission raised the issue of collecting broadband pricing data again in the *2007 Broadband Data Gathering Further Notice*, numerous commenters described why doing so would not be in the public interest.⁴⁵ AT&T, for example, explained that broadband pricing “often turns on a host of customer-specific variables, including speeds, promotional rates, bundling discounts, and other service characteristics,” such as “free or discounted broadband modems, service reliability, the number of email accounts or online storage capacity included with the broadband service, proprietary content available to the subscriber and myriad other factors.”⁴⁶ We further pointed out that “it would be virtually impossible and often misleading to attempt to correct for these variables and construct apples-to-apples pricing comparisons for reporting purposes.”⁴⁷

The Commission took no action on this pricing proposal in the *2008 Data Collection Order*, instead seeking yet more comment on the issue. And again, commenters addressed the myriad problems with the pricing proposal.⁴⁸

Despite these concerns – and the lack of any serious response to them in the record – the Commission has once again proposed requiring broadband providers to report detailed pricing information for each broadband speed tier offered by the provider and at a granular level of

⁴⁴ *2004 Broadband Data Order* ¶ 29.

⁴⁵ See *2008 Broadband Data Notice* ¶ 37 n.130.

⁴⁶ AT&T reply comments, WC Docket No. 07-38, at 20-21 (July 16, 2007).

⁴⁷ AT&T reply comments, WC Docket No. 07-38, at 21 (July 16, 2007).

⁴⁸ See AT&T comments, WC Docket No. 07-38, at 6-14 (Aug. 1, 2008).

geography where the provider offers service. The Commission's proposal is deeply flawed for at least three independent reasons.

First, the pricing data the Commission proposes to collect would not provide reliable or meaningful information to support the Commission's policymaking activities. As AT&T and others have previously explained, in today's competitive marketplace where providers offer their services in triple-play (voice, video, Internet) or quadruple-play (triple-play plus wireless) packages, consumers often purchase broadband Internet access service as part of a bundle of services for which they receive discounted pricing. While this is clearly a pro-consumer marketplace development that policymakers should encourage, it makes comparing broadband Internet access service prices from different providers exceedingly difficult because those prices are dependent on the type and quantity of other *non-broadband* services purchased by the customer.

Moreover, even when providers offer broadband Internet access services on a "stand-alone" basis (i.e., not bundled with other non-broadband services), the broadband service offered to the customer is typically not an easily comparable, single-capability product that merely provides access to the Internet and nothing more. Quite the contrary, providers often charge a single price for Internet access capability integrated with a plethora of different features and functionalities that vary from provider to provider, including but not limited to multiple email addresses, web-based email access with email storage capacity, free or discounted email migration services, firewall software, anti-virus software, anti-spam software, pop-up blocking software, parental controls, online data storage capacity, a companion dial-up Internet access account, free or discounted modems and/or wireless routers, online or live technical support, free or discounted access to WiFi hotspots, access to proprietary content, and many other features. In

addition, even when providing “stand-alone” broadband Internet access services, many providers offer customers a variety of pricing incentives, including but not limited to introductory promotional rates, rebates, gift cards, term discounts and other inducements. With so many bundles, features, and discounted pricing options available to consumers in the marketplace, it would be virtually impossible for the Commission to correct for all of these variables (or create a single “basket” of representative services) and make meaningful apples-to-apples comparisons between providers or to develop useful “price-per-bit” data as some commenters have proposed.⁴⁹

Second, the Commission’s proposal for collecting pricing data would impose significant and unnecessary burdens on broadband providers in violation of the Regulatory Flexibility Act (RFA) and the Paperwork Reduction Act (PRA), as well as the Commission’s own pledge to abide by the President’s Executive Order calling on government agencies to streamline their regulatory reporting obligations. The RFA and the PRA expressly require the Commission to take reasonable steps to minimize the burdens its rules place on the respondents to its data collections.⁵⁰ Here, the Commission is proposing to collect pricing data from broadband

⁴⁹ Notice ¶ 69. In addition, unlike the residential broadband market where broadband prices are relatively (though not always) standardized across geographic regions, broadband service offerings in the business market are often customized for *individual* purchasers, resulting in an even wider range of pricing data that would potentially need to be reported under the proposals in the *Notice*.

⁵⁰ See 5 U.S.C. § 603(c) (requiring agencies to seek comment on alternatives that “accomplish the stated objectives of applicable statutes and which minimize any significant impact of the proposed rule on small entities”); 5 U.S.C. § 604(b) (requiring agencies to describe “the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”); 5 U.S.C. § 3506(c)(3) (requiring agencies to certify that a data collection is “necessary for the proper performance of the functions of the agency, including that the information has practical utility,” “is not unnecessarily duplicative of information otherwise reasonably accessible to the agency” and reduces “the burden on persons who shall provide information to or for the agency”); 5 C.F.R. § 1320(5)(d) (requiring agencies to take “every reasonable step to ensure that the proposed collection of information . . . is the least burdensome necessary for the

providers for each separate speed tier they offer and at a granular level of geography. AT&T offers a wide range of residential and business broadband Internet access services at a variety of broadband speeds using both wireline and wireless technologies, including asymmetric xDSL, symmetric xDSL, traditional wireline (e.g., T-1, T-3), optical carrier, fixed wireless and mobile wireless. We also offer broadband services in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Compiling, validating and reporting this pricing data on an address-by-address or Census unit level would require substantial effort and expense.

Regardless of the precise cost of those burdens, moreover, imposing *any* such burdens on AT&T, or any of the more than 1,500 other providers in the broadband industry, is entirely unnecessary.⁵¹ As AT&T explained in its comments on the *2007 Broadband Data Notice* and again in comments on the *2008 Broadband Data Notice*, broadband pricing data is available to the Commission from numerous market analysts and other firms that specialize in collecting such data, both at the macro level to track broad industry-wide pricing trends and at the micro level to capture company-specific, service-specific and speed-specific pricing information at the state and/or local level.⁵² Indeed, in fulfilling its statutory responsibility to prepare an annual report to Congress evaluating the state of competition for commercial mobile services, the Commission has routinely and extensively relied on third-party analysts for information on the

proper performance of the agency's functions," "is not duplicative of information otherwise accessible to the agency," and "has practical utility").

⁵¹ *FCC Broadband Subscribership Report – Data from June 30, 2010* at Table 14.

⁵² AT&T comments (2007), WC Docket No. 07-38, at 28 n.70; AT&T comments, WC Docket No. 07-38, at 10-12 (Aug. 1, 2008). *See, e.g.*, Telogical Systems at <http://www.telogical.com/services/>; Pike & Fischer at <http://www.pf.com/marketResearchPD.asp>; TeleGeography at <http://www.telegeography.com/services/index.php>; Current Analysis at <http://www.currentanalysis.com/solutions/index.asp>; Strategy Analytics at <http://www.strategyanalytics.com/default.aspx?mod=PrimaryResearchInformation>; Jupiter Research at <http://www.jupiterresearch.com/bin/item.pl/company:customresearch/>; BPI-Telcodata at <http://www.telcodata.net/>; TNS Telecoms at <http://www.tnstelecoms.com/products.html>.

prices of such services.⁵³ And for more than a decade, the Commission has relied on pricing data from TNS Telecoms to track the price of various voice services in its *Trends in Telephone Service* report. As the Commission's *Trends* report explains,

Bill Harvesting® data collected by TNS Telecoms provides information on actual usage in the residential telecom market as collected from the actual telecommunications bills of households. TNS Telecoms (TNS), a telecommunications market information firm, conducts nationwide surveys and Bill Harvesting® on a quarterly basis from over 120,000 households per year.

In fact, the Commission even cited broadband pricing data from TNS Telecoms (as well as similar data from Telogical Systems and the Pew Internet Project) in the *National Broadband Plan*.⁵⁴

Thus, rather than forcing more than 1500 broadband providers to each individually spend the time, money and resources to collect and submit their own pricing data to the Commission – time, money and resources that could be better invested in actually deploying broadband service – the Commission could simply obtain such data from one of the many firms that already have expertise in collecting such data and presenting it in the format(s) that would be most useful to the Commission. To be sure, the Commission may have to pay a fee for the use of such commercially supplied pricing data, but that fee would pale in comparison to the tremendous burdens the Commission would avoid imposing on the entire broadband industry through its unnecessary proposal to collect broadband pricing data from individual providers.

Despite the availability of such commercially supplied data, the Commission's prior experience with similar data in various agency reports, and comments from AT&T in response to two separate *Notices* about this subject, the Commission did not even raise this alternative

⁵³ See *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, FCC 10-28 (released May 20, 2010).

⁵⁴ *Connecting America: The National Broadband Plan*, at 15 (March 16, 2010).

approach in the *20011 Notice*. The failure to explore, let alone adopt, an alternative that could cost-effectively produce the pricing data the Commission wants while saving the broadband industry from enormous data collection obligations cannot be considered a reasonable step to minimize the burdens on respondents, as required by the RFA and PRA.⁵⁵ Moreover, the Commission's repeated failures to address AT&T's comments raise serious questions about the agency's compliance with its own rules and the APA's standards for reasoned decision making in notice and comment rulemaking proceedings.⁵⁶

Third, despite the fact that the Commission has declared various forms of broadband Internet access service to be information services, which are supposed to exist in a congressionally mandated deregulatory environment, the Commission is now proposing to apply legacy, common-carrier style price reporting obligations to providers of these services. As Congress stated in section 230(b)(2) of the Act, it is "the policy of the United States to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*"⁵⁷ This congressional directive, moreover, codifies the Commission's decades-old and highly successful policy of Internet "unregulation."⁵⁸ As the Commission has explained,

The Internet has evolved at an unprecedented pace, in large part due to the absence of government regulation. Consistent with the tradition of promoting

⁵⁵ See *supra* note 50.

⁵⁶ 47 C.F.R. § 1.425 (in rulemaking proceedings, the "Commission will consider all relevant comments and material of record before taking final action"); *ACLU v. FCC*, 823 F.2d 1554, 1581 (D.C. Cir. 1987) ("Notice and comment rulemaking procedures obligate the FCC to respond to all significant comments, for the opportunity to comment is meaningless unless the agency responds to significant points raised by the public.") (internal quotations omitted).

⁵⁷ 47 U.S.C. § 230(b)(2) (emphasis added).

⁵⁸ See *The FCC and the Unregulation of the Internet*, Jason Oxman, FCC Office of Plans and Policy Working Paper No. 31 at 24 (July 1999) ("Perhaps the most important contribution to the success of the Internet that the FCC has made has been its consistent treatment of IP-based services as unregulated information services.").

innovation in new communications services, regulatory agencies should refrain from taking actions that could stifle the growth of the Internet. During this time of rapid telecommunications liberalization and technology innovation, unnecessary regulation can inhibit the global development and expansion of Internet infrastructure and services. To ensure that the Internet is available to as many persons as possible, the FCC has adopted a “hands-off” Internet policy. We are in the early stages of global Internet development, and policymakers should avoid actions that may limit the tremendous potential of Internet delivery.⁵⁹

Yet, notwithstanding the well-established “hands-off” regulatory approach to the Internet pioneered by the Commission and codified by Congress, this Commission’s broadband pricing data collection proposal would subject broadband Internet access providers to the type of heavy-handed price reporting obligations that only apply to “dominant” incumbent local exchange carriers for a limited number of legacy common carrier services. In particular, under section 203 of the Act, “Schedules of Charges,” incumbent local exchange carriers are required to “file with the Commission . . . schedules showing all charges for” their interstate communications services.⁶⁰ Given that the Commission has *eliminated* such price filing obligations for CLECs, IXCs and wireless carriers – all of whom are common carriers under the Act – it would be illogical to now impose a more onerous price reporting obligation on broadband Internet access providers, who are *not* common carriers under the Act and who Congress forbade the Commission from treating as such.⁶¹

Indeed, the Commission itself appears to have recognized the serious jurisdictional deficiencies in this proposal. Rather than identifying a particular source of legal authority for the collection of broadband pricing data, the *Notice* instead seeks comment on whether the agency

⁵⁹ FCC, *Connecting the Globe: A Regulator’s Guide to Building a Global Information Community*, at Section IX (1999) available at <http://www.fcc.gov/connectglobe/sec9.html>.

⁶⁰ 47 U.S.C. § 203.

⁶¹ 47 U.S.C. § 151(44) (“A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services”).

even has “legal authority to collect price data” for broadband service.⁶² But the failure to identify a source of authority for this proposed requirement is itself a violation of the APA, which mandates that notices of proposed rulemaking “shall include reference to the legal authority under which the rule is proposed.”⁶³

Thus, to avoid running afoul of the Communications Act, the RFA, the PRA and the APA, and simultaneously undermining its own well-established policy of Internet unregulation, the Commission should not impose price reporting requirements on broadband Internet access providers – particularly since it has less burdensome alternatives for acquiring such information, as discussed above.

2. Service Quality and Customer Satisfaction Data

The *Notice* (at ¶¶ 89-91) asks whether the Commission should require broadband and voice service providers to report a wide variety of customer satisfaction data, including but not limited to: the number of customer trouble reports or complaints about network performance, customer care and billing, installation and repair intervals, and general customer satisfaction. Similarly, the *Notice* asks whether providers should be required to provide the Commission with certain direct measurements of network performance, such as network downtime and number of customers affected, call blocking, prevalence of dropped calls, and (presumably only for broadband networks) speed, latency, and jitter. The *Notice* posits that such data might be generally useful for ensuring public safety networks remain reliable; making sure that universal service recipients are properly using the support they receive; monitoring the level of competition

⁶² *Notice* ¶ 70.

⁶³ 5 U.S.C. § 553(b)(2).

in voice and broadband markets; and tracking the effects of the transition from the PSTN to IP-based services.

While these are all generally legitimate Commission objectives, the additional types of data the Commission proposes collecting from service providers via Form 477 to fulfill those objectives is both entirely unnecessary and unduly burdensome to produce. As an initial matter, the markets for voice and broadband services are both highly competitive and service providers have strong incentives to deliver the highest quality services possible.⁶⁴ If they do not, service providers will quickly see their churn rates rise as customers vote with their feet and switch to other providers. Thus, given these marketplace realities, imposing additional data production obligations related to service quality and customer satisfaction through the Form 477 program is simply not a necessary or effective means to incent providers to deliver high quality services to their customers.

Beyond that, the Commission already has access to the information it needs to achieve the objectives identified in the *Notice*. For example, in the public safety context, the Commission already requires wireline and wireless providers to report 911 outages to the Commission.⁶⁵ Thus, there is no reason for the Commission to add a duplicative reporting requirement to Form 477.

With respect to universal service, the Commission's rules already mandate that support recipients "shall use that support only for the provision, maintenance, and

⁶⁴ See *FCC Voice Subscribership Report – Data from June 30, 2010*; *FCC Broadband Subscribership Report – Data from June 30, 2010*.

⁶⁵ See 47 C.F.R. § 4.9(e)(5), (f)(4).

upgrading of facilities and services for which the support is intended.”⁶⁶ The Commission’s rules for the various support mechanisms also require support recipients to certify to this Commission or the relevant state commission that they are using support for the services and purposes as directed under the Commission universal service rules.⁶⁷ To the extent the Commission has cause for concern about the veracity of those certifications in the future (and the *Notice* fails to identify any such concerns), the Commission and/or USAC could investigate those concerns on a case-by-case basis, if necessary. But AT&T is aware of no systemic universal service problem related to service quality (and the *Notice* identifies none) that could justify imposing a Form 477 service quality or customer satisfaction reporting obligation on *all* voice and broadband service providers, particularly given that many of those providers do *not* even receive universal service support.

As for monitoring competition and the transition from the PSTN to IP-based services, the Commission’s Consumer & Governmental Affairs Bureau has already established a process for soliciting and tracking consumer complaints about voice and broadband services.⁶⁸ The Bureau also issues a report, on a quarterly basis, separately detailing both the “inquiries” and “complaints” that it has received from consumers. In particular, these quarterly reports track a variety of concerns related to “Billing & Rates,” “Airtime Charges,” “Credit/Refunds/Adjustments,” “Line Items,” “Recurring Charges,”

⁶⁶ 47 C.F.R. § 54.7.

⁶⁷ *See, e.g.*, 47 C.F.R. §§ 54.313, 54.314, 54.410, 54.809

⁶⁸ *See* File a Complaint, Consumer and Governmental Affairs Bureau, FCC, at <http://esupport.fcc.gov/complaints.htm>; 47 C.F.R. § 1.716, *et seq.*

“Roaming Rates,” “Rounding calls to the next minute,” and “Security Deposit.”⁶⁹ The quarterly reports also track a multitude of “Service Quality” and “Service Related Issues,” including “Dead Spots,” “Dropped Calls” “Network Busy Signal,” “Roaming Availability,” “Roaming Service [Quality],” “Service Interruption,” and “DSL Service [Quality or Outage],” among others.⁷⁰

As for collecting specific data about broadband network performance, such as “packet loss, latency and jitter” through Form 477, the Commission has already hired an expert consultant, U.K.-based SamKnows, to collect a variety of performance data on U.S. broadband networks.⁷¹ SamKnows has been working closely with the fifteen largest wired ISPs in the U.S. for many months to measure the performance of their networks, including latency, jitter, packet loss and other metrics. As the Commission is aware, the collection of this performance data is a highly complex, time consuming and expensive undertaking.⁷² In particular, collecting this data requires the participation of carefully screened volunteers (who are customers of the ISPs) and the use of specialized equipment in the ISPs’ networks and at the customers’ premises. In short, this is not the type of data collection that could be accomplished merely by adding a new “box” with a few sentences of instructions to Form 477, nor is it the type of data collection that will “minimize the burden on filers.”⁷³

⁶⁹ See Report on Informal Consumer Inquiries and Complaints, 1st Quarter Calendar Year 2010 (Aug. 13, 2010).

⁷⁰ *Id.*

⁷¹ *Comment Sought on Residential Fixed Broadband Services Testing and Measurement Solution*, Public Notice, DA 10-670 (April 20, 2010).

⁷² See AT&T comments, CG Docket No. 09-158 (May 4, 2010).

⁷³ *Notice* ¶ 37.

While the Commission is obviously aware that it is *already* collecting all of the service quality and customer satisfaction data mentioned above, the *Notice* oddly fails to acknowledge any of this data, much less explains why the data is insufficient to serve the policymaking objectives identified by the Commission. Moreover, even if this data were somehow insufficient, the *Notice* fails to recognize that a multitude of service quality and customer satisfaction data can be obtained more efficiently and cost-effectively from third parties without the need to further expand Form 477 and impose a host of burdensome new reporting obligations on voice and broadband providers. Indeed, a significant number of consumer research firms – such as Consumer Reports, JD Power and Parks Associates, just to name a few – routinely publish reports on service quality and customer satisfaction regarding a wide variety of communications products and services. Given the extensive data already collected by the Commission and the availability of additional data from alternative sources, the proposals in the *Notice* to expand Form 477 to collect additional service quality and customer satisfaction data directly from service providers cannot withstand scrutiny under the RFA, PRA or APA, and should therefore be rejected.⁷⁴

3. Address Level Data

The *Notice* seeks comment on whether the Commission should collect a variety of different data at the address level, as opposed to some other geographic level such as the

⁷⁴ For similar reasons, the Commission should not require broadband providers to report their network management practices on Form 477. *Notice* ¶ 99. In the *Open Internet Order*, the Commission required providers to disclose such practices on their websites and at the point of sale. *Preserving the Open Internet*, GN Docket No. 09-191, Report and Order, FCC 10-201, ¶ 57 (released Dec. 23, 2010) (*Open Internet Order*). The Commission further determined that such “online disclosures shall be considered disclosed to the Commission for purposes of monitoring and enforcement.” *Id.* The *Notice* fails to identify any reason to depart from this approach, and doing so would only result in the imposition of unnecessary burdens on broadband providers.

Census Tract or Census Block levels. In particular, the *Notice* asks whether providers should be required to submit address-level data on availability, subscribership, price and perhaps service quality and/or customer satisfaction for their voice and broadband services.⁷⁵ The *Notice* posits that such address level data could provide the Commission with “a more granular and accurate understanding of the marketplace” while at the same reducing reporting burdens on filers.⁷⁶ The *Notice* is wrong on both points.

The *Notice* proceeds from the flawed assumption that if the Commission collects data at a more “granular” level on Form 477, such data will necessarily be more “accurate” and useful for the Commission’s policymaking purposes.⁷⁷ But contrary to this assumption, in this case “accuracy” actually *decreases* when granularity increases to the address level. That is so because “addresses” are *not* necessarily recorded in a standardized, uniform manner by all of the nearly 1,800 service providers that are required to submit Form 477. Indeed, unlike Census unit designations which are defined and maintained by a single entity (the Census Bureau), the “address level” data the Commission seeks would be produced separately by each one of these nearly 1,800 Form 477 filers using the various different address descriptions those filers happen to have in their records.⁷⁸

⁷⁵ *Notice* at ¶¶ 39, 50, 56, 74, 81.

⁷⁶ *Notice* at ¶39

⁷⁷ *Notice* at ¶39

⁷⁸ For similar reasons, the Commission should not use other alternative geographic areas in the Form 477 program, such as wire centers or study areas. *Notice* at ¶ 106. These types of idiosyncratic geographic areas are typically used by only a subset of service providers (e.g., ILECs) and their boundaries do not conform to existing Census unit designations, thus depriving the Commission of the ability to efficiently use the rich demographic data (e.g., income, population density, race, age, education) available from the Census Bureau to analyze the Form 477 data.

For example, a hypothetical subscriber living in Apartment B at 123 Main Street in Anytown, Anystate, may have his or her address listed as “123 Main Street, Apartment B, Anytown, Anystate, 12345” in one provider’s records, while the same address may appear as “123 Main, Unit B, Anytown, Anystate, 12345-6789” in another provider’s records, and “123 Main Rd., #B, Anytown, Anystate, 12345” in still another provider’s records. In fact, a single provider that serves two or more occupants living in the same household, and bills those occupants separately, may have recorded the address for this single household differently for each occupant depending on how the individual occupants described the address to the provider when they each originally initiated service.⁷⁹

To be sure, many addresses may be recorded in the same manner in the databases of multiple providers. But with more than 100 million households in the U.S., and nearly 600 million total voice and broadband lines reported on Form 477 that would need to be matched to a particular address, an addresses level data production requirement would likely produce *millions* of instances where a single address is described in different ways by at least some of the nearly 1,800 Form 477 filers. In the end, the Commission would be left with the monumental task of attempting to “scrub” this massive data set to determine which addresses refer to the same physical location and which do not. Thus, rather than painting the Commission a more “accurate” picture of the markets for voice and broadband services, an address level reporting requirement would significantly cloud

⁷⁹ Although the Master Street Address Guide (MSAG) validation process for wireline voice 911 purposes in many localities may have the effect of reducing the number of address disparities associated with wireline voice services that have 911 obligations, there is no corresponding process for wireless voice services or broadband services.

the Commission's understanding of those markets while creating an administrative nightmare for the Commission and its staff.

In addition, as compared to the existing geographic area reporting requirements in Form 477 (Census Tract level for broadband; Zip Code level for voice), and address level reporting requirement would represent an enormous incremental data production burden on service providers. Indeed, there are approximately 66,000 Census Tracts and 40,000 five-digit Zip Codes in the U.S., as compared to more than 100 million addresses. Thus, the imposition of address level reporting obligations would represent a potential industry-wide data production obligation that is 1,500 to 2,500 times larger than the data current production.

Moreover, although the *Notice* (at ¶ 39) suggests that the production of address level *subscriber* data may reduce burdens on filers because some filers would prefer to simply submit a list of all of the addresses in their subscriber databases, this assertion is problematic for at least two reasons. *First*, the Commission is proposing to collect a substantial amount of *non-subscriber* data – including availability, pricing, service quality and customer satisfaction – at the address level. As AT&T and other commenters have explained in prior filings, producing such data at the address level would be a massively burdensome undertaking because filers do not typically have such data and, in many cases, would need to create the systems and processes to gather the data at the address level and report it to the Commission.⁸⁰ Considering the more than 1 million burden hours that Form 477 *already* imposes on voice and broadband providers each year, the new address level reporting proposals are directly at odds with the

⁸⁰ See AT&T comments, WC Docket No. 07-38 (July 17, 2008); AT&T comments, WC Docket No. 07-38 (Aug. 1, 2008).

Commission’s longstanding commitments to “distil our proposal[s] down to that information which is most essential” and to focus as much as possible on “easily-quantifiable and readily-available” data sources.⁸¹

Second, as the *Notice* itself recognizes (at ¶ 110), a requirement that providers produce address level subscribership data (and other address level data concerning the particular attributes of a subscriber’s service, such as speed or service quality) would likely violate the Electronic Communications Privacy Act (ECPA).⁸² Pursuant to ECPA, neither the Commission nor any other “governmental entity” may require a provider of an electronic communications service to disclose “a record or other information pertaining to a subscriber or customer of such service,” except in certain limited circumstances where the governmental entity obtains a warrant, court order or similar formal authorization, or acquires the consent of the subscriber.⁸³ And ECPA specifically identifies a subscriber’s “address” and “types of service utilized” as information subject to its disclosure restrictions.⁸⁴

In the event a service provider is found to have violated these non-disclosure provisions, ECPA authorizes aggrieved parties to seek substantial civil penalties against the service provider, including damages of *not less than* \$1,000 per plaintiff.⁸⁵ ECPA also provides for “administrative discipline” against employees of federal agencies that “acted willfully or intentionally with respect to the violation.”⁸⁶ Given that there are

⁸¹ 2000 *Broadband Data Order* ¶ 6.

⁸² 18 U.S.C. § 2701, *et seq.*

⁸³ 18 U.S.C. § 2703.

⁸⁴ 18 U.S.C. § 2703.

⁸⁵ 18 U.S.C. § 2707.

⁸⁶ 18 U.S.C. § 2707.

nearly 600 million total voice and broadband lines for which the Commission proposes to collect various types of address level “information pertaining to a subscriber,” the potential liability for service providers arising from the Commission’s address level data collection proposals would be enormous. In light of these and other concerns discussed above, there should be absolutely no doubt that the Commission should not – and lawfully cannot – adopt the address level data collection proposals in the *Notice*.

4. Actual Broadband Speeds

Since the inception of Form 477, the Commission has instructed broadband service providers to determine and report the speed of their broadband lines based on the “authorized maximum information transfer rate,” also known colloquially as the “advertised speed,” of those lines.⁸⁷ At various times over the last decade, however, a few commenters have urged the Commission to instead require providers to report data on the “actual” speeds delivered to subscribers in their Form 477 filings. Each time, AT&T and numerous other broadband providers described why such a requirement was not feasible.⁸⁸ And each time, the Commission rejected the proposed requirement. As the Commission explained, the “record indicates that factors beyond the control of service providers may compromise the ability of service providers to report actual speeds experienced by consumers.”⁸⁹ Indeed, to this day, the “the record of this proceeding does not identify a methodology or practice that could be applied, consistently and by all types of broadband filers, to measure the information transfer rates actually observed by end

⁸⁷ Form 477 Instructions at 6.

⁸⁸ *See, e.g.*, AT&T comments, WC Docket No. 07-38, at 3-6 (Aug. 1, 2008); AT&T comments, WC Docket No. 07-38, at 11-12 (June 15, 2007). *See also* Verizon comments, WC Docket No. 07-38, at 6-8 (Aug. 1, 2008).

⁸⁹ 2008 *Data Collection Order* ¶ 36.

users.”⁹⁰ Thus, the Commission concluded that attempting to collect “such information directly from providers may impose significant burdens.”⁹¹

Despite these findings, the *Notice* (at ¶ 59) proposes, once again, that the Commission collect data on “actual speeds” via Form 477. However, the *Notice* fails to identify anything in the record that has changed since it previously rejected such an actual speed reporting requirement in 2004 and again in 2008. In fact, the only new developments in the record since 2008 *confirm* the Commission’s prior findings and conclusions. As the *Notice* observes in a footnote (and as we discuss above), the Commission has retained SamKnows to collect a variety of performance data on U.S. broadband networks, including data on actual speeds. As the Commission is aware,⁹² the collection of this data is a highly complex, time consuming and expensive undertaking that requires the use of specialized equipment in the ISPs’ networks and at customers’ premises. Thus, the SamKnows project reinforces what the Commission has already concluded: collecting actual speed data via Form 477 is simply not feasible.

Of course, this does not mean the Commission has no other options for gathering data on actual speeds if it believes such data will be useful for its policymaking activities. Indeed, while the SamKnows project is only a “proof of concept” at this point, it could provide useful insights about whether and how broadband speeds could be measured in the future. Accordingly, consistent with its prior determinations in 2004 and 2008, the Commission should decline to impose an “actual” broadband speed reporting requirement

⁹⁰ 2004 Data Collection Order ¶ 27.

⁹¹ 2008 Data Collection Order ¶ 22.

⁹² *Comment Sought on Residential Fixed Broadband Services Testing and Measurement Solution*, Public Notice, DA 10-670 (April 20, 2010).

via Form 477 filers and should instead carefully evaluate the results of the SamKnows project when they are available later this year.

5. Broadband Contention Ratios

The *Notice* (at ¶ 59) asks whether the Commission should require broadband providers to report “contention ratios,” which the *Notice* defines as “the ratio of the potential maximum demand to the actual bandwidth available.” According to the *Notice*, contention ratios could be used to measure network congestion, under the theory that higher contention ratios would demonstrate that the network is shared by a larger number of users, which will result in lower effective speeds during periods of congestion.⁹³

This is not the first time the subject of contention ratios has arisen in this proceeding, however. In response to a proposal from a commenter in the 2008 data gathering proceeding, AT&T and other providers explained that: (i) due to the myriad other factors that affect the performance of a subscribers Internet experience, contention ratios provide no meaningful information about the speed of the subscribers service; (ii) a large number of moderate users sharing a particular link with a relatively high (100:1) contention ratio (e.g., 100 residents of a retirement community browsing the web and sending email) may experience *less* congestion than a small number of heavy users sharing a particular link with a relatively low (10:1) contention ratio (e.g., 10 residents of a college dormitory using P2P applications); (iii) there is no single “contention ratio” applicable to a given subscriber or network, as broadband traffic traverses numerous segments in a network (i.e., the multitude of individual network connections that make up the “last mile,” “middle mile,” and “backbone”), which each have different contention

⁹³ *Notice* ¶ 59, n. 161.

ratios; (iv) calculating contention ratios would be extremely burdensome, as providers would presumably need to examine every link in their networks that is subject to the reporting requirement, determine the bandwidth available on the link, and figure out how many subscribers are assigned to use that link; and (v) the disclosure of such contention ratios, while not useful for Commission policymaking, could result in the release of confidential data about basic network design and engineering assumptions that could give competitors an unfair competitive advantage or provide hackers, terrorists and other malfeasors with useful information in planning directed denial of service attacks.⁹⁴

The *Notice* does not acknowledge any of these concerns, let alone provide a meaningful response to them. Accordingly, for all of the reasons stated in AT&T's prior filings on this issue, the Commission should not adopt a contention ratio reporting requirement.

6. Assorted Spectrum Metrics

The *Notice* (at ¶ 61) proposes collecting data on wireless "signal strength" via Form 477. But the *Notice* does not identify the tools or technologies wireless providers are supposed to use for measuring signal strength; the particular geographic locations where such measurements are supposed to take place; the number of measurements that are to be taken; the frequency with which those measurements are supposed to occur; or how measurements taken by different providers at different locations at different times would facilitate apples-to-apples comparisons among different mobile services.

As AT&T and other providers previously explained to the Commission, measuring signal strength is a complex and time consuming endeavor due in significant

⁹⁴ AT&T reply comments, WC Docket No. 07-38, at 4-10 (Sept. 2, 2008).

part to the extreme variability in the propagation and reception of wireless signals.⁹⁵ The strength of the signal received by any given subscriber can be impacted by a broad range of factors, including topography, foliage, weather, type of structure for in-building reception (e.g., glass, wood frame, concrete block), the number and behavior of other subscribers connected to the same cell site, whether (and how fast) the subscriber is moving through the cell site's coverage area, and the capabilities of the antenna in the subscriber's device, among other things. Some of these factors – such as foliage, weather and subscriber movement – can vary from month-to-month, hour-to-hour or even minute-to-minute. In short, signal strength goes well beyond the kind of “easily-quantifiable and readily-available” data that the Commission appropriately limited itself to collecting in the Form 477 program.

Given all of this complexity and the obvious burdens that collecting such data would impose on broadband providers, the Commission should not adopt any requirement to report “signal strength” on Form 477. Instead, to the extent it believes signal strength data is necessary for its policymaking activities, the Commission should continue to investigate alternative approaches to obtaining the data, including the use of third-party consultants similar to the SamKnows project for wired broadband services.⁹⁶

Next, the *Notice* (at ¶ 79) proposes collecting “the number of mobile voice and mobile broadband subscriptions by spectrum band” and by “technology,” which may include “GSM, CDMA, EVDO, WiMax, LTE, and WCDMA/HSPA, among others.” Contrary to the implicit premise of this proposal, however, customers do not typically

⁹⁵ See AT&T comments, CG Docket No. 09-158 (July 8, 2010).

⁹⁶ See Comment Sought on Measurement of Mobile Broadband Network Performance and Coverage, CG Docket No. 09-158, Public Notice, DA 10-988 (June 1, 2010).

subscribe to a “spectrum band” or “technology.” Rather, subscribers purchase service plans (e.g., a certain quantity of minutes and/or megabytes) and devices, the latter of which are usually designed to operate on multiple spectrum bands using multiple spectrum technologies. For example, the Motorola Atrix offered by AT&T operates on 850, 900, 1800, 1900, 2100 MHz spectrum, using GSM, UMTS and HSDPA technologies.⁹⁷

Thus, given these facts, it would appear the proposal in the *Notice* would require mobile voice and broadband providers to submit what amounts to a master inventory list of each spectrum band and technology supported by each of the end-user devices currently in use by their wireless subscribers.⁹⁸ With nearly 300 million wireless subscribers in the U.S. today, many of which have devices that support multiple spectrum bands and technologies, the proposal could easily result in the production of well over a *billion* additional data points to the Commission. And despite the magnitude of this data production and the obvious burdens it would impose on service providers, the *Notice* does not even identify what (if anything) the Commission proposes to do with this data after it is produced. In brief, the *Notice*'s spectrum band and technology proposals clearly violate the RFA, PRA and the Commission's commitment to collect only “the data it needs, while minimizing the overall burdens of data collection.”⁹⁹

⁹⁷ See Motorola Atrix 4G, at <http://www.att.com/shop/wireless/devices/motorola-atrrix.jsp#fbid=VENkFhdYetZ>

⁹⁸ For providers like AT&T that have “Bring Your Own Device” policies, such a master list would necessarily be incomplete because the providers would not necessarily know the spectrum bands and technologies supported by such devices. See AT&T Choice website (“You've got the choice: either conveniently get a phone through AT&T for guaranteed worry-free functionality, or bring any GSM Phone and we'll connect it to our network.”), at <http://choice.att.com/flash/customersdevices.aspx>.

⁹⁹ *Notice* ¶ 1.

Finally, the *Notice* (at ¶ 79) asks whether the Commission should modify Form 477 to require mobile service providers to segment their subscribers into separate categories based on whether they are “voice-only, broadband-only, or both voice and broadband.” The *Notice* also asks whether Form 477 should be changed to account for mobile data service provided in connection with “non-traditional devices, such as data-only e-readers, machine-to-machine communications, telemetry systems and others.”

The answer to both questions is no. To the extent the Commission has a need to explore whether subscribers in some parts of the country are more prone to subscribe to voice and/or broadband services than subscribers in other areas (and the *Notice* does not identify such a need), the Commission could use existing Form 477 data combined with population data from the Census Bureau to determine the per capita subscribership to each service in each state.¹⁰⁰ Alternatively, the Commission could request the Census Bureau to include a question about subscription to voice-only, broadband-only, and voice + broadband services in one of its regular surveys.¹⁰¹ Given these options (and the lack of any specific need for this data at the present time), there is simply no reason for the Commission to force mobile service providers to incur the additional burdens of having to sub-categorize their subscribers on Form 477 in the way the *Notice* proposes.

Likewise, there is no need to require mobile broadband providers to separately report the mobile data services they offer in connection with “non-traditional devices.” The existing instructions for Form 477 direct mobile broadband providers to report connections for

¹⁰⁰ As currently structured, Form 477 already provides the Commission with information about the number of mobile voice connections and, separately, the number of mobile broadband connections in each state.

¹⁰¹ See U.S. Census Bureau, Current Population Survey, at <http://www.census.gov/cps/>. See also NTIA Current Population Survey (CPS) Internet Use 2010, at http://www.ntia.doc.gov/data/CPS2010_Tables.html.

“subscribers whose device and subscription permit them to access the lawful Internet content of their choice.”¹⁰² In other words, if the subscription and device support broadband Internet access service,¹⁰³ the connection is already subject to reporting on Form 477. Thus, tablet computers and other new devices with subscription-based Internet access connectivity, like the Apple iPad, Samsung Tab, Motorola Xoom and many others, are reportable today.

But beyond these types of broadband Internet access-capable devices, it would be premature for the Commission to begin collecting information on mobile broadband connectivity services associated with devices that do not support broadband Internet access service. First, the nascency and heterogeneity of these devices and the services associated with them – smart electric meters, wireless dog tracking collars, remote medical monitoring devices, wirelessly connected vending machines, fleet monitoring systems – would it make it difficult for the Commission to coherently define which services and devices are subject to reporting obligations and which are not. Second, many of these devices are used for machine-to-machine communications in industrial or other settings that do not involve direct human interaction with the device or service (e.g., wireless sensors on pipelines at an oil refinery). Thus, they are beyond the proper scope of Form 477, the purpose of which has always been to provide the Commission with a better understanding of the types of broadband Internet access connections obtained by residential, business and government “end users.”¹⁰⁴ Third, given the 1 million annual burden hours already imposed by the Form 477 program, it would not be in the public

¹⁰² Form 477 Instructions at 21.

¹⁰³ See, e.g., *Open Internet Order* ¶ 44; Report to Congress, *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501 ¶ 63 (1998) (describing Internet access service as providing “open-ended Internet connectivity”).

¹⁰⁴ Form 477 Instructions at 1. We also note that the Commission has long excluded “point-to-point connections within private or semi-private data networks” from the scope of Form 477. See Form 477 Instructions at 3.

interest to further expand the scope of that program to include an ill-defined and potentially far-reaching category of “non-traditional devices.” For all of these reasons, the Commission should not modify the current Form 477 instructions for mobile broadband service reporting.

7. Voice Services

The *Notice* (at ¶¶ 78, 85-87) seeks comment on whether to add or maintain a variety of data reporting requirements related to the provision of voice services, such as the percentage of local telephone lines for which the provider is also the customer’s presubscribed long distance carrier; the types of long distance plans such subscribers purchase (e.g., per minute, unlimited); the number of telephone lines provided over the UNE-Platform; and the number of DS0, DS1 and DS3 loops provided to unaffiliated carriers under a UNE loop arrangement. None of these reporting requirements should be maintained in, or added to, Form 477.¹⁰⁵

The Commission already collects a substantial amount of information about the highly competitive market for voice services on Form 477, including the types of service (local, mobile, interconnected VoIP), the number of lines in service, and the type of provider (ILEC, CLEC, VoIP provider), and the type of technology used (fixed wireless, FTTP, coaxial cable, copper) – as well as the pricing data it obtains from TNS Telecoms. And if the Commission adopts the proposals discussed above (i.e., Census Tract level data; additional VoIP providers), it will have even more useful information about these services for its policymaking activities.

Given the extent of the information that the Commission already does (or could soon) collect about voice services, the other voice-related data collection requirements and proposals

¹⁰⁵ The *Notice* (at ¶87) also asks where Form 477 should be modified to distinguish “nomadic” from “fixed” VoIP. That distinction, however, *already* exists in Form 477. See Form 477 Instructions at 13 (“Report the percentage of subscriptions reported in (a) that were purchased under terms that allow use with any broadband connection (‘nomadic’ functionality)”).

discussed above are entirely unnecessary. Indeed, in the decade since Form 477 was created, consumers have overwhelmingly embraced mobile voice and any-distance wireline and VoIP offerings, which do not distinguish between local and long distance service. Over the same period, traditional stand-alone long distance services have gone the way of the buggy whip, typewriter, and Princess phone. Thus, it makes little sense for the Commission to continue requiring providers to report data about long distance service, particularly since the Commission is no longer engaged in any significant policymaking regarding these anachronistic services.

Similarly, the Commission's UNE-Platform regime has long since been phased-out and its remaining UNE loop rules have remained unchanged for many years. Thus, there is no legitimate policymaking reason for the Commission to continue requiring providers to report the number of lines provided via UNE-Platform arrangements,¹⁰⁶ nor is there any reason to expand Form 477 to collect additional data about the number of DS0, DS1 and DS3 UNE loops provided to competitors.

8. Exemptions for Small Providers / Satellite Providers

The *Notice* (at ¶¶ 44, 64) asks whether there are certain “classes of providers that should be exempted” from any data collections in Form 477, particularly small broadband providers and satellite broadband providers. Given that one of the primary objectives of Form 477 is to inform the Commission's efforts to promote broadband deployment in a reasonable and timely fashion to “*all* Americans,”¹⁰⁷ it would be extremely counterproductive to only require *some* but not “*all*” broadband providers to complete Form 477. That is especially true with respect to providers serving rural or insular areas of the U.S., where the barriers to broadband deployment are

¹⁰⁶ To the extent that some providers (including AT&T) have continued to report lines as being provided via UNE-Platform arrangements in their more recent Form 477 filings, it is likely because the records for those lines have not been fully updated to reflect the transition of the lines to alternative arrangements.

¹⁰⁷ 47 U.S.C. § 1302(a) (emphasis added).

typically the highest. Indeed, those areas are often served by the very same small or satellite-based broadband providers that the Commission proposes exempting from Form 477 filing requirements. Thus, such exemptions would deprive the Commission of the information it needs most in order to fulfill its mission to promote broadband deployment.

To be sure, these providers unquestionably incur significant burdens in having to comply with Form 477 data production requirements. But the Commission can reduce those burdens without exempting these providers from some or all of the Form 477 requirements. Instead, as discussed above, the Commission should reduce the burdens on *all* Form 477 filers by transitioning to an annual (rather than semi-annual) reporting cycle and by giving filers an extra month to submit their filings after the close of the reporting period.

9. Ownership and Contact Information

The *Notice* (at ¶¶ 100-103) proposes collecting additional information from Form 477 filers about their corporate ownership, such as the filer’s “disclosable interest holders” (i.e., entities with a 10% or greater ownership interest in the filer), its FCC Registration Number (FRN), or any other information that would enable the Commission to “evaluate ultimate ownership of, and common control among, filers.”

But contrary to *Notice*’s assumption in asking these questions, Form 477 *already requires* filers to provide their FRNs. Indeed, the Commission requires Form 477 to be filed electronically and filers cannot login to the Form 477 website to make their filings unless they first input their FRN and a password.¹⁰⁸ In order to obtain an FRN, a filer must complete FCC Form 160, which directs the filer to provide its business name, trade name, and tax payer identification number. Further, Form 477 requires filers to “to identify **all** commonly-owned or

¹⁰⁸ Form 477 Instructions at 4.

commonly-controlled entities who are filing Form 477 data” in the submission.¹⁰⁹ Thus, the Commission already collects a substantial amount of data about the ownership status of Form 477 filers. It is thus both unnecessary and unduly burdensome to require filers to submit even more ownership related data, particularly when the *Notice* fails to explain why the existing ownership data is insufficient. This is particularly so for large providers like AT&T that operate through multiple affiliates and provide service in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Accordingly, the Commission should reject proposals to further expand Form 477 in this regard.

The *Notice* (at ¶ 104) also proposes using Form 477 to collect emergency contact information from service providers, such as the “telephone number and email address for each provider’s Network Operations Center.” While AT&T does not object to providing such information to the Commission, we do not believe that Form 477 is the appropriate vehicle to do so. Like many other providers, AT&T’s global network operations center (GNOC) is a highly secure facility that functions as the nerve center of its entire network. Accordingly, AT&T treats the emergency contact information for senior personnel at that facility as highly confidential. While the Commission has historically done an admirable job in protecting the confidentiality of sensitive information submitted on Form 477, it does disclose Form 477 data to other federal agencies and state commissions (subject to confidentiality requirements). It is also proposing in the *Notice* to disclose certain Form 477 data to academic researchers (see discussion below). In light of this existing and proposed sharing, there is a heightened risk that highly confidential emergency contact information could be inadvertently disclosed. Thus, to the extent the Commission needs (but does not already have) emergency contact information from certain

¹⁰⁹ Form 477 Instructions at 5 (emphasis in original).

providers, it should task the Public Safety and Homeland Security Bureau with obtaining that information through appropriate and secure means.

10. Disclosure of Confidential Form 477 Data

The *Notice* (at ¶¶ 108-09) recognizes that the Commission has always been “cognizant of the potential sensitivity of the data collected and has limited their disclosure.” Nonetheless, the *Notice* proposes that the Commission “establish a program to allow researcher access to those [confidential] data under certain conditions.” While AT&T appreciates the Commission’s desire to maximize the value of the Form 477 program for all stakeholders, we strongly urge the Commission not to break from its well-established practice of protecting confidential information from disclosure to third parties – particularly given the substantial increase over the past decade in the amount of confidential information requested on Form 477.

Ever since the Kennard Commission initiated the Form 477 data collection program in 2000, the Commission has kept provider-specific voice and broadband data confidential and has refused to disseminate the data in a manner that would disclose individual company information.¹¹⁰ When the Commission’s practice of safeguarding this data was challenged in court in 2007 under the Freedom of Information Act (FOIA), the Commission vigorously defended the data from disclosure and won.¹¹¹ As the Commission explained to the court, “disclosure would, *inter alia*, (1) allow competitors to determine particular areas where a service provider has or has not been successful in acquiring customers; (2) disadvantage new entrants in

¹¹⁰ *2000 Data Collection Order* ¶ 89 (“[W]e will honor all parties’ requests for confidential treatment of information that they identify as competitively sensitive until persons requesting confidential treatment are afforded all of the procedural protections provided by our confidentiality rules. . . . [W]e agree with those commenters who suggest that we can aggregate much of the data -- for example, by carrier class and to the state level -- so that it does not identify the individual provider in our regularly published reports.”)

¹¹¹ *Center for Public Integrity v. FCC*, 505 F. Supp. 2d 106 (D.D.C. 2007).

particular geographic areas by enabling existing providers to target ‘win back’ efforts; (3) disadvantage new entrants by drawing the interest of additional new competitors to a particular geographic area; (4) reveal data regarding the technologies that a service provider uses; (5) enable competitors to identify and target a service provider’s largest or most lucrative customers; and (6) provide competitors with information about market trends that would not be otherwise available through legitimate means.”¹¹²

Indeed, a competitor “[a]rmed with [Form 477 data] . . . could . . . alter its facilities deployment plans and thereby defeat any advantage [another provider] hopes to gain by deploying particular technology in a given market.”¹¹³ Further, “a competitor could devise marketing strategies that seek to highlight perceived advantages it may claim to have over a particular technology [another provider] may be deploying in a particular market” and “a competitor could learn, on an aggregated basis, which technologies have found the most success in the market – information that [other providers] ha[ve] gained only through participating in the market and that is extremely valuable in making deployment and investment plans on a prospective basis.”¹¹⁴

¹¹² *Center for Public Integrity v. FCC*, Civil Action, No. 06-1644, FCC Reply, at 2 (D.D.C. filed May 15, 2007). The Form 477 data at issue here is even more detailed and granular – and thus more competitively sensitive – than the prior Form 477 data that was the subject of the FOIA litigation. See *High-Speed Services for Internet Access: Status as of December 31, 2008*, FCC Wireline Competition Bureau, at 2-3 (Feb. 2010) (describing changes to Form 477 data collection).

¹¹³ *Center for Public Integrity v. FCC*, Civil Action, No. 06-1644, Joint Declaration of Mark Keiffer, Robert W. Quinn Jr., and Rick Welday, Jr. on behalf of AT&T *et al.*, at 4 (D.D.C. filed Jan. 8, 2007).

¹¹⁴ *Id.* at 4. See also *Center for Public Integrity v. FCC*, Civil Action, No. 06-1644, Joint Declaration of John A. Wimsatt, Larry J. Zeppetela And Thomas Y. Ikegami on behalf of Verizon, at 4-5, (D.D.C. filed Jan. 8, 2007) (information regarding the “pace and pattern of Verizon’s roll-out of this new [fiber] network” would enable competitors “to anticipate Verizon’s moves and protect themselves against competition from Verizon in a targeted way, without engaging in the same business-wide price reductions and service improvements that they would have to make if they were competing without inside information” and “that, in turn, would cause Verizon substantial competitive harm in this vitally important area”); *Center for Public Integrity v. FCC*, Civil Action, No. 06-1644, Declaration of Kevin J. Albaugh on behalf of NPTC, at 2, (D.D.C. filed Jan. 8, 2007) (“[b]y utilizing the broadband data provided

Moreover, these confidentiality concerns cannot be alleviated even if the Commission were to require “researchers” to comply with a protective order governing their access to and use of the Form 477 data. The Commission should reasonably expect that researchers desire access to this confidential data because they want to conduct research and *publish* the results of that research in academic journals, white papers and other public documents. Although these researchers may commit to publishing only aggregate data and analysis, such commitments do not guarantee that confidential information will not be inadvertently disclosed. Indeed, even parties acting in good faith can make mistakes – particularly those lacking the Commission staff’s decade of practical experience handling Form 477 data. Since 2000, Commission staff have spent considerable time and effort evaluating whether and how pieces of individual, company-specific data can (or cannot) be appropriately aggregated to prevent the disclosure of confidential information.¹¹⁵ The Commission has no basis to conclude that non-governmental, third-party “researchers” will have the same experience or exercise the same diligence. Accordingly, AT&T urges the Commission to maintain its existing limits on the disclosure of confidential Form 477 information to third parties.

on Form 477, . . . competitors could identify areas where demand is highest, or where current service offerings would make NPTC most vulnerable to the introduction of new technology or aggressive marketing by a competitor” and such information could be “use[d] . . . to tailor their competitive strategies – including marketing and infrastructure investment – to compete unfairly against NPTC.”).

¹¹⁵ See, e.g., *FCC Broadband Subscribership Report – Data from June 30, 2010, passim* (replacing certain data points with an asterisk and explaining that the data was “withheld to maintain firm confidentiality”).

III. CONCLUSION

For all of the foregoing reasons, the Commission should focus its attention on streamlining the existing Form 477 data collection program *before* it considers imposing additional data production requirements on voice and broadband service providers.

Respectfully Submitted,

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