

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Development of Nationwide Broadband Data to)	
Evaluate Reasonable and Timely Deployment of)	
Advanced Services to All Americans,)	WC Docket No. 07-38
Improvement of Wireless Broadband)	
Subscribership Data, and Development of Data on)	
Interconnected Voice over Internet Protocol)	
(VoIP) Subscribership)	

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) hereby submits its comments in response to the broadband mapping issues identified in the Commission’s Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹

NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators serving more than 90% of the nation’s cable television subscribers, as well as more than 200 cable programming networks and services. NCTA’s members also include suppliers of equipment and services to the cable industry. The cable industry is also the nation’s largest provider of high-speed Internet access after investing over \$130 billion since 1996 to build out a two-way interactive network with fiber optic technology.

¹ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Service to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnection Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89 (rel. June 12, 2008) (*Report and Order* or *Further Notice*). The portion of the *Further Notice* seeking comment on broadband mapping issues was placed on an accelerated pleading cycle and the instant comments are limited to those issues. NCTA plans to file separate comments on the other issues identified in the *Further Notice*.

INTRODUCTION AND SUMMARY

In the *Further Notice*, the Commission asks a variety of questions related to its data collection efforts with respect to broadband services. In particular, it seeks comment on the “adoption of a national broadband mapping program with the objective of creating a highly detailed map of broadband availability nationwide.”² The Commission asks how such a mapping program could prove useful to other broadband initiatives that are underway and whether the Commission might work with the Department of Agriculture’s Rural Utilities Service in developing and using such a program.³ It also raises a variety of other issues regarding the form and content of data it might collect in connection with a mapping program and how that data, as well as the Form 477 data it already collects, can be used most effectively.⁴

As the Commission found in its most recent Section 706 report, there has been “extensive investment in broadband deployment” over the last few years.⁵ Cable operators, telephone companies, wireless carriers, and satellite providers all make broadband services available across the country,⁶ with cable broadband service already available to 92 percent of all U.S. homes. Not only is broadband nearly ubiquitous, competition among these broadband providers has resulted in increases in service quality and speed, and decreases in price-per-megabit offered. In short, the market is working to meet the needs of consumers.

² *Id.* at ¶ 34.

³ *Id.*

⁴ *Id.* at ¶ 35.

⁵ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, Fifth Report, FCC 08-88 at ¶ 59 (rel. June 12, 2008) (“The data reflect the industry’s extensive investment in broadband deployment, including at higher speeds, as evidenced by increased subscribership for those higher-speed services. The record also reflects that providers are continuing to make significant investments in broadband facilities going forward.”).

⁶ *Id.* at ¶ 69 (“Most households in the United States have access to both DSL and cable modem services. In addition, wireless broadband, fiber-to-the-premises, and broadband over power line are being deployed in many areas.”).

In light of the fact that broadband service is available from multiple providers in most parts of the country, the Commission should focus its efforts on identifying those areas where broadband networks have not yet been deployed. In these comments, NCTA agrees with the Commission and others that broadband mapping can be a useful tool in achieving this objective. There are, however, a variety of challenges that the Commission must consider before establishing such a program. In particular, Congress has not yet determined whether the Commission is the federal agency that is best suited to be responsible for broadband mapping. If the Commission moves forward without waiting for Congress, it should recognize that mapping efforts entail significant costs and it should avoid imposing unnecessary or duplicative requirements on broadband providers. The Commission also should ensure that it takes necessary steps to preserve the confidentiality of any data submitted by broadband providers as part of such mapping programs.

I. NCTA SUPPORTS THE USE OF MAPPING TO IDENTIFY AREAS NOT SERVED BY TERRESTRIAL BROADBAND NETWORKS

The highly competitive marketplace that exists for broadband services limits significantly the need for government intervention. As NCTA has explained previously, however, there is a role for government to play – working with the private sector in promoting broadband availability in areas of the country that are currently unserved by terrestrial broadband services.⁷ There are still remote rural areas across the United States that only have access to broadband service via satellite services (if that) and any initiatives to promote ubiquitous broadband availability (such as the subsidized lending program administered by the Rural Utilities Service) should target these areas.

⁷ See, e.g., Comments of the National Cable & Telecommunications Association, WC Docket No. 05-337 (filed Apr. 17, 2008) at 20; Comments of the National Cable & Telecommunications Association, WC Docket No. 07-38 (filed June 15, 2007) at 5.

The first step in targeting policy initiatives in this way is to identify areas that do not have broadband service available from a cable operator, telephone company, or other terrestrial broadband provider. The Commission's new reporting obligations (under which data will be collected on the basis of census tracts on a revised version of Form 477) should produce helpful information in that regard. In some cases, however, the more detailed information made available through mapping projects might prove particularly useful in helping to ensure that any government support is targeted appropriately and not distributed to areas where the marketplace already is working to meet the needs of consumers. Therefore, NCTA agrees that broadband mapping can be a useful tool in promoting broadband deployment and adoption.

II. THE COMMISSION MUST CONSIDER A VARIETY OF FACTORS BEFORE MOVING FORWARD WITH A BROADBAND MAPPING PROJECT

The fact that mapping may be useful in identifying areas of the country that are not served by terrestrial broadband services does not necessarily mean that the FCC should proceed without full consideration of other relevant factors. For the reasons discussed below, NCTA encourages the Commission, should it decide to initiate a broadband mapping project, to take a cautious approach that avoids duplication and integrates any such Commission action into existing programs.

As an initial matter, NCTA notes that Congress is actively considering legislation that would allocate responsibility (and funding) for broadband mapping to federal and/or state entities other than the FCC. Senator Inouye, Chairman of the Senate Committee on Commerce, Science and Transportation, has introduced S. 1492, the Broadband Data Improvement Act, which directs the Commerce Department to award grants to non-profit entities selected by the states.⁸ These grants would be used for a variety of functions designed to promote broadband deployment and

⁸ Broadband Data Improvement Act, S. 1492 (introduced May 24, 2007).

availability, including mapping initiatives. Similarly, last year the House passed H.R. 3919, the Broadband Census of America Act, a bill introduced by Representative Markey, the Chairman of the House Subcommittee on Telecommunications and the Internet.⁹ Among other things, H.R. 3919 would authorize NTIA to award grants to state and local governments to assist in the development of a broadband inventory map. Given the possibility that Congress will choose to assign responsibility for broadband mapping elsewhere, an extensive effort by the Commission could prove to be a significant waste of public and private resources.

If the Commission nevertheless decides to move forward with a mapping program, it should coordinate fully with state and local entities that already are engaged in similar efforts and take the time to learn the lessons of these pioneering efforts. For example, Connected Nation, a nonprofit organization that works with states to expand access to broadband service by (among other things) mapping broadband availability, has subsidiaries in Kentucky, Tennessee, Ohio and West Virginia, and it also has completed a mapping project in South Carolina. As Connected Nation explained in a recent filing, gathering broadband data and presenting it in a meaningful way is an extremely difficult task. To do the job properly, “it is necessary to work literally on the ground with providers to manually collect much of the data on where broadband is offered. This includes establishing a dialogue with each individual provider to understand what technology has been deployed and how data is stored.”¹⁰ Engaging in this sort of “on the ground” effort in local communities might present a significant drain on Commission resources, as well as the resources of broadband providers.

⁹ Broadband Census of America Act, H.R. 3919 (passed Nov. 13, 2007).

¹⁰ Letter from Raquel Noriega, Director of Strategic Partnerships, Connected Nation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-38, Attachment at 3-4 (filed July 14, 2008) (Connected Nation Letter).

Given the substantial amount of work that already is taking place at the state level,¹¹ and the fact that the Commission’s new reporting requirements “will serve as a highly effective and accurate proxy for broadband availability,”¹² it is not clear whether further action by the Commission, except perhaps in a coordination role, would be helpful in achieving the desired result. As explained by Connected Nation, there is a significant risk that a Commission mapping program “would gather incomplete and dated information,” that it would impose an “insurmountable” burden on smaller providers, and that it would “hamper the progress that is being through public-private partnerships” at the state and local level.¹³ The Commission should give full consideration to how it will deal with these challenges before rushing ahead with such a significant effort.

III. THE COMMISSION MUST CONTINUE TO PRESERVE THE CONFIDENTIALITY OF THE DATA IT COLLECTS

If the Commission establishes any new reporting obligations in connection with a mapping project, NCTA requests that it reiterate and continue its existing policy of preserving the confidentiality of any data it collects regarding broadband deployment and adoption. Given the level of competition that exists for broadband services, providers do not generally disclose information regarding the capabilities of their broadband networks or the success of any particular service offering at the detailed level that would be required for a mapping effort to be effective. If such information were made public, it undoubtedly would be used by competitors in developing their own strategies to compete with other broadband providers. Such information

¹¹ In addition to the Connected Nation programs, there are other state efforts that also are gathering broadband data. The California Broadband Task Force, for example, has produced regional maps indicating broadband service availability. In addition, at least ten states considered broadband mapping legislation this year with laws requiring broadband mapping enacted in four states.

¹² Connected Nation Letter, Attachment at 4.

¹³ *Id.* at 2.

would be valuable in providing both a snapshot of a competitor's network and services at a given point in time and, by looking at changes over time, a roadmap to strategic decisions made over a period of years.

Preserving the confidentiality of such data is fully consistent with Commission precedent. With respect to broadband data, the Commission recognized when it adopted the Form 477 reporting requirement that it was requiring companies to routinely provide competitively-sensitive information.¹⁴ Since then, the Commission consistently has refused to make such information available in response to FOIA requests,¹⁵ and that policy has been affirmed by the courts.¹⁶ The Commission has taken a similar approach with other competitively-sensitive information, such as subscriber counts collected from cable operators¹⁷ and company-specific information regarding universal service contributions.¹⁸ There is no reason for the Commission to depart from these well-established principles if it decides to collect data for a broadband mapping initiative.

¹⁴ *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7758-59, ¶¶ 87-90 (2000).

¹⁵ See Letter from Kirk Burgee, Associate Chief, Wireline Competition Bureau, to Drew Clark, Senior Fellow and Project Manager, The Center for Public Integrity, FOIA Control No. 2006-493 (Sept. 26, 2006).

¹⁶ *Center for Public Integrity v. FCC*, 505 F. Supp. 2d 106, 116 (D.D.C. 2007) (“Accordingly, because the Court finds that disclosure of even redacted data from Part V would be likely to cause substantial competitive harm to filers, the FCC may withhold this data under [FOIA] Exemption 4.”).

¹⁷ See, e.g., *Cox Communications, Inc.; Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12160, 12162, ¶ 8 (2004), *recon. granted in part*, 21 FCC Rcd 2309 (2006); *Comcast Cable Communications, Inc.; Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12165, 12167, ¶ 8 (2004); *Time Warner Cable; Request for Confidentiality for Information Submitted on Forms 325 for the Year 2003*, 19 FCC Rcd 12170, 12172, ¶ 7 (2004).

¹⁸ See *Lakin Law Firm, P.C.*, 19 FCC Rcd 12727, 12729-30, ¶¶ 6-7 (2004).

CONCLUSION

NCTA supports the use of broadband mapping to identify areas of the country where terrestrial broadband service is not yet available, but there are many challenges the Commission must address before establishing a mapping program. In particular, as the Commission considers whether or not it is advisable to initiate a broadband mapping program at this time, it should take heed of ongoing state efforts, pending federal legislation, and the potential limitations of “top-down” approaches to broadband mapping. If the Commission nevertheless proceeds with such a program, it should be mindful of the burdens such programs impose on broadband providers and take care not to impose duplicative or unnecessary requirements. Finally, it should take steps to preserve the confidentiality of any data that is submitted.

Respectfully submitted,

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