



PUBLIC NOTICE

Federal Communications Commission
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NOTICE OF REQUEST FOR ACCESS TO FORM 477 BROADBAND DATA COMMENT PERIOD ESTABLISHED

WC Docket No. 11-10

Comment Date: July 3, 2014

In connection with its investigation of the proposed acquisition of Time Warner Cable by Comcast Corp., the Antitrust Division of the United States Department of Justice (the Department) has requested access to data collected on the Commission's Form 477.¹ Specifically, the Department is seeking access to "disaggregated broadband subscriber data collected through FCC Form 477 (and any updates that become available during the pendency of the investigation), by carrier and census tract, from June 2009 forward."² Pursuant to section 0.442 of the Commission's rules, this Notice initiates a pleading cycle that allows any affected provider to oppose such disclosure of Form 477 data.³

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) 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

¹ See *infra* Attachment, Letter from Scott Scheele, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, to Julie Veach, Chief, Wireline Competition Bureau, Federal Communications Commission (dated June 5, 2014) (DOJ Request).

² *Id.*

³ See 47 C.F.R. § 0.442(d)(1).

⁴ See Instructions for Local Telephone Competition and Broadband Reporting Form (FCC Form 477), at 1 (2014), <http://www.fcc.gov/Forms/Form477/477inst.pdf> (*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*, WC Docket No. 04-141, Report and Order, 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.

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

Pursuant to the Commission's regulations, affected parties have until July 3, 2014 to oppose disclosure to the Department of the Form 477 data that the Commission collects from broadband service providers.¹¹ If the Commission receives no opposition from affected parties by that date, the Commission will disclose the information requested above to the Department. 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. 11-10. The scope of this Public Notice is limited to the Department's request for Form 477 data; this Public Notice does not seek comment on broader disclosure issues raised in WC Docket No. 11-10, except as needed to address the Department's request.

Filing Instructions. Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹² interested parties may file objections to the planned disclosure on or before the date indicated above. Comments may be 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 one copy 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, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries

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 47 C.F.R. §§ 0.442(d)(1).

¹² 47 C.F.R. §§ 1.415, 1.419.

¹³ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- 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, SW, Washington DC 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).

Ex Parte Presentations. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

For further information, contact Kirk Burgee, Chief of Staff, Wireline Competition Bureau, at (202) 418-1599 or kirk.burgee@fcc.gov.

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¹⁴ 47 C.F.R. §§ 1.1200 *et seq.*