

**Before the
Federal Communications Commission
Washington, DC 20554**

and

**Office of Management and Budget
Washington, DC 20503**

In the Matter of)
)
Information Collection Regarding Local) 73 Fed. Reg. 55080
Telephone Competition and Broadband)
Reporting, FCC Form 477) OMB Control No. 3060-0816

**COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

Pursuant to the above-captioned Notice of Public Information Collection, the Independent Telephone & Telecommunications Alliance (ITTA) hereby submits comments on the proposed information collection for recently adopted changes to the Commission's broadband reporting requirements in the FCC Form 477.¹ ITTA members are mid-size local exchange carriers that provide a broad range of high-quality wireline and wireless voice, data,

¹ See Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, 73 Fed. Reg. 55080 (Sept. 24, 2008) (*Notice*). The *Notice* requests that comments be submitted to both the Commission and Office of Management and Budget ("OMB"), and states that the Commission's information collection has been submitted to OMB and is available from OMB's website. *Id.* ITTA is accordingly filing comments with both agencies as instructed. ITTA notes, however, that the Commission's Information Collection ("IC") submission is *not* posted on OMB's website, and understands that the Commission will *not* be submitting the IC to OMB until after this 60-day comment period expires. Accordingly ITTA's ability to submit specific comments on the Commission's new requirements is compromised. ITTA also notes that this IC is not being proposed in the context of an NPRM such that no further OMB action would be required. See 47 U.S.C. §3507(d). (Indeed, the NPRM in this proceeding expressly stated that it did *not* contain any proposed information collections. *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*, Notice of Proposed Rulemaking, WC Docket No. 07-38, 22 FCC Rcd. 7760, para. 48 (2007)) ITTA thus presumes that, consistent with the Paperwork Reduction Act and the requirements for obtaining a valid OMB control number, the new Form would not be approved until after OMB's own 30-day comment period, during which the IC – including, hopefully, the revised Form 477 and its instructions – will be publicly available for review and comment. See 44 U.S.C. §§ 3507(a), (b), 3512. Depending on the content of the revised Form as submitted to OMB, ITTA may file a separate request for a Stay of the March 1, 2009 filing deadline for many of the same reasons described herein.

Internet, and video services to 30 million access lines in 44 states. ITTA urges the Commission to incorporate into its Information Collection (IC) an interim delay of the deadline for the Form 477 until at least 120 days after the revised Form and instructions become publicly available. Consistent with the Paperwork Reduction Act (PRA),² such action will ensure that entities required to produce Form 477 reports will have sufficient time to collect and compile broadband data according to the Commission's specifications.

I. THE COMMISSION'S PRELIMINARY ESTIMATE ALONE WARRANTS A DEFERRAL OF THE MARCH 1, 2009, DEADLINE

Most ITTA members are long-time Form 477 filers, and all are working in good faith to implement and prepare for the broadband data collection changes adopted in the Commission's underlying *Orders*.³ Although the *Orders* provide some guidance for implementing the new requirements, the Form 477 and its instructions remain the most significant guidance for business personnel responsible for collecting and compiling the data in the Commission's desired format.⁴ Problematically, however, neither the Form nor its instructions have yet been released. Unlike previous decisions modifying the Form 477, the Commission did not adopt a new Form 477

² Thus, release of a revised OMB-approved Form 477 in mid-January 2009 would result in a filing deadline in mid-May 2009. The next filing would be due by the standard September 1, 2009 deadline.

³ *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*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 07-38, 23 FCC Rcd. 9691 (*Report and Order*), revised *sua sponte* Order on Reconsideration, 23 FCC Rcd. 9800 (2008) (*Recon Order*) (collectively the *Orders*).

⁴ The Commission's codified rules do not specify in detail the data that Form 477 filers must submit, requiring only that the Form be filed "in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they provide service." See 47 U.S.C. § 1.7001(b).

format concurrently with its rule changes.⁵ Therefore, the extent to which Form 477 filers can implement the modified reporting requirements adopted in the *Orders* is necessarily limited.

In the *Report and Order*, the Commission envisioned that the rule changes would be effected such that filers will report “year-end connection data as of December 31, 2008” in their regularly-scheduled March 1, 2009 filings.⁶ Under the terms of the PRA, however, OMB’s 30-day comment period will not expire until late December 2008 at the earliest. Even if the Commission receives OMB approval for the revised Form 477 shortly thereafter, filers would have, at most, approximately two months (or 40 eight-hour business days) to compile data and submit the report to the Commission.

As the proposed Form 477 and the Commission’s underlying instructions are not yet publicly available, however, the extent to which ITTA can comment on this IC is necessarily limited. A review of the Form and instructions may raise additional issues beyond those addressed in these comments, which ITTA may bring to OMB’s attention during the subsequent 30-day review process. Nevertheless, even with the limited information available, it is clear that the new requirements are likely to impose a substantial additional burden on LECs in particular. The *Notice* states that the Commission projects an estimated average *per response* burden of 337 hours – more than 42 (forty two) *business days*. By contrast, the current Form 477, which received OMB approval just a few months ago, estimated an average per response hour burden

⁵ See *Local telephone Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd. 7717, App. B (2000); *Local Telephone Competition and Broadband Reporting*, 19 FCC Rcd 22340, App. D (2004).

⁶ See *Report and Order* at para. 14, n.47.

of 46 (forty six) *hours* per respondent.⁷ Accordingly, the Commission already projects that the revised Form 477 will be substantially more burdensome than the current version. Furthermore, in obtaining approval for the current Form 477 just a few months ago, the Commission “estimate[d] that LECs will have the largest annual hour burden as a group, reflecting the complexity of the operations of larger entities”⁸ Inasmuch as this finding would presumably remain applicable now, many of ITTA’s member companies, particularly those operating in several states and offering varieties of broadband services, are likely to face a burden well in excess of that 337-hour estimate – and a more thorough review of the Form and instructions themselves may reveal additional burdens. Accordingly, the Commission’s own burden estimate, even in the absence of the more detailed IC supporting statement, underscores the substantial paperwork burden that will result from the revised Form 477.

II. THE IMPACT OF NEW FORM 477 INFORMATION REQUIREMENTS UNDERScores THE MERITS OF A SHORT-TERM DEFERRAL OF THE MARCH 1, 2009 FILING DEADLINE

A. DEFERRAL OF THE INITIAL FORM 477 FILING DEADLINE IS CONSISTENT WITH THE PRA.

Incorporating a deferral period into implementation of the Commission’s IC is one of the very mechanisms for easing regulatory burdens Congress contemplated in the PRA. The PRA requires that the Commission certify to OMB that its IC has “reduce[d] to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, ... [via] the use of such techniques as ... establishing

⁷ See ICR Reference No. 200804-3060-016, OMB Control No. 3060-0816, FCC Supporting Statement, at 6, approved June 9, 2008 (available online at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200804-3060-016#).

⁸ *Id.* at 7.

different compliance or reporting requirements *or timetables* that take into account the resources available to those who are to respond”⁹ A short, one-time deferral of the initial Form 477 deadline is precisely the sort of “timetable” mechanism that could reduce ITTA members’ and other parties’ filing burdens in accordance with Congress’s objectives.

As discussed below, the impact of the new Form 477 requirements on ITTA members underscores that such a deferral will serve other important PRA objectives. By affording filers additional time to maximize their database capabilities and minimizing the degree of manual input necessary to comply with the Form 477, the Commission would: (1) “enhance the quality, utility, and clarity of the information to be collected” by mitigating the impact of a “last minute rush” and reducing the need for subsequent corrective filings, and (2) “minimize the burden of the collection” by enabling filers to increase the extent of the information compiled “through the use of automated collection techniques or other forms of information technology.”¹⁰ Finally, ITTA’s request that the Commission’s IC provide for only a deferral of the deadline would not compromise materially the Commission’s objective of “improv[ing] [its] own understanding of the state of broadband services in this country and enable us to assist others in fostering broadband deployment;”¹¹ the requested 120-day delay in submission will not reduce significantly the value of the broadband data. ITTA’s request therefore does not undermine the Commission’s ability to certify that the IC “is necessary for the proper performance of the functions of the agency....”¹²

⁹ See 44 U.S.C. § 3507(c)(3)(C)(i) (emphasis added).

¹⁰ See 44 U.S.C. § 3506(c)(2)(A)(iv).

¹¹ *Report and Order* at para. 9.

¹² See 44 U.S.C. § 3506(c)(3)(A).

B. COMPIILING BROADBAND CONNECTION DATA AT THE CENSUS TRACT LEVEL POSES SUBSTANTIAL SHORT-TERM BURDENS.

Based on the limited guidance provided in the *Orders*, ITTA and its members have begun assessing the extent to which relevant data can be obtained through modifications or add-ons to existing billing and other customer database capabilities. One of the most significant changes adopted in the *Orders* relates to the geographic breakdown of data relating to broadband connections and subscribership. At the request of consumer groups and state regulatory bodies, the Commission determined that filers should report broadband connection information by Census Tract rather than 9-digit zip codes, thus requiring that data be collected and reported at a significantly more granular level.¹³ Based on preliminary information received from ITTA's members, the extent to which billing and other databases can be integrated with the U.S. Census Bureau map data, particularly with respect to rural areas, appears limited at best. ITTA expects that, for many LECs, some – but not all – of the additional data can be compiled electronically, and where electronic mechanisms may be available, system upgrades may be necessary, entailing investment of several thousands of dollars in IT costs.

Deferral of the filing deadline will provide additional time to work with vendors and help minimize the degree to which data will need to be input manually, thus “minimiz[ing] the burden” of this IC for LECs.¹⁴ As a corollary benefit, where manual input will be required, as would likely be the case for many filers with respect to at least some of their subscribers,

¹³ *Report and Order* at paras. 12-14.

¹⁴ See 44 U.S.C. § 3506(c)(2)(A)(iv).

deferring the initial filing date would help avoid a last-minute rush, thereby ensuring that the quality of the data is not undermined and easing the short term burden of the new requirements.¹⁵

Failure to defer the deadline could compel more filers to avail themselves of the “significant hardship” exemption, rather than submit the information in the Commission’s desired format. This exemption included in the *Report and Order* provides that “upon a showing of significant hardship, entities will be permitted to report a list of service addresses or GIS coordinates of service, along with the speed and technology of the broadband connection in service at each address, in lieu of reporting subscriber counts by Census Tract.”¹⁶ For now ITTA, expects that many LECs will endeavor to submit data in the required format to the extent possible, so as to avoid the burden of making a “showing of significant hardship,” the standards for which are undefined. To the extent that the initial filing deadline is deferred, it could afford these Form 477 filers additional time to automate their data gathering systems, thus improving the quality of the data and “minimiz[ing] the burden … on those who are to respond, including through the use of automated collection techniques or other forms of information technology.”¹⁷

C. PROVISION OF BROADBAND DATA TRANSMISSION SPEED INFORMATION WILL IMPOSE ADDITIONAL PAPERWORK BURDENS, FURTHER WARRANTING A SHORT-TERM DEFERRAL OF THE MARCH 1, 2009 DEADLINE.

The *Report and Order* requires that a far more granular showing be provided with respect to broadband subscribers’ respective upload and download speeds – again, on a per-Census Tract

¹⁵ ITTA expects that resulting vendor-related costs will face little downward pressure as vendors see a short-term compliance deadline and multiple carriers will jockey for vendors’ time and resources. A short deferral of the initial deadline could potentially mitigate some of these costs as well.

¹⁶ *Id.* at para. 15. In its Regulatory Flexibility Analysis, the Commission cited to this provision as one of the “significant alternatives that it has considered” to address the concerns of small entities. *See id.* at App. D para. 59.

¹⁷ *See* 44 U.S.C. § 3506(c)(2)(A)(iv).

basis if possible.¹⁸ The Commission requires that speeds be reported based on maximum speed for each “type of technology and service” and expressly declined to require per-line data on actual data transmission speeds. Based on preliminary feedback, however, it appears that some ITTA members maintain service-specific but not “actually delivered” speed-specific information for individual subscribers in their billing and other databases. Thus, it is likely that many of ITTA’s members will need to supplement customer account information by manually inputting data transmission speed information into customer service databases. For this reason as well, deferring the initial filing date would help avoid a last-minute rush, thereby ensuring that the quality of the data is not undermined and easing the short term burden of the new requirements.

III. CONCLUSION.

For the foregoing reasons, the Commission should incorporate a filing deadline deferral mechanism into the IC to be submitted to OMB, such that the initial deadline for filing the revised Form 477 will not occur until at least 120 days after the revised Form 477 and instructions become publicly available. Such action is necessary for the Commission to meet its PRA obligations.

Respectfully submitted,

s/Joshua Seidemann
 Joshua Seidemann
 Vice President, Regulatory Affairs
 Independent Telephone &
 Telecommunications Alliance
 888 16th Street, Suite 800
 Washington, DC 20006
 202-580-6671

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¹⁸ *Report and Order* at para. 20.