

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

In the Matter of)	
)	
Establishing the Digital Opportunity Data Collection)	WC Docket No. 19-195
)	
Modernizing the FCC Form 477 Data Program)	WC Docket No. 11-10

**COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”)¹ hereby submits its comments with respect to the rulemaking portion of the Commission’s *Second Report and Order and Third Further Notice of Proposed Rulemaking*, FCC 20-94, released July 17, 2020, in the referenced proceeding (“*Third FNPRM*”). These comments are filed in accordance with the schedule established in 85 *Fed Reg.* 50911 (August 18, 2020).

WTA supports the efforts of the Commission to create a new data collection to replace the flawed FCC Form 477 system, to produce more accurate broadband deployment maps, and to develop and implement efficient mechanisms to verify broadband mapping and availability data. It believes that the most critical element of this task is the accurate definition, pinpointing and counting of “locations” for the purposes intended. Whereas the initial definitions of “locations” for broadband mapping purposes may be similar to those for Connect America Fund (“CAF”) compliance purposes, their ultimate usage and development are likely to differ significantly. This is due to: (a) the need for current mapping data to determine where various broadband services

¹ WTA is a national trade association representing more than 350 rural telecommunications providers that offer voice, broadband, and video-related services in rural America. WTA members are predominately rural local exchange carriers (“Rural LECs”) that serve some of the most rugged, remote and/or sparsely populated areas of the United States.

and speeds are available and to target high cost support to the places where they are not; versus (b) the very different need for more stable location data to evaluate whether long-term high-cost support programs have been used for the multi-year broadband network construction and deployment purposes for which they were intended. WTA also supports the requirement of engineering certifications for all biannual broadband data filings, and the structuring of challenge processes to limit them solely and entirely to questions regarding service availability and to screen out irrelevant or frivolous filings.

I
Definition of “Location” for
Data Collection, Fabric and CAF Build-Out Purposes

The Broadband DATA Act² requires the Fabric to include all “locations” where “fixed broadband Internet access service can be installed.” *Third FRPRM* at ¶169. With respect to CAF build-out obligations, a “location” is a “residential or business location to which providers would extend mass market broadband and voice services.” *Id.* Residential “locations” are based upon the Census Bureau’s definition of “housing unit,” whereas there appears to be some discretion and judgment regarding the “location” status of small businesses that may be expected to demand consumer-grade broadband services. *Id.* For both residential and business “locations,” the controlling factor for counting purposes is whether the carrier is commercially offering the requisite mass market broadband services to the residence or the business at the location and would be able to provide the services within 10 business days if the customer placed an order for them (rather than whether a customer at the “location” is actually subscribing to the service at the time of counting).

² Broadband Deployment Accuracy and Technology Availability Act, Public Law No. 110-130 (“Broadband DATA Act”).

Single-family homes are relatively easy to identify as “locations” for mapping and CAF compliance purposes. However, the counting of residential “locations” is complicated by the presence of duplexes, triplexes and other multi-family homes; apartment buildings; apartments above ground floor businesses; mobile homes; recreational vehicles renting spaces in RV parks for months at a time; vacation homes; and multiple homes on farms and ranches for relatives and workers. Likewise, the counting of small business “locations” is complicated by home-based businesses; and by various farm and ranch buildings that may require broadband service for Precision Agriculture applications. With respect to both residential and business “locations,” counting is further complicated by changes due to the fact that new “locations” may be constructed and occupied, while existing “locations” may be abandoned, moved or torn down.

WTA believes that the complexities and fluctuations in the counting of “locations” require somewhat different approaches for broadband mapping and CAF build-out purposes. In the mapping situation, current accuracy is of substantial importance, and “location” counts and patterns should be modified at least every two years as residential and small business circumstances change. However, in the CAF build-out situation, high-cost support is calculated and accepted -- and broadband networks are planned, constructed and upgraded -- on the basis of long-term (commonly ten-year) contract-like commitments that depend upon relatively accurate, predictable and stable numbers of “locations.” Whereas the Commission and industry have been trying to develop reasonable and equitable ways of adjusting support and actual “locations” in the model-based support and CAF Phase I auction situations and whereas the Commission is introducing a mid-course “location” adjustment mechanism with respect to Rural Digital Opportunity Fund (“RDOF”) auction support, such adjustments are generally feasible only if the differences and fluctuations in “location” numbers are relatively small and stable. A CAF recipient

that accepts support and deploys a broadband network designed to serve an area containing a particular number of initially estimated “locations” is likely to suffer severe financial hardships or disruptions if during the next six-to-ten years population migrations, more accurate “location” counts or different “location” definitions result in a significant difference between the initial number of estimated “locations” and the number of subsequent “locations” used by the Commission to determine compliance with broadband build-out obligations.

One solution may be to remove those classes of “locations” likely to fluctuate significantly over a ten-year period from the calculation of “locations” at least for CAF build-out purposes. Another may be to measure and monitor CAF build-out obligations on the basis of fiber route miles or square miles or other relevant measure of area served as well as the number of “locations” able to be served, and to require return of CAF support only if a recipient failed to deploy broadband to both a minimum portion of the specified area as well as a minimum portion of the initial estimated number of “locations.” Whatever the ultimate definition of “location” and resolution of the foregoing issues, WTA’s point is that the counting and use of “locations” for broadband mapping purposes is likely to entail significant differences from the counting and use of “locations” for CAF build-out purposes, and that such differences need to be recognized and adjusted for.

WTA agrees with USTelecom³ and other industry members that “mass market services” (which are subscribed to by both residential and small business customers) constitute a more accurate and relevant reporting category than separate “residential” and “residential-and-business” categories. The latter dual categories are not relevant from a service availability standpoint, and

³ Letter from B. Lynn Follansbee to Ms. Marlene H. Dortch, WC Docket No. 19-195, dated August 14, 2020, at p. 1.

are not currently used by most carriers for business coding purposes or for FCC Form 477 reporting.

WTA also agrees with USTelecom⁴ and other industry members that most non-mass market services (such as commercial multi-line services provided via contract) should not be required to be reported and mapped due to proprietary information and antitrust concerns. However, because they receive (or are eligible to receive) Universal Service Fund (“USF”) support, schools, libraries and rural health care (“RHC”) centers should be included in the subject broadband data collections and included on the resulting broadband service maps. Such inclusion will highlight the areas where schools, libraries and RHCs do not have access to the level of broadband service that is supported by the applicable USF program, and prevent overbuilding and waste of USF resources with respect to schools, libraries and RHCs that already have available the requisite level of broadband service.

Finally, WTA has previously informed the Commission that many rural “locations” do not have specific street or postal delivery addresses. Whereas polygon shapefiles and geographic coordinates are generally available, there are no usable street addresses for some rural “locations.”

II Engineering Certification of Biannual Filings

WTA supports the Commission’s proposal that engineering certifications be required for the biannual filings of fixed broadband service providers as well as mobile broadband service providers. *Third FNPRM*, at ¶112. WTA understands that such an engineering certification will entail an additional regulatory burden and cost for its members. However, WTA members have long been plagued and disadvantaged by exaggerated and inaccurate claims of broadband service availability from other entities. The contemplated engineering certifications will help improve the

⁴ *Id.*

accuracy of data submissions as well as related advertising claims by ensuring that fixed service providers take into account network performance data showing ACTUAL service availability in different areas across the country.

III Challenge Process

WTA commends the Commission for developing and proposing a challenge process that generally appears to be fair and reasonable.

WTA particularly applauds the Commission's efforts to make it clear to consumers, governments and other entities that challenges to fixed broadband service data are strictly limited to questions of service availability, and are not to stray into service quality complaints (including the actual speeds and latencies received at a particular location). The Commission has formal and informal Section 208 complaint processes for the airing and litigation of quality of service issues.

To implement this critical service availability versus service quality distinction, the Commission should adopt a review or screening process to eliminate irrelevant or frivolous challenges before a service provider is required to prepare and file a response. This process can entail an initial review and dismissal by the Commission before it serves an irrelevant challenge upon the service provider. In the alternative, it could be designed as a two-step process wherein the challenge is served upon a service provider which then has the option of filing a *bona fide* one-sentence "request to dismiss as irrelevant" with the Commission in lieu of a formal response. If the Commission reviews the "request to dismiss" and agrees, it can dismiss the challenge without further action. If the Commission disagrees and finds the challenge to be relevant and appropriate on its face, it can serve the challenge again upon the service provider and require a response within an appropriately shortened time period.

WTA proposes also that the Commission reduce the drop-down menus for service availability challenges from both consumers and other entities. The categories “no actual service offerings at location(s),” “provider denied request(s) for service” and “reported speed not available” are clearly related and applicable to service availability. However, “provider failed to install within 10 business days” and “installation(s) attempted but unsuccessful” are not clearly and wholly related to service availability, and can involve lack of customer cooperation, inadequacy of customer premises equipment, and weather disruptions. The latter two situations are better and more appropriately addressed via the Commission’s informal Section 208 complaint process if customers believe that delayed or unsuccessful installations are the service provider’s fault. Only if such installation complaints are numerous and demonstrate a pattern on the service provider’s part should they become relevant to its service availability representations and data submissions.

Finally, WTA agrees with USTelecom⁵ and others that sixty (60) days rather than thirty (30) days is the more reasonable and appropriate time period for responses to broadband data and mapping challenges. Particularly during the initial data collection and mapping stages, there could be large numbers of challenges requiring investigation and responses. WTA members and many other fixed service providers have small staffs that already are responsible for multiple technical, customer relations and administrative tasks. They simply do not have the time or resources to drop their critical daily operational tasks, and investigate and respond to numerous consumer, government and other challenges to their service availability data.

⁵ *Id.* at p. 3.

IV Conclusion

WTA generally supports the efforts of the Commission to create a new data collection to replace the flawed FCC Form 477 system, to produce more accurate and current broadband deployment maps, and to develop and implement efficient mechanisms to verify broadband mapping and availability data. It recognizes the difficulties and complexities of defining and counting “locations” for various purposes. Whereas the Commission’s broadband mapping program may initially employ “location” definitions that have been developed and used for CAF compliance purposes, WTA believes that there are very substantial and consequential differences between the need for current and accurate “location” data for service availability mapping and USF targeting purpose vis-à-vis the need for stable and accurate “location” data for evaluating long-term high-cost support and network construction programs. WTA supports the requirement of engineering certifications for all biannual broadband data filings, and the structuring of challenge processes to limit them solely and entirely to questions regarding service availability and to screen out irrelevant or frivolous filings.

Respectfully submitted,
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