

## SUPPORTING STATEMENT

**Note:** This submission is being made pursuant to 44 U.S.C. §§ 3506 and 3507. The Commission seeks to renew Form 477, which was revised in 2005 as described below.

### A. Justification:

1. The Commission seeks to renew FCC Form 477 with only minor editorial changes, e.g., “non substantive” changes, designed to update the form for current users..

OMB last approved Form 477 in 2005, when the Commission modified the Form as part of changes in its existing local competition and advanced telecommunications services (broadband) data gathering program.<sup>1</sup>

The Commission initially established a reporting program using FCC Form 477 to collect basic information about two critical areas of the communications industry:

- (1) the deployment of broadband services and
- (2) the development of local telephone service competition.

The information collected in the Form 477 program helps the Commission and the public to understand the extent of local telephone competition and broadband deployment, which is important to the nation’s economic, educational, and social well-being.

In the 2005 *Order*, the Commission adopted rules and a standardized form to improve the Form 477 local competition and broadband data-gathering program, including extending the program for five years beyond its currently designated sunset in March 2005, eliminating existing reporting thresholds, and gathering more granular data from service providers.

As part of this process, the Commission also took the following steps to reduce associated burdens:

- (1) we declined to adopt certain modifications to the Form 477 proposed in the *Data Collection NPRM*, including the proposed requirement that filers categorize broadband connections according to the information transfer rate (“speed”) actually observed by the end user;<sup>2</sup>
- (2) we eliminated various questions from the wireline local telephone section of the form;<sup>3</sup>

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<sup>1</sup> *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, 19 FCC Rcd 22340 (2004) (*Order*).

<sup>2</sup> See *Order*, 19 FCC Rcd at 22353-54, paras. 27-29.

<sup>3</sup> See *Order*, 19 FCC Rcd at 22351-52, paras. 22-23.

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- (3) we eliminated the requirement that filers seeking confidential treatment of Form 477 data prepare and submit a separate, redacted Form 477;<sup>4</sup>
- (4) we responded to comments submitted by the Office of Advocacy of the Small Business Administration (SBA);<sup>5</sup> and
- (5) we published a *Small Entity Compliance Guide* to provide a set of user-friendly explanations to direct small entities to those sections of the Form 477 relevant to their operations.<sup>6</sup>

The improvements adopted in the *Order* include some but not all of the modifications the Commission proposed in the 2004 *Data Collection NPRM*.<sup>7</sup> The several proposals that were ultimately not adopted, as well as the simplification of the form, are a direct result of comments received from interested parties that responded to the *Data Collection NPRM*.<sup>8</sup> The *Order* is a balance between the Commission's statutory need to collect information necessary to effectively evaluate broadband and local competition developments as they affect all Americans, and minimizing, wherever possible, the administrative burdens imposed on reporting entities by the modified Form 477 program.<sup>9</sup>

The Telecommunications Act of 1996 directs the Commission to take actions to open all telecommunications markets to competition and to seek to promote innovation and investment by all participants, including new entrants. A central task in creating this framework is the opening of previously monopolized local telecommunications markets.<sup>10</sup> By collecting timely and reliable information about the pace and extent of competition for local telephony service in different geographic areas – including rural areas – we significantly improve our ability to evaluate the effectiveness of actions the Commission and the states are taking to facilitate economic competition in those markets.

Moreover, this information collection program also enables us to better assess the availability of broadband services so that we can better satisfy our specific duty to encourage the deployment “to all Americans” of advanced telecommunications capability as Congress directed us to do in section 706 of the Telecommunications Act of 1996.<sup>11</sup> Specifically, section 706 requires that the Commission determine whether deployment of advanced telecommunications capability, commonly known as broadband, is occurring in a reasonable

<sup>4</sup> See *Order*, 19 FCC Rcd at 22353, para. 25.

<sup>5</sup> See Letter dated August 24, 2004, from Thomas M. Sullivan, Chief Counsel for Advocacy, Small Business Administration, to the Hon. Michael K. Powell, Chairman, Federal Communications Commission (*SBA Ex Parte*).

<sup>6</sup> See *Order*, 19 FCC Rcd at 22343-44, para. 6.

<sup>7</sup> *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, Notice of Proposed Rulemaking, 19 FCC Rcd 7364 (2004) (*Data Collection NPRM*).

<sup>8</sup> A list of parties that filed comments and reply comments to the proceeding appears in the *Order* as Appendix A. *Order*, 19 FCC Rcd at 22357 (Appendix A – List of Parties).

<sup>9</sup> For a complete record of the comments, replies and *ex parte* presentations provided by interested parties to the *Data Collection NPRM*, see *Order*, 19 FCC Rcd at 22360-75 (Appendix C - Final Regulatory Flexibility Analysis).

<sup>10</sup> See 47 U.S.C. §§ 251, 252, 271.

<sup>11</sup> Pub. Law No. 104-104, Title VII, § 706, reproduced in the notes under 47 U.S.C. § 157. See § 706 of the 1996 Telecommunications Act (the 1996 Act) is § 706, Pub. L. 104-104, Title VII, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157.

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and timely manner.<sup>12</sup> If not, there are actions that the statute directs the Commission to take to accelerate deployment.<sup>13</sup> The information collection program, as modified in 2005, provided the Commission with a more comprehensive understanding of the deployment of broadband services and thus allow it to make an informed assessment of that market.

Statutory authority for collecting information from carriers and other entities is set out in the following sections of the Communications Act: Sections 4(i), 201, 218-220, 251-252, 271, 303(r), 332, and 403; 47 U.S.C. §§ 4(i), 201, 218-220, 251-252, 271, 303(r), 332, and 403, as well as section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157nt.

As noted on the OMB Form 83i, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

2. The information is used by the Commission to prepare reports that help inform consumers and policy makers at the federal and state level of the development of competition in the local telephone service market and the deployment of broadband services. The Commission will continue to use the information to better inform its understanding of broadband deployment in conjunction with its congressionally-mandated section 706 reports. The Commission also uses the data to help our analysis in a variety of rulemaking proceedings under the Communications Act. Absent this information collection the Commission would lack essential tools for assisting it in determining the effectiveness of its policies and fulfilling its statutory responsibilities in accordance with the Communications Act of 1934, as amended.<sup>14</sup>
3. Respondents will continue to obtain copies of the Local Telephone Competition and Broadband Reporting form electronically from the Commission's website and to make their submissions electronically either by e-mail to a dedicated Commission e-mail address or on diskette or compact disc. These formats minimize the time necessary to comply with the reporting requirement.
4. To minimize duplication of information collection efforts by ourselves and the states, we maintain our current procedure of sharing state-specific Local Telephone Competition and Broadband Reporting data with those states that can afford equivalent protection against unauthorized release. Without this collection, the information requested in Form 477 would not be otherwise available; in our experience, no nationwide studies of broadband deployment or of local telephone competition are based on better sources of data.<sup>15</sup>
5. Since Congress has tasked the Commission with encouraging deployment of broadband to all Americans and promoting competition in local telephony service, the information collection may affect small entities, as well as large entities. By adopting thresholds in the original *Data Gathering Order*,<sup>16</sup> we exempted the smallest providers and ensured that before a

<sup>12</sup> ? Section 706 (b).

<sup>13</sup> ? *Id.*

<sup>14</sup> ? See 47 U.S.C. §§ 157 nt., 251, 252, 271.

<sup>15</sup> See *Order*, 19 FCC Rcd at 22344-45, para. 7.

<sup>16</sup> See *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717 (2000) (*Data Gathering Order*).

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provider was required to report it has achieved a significant presence in a given state. Although we eliminated the exemptions for these providers in the 2005 *Order*, we responded to comments and adopted several, less-burdensome alternatives.

In conformance with the Paperwork Reduction Act, the Commission has made an effort to minimize the burden on all respondents, regardless of size. Further, the Commission has limited the information requirements to those that it has deemed absolutely necessary for evaluating the status of local competition and deployment of broadband services. These efforts minimize the impact on small entities.

6. To minimize the burden of filing on reporting entities, the Commission concluded in the original *Data Gathering Order* that semi-annual reporting, while not ideal, balances the Commission's need for information with the burden imposed on reporting entities,<sup>17</sup> and the *Order* continues to require semi-annual reporting.

As discussed in the answer to 2, *supra*, the information on the development of competition in local telephone services and the deployment of broadband services that is collected in Form 477 is an essential tool assisting the Commission in determining the effectiveness of its policies, in informing analysis in a variety of Commission rulemaking proceedings, and in understanding broadband deployment in conjunction with congressionally required section 706 reports.

As discussed in the answer to 1, *supra*, the modifications to the collection that were adopted in the *Order* provide more granular information to assist the Commission in evaluating broadband and local telephone competition developments as they affect all Americans, including those residing in rural areas. That information would not be otherwise available.<sup>18</sup>

7. As detailed above, respondents are not required to file the information collection with the Commission more often than semi-annually. Provision for confidential treatment of submitted information conforms to authorized Commission procedures and the Commission took the extra step of allowing reporting entities to indicate that they request confidentiality of some data by checking a box on the first page of the form. No other special circumstances apply to this information collection.
8. A notice was published in the Federal Register as required by 5 CFR 1320.8(d) on January 25, 2008. See 73 FR 4567. Copy attached. The Commission received no comments in response to the notice.
9. The Commission has not provided any payment or gift to respondents.
10. We will continue to allow respondents, by checking a box on the first page of the form, to certify that some data contained in their submissions are privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the entity filing the worksheet. If the

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<sup>17</sup> *Data Gathering Order*, 15 FCC Rcd at 7746-47, paras. 56-59.

<sup>18</sup> See *Order*, 19 FCC Rcd at 22344-45, paras. 7-8.

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Commission receives a request for, or proposes to disclose, the information, the respondent would be required to make the full showing pursuant to the Commission's rules for withholding from public inspection information submitted to the Commission.<sup>19</sup> We will retain our current policies and procedures regarding the confidential treatment of submitted Form 477 data, including the exclusive use of aggregated data in our published reports. We will continue, however, our current practice of publishing most of the local telephone information reported by the Bell operating companies after consultation with the individual companies.<sup>20</sup>

11. The information collection does not address any matters of a sensitive nature

12. The following represents the hour burden of the collection of information:

(1) Number of Respondents: 1,400 respondents

Based on our experience with this information collection, the Commission estimates 1,400 respondents.

Respondents include incumbent and competitive local exchange carriers (LECs), facilities-based mobile telephony service providers, and facilities-based providers of broadband services.

Respondents are required to make a separate report for each state in which they provide services subject to this information collection.

Respondents with incumbent LEC operations and other operations in a given state must make separate reports for the two types of operations.

(2) Frequency of response: Responses will be made on a semi-annual basis.

(3) Total Number of Responses Annually: 2,800 responses.

The Commission estimates that each respondent will have two responses annually, on a semi-annual basis:

1,400 respondents x 2 responses/annum = 2,800 responses

(4) Estimated annual hour burden: 128,000 hours (annual hour burden for *all* respondents)

This estimate was derived by summing estimated annual hour burdens for the several categories of respondents enumerated in the answer to 12(1), *supra* (i.e., LECs; other, facilities-based providers of broadband services; and facilities-based providers of mobile telephony service).

<sup>19</sup> See *Data Gathering Order*, 15 FCC Rcd at 7759, para. 90.

<sup>20</sup> See *Order*, 19 FCC Rcd at 22352-53, para. 24.

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The annual hour burden estimate for each category of respondents was derived by reviewing the number of reports submitted by entities in that category and estimating the burden of completing those particular parts of the form that apply to those entities.

As we noted in the answer to 12(1), *supra*, respondents are required to make a separate report for each state in which they provide services subject to this information collection, and to make separate reports for incumbent LEC and other operations in a given state. Taking into account these sources of variability among respondents, the Commission estimates that the hour burden, per response, for the *average* respondent is 46 hours.

The estimated annual hour burden for *all* respondents is therefore:

1,400 respondents x 2 responses/annum x 46 hours/response = 128,800 hours

- (5) Estimated average hour burden per respondent per report in a single reporting period. Some respondents (*e.g.*, small, rural LECs or wireless ISPs) submit only a single report for a single state, while other respondents (*e.g.*, entities that operate in multiple states in which they (or their affiliates) have both incumbent LEC and other operations) submit one or two reports for each of a large number of states.

The Commission estimates that the *average* burden to complete a single FCC Form 477 is 12.6 burden hours.

This estimate was derived by dividing the estimated annual hour burden for *all* respondents (128,800 hours) by the number of reports that we estimate will be submitted per annum (5,100 individual reports per filing period, or 10,200 individual reports per annum).

As we noted in the answer to 12(4), *supra*, entities within several categories of communications service provider will respond, and will complete particular parts (but not necessarily all) of FCC Form 477.

Respondents also will differ with respect to the number of states for which they report and with respect to whether they have both incumbent LEC operations and other operations in a given state.

Taking these sources of variability into account, the Commission estimates that facilities-based providers of mobile telephony service will have the lowest annual hour burden.

The Commission estimates that LECs will have the largest annual hour burden as a group, reflecting the complexity of the operations of larger entities (*e.g.*, the regional Bell operating companies, and multi-state cable system operators).

Therefore, the Commission has determined that the *average* hour burden per response is 46 hours (as noted above).

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- (6) Total Annualized “In House” Cost to Respondents for the hour burdens for collection of information: \$5,292,400.

The Commission estimates that respondents will use staff equivalent to GS 11, Step 5, plus 30% overhead, to comply with the requirement throughout the authorized period (\$41.09 per hour). The annualized cost to respondents for the hour burdens for collection of information is calculated by multiplying the estimated total annual burden for all respondents as a group (see the answer to 12(3), *supra*) by \$41.09 per hour.

$$128,800 \text{ burden hours/annum} \times \$41.09/\text{hour} = \$5,292,400$$

13. The annual reporting and recordkeeping cost burdens are estimated as follows:

- (1) Total capital and start-up cost component (annualized over its expected useful life): \$0. Providing the requested information will not require the purchase of additional equipment.

- (2) Total operation and maintenance and purchase of services component: \$0.

Providing the requested information will not result in additional operating or maintenance expenses or in the purchasing or contracting out of information collection services.

- (3) Total annualized cost requested: \$0.

14. Costs to the Commission: \$119,500 per year.

The Commission assumes administration of the program will require 25% of total activity from each of (3) Commission economists and analysts at GS 15, Step 5 (\$130,694 per year) and 25% of total activity from one (1) Commission analyst at GS 13, Step 2 (\$85,727) with intermittent participation from other Commission employees, including attorneys, as required but probably on a *de minimis* cost basis. The program does not envision other costs, *e.g.*, personnel or other resources from other government agencies or from the private sector.

15. The public burden for the information collection requirements contained herein has increased by +67,480 burden hours (adjustment).

The Commission accurately predicted the total number of respondents. This adjustment change is due to:

- (1) respondents operating in more states than predicted, and therefore submitting more individual reports per reporting period than predicted; and
- (2) respondents expanding their service offerings (*e.g.*, cable system operators adding voice telephone service; LECs deploying Internet access service more extensively; mobile wireless carriers upgrading their networks to broadband speeds) and therefore answering

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a larger number of questions on the form, which increased the average burden per response from 21.9 hours to 46 hours.

16. Information filed on Form 477 will not be made publicly available in public files maintained by the Commission; in our experience, the preponderance of Form 477 filers asserts that some or all filed data are competitively sensitive.

As noted in the answer to 10, *supra*, we will continue our current policy of using only aggregated data in our published reports except that we will continue to publish most of the local telephone information reported by the Bell operating companies after consultation with the individual companies. We will continue our current practice of publishing reports twice each year, within four months of each semi-annual filing.

17. The Commission will display the expiration date for OMB approval on the FCC Form 477. Finally, we will publish the OMB Control Number, OMB expiration date and title of the collection in 47 CFR 0.408.

18. There are no exceptions to the certification statement, item 19.

**B. Collections of Information Employing Statistical Methods:**

The Commission does not anticipate that the collection of information will employ statistical methods.