

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

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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, Infrastructure	)	WC Docket No. 08-190
and Operating Data Gathering	)	
	)	
Review of Wireline Competition Bureau Data Practices	)	WC Docket No. 10-132
	)	

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**REPLY COMMENTS OF AT&T INC.**

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April 14, 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 reply 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*).<sup>1</sup>

The comments uniformly support the Commission's goal of collecting useful, relevant data on broadband and voice services in the U.S., but also emphasize that the Commission "must be sensitive to the costs and other burdens that result from mandating any additional reporting requirements."<sup>2</sup> AT&T and numerous commenters therefore have urged the Commission to ensure that any new reporting obligations are consistent with the Administrative Procedure Act, the Paperwork Reduction Act and the Regulatory Flexibility Act, as well as the recent executive documents issued by President Obama that direct government agencies to use the "least burdensome tools for achieving regulatory ends" – a directive that Chairman Genachowski has pledged that the Commission will heed.<sup>3</sup>

The vast majority of commenters agree that the Commission has not met its burden of demonstrating that its proposals are reasonably necessary for it to fulfill its statutory duties, or

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

<sup>2</sup> Comments of Verizon, at 1-2 ("Verizon"); *see also* Joint Comments of CenturyLink and Qwest, at 4 ("*CenturyLink/Qwest*") (new data collection requirements "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").

<sup>3</sup> Comments of AT&T Inc., at 3 ("*AT&T*") (quoting *Improving Regulation and Regulatory Review*, Executive Order 13563, § 1 (Jan. 18, 2011); *CenturyLink/Qwest*, at 4 & n.9; *Verizon*, at 4-6; Comments of the United States Telecom Association, at 2-5 ("*USTA*"); *see also* Comments of CTIA - The Wireless Association, at 4 ("*CTIA*") (noting that the requirements of the Paperwork Reduction Act also constrain any new data collection obligations).

that the potential benefits of the data exceed the burdens on providers of collecting it.<sup>4</sup> As commenters demonstrate, these data collections would serve no legitimate policymaking purpose, involve information that could be obtained far more efficiently and/or reliably from third-party sources, be unduly burdensome, and, in the case of broadband pricing data, be unlawful. The commenters who support the Commission's expanded data collection proposals do not even address these fundamental issues and instead merely tout the benefits of having more, rather than less data, without addressing whether the data is needed for a legitimate purpose or whether its collection would impose undue burdens on regulated entities.

As explained in AT&T's Opening Comments (at 8-22), rather than focus on the data collection proposals set forth in the *Notice*, the Commission should focus instead on (1) certain targeted data collections that would benefit the Commission's policymaking at reasonable cost to providers, and (2) AT&T's administrative proposals to streamline the Commission's data

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<sup>4</sup> See, e.g., *Century Link/Qwest*, at 2 ("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 . . . in the *NPRM*"); *CTIA*, at 1-2 ("the *NPRM*'s proposed additions to Form 477 not only are unnecessary, but also are counter to the goals of both the Chairman and the Obama administration to reduce regulatory burdens"); Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, the National Telecommunications Cooperative Association and the Western Telecommunications Alliance, at 2 ("*OPASTCO*") ("a number of the Commission's proposals would appreciably expand the scope of its Form 477 reporting requirements, significantly increasing the burden on small businesses, including rural local exchange carriers (RLECs)"); Comments of Time Warner Cable Inc., at 5 ("*Time Warner*") ("the Commission should refrain from revising Form 477"); *USTA*, at 1 ("the changes proposed in the *Notice* would impose significant burdens on broadband providers with no countervailing public benefit"); and *Verizon*, at 3 ("the Commission has no need to adopt new reporting obligations, and instead it should consider reducing some of the existing obligations that are unnecessarily burdensome and/or that serve no purpose related to the Commission's statutory responsibilities").

collection processes.<sup>5</sup> The comments confirm, however, that the remaining data collections proposed in the *Notice* should not be adopted. AT&T addresses these Commission proposals below.

## II. DISCUSSION

### A. The Comments Confirm That There Is No Legitimate Basis For The Commission To Initiate Collection Of Broadband Pricing Data.

The comments overwhelmingly confirm that the Commission should not adopt its data collection proposals on broadband pricing. *See Notice*, ¶¶ 66-76. AT&T and other commenters have made a detailed showing that the proposed data collections (i) would not provide meaningful information to assist the Commission in performing its duties because broadband service offerings are multi-faceted, which makes “apples to apples” comparisons of their prices exceedingly difficult; (ii) would be highly burdensome, particularly for providers who offer service in all states; (iii) are unnecessary because abundant data is available from provider websites and numerous third-party sources; and (iv) the Commission lacks legal authority to collect this data.<sup>6</sup>

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<sup>5</sup> AT&T will not here repeat arguments concerning its affirmative proposals, but notes that several of them are echoed by other commenters. *See, e.g., CTIA*, at 23-24, 26 (agreeing that the Commission should redesign its electronic interface so that parties can submit Form 477 data for multiple states as a single file; agreeing that the Commission should retain the “checkbox” on Form 477 that allows filers to request confidential treatment of submitted data); *Verizon*, at 30, 31 (same). In addition, while AT&T recommends that the Commission move from the current semi-annual filing requirement to an annual filing requirement, *see AT&T*, at 15-17, no commenter proposes an *increase* in the reporting frequency for Form 477. *See also* Comments of John Staurulakis, Inc., at 3, 11 (“*Staurulakis*”) (recommending that subscription data be reported only once per year and that certain other data be reported only every other year).

<sup>6</sup> *AT&T*, at 22-30; *CenturyLink/Qwest*, at 15; *CTIA*, at 16-19; Comments of the Independent Telephone and Telecommunications Alliance, at 5-6 (“*ITTA*”); *NCTA*, at 10-12; Comments of Sprint Nextel Corp., at 4-6 (“*Sprint*”); *Time Warner*, at 14-16; Comments of T-Mobile USA, Inc., at 13-14 (“*T-Mobile*”); *USTA*, at 13-15; and *Verizon*, at 17-19.

The record does not contain any serious response to these showings. Of the commenters who support the collection of broadband pricing data,<sup>7</sup> none address the Commission’s legal authority to require broadband providers to submit this information, or otherwise rebut AT&T’s showing (*AT&T*, at 28-30) that there is none. This lack of legal authority alone should be the end of the matter.

The commenters who support the Commission’s proposals do little more than tout the usefulness of broadband price data at a high level,<sup>8</sup> without responding to the specific arguments of AT&T and others that meaningful interpretations and comparisons of broadband price data are difficult to make (and that comparisons at a particular point in time are obsolete as soon as they are made). The attempts of some commenters<sup>9</sup> to identify specific prices to be reported do not address this deficiency because their proposed data points are ill-defined and bear no connection to actual marketplace offerings.<sup>10</sup> In addition, the commenters fail to show how the specific

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<sup>7</sup> See Comments of the California Public Utilities Commission and the People of the State of California, at 9-10 (“*CPUC*”); Comments of Communications Workers of America, at 6 (“*CWA*”); Comments of Free Press, at 3-4 (“*Free Press*”); Comments of the Massachusetts Department of Telecommunications and Cable, at 4-7 (“*MDTC*”); and Comments of the New Jersey Division of Rate Counsel, at 8-11 (“*New Jersey*”).

<sup>8</sup> See, e.g., *New Jersey*, at 10 (“Without pricing data, the FCC cannot measure the nation’s progress toward promoting broadband investment and adoption”); *Free Press*, at 3 (“Price is one of the two critical pieces of data for any kind of basic economic analysis”).

<sup>9</sup> See, e.g., *New Jersey*, at 10-11 (recommending that the Commission require broadband providers to submit “monthly pricing information for stand-alone broadband services and bundled broadband services separately,” without any further specification of the “bundles” for which pricing data would be required); *CPUC*, at 10 (recommending that the Commission require broadband providers to submit “the price of the lowest-cost bundle that includes Internet Access and voice, excluding promotional prices or short term deals”).

<sup>10</sup> See *CTIA*, at 18 (“any FCC-defined plan designated by the Commission for purposes of the Form 477 data collection would have only the most tenuous connection to the realities of what is offered in the marketplace – and would likely have no connection to the needs of any particular consumer”).

price data that they propose would assist the Commission in performing any policymaking functions.<sup>11</sup>

Most fundamentally, however, no proponent of collecting broadband pricing data meaningfully addresses the burdens to providers of reporting the pricing data that they suggest. As AT&T and others have shown, the Commission should not impose the proposed broadband price reporting requirements because it has far less burdensome alternatives for acquiring the information, including third party sources.<sup>12</sup> The few commenters<sup>13</sup> that object to the Commission's use of third party and publicly available data do so only generally and without explaining the basis for their objections or acknowledging that the Commission routinely uses such data in a variety of contexts.<sup>14</sup>

**B. The Comments Confirm That The Commission Should Not Collect Service Quality and Customer Satisfaction Data.**

The comments also confirm that the Commission should not adopt its data collection proposals on service quality and customer satisfaction data. *See Notice*, ¶¶ 89-99. As AT&T and other commenters have shown, the Commission already has an outage reporting system, tracks consumer complaints, is collecting a variety of broadband network performance data through its consultant SamKnows, and has access to the information generated by numerous

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<sup>11</sup> *Free Press* (at 4) advocates that the Commission require reporting of “average price per megabit per second” and “Average Revenue per User (ARPU),” both at the “Census tract level,” but provides no explanation of how the Commission could develop meaningful parameters for such calculations and fails to address the burdens on carriers of performing these numerous calculations. Nor does *Free Press* explain how these “averages” would provide any useful information to the Commission, given the wide range and variation in the services purchased by customers.

<sup>12</sup> *AT&T*, at 26-28; *CenturyLink/Qwest*, at 15; *CTIA*, at 19; *ITTA*, at 5; *NCTA*, at 11; *Sprint*, at 4-5; *Time Warner*, at 14-16; *T-Mobile*, at 13-14; *USTA*, at 13-14; and *Verizon*, at 17.

<sup>13</sup> *See, e.g., New Jersey*, at 3-4; *CPUC*, at 2-3.

<sup>14</sup> *See, e.g., AT&T*, at 27 (documenting the Commission's use of broadband pricing data from TNS Telecoms and other third parties in the *National Broadband Plan*).

consumer research firms that are in the business of reporting timely data on the service quality of broadband networks. Given these existing sources of information, the Commission fails to show that imposing burdensome new data collection requirements is justified by any of its statutory duties, particularly where, as here, the intensely competitive broadband marketplace gives providers strong incentives to deliver high quality service.<sup>15</sup>

Again, the commenters who support the imposition of new Form 477 reporting requirements on all providers fail to address any of these issues.<sup>16</sup> They merely tout the usefulness and value of service quality and customer satisfaction data in the abstract,<sup>17</sup> without addressing the abundant information already collected by the Commission and available through third party sources, much less showing that this existing information is inadequate to the Commission's purposes. They also fail to address the burdens on providers, particularly small and rural providers, of collecting and reporting data that providers have not previously compiled.<sup>18</sup> Accordingly, these commenters fail to make their case that any benefits of new Form 477 reporting requirements in this area exceed the significant burdens that they would impose on providers.

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<sup>15</sup> *AT&T*, at 30-34; *CenturyLink/Qwest*, at 15-17; *CTIA*, at 21-23; *ITTA*, at 6; *NCTA*, at 13-15; *Sprint*, at 4-6; Comments of Texas Statewide Telephone Cooperative, Inc., at 5-7 (“*Texas Cooperative*”); *Time Warner*, at 14-16; *T-Mobile*, at 14-15; *USTA*, at 16-17; and *Verizon*, at 23-28.

<sup>16</sup> See *CPUC*, at 12-14; *CWA*, at 8-18; *Free Press*, at 9; Comments of the Michigan Public Service Commission (“*Michigan*”); and *New Jersey*, at 4-8, 11-12.

<sup>17</sup> *CWA*, at 11 (“Consumers and policymakers need information . . .”); *Free Press*, at 9 (asserting that information on “average latency, jitter, dropped packets, uptime, service outages, and customer equipment failures” is “extremely valuable to consumers and policymakers”).

<sup>18</sup> See, e.g., *Texas Cooperative*, at 6 (“imposing new reporting requirements [for service quality and customer satisfaction data] and new processes upon small RLECs is not warranted and will be disproportionately burdensome to any benefit that may accrue to the Commission”).

A few carriers go beyond the Form 477 framework and advocate that the Commission either collect industry-wide data on service quality and customer satisfaction through ARMIS reports (which, unlike Form 477, are generally not kept confidential),<sup>19</sup> or otherwise make such data publicly available.<sup>20</sup> But none of these commenters address the substantive concerns discussed above and, in any event, proposals to revise the ARMIS reporting process are beyond the scope of the Commission's *Notice*. Further, to the extent these commenters criticize the Commission's decision in 2008 to forbear from collecting service quality data from certain large price cap LECs as part of its ARMIS reports, they largely repeat arguments that they asserted and that the Commission rejected in the relevant ARMIS proceedings.<sup>21</sup> In short, these commenters offer nothing that could provide a predicate for the Commission to reverse its policies.<sup>22</sup>

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<sup>19</sup> See *CPUC*, at 12-14 (recommending that the Commission “retain[] the ARMIS filing as a separate report” for service quality and customer satisfaction data and extend it “to all facilities-based broadband and telecommunications providers” because “[c]arrier-specific Form 477 data is treated as confidential whereas ARMIS carrier-specific information is generally available to the public”); see also *id.* at 13 (“public availability of service quality information serves important consumer protection functions”).

<sup>20</sup> *Michigan*, at 2 (“The MPSC urges the FCC to make a subset of service quality and customer satisfaction data public so that customers can use it to make informed choices regarding telecommunications services.”); *id.* at 3 (“The MPSC would prefer to see a publicly accessible online database showing each provider’s scores on basic service quality and customer satisfaction metrics, including the functionality to simultaneously compare different providers’ scores.”).

<sup>21</sup> See *CWA*, at 10-18; *Free Press*, at 8-9; *New Jersey*, at 4-8; see also *ARMIS Forbearance Order* (Sept. 6, 2008).

<sup>22</sup> In its comments, CALTEL points out that one of its members (TelePacific Communications) had concerns with AT&T’s response to service outages in California late last year caused by severe flooding. Comments of CALTEL, at 6. AT&T regrets the service disruptions resulting from that flooding and has engaged in executive level discussions with TelePacific to address its particular concerns. In all events, however, these flooding-induced disruptions in California do not raise industry-wide service quality issues and cannot justify proposals to add service quality reporting obligations to Form 477.

**C. The Comments Confirm That The Commission Should Not Require Providers To Report Data At The Address Level.**

The Commission (*see Notice* ¶¶ 39, 50, 56, 74, 81) proposes to collect a variety of different data (availability, subscribership, price, and perhaps service quality and/or customer satisfaction data) at the address level, but the comments confirm that this approach is ill-advised. As AT&T and other commenters demonstrate, providers do not record addresses in a standardized, uniform manner, which means that address level data might provide the Commission with less accurate information than data collected at a more aggregated level. In addition, the production of such massive data sets would be extremely burdensome for providers and also burdensome to the Commission because the agency would have to undertake the massive task of “scrubbing” the data to make sure that individual physical locations are uniquely identified. In all events, the Commission should not require address level data because such a requirement would likely violate the Electronic Communications Privacy Act (“ECPA”), 18 U.S.C. § 2701, *et seq.*<sup>23</sup>

The commenters also refute the rationales in the *Notice* for collecting address level data. OPASTCO, et al., for example, explains that although the Commission relies in the *Notice* “on [OPASTCO’s] suggestion, originally made several years ago, that an option to report at the subscriber address level could reduce burdens on small providers,”<sup>24</sup> the “benefits of an address-level reporting option may not be as pronounced today” in light of small providers’ successful implementation of the requirement for census-tract level reporting for subscribership data.<sup>25</sup> In addition, the CPUC notes that the Commission incorrectly asserts in its *Notice* (at ¶ 56) that

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<sup>23</sup> *AT&T*, at 34-39; *ITTA*, at 2-3; *NCTA*, at 9-10; *Sprint*, at 6-7; *Staurulakis*, at 10; *Texas Cooperative*, at 7-9; and *Verizon*, at 11, 21-22.

<sup>24</sup> *See Notice*, at ¶¶ 39, 57, 81 (citing comments of OPASTCO in prior Commission dockets).

<sup>25</sup> *OPASTCO*, at 4-5.

California “already requires address-level reporting for the construction of its broadband map.” Instead, broadband providers in California “may *voluntarily* provide the CPUC mapping group with this information,” and it is not made public.<sup>26</sup> Finally, Texas Cooperative notes that many rural LECs “do not maintain broadband network deployment data on an address-by-address basis” and that although some of its members “believe it would be less burdensome to report this data on an address-by-address basis than by census tract or census block,” it would still “be expensive for RLECs to produce this data for the Commission because of programming costs to develop and produce the reports.”<sup>27</sup>

The few commenters that support address level reporting requirements fail to address the issue at any length, much less rebut the showings in the record that such requirements would be extremely burdensome and possibly produce less accurate information.<sup>28</sup> The record therefore presents no basis for the Commission to adopt any address level reporting requirements.

**D. The Comments Confirm That The Commission Should Not Require Providers To Report Actual Broadband Speeds.**

The comments confirm that the Commission should not adopt an actual speed reporting requirement for broadband services, *see Notice* ¶ 59 – a requirement that the Commission has recently rejected on several occasions. As AT&T and other commenters have shown, such a requirement is not feasible because the measurement of broadband speeds is extremely complex

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<sup>26</sup> *CPUC*, at 7 n.13 (emphasis added).

<sup>27</sup> *Texas Cooperative*, at 8-9.

<sup>28</sup> *See CPUC*, at 7, 11 (recommending that landline broadband availability data be collected “at least at the census block level,” and that the Commission “consider collecting by street address or by road segment” for census blocks larger than two square miles; recommending that the Commission collect voice and broadband subscription data at the address level); *MDTC*, at 2-3 (suggesting that broadband deployment data could be collected based on “a range of address segments where service is actually provided by the carrier”); *cf. CWA*, at 6-7 (recommending that the Commission *allow* the submission of Form 477 data at the address level).

and there is no standard methodology for doing so.<sup>29</sup> The Commission’s SamKnows project may provide insights into whether and how broadband speeds might be measured in the future, but nothing in the record has changed that could support the Commission’s adoption of an actual speed reporting requirement now.

The few commenters that advocate reporting of actual broadband speeds fail to address the feasibility issue, much less propose a methodology that providers could or should use to measure and report actual broadband speeds.<sup>30</sup> Instead, these commenters merely tout the purported value of data on broadband speeds,<sup>31</sup> without acknowledging or addressing the complexities of gathering meaningful data, much less the costs of developing reliable measurement methodologies. Therefore, as the Commission has concluded before, the record as it exists simply does not support the imposition of a new actual speed reporting requirement.

**E. The Comments Confirm That The Commission Should Not Collect Broadband Contention Ratios.**

The comments confirm that the Commission should not require broadband providers to report “contention ratios” – *i.e.*, ratios of “the potential maximum demand to the actual bandwidth available” – as an attempt to measure network congestion as a possible proxy for

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<sup>29</sup> *AT&T*, at 39-41; *CTIA*, at 12-15; *ITTA*, at 4-5; *NCTA*, at 14; *Sprint*, at 7-8; *Time Warner*, at 15; *T-Mobile* at 10-13; *USTA*, at 15-16; and *Verizon*, at 11-13; *see also Free Press*, at 5 (acknowledging the “limitations” of current methodologies for determining actual broadband speeds).

<sup>30</sup> *CWA*, at 5-6; *New Jersey*, at 11; *see also CPUC*, at 9 (“If the use of the SamKnows program proves effective to survey Internet access speeds, California recommends the FCC expand the program to gather data regarding service from Wisps [wireless internet service providers] as well.”).

<sup>31</sup> *CWA*, at 5-6 (actual speed data “will give the Commission valuable tools as it reviews truth-in-reporting issues”); *New Jersey*, at 11 (actual speed data is “essential” so that the Commission “can monitor progress toward broadband goals”).

network speed.<sup>32</sup> AT&T and other commenters have demonstrated that contention ratios not only are extremely burdensome to calculate, but also do not provide meaningful information about the speed of subscriber service because the speed that a particular network user experiences at any given point in time is affected by numerous factors, including whether other users are engaged in high-bandwidth or low-bandwidth applications.<sup>33</sup>

A single commenter, Free Press, supports the use of contention ratios, recommending that the Commission require providers to report “the contention ratios of their last mile services at the Census Tract level.”<sup>34</sup> Free Press asserts with no citation or documentation that contention ratios are a “useful proxy” for actual speed, that providers are “easily able” to calculate these ratios, and that the Commission “should dismiss arguments as to the burdens and feasibility” of such a reporting requirement.<sup>35</sup> As AT&T and others have shown, these assertions are false.<sup>36</sup> Also lacking support is Free Press’s assertion that “such figures are routinely used in the advertisements of overseas broadband providers” and that “at least one foreign government require[s] the publishing of contention ratios.”<sup>37</sup> The websites that Free Press cites do not

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<sup>32</sup> *See Notice* at ¶ 59 & n.161 (“The higher the contention ratio, the greater the number of users that may be trying to use the actual bandwidth at any one time and, therefore, the lower the effective bandwidth or speed offered, especially at peak times”).

<sup>33</sup> *AT&T*, at 41-42; *NCTA*, at 14-15 (contention ratios “would not add any value,” and more likely would provide a “misleading picture”); *Verizon*, at 13 (calculating contention ratios is a “laborious task” and “the resulting data are unlikely to be of any practical use or relevance”).

<sup>34</sup> *Free Press*, at 5-7.

<sup>35</sup> *Id.* at 6.

<sup>36</sup> *AT&T*, at 41-42; *NCTA*, at 14-15; *Verizon*, at 13.

<sup>37</sup> *Free Press*, at 6-7.

support its claims.<sup>38</sup> Accordingly, the record offers no reason for the Commission to require broadband providers to report contention ratios.

### III. CONCLUSION

For the foregoing reasons, and for those stated in AT&T's initial comments, the Commission should focus its attention on streamlining the existing Form 477 data collection program and should exercise caution before imposing any new data production requirements on voice and broadband service providers.

April 14, 2011

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<sup>38</sup> Of the provider websites that Free Press cites (at 6-7 nn.9-10), AT&T was able to find references to contention ratios on the sites of U.K. provider Vaioni and South African incumbent provider Telkom, but not the third provider that Free Press lists. The South African government apparently requires Telkom to publish a “contention ratio” on its website, but provides no specifics as to how this ratio must be calculated. *See* General Notice 1112 of the Independent Communications Authority of South Africa, section 6.1 (Aug. 17, 2006) (“Telkom, SNO and ISPs shall on a quarterly basis publish on its [sic] website the contention ratio as a commitment to good business practice”), available at <http://www.info.gov.za/view/DownloadFileAction?id=58376>. The two provider websites hardly establish that contention ratios are “routinely used” in the advertisements of overseas broadband providers. In any event, the single, company-wide ratios that the two providers published have little informational value and bear scant resemblance to the far more complex census-tract level calculations that Free Press proposes.