



Federal Communications Commission
Washington, D.C. 20554

June 16, 2005

Small Entity Compliance Guide

Local Telephone Competition and Broadband Reporting (FCC Form 477)

DA 05-1676

WC Docket No. 04-141

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—to comply with the new rule/s adopted in the above-referenced FCC rulemaking docket/s. This Guide is not intended to replace the rule/s and, therefore, final authority rests solely with the rule/s. Although we have attempted to cover all parts of the rule/s that might be especially important to small entities, the coverage may not be exhaustive. As a result, in any civil or administrative action against a small entity for a violation of a rule or rules, the content of the Small Entity Compliance Guide may be considered only as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. This Guide may not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC (1-888-835-5322)

Fax: 202-418-0232

fccinfo@fcc.gov

COMPLIANCE REQUIREMENTS

Objectives of the proceeding

In November 2004, the Commission adopted a modified Form 477 to improve its local telephone competition and broadband data gathering program and extended the program for five years. The information collected on Form 477 helps the Commission and the public understand the extent of local telephone competition and broadband deployment, which is important to the nation's economic, educational, and social well-being.

Rules and procedures that the Commission amended

- The Commission **eliminated reporting thresholds** that previously had exempted certain facilities-based providers of broadband connections to end-user locations, local exchange carriers, and facilities-based providers of mobile telephony services from filing Form 477 (47 C.F.R. §§ 1.7001, 20.15, and 43.11).
- The Commission **adopted a modified Form 477** and **instructions** for completing and filing the form.
- The Commission **extended** the Form 477 program through March 2010.

Compliance date and subsequent deadlines

- **The compliance date is September 1, 2005.**

Beginning with the Form 477 filing due no later than September 1, 2005, **all** facilities-based providers of broadband connections to end-user locations, **all** local exchange carriers, and **all** facilities-based providers of mobile telephony services must file the modified Form 477 that the Commission adopted in November 2004.

- **Deadlines for subsequent semi-annual filings.**
 - No later than **March 1** (reporting data as of December 31 of the preceding year).
 - No later than **September 1** (reporting data as of June 30 of the same year).

Impact on small entities

A small entity is required to file Form 477 semi-annually if it is (1) a **facilities-based broadband provider** with at least one broadband connection in service to an end-user location, (2) an incumbent or competitive **local exchange carrier** (ILEC or CLEC) with at least one voice telephone service line, or (3) a **facilities-based provider of mobile telephony service** to at least one subscriber.

- For the purposes of Form 477, a **facilities-based broadband provider** is a provider of **broadband connections** to **end-user locations** that (1) **owns** the portion of the physical facility that terminates at the end-user location, (2) obtains unbundled network elements, special access lines, or other leased

facilities that terminate at end-user locations and **provisions/equips** them as broadband, or (3) **provisions/equips** wireless channels to end-user locations over licensed spectrum or over spectrum that the provider uses on an unlicensed basis. Entities must file a separate Form 477 to report information about in-service broadband connections for **each state** in which the entity has at least one facilities-based broadband connection.

Examples of small entities that may be facilities-based broadband providers for purposes of Form 477 include cable TV systems, competitive LECs, incumbent LECs, and satellite carriers.

Additional examples include municipalities or other governmental entities that deploy broadband connections to homes and/or businesses; investor-owned or public utilities that provide, on commercial basis, “Access BPL” (i.e., the use of electric power lines to provide Internet connectivity to a home or business premises from an outside source); and wireless ISPs (or “WISPs”) that equip or provision broadband connections to end-user locations by using their own equipment and spectrum on an unlicensed basis.

These examples **are not** an exhaustive list.

- **Broadband connections** are lines (or wireless channels) that terminate at an end-user location and enable the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction. (Providers of terrestrial mobile wireless broadband services should think in terms of subscribers whose wireless modem laptop cards or other mobile devices are capable of sending or receiving data at speeds in excess of 200 kbps.)
- **End users** are residential, business, institutional, or government entities who use services for their own purposes and who do not resell those services to other entities.

A facilities-based broadband provider **does not necessarily have a retail relationship** with end users of the broadband Internet-access services that are delivered over its broadband connections. For example, the end users of Internet-access services that are delivered over a small entity’s broadband connections might be billed by an ISP that is affiliated with it – possibly through a holding company. To meet its obligation to report **all** the information about its facilities-based broadband connections that is specified on Form 477, the facilities-based broadband provider might need to consult with its affiliate or with its holding company and/or arrange for its holding company to file, and certify, Form 477 on its behalf.

- A **local exchange carrier** is an entity that is engaged in the provision of telephone exchange service or exchange access service (47 U.S.C. § 153(26)).
- A **facilities-based provider of mobile telephony services** is an entity that serves **mobile voice telephony subscribers** over its **own facilities**. These subscribers include subscribers the entity bills directly and also subscribers that are billed by a mobile telephony service reseller. Entities that **purely resell** mobile telephony service should not file Form 477.

- A **mobile voice telephony subscriber** is a mobile handset, car-phone, or other revenue-generating, active, voice unit that has a unique phone number and that can place and receive calls from the public switched network.
- **Own facilities** means spectrum for which the mobile telephony service provider holds a license, or that it manages.
- The term **state** includes the District of Columbia and the “Territories and possessions” (47 U.S.C. § 153(40)).

Steps a small entity must take to comply with the new rules

For each semi-annual filing, a small entity should:

1. Determine whether it must file and the number of required Form 477 files.

- Obtain the Form 477 (which is an Excel spreadsheet) and the instructions for a particular filing from www.fcc.gov/formpage.html#477, where they will be posted several weeks in advance of the filing deadline.

Entities that are not able to download the Form 477 and instructions can obtain assistance by e-mailing 477INFO@fcc.gov or telephoning (202) 418-0940 or (202) 418-0484 (for users of TTY equipment) and asking to speak with a member of the FCC Form 477 Team. These materials also may be purchased from the FCC’s duplicating contractor, Best Copy and Printing, Inc., telephone (202) 488-5300 or (800) 378-3160, fax (202) 488-5563, TTY (202) 488-5562, or e-mail to fcc@bcpiweb.com.

- Identify those specific states in which the small entity is a facilities-based broadband provider, LEC, or facilities-based provider of mobile telephony services.

Form 477 must be filed on a **state-by-state** basis. Information about operations in different states **may not** be combined in a single Form 477.

- Identify those states (if any) in which the small entity has both ILEC operations and other types of operations (“non-ILEC” operations) in the state. These two categories of operations must be reported on separate forms. A small entity may, however, choose to combine information for multiple ILEC operations (in a single state) into a single Form 477. Similarly, it may choose to combine information for multiple non-ILEC operations (in a single state) into a single Form 477.

2. Complete the Cover Page and name each Form 477 file.

- For **each** Form 477s that must be submitted, answer **all** eight questions in the **Cover Page** section of the form.
- Once all questions on the Cover Page are answered, a **suggested name** will appear in the “Example” box to the right of question 7 of the Cover Page. The suggested name provides a “helpful hint” for naming completed forms according to the required file-naming convention, which is specified at page 12 of the instructions for the form.

3. Complete the relevant Parts of each Form 477 file.

Form 477 has five Parts (Part I through Part V) in addition to the Cover Page. A small entity should complete **only** the **Parts** that apply to its situation.

Within any of **Parts I, II, or III** of the form that **does** apply, a small entity should **fully** complete those particular **lines** that apply to its situation. (Lines in Parts I, II, and III that do not apply may be left blank.)

- **Part I.A: Facilities-based broadband providers** must complete the relevant **lines** in Part I.A (and also the relevant **columns** in Part V, which are discussed later in this guide). In many cases only one or two of the ten lines in Part I.A will be relevant to the small entity's situation.

Each line in Part I.A (and column in Part V) refers to a **particular broadband technology**. If more than one technology is used to deploy a particular broadband connection, that connection should be reported according to the technology used where the connection terminates at the end-user location.

- **Part I.B: ILECs that report DSL connections** in Part I.A must answer question 11 in Part I.B. **Cable TV systems that report cable modem connections** in Part I.A must answer question 12 in Part I.B. All other facilities-based broadband providers should **skip** Part I.B.
- **Part II: CLECs and ILECs** must complete the relevant lines in Part II. Part II has five lines. A small entity may find that only Line 1 of Part II applies to its situation.
 - All LECs that provide **voice telephone service** to end users must fully complete **Line 1** of Part II – and also **column (j)** in Part V. This includes facilities-based LECs and also LECs that provide voice telephone service to end users by reselling the services of unaffiliated LECs or by using the facilities of unaffiliated LECs.

Voice telephone service is, for purposes of Form 477, local exchange or exchange access services that allow end users to originate and/or terminate local telephone calls on the public switched network, whether used by the end user for voice telephone calls or for other types of calls carried over the public switched network (for example, lines connected to facsimile equipment or lines used occasionally or exclusively for “dial-up” connection to the Internet).

- A LEC should complete **Line 2** of Part II **only if** it makes its voice telephone service available to unaffiliated LECs for resale under the type of wholesale arrangement (sometimes called “Total Service Resale”) specified in the Telecommunications Act of 1996, in which case the relevant state regulatory commission would have determined the wholesale rates that the LEC must charge (47 U.S.C. §§ 251(c)(4), 252(d)(3)). The obligation to provide wholesale services in this way applies only to ILECs, and certain rural ILECs may be exempt (47 U.S.C. § 251(f)).
- A LEC should complete **Line 3** of Part II **only if** it makes its voice telephone service available to unaffiliated LECs for resale in some way other than “Total Service Resale” (as discussed immediately above), such as by reselling a tariffed service or negotiating a commercial arrangement.

- A LEC should complete **Line 4** of Part II **only if** it provides unbundled network element (UNE) loops, without switching, to unaffiliated LECs at cost-based rates. The obligation to provide unbundled network elements (UNEs) at cost-based rates applies only to ILECs (47 U.S.C. §§ 251(c)(3), 251(d)), and certain rural ILECs may be exempt (47 U.S.C. § 251(f)).
- A LEC should complete **Line 5** of Part II **only if** it provides UNE loops, with switching (the so-called “UNE-Platform”), to unaffiliated LECs at cost-based rates. Again, the obligation to provide UNEs at cost-based rates applies only to ILECs, and certain rural ILECs may be exempt.
- **Part III: Facilities-based mobile telephony service providers** must answer the two questions in Part III of the form.
- **Part IV:** Part IV of the form is available, on an as-needed basis, for notes to explain particular pieces of data filed elsewhere in the form.
- **Part V:** A LEC that completes Part II must also complete **column (j)** of Part V to report the ZIP Codes in which it has at least one end user of its voice telephone service. A **facilities-based broadband provider** that reports broadband connections (or terrestrial mobile wireless subscribers) in Part I.A must also report ZIP Codes in the **relevant** columns of Part V. For nearly all broadband providers, the number of columns (which pertain to specific broadband technologies) that must be completed in Part V will be the same as the number of lines that must be completed in Part I.A.

Example: An entity that reports cable modem connections, in Line 4 of Part I, will list, in column (c) of Part V, those ZIP Codes in which at least one of the reported cable modem connections is in service to an end-user location.

Example: An entity that reports asymmetric xDSL (“ADSL”) connections, in Line 1 of Part I, and also traditional wireline connections, such as T-carrier connections, in Line 3 of Part I, will list those ZIP Codes in which there is at least one end user of a reported ADSL connection in column (a) of Part V. The entity will separately list, in column (i) of Part V, those ZIP Codes in which at least one of the reported traditional wireline connections terminates at an end-user location.

Example: A WISP that reports fixed wireless connections, in Line 7 of Part I, will report, in column (f) of Part V, those ZIP Codes in which at least one of the reported fixed wireless connections terminates at an end-user location.

Example: An entity that reports terrestrial mobile wireless broadband subscribers, in Line 8 of Part I, will report, in column (g) of Part V, those ZIP Codes in which the terrestrial mobile wireless broadband service is deployed and offered for sale to subscribers.

These examples **are not** an exhaustive list.

4. Submit completed Form 477 files and the Certification Statement.

- Send completed Form 477s to FCC477@fcc.gov as attachments to an e-mail (preferred) or submit compact discs or floppy diskettes by one of the other methods specified at page 11 of the instructions. Paper copies of completed Form 477s **may not** be submitted.
- Print a copy of the Certification Statement (which is page 14 of the instructions), which an officer of the entity must sign. Fax the completed and signed statement to (202) 418-0520 or submit it by one of the other methods discussed at page 11 of the instructions.

Entities that must complete and file Form 477s for operations in different states, or for different types of operations in a single state, may choose different ways to make the required certification. A single officer may certify the accuracy of all the completed forms. Alternatively, officers of the different operations may certify the accuracy of information about those operations.

Filing fee. There is no filing fee associated with Form 477.

Recordkeeping requirements and obligation to file revisions. There are no recordkeeping requirements associated specifically with Form 477. Entities must submit **revised filings** if they discover a significant error in the filed information (see page 13 of the instructions).

Internet links to related documents and forms

- **FCC Form 477 and Instructions:** www.fcc.gov/formpage.html#477
- **Report and Order** – FCC 04-266, released on November 12, 2004:
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-266A1.pdf
- **Form 477 Frequently Asked Questions (FAQs):**
http://www.fcc.gov/broadband/broadband_data_faq.html

See also the table of **Illustrative Small Entity Situations** on the next page of this guide for examples of which particular questions on Form 477 would have to be answered in various illustrative situations.

Illustrative Small Entity Situations	Part I: <i>Broadband</i>	Part II: <i>Wireline Local Telephone</i>	Part III: <i>Mobile Local Telephone</i>	Part IV: <i>Explanations & Comments</i>	Part V: <i>ZIP Codes</i>
Small LECs:					
ILEC, has no broadband connections, does not provide to CLECs any UNEs or services for resale to end users	Skip	Line 1	Skip	As needed	Col. (j)
ILEC, above, also holds a spectrum license that it uses to provide “cell phone” service; its cell phone subscribers can use the Internet, but not at broadband speeds	Skip	Line 1	Answer the two questions	As needed	Col. (j)
ILEC with ADSL and T-1 connections to end-user locations, does not provide UNEs or services for resale	Line 1 and Line 3 of Part I.A, and also question 11 of Part I.B	Line 1	Skip	As needed	Col. (a), (i), and (j)
ILEC with a CLEC affiliate and a cable TV affiliate with cable modem connections; ILEC does not provide unaffiliated CLECs with UNEs or services for resale to end users	In a form for only non-ILEC operations, Line 4 of Part I.A and also question 12 of Part I.B	Line 1 in separate forms reporting ILEC and non-ILEC operations	Skip	As needed	Col. (j) in form reporting ILEC operations; col. (c) and (j) in a form reporting non-ILEC operations
Other Broadband:					
Cable TV system provides cable modem service; not authorized as CLEC in the state	Line 4 of Part I.A, and also question 12 of Part I.B	Skip	Skip	As needed	Col. (c)
WISP uses spectrum on an unlicensed basis to provide broadband Internet-access service	Line 7 of Part I.A	Skip	Skip	As needed	Col. (f)
Municipality owns and equips fiber-to-the-end-user connections over which unaffiliated ISPs deliver retail broadband Internet-access services	Line 5 of Part I.A	Skip	Skip	As needed	Col. (d)
Utility owns and equips “Access BPL” connections to end-user locations	Line 9 of Part I.A	Skip	Skip	As needed	Col. (h)

Note: The examples in this table are illustrative. They do not exhaustively describe the particular circumstances of all the small entities that are obligated to file FCC Form 477.