

collection of detailed and accurate broadband and voice services data.³ Instead, ACA submitted that the Commission should, for fixed providers, continue to employ a strategy for gathering broadband and voice data that meshes the granularity and precision of the data required with Commission's specific needs, and that places collection burdens only on those whose data are required and only to the extent necessary.⁴ Form 477 then would be the source for baseline data on broadband and voice services, and the Commission would collect more extensive and more granular data through other mechanisms on an "as needed" basis to achieve specific purposes.⁵ Under this approach, the Commission would largely maintain Form 477's data collection, at least for wireline providers.⁶ In addition, to alleviate burdens on filers without reducing the value of the collection, ACA recommended that the Commission move from a semi-annual to an annual Form 477 data collection.⁷

ACA maintains its views in these reply comments. Most parties concurred with ACA's views that, for fixed providers, the costs of collecting more granular broadband deployment data, including about availability, far outweighed any benefits.⁸ They also agreed that the

³ Comments of the American Cable Association on the Further Notice of Proposed Rulemaking, WC Docket No. 11-10, at 5 (Oct. 10, 2017) ("ACA Comments").

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 5-6.

⁷ *Id.* at 6.

⁸ See, e.g., Comments of NCTA-The Internet & Television Association, WC Docket No. 11-10, at 3-10 (Oct. 10, 2017) ("Each of the proposals identified in the *Notice* for collecting more granular data raises cost and accuracy concerns and none would be capable of providing definitive information on the location of unserved customers.") ("NCTA Comments"); Comments of Verizon, WC Docket No. 11-10, at 10-13 (Oct. 10, 2017) ("The Commission should reject any proposals that would require fixed broadband providers to report deployment data below the census-block level. Such proposals would impose enormous costs on fixed broadband providers without providing any real benefit to the Commission or the public.") ("Verizon Comments"); Comments of the Wireless Internet Service Providers Association, WC Docket No. 11-10, at iv (Oct. 10, 2017) ("As to the Commission's proposed collection of deployment data at a sub-census block level (e.g., via street address or road segments), WISPA submits that such information would not be accurate and questions the utility of such an exercise."); Comments of WTA—Advocates for Rural Broadband, WC Docket No. 11-10, at 8-11 (Oct. 10, 2017) ("[I]t would appear most effective and efficient at this time to stick with census block reporting for FCC Form 477 data collections.")

Commission should require providers to submit Form 477 only once a year.⁹ That said, certain parties either opposed these positions or raised other matters, and ACA addresses them briefly below.

1. Any FCC data/information collection, including the Form 477 collection, should be linked to the purpose for which the data/information are collected.

As ACA explained in its initial comments, voice and broadband subscription data and broadband deployment data are used by the Commission for a great many purposes, and the nature and extent of the data the Commission will need vary depending on each of these purposes.¹⁰ ACA proposed the Commission address these varied needs by using the Form 477 to provide baseline information about subscription and deployment, where it would collect sufficient but not highly detailed and extensive information, and then undertake additional, targeted collections to serve particular needs.¹¹ This approach would strike an appropriate balance between the Commission's need for information and the undue burdens that might be imposed on providers.

Certain commenting parties urged the Commission to require that providers also submit in the Form 477 collection information about additional aspects of their broadband service,

("WTA Comments"); Comments of the Small Company Coalition, WC Docket No. 11-10, at 3 (Oct. 10., 2017) ("This proposal could add significantly to the Form 477 filing burden for the average small company that may not currently have the ability or processes in place to generate and report such granular data.") ("SCC Comments").

⁹ See, e.g., NCTA Comments at 16; Verizon Comments at 9; WTA Comments at 3-6; Comments of NTCA-The Rural Broadband Association, WC Docket No. 11-10, at 7 (Oct. 10, 2017) ("NTCA Comments"); SCC Comments at 3-4; Comments of AT&T, WC Docket No. 11-10, at 16-18 (Oct. 10, 2017) ("AT&T Comments"); Comments of the California Public Utilities Commission, WC Docket No. 11-10, at 2 (Sept. 25, 2017).

¹⁰ ACA Comments at 3-4.

¹¹ *Id.* at 5-6.

including pricing¹² and speed tests,¹³ so that they could investigate such issues as affordability,¹⁴ deceptive advertising practices,¹⁵ and redlining.¹⁶ In no instance did proponents of more detailed data collection provide material evidence as to why all broadband providers, regardless of their location or market status, should be required to submit this information persistently nor why the burdens of the collection would be relatively trivial, not unduly burdening providers. That alone should be their death knell. But even assuming *arguendo* there is merit in these proposals, what is certain is that they would turn the Form 477 collection into an unmanageable and costly process: the Commission would first need to spell out the details and metrics for each piece of data collected, taking into account the fact that many hundreds of providers have different practices and operations, and then the providers, most of whom do not collect and store such data today, at least in any manner the Commission is likely to propose, would need to collect and file the data. While commenters may be cavalier about such an undertaking, the Commission should not. If the proposed information is truly valuable, it should be collected as part of a relevant proceeding, either one where the Commission has sufficient cause to initiate or where an outside party provides sufficient evidence indicating a concern.

¹² Comments of the Open Technology Institute at New America, WC Docket No. 11-10, at 7-8 (Oct. 10, 2017) (“OTI Comments”).

¹³ Filing of Comment by the West Virginia Broadband Enhancement Council, WC Docket No. 11-10, at 3-4 (Oct. 6, 2017) (“WV Comments”).

¹⁴ OTI Comments at 7-8.

¹⁵ WV Comments at 4.

¹⁶ *Id.* at 3.

2. The Commission should reject proposals to use Form 477 to collect more granular broadband deployment data from fixed providers.

In its *2013 Form 477 Order*,¹⁷ by requiring fixed providers to submit their broadband deployment information on a granular census block basis, the Commission greatly increased our understanding about where fixed broadband service is available and where it is not.¹⁸ The Commission has since enhanced this information when necessary, such as in the Connect America Fund “challenge” processes, which only required a limited number of providers to submit additional, more detailed (sub-census block) data.¹⁹ ACA and other commenters contended this process of collecting broadband deployment data by census block in Form 477 and then enhancing it in targeted collections strikes the proper balance between the Commission’s need for information and the burdens a collection imposes on providers.²⁰ By contrast, proposals to collect sub-census block broadband deployment data from all providers as part of the Form 477 collection would provide the Commission with no more data than collected in the “challenge” process, at least to determine unserved areas, yet would burden every provider. That is a bad calculus, and such proposals should be rejected.

In addition to ACA’s support for continuing the Commission’s current approach to collecting sub-census block deployment data, ACA believes the Commission has other avenues to collect more granular data efficiently. For instance, Commissioner Rosenworcel proposed

¹⁷ *Modernizing the FCC Form 477 Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887, 9904-05, para. 35 (2013) (“*2013 Form 477 Order*”).

¹⁸ See e.g., NCTA Comments at 1-2. Of course, this was not cost-free, as few providers collected data on this basis or, if they did, could attest to its accuracy. ACA Comments at 3. See also NCTA Comments at 3 (“Implementing this new requirement placed considerable new burdens on broadband providers, requiring many companies to devote significant resources to updating their internal records and sorting data in ways that do not serve a business purpose.”).

¹⁹ ACA Comments at 4.

²⁰ See e.g., NCTA Comments at 9

recently that the Commission use “crowdsourcing” to determine unserved locations.²¹ ACA applauds the Commissioner for offering this proposal, which may enable the Commission to gain better data without burdening providers. The Commission should explore this and other innovative collection measures before expanding the Form 477 collection to include sub-census block deployment data.

Finally, NTCA proposed that the Commission build on the High Cost Universal Service Broadband Portal (“HUBB”), a reporting mechanism developed by the Universal Service Administrative Company (“USAC”) for high-cost universal service fund recipients, and require broadband providers to collect as part of Form 477 new service installations and service upgrades at existing locations.²² Of course, USAC is collecting the HUBB data as part of the Commission’s responsibility to “protect the federal coffers,” which is not the case with the Form 477 collection. Thus, before requiring providers not taking government funding to collect the same data, the Commission should undertake a new benefit-cost analysis, one that does not factor in any benefit derived from ensuring federal funds are properly expended. In any event, the proposal is far from cost-free as providers, especially smaller ones, do not have the systems or software in place to undertake such a collection. ACA suggests the Commission study the HUBB collection, and then if warranted, propose and seek comment on whether it should be extended to all providers.

3. The Commission should shift to an annual Form 477 collection.

Numerous commenters supported moving to an annual Form 477 collection because the cost has increased so substantially while the benefits from receiving data twice each year have

²¹ “Expanding Broadband Infrastructure in the Granite State,” Statement of Jessica Rosenworcel, Commissioner, Federal Communications Commission, before the United States Senate Committee on Commerce, Science, and Transportation (Oct. 13, 2017), available at <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=3C4AD9DE-B5A1-4519-9A4C-A49757F518A5>.

²² NTCA Comments at 6-7.

diminished.²³ AT&T, for instance, explained that the Form 477 information collection is over 50 times more burdensome today compared to when the semi-annual reporting requirement was adopted in 2000, due to the Commission greatly expanding the collection requirements.²⁴ In addition, AT&T noted that “deployment and subscription data do not change so quickly as to make annual filing inadequate or insufficient.”²⁵ In fact, broadband subscriber growth has slowed significantly – to less than 3 percent annually – with the national penetration rate now exceeding 80 percent.²⁶ In effect, on a national basis, broadband growth is at the “top of the S curve,” with deployment data varying little over any six month period. Growth in any local market may vary from the national average depending on a number of local factors (e.g., local demographics), but because the overall broadband growth rate is low and has been declining for so long, it is unlikely any local growth rate differs materially from the national rate.²⁷ In sum, while the costs of the collection have burgeoned, the benefits from gaining data every six months have shrunk, and an annual collection is more than sufficient to meet the needs of the Commission or any other parties that need to examine the data.

²³ See *supra* note 9.

²⁴ AT&T Comments at 17 (stating that, in 2000, “those burdens amounted to a total of nearly 30,000 hours of extra labor each year for filers of Form 477. Today, after significant expansions of the Form 477 data program in 2004, 2008, and 2013, the yearly industry-wide burden for this program now exceeds 1.6 million hours.”) (internal citations omitted). See also WTA Comments at 5 (“[T]he preparation of a single FCC Form 477 submission can take even a small RLEC at least 10-to-100 man-hours for its clerical, plant and sales personnel to collect and confirm the current service data for the census blocks that it serves.”).

²⁵ AT&T Comments at 18. AT&T added that the Commission’s analyses are “routinely made by comparing the data year-over-year,” even though it publishes reports more frequently. *Id.*

²⁶ “US Telecom and Pay TV, What ‘direct-to-consumer’ means for distributors,” UBS Global Research, at 7-8 (Aug. 16, 2017).

²⁷ See WTA Comments at 3 (“Fixed broadband service deployments and speed upgrades in rural areas occur on timetables that have durations much closer to two years than six months.”). In addition, regarding broadband speeds, most ACA members, as well as larger cable providers, have deployed DOCSIS 3.0/3.1 or all-fiber networks and are offering broadband service at speeds of 100 Mbps or even greater, and thus, because these speeds are already so great, there is little value in collecting data every six-months to see if they are increasing.

4. The Commission should preserve the confidentiality of providers' proprietary information to the maximum extent and not release additional subscriber data.

The FNPRM proposes to make public the number of fixed broadband subscribers at each reported speed on a national level to provide a “meaningful metric” on national adoption rates²⁸ or disaggregated subscriber data “after a certain period of time has passed.”²⁹ In the *2013 Form 477 Order*, the Commission too considered increasing public access to subscription data, but decided to retain the existing procedures – a “simple check-box” – enabling providers to claim confidential treatment for their data.³⁰ Thus, the Commission has consistently, since Form 477 was first created almost two decades ago, decided to permit providers to protect the confidentiality of their subscribership data.³¹ ACA believes that the potential competitive harm that may result from disclosure of subscription data continues to outweigh the benefits and urges the Commission not to deviate from its existing practice.

Connected Nation makes clear in its comments that broadband providers “have a reasonable expectation that their proprietary and competitively sensitive . . . subscriber data should be protected from disclosure.”³² This is especially the case in today’s more vibrantly competitive broadband market, where subscription data are considered highly competitively sensitive and public disclosure, even of limited information, could undermine a provider’s plans to gain an edge on the competition. NCTA, for instance, noted in its comments that it may be possible to even associate speed information on a national level, which the FNPRM proposes to release, with a single provider if the provider’s speed tiers are unique, or that it may be possible

²⁸ FNPRM, 32 FCC Rcd at 6347, para. 53.

²⁹ *Id.* at 6347, para. 54.

³⁰ *2013 Form 477 Order*, 28 FCC Rcd at 9921, para. 79. The Commission also delegated authority to the Wireline Competition Bureau to explore ways to allow greater public access to subscription data. *Id.* at 9922, para. 80.

³¹ FNPRM, 32 FCC Rcd at 6347, para. 53.

³² Comments of Connection Nation, Inc., WC Docket No. 11-10, at 7 (Sept. 14, 2017).

to mine older company-specific subscriber data to determine future trends.³³ Verizon too explained, “[e]ven if aggregated, competitors could use information about subscriber count changes at certain speeds to gain proprietary insight and target areas of competitive overlap.”³⁴ As for smaller providers, WTA makes the critical point that for providers with limited service territories, “this ‘national-level’ subscriber information is already ‘disaggregated,’ or can be relatively easily disaggregated, into subscriber information for individual states and service areas.”³⁵ It urges the Commission to continue to preserve the confidentiality of this subscriber data.³⁶

³³ NCTA Comments at 14.

³⁴ Verizon Comments at 16.

³⁵ WTA Comments at 7.

³⁶ *Id.*

Accordingly, the Commission should not alter its existing practice and adopt proposals to publish either national level subscribership data or older disaggregated provider data. Either proposal has the potential to expose proprietary or competitively sensitive data that could skew the market.

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