

**Before the
Federal Communications Commission
Washington, DC**

In the Matter of)
)
Local Telephone Competition and Broadband) WC Docket No. 04-141
Reporting)

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION™

CTIA – The Wireless Association™ (“CTIA”),¹ presents the following comments on the Commission’s above-captioned *Notice of Proposed Rulemaking* on proposed changes to the FCC Form 477 (the “NPRM”).²

I. FORM 477 SHOULD BE TECHNOLOGICALLY AND COMPETITIVELY NEUTRAL

Because Form 477 is used to collect data from a disparate group of service providers, including CMRS providers that offer advanced and high-speed services, the Commission should take specific steps to ensure that the form is technologically and competitively neutral. The form has been designed (and continues to be designed) in a Common Carrier or Wireline Competition docket proceeding, and clearly suffers from a wireline focus. Specifically, CTIA urges the

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² *Local Telephone Competition and Broadband Reporting, Local Competition and Broadband Reporting*, WC Docket No. 04-141, CC Docket No. 99-301, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 04-81 (rel. Apr. 16, 2004) (“NPRM”).

Commission to ensure that the form properly accounts for the mobile nature of CMRS service; the varying bit-rates that some broadband technologies, such as wireless, provide; the different ways that wireless services are marketed and sold; and the different geographic areas over which wireless carriers are licensed.

Part I Column (e) of the proposed Form 477 would require that CMRS providers distinguish between residential and business customers. The distinction between residential and business users is a relic of state and federal legacy wireline carrier rate regulation. Congress and the Commission have effectively rendered this distinction irrelevant in the CMRS context.³ Indeed, while the Commission requires such data at Part II of Form 477 (for wireline and fixed wireless local telephone services), it appropriately does not request such data in Part III of Form 477 (for mobile wireless service). In any event, as a business matter mobile wireless providers' billing and customer care databases do not distinguish between residential and business customers and should not be required to do so solely for purposes of reporting data to the Commission on Form 477.

The Commission states that “consumers increasingly can choose among telephone service offerings that permit both local and long distance calling, often for a single price.”⁴ For this reason, the Commission proposes “to require carriers to report the extent to which they are also the end user’s default interstate long distance carrier.”⁵ As a threshold matter, this

³ See 47 U.S.C. § 332(c) (preempting state rate regulation and authorizing the Commission to detariff CMRS services); 47 C.F.R. § 20.15(b) (forbearing from imposing Title II rate regulation on CMRS).

⁴ *NPRM* at ¶ 8.

⁵ *Id.* at ¶ 8.

information is well beyond the scope of a *local* competition data collection. More importantly, however, there is no valid reason for requiring CMRS providers to report the extent to which they also are the end user's default interstate long-distance carrier. Congress already has spoken to the question of whether CMRS providers' provision of long distance services raises competitive issues, and determined that it did not.⁶ Absent a Commission finding to the contrary, provision of this information can serve no compelling purpose.

The Commission also should account for varying bit-rates for some broadband technologies, such as wireless, and direct filers to consider the end-user's authorized *maximum* usage speed on a connection when categorizing connections by "speed." Wireless broadband connection speeds can vary from moment to moment and location to location depending on factors such as distance from the nearest cell site, number of other simultaneous users in the user's current cell site, and the speed at which the user is traveling. The only way to report such lines consistently is by reporting based on the maximum rate available given the equipment and the rate plan.

II. THE COMMISSION SHOULD CONSIDER THE IMPACT OF THE PROPOSALS ON CMRS PROVIDERS AND THE MARKETPLACE GENERALLY

The Commission proposes to extend the Form 477 program for five years beyond the current scheduled sunset date, and to generally expand the scope of information and the number of entities subject to this filing obligation.⁷ A number of the proposed changes to Form 477 would increase CMRS carriers' reporting obligations, increasing a burden that is already

⁶ 47 U.S.C. § 332(c)(8) (CMRS providers "shall not be required to provide equal access to common carriers for the provision of telephone toll services").

⁷ NPRM at ¶ 6.

growing as a result of CMRS providers' significant deployment of broadband services throughout their markets. Today, CMRS providers are rolling out mobile wireless broadband services at an accelerating pace, providing affordable Internet access offerings at speeds comparable to DSL and cable modem services – but with the unique benefits of mobility. Multiple other services offerings, that we cannot foresee today, will become available over the next few years. If many of the proposed changes in Form 477 are required, CMRS providers will thus increasingly be compelled to monitor and evaluate their broadband deployment efforts, often in ways they would not ordinarily undertake but for the Form 477 requirement.

In assessing the “potential benefits and burden of these revisions,” the Commission needs to consider the cumulative effect of its various information collections on telecommunications providers.⁸ The Commission already collects a myriad of information from CMRS providers, and CMRS carriers increasingly are subject to additional federal, state, and local regulatory mandates.⁹ These burdens are particularly acute for CMRS providers who operate in a hyper-competitive environment characterized by highly elastic demand making them less able to absorb regulatory costs. Similarly, the Commission should recognize that broadband services increasingly are provided by competitive entities that are not, and should not be, subject to extensive regulation, such as CMRS carriers. As a result, these entities often do not have large staffs devoted to regulatory reporting – a savings that benefits consumers. The Commission therefore should carefully weigh the costs and benefits of some of the levels of detail in the

⁸ *See id.* at ¶ 6.

⁹ *See, e.g.*, 47 C.F.R. §§ 1.815 (EEO reports), 1.1152 (regulatory fees), 43.61 (international traffic and revenue reports), 54.711 (universal service reporting).

proposed form, and should impose an information collection on CMRS providers only if the quantifiable benefits of the information collection clearly outweigh its additional costs.

For example, the Commission has determined that, for purposes of section 706, “advanced services” means connections in excess of 200 kbps in both directions.¹⁰ Once that determination is made the Commission should only request data on whether services it has defined as “advanced” are being deployed, nothing more. The Commission does not also need to require filers to report on broadband connections in four categories of speed above 200 kbps. Therefore, columns (g) through (j) in Part I.A. of the proposed form should be deleted.

In keeping with the theme of appropriately tailoring the regulatory burden of the reporting obligation, section 706 mandates that the Commission conduct periodic inquiries into “whether advanced telecommunications capability is being *deployed* to all Americans in a reasonable and timely fashion.”¹¹ It therefore is sufficient that the Commission inquire into whether high-speed and advanced services are *available*, and carefully consider the costs and benefits of mandating a reporting requirement that is more burdensome than contemplated by the statute. CTIA proposes that entities be required to report only on the geographic areas where services are available, rather than on the specific number of customers that subscribe to such services.

¹⁰ See, e.g., *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. 04-54, Notice of Inquiry, 19 FCC Rcd 5136, 5139 (2004) (“*Section 706 NOI*”).

¹¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) at § 706 (b) (reproduced in the notes under 47 U.S.C. § 157) (emphasis added).

This issue is of particular concern to CMRS providers, because mobile wireless service, more likely than any other type of broadband service, often combines regular voice service with advanced data functionalities. As this bundling and pricing trend continues, it will become even more difficult for CMRS providers to identify with specificity the precise number of customers that have access to a particular data speed. While it may be possible to mine such data manually from wireless carriers billing systems, having to do so for a regular reporting requirement – or to implement automated modifications to the billing system to capture such data – would be overly burdensome relative to the potential benefit.

Similarly, the Commission should carefully consider whether the benefits outweigh the costs of requiring reporting by zip code. If data below the state level are deemed necessary, the Commission should consider permitting CMRS carriers to report based on their licensed service areas (*i.e.*, MSAs, RSAs, or BTAs) for purposes of their reporting.

Accordingly, CTIA proposes that the Commission: (1) amend Part I of the proposed form to require filers to indicate whether they make high-speed and advanced service connections available to end-user customers in a given state, and (2) amend Part V of the proposed form, which requires filers to identify zip codes where they have at least one broadband customer, to collect data from wireless carriers at the state or licensed service area level.

III. CONFIDENTIAL TREATMENT OF DATA

The Commission stated that it “do[es] not propose to change existing policy regarding the overall protection we afford Form 477 data in connection with competitively sensitive information.”¹² CTIA agrees that such information should be released only on an aggregated

¹² *NPRM* at ¶ 12.

basis.¹³ Any publication of individual company data would seriously compromise carriers' confidentiality and would harm the competitive marketplace.

The Commission also seeks comment, however, “on whether historical aggregated information ... remains competitively sensitive after the passage of time, such as a year or two” and should be made publicly available after a given period of time.¹⁴ CTIA also opposes releasing company-specific data after a set period of time. It is well established that data relating to carriers' subscribership levels constitutes commercial proprietary and financial information.¹⁵ Individual carriers release this information to the public according to their own business and commercial needs – if at all – and as such data is not customarily made available to the public, it is entitled to statutory legal protections.¹⁶ Carriers submit commercially-sensitive information with an expectation of privacy and that expectation of privacy does not uniformly expire after a set period of time. Some data would remain commercially sensitive for a short period of time while other information would continue to be commercially sensitive for several years. The Commission should not substitute its own judgment for that of the carriers as to whether and for how long the Form 477 data is competitively sensitive.

¹³ *See id.* at ¶ 12 n.25.

¹⁴ *Id.* at ¶ 12.

¹⁵ *See Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Report and Order, 12 FCC Rcd 17859, ¶¶ 9-10 (1997).

¹⁶ *See* 5 U.S.C. § 552(b)(4); *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, & 4 (1998).

