



PUBLIC NOTICE

Federal Communications Commission
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DA 11-29
January 7, 2011

NOTICE OF REQUEST FOR ACCESS TO FORM 477 BROADBAND DATA PLEADING CYCLE ESTABLISHED

WC Docket No. 11-3

Comment Date: January 18, 2011

Pursuant to its administration of the State Broadband Data and Development (SBDD) Program, the National Telecommunications and Information Administration (NTIA) has requested access to data collected on the Commission's Form 477.¹ Specifically, NTIA is seeking access to data on Internet access connections as of June 30, 2010, with a reporting deadline of September 1, 2010. This Notice initiates a pleading cycle that would allow any affected provider to oppose such disclosure of Form 477 data.

Among the purposes of the SBDD Program is to assist state-designated eligible entities in gathering data twice a year on the availability, speed, and location of broadband services, as well as on the use of broadband services by community institutions, such as schools, libraries and hospitals.² The FCC and NTIA will use data collected from state eligible entities in the SBDD Program to develop a comprehensive national inventory map of broadband service capability and availability, in fulfillment of NTIA's obligation under the ARRA.³ NTIA intends to use Form 477 broadband data as a baseline for comparison with the data collected by the eligible entity in each State pursuant to the SBDD Program and may include non-confidential Form 477 data in the National Broadband Map website.

The Commission collects information about Internet access connections to end user locations, wired and wireless local telephone services, and interconnected Voice over Internet Protocol (VoIP)

¹ The SBDD Program implements the joint purposes of the Recovery Act and the Broadband Data Improvement Act. *See* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001, 123 Stat. 115, 516 (codified at 47 U.S.C. § 1305) (ARRA); Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008) (codified at 47 U.S.C. §§ 1301-04).

² *See* State Broadband Data and Development Grant Program, Department of Commerce, National Telecommunications and Information Administration, Notice of Funds Availability and Solicitation of Applications, 74 Fed. Reg. 32545, 32550 - 32552, 32562 - 32564 (July 8, 2009), *available at* http://www.ntia.doc.gov/frnotices/2009/FR_BroadbandMappingNOFA_090708.pdf.

³ 47 U.S.C. § 1305(l).

services in individual states on FCC Form 477.⁴ The Commission allows filers to request confidential treatment for competitively sensitive information in a particular Form 477 submission by making the appropriate selection on the cover page of Form 477.⁵

While the Commission's regulations provide that proprietary and commercially sensitive information will be withheld from public disclosure, subject to the public's right to seek disclosure under the FOIA and implementing regulations,⁶ the Commission is authorized to share information it has collected with another federal agency if such disclosure is not inconsistent with applicable law.⁷ The Commission's rules provide for interagency disclosure of information that has been submitted to the Commission in confidence if certain conditions are met.⁸ Specifically, the Commission may engage in sharing with other agencies, subject to notice and an opportunity for submitting parties to object, and provided that: (1) specific assurances against such disclosure have not been given; (2) the receiving agency has established a legitimate need for the information; (3) disclosure is made subject to 44 U.S.C. 3510(b); and (4) disclosure is not prohibited by the Privacy Act or other provisions of law.⁹ Under 44 U.S.C. § 3510(b), the officers and employees of an agency receiving information from another agency are subject to the same provisions of law, including penalties, relating to unlawful disclosure of the information as the officers and employees of the agency originally collecting it.¹⁰ The Commission has previously provided NTIA with access to Form 477 data for use in connection with NTIA's Broadband Technology Opportunities Program.¹¹

Pursuant to the Commission's regulations, affected parties have until January 18, 2011 to oppose disclosure to NTIA of the Form 477 data that the Commission collects from broadband service providers.¹² If the Commission receives no opposition from affected parties by that date, the Commission will disclose the information requested above to NTIA. If disclosure is opposed, the procedures set forth in 47 C.F.R. § 0.442 shall apply. All pleadings should refer to WC Docket No. 11-3. Comments may be

⁴ See Instructions for Local Telephone Competition and Broadband Reporting Form (FCC Form 477), <http://www.fcc.gov/Forms/Form477/477inst.pdf>, at 1 (2010) (*Form 477 Instructions*).

⁵ See *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7759, at para. 90 (2000) (*2000 Data Gathering Order*); *Local Telephone Competition and Broadband Reporting*, Report and Order, WC Docket No. 04-141, 19 FCC Rcd 22340, 22352, at para. 24 n.56 (2004); *Form 477 Instructions* at 19.

⁶ See 47 C.F.R. § 0.457(d), 0.459(d); 5 U.S.C. § 552.

⁷ 44 U.S.C. § 3510.

⁸ See generally 47 C.F.R. § 0.442.

⁹ 47 C.F.R. § 0.442(b). See also 47 C.F.R. § 0.442(a) ("The acceptance [by the Commission] of materials in confidence under § 0.457 or § 0.459, or any other statute, rule or Commission order, does not preclude their disclosure to other agencies."). The Privacy Act is codified at 5 U.S.C. § 552a.

¹⁰ 44 U.S.C. § 3510(b).

¹¹ See *Notice of Request for Access to Form 477 Broadband Data Pleading Cycle Established*, WC Docket No. 09-214, Public Notice, 24 FCC Rcd 14219 (2009).

¹² See 47 C.F.R. §§ 0.442(d)(1).

filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.¹³

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, D.C. 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpiweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Jeremy Miller, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-C145, Washington, D.C. 20554; email: jeremy.miller@fcc.gov; phone: (202) 418-1507.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁴ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.¹⁵ Other rules pertaining to oral and written *ex parte*

¹³ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

¹⁴ 47 C.F.R. §§ 1.1200 *et seq.*

¹⁵ See 47 C.F.R. § 1.1206(b)(2).

presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.¹⁶

For further information, please contact Jeremy Miller, Industry Analysis and Technology Division, Wireline Competition Bureau at (202) 418-1507.

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¹⁶ 47 C.F.R. § 1.1206(b).