

August 11, 2009

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: WC Docket No. 07-38, WC Docket No. 08-190, GN Docket No. 09-47, GN Docket No. 09-51

Dear Chairman Genachowski,

We write to commend you for your commitment to running a data driven agency and to present a set of priorities for immediate FCC action on data collection proceedings that benefit the public interest. We agree entirely with your oft-stated desire to run the FCC as a fact-based, data-driven agency.¹ As consumer advocates who have worked for years to get the Commission to collect better data, we look forward to seeing these goals translated into action. Although we have many ideas for data collection initiatives across the agency's jurisdiction, we offer below a set of proposals that reflect our priorities for policies specific to open items related to broadband data. We urge the Commission to take immediate action to make good on its new commitments.

The FCC should issue a Report and Order expanding Form 477. Last year the Commission adopted long-overdue changes to its Form 477 broadband data collection practices. However, the Commission left the job only half finished – stopping with new rules on subscribership counts. The critically important matter of broadband availability data was left to a *Further Notice*, accompanied with a promise to reach a resolution by fall 2008.² This self-imposed deadline came and went without any further attention paid to the matter. Since that time, we have repeatedly asked the Commission to complete its Form 477 reform efforts. This data is critical to ongoing FCC policy on broadband, and it is important for maximizing the effectiveness of the NTIA's grant programs.³ The time-sensitivity of these programs enhances the urgency of reaching a successful conclusion on the issue of broadband availability data.

We therefore urge the Commission to move quickly. We recommend issuing a Report and Order requiring all providers to report their service footprints by Census Block, broken down by technology type and speed tier. These data sets should be public and freed of unnecessary blankets of confidentiality. Several telecommunications giants and trade associations have recently agreed to report to NTIA-funded state-designated entities the availability of broadband services at the Census Block level, and agreed to the public disclosure of the identity of each provider within a given Block.⁴ It is the exact data that we and others have repeatedly asked the Commission to gather under Form 477.⁵ It is also data that the carriers have strenuously resisted disclosing to the Commission. Now is a timely moment to act to consolidate these advances.

We certainly understand that rapid action may seem infeasible for an agency already under the great strain of formulating a National Broadband Plan. But Commission leadership here will pay great dividends. A database of national broadband availability will accomplish the goals of the Broadband Data Improvement Act (BDIA) which calls for “[i]mproving Federal data on the deployment and adoption of broadband service.”⁶ It will also ensure that the Commission has the data needed to tackle difficult issues such as USF modernization and the promotion of meaningful broadband competition.

The FCC should seek to coordinate with NTIA on data collection. In addition to issuing an immediate Order resolving the Form 477 availability issue, we strongly urge the FCC to access the data that is submitted to NTIA-funded state-designated entities through its mapping program. Under the terms of the Recovery Act, the FCC is authorized to utilize this data.⁷ Since new Form 477 data will not be available for many months after an Order is issued, this will allow the agency to have a basis of availability data to utilize in the National Broadband Plan as well as other broadband policy initiatives it

may develop in the coming months. If the mechanics of receiving and processing tens of millions of data points presents too formidable a roadblock, the Commission might consider the feasibility of hiring a private data firm to function as a disinterested, third-party data bank. Funds for a data bank could come through discretionary transfer of moneys from the Commerce Department to the FCC to support the development of the National Broadband Plan under the terms of the Recovery Act.⁸ The data bank would handle the logistics of standardizing, verifying, and scrubbing both the inputs and the outputs of the data collection from states and carriers, and ultimately it would hand the FCC and the NTIA data sets that are ready for policy analysis. Such a function could also be utilized in the next round of Form 477 data intake and be considered as a permanent alternative to using in-house resources for this task. In addition, the Commission should work jointly with NTIA and its state grantees to address any potential problems related to uniformity and standardization in data collection and reporting across the state programs that will be funded by the Commerce Department. FCC expertise will also be valuable more generally through inter-agency cooperation on the NTIA broadband maps throughout its five year grant program – particularly on issues of middle-mile infrastructure data and mapping.

The FCC should launch ARMIS 2.0: In addition to the issue of broadband availability data, there remain questions to resolve regarding data on broadband speed, price, and the location/capacity of infrastructure within and between last-mile networks. The NTIA has taken very important steps in collecting this type of data. However, the NTIA’s program has some limitations on infrastructure, capacity, speed, and pricing data collection that the FCC should revisit through a rule-making process prior to the national broadband plan. The pending *Further Notice* on Form 477 reform contained tentative conclusions regarding the collection of actual speed and price data.⁹ Also, last fall the Commission initiated a *Further Notice* on the issue of middle mile data, tentatively concluding that this type of data (similar to some of the data that used to be collected in the ARMIS reporting system from price-cap carriers) should likely be collected from all broadband providers.¹⁰ We strongly encourage the FCC to move these proceedings forward, either by moving to rules, or by requesting an expedited refreshing of the record. These efforts should include a broad review of critical data about network architecture and traffic. In particular, the FCC should also seek to find a way to measure and collect data concerning the actual speed of broadband connections, as opposed to advertised speeds. Such a broad initiative could be fashioned as a holistic review of broadband data needs across all networks—an “ARMIS 2.0” to produce for the FCC a complete picture of the nation’s information infrastructure, the character of local markets, and the experience of consumers.

Once again, we commend the FCC on its focus on the need for good data. Now it is time to apply that worthy rhetoric to needed policy reform. We look forward to working with you to ensure that the data needed for successful broadband policy is granular, accurate, reliable, comprehensive, and is collected in a timely fashion.

Most sincerely,

/s/

Ben Scott
Free Press

/s/

Mark Cooper
Consumer Federation of America

/s/

Sascha Meinrath
New America Foundation

/s/

Andrew Schwartzman
Media Access Project

/s/

Gigi Sohn
Public Knowledge

/s/

Joel Kelsey
Consumers Union

cc: Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker

¹ See e.g. Statement of Julius Genachowski, Nominee to Serve as Chairman of the Federal Communications Commission, Before the U.S. Senate Committee on Commerce, Science, and Transportation, June 16, 2009. (“My career inside and outside government has convinced me that the FCC can be a model for excellence in government, fighting for consumers and families, fostering investment and innovation, through open, fair, and data-driven processes—a 21st century agency for the information age.”); Remarks of Chairman Julius Genachowski to the Staff of the Federal Communications Commission, June 30, 2009. (“Our policy decisions will be fact-based and data-driven.”); Chairman Julius Genachowski, Prepared Remarks on National Broadband Plan Process, FCC Open Meeting, July 2, 2009. (“I am pleased that we have a plan that will be data-driven. That means not starting with conclusions, but using data to develop analysis. It also means not just accepting data, but digging into data, to find concrete solutions that supersede ideology -- and that can make a difference in the lives of real Americans.”); “FCC Chairman Genachowski Announces Senior Staff in the Office of Strategic Planning,” Press Release, FCC, July 22, 2009. (“This team will help the agency tremendously in its push to engage in data-driven decision-making, grounded in hard facts, real-world experience, and sound economic analysis.”); etc.

² See *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Order on Reconsideration, 23 FCC Rcd 9800 (2008), page 75.

³ We have raised these issues in at least 13 separate filings and *ex parte* communications with the Commission over the past year. See Comments of Free Press, In the Matter of *A National Broadband Plan for Our Future*, GN Docket No. 09-51, July 30, 2009, note 8 (*Free Press June 30 Data Comments*).

⁴ See Fawn Johnson, “Commerce Dept Drops Request for Sensitive Telecom Data”, *Dow Jones Newswires*, August 7, 2009.

⁵ See e.g. *Free Press June 30 Data Comments*; See also Letter to Marlene Dortch, Secretary, Federal Communications Commission, from the People of California and the California Public Utilities Commission, WC Docket No. 07-38, August 19, 2008 (encouraging the FCC to collect broadband availability data at the Census Block or street address level).

⁶ See Broadband Data Improvement Act of 2008, Pub. L. No. 110-385, 122 Stat. 4097 (codified at 47 U.S.C. §§ 1301-04), Sec 102(3).

⁷ ARRA, Sec. 6001(k)(3)

⁸ ARRA, Division A, Title II

⁹ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9710, para. 36, 37 (2008).

¹⁰ *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 1364, 1382 para. 34, 35 (2008).