

**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 NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
AND
THE NEW JERSEY DIVISION OF RATE COUNSEL**

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EXECUTIVE SUMMARY

Good policy making requires good data.¹ In their initial comments, carriers contend that robust competition makes data collection and reporting such as the “antiquated” Automated Reporting Management Information System (“ARMIS”) reports unnecessary. Also, in support of their opposition to any expansion of data reporting requirements, carriers rely on President Obama’s recent Executive Order on improving regulation and the regulatory review process. Carriers also generally posit that industry members have little or no responsibility to provide additional data to the Federal Communications Commission (“FCC”). Instead, they argue that the FCC should be obligated to chase down the data it seeks from industry web sites, other agencies, and private sources. Industry members’ arguments, however, ignore the fact that the FCC possesses a unique, important, and independent responsibility to monitor the telecommunications industry and to ensure that broadband and voice services are widely available at reasonable rates and service quality. The FCC should not delegate data collection and reporting to external entities.

The debate over data collection and reporting has spanned many years, with the most recent round beginning in 2007 (with 07-38). The National Association of State Utility Consumer Advocates (“NASUCA”) and the New Jersey Division of Rate Counsel (“Rate Counsel”) have participated in the FCC’s various proceedings. NASUCA and Rate Counsel have consistently posited and demonstrated that relevant markets lack effective competition, and, therefore, the FCC requires reliable, timely and comprehensive data to exercise its unique regulatory oversight over the telecommunications industry. Simply because consumer patterns

¹ / Remarks of Chairman Genachowski, Workshop on Intercarrier Compensation Reform, April 6, 2011.

and technology are changing does not mean that market imperfections have vanished. Precisely because the industry continues to be in a state of technical and structural flux, data is essential so that the FCC can monitor progress toward closing gaps in broadband deployment, assess the affordability of broadband service, monitor the quality of voice and broadband services, and evaluate the level of competition that actually exists in relevant markets. The information that the FCC collects and reports may seem irrelevant and “antiquated” to industry members that do not want to provide it, but it is essential to federal and state regulators, state consumer advocates, and other stakeholders, which do not possess the vast resources that the nation’s largest carriers possess.

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I. INTRODUCTION

The National Association of State Utility Consumer Advocates (“NASUCA”) as an organization² and the New Jersey Division of Rate Counsel (“Rate Counsel”) as an agency representing New Jersey consumers and as a member of NASUCA,³ hereby respond to

^{2/} NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

^{3/} Rate Counsel submitted initial comments in this proceeding.

comments submitted regarding the modernization of the Form 477 Data Program, proposed by the Federal Communications Commission (“FCC” or “Commission”).

Numerous comments were submitted in response to the FCC’s request for comment.⁴ Predictably, regulators and consumer advocates seek improved and continuing data collection through the Form 477 reports, urge the FCC to reinstate the discontinued Automated Reporting Management Information System (“ARMIS”) reporting, and observe that the benefits of reliable and comprehensive information outweigh the purported burdens for industry. Industry members, on the other hand, assert that markets are competitive (rendering data collection purportedly unnecessary or at best only minimally so), reporting is burdensome, and the FCC can turn to other federal agencies and to third party private sources to gather the data it seeks.

NASUCA and Rate Counsel urge the FCC to improve Form 477 data collection (without jeopardizing the value of historic data sets), to re-instate ARMIS reports, and to minimize the information that is afforded confidential treatment. Reliable, timely data improves the efficiency of market transactions and contributes to sound policy making at state and federal levels. NASUCA members, including Rate Counsel, rely on data about deployment, subscriptions, prices and quality in order to fulfill their responsibilities to represent consumers effectively in state and federal regulatory proceedings. The FCC, by collecting and reporting data, plays a vital

⁴ / Among the various comments submitted, in addition to those of Rate Counsel, were those of AT&T Inc. (“AT&T”), California Association of Competitive Telecommunications Companies (“CALTEL”), California Public Utilities Commission and the People of the State of California (“CPUC”), CenturyLink, Inc. and Qwest Communications International Inc. (“CenturyLink”), Communications Workers of America (“CWA”), CTIA – The Wireless Association® (“CTIA”), Free Press; GVNW Consulting, Inc. (“GVNW”), Hughes Network Systems, LLC (“Hughes”), Independent Telephone and Telecommunications Alliance (“ITTA”), John Staurulakis, Inc., Massachusetts Department of Telecommunications and Cable (“MDTC”), Michigan Public Service Commission (“MPSC”), National Cable and Telecommunications Association (“NCTA”), OPASTCO/NTCA/WTA, Pennsylvania Public Utility Commission (“PaPUC”), Sprint Nextel Corporation (“Sprint”), Texas Statewide Telephone Coop, Inc., Time Warner Cable Inc. (“Time Warner”), T-Mobile USA, Inc. (“T-Mobile”), United States Telecom Association (“US Telecom”), Verizon and Verizon Wireless (“Verizon”), ViaSat, Inc. (“ViaSat”), and Voice on the Net Coalition.

role. The FCC’s data collection and reports enhance the ability of stakeholders to assess which markets are functioning properly and to address those market imperfections that persist (such as lack of availability, network congestion, outages, and duopolistic pricing). The FCC, as a government agency with limited resources, should not be compelled to go chasing after information on providers’ web sites, private analysts’ reports, and elsewhere. Instead, carriers that operate in the multi-billion dollar telecommunications industry should submit data directly to the agency that has the authority and responsibility to regulate them. Furthermore, any decision rendered by the FCC in this proceeding should not “preempt or prohibit separate state filing requirements.”⁵

II. FCC FORM 477 DATA PROGRAM

A. IMPORTANCE OF DATA

Accurate data is essential so that the Commission can make fact-based, data-driven decisions and policy; the benefits of such data outweigh the burdens associated with data reporting.

The Commission’s ability to make well-informed decisions, especially on broadband, depends critically on “[a]ccurate data collection.”⁶ Carriers should file data on, among other things, deployment, pricing, subscription, and service quality.⁷ Some oppose any expansion of Form 477.⁸ CTIA contends that, in light of the Paperwork Reduction Act and President Obama’s recent Executive Order on improving regulation and the regulatory review process, the Commission bears the responsibility of demonstrating that the benefits of its Form 477 data

⁵ / PaPUC, at 2.

⁶ / CWA, at 1.

⁷ / PaPUC, at 2.

⁸ / See, e.g., CenturyLink, at 3.

collection proposals outweigh the costs and burdens.⁹ Initial comments (as well as comments submitted in response to the various comment cycles of all four proceedings captioned above) provide such evidence. NASUCA and Rate Counsel concur with CWA that “[w]ithout access to reputable data, sufficiently granular and collected over time, the FCC is hamstrung in its efforts to protect consumers, promote competition and fulfill its statutory obligations, specifically in regard to universal service, public safety and others.”¹⁰ The benefits of the data that the FCC collects and historically collected through the Form 477 and ARMIS reports far outweigh the cost of data collection and reporting.¹¹ The Commission and states would benefit from an expanded and updated data collection practice so that they possess the information necessary to promote universal, high quality voice and broadband services, offered at reasonable prices.¹²

Industry bemoans the burden of reporting data. For example, AT&T states that “[w]hereas it once cost voice and broadband providers an annual total of ‘only’ 29,924 hours in lost productivity to fill-out the original 2000 version of Form 477, it now costs them a jaw-dropping 1,034,620 hours in lost productivity each year to complete the current version – an increase of over 3,400 percent.”¹³ AT&T fails to note that the Office of Management and Budget estimates to which it cites also estimates an increase in the total number of responses

⁹ / CTIA, at 2, citing *Improving Regulation and Regulatory Review - Executive Order*, Exec. Order No. 13,563, January 18, 2011, Section 1, General Principles of Regulation, published at 76 Fed. Reg. 3821 (Jan. 21, 2011). See also CenturyLink, at 4; AT&T, at 3, NCTA, at 2.

¹⁰ / CWA, at 2.

¹¹ / *Id.*, at 3; MPSC, at 1 (“uses the [Form 477] data in many areas of policy-making,” and “the Form 477 data collection process is a very important vehicle for collecting data about the communications market”).

¹² / CWA, at 1.

¹³ / AT&T, at 1, citing See also Office of Information and Regulatory Affairs (OIRA), OMB, Notice of OMB Action (April 6, 2000), http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200003-3060-021#; Office of Information and Regulatory Affairs (OIRA), OMB, Notice of OMB Action (April 26, 2010), http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200912-3060-012#.

(from 510 in 2000 to 3,580 responses today). It is not surprising that reporting hours have increased during a period of rapid broadband growth: Between June 2000 and June 2010, total (business and residential) reportable fixed-location connections grew from 4 million connections to 82 million connections – at a compound annual growth rate of 35% per year, and this number does *not* include mobile wireless broadband.¹⁴ Providers likely generated more than \$40 billion from fixed-location (i.e., excluding wireless broadband revenues) broadband services.¹⁵ As of June 30, 2010, in addition to the 82 million total fixed connections, there were also 71 million mobile wireless connections in service, a substantial increase from the 11 million mobile wireless connections in June 2006.¹⁶

The hours of “lost productivity” that AT&T bemoans pales in comparison with the substantial revenues associated with growing demand for broadband service. Furthermore, it is expected that providers retain information about their business regardless of the government mandate to do so. One would assume that in a multi-billion dollar industry, the carriers would track information about where they deploy service, the prices for the service, and the quality of the service. Presumably industry cannot operate in an information vacuum, and it is entirely reasonable that regulators not be required to do so. NASUCA and Rate Counsel also urge the Commission to consider the purported reporting burden in the context of the resources that industry devotes to lobbying before legislatures and regulators at the state and national levels.

¹⁴ / Federal Communications Commission, *Internet Access Services: Status as of June 30, 2010*, rel. March 2011, at 9.

¹⁵ / This assumes annual revenue per broadband line of approximately \$500.

¹⁶ / Federal Communications Commission, *Internet Access Services: Status as of June 30, 2010*, rel. March 2011, at Table 1.

AT&T alone is estimated to have spent \$115 million on lobbying over the last six years, which puts it among the top five corporate spenders in the United States.¹⁷

AT&T also opposes providing data on prices, service quality and customer satisfaction, address level data, actual broadband speeds, contention ratios, and spectrum metrics, as well as proposals to expand the disclosure of alleged confidential data.¹⁸ For the reasons discussed in Rate Counsel’s initial comments, and in these reply comments, as well as in comments previously submitted by Rate Counsel and NASUCA, the value of these data substantially outweigh the burden that AT&T alleges.

Carriers should be required to submit data to federal and state regulators.

Some initial comments echo the long-stated position of NASUCA and Rate Counsel that service providers should report data directly to state commissions at the same time as they do to the FCC.¹⁹ States need access to timely broadband information to implement policy and to administer broadband grants.²⁰ In its proceeding seeking comment on intercarrier compensation, universal service fund reform, and Connect America, the FCC seeks comment on, among other things, a proposal that would encourage states to provide matching funds for broadband.²¹ Clearly it is equally important that states have access to broadband data at the same levels of timeliness and comprehensiveness as does the FCC. There is absolutely no compelling reason to keep states in the dark for a lag period.

¹⁷ / “The Arsenal of a Lobbyist: Hardball and Cupcakes, An AT&T Veteran Faces His Biggest Beltway Test” Edward Wyatt, *New York Times*, Sunday Business, March 27, 2011, at 8. One wonders how such expenditures count in a productivity calculation.

¹⁸ / AT&T, at 5.

¹⁹ / See, e.g., CPUC, at 3.

²⁰ / *Id.*, at 5.

²¹ / *In the Matter of Connect America Fund*, WC Docket No. 10-90, et al., Notice of Proposed Rulemaking, FCC 11-13 (rel. February 9, 2011).

Carriers' submission of data to other agencies, whether to federal agencies or to state regulators, is not a substitute for reporting data directly to the FCC. Contrary to CALTEL's recommendation,²² the FCC should not require providers to submit their state-filed reports to the FCC as a substitute for national reports. As CWA asserts, relying on states' reporting mechanisms will yield "a patchwork of information with different set of standards and gaps between types of data from one state to the next."²³ Also, not all states collect the data and not all states report the data publicly.²⁴

The FCC should re-impose its own service quality reporting requirements,²⁵ rather than rely on the submission of state-required service quality reports. If the FCC expands Form 477 reporting requirements to encompass service quality data, however, that portion of the reports should not be afforded proprietary treatment – the service quality data that the FCC historically collected through ARMIS 43-05 and 43-06 is public, and there is no reason now to consider the same information proprietary.²⁶ Furthermore, as MPSC observes, the metrics likely are not overly burdensome because providers presumably (hopefully?) are internally tracking service quality.²⁷

NASUCA and Rate Counsel disagree with CALTEL, which does not support reinstatement of ARMIS 43-05 and 43-06.²⁸ CALTEL acknowledges the importance of data on

²² / CALTEL, at 2, footnote 7.

²³ / CWA, at 3.

²⁴ / *Id.*, at 12.

²⁵ / See, e.g., Free Press, at 9; MPSC, at 1-2.

²⁶ / See MPSC, at 2.

²⁷ / *Id.*

²⁸ / CALTEL, at 21.

the customer trouble report rate and out of service repair interval,²⁹ which is precisely the data that ARMIS reports include. Not all states collect this type of information, and states are under increasing pressure to deregulate service, which may result in discontinuing state-mandated service quality reporting. NASUCA and Rate Counsel recommend that the FCC require providers (for voice and broadband, whether offered over wireline, VoIP, wireless) to submit service quality data. Pending any directives to expand the service quality directives to a broader universe of carriers or to modify the information reported, the FCC reports should be immediately re-instated for the nation's Tier 1 ILECs. Despite the purported competition in local markets, service quality problems persist, as is evidenced by recent state PUC investigations into service quality problems,³⁰ which particularly harm the elderly, those in rural areas with few or no alternatives to basic local service, and those with limited disposable income.

²⁹ / *Id.*, at 15.

³⁰ / Numerous state public utility commissions have been and are continuing to grapple with market failures in local markets that lead to inadequate and unreliable telephone service. See, e.g., *In the Matters of Request of Verizon Maryland Inc. to Reclassify Certain Retail Bundled Services to the Competitive Service Basket as Provided by the Commission's Price Cap Plan; Commission's Investigation of Verizon Maryland Inc.'s Service Performance and Service Quality Standards; Commission's Investigation Into Verizon Maryland Inc.'s Affiliate Relationships; Commission's Investigations into Local Calling Area Boundaries and Related Issues; Appropriate Forms of Regulating Telephone Companies*, Maryland Public Service Commission Case Nos. 9072; 9114; 9120; 9121; and 9133, Order No. 83137, February 2, 2010, at 6; *Investigation by the Department of Telecommunications and Cable on its own motion, pursuant to General Law Chapter 159, Section 16, of the telephone service quality of Verizon New England Inc., d/b/a Verizon Massachusetts, in Berkshire, Hampden, Hampshire, and Franklin Counties*, Commonwealth of Massachusetts, Department of Telecommunications and Cable, D.T.C. 09-1, Order on Joint Motion for Approval of Settlement, February 10, 2011; *In the Matter of Investigating the Service Quality of Verizon Virginia Inc. and Verizon South Inc.*, Commonwealth of Virginia State Corporation Commission Case No. PUC-2010-00064, Notification Order, January 25, 2011. The Maryland PSC found that Verizon MD's service quality provided to basic service had suffered because of a business decision to focus on business customers, deploying FiOS and increasing profits by reducing employment. The Massachusetts Department of Telecommunications and Cable approved a settlement agreement, which, among other things, requires Verizon to submit additional service quality reports and undertake a survey of its outside plant in certain wire centers in Western Massachusetts and complete repair work based on the findings of the survey. The Virginia State Corporation Commission, after a written response by Verizon to a "show cause" order and hearings, issued an order to "notify Verizon of its obligation and need to satisfy provisions" of the service quality rules related to out-of-service and repair.

Contrary to the assertions of some, intense competition does not characterize relevant telecommunications markets.

Some assert that the broadband market is competitive, which supposedly renders information such as broadband prices and service quality data unnecessary.³¹ The flawed premise that the broadband market is competitive leads to the erroneous conclusion that the FCC should not expand the Form 477 or re-instate ARMIS requirements. A cable-telecommunications duopoly dominates wireline broadband. And the wireless industry has undergone and may continue to undergo substantial market concentration. NASUCA and Rate Counsel urge the Commission to dismiss unambiguously the erroneous assumption that markets are effectively competitive.³²

Instead information for consumers and competitors is important so that markets can work efficiently and so that regulators can detect and remedy market imperfections (e.g., excessive prices, poor service quality, availability gaps).³³ As does Rate Counsel, CWA observes that market efficiency depends on consumers' having access to information and the information also is useful to the Commission to assess whether markets indeed are competitive.³⁴

Data can assist the Commission in assessing structure of broadband markets. Rate Counsel raised concerns about the importance of reliable data to regulators' ability to monitor the level of competition in broadband markets.³⁵ NASUCA and Rate Counsel support Free Press's

³¹ / See, e.g., Verizon, at 18; AT&T, at 31; NCTA, at 4; CTIA, at 25.

³² / Much of this information would also be important even if markets were effectively competitive.

³³ / Rate Counsel, at 7-8, 11-12.

³⁴ / CWA, at 18.

³⁵ / Rate Counsel, at 8-9.

recommendation that the FCC calculate and report the Herfindahl-Hirschman Index (“HHI”) for broadband markets in census tracts.³⁶

In no event should data gathering efforts be shifted unnecessarily from industry to the FCC and such proposals should be rejected. Furthermore, the FCC should not rely on third-party sources in lieu of direct reporting by the industry.³⁷ NASUCA and Rate Counsel disagree with proposals that the Commission consider existing third-party or publicly available data and should obtain data from NTIA and the Census Bureau.³⁸ Interagency coordination is commendable but it is not an acceptable or sufficient substitute for the FCC’s specific and direct collection of data from the multi-billion dollar industry³⁹ that it regulates and that continues to undergo substantial market concentration, which in turn is jeopardizing the rates, quality, and availability of services offered to consumers throughout the country.

B. CATEGORIES OF DATA

The FCC should collect infrastructure information as well as subscribership data.

NASUCA and Rate Counsel concur with CWA that the Commission should begin collecting broadband infrastructure information beginning in 2015, or at such time as the broadband mapping program of the National Telecommunications and Information Administration (“NTIA”) ends.⁴⁰ The FCC has a separate and unique requirement to monitor the status of the nations’ broadband infrastructure, which does not end with the termination of

³⁶ / Free Press, at 10-12.

³⁷ / Third-party sources can used for verification. CPUC, at 3.

³⁸ / See, e.g., Verizon, at 2, 24; CenturyLink, at 12.

³⁹ / See the discussion of industry revenues at pages 5-6, above.

⁴⁰ / CWA, at 2, 4-5.

NTIA-mandated broadband mapping.⁴¹ However, contrary to AT&T's recommendation that the FCC wait until the NTIA program is complete to seek comment on whether and how to add a broadband availability data collection requirement to the Form 477 program,⁴² the FCC should commit now to so doing. The process of seeking comments and changing data collection requirements often takes many years, and so there would be no harm in setting in place today a mechanism whereby the FCC is fully prepared to collect broadband availability data in 2015, if and as necessary.

NASUCA and Rate Counsel also support MDTC's recommendation that the Commission collect deployment data for wireline voice (including voice over Internet protocol ("VoIP"), wireless voice, wireline broadband service and wireless broadband service.⁴³ The best format would be standardized digital geographic information service coverage maps, or, in the alternative, a range of address segments where the carrier actually provides service.⁴⁴

Broadband pricing information is essential to inform policy making.

Some comments raise concerns about the complexity of reporting pricing and the possibility that pricing data can become stale.⁴⁵ Others support the FCC's collection of price data.⁴⁶ NASUCA and Rate Counsel support CPUC's recommendation that the FCC collect at least the price of the lowest cost stand-alone voice service provided by the service provider and the price of the lowest cost bundle that includes Internet Access and voice, excluding

⁴¹ / 47 U.S.C. § 706.

⁴² / AT&T, at 13.

⁴³ / MDTC, at 2.

⁴⁴ / *Id.* See also NASUCA and Rate Counsel comments submitted in 07-38, recommending GIS format and address ranges for broadband deployment data.

⁴⁵ / See, e.g., CTIA, at 16-17; GCNW, at 7; Verizon, at 17, 19; AT&T, at 23-25; NCTA, at 10-11.

⁴⁶ / See, e.g., MDTC, at 4-5; Free Press, at 3-4.

promotional prices or short term deals, and also support CPUC’s recommendation that in the future “the FCC could focus price data collection on the most common types of bundles purchased by subscribers, so that the data collected on bundles is representative of what most customers order.”⁴⁷ NASUCA and Rate Counsel also support MDTC’s recommendation that broadband providers be required to report the standalone price for products meeting, or reasonably comparable to the Broadband Plan’s target of 4 mbps download and 1 mbps upload as well as prices for the service that receives universal service support.⁴⁸ These should be minimum reporting requirements.

Pricing information is essential so that the FCC and states can assess whether broadband service is affordable (and therefore available), and also to enable the FCC to assess the status of competition.⁴⁹ NASUCA and Rate Counsel disagree with those who assert that alternative sources are sufficient,⁵⁰ including for example Verizon’s continuing position that because third parties report on pricing information for broadband, including private analysts, the FCC need not collect pricing data.⁵¹ Pricing data from other sources is expensive, and not necessarily the

⁴⁷ / CPUC, at 10. See also, MDTC, at 6.

⁴⁸ / MDTC, at 5-6.

⁴⁹ / *Id.*, at 4-5.

⁵⁰ / CenturyLink, at 15.

⁵¹ / Verizon, at 17. As Rate Counsel stated three years ago: “Furthermore, Verizon’s suggestion that there are ‘private analysts’ that already compile pricing data and issue reports is misplaced at best and ludicrous at worst: unless these reports are sufficient to provide the Commission with all of the data it seeks and unless Verizon will ensure that these private analyst reports (which typically are considered proprietary and often are expensive) are made available to the Commission and to the public, these reports are irrelevant to the Commission’s data gathering efforts.” *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 Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Comments of Rate Counsel, August 1, 2008, at 14, citing WC Docket No. 07-38, Report And Order And Further Notice of Proposed Rulemaking, FCC 08-89, released June 12, 2008, at fn 132.

information that the FCC requires.⁵² It is entirely reasonable and appropriate that broadband providers submit pricing data directly to the FCC, and it would be unduly cumbersome and burdensome for the FCC to be required to collect data from diverse sources.

Pricing information should be made readily available to consumers in a manner that can be easily understood, and the clarity of such information would in no way prevent innovative pricing. Similarly carriers should be able to provide the FCC with pricing information in a manner that can be understood. NASUCA and Rate Counsel do not oppose carriers' provision of links to their web pages,⁵³ but such information should supplement rather than substitute for direct reporting of relevant pricing information.

Data on broadband speeds and congestion is essential so that the FCC and states can monitor progress toward broadband goals.

There is general agreement that the FCC should continue to collect speed data according to various tiers of advertised download and upload speeds, and that, in addition, the FCC should collect data for a tier that corresponds with the 4 mbps/1 mbps tier.⁵⁴ There is support for harmonizing speed tiers among various federal agencies.⁵⁵ However Free Press raises a legitimate concern that changing the current speed tiers would “disrupt the continuity of the historical data sets” and recommends that the Commission enhance rather than eliminate information.⁵⁶ NASUCA and Rate Counsel concur that any improvements to Form 477 should

⁵² / Among the sites to which AT&T refers (at 24) is TeleGeography (<http://www.telegeography.com/services/index.php>.) The purchase price of the products is at least \$4,000 and does not necessarily consist of the pricing information that the FCC seeks.

⁵³ / GNVW, at 7.

⁵⁴ / See, e.g., AT&T, at 4.

⁵⁵ / CWA, at 6.

⁵⁶ / Free Press, at 9.

not jeopardize the value of historic data sets, and, therefore, the FCC could add but should not subtract speed tiers.⁵⁷

It is well-accepted that advertised and actual broadband speeds diverge. Presently carriers report advertised speeds. In initial comments, Rate Counsel and others recommended that the Commission require carriers to report actual as well as advertised speeds.⁵⁸ Initial comments, however, raise concerns about the practical limitations on collecting data on actual broadband speeds because, for example, of various factors affecting speeds, some of which are beyond the providers' control.⁵⁹

The recommendation of Free Press that the Commission require providers to report the contention ratios of their last mile, as a proxy for actual speed, has merit, and should be considered.⁶⁰ The contention ratio provides a measure of the degree to which customers are sharing broadband capacity (and therefore is a barometer of the level of oversubscription on a local network), and seemingly would be less burdensome for carriers than reporting the results of

⁵⁷ / As explained by AT&T, "in addition to reporting data for each of the existing speed tiers, providers would report in a new section the total number of connections, for each technology, that are greater than or equal to the CAF-focused speed definition (e.g., ≥ 4 Mbps downstream and ≥ 1 Mbps upstream)." AT&T, at 14.

⁵⁸ / Rate Counsel, at 11. See also, CWA, at 2.

⁵⁹ / See, e.g., GVNW, at 6; Verizon, at 11-12; AT&T, at 39-41. See, however, CWA, at 2, recommending that carriers report actual broadband speed.

⁶⁰ / Free Press, at 5. See NPRM, at para. 59. As explained by Free Press a contention ratio is the ratio of the sum of the potential bandwidth demand to the total bandwidth supply. For example, a cable node with 500 customers all subscribing to 16 Mbps service that share a 38.8 Mbps channel would have a download contention ratio of 206.2 while, by contrast, a Verizon FiOS fiber drop with a total download capacity of 622 Mbps that serves ten 20 Mbps has a download contention ratio of only 0.3 (in other words, in this example, Verizon's consumers would experience significantly less congestion than would the customers of the cable company). Free Press, at 5-6, footnote 7.

speed tests that they conduct throughout their footprints.⁶¹ However, AT&T raises concerns about the drawbacks of reporting contention ratios that also should be considered.⁶²

Comments commend the FCC on the “SamKnows” program, which tests network performance.⁶³ NASUCA and Rate Counsel support collaborative efforts among the FCC and industry to develop and implement tools for measuring broadband performance.

Broadband availability depends on adequate service quality.

Data on broadband service quality is essential to assess the true availability of broadband service. Service quality data is essential to yield accountability, ensure comparable levels of service across geographic markets, protect public safety, and enable new entrants to offer competing and diverse alternatives. For example, a prolonged outage would render broadband service unavailable. Slow installation intervals, similarly, undermine availability. Data on broadband service quality is essential to assess the true availability of broadband service.

Last-mile copper loops “are actually an essential component of the cost-effective, high-quality broadband services that competitive carriers provide”⁶⁴ and, therefore, the quality of (and data collection regarding the quality of) traditional local loops continues to be important. The quality of ILECs’ local loops affects competition and innovation, because other carriers rely on those loops to offer voice and broadband service to carriers’ own customers. As CALTEL states: “While these last-mile copper loops recently have become maligned as outdated or obsolete, they are actually an essential component of the cost-effective, high-quality broadband services that

⁶¹ / *Id.*, at 6.

⁶² / AT&T, at 41-42.

⁶³ / See, e.g., NCTA, at 6.

⁶⁴ / CALTEL, at 3.

competitive carriers provide.”⁶⁵ As stated above, however, NASUCA and Rate Counsel disagree with CALTEL that the “best way for the Commission to monitor such quality is via the ‘off-the-shelf’ data that CALTEL recommends the Commission seek from carriers required to file it at the state level.”⁶⁶ Off-the-shelf data is only relevant if the data is indeed still on the shelf, but for those states where the shelves are bare, the recommendation is not sufficient.

The condition of the nation’s copper network bears directly on public safety. Therefore information is critical. Also in the wake of trend toward deregulation, there is a serious concern that companies are picking and choosing when and where to repair and to maintain their networks. As CALTEL states,

AT&T California was able to restore lost service to residential and small business customers within 24 hours only 50% of the time in 2010. That fact alone suggests there is a potentially significant public safety risk growing out of the deterioration of the copper plant. By monitoring service quality reports, this Commission, and state commissions everywhere, can begin to ascertain the critical public safety risks associated with this issue.⁶⁷

NASUCA and Rate Counsel concur with CALTEL regarding the importance of service quality data and only differ as to the actual reporting mechanism. Where CALTEL would rely on “off-the-shelf” reports that carriers already submit to state PUCs, NASUCA and Rate Counsel urge the re-instatement of national templates and requirements that would yield data collection and reports on critical measures of service quality: timeliness of repair (out-of-service interval; percent of troubles cleared within 24 hours; percent cleared within 48 hours); timeliness of installation (installation interval; percent installed within certain time period); condition of

⁶⁵ / *Id.*

⁶⁶ / *Id.*, at 4.

⁶⁷ / *Id.*, at 11.

network (trouble report rate; repeat trouble report rate).⁶⁸ Furthermore data needs to be sufficient disaggregated geographically so that poor service in rural areas is not masked by relatively better service in more populated areas.

Broadband subscription data is essential.

Consistent with Rate Counsel’s initial comments, NASUCA and Rate Counsel concur with CPUC’s recommendation that the FCC collect data on quantities that subscribe to stand-alone voice separately from those that subscribe to voice as part of a bundle.⁶⁹ The disaggregation of subscription data will assist in assessing customers’ pricing decisions, market concentration, and the level of broadband adoption.⁷⁰

NASUCA and Rate Counsel are not persuaded by CTIA’s reliance on NTIA’s collection of data as a substitute for the FCC’s direct collection of broadband data. Entirely apart from Congress’ directive resulting in NTIA collecting data, the FCC has the independent authority as the expert agency overseeing the telecommunications industry to collect and report broadband data, and in so doing is not “second-guess[ing] Congress’s decision.”⁷¹

⁶⁸ / CWA recommends similar data and also recommends data on quantities of complaints about service provider customer care and billing, answer times to reach a live representative and general customer satisfaction surveys. CWA, at 9. See also CPUC, at 12-13.

⁶⁹ / CPUC, at 11-12.

⁷⁰ / *Id.*, at 12.

⁷¹ / CTIA, at 4. See also Verizon at 9.

C. FREQUENCY AND TIMING OF DATA REPORTING IMPROVEMENTS

Semi-annual reporting is a minimum threshold for the frequency of data reporting

NASUCA and Rate Counsel oppose recommendations that the Commission make the reporting cycle annual,⁷² and instead urge the Commission to retain at least semi-annual reporting requirements.⁷³ The nation is at a critical juncture in its effort to ensure that broadband service is widely deployed, available at reasonable prices, and offered at adequate levels of service quality. A one-year lag in data reporting is too long.

The Commission should implement data reporting requirements and improvements without further delay.

Consumer advocates, regulators, and the public have already lost access to operating data that is essential for their participation in various public policy proceedings. The FCC's unfortunate and premature granting of forbearance regarding, among other things, ARMIS reporting requirements was a major setback.⁷⁴ The hiatus further harmed consumers and regulators. The Commission should expeditiously remedy this lack of data. The FCC should reimpose ARMIS reporting of financial and service quality information and expand these requirements to all carriers. Verizon refers to the "antiquated ARMIS framework" and associated burdens,⁷⁵ but the data included in ARMIS is as relevant today as it was when the FCC prematurely discontinued the reporting requirement.

Contrary to Verizon's assertion that "[t]here is no evidence that ARMIS data provided any practical benefits to consumers (who likely did not even know they existed), and such data

⁷² / See, e.g., Verizon, at 30, AT&T, at 18.

⁷³ / See, also, CWA, at 4; CenturyLink, at 13.

⁷⁴ / See Rate Counsel, at 4-8.

⁷⁵ / Verizon, at 22.

were rarely used by policymakers,”⁷⁶ consumer advocates (representing consumers’ interests) have relied extensively on ARMIS data (financial, service quality) in state and federal regulatory proceedings. It may be inconvenient for industry to inform stakeholders about carriers’ key financial, operating, and service quality metrics, but the burden pales in comparison to the cost to consumers and their advocates of lacking such information. Verizon’s oft-repeated reliance on purported competition which “forces providers to address the full range of service quality issues and to strive to increase customer satisfaction,”⁷⁷ is belied by the numerous state investigations into incumbent local exchange carriers’ service quality.

NASUCA and Rate Counsel reiterate Rate Counsel’s concern about the impact of the FCC’s forbearance decision on its access to service quality data.⁷⁸ As similarly observed by CWA, between 1990 through 2010, the FCC collected service quality data on large ILECs as part of its ARMIS reports, and the FCC should resume collecting service quality data.⁷⁹

NASUCA and Rate Counsel concur with CWA that “forbearance has resulted in serious harm to consumers, as well as to the ability of the Commission, the states, consumers and interested stakeholder organizations to monitor industry developments in order to craft good policy.”⁸⁰

Free Press echoes concerns expressed by Rate Counsel that the Commission requires financial and operational data from carriers, similar to that it had previously collected from large price cap carriers through ARMIS reports.⁸¹ Regulatory oversight depends on access to detailed,

⁷⁶ / *Id.*, at 24.

⁷⁷ / *Id.*, at 25

⁷⁸ / Rate Counsel, at 4-8.

⁷⁹ / CWA, at 10.

⁸⁰ / *Id.*, at 12.

⁸¹ / Free Press, at 8; Rate Counsel, at 4-8.

reliable network infrastructure data.⁸² The Commission should reinstate the financial and operational data reporting requirements that previously applied.

III. CONCLUSION

NASUCA and Rate Counsel urge the Commission to adopt the recommendations set forth in Rate Counsel's initial comments and in these joint reply comments. NASUCA and Rate Counsel commends the FCC's comprehensive efforts to improve, and where appropriate, to streamline its data collection process. NASUCA and Rate Counsel are concerned, however, that with each passing day, valuable data is being lost, and urge the Commission to reinstate ARMIS requirements immediately, pending any additional modifications and improvements that result from this proceeding. Similarly, NASUCA and Rate Counsel urge the Commission immediately to direct providers to submit Form 477 data directly to state regulators and consumer advocates, pending the FCC's improvement to the form so that states can fulfill effectively their shared mandate to promote broadband deployment and adoption.

Consumer advocates rely on reliable, comprehensive data. The absence of such data, or delay in having access to such data, severely hampers them in achieving their goal of representing consumer interests in state and federal proceedings. Accordingly, NASUCA and Rate Counsel urge the Commission immediately (1) to provide states with access to Form 477 data at the same time as providers submit the data to the Commission and (2) to reinstate ARMIS reporting requirements. NASUCA and Rate Counsel then urge the Commission to modify and to

⁸² / Free Press, at 9-10.

improve the Form 477 data reports consistent with the recommendations set forth in Rate Counsel's initial comments and in these joint reply comments.

Respectfully submitted,

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