

**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	)	WC Docket No. 10-132
Practices	)	

**COMMENTS OF  
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

March 30, 2011

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NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA)<sup>1</sup> submits these comments in response to the Notice of Proposed Rulemaking (*Notice*) in the above-referenced proceeding.<sup>2</sup> NCTA supports the Commission's efforts to improve its general data collection and use policies and its decision to reassess the use of Form 477 in this proceeding. Many of the specific reporting requirements proposed in the *Notice*, however, would either collect data that is

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<sup>1</sup> NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of broadband service after investing over \$170 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 23 million customers.

<sup>2</sup> *In re Modernizing the FCC Form 477 Data Program; Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering; Review of Wireline Competition Bureau Data Practices*, Notice of Proposed Rulemaking, 26 FCC Rcd 1508 (2011) (*Notice*).

not necessary or helpful to achieving the Commission’s statutory responsibilities or would impose obligations for which the burdens likely outweigh the benefits. As discussed below, recent collaborative efforts between industry and government agencies have proven to be successful in developing meaningful broadband information and the Commission should consider building on those successes as it moves forward in this proceeding.

### **INTRODUCTION AND SUMMARY**

The *Notice* is part of the Commission’s Data Innovation Initiative (DII), which Chairman Genachowski has described as a “comprehensive effort to modernize and streamline how we collect, use, and disseminate data.”<sup>3</sup> The DII is not designed simply to increase the amount of data the Commission collects from broadband providers. Rather, as the Chairman explained, it is intended to help “fulfill important statutory obligations” and to “ensure that we don’t collect voice and broadband data that we no longer need.”<sup>4</sup> The Chairman has stated that all of these efforts should be carried out in accordance with President Obama’s recent *Executive Order* to improve regulation and regulatory review.<sup>5</sup> Pursuant to the *Executive Order*, each agency must “tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives” and select regulatory approaches that “maximize net benefits.”<sup>6</sup>

As described in the *Notice*, an important component of the DII is reassessing both the information that is collected from broadband providers through the Form 477 and how the Commission uses that data. The *Notice* seeks comment on proposals to require interconnected

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<sup>3</sup> *Notice*, Statement of Chairman Julius Genachowski at 1.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *See id.* at 2 (“As I informed senior staff last week, I expect the FCC to perform its responsibilities consistent with the principles in the executive order.”); Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 21, 2011) (*Executive Order*).

<sup>6</sup> *Executive Order*.

VoIP providers and broadband Internet service providers (ISPs) to report information on a variety of matters, including retail prices, quality of service, signal strength for mobile broadband, network performance (including actual speeds), network downtime, time intervals for installation and service commitments, complaints regarding customer care and billing, and general customer satisfaction.

Because “data collections place burdens – and potentially significant burdens – on those required to file,”<sup>7</sup> the Commission should impose such requirements only where the collection of data is necessary or helpful in achieving a statutory purpose. Moreover, even when proposed requirements can be justified under the statute, the Commission also should consider the increased burden – on providers and on the Commission itself – associated with those requirements and whether there are alternative means of obtaining relevant data.

As explained in these comments, many of the requirements under consideration in the *Notice* would not meet these threshold criteria. Establishing a broad set of mandatory reporting requirements would not achieve the type of efficiency in data collection that is the goal of the DII, nor would it be consistent with President Obama’s *Executive Order*. Instead, this proceeding provides a great opportunity for the Commission to work collaboratively with industry and other interested parties in determining what data to collect and the best way to obtain it. The cable industry stands ready to work with the Commission in this effort.

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<sup>7</sup> *Notice* ¶ 37.

**I. THE COMMISSION SHOULD STRIVE TO DEVELOP AN EFFICIENT BROADBAND DATA REGIME THAT DOES NOT DEPEND ON EXTENSIVE MANDATORY REPORTING OBLIGATIONS ON BROADBAND PROVIDERS**

**A. The Marketplace Is Providing a Substantial Amount of Data**

In deciding whether, and how, to revise Form 477, the Commission should keep in mind the significant marketplace changes that have occurred since the Form 477 was first established in 2000. At the time, there was little competition in the voice market and limited availability of broadband Internet access services. Today, the marketplace for all of these services is highly competitive, with most consumers able to purchase voice and broadband services from multiple providers using a variety of technologies. This widespread competition provides an incentive for companies to give consumers information about the services they are selling. Moreover, spurred by the spread of broadband, the Internet has developed as a robust forum for the exchange of information and opinions about ISPs and the services they provide. In this environment, the need for mandatory reporting obligations is greatly diminished from what it was in the past.

One of the important developments arising out of the National Broadband Plan process was the recognition that the best source of data regarding broadband services is not always the companies that provide that service. In contrast with most rulemaking proceedings, the Plan made extensive use of data from a wide variety of sources, including analyst reports, surveys and academic research. In addition, the Commission developed a variety of “crowdsourcing” tools, like the broadband speed test and “dead zone” reporting mechanism available on the broadband.gov website. While the value of any particular data source must be considered before it is relied on as the basis for a decision, the Plan’s general approach of using a wide variety of sources almost certainly added value to the final product.

In its monitoring of the broadband marketplace, the Commission should continue to make use of the types of data relied on in the National Broadband Plan. In addition to the sources identified above, the Commission could rely on publicly available data on providers' websites, particularly for dynamic and varied information such as prices and service offerings. The Commission should also continue to make use of surveys and crowdsourcing tools, provided it offers appropriate disclaimers and explanations to reflect the limitations and biases inherent in some of those tools.<sup>8</sup>

**B. The Commission Should Collaborate With Industry and With Other Agencies in Developing Data Collection Practices**

In addition to recognizing that providers are not the only source of data regarding the broadband marketplace, policymakers increasingly recognize that even where providers may possess relevant data, a collaborative process may be more effective than a mandate. For example, as discussed in more detail below, the process employed by the National Telecommunications and Information Administration (NTIA) in developing the National Broadband Map was more effective in producing a set of data that will be useful for consumers and regulators than a top-down mandate would have been. One reason for the success of this effort was NTIA's willingness to work with providers on key issues, such as the appropriate

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<sup>8</sup> For example, the broadband speed test appropriately includes the following disclaimer: "Please note that the Consumer Broadband Test in its current software based form may not be an accurate representation of connection quality provided by your broadband provider. The results can be impacted by a range of factors -- for instance, the test can vary based on the geographical distance of the user from the testing server, end-user hardware, network congestion, and time of day." Unfortunately, both the Commission and NTIA have published aggregate results from these speed tests without providing this disclaimer. *See, e.g.,* Michael Byrne, Geographic Information Office, FCC, *Crowd-Sourced Mobile Broadband Data*, at <http://reboot.fcc.gov/blog?entryId=1212602> (map showing mobile broadband speed test results); *see also* NTIA, *National Broadband Map*, at <http://www.broadbandmap.gov/speedtest> (map showing speed test results) (last visited Mar. 29, 2011).

level of granularity and the need for strong confidentiality protections, even after the initial rules for the program were adopted.<sup>9</sup>

The Commission has followed a similar approach in its recent efforts in the area of broadband performance measurement. After selecting a contractor, SamKnows, to develop a test for measuring broadband network performance, staff from the Commission and SamKnows have met on a regular basis with representatives of the companies involved in the testing, as well as equipment manufacturers, public interest groups, and other interested parties.<sup>10</sup> NCTA has been a party to this collaborative process and we believe that it has improved the quality of the testing that is now in progress, and we are hopeful that the end result of this process will be more reliable and more valuable to consumers than if the Commission had simply mandated a particular approach on its own.

Collaboration with other agencies with a role in monitoring and promoting the broadband marketplace also is important. The use of different definitions or geographic areas for different purposes by different agencies (or even within a single agency) increases the difficulty of monitoring the state of the marketplace and the effectiveness of government policies. For example, as NCTA has explained previously, the fact that the Commission and NTIA use census-based areas in monitoring broadband adoption and availability, while the Commission distributes high-cost funding on a study area basis, makes analysis of the high-cost program extremely difficult.<sup>11</sup> Whenever possible, the Commission should use, and encourage other agencies to use, a standardized format and maintain the established format for a period of time.

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<sup>9</sup> See Department of Commerce, NTIA, RIN 0660-ZA29, Notice of Funds Availability, Clarification, 74 Fed. Reg. 40569 (Aug. 12, 2009).

<sup>10</sup> See, e.g., Letter from Joel Gurin, Chief, Consumer and Governmental Affairs Bureau, and Walter Johnston, Office of Engineering & Technology, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 09-158 (filed July 21, 2010).

<sup>11</sup> NCTA Reply Comments, WC Docket No. 05-337 (filed Aug. 11, 2010) at 9-11.

Repeated format changes both limit the value of data as a tool for measuring progress and increase the burdens imposed on providers.<sup>12</sup>

**C. The Commission Should Not Mandate Collection of Data That It Cannot Process In a Timely Manner**

As noted above, the purpose of the DII is not simply for the Commission to collect more data. Rather, the goal is for the Commission to modernize and streamline its data collection and use practices so that they are more effective. With respect to broadband, much of the Commission's past reporting was so slow that its reports were out of data as soon as they were released. While there have been some recent improvements as the Commission has developed more experience with the census tract-based approach adopted in 2008, any significant increase or change in the Form 477 should not be made unless the Commission also considers the effect of such a change on its ability to process and release the data.<sup>13</sup>

When the Commission finds it necessary to collect data directly from providers, it should only collect data that it can compile, analyze, and publish in a timely manner. For example, the Commission currently requires providers to file Form 477 semi-annually and in turn it releases reports based on this data on a semi-annual basis. The *Notice* seeks comment on potentially increasing the frequency of reporting to quarterly.<sup>14</sup> Given the existing lag between the collection of the data and the release of a report by the Commission, doubling the frequency of collection, while simultaneously expanding the categories addressed by the form, would impose significant new costs and burdens upon providers and the Commission. Even if the Commission

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<sup>12</sup> NCTA Comments, GN Docket No. 10-159 (filed Sept. 7, 2010) at 8-10.

<sup>13</sup> Even with these improvements, we note that the Commission appears to be behind schedule in delivering to Congress the latest version of the Section 706 broadband availability report. The report is supposed to be issued six months after the Commission begins the process of preparing it. 47 U.S.C. § 1302(b). The Commission issued a Notice of Inquiry on August 6, 2010, but did not release the report by the February 2, 2011 deadline.

<sup>14</sup> See *Notice* ¶ 46.

were able to issue timely reports on a quarterly basis, the increased frequency is not likely to result in a material improvement in the ability of the Commission or the public to assess the state of the broadband marketplace. In the absence of a considerable benefit to the public interest, this new burden is not warranted.

## **II. FORM 477 IS NOT THE BEST VEHICLE FOR COLLECTING MUCH OF THE DATA IDENTIFIED BY THE COMMISSION**

The *Notice* seeks comment on five specific types of data that might be of interest to the Commission: (1) deployment, (2) price, (3) subscription, (4) service quality and customer satisfaction, and (5) ownership and contact information.<sup>15</sup> Consistent with the general principles outlined in the previous section, significant expansion or revision of the Form 477 is not warranted at this time.

### **A. Deployment**

The *Notice* seeks comment on how the Commission might obtain deployment data for voice and broadband services.<sup>16</sup> The data collected by NTIA for the State Broadband Data and Development program (SBDD) largely fulfills the Commission's need for information on broadband deployment. The SBDD data has led to the creation of the National Broadband Map, which allows consumers to evaluate broadband services available in their areas of interest. Through a collaborative process, NTIA has largely succeeded in creating a map and a database that provide a wealth of useful information regarding broadband availability to consumers and to regulators.<sup>17</sup>

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<sup>15</sup> *See id.* ¶ 47.

<sup>16</sup> *See id.* ¶ 49.

<sup>17</sup> As NCTA and others have observed, because this is Version 1.0 of the map, there still are a number of issues that limit the reliability of the data. We are optimistic that NTIA, working with the states and with broadband ISPs, will be able to address these issues in subsequent versions of the map.

By sharing in the use of SBDD data, the Commission can accomplish its goal of measuring broadband deployment without the need for additional, extensive data collection. Indeed, it would be inefficient for the Commission to duplicate ongoing efforts by NTIA and by the more than fifty jurisdictions that gather local information. Going forward, the Commission, NTIA, and state mapping entities should work together to develop a set of best practices that can be applied to future data collection efforts. Doing so not only will improve the quality of the National Broadband Map, but it also would begin to establish a foundation upon which the Commission could pursue these issues if Congress does not allocate additional funding to NTIA for maintenance of the map after the initial period for which funds have been distributed.

With respect to the granularity of data collection, the *Notice* seeks comment on whether reporting deployment and subscription data at the address-level would be overly burdensome, and notes that some rural providers have requested this method.<sup>18</sup> Although providers likely have such address-level data for subscriptions to their services, that data is competitively-sensitive and any use of that data might raise privacy concerns. With respect to deployment data, many providers do not actively maintain deployment statistics on an address-by-address basis. At any given time, large providers have a number of ongoing deployment projects and are continuously working to improve the levels of service across their networks. Taking a snapshot of these ever-changing deployment statistics is difficult at any level of specificity, let alone for individual addresses.

In developing the Broadband Map, NTIA considered whether it should collect address-level deployment data and after extended consideration and discussions with the affected industries, decided that census-block deployment data was more appropriate and sufficient. The

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<sup>18</sup> See *Notice* ¶ 56. To the extent providers prefer to submit address-level data, the Commission should permit them to do so.

result is a data set that is slightly less granular, but likely to be more accurate than one based on address-level data due to the potential difficulties, discussed above, in compiling an accurate snapshot of deployment at the address level.

Although there is no reason to impose new reporting obligations to obtain deployment data from ISPs generally, NCTA does support the imposition of requirements on entities that receive federal high cost support. As the Commission recently proposed in the *USF/ICC NPRM*, additional information should be collected from recipients of government funding to ensure that the funding is necessary and that it is being put to its intended purpose.<sup>19</sup>

## **B. Price**

The *Notice* seeks comment on whether the Commission should use Form 477 to collect price data.<sup>20</sup> As NCTA has explained in prior comments, “[g]iven the information that is already available to help consumers compare their broadband service options (and recognizing that the Internet facilitates the ability of consumers to make such comparisons and share their opinions with others), government collection and reporting of pricing information by the Commission offers little benefit.”<sup>21</sup>

For a variety of reasons, collection of pricing data is particularly challenging and not likely to achieve any of the intended benefits. Broadband Internet access service is typically purchased as part of a bundle with other services, such as voice or multichannel video, and it is often purchased pursuant to a promotion and/or a term commitment. Consequently, for each tier of service, customers may be paying a range of different rates, just as passengers on a plane or

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<sup>19</sup> See *Connect America Fund*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, WC Docket No. 10-90 ¶¶ 458-67 (rel. Feb. 9, 2011) (*USF/ICC NPRM*).

<sup>20</sup> See *Notice* ¶ 70.

<sup>21</sup> NCTA Comments, WC Docket No. 07-38 (filed June 15, 2007) at 9.

guests at a hotel may pay a range of rates that varies based on when, and how, their travel arrangements were made and what sort of promotion or bundling may be involved.

Given the number of variables, the Commission’s traditional approach to collecting pricing data – collecting the data from providers and issuing a report months (or years) later – is almost certain to produce information that is meaningless to consumers and policymakers.<sup>22</sup> For a consumer looking to decide which service meets the individual needs of their household, the value of such a report would pale when compared to the wealth of real-time data available online, both directly from providers and from third-parties. WhiteFence (www.whitefence.com), for example, enables a customer to identify the providers that offer service at a particular location and it provides information on the different offers available from each provider.

The complexity of broadband pricing data also means that the Commission’s traditional approach to collecting such data does not even have value as a vehicle for monitoring the state of the marketplace on an aggregate basis over time. Indeed, rather than collecting a complex set of data and reporting it many months later, it likely would be more productive (and far less expensive) for the Commission to establish a narrow set of metrics (*e.g.*, stand-alone, month-to-month price for “basic” Internet access, promotional rate for a triple play bundle), have an intern visit a sample of provider web sites each week to find those offerings, and then report on the results, with disclaimers and explanations as needed.

The *Notice* offers a variety of possible reasons why the Commission might need pricing data to accomplish statutory purposes,<sup>23</sup> but none of these are sufficient to overcome the

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<sup>22</sup> Moreover, requiring providers to artificially assign prices to the components of the bundle may have unintended consequences outside of the regulatory context, *e.g.*, tax implications.

<sup>23</sup> The *Notice* suggests that price data may be “necessary to . . . ensur[e] universal service by determining whether rural consumers are paying affordable and reasonably comparable rates to those in urban areas; monitor[] telephone and broadband competition (*e.g.*, in forbearance proceedings) . . . ; report[] a comparison of U.S. and

challenges identified above and justify a mandatory reporting obligation imposed on thousands of broadband ISPs. The most relevant use of broadband pricing data arguably would be in the context of the Commission's efforts to repurpose the high-cost Universal Service Fund into a targeted mechanism that supports broadband deployment. However, the Commission can obtain the data it needs for that purpose on a more selective basis, *e.g.*, through surveys or by reviewing provider websites on a periodic basis. Establishing a "benchmark" price for universal service purposes is an insufficient rationale to justify the significant burden that would be imposed by requiring *all* broadband ISPs to report price data every six months.

The Commission also suggests that broadband pricing data would be helpful in assessing the state of competition in a particular area for its forbearance analyses. But forbearance decisions are made on a case-by-case basis and the Commission could gather relevant data from broadband providers in those areas where an entity is seeking forbearance. Indeed, it has specifically amended the process for collecting information in forbearance proceedings with that goal in mind.<sup>24</sup> Similarly, the Commission suggests pricing data might be needed to help it comply with the statutory obligation to report a comparison of United States and international prices for broadband service. That obligation could be fulfilled by conducting surveys of a sampling of broadband ISPs, as it does with respect to international providers.

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international prices for broadband service capability; and promot[e] broadband deployment and availability." Notice ¶ 66.

<sup>24</sup> See *In re Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report & Order, 24 FCC Rcd 9543 ¶ 15 (2009).

### **C. Subscription**

The primary way in which the Commission has used subscription data is as a proxy for availability in the Section 706 context.<sup>25</sup> Once the Commission has access to accurate, granular availability data through the National Broadband Map, the collection of subscription data becomes much less important. Consequently, given the limited benefits associated with the collection of this data, the Commission generally should leave the Form 477 as is with respect to subscription data and not make changes that would be expensive and time consuming for providers – and the Commission – to implement.<sup>26</sup>

The *Notice* seeks comment on whether speed tiers used for subscription data should match those used for other reporting purposes.<sup>27</sup> To the extent that the Commission continues to collect subscription data, we agree with this approach. A system with different speed tiers for different categories of data would increase the burden for reporting entities while dramatically reducing the potential benefit of such data. As connection speeds accelerate with the implementation of new transmission technologies, a simple, streamlined tiering system is increasingly important.

### **D. Service Quality & Customer Satisfaction**

The *Notice* asks whether the Commission should collect data on broadband service quality and customer satisfaction. Although requirements to report levels of customer satisfaction may have been appropriate in the context of a monopoly phone system, they are an

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<sup>25</sup> See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Sixth Broadband Deployment Report, 25 FCC Rcd 9556 ¶ 16 (2010).

<sup>26</sup> Moreover, many industry analysts compile and publish subscription data in a timelier manner than the Commission. If needed, the Commission could refer to such industry information.

<sup>27</sup> See *Notice* ¶ 60.

anachronism in today’s competitive marketplace. The Internet provides a robust forum for consumers to air their opinions about the service they receive and for companies to respond accordingly. To supplement that data, the Commission should continue to make use of surveys to monitor quality and satisfaction in the aggregate. If done correctly, surveys may provide a more representative view of public opinion than web sites that may attract a vocal minority of unsatisfied customers. We note that the Commission’s most recent surveys of broadband satisfaction have demonstrated that the vast majority of consumers – 92 percent – are satisfied with the broadband service they receive today.<sup>28</sup>

The *Notice* also seeks comment on the reporting of “actual” broadband speeds and other measures of network performance.<sup>29</sup> As the Commission has recognized in a number of orders, measuring the speed provided by an ISP is a complex undertaking.<sup>30</sup> The first step is to establish an accurate and workable system of measurement, something that broadband ISPs have been working on with the Commission and its contractor, SamKnows, for the last year.<sup>31</sup> The Commission is on the right track in pursuing a collaborative approach with respect to measuring broadband speeds and it should not stray from that course now. The various alternative metrics suggested in the *Notice*,<sup>32</sup> such as reporting of data contention ratios, would not add any value.

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<sup>28</sup> FCC Working Paper, *Broadband Satisfaction: What Consumers Report About Their Broadband Internet Provider* at 3 (Dec. 2010) (“The survey found that 51% of home broadband users report being very satisfied with their service overall and 41% report being somewhat satisfied.”).

<sup>29</sup> See *Notice* ¶ 59.

<sup>30</sup> See, e.g., *USF/ICC NPRM* ¶¶ 115-18.

<sup>31</sup> *Id.* ¶ 115.

<sup>32</sup> *Notice* ¶ 59.

More likely they would provide consumers and the Commission with a misleading picture of the reality in a given area.<sup>33</sup>

#### **E. Ownership and Contact Information**

The *Notice* seeks comment on whether the Commission should alter the ownership and contact information collected on the Form 477 in order to “inform the Commission’s overall understanding of the broadband ecosystem.”<sup>34</sup> Because the Form 477 requirement applies only to ISPs and telecommunications providers, and not to any other entities involved in the Internet, it is not an effective vehicle for gathering information on the broadband ecosystem.

Accordingly, the Commission should not impose new ownership reporting obligations and it should continue to provide companies flexibility as to the organizational level that they use for filing Form 477 data.

The Commission also proposes to use Form 477 to “collect contact information for use in emergency situations.”<sup>35</sup> Although this proposal is well-intentioned, it is not the most effective way to accomplish the stated goal. In an emergency situation, the Commission may need specific local or regional contacts, which are collected through the Disaster Information Reporting System. Requiring similar contact information on the Form 477, which may be harder to update, is unnecessary and may lead to confusion or delay in an emergency situation.

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<sup>33</sup> NCTA Reply Comments, GN Docket No. 09-51 (filed July 21, 2009) at 10-11 (“Not only does the use of contention ratios fail to account for the effect of factors beyond the control of the Internet access provider, contention ratios do not even provide a good measure of the speed of the “last mile” connection because those ratios assume that every customer uses service at the same time. But that assumption is simply irrelevant to any experience that consumers actually face, which means that contention ratios are a meaningless piece of information for consumers.”).

<sup>34</sup> *Notice* ¶ 102.

<sup>35</sup> *Id.*

## F. Confidentiality

The *Notice* seeks comment on whether changes are needed in the Commission's approach to the confidentiality of data submitted on Form 477.<sup>36</sup> The Commission has always "been cognizant of the potential sensitivity of the data collected" on Form 477 and has limited disclosure of such data.<sup>37</sup> Anticipating that many companies would seek confidential treatment of the data that would be required on an ongoing basis, the Commission established a streamlined process by which a provider could request confidential treatment simply by checking a box on the first page of the form.<sup>38</sup>

As NCTA explained previously, the Commission's confidentiality policy with respect to the data submitted on Form 477 is fully consistent with its efforts to obtain competitively-sensitive information from companies in order to fulfill its responsibilities under the Communications Act.<sup>39</sup> The Commission's approach to confidentiality should be maintained because it strikes the proper balance between the public's need for data and the need of providers to protect against the release of competitively sensitive information. As noted above, NTIA took a similar approach by requiring state mapping entities to protect the confidentiality of data

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<sup>36</sup> See *id.* ¶ 109.

<sup>37</sup> *Id.* ¶ 108.

<sup>38</sup> See *In re Local Competition and Broadband Reporting*, Report & Order, 15 FCC Rcd 7717 ¶ 90 (2000).

<sup>39</sup> See NCTA Comments, WC Docket No. 07-38 (filed June 15, 2007) at 14. The Commission has held, for example, that subscriber counts collected from cable operators in connection with other annual reporting requirements should be accorded confidential treatment. See, e.g., *Cox Communications, Inc.; Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12160 ¶ 8 (2004), *recon. granted in part*, 21 FCC Rcd 2309 (2006); *Comcast Cable Communications, Inc.; Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12165 ¶ 8 (2004); *Time Warner Cable; Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12170 ¶ 7 (2004). Similarly, the Commission does not publicly disclose company-specific information regarding contributions made to federal universal service support mechanisms because that information could be used by competitors to the disadvantage of the company submitting the information. See *Lakin Law Firm, P.C.*, 19 FCC Rcd 12727 ¶¶ 6-7 (2004).

submitted by broadband providers, which was one reason that the vast majority of providers submitted data on a voluntary basis.

### **CONCLUSION**

NCTA supports the Commission's efforts to improve its data collection and use policies and to reassess Form 477. In this endeavor, however, the Commission must not require the collection of data that is not necessary or helpful to achieving its statutory responsibilities. Nor should the Commission impose reporting obligations for which the burdens likely outweigh the benefits. Rather, as Chairman Genachowski has instructed, the Commission should act in accordance with President Obama's *Executive Order* and impose only those regulations that are tailored to "impose the least burden on society, consistent with obtaining regulatory objectives." Building on recent collaborative efforts between industry and government agencies provides the best opportunity for the Commission to collect meaningful broadband information.

Respectfully submitted,

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