

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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)	

JOINT COMMENTS OF CENTURYLINK AND QWEST

Nancy Shelledy
John E. Benedict
Suite 950
607 14th Street, N.W.
Washington, DC 20005
202-383-1516
Nancy.l.shelledy@centurylink.com
John.e.benedict@centurylink.com

Attorneys for

CENTURYLINK

Craig J. Brown
Lawrence E. Sarjeant
Suite 950
607 14th Street, N.W.
Washington, DC 20005
202-429-3112
Craig.brown@qwest.com
Lawrence.sarjeant@qwest.com

Attorneys for

QWEST COMMUNICATIONS
INTERNATIONAL INC.

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SUMMARY

Since establishing the Form 477 in 2000, the Federal Communications Commission has twice modified it, first in 2004 and again in 2008. Each modification has increased the data to be reported to the Commission by service providers and also increased the burden on service providers to collect the data and file it. The Commission's current rulemaking on modernizing the Form 477 data program asks for comments on a wide range of data collection proposals. Most of the proposals would further expand the data to be collected and filed. The collection and filing burden placed on service providers would again increase. Joint Commenters believe that the Commission's current Form 477 data program, along with data available to the Commission from non-service provider sources, provide the Commission with sufficient data to fulfill its statutory duties.

As the Commission contemplates its current data needs and the new or expanded data collections that it requires, it has also undertaken, or is about to undertake, major regulatory reform initiatives. Among the major regulatory reform initiatives is a rulemaking proceeding concerning universal service and inter-carrier compensation reform. The Commission also has an open inquiry concerning next generation 911 deployment. The Commission's tentative agenda for its April open meeting lists inquiries concerning accelerating broadband deployment and the reliability and continuity of communications networks. Joint Commenters submit that it is premature for the Commission to consider any new or enhanced Form 477 data collections at this time and encourage the Commission to impose a moratorium on new or enhanced Form 477 data collection requirements until outcomes have been determined in its open, or soon to be opened, major regulatory proceedings.

Joint Commenters acknowledge that the Commission has legitimate data needs but assert that its authority to require data submissions from service providers is limited. The Commission's exercise of its lawful authority should be further limited to those instances where data collections are expressly required by statute or where the Commission would be unable to perform a non-discretionary, statutory duty without the data collection. The Commission should also follow President Obama's directive on improving regulation and regulatory review and only consider service provider data collections that are the best and least burdensome means of obtaining needed data. Broad-based data collections such as the Form 477 data program should be technology and competitively neutral.

Joint Commenters support efforts to streamline the Form 477 data program and support Commission reliance on the national broadband inventory map for deployment data when it is sufficiently accurate to meet the Commission's needs. Joint Commenters believe that: the Commission can secure any needed pricing data from customers, third-party sources and service providers' websites; there is no demonstrated need for the Commission to collect service quality or customer satisfaction data; it is inappropriate for service providers to be required to collect socio-economic or social metrics data; and reporting service provider emergency contact information on the Form 477 would be useful. Joint Commenters support retaining service providers' ability to check one box on the Form 477 in order to request confidential treatment for all data that is being filed. Finally, Joint Commenters do not believe that the Commission requires any new or enhanced Form 477 data collections in order to perform the international broadband comparison required by Section 706.

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JOINT COMMENTS OF CENTURYLINK AND QWEST

CenturyLink, Inc. and Qwest Communications International Inc. (Joint Commenters) submit these comments in response to the Federal Communications Commission's (Commission) *Notice of Proposed Rulemaking*¹ concerning proposed revisions to the Commission's Form 477 data program. Joint Commenters support the Commission's goals of streamlining the data collection program, minimizing its overall costs and avoiding the imposition of unnecessary

¹ *In the Matter of 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; and Review of Wireline Competition Bureau Data Practices*, WC Docket Nos. 11-10, 07-38, 08-190, 10-132, Notice of Proposed Rulemaking, FCC 11-14 (rel. Feb. 8, 2011) (*NPRM*).

burdens on service providers² as the Commission carries out its data collection obligations under Section 706 of the Communications Act, as amended,³ and its duties to eliminate or reduce government regulation in competitive markets under Sections 10 and 11 of the Communications Act, as amended.⁴

Joint Commenters also appreciate the Commission's acknowledgement "that data collections place burdens – and potentially significant burdens – on those required to file" and that the Commission "actively seek[s] to balance the benefits of data collected against those burdens."⁵ It is precisely the significant burdens that would be placed on Joint Commenters, and others similarly situated, that compel Joint Commenters to respectfully oppose the additional data collections proposed and socialized in the *NPRM*. While some urge the Commission to collect volumes of information of general interest concerning domestic communications services and service providers' customers,⁶ it is neither necessary nor justified, and the Commission should exercise maximum restraint when considering the imposition of additional data collections. Only those collections expressly required by statute, or without which the Commission could not perform non-discretionary, statutory duties, should be imposed by the Commission, across the board, on service providers subject to the Form 477 data program (those providing broadband connections to end user locations, wired or fixed wireless local exchange

² *Id.* ¶ 1.

³ 47 U.S.C. §§ 1302 and 1303.

⁴ 47 U.S.C. §§ 160 and 161.

⁵ *NPRM* ¶ 37.

⁶ *See*, for example, *id.* ¶ 89 concerning the collection of service quality and customer satisfaction data and *id.* ¶ 105 concerning the collection of customer "socioeconomic" and "social metrics" data.

telephone service, interconnected Voice over Internet Protocol (VoIP) service, or mobile telephony service).

Where additional data collection is reasonable and necessary in specific rulemaking proceedings or adjudications, such data collection should be targeted and specific to those individuals or entities with an interest in the outcome of the proceedings and incremental to information already in the possession of the Commission. As discussed in section II.A. of these comments, universal service is an area where an additional, targeted service provider data collection may be necessary once the Commission has finally adopted a universal service reform plan that includes universal service support for broadband service providers.

Joint Commenters believe that the data collected from service providers under the current Form 477 data program, in conjunction with data available from other sources, provide the Commission, at this time, with sufficient information to fulfill its Section 706 data gathering, assessment and reporting obligation,⁷ and its forbearance and biennial review duties under Sections 10 and 11, respectively. Accordingly, Joint Commenters urge the Commission to forgo instituting any new or enhanced Form 477 collection requirements at this time.

DISCUSSION

I. THE COMMISSION'S LEGAL AUTHORITY IS LIMITED.

As it has in past Form 477 data program orders, the Commission states that “it must collect data on the provision of voice and broadband services to fulfill numerous statutory obligations.”⁸ Among the statutory obligations cited by the Commission as justifying the need

⁷ The obligation to determine the availability of advanced telecommunications services in the United States, benchmark that availability against the availability of advanced telecommunications services in other countries, make an assessment as to the timely deployment of advanced telecommunications services in the United States, and produce a report.

⁸ *NPRM* ¶ 107.

for the data collections accomplished through the Form 477 data program are opening telecommunications markets to competition, assessing the availability of broadband, reducing government regulation wherever possible and assessing whether broadband is being deployed in the United States on a reasonable and timely basis. Unquestionably, data are required by the Commission in order to fulfill the cited statutory duties, and the Commission has the authority to require data submissions from service providers that are necessary, reasonable and in conformance with an authorizing statute's provisions. The new collections proposed or socialized in the *NPRM* must, therefore, be judged on the basis of need, reasonableness and any guidance or constraints concerning the collection of data set forth in the authorizing statutes.

The inquiry into whether the Commission should impose new or enhanced data collections upon service providers should not end, though, with the legal analysis of the Commission's authority to require the filing of particular data. The communications industry comprises a substantial portion of the Nation's economy, and regulatory actions should not be undertaken by the Commission without a rigorous weighing of the burdens that those contemplated actions will impose on the communications industry, particularly as the Nation's economy continues its slow recovery. As President Obama recently noted, the Nation's regulatory system "must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends."⁹ Accordingly, any new or enhanced Form 477 data collection

⁹ *Improving Regulation and Regulatory Review – Executive Order* | *The White House*, January 18, 2011, Section 1, General Principles of Regulation. <http://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders> When presenting the Executive Order, the President said that his Administration is "looking at the system as a whole to make sure we avoid excessive, inconsistent and redundant regulation." Barack Obama, Opinion, *The Wall Street Journal* (Jan. 18, 2011). Although the *Executive Order* does not apply to independent agencies such as the Commission, independent agencies have nonetheless been "encouraged to give consideration to all of its provisions, consistent with their legal authority." *Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies*, M-11-10, Office of Management and Budget Administrator Cass R. Sunstein, p.6 (Feb. 2, 2011).

should only be considered if, in addition to being lawful, it is the best and least burdensome means of obtaining data that is absolutely necessary to enable the Commission to fulfill a statutory duty.

A. Section 706 Identifies Non-Service Provider Sources For Data Collections.

Since the adoption of its *2000 Data Gathering Order*,¹⁰ the Commission has primarily relied on Section 706 as the authority for the broadband portion of its Form 477 data program.¹¹ In 2008, Section 706 was amended by the *Broadband Data Improvement Act of 2008 (BDIA)*,¹² which added to the Commission's existing Section 706 duties. Prior to the *BDIA* amendments, Section 706 required the Commission to regularly conduct an inquiry concerning the availability of advanced telecommunications capability to all Americans and determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.¹³ Initially, Section 706 was silent as to the specific source(s) for the data required by the Commission to render a judgment on the availability of advanced telecommunications services and whether their deployment was proceeding in a reasonable and timely fashion.

As amended by the *BDIA*, Section 706 now provides the Commission guidance as to specific sources for the pursuit of certain data required to fulfill its duties under Section 706.

¹⁰ *In the Matter of Local Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd 7717 (2000) (*2000 Data Gathering Order*).

¹¹ “Moreover, this information collection program will also enable us to better assess the availability of broadband services such as high-speed Internet access, so that we can better satisfy our duty to encourage the deployment of advanced telecommunications capability as Congress directed us to do in section 706 of the 1996 Act.” *Id.* at 7719-20 ¶ 3.

¹² *Broadband Data Improvement Act of 2008*, Pub. L. No. 110-385, 122 Stat. 4097 (2008) (codified at 47 U.S.C. §§ 1301-04).

¹³ 47 U.S.C. § 157 note at subsection (b).

Section 706¹⁴ directs the Commission to obtain demographic information concerning areas unserved by any provider of advanced telecommunications capability, to the extent such data is available, from the Census Bureau.¹⁵ “For the purpose of evaluating, on a statistically significant basis, the national characteristics of the use of broadband service capability” the Commission is directed to conduct periodic surveys of consumers in urban, suburban, and rural areas in the large business, small business, and residential consumer markets.¹⁶ Section 706 instructs that the periodic consumer surveys are to be designed to identify:

“the types of technology used to provide the broadband service capability to which consumers subscribe;

the amounts consumers pay per month for such capability;

the actual data transmission speeds of such capability;

the types of applications and services consumers most frequently use in conjunction with such capability;

for consumers who have declined to subscribe to broadband service capability, the reasons given by such consumers for declining such capability;

other sources of broadband service capability which consumers regularly use or on which they rely;

and other information the Commission deems appropriate for such purpose.”¹⁷

Section 706 does not state that the Census Bureau and periodic consumer surveys are the exclusive means by which the Commission can obtain the data needed to fulfill its statutory responsibilities relative to broadband. Nor does Section 706 preclude the Commission from

¹⁴ 47 U.S.C. § 1302(c).

¹⁵ The National Telecommunications and Information Administration (NTIA) currently collects broadband deployment data, at the census block level, under the State Broadband Data and Development (SBDD) program that identifies census blocks that are unserved by any provider of advanced telecommunication capability.

¹⁶ 47 U.S.C. § 1303(c).

¹⁷ *Id.*

seeking broadband data from service providers. Still, Section 706's guidance on the use of sources other than service providers for the collection of broadband data by the Commission signals that Congress intended the Commission to fully utilize non-service provider sources as the Commission seeks to fulfill its statutory duty to determine the availability of broadband in the Nation and whether it is being deployed in a reasonable and timely manner.

The Commission already secures a substantial amount of broadband data from service providers pursuant to the current Form 477 data program. Joint Commenters believe that the opportunity exists for the Commission to secure additional information that may be needed from consumers¹⁸ and other third-party sources. The Commission should not adopt new or enhanced data collections for service providers without first demonstrating that the data it seeks is necessary in order for it to fulfill its non-discretionary, statutory duties and that it has exhausted all other available and less burdensome alternatives.

¹⁸ In the *2008 Broadband Data Gathering Order and Further Notice*, the Commission stated that it would “design and implement a voluntary system that households may use to report availability and speed of broadband Internet access service at their premises.” *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9699 ¶ 18 (2008). The Commission currently collects data about the quality of consumers' broadband connections. By visiting the Commission's website, a consumer can voluntarily download an application that will enable collection of speed and latency information about the consumer's broadband connection. Consumers may also voluntarily file a Broadband Dead Zone Report with the Commission. The report is designed to collect information about the availability of broadband Internet access at a specific home address. Consumers may also report whether they would purchase broadband if it, or additional broadband service options, were available in their area. The Commission should consider whether its current broadband data collections from consumers are maximizing the opportunity to secure valuable broadband data from this source.

B. Sections 10 And 11 Do Not Require New Or More Granular Collections.

In the *2000 Data Gathering Order*, the Commission stated that “[g]athering data about the development of competition for local telephone service and broadband deployment will help us to achieve the complementary goal reflected in the 1996 Act of reducing government regulation wherever possible.”¹⁹ The Commission then cited to Sections 10 and 11 as providing directives to consider forbearing from regulation when certain conditions are satisfied²⁰ and determining when existing regulations are no longer needed because of the existence of meaningful competition.²¹ The Commission’s Form 477 data collection concerning local telephone service has principally been justified on the basis of its Section 10 and 11 duties. In the *NPRM*, the Commission also points to its local telephone service and broadband data needs in “proceedings seeking the transfer of Title III licenses and section 214 authorizations”²² as the authority for its local telephone service and broadband data collections.

Joint Commenters agree that the Commission has a compelling need for data that is relevant to the issues raised by forbearance petitions, its biennial review of its existing regulations, Title III license transfers and section 214 authorizations. Joint Commenters are not persuaded that new or enhanced data collections for the Form 477 program will materially improve the Commission’s ability to carry out its statutory duties in these areas and thereby

¹⁹ *2000 Data Gathering Order*, 15 FCC Rcd at 7720 ¶ 5.

²⁰ “(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.” 47 U.S.C. § 160(a).

²¹ *2000 Data Gathering Order*, 15 FCC Rcd at 7720 ¶ 5.

²² *NPRM* ¶ 29.

justify the increased burden that would be imposed upon service providers, generally, and local telephone service providers specifically.

While sector-wide forbearance petitions can be filed, forbearance petitions are almost always service provider and market specific. The state of competition outside of the product and geographic markets addressed by a forbearance petition are generally not determinative of the outcome. Broadening the current Form 477 data collection might incrementally improve the Commission's general view of the state of local competition, but the Commission will ultimately require information of a more targeted and probing nature from the petitioner(s) and interested parties possessing information relevant to the state of competition in the particular product and geographic markets implicated by a forbearance petition. Joint Commenters believe the same to be true with respect to the disposition of most Title III license transfers and section 214 application matters. To the extent that an industry-wide local telephone service or broadband data collection is helpful in facilitating Commission action on a forbearance petition, Title III license transfer or section 214 application, the current data collection provides the Commission with a sufficient body of data to fulfill its applicable statutory duties.

Joint Commenters acknowledge that in the case of a Section 11 biennial review of the continuing need for Commission regulations, a broad-based view of the state of local competition on the part of the Commission is of greater significance. Joint Commenters believe, though, that the current Form 477 data program, along with data submitted by interested parties in Biennial Review proceedings and data available from other sources, provide the Commission with sufficient information to be well-informed as to the state of local competition.

II. NEW OR MORE GRANULAR COLLECTIONS ARE EITHER PREMATURE OR UNNECESSARY.

A. Any New Universal Service Collections Should Await A Final Plan.

The Commission has recently opened a proceeding to consider major reform of the Universal Service program.²³ Among the reforms under consideration is extending universal service support to broadband.²⁴ The Commission asks for comment on the data needed to ensure universal service.²⁵ While there will certainly be a need for much data and modeling as the Commission works its way through the issues presented by the *USF-ICC NPRM*, it is far too early to consider changes to the Form 477 data program to ensure universal service. The data upon which decisions will be made in the universal service reform proceeding will be presented by the interested parties participating in the proceeding as they advocate for particular reforms. Burdening the industry at this point with additional Form 477 data collection requirements for universal service when the reform plan is unknown is not justified or reasonable. The more appropriate course is to await the adoption of a universal service reform plan and then determine whether there are universal service data collection needs that can best be satisfied through the Form 477 data program where the associated benefits of the collection outweigh the burdens that would be borne by service providers.

²³ *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, rel. Feb. 9, 2011.

²⁴ *Id.* Section V.

²⁵ *NPRM* ¶ 24.

B. Status Of Traditional 911 And NG-911 Do Not Necessitate New Collections.

With respect to traditional 911 services, there is no justification evident for a new Form 477 data collection. Unlike local service competition and broadband availability, the Commission's role in the traditional 911 area is significantly limited. Much of the direction in the 911 area, except perhaps with respect to certain spectrum and CMRS issues, rests with state and local governmental entities. There is no obvious statutory duty that the Commission must perform that gives rise to the need for a 911 data collection as a part of the Form 477 data program.

With respect to NG-911, the Commission continues to inquire about how NG-911 should be deployed, who should bear what responsibilities, and how it should be funded.²⁶ No Form 477 data collection for NG-911 should be adopted when there is no settled direction for the deployment of NG-911. Further, as with traditional 911, the limited statutory duty of the Commission related to NG-911 does not justify imposing an information collection.

The Commission's general responsibility to ensure "adequate" facilities for wire and radio communications services used to support emergency services is better addressed through its Part 4 Rules. There the Commission has established reporting requirements for service outages, including those affecting 911 services. This more targeted data collection is preferable to a broader Form 477 data collection.

III. DATA COLLECTIONS SHOULD BE TECHNOLOGY AND COMPETITIVELY NEUTRAL.

Joint Commenters do not believe that any significant modifications to the existing Form 477 data program are warranted. Nonetheless, should the Commission modify its Form 477 data

²⁶ *In the Matter of Framework for Next Generation 911 Deployment*, Notice of Inquiry, 25 FCC Rcd 17869 (2010).

program, it is important that it not competitively advantage or disadvantage any individual service provider or category of service provider. Although identical data collections may not be appropriate for all service providers and technologies, the data collections imposed and burdens borne by service providers should be reasonably comparable.

IV. JOINT COMMENTERS' RESPONSES TO SPECIFIC PROPOSED DATA COLLECTION REVISIONS.

In this section, Joint Commenters respond to specific data collection proposals. Since the adoption of the *2000 Data Gathering Order*, each new review of the Commission's Form 477 data program has resulted in increased and more granular collections from service providers. Increased and more granular data collections have produced increased burdens for those service providers subject to the collection requirements. It is not Joint Commenters' intention to reargue the merits of past Form 477 data program collection decisions; rather, we respectfully submit that it is appropriate for the Commission to exercise restraint at this time and forgo any material expansion of the Form 477 data collections from service providers. Consistent with the President's *Executive Order* on improving regulation and regulatory review,²⁷ the Commission should undertake to maximize its use of non-service provider sources for its broadband and local competition data needs, especially leveraging ongoing, relevant data collections by other federal and state government entities and commercial third-parties. The Commission should consider placing a moratorium on significant new or enhanced Form 477 data collections from service providers until it completes major rulemaking proceedings such as universal service and inter-carrier compensation reform.

²⁷ See footnote 9, *supra*.

In the *NPRM*, questions are raised concerning the frequency of the Commission's Form 477 data collection,²⁸ synchronizing the filing deadlines for the Commission's data collection with those for NTIA's SBDD program²⁹ and conforming the FCC and NTIA speed tiers.³⁰ Joint Commenters support efforts to streamline the Form 477 data collection process, especially where such streamlining produces a diminution in the burdens imposed upon service providers.

Joint Commenters believe that the current semi-annual collections of the Form 477 data strike the right balance between keeping the Commission apprised of significant changes within the categories of data being collected and the burdens of data gathering, sorting and reporting imposed upon service providers. Increasing these burdens by fifty or one hundred percent is not justified given the minimal changes likely to be seen between reports if the frequency of reporting is increased and the time between reports decreased. The Form 477 data should continue to be filed twice a year.

Joint Commenters support the Commission and NTIA synchronizing the "as of date" for which data being reported to them is current.³¹ Joint Commenters do not support synchronization of the Form 477 and SBDD data filing "due dates." It is less burdensome to stagger the filing of the respective data collections than to have them due at or close to the same date.

Joint Commenters support the FCC and NTIA conforming their speed tiers. Once conformance is accomplished, consideration should be given to one agency or the other forgoing the collection of speed data. Doing so would seem consistent with the President's statement

²⁸ *NPRM* ¶ 46.

²⁹ *Id.*

³⁰ *Id.* ¶ 60.

³¹ The data should be as of mid-year and year-end.

about looking at the federal regulatory system as a whole in order to avoid excessive, inconsistent and redundant regulation.³²

A. Broadband Deployment.

The Commission asks whether it should rely on NTIA's national broadband inventory map for deployment data once it is online and the data is available and forgo collecting deployment data through the Form 477 data collection process.³³ NTIA's national broadband inventory map is now online, and Joint Commenters believe that the Commission should aspire to use NTIA's national broadband map for broadband deployment data. There is no need for the Commission to duplicate NTIA's broadband deployment data collection efforts to the extent that NTIA's data is accurate. The national broadband map has been the subject of some criticism concerning its accuracy since its release.³⁴ Whether the national broadband map is sufficiently accurate in its current iteration is a judgment to be made by the Commission. Whether now, or at a future date, when NTIA's national broadband map is sufficiently accurate that the Commission can use its broadband deployment data to fulfill its statutory duties, the Commission should do so and forgo a separate Form 477 broadband deployment data collection.³⁵

³² See footnote 9, *supra*.

³³ *NPRM* ¶ 54.

³⁴ See TR Daily, March 21, 2011, *Strickling Defends Broadband Map at NTCA Event*. "Speaking at the National Telecommunications Cooperative Association's Legislative & Policy Conference, NTIA Administrator Lawrence E. Strickling said, 'This is an iterative process. We see the map as improving' as time goes on and more data is provided."

³⁵ Once the Commission has adopted a final universal service reform plan, it may determine that broadband deployment data available from the national broadband map is insufficient for its universal service needs. At that time, the Commission can determine how best to meet its universal service needs, whether through a broad-based industry collection mechanism such as the Form 477 or through a more targeted collection mechanism.

B. Pricing.

The Commission asks whether price data are necessary as a part of the Form 477 data collection to fulfill certain purposes.³⁶ Joint Commenters submit that the Commission has numerous sources other than through the Form 477 data program to collect pricing information. As noted in Section I.A. of these Joint Comments, Section 706 states that “[f]or the purpose of evaluating, on a statistically significant basis, the national characteristics of the use of broadband service capability, the Commission shall conduct and make public periodic surveys of consumers in urban, suburban, and rural areas in the large business, small business, and residential consumer markets” in order to, among other things, determine “the amounts consumers pay per month for such [broadband service] capability[.]”³⁷ Additionally, telephone and broadband service pricing information is made available by many service providers on their public websites. Commercial entities such as Current Analysis, Telogical Systems and Broadband Reports also collect pricing information.

Joint Commenters do not believe that the Commission needs to collect price data from service providers through the Form 477 Data Program in order to fulfill any of the several purposes that it identifies in the *NPRM*. Whether to satisfy its Section 706 duties or universal service program duties, the Commission has adequate alternative sources for service provider price data, and it does not need to add that category of data to the Form 477 for collection.

C. Service Quality And Customer Satisfaction.

Service quality and customer satisfaction data have a very tenuous connection to ascertaining the deployment or availability of broadband, or competition in the local telephone service market. The ability to make meaningful comparisons of service quality and customer

³⁶ *NPRM* ¶ 66.

³⁷ 47 U.S.C. § 1303(c)(1) and (c)(1)(B).

satisfaction data across service providers is very uncertain as there will be variations in the methods used to survey customers and how questions are asked. These data are not among the enumerated data points identified in Section 706. Accordingly, Joint Commenters question the Commission's need to collect such data.³⁸

To the extent that the Commission concludes that it does have a need for service quality or customer satisfaction data in order to fulfill a statutory duty, it has numerous sources other than service providers from which to collect that data. For example, this data could be collected, along with other data, from customers in the periodic consumer surveys that Section 706 requires the Commission to conduct. Service quality and customer satisfaction data could also be obtained from third-party sources. For example, J.D. Power rates high speed Internet service providers and wireline telephone service providers for overall customer satisfaction, performance and reliability, cost of service, billing, offers and promotions, and customer service.³⁹ Were service quality or customer satisfaction data to be included in the Form 477 data collection, some service providers would need to establish processes in order to solicit, collect, sort and collate customer opinions.

Joint Commenters believe that the Commission should not add service quality or customer satisfaction data to the categories of data collected on the Form 477. Should the Commission decide to require service providers to file service quality or customer satisfaction data on the Form 477, that data should not be made publicly available by the Commission on a service provider-specific basis. To the extent that the Commission publishes service provider-specific service quality or customer satisfaction data obtained from customers or third-party

³⁸ See *NPRM* ¶ 89.

³⁹ See <http://www.jdpower.com>.

sources, service providers should be afforded the opportunity to review, respond and supplement the data before it is published.

D. Ownership And Contact Information.

Joint Commenters believe that it would be useful for the Commission to have emergency contact information for service providers required to file Form 477.⁴⁰ Emergency contact information could be added to the Form 477 without placing any material burden on service providers.

The collection of additional ownership information as a part of the Form 477 data collection is unnecessary. Additional ownership information would not meaningfully enhance the Commission's general understanding of the broadband ecosystem⁴¹ or its general understanding of the state of local competition. Joint Commenters believe that it is not information that is necessary for the Commission to collect as a part of a broad-based service provider data collection in order for it to fulfill a statutory duty. There may be specific matters that arise where the Commission does need more detailed ownership information in order to carry out a statutory duty. In those instances, the Commission has the ability to secure ownership information at whatever level of detail is necessary and lawful.

E. Socio-Economic Data.

The Commission should not require service providers subject to the Form 477 Data Program to collect socio-economic or social metrics data.⁴² It is inappropriate to force service providers to collect such sensitive information from their customers, and file it with the Commission, absent an unambiguous statutory mandate requiring such a collection. In addition

⁴⁰ See *NPRM* ¶ 104.

⁴¹ See *id.* ¶ 102.

⁴² See *id.* ¶ 105.

to the resource burden that such a collection would place on service providers, the Commission would place service providers at risk of alienating their customers by requiring them to collect socio-economic or social metrics data. Section 706 directs the Commission to collect population, population density and average per capita income with respect to “geographical areas that are not served by any provider of advanced telecommunications capability” to the extent that such data is available from the Census Bureau.⁴³ Nothing in Section 706 supports a service provider requirement to collect and file customer socio-economic or social metrics data. Nor does the *NPRM* cite to any statutory authority that would support such a requirement. Any socio-economic or social metrics data concerning service providers’ customers should be obtained by the Commission, if at all, from the Census Bureau, state and local governments, the customers themselves, or commercial sources in the business of collecting such data.

V. CONFIDENTIALITY AND PRIVACY CONCERNS HAVE BECOME MORE COMPELLING.

As markets become subject to more intense competition, data that may not have been competitively sensitive several years ago has become competitively sensitive and data that was previously acknowledged as competitively sensitive has become more so. The Commission should retain the current “check box” on the Form 477 that allows service providers to request confidential treatment for all data submitted on the form. Data currently collected from service providers by the Commission and through the SBDD program are not identical. Judgments about what, if any, service provider data the Commission should make publicly available cannot be made based on the public availability of SBDD collected data without close examination of the differences. Current levels of data aggregation should be retained by the Commission. Also, the passage of time does not necessarily affect the confidential nature of this data. If the

⁴³ 47 U.S.C. § 1302(c).

Commission and the public continue to find value in historic data collected from service providers by the Commission, then competitors are also likely to find value in that data. Accordingly, once the data is deemed confidential, it should always be treated as confidential. At the point in time when the data is of no further value to the Commission, it should be deleted or destroyed in a secure manner.⁴⁴

Significant concerns exist as to the appropriate limits on government and private-sector retention and use of customer information. Concerns also exist as to the security of customer information legitimately retained by the government and private-sector entities. The Commission should not require service providers to file any customer data that could potentially be found to exceed the limits of the Commission's legal authority for access to customer information.⁴⁵ Doing so potentially creates troublesome customer relations issues and legal exposure for service providers.

VI. NEW OR ENHANCED DATA COLLECTIONS ARE NOT REQUIRED FOR AN INTERNATIONAL COMPARISON.

The Commission asks whether the Form 477 data program should be modified in order to fulfill its duty under Section 706 to perform a comparison of the extent of broadband service capability between the U.S. and countries abroad. Joint Commenters do not believe that the Form 477 data program needs to be expanded or enhanced in order for the Commission to perform the international comparison required by Section 706. Section 706 specifies the factors

⁴⁴ Section 610 of the Regulatory Flexibility Act of 1980, as amended, requires the review of Commission rules for a determination as to whether they should be continued without change, amended, or rescinded in order to minimize any significant impact the rules may have on a substantial number of small entities. The Commission should similarly consider an ongoing review of historic Form 477 data that is ten or more years old to justify the need for its continued retention.

⁴⁵ See 18 U.S.C. § 2703(c) and 47 U.S.C. § 551(a)-(c).

to be considered in conducting the comparison.⁴⁶ Relative to the U.S., the data required is among that already provided by service providers to the Commission; is available from consumers or other third parties; or is available from other government entities.⁴⁷

VII. CONCLUSION.

In its *NPRM*, the Commission asks commenters to respond to a wide range of proposals that could expand or enhance the current data collections required from service providers under its Form 477 data program. Joint Commenters submit that no new or enhanced Form 477 data collections are needed at this time. Data collected from service providers under the current Form 477 data program, in conjunction with data available from other sources, provide the Commission, at this time, with sufficient information to fulfill its statutory duties. Further, the Commission has several major, open regulatory reform proceedings that could significantly affect its information requirements. It would be premature for the Commission to impose significant new or enhanced data collections before final decisions are made concerning its plans for regulatory reform.

When it becomes timely for the Commission to consider changes to the current Form 477 data program, only those new or enhanced data collections that are expressly required by statute, or without which the Commission could not perform non-discretionary, statutory duties, should be imposed upon service providers. Additionally, and in accordance with the President's *Executive Order* on improving regulation and regulatory review, new or enhanced Form 477 data

⁴⁶ The factors to be considered in the comparison of communities include: population size, population density, topography, demographic profile and market structures of the communities being compared; number of competitors; number of facilities-based providers; types of technologies deployed; the applications enabled by the technologies; the regulatory model for broadband service; the types of applications used, business and residential use of broadband services; and other media available to consumers. *See* 47 U.S.C. § 1303(b)(2) and (3).

⁴⁷ Such as the Census Bureau, NTIA and state public service commissions.

collections should only be considered if, in addition to being lawful, they are the best and least burdensome means of obtaining data that is necessary to enable the Commission to fulfill a statutory duty.

Joint Commenters support efforts to streamline the Form 477 data collection process. Where there are opportunities for the Commission to leverage the data collections of other government entities, it should do so. The Commission should also maximize its use of other non-service provider sources to fulfill its data collection needs.

Respectfully submitted,

CENTURYLINK

QWEST COMMUNICATIONS
INTERNATIONAL INC.

By: /s/ John E. Benedict
Nancy Shelledy
John E. Benedict
Suite 950
607 14th Street, N.W.
Washington, DC 20005
202-383-1516
Nancy.l.shelledy@centurylink.com
John.e.benedict@centurylink.com

By: /s/ Lawrence E. Sarjeant
Craig J. Brown
Lawrence E. Sarjeant
Suite 950
607 14th Street, N.W.
Washington, DC 20005
202-429-3112
Craig.brown@qwest.com
Lawrence.sarjeant@qwest.com

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Their Attorneys

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **JOINT COMMENTS OF CENTURYLINK AND QWEST** to be: 1) filed via ECFS with the Office of the Secretary of the FCC in WC Docket Nos. 10-11, 07-38, 08-190 and 10-132; 2) served via e-mail on the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission at CPDcopies@fcc.gov; and 3) served via e-mail on the FCC's duplicating contractor, Best Copy & Printing, Inc. at fcc@bcpiweb.com.

/s/ Richard Grozier

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