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

In the Matter of	)	
	)	
Modernizing the FCC Form 477 Data Program	)	WC Docket No. 11-10
	)	
Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice Over Internet Protocol (VoIP) Subscribership	)	WC Docket No. 07-38
	)	
Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering	)	WC Docket No. 08-190
	)	
Review of Wireline Competition Bureau Data Practices	)	WC Docket No. 10-132

REPLY COMMENTS OF THE

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

The Public Service Commission of the District of Columbia ("DC PSC") hereby submits its Reply Comments in response to the Federal Communications Commission ("FCC" or "Commission") February 8, 2011 Notice of Proposed Rulemaking in the above-captioned proceedings.[1] The NPRM seeks comment on whether and how to reform the Form 477 data program to improve the FCC's ability to carry out its statutory duties, while streamlining and

[1] *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10; *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38; *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering,* WC Docket No. 08-190; *Review of Wireline Competition Bureau Data Practices,* WC Docket No. 10-132, Notice of Proposed Rulemaking, February 8, 2011 ("*NPRM*").

minimizing the overall costs of the program, including the burdens imposed on service providers.[2]

I. INTRODUCTION

The DC PSC, pursuant to a Memorandum of Understanding with the D.C. Office of the Chief Technology Officer ("OCTO"), gathered information necessary to compile the first comprehensive map of the availability and adoption rates for broadband Internet access services in the District of Columbia. The DC broadband map, created with Geographic Information Systems ("GIS") technology, can be found at http://broadbandmap.dc.gov/. The DC PSC gathered three rounds of broadband service availability data from broadband service providers in the District of Columbia to assist OCTO's data submission to the National Telecommunications and Information Administration ("NTIA"), State Broadband Data and Development Grant Program, for use in the preparation of NTIA's National Broadband Map; see: http://broadbandmap.gov/. The DC map, which is based primarily on data acquired from the voluntary submission to the DC PSC of copies of the broadband service providers' most recently filed Form 477 or data contained in the filed Form 477, shows estimated residential broadband adoption rates for the entire city. The residential broadband adoption rate is calculated by dividing the number of households according to the 2000 Census into the number of households subscribing to wireline broadband.[3] Thus, the accuracy and timeliness of the map depends on the accuracy and timeliness of the information provided by broadband service providers to the FCC in the Form 477.

The map shows a stark digital divide in the District. The average broadband wireline adoption rate for the District as a whole was 65.3% in 2009. However, in Wards 5, 7 and 8, adoption rates were below 40%, while adoption rates in the other Wards fall in the 80-100% range.[4] In order to expand the availability of affordable broadband services and to close this digital divide, it will be essential for District policy makers to have timely and accurate information on broadband service deployment and adoption rates at a granular level. For this

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2 *NPRM* at 2.

3 See, Press Release, Office of the Chief Technology Officer, March 9, 2011. See http://octo.dc.gov.

4 *Id.*

reason, the DC PSC is extremely interested in changes to the Form 477 data collection process that will make the data more readily available, especially to those with responsibility for expanding the adoption of broadband services.

II. REPLY COMMENTS

A. Simultaneous Filing of Form 477 Should Be Required.

The DC PSC strongly supports the view of the California Public Utilities Commission and the People of the State of California ("California") that the Commission should require service providers to report their data to the relevant state commission at the same time that it is provided to the FCC.[5] This matter has a long history in which state regulators, including the National Association of Regulatory Utility Commissioners ("NARUC"), have urged the Commission to "require broadband service providers to simultaneously file future Form 477 reports with both the FCC and the requesting states."[6] In this case, both California and New Jersey have asked the Commission again to require the simultaneous filing of data with the states. As California points out, up-to-date information is invaluable to states that are actively promoting deployment and adoption of broadband services through various state programs.[7] In New Jersey's words, the FCC and state PUCs require simultaneous access to Form 477 data in order to carry out their unique federal-state authority and responsibility to achieve national broadband goals.[8] Moreover, simultaneous filing can help the FCC as well because states can help the FCC "scrub" the data by assisting with verification of information about services provided in their states.[9] DC PSC recommends that the Commission adopt the positions urged by California and New Jersey, as well as the Resolution adopted by NARUC, and require simultaneous filing of Form 477 data with the relevant state public utility commission.

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5 Comments of the California Public Utilities Commission and the People of the State of California, March 30, 2011, at 3-4 ("California Comments").

6 National Association of Regulatory Utility Commissioners, Board of Directors, Resolution Supporting Access to Broadband Mapping Data, July 22, 2009. See Attachment A.

7 California Comments at 4.

8 Comments of the New Jersey Division of Rate Counsel, March 30, 2011, at 3 ("New Jersey Comments").

9 California Comments at 4-5.

B. The Commission Should Post Service Information

If the Commission is, for whatever reason, reluctant to require that Form 477 information be filed with the appropriate state commission, then it should at least post information on its website in a way that makes it possible for state commissions to confirm the existence and type of service providers in their state. At present, every six months the FCC posts a list, by state, of all those providers that have filed a Form 477. For example, in March 2011, the Commission listed 46 companies as having filed a Form 477 for the District of Columbia through June 30, 2010.[10] However, these companies are identified only as "ILEC" or "Non-ILEC." This breakdown is not helpful in developing an understanding of the nature of the services provided or the facilities used. States need a more sophisticated breakdown of who these companies are and what services they provide. This information can then be checked against other information to be sure that the affected state is capturing data from all the broadband service providers and the required financial contributions for state programs such as E911 service and Universal Service. So long as the issue of state authority over certain kinds of voice telecommunications service providers, such as VoIP service providers, is unclear, the states need more information to assist in enforcing the same kind of contribution requirement that the FCC has imposed at the federal level.

C. All Providers Should be Required to File a Form 477

As a corollary to more specific information being posted on the Commission's website, the FCC should also make it clear that all service providers should be required to file the Form 477 information. There should be no exceptions made on the basis of facilities used or whether the service provider is a reseller. In order to get the most complete information, the FCC should not exempt any type of service provider or technology. In this respect, we support the view of the Pennsylvania Public Utility Commission.[11]

D. Information at the Census Block Level Is Sufficient

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[10] See http://www.fcc.gov/wcb/iatd/comp.html

[11] Comments of the Pennsylvania Public Utilities Commission, April 1, 2011, at 2.

The NPRM requests comment on what is the appropriate geographic area for the collection of information. We have supported the collection of information, at the very least, on a census block level.[12] In this respect we agree with California, which suggests that the FCC study the census-block level NTIA National Broadband Map to determine whether address-level information would be more useful.[13] We understand, of course, that the Commission will consider the cost of gathering information at different geographic levels. However, we strongly believe that anything larger than census block information will be of limited utility to federal and state policy makers.

E. Form 477 Data Is Not Duplicative

Several commenters have claimed that it is not necessary for the FCC to impose deployment reporting obligations because the Commission already has access to substantial broadband deployment data through other available resources, particularly the NTIA National Broadband Map.[14] We disagree; there is at least one key difference between the information found in the Form 477s and the NTIA National Broadband Map. The Form 477 information includes broadband service subscribership, or adoption, data, which the NTIA National Broadband Map does not. Adoption data are critical to D.C. and other jurisdictions interested in implementing broadband Lifeline programs. We need to be able to identify areas with low adoption rates by neighborhood in designing our digital literacy, equipment distribution and broadband service support programs.

F. Filing Requirements Should Be Enforced

Finally, the DC PSC believes that the Form 477 filing requirements should be rigorously enforced by the FCC, including by the assessment of financial penalties where appropriate. In our experience, some broadband service providers do not file the Form 477 report with the FCC

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[12] Comments of the Public Service Commission of the District of Columbia and the New Jersey Board of Public Utilities, GN Docket 09-51, July 30, 2009, at 4.

[13] California Comments at 7.

[14] See, e.g., Comments of the United States Telecom Association, March 30, 2011, at 12; Comments of AT&T, Inc., March 30, 2011 at 12-13.

and may not voluntarily provide the Form 477 information to the DC PSC, even under assurances of confidentiality. The broadband service data collected in the Form 477 is sufficiently important to require that filings be made, subject to financial penalties for failure to do so.

III. CONCLUSION

The Public Service Commission of the District of Columbia urges the Federal Communications Commission to consider these Reply Comments when determining whether there should be changes and improvements to the Form 477 data collection program.

Respectfully submitted,

PUBLIC SERVICE COMMISSION
of the DISTRICT OF COLUMBIA

By: _____
Richard A. Beverly, General Counsel
Veronica M. Ahern

1333 H Street, N.W.
Suite 200, West Tower
Washington, D.C. 20005
202-626-5100

Its Attorneys

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Resolution Supporting Access to Broadband Mapping Data

WHEREAS, States need broadband services information on service locations, speeds, prices, technology and infrastructure from wireline and wireless broadband service providers in order to:

- Accurately measure the progress in improving access to and adoption and use of broadband services in their States,
- Assess the impact that broadband service has on rural, low-income, unemployed, aged, disabled and otherwise vulnerable consumers,
- Analyze the effects of broadband infrastructure deployment initiatives on schools, libraries, medical and healthcare providers, community colleges and other institutions of higher learning, community support organizations and public safety agencies, and
- Target State, regional and local-level policy initiatives and incentives to increase broadband service deployment and adoption rates; *and*

WHEREAS, The Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its February 2009 Winter Meetings in Washington, D.C., adopted a resolution recognizing the critical role the States have in gathering the necessary broadband services data to determine unserved and underserved areas within their borders; *and*

WHEREAS, The Federal Communications Commission (FCC) found both digital subscriber line (DSL) and cable modem services – that provide access to the Internet – are "information services" and that "courts have recognized the Commission's authority under Title I to preempt non-federal regulations that negate the Commission's goals;" *and*

WHEREAS, Absent federal preemption, States have legal authority to collect broadband services data; *and*

WHEREAS, It is clear from sections 706 and 254 of the Telecommunications Act of 1996 (47 U.S.C. §706 and §254), as well as the express terms of the Broadband Data Improvement Act (P.L. 110-385, 122 Stat. 4096 (2008)) (the BDIA), encouraging "complementary State efforts to improve the quality and usefulness of State data" and the American Recovery and Reinvestment Act of 2009, (P.L. 111-5, 123 Stat. 115 (2009)) that Congress's expressed goals are that States will both: (i) promote the deployment of advanced infrastructures and information services themselves, and (ii) collect information to assist State and Federal efforts to map the current and ongoing state of the deployment of broadband services; *and*

WHEREAS, NARUC disagrees with those who argue that because the FCC has preempted *some* State authority to regulate wireline and wireless broadband service providers, the FCC has also preempted the States' authority to require broadband service providers to submit information on service locations, speeds, prices, technology and infrastructure within the State; *and*

WHEREAS, Several States initiated broadband services mapping projects to identify served, underserved and unserved areas which have been frustrated by reliance on *voluntary* responses to requests for granular broadband services data; *and*

WHEREAS, The NARUC Board of Directors, convened at its July 2007 Summer Meetings in New York, New York, adopted a resolution that requested the FCC to delegate authority, at the States' option, for broadband services data collection and analysis purposes; *and*

WHEREAS, The BDIA, at 47 U.S.C. §1304(h), directs the FCC to provide States with the aggregate broadband services data collected by the FCC based on the Form 477 submissions of broadband service providers; *and*

WHEREAS, On March 19, 2008, the FCC adopted a Report and Order, WC Docket No. 07-38, to require wireline and wireless broadband service providers to file modified semi-annual FCC Form 477 reports that will show the number of broadband connections in service in individual Census Tracts, the broadband service speed data in conjunction with subscriber counts according to new categories for download and upload speeds, and, for mobile wireless broadband service providers, the number of subscribers whose data plans allow them to browse the Internet and access Internet content; *and*

WHEREAS, The FCC received the modified Form 477 reports for data for the period July 1, 2008, through December 31, 2008, from all wireline and wireless broadband service providers on or before March 16, 2009, *and*

WHEREAS, The FCC denies States' requests for up-to-date copies of the dis-aggregated Form 477 reports filed by individual wireline and wireless broadband service providers that provision service in their States and, currently, will only provide copies of the outdated Form 477 reports with aggregated data for the period July 1, 2007 through December 31, 2007; *and*

WHEREAS, On July 1, 2009, the National Telecommunications and Information Administration (NTIA) released a Notice of Funding Availability (NoFA) for the State Broadband Data and Development Grant Program that makes grants available to the States "to fund their collection of broadband-related data . . . to develop statewide broadband maps, which will be linked to a Department of Commerce webpage." And, "In addition, the (State grant) awardees will submit all of their collected data to NTIA for use by NTIA and the FCC in developing and maintaining the national broadband map, which will be displayed on an NTIA webpage before February 17, 2011." And, the NoFA concluded that "State participation is critical to the national broadband mapping effort;" *and*

WHEREAS, Even though the NoFA provides that "In order to promote the efficient creation of the State and national broadband maps, NTIA and RUS [the Rural Utilities Service] will require that broadband internet service providers that apply for infrastructure grants under BTOP [the NTIA's Broadband Technology Opportunities Program] and RUS' Broadband Initiatives Program (BIP) agree to provide the data that awardees under this Program [the State Broadband Data and Development Program] are required to collect" there will likely be many broadband service providers that do not apply for BTOP or BIP funding and will, thus, not be required to submit necessary broadband mapping data to the States; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its Summer 2009 Meetings in Seattle, Washington, requests the

FCC, in accord with the requirements of the BDIA to immediately: (1) provide States that so request with disaggregated data from the relevant current Form 477 submissions by wireline and wireless broadband service providers; (2) require broadband service providers to simultaneously file future Form 477 reports with both the FCC and the requesting States; and (3) condition the aforementioned on a State's commitment to treat such Form 477 reports as privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider; *and be it further*

RESOLVED, To promote regulatory certainty, the FCC should immediately grant a petition for declaratory ruling affirming that: (1) it is an important aim of federal policy to expand the scope of available broadband services data; and (2) the FCC has not asserted any general preemption of any State actions requiring broadband service providers to submit specific information, at an appropriate level of granularity as determined by the State, on broadband service locations, speeds, prices, technology and infrastructure within the State, provided such State agrees to provide a minimum level of data confidentiality and protection as required by the BDIA, at 47 U.S.C. §1304.

Sponsored by the Committees on Telecommunications and Consumer Affairs
Adopted by the NARUC Board of Directors, July 22, 2009