

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Local Competition and Broadband Reporting)	CC Docket No. 99-301
)	

COMMENTS OF THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association hereby submits these comments in response to the *Notice of Proposed Rulemaking* (“*NPRM*”) in the above-captioned proceeding. With over 350 members, CompTel is the principal national industry association representing competitive telecommunications carriers and their suppliers. CompTel’s diverse membership base includes integrated communications providers (“ICPs”), competitive local exchange carriers (“CLECs”), data CLECs (“D-LECs”), and internet service providers (“ISPs”), many of whom are likely to be affected by the Commission’s proposed reporting requirements.

The Commission, in its *NPRM*, states that it needs timely and reliable information concerning local competition and broadband deployment in order to evaluate the efficacy of its own, and state, regulatory policies aimed at promoting both local competition and broadband deployment. CompTel supports this goal as well as the Commission’s stated desire to avoid “one size fits all” regulation of both incumbent and competitive providers. However, CompTel asserts that there may be less burdensome, and more effective, ways for the Commission to obtain the information it needs to assist its policymaking efforts other than the mandatory “one size fits all” information reporting format the Commission is proposing.

Specifically, CompTel urges the Commission to consider modifying its requirement that all entities covered by the proposed rules must report the proposed information by end-user classifications, which many firms do not use in their ordinary course of business. CompTel argues that, by balancing its legitimate information *needs* against the burdens and benefits of securing its information *wants*, the Commission may also be able to substantially increase the number of entities who voluntarily report information; this would eliminate the need to administer and enforce what would be, as proposed, an overly inclusive and burdensome program. CompTel further argues that the Commission's 1,000 line reporting threshold for broadband providers is excessive in scope and will not provide significantly more information regarding broadband *deployment* than a more narrowly-tailored survey of facilities-based data providers. Finally, CompTel urges the Commission to be more vigilant in protecting the legitimate confidentiality concerns of the numerous small entities who may be publicly reporting the proposed information for the first time.

I. DATA TO BE REPORTED

A. The FCC Should Not Require Reporting Entities to Collect Data They Do Not Collect In the Ordinary Course of Business

The Commission has a legitimate need for information describing the speed and scope of both broadband and competitive local telecommunications service deployment. Indeed, without timely and reliable information regarding the effects of, and need for, its policies, the Commission will, effectively, be navigating without a compass. The information the Commission will likely find to be the most helpful is information which allows the Commission to spot trends and barriers in the marketplace. Such information is, generally speaking, the same type of data that businesses themselves find most useful in informing their own policy,

investment, and marketing decisions. However, the Commission, in insisting on a “one size fits all” format for data reporting, shows no interest in, or regard for, the type of data that providers currently collect and that they could most quickly and efficiently report to the Commission.

The Commission notes that the proposed mandatory reporting form was developed from a series of voluntary surveys, which, originally, were based on an ILEC local competition survey.¹ The Commission’s brief history of the proposed reporting format explains why all of the information is expected to be reported separately for residential and non-residential customers, since this is traditionally how regulated carriers collect and report service information. For ILECs, the business/residential customer reporting distinction is a necessary part of billing information, given that these customers have traditionally been charged different prices for the same service due to historical ILEC pricing policies. CompTel questions, however, whether it is reasonable for the Commission to expect competitive carriers, who have never been subject to customer class price regulation, to collect and report lines-in-service data in this traditional, but artificial, regulatory format.

Today many, if not most, competitive providers market and price their services based on cost, capacity, and customer usage, rather than regulatory distinctions, such as customer class. Therefore, it is unreasonable to expect these entities to conform their data to a regulatory construct that never applied to them. While competitive providers will certainly develop and price their service offerings to appeal to a particular target customer class (*i.e.*, “high end residential/small business”), these carriers generally have no reason to keep a record of their customers by a “residential/non-residential” designation, because they simply bill their customers by service plan selected. Any reporting requirement that requires competitive carriers

¹ *NPRM*, ¶ 9.

to collect data they do not otherwise collect is, necessarily, inefficient and burdensome.² This burden will only be exacerbated by the Commission's proposed quarterly reporting requirements.

B. The FCC Should Work With Competing Carriers To Develop Mutually Acceptable Reporting Formats For Each Carrier Class

Given the difficulty to competitive carriers of collecting the data the Commission proposes and reporting the data in the proposed format (by customer class), it is not surprising that the voluntary surveys were not successful. What is genuinely troubling, however, is that, after discussing the poor record of participation in the voluntary surveys, the Commission's proposed solution is not to see whether the survey can be made more user-friendly, but simply to make the survey mandatory.³ This casual "problem/solution" analysis renders meretricious the many assertions in the *NPRM* that the Commission is earnestly concerned with minimizing burdens on reporting carriers.

If the Commission were genuinely interested in getting only the data it truly needs in the manner least burdensome to competitive local carriers and broadband providers, then it should be more flexible in allowing different formats for different types of providers. For example, the FCC could allow for greater use of estimates and approximations. In those instances where providers do not know precisely how many customers of a particular type they serve, the Commission should allow for "good faith" estimates by percentage of lines. This approach would substantially ease the reporting burden for many providers and would have a minimal impact on the reliability of the Commission's data. Moreover, an approach which allows

² It is not surprising that the only carriers the Commission identifies as having "expressed concern that the voluntary surveys are not sufficiently inclusive" are all ILECs. Given that the survey was originally tailored to their data reporting requirements it is, doubtless, easier for them to comply with than those CLECs they hope to similarly burden. *NPRM*, n.27, p. 11.

³*Id.*, ¶ 17.

reporting entities to report the information they have, and provide informed estimates of information they do not record, would allow the Commission to elicit a broader scope of information, at a much lower burden to reporting entities, while sacrificing only some precision. Allowing carriers, who know their customers, to provide estimates on a level of detail about reported data would allow the Commission greater insight into more general characteristics of the lines served (*i.e.*, urban or rural, residential or small business, government or large business, *etc.*).

C. The FCC Should Experiment With Flexible Format Reporting Before Requiring Mandatory Reporting

CompTel believes that the Commission should work with competitive local carriers and broadband providers to develop information reporting procedures which satisfy the Commission's need for timely, reliable information and impose a minimal burden on the reporting parties. CompTel members who were informally polled for these comments all expressed a willingness to make the voluntary surveys work.⁴ Moreover, many members who serve substantial numbers of local customers, but would not meet the Commission's 50,000 line threshold for the proposed mandatory reporting, would likely participate in a voluntary local competition survey which more closely tracked the information they already collect. Until the FCC has at least made an effort to determine whether competitive carriers could provide most of the information the Commission needs in a way that is less burdensome to the reporting party, CompTel believes mandatory reporting requirements are premature. While CompTel argues it is

⁴ Many CompTel members were never asked to participate in the Commission's voluntary surveys. Similarly, neither was CompTel, itself, asked to notify more than a handful of its members about the voluntary surveys.

not necessary for the Commission to institute a mandatory reporting program at this point, we believe that if the Commission were to adopt such a program, the program should contain a date certain sunset provision, preferably not to exceed three years.

II. THE BROADBAND REPORTING THRESHOLD IS OVERLY INCLUSIVE

The Commission asserts throughout this *NPRM* that it needs information on broadband deployment in order to satisfy its obligations under Section 706 of the Act, and in order to facilitate its annual reports to Congress on broadband capability and deployment.⁵ Presumably, if the Commission is only interested in information pertaining to broadband *capability* and *deployment*, then the Commission could limit the number of reporting entities to facilities-based broadband providers. After all, these entities possess all the relevant information about broadband capability and capacity. Furthermore, once the initial sale of a broadband line has occurred, whether to a reseller or an end-user, that line has been deployed. Therefore, strictly speaking, the FCC does not really *need* any information likely to be kept by ISPs, data networking firms, or any other *reseller* of broadband services.

However, the Commission proposes to require mandatory information reporting by any entity who serves at least 1,000 full broadband customers, whether business or residential.⁶ CompTel believes that this requirement is unnecessary and will capture many non-carrier entities. Furthermore, this requirement will impose severe administrative burdens on these firms while providing an, at best, *marginal* addition to the information that the Commission would get under a more reasonable and limited survey of facilities-based data carriers.

⁵ See, e.g. *NPRM*, ¶¶ 1, 2.

⁶ *Id.*, ¶ 30, 42.

CompTel has many ISP members who will, no doubt, be captured by this overly inclusive threshold. Moreover, while practically all ISPs providing broadband service over DSL lines will almost certainly be serving either residential or small business customers, the Commission requires each reporting ISP to list how many broadband lines it provides to each type of customer. As CompTel noted earlier, the ISP, or other reporting entity, is quite unlikely to presently keep easy-to-manipulate data regarding the business or residential status of its customers.

Thus, the FCC, through the breadth of this reporting requirement—“any entity” providing full broadband service to 1,000 lines of business or residential customers—would certainly be imposing a substantial administrative burden on a large number of small, unregulated entities such as ISPs (for whom, paradoxically, the FCC has always publicly disclaimed an interest in regulating)⁷. In return, the Commission would receive a very minimal amount of additional information regarding the proportion of broadband deployment to either residential or small business customers. As far as its need for information about broadband deployment to business customers, the FCC has provided absolutely no justification, other than agency curiosity, for extending the reporting requirements to entities providing broadband service to businesses.⁸ Therefore, CompTel urges the Commission to limit the entities required to report under these provisions to facilities-based carriers. This limitation would still provide the Commission with comprehensive broadband deployment information by lines deployed and technology utilized. From this information, the Commission could make fairly accurate inferences as to the number

⁷ For a short, concise history of the Commission’s policies relating to (or, rather, not relating to) ISPs *see*, J. Oxman, The FCC and the Unregulation of the Internet, OPP Working Paper No. 31, Office of Plans and Policy, Federal Communications Commission, 1999 FCC LEXIS 3370 (July 1999), pp. 16-23.

⁸ Indeed, the Commission notes that it has concluded that broadband deployment to business customers has been “reasonable and timely”, but asserts a desire to analyze segments of the business market as a basis for imposing this administrative burden on many companies who, at present, are not subject to FCC regulation. *NPRM*, ¶ 31.

and types of end-users who have access to the various broadband technologies.

III. THE FCC SHOULD KEEP CARRIER-SPECIFIC DATA CONFIDENTIAL

The Commission's proposed reporting requirements, as written, will likely encompass large numbers of entities, including small, non-public firms who have not previously been subject to government reporting requirements. The smaller the geographic scope of a reporting entity's operations, the more sensitive its information. CompTel believes that the benefit to the Commission of public disclosure would not be diminished by a reasonable statewide or provider class data aggregation which would serve to protect carrier-specific information. Moreover, CompTel believes the Commission should honor *any* reporting firm's request that its data not be publicly disclosed on a dis-aggregated, carrier-specific, basis.

As the Commission notes, it both provides, and receives benefits, by allowing public access to deployment data. However, after carefully considering the incremental benefit (to both itself and the public) of publishing data on a less confidential company-specific basis vs. a slightly more aggregated statewide basis, CompTel is certain that the Commission will decide in favor of protecting data considered confidential by those who share it.

IV. CONCLUSION

While CompTel recognizes the Commission's legitimate need for timely and reliable data regarding the level of broadband deployment and the state of local competition, the *NPRM* proposes a mandatory reporting scheme that is the regulatory equivalent of swatting a fly with a sledge hammer. The number of entities covered by the proposed program, the burdens and costs that covered entities must shoulder in order to provide the requested data, the frequency of

reporting, and the mandatory nature of the proposed program are all excessive means of satisfying the Commission's real information needs. The only part of the proposed program which is not excessive is the lack of protection the FCC proposes to provide for data asserted to be confidential by those reporting.

CompTel believes that a voluntary program, focused on the minimum number of firms best able to provide the information the Commission seeks, which also provided for flexible reporting formats—corresponding to data routinely kept by various provider classes—is likely to be the least burdensome, most efficient means for the Commission to get the information it needs. CompTel urges the Commission to experiment with alternative, voluntary reporting formats before instituting a mandatory “one size fits all” reporting program that, quite likely, may not provide materially better information, but will certainly impose substantial administrative costs on both the FCC and the reporting entities.

Respectfully submitted,

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