

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Modernizing the FCC Form 477 Data Program) WC Docket No. 11-10

COMMENTS OF INCOMPAS

INCOMPAS respectfully submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking (“*Further NPRM*”) in the above-referenced proceeding.¹ In its *Further NPRM*, the Commission seeks comment on data collection via Form 477. While INCOMPAS believes that the Commission should continue to collect information on both best-efforts and guaranteed broadband speeds, these comments focus on the collection of information on services with guaranteed speeds—*i.e.*, business data services (“BDS”).

The Commission has commenced numerous initiatives intended to accelerate broadband deployment, including those directed toward eliminating regulations it deemed to be impeding investment in infrastructure and new technologies. The Commission is also required pursuant to Section 706 of the Telecommunications Act of 1996 to annually measure the availability of advanced telecommunications services—which the Commission has long referred to as broadband.² In addition to this Section 706 obligation, in the 1996 Act, Congress directed the Commission to promote competition and consumer choice, and to protect consumers in the provision of communications services.³ If revised appropriately, Form 477 provides the

¹ *In the Matter of Modernizing the FCC Form 477 Data Program*, Further Notice of Proposed Rulemaking, 32 FCC Rcd 6329 (2017).

² 47 USC § 1302(b).

³ *See* 47 USC § 151.

Commission with a mechanism to evaluate the fruits of its efforts, especially with regard to fixed broadband deployment to businesses, anchor institutions, and governmental agencies through the measurement of facilities-based BDS. Accordingly, Form 477 should collect the number of facilities-based connections⁴ for BDS services that each provider has by census block by guaranteed data throughput rate, broken down as follows: (1) 10 Mbps and below; (2) 50 Mbps and below; (3) 100 Mbps and below; (4) one Gigabit and below; and (5) above one Gigabit. These categories correlate to various bandwidth levels typically purchased, and reflect the appropriate breakdown needed to measure any association between bandwidth demanded and competitive entry.

Broadband deployment is one of Chairman Pai's top priorities, as demonstrated by the following actions:

- Proposing his Digital Empowerment Agenda—a blueprint of policies to accelerate deployment of high-speed Internet access, or broadband, in communities across the country—as a Commissioner;⁵

⁴ “Facilities-based connection,” for purposes of this data collection, should be defined as a connection in a census block served by facilities owned (not leased) by that provider.

⁵ See Remarks of Commissioner Ajit Pai at the Brandery: “A Digital Empowerment Agenda” (Sept. 13, 2016), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-341210A1.pdf (discussing proposals); see also Summary of Commissioner Pai's Digital Empowerment Agenda (Sept. 13, 2016), [https://www.fcc.gov/document/commissioner-pais-digital-empowerment-agenda/summary\(summarizing proposals\)](https://www.fcc.gov/document/commissioner-pais-digital-empowerment-agenda/summary(summarizing%20proposals)).

- The formation of a new federal advisory committee, the Broadband Deployment Advisory Committee (BDAC or Committee), to provide advice and recommendations for the Commission on how to accelerate deployment of high-speed Internet access;⁶ and
- The issuance of a Notice of Proposed Rulemaking proposing and seeking comment on actions designed to accelerate deployment of next-generation networks and services by removing barriers to infrastructure investment.⁷

Additionally, the Commission adopted a new regulatory framework for BDS that it claimed would “maximize [BDS] competition and investment.”⁸ In the *BDS Order*, the Commission predicted a rise in competition for BDS services and “a strong willingness on the part of providers to extend their networks half a mile to meet demand, especially over the medium term.”⁹ Indeed, the Commission concluded “that, while there can be high barriers to [BDS] entry, evidence shows that firms frequently choose to enter this market with significant

⁶ See “FCC Announces the Establishment of the Broadband Deployment Advisory Committee and Solicits Nominations for Membership,” FCC Public Notice, DA 17-110 (2017), available at: https://apps.fcc.gov/edocs_public/attachmatch/DA-17-110A1.pdf.

⁷ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd. 3266 (2017) (“*Wireline Deployment NPRM*”).

⁸ *Business Data Services in an Internet Protocol Environment; Technology Transitions; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, 32 FCC Rcd 3459, ¶ 5 (2017) (“*BDS Order*”).

⁹ *Id.* at ¶ 18. See also *id.* at ¶¶ 15-16.

investments, particularly in areas of significant demand, indicating sufficient competitive conditions that do not warrant direct regulatory intervention.”¹⁰

The Commission should assess whether the predicted impact of actions it has taken with regard to the deployment of BDS facilities have proven to be accurate. Eliminating reporting of contractual or guaranteed data throughput rates for BDS, as proposed,¹¹ would profoundly hinder the Commission’s ability to determine whether its near-total deregulation of BDS markets actually is resulting in the promised maximization of competition and investment.

While the data collection proposed here is not for purpose of implementing the competitive market test adopted in the *BDS Order*,¹² it would allow for assessment of the accuracy of its predictions and theories with regard to BDS markets, in addition to an evaluation of the Commission’s wireline deployment agenda for businesses and anchor institutions. For example, the *BDS Order* states, without distinguishing bandwidth demand, that “buildouts are common within a half mile from a competitor’s facilities”¹³ and “the average building with [BDS] demand over time will find itself closer and closer to a competing facilities-based competitor’s network.”¹⁴ The Commission also concluded that “the underlying facilities used to

¹⁰ *Id.* at ¶ 48.

¹¹ *Further NPRM* at ¶ 31.

¹² In the *BDS Order*, the Commission directed the Wireline Competition Bureau to review the current subset of data collected on Form 477 every three years to determine whether any additional counties meet the second prong of the Commission’s competitive market test as a means of periodically updating the counties deemed competitive under the test and, as a result, not subject to price cap regulations. *BDS Order* ¶ 151.

¹³ *BDS Order* at ¶ 41.

¹⁴ *Id.* at ¶ 44.

provision best-efforts services . . . can be and are being *repurposed* to provide” BDS at a pace that justifies the test adopted.¹⁵ Thus, the Commission predicted carriers would build out BDS networks where they have existing facilities in the near and medium term. The revised Form 477 data is a proper means to test whether these predictions prove true. The data collection we propose would measure the growth. By collecting data on contractual or guaranteed data rates, the Commission will be able to see the extent to which demand of the nearby locations impacts the growth in competitive facilities-based connections, particularly in counties the Commission has deemed competitive.

Moreover, the Commission is tasked in Section 706 with measuring the availability of broadband services, such as BDS. The Commission must collect relevant data to make that assessment. As urged in INCOMPAS’s comments to the Commission’s *Section 706 NOI*,¹⁶ the Commission should examine whether advanced telecommunications capabilities are being deployed to the nation’s anchor institutions, including schools, libraries, and hospitals, small and mid-sized businesses, as well as businesses with multiple locations. Given the importance of these entities to each community, it would otherwise be difficult to suggest that the Section 706 standard had been met absent a showing that these entities have advanced telecommunications capabilities.¹⁷ Nearly every business, anchor institution and government entity across the

¹⁵ *Id.* at ¶ 31.

¹⁶ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely*, Notice of Inquiry, 32 FCC Rcd 7209 (2017) (“*Section 706 NOI*”).

¹⁷ INCOMPAS Comments in GN Docket No. 17-199, at 15 and 20 (Sept. 21, 2017).

country, as well as competitive wireline and wireless companies, uses BDS services in its operations. The consumers of these services are entrepreneurs and innovators developing new technologies, creating jobs, and striving to bring to the U.S. next generation 5G networks; they serve our communities, run our government, and secure our electronic systems. But, as a recent GAO Report on broadband states, the Commission “lacks information on how well [its] actions promote competition.”¹⁸ Collection of BDS data will allow the Commission to ensure that the goals of Section 706 are being met for these consumers.

This data would not be burdensome to collect via Form 477; carriers can use widely available geocoding software to map BDS locations to census blocks. For smaller carriers without the commercial software, a Geocoder tool is available on census.gov that allows batch entry of addresses to obtain census block groups (“CBGs”).¹⁹ The benefit of this data outweighs any burden from collecting it. The Commission has largely deregulated BDS markets (despite INCOMPAS’s concerns that doing so will consolidate market power with incumbents, leading to higher prices and fewer choices for most business customers). These data present the most efficient avenue by which the Commission can measure the accuracy of its predictions.

¹⁸ GAO Highlights, United States Government Accountability Office, *Report to the Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate*, “Broadband Additional Stakeholder Input Could Inform FCC Actions to Promote Competition,” Sept. 2017.

¹⁹ See <https://geocoding.geo.census.gov/geocoder/>

Respectfully submitted,

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