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February 25, 2018

Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Filing – Modernizing the Form 477 Data Program, WC Docket No. 11-10

Dear Ms. Dortch:

On February 21, 2019, Ross Lieberman (American Cable Association (ACA)) and the undersigned (Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA) met with the following staff of the Wireline Competition Bureau: Steve Rosenberg, Rodger Woock, Kirk Burgee, John Emmett, Suzanne Mendez, Ying Ke, and Ken Lynch. The purpose of the meeting was to continue discussing the benefits and costs of various methods by which smaller cable operators that provide broadband service could collect and report on Form 477 broadband deployment data on a more granular basis.¹

On October 17, 2018, ACA representatives met with Commission staff and submitted that a street segment collection of broadband deployment data adequately balances competing interests, assuming there is a need to obtain more granular data in a timely manner without imposing unreasonable burdens on providers.² Since then, various stakeholders have, in filings with the Commission, supported the street segment approach, while others have proposed the Commission adopt different, more granular collection methodologies. We have had extensive discussions with many ACA members and their mapping vendors about all of these methodologies and have discussed them with other broadband providers and their trade

¹ *Modernizing the FCC Form 477 Data Program, WC Docket No. 11-10, Further Notice of Proposed Rulemaking, 32 FCC Rcd 6329 (2017) (NPRM).*

² *See Ex Parte* Letter from Thomas Cohen, Counsel to ACA, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-10 (Oct. 19, 2018).

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associations. As a result of these discussions, we raised the following points with the Commission staff.

First, it is not clear what problems the Commission is trying to solve – as well as the priority of those problems – in seeking to amend its current census block collection process. The NPRM states that the Commission has “found more granular data [provided by Universal Service Fund recipients] to be extremely useful in understanding issues surrounding fixed broadband deployment in these contexts and believe that it could be useful if residential deployment data in particular were more generally available to us.”³ That, however, is a far cry from identifying and prioritizing specific problems and connecting them to Commission policies. For example, is the Commission’s chief concern more precisely identifying unserved locations in larger census blocks to close the digital divide through its universal service programs? Is it to determine whether urban areas have meaningful broadband competition?⁴ Is it needed for merger reviews? As a result, it is difficult to develop solutions that are well-targeted, and especially ones that could address discrete problems, and be implemented in less time and at less cost. Instead, we appear to be looking for a single solution to solve multiple problems, which only delays making any progress on any of the problems. It also complicates any benefit-cost analysis, making any single solution harder to justify.

Second, the Commission should recognize and account for the fact that broadband providers are situated differently and will be affected differently by the solution it adopts. For instance, because providers that receive universal service support are required to supply point-by-point (local level) deployment data, they should face lesser burdens if the Commission adopts this type of more granular collection. Other, most often larger providers may also be less burdened because they already collect for operational purposes more granular data on their networks in a digital format. Larger providers also have in-house capabilities to provide their homes passed information in ways that could make it easier for them to report deployment data with more precision. By contrast, smaller providers that submit deployment data today using paper maps and rely upon census block maps to submit Form 477 data will face much greater burdens. In the end, the Commission should ensure that providers, particularly smaller providers that have fewer resources and capabilities, are not unreasonably burdened by any methodology it adopts.

Third, each of the more granular collection methodologies proposed so far – be it point-by-point, shapefile, or street segments – has significant, different shortcomings. Shapefiles and street segments are less precise in identifying specific locations. A point-by-point collection is an enormous undertaking, requiring considerable administrative staff and funding to build the

³ NPRM, para. 37.

⁴ See Karl Bode, “How Bad Maps are Ruining American Broadband,” *The Verge* (Sep. 24, 2018), available at <https://www.theverge.com/2018/9/24/17882842/us-internet-broadband-map-isp-fcc-wireless-competition> (last visited Feb. 25, 2019).

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database of all locations and those that are served, and then maintain it. In addition, a point-by-point collection will impose substantial costs on a great many providers. As such, it is a solution that will take years to complete. In sum, the Commission is faced with a difficult and complex calculus in determining which methodology to adopt. ACA reiterated that these decisions should be guided by a consensus on the problems this effort is intended to solved.

ACA thus recommends that the Commission proceed deliberately in adopting a new broadband deployment collection methodology based upon well-defined priorities and consider instituting pilot programs that would assess different methodologies. In the interim, the Commission should again employ a challenge process to assess unserved and served census blocks for purposes of implementing the Remote Areas Fund (RAF) and the follow-on support mechanism to the Connect America Fund Phase II model support program. Because the Commission has other mechanisms, including use of a challenge process, to more precisely determine whether an area is served or unserved, there is no reason to – indeed it should not – delay moving forward on the RAF and auction because it has yet to collect more granular data using Form 477.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.⁵

Sincerely,



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⁵ 47 C.F.R. § 1.1206.