

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Establishing the Digital Opportunity Data Collection)	WC Docket No. 19-195
)	
Modernizing the FCC Form 477 Data Program)	WC Docket No. 11-10
)	

**COMMENTS OF ACA CONNECTS – AMERICA’S COMMUNICATIONS
ASSOCIATION
ON THE THIRD FURTHER NOTICE OF PROPOSED RULEMAKING**



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I. INTRODUCTION AND SUMMARY

ACA Connects – America’s Communications Association (“ACA Connects”)¹ hereby comments on the Third Further Notice of Proposed Rulemaking (“*FNPRM*”) issued by the Federal Communications Commission (“Commission”) regarding implementation of the Digital Opportunity Data Collection (“DODC”).² ACA Connects

¹ ACA Connects’ membership is made up of more than 700 small- and medium-size independent operators providing video, broadband, and phone services. See ACA Connects, “About ACA Connects,” <https://acaconnects.org/about/> (last accessed Sep. 8, 2020). ACA Connects’ members provide service to more than 11 million households and businesses, some of whom have no other means of receiving vital communication services. ACA Connects’ members currently file Form 477 reports and will be required to submit broadband data under the Digital Opportunity Data Collection.

² *Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 20-94 (July 17, 2020). The Second Report and Order (“*Second DODC Order*”) is contained in paras. 9-86, while the *FNPRM* is contained in paras. 87-191.

generally supports the Commission’s proposals in the *FNPRM* to collect more granular and accurate broadband data from service providers for its DODC mapping efforts and statutory obligations under the Broadband DATA Act.³ However, the Commission must ensure that its proposed broadband data collection and reporting obligations do not unnecessarily burden providers, particularly smaller providers that often lack the personnel and resources to dedicate to DODC compliance. ACA Connects submits that the Commission struck such an appropriate balance of regulatory burdens in its DODC crowdsourcing rules and it should take a similarly measured approach with its latest proposals in the *FNPRM*.⁴ In doing so, the Commission will facilitate robust broadband data reporting through the DODC, advancing its goal of identifying unserved locations in need of support to close the digital divide.⁵ ACA Connects herein comments on various proposals by the Commission and, where necessary, provides targeted recommendations to improve the DODC and reduce provider burdens.

First, we support the Commission’s proposed regulatory guardrails to ensure DODC challenges of provider broadband data are credible before directing providers to respond. This will save providers from undertaking time-consuming and costly responses, which would especially burden smaller providers. That said, we suggest the

³ Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-46) (“Broadband DATA Act”).

⁴ See *Second DODC Order* at paras. 62-76 (establishing procedures for collection of crowdsourced data to inform, but not decide, issues related to providers’ DODC reports and stating providers generally will not be required to respond to crowdsourced filings in the absence of a Commission inquiry).

⁵ See *FNPRM* at para. 1 (“Closing the digital divide and connecting every American to broadband no matter where he or she lives is the Commission’s highest priority.”).

Commission adopt several additional practices or measures to further reduce the burdens on smaller providers. In particular, the Commission should extend its proposed 30-day deadline for responding to DODC challenges to 60 days for challenges involving a single location and 180 days for bulk challenges involving multiple locations. The Commission also should allow providers the opportunity to request waivers of the response deadline for bulk challenges and other particularly complex disputes. Finally, to further screen out unreliable or malicious challenges, the burden of proof for DODC challenges should be on the challenger at all times.

Second, we agree with the Commission's proposal to assist smaller providers in reporting GIS data. However, we believe additional actions by the Commission are warranted to provide technical assistance and other relief to help smaller providers meet their DODC obligations. Only a few smaller providers currently produce the broadband coverage polygons required under the DODC and many do not have personnel that could be dedicated to DODC reporting tasks full-time. Thus, the Commission should reduce provider burdens by allowing smaller providers more time to file their initial DODC reports, to report DODC broadband data in the format of their choosing, and to rely on existing data sets when reporting broadband coverage polygons for the DODC. The Commission also should develop facts sheets, webinars, and other DODC education initiatives, which ACA Connects can help with and publicize.

Third, the Commission's proposed DODC enforcement regime correctly focuses on facilitating compliance rather than punishing providers for flawed broadband data submitted in good faith. ACA Connects welcomes the Commission's proposal that providers report any DODC corrections prospectively, which balances the need for

improved broadband data with the burdens imposed on providers. At the same time, ACA Connects agrees with the Commission that providers who intentionally or persistently submit inaccurate or incomplete broadband data to the Commission should be severely sanctioned in accordance with the Broadband DATA Act. As its recent enforcement activity demonstrates, the Commission's existing forfeiture adjustment rules provide sufficient flexibility to punish wrongdoers while protecting providers from draconian fines for DODC violations.

Fourth, no purpose is served by imposing an engineering certification requirement for reports submitted by wireline broadband providers employing DOCSIS or FTTx network technologies. Commission data show that wireline broadband service using these technologies is subject to established standards that ensure consistent transmission performance throughout the network. In addition to serving no purpose, requiring wireline providers to submit an engineering certification for every DODC report would be burdensome, particularly for smaller providers who generally do not have certified engineers on staff.

Fifth, the Commission should adopt its proposed DODC serviceable "location" definition for the Broadband Serviceable Location Fabric ("Fabric"), which mirrors the serviceable location definition used in the Commission's Connect America Fund ("CAF") proceeding. Adopting this definition would promote regulatory uniformity across Commission broadband deployment programs and lower provider burdens by using a familiar reporting standard. The Commission also should adopt its proposal to allow providers to report a served multi-tenant environment ("MTE") as a single location and

denote the number of units in an MTE for the Fabric, which will reduce provider data collection costs significantly without compromising the DODC's success.

Sixth, in regard to the collection of specific performance data, ACA Connects agrees that the Commission should collect broadband service speed data from fixed providers, which are essential for DODC mapping and to determine unserved locations. However, the Commission should limit its proposed latency data collection to the broadband services where latency issues most often arise (*i.e.*, fixed wireless and satellite) to better balance provider burdens. Moreover, the Commission should not require fixed providers to distinguish between residential-only and business-and-residential services in their DODC reports. Such a distinction is neither required by the Broadband DATA Act nor relevant to the Commission's determination of where broadband service actually is available under the DODC.

Finally, the Commission should sunset the Form 477 census block-based broadband data collection one year after the DODC commences. While the Form 477 data currently are necessary to award Rural Digital Opportunity Fund ("RDOF") support and for other purposes, this information will decline in value once the DODC is implemented and the Commission obtains more granular and accurate broadband data. As such, any benefits from the Form 477 collection will be outweighed by the reporting burdens on providers.

II. THE COMMISSION SHOULD ENSURE THE PROPOSED DODC REQUIREMENTS IN THE *FNPRM* DO NOT IMPOSE UNWARRANTED BURDENS ON PROVIDERS

ACA Connects demonstrated in its prior filings that, while it generally supports the collection of more granular and accurate data on broadband availability and service

quality, the Commission needs to address the challenges smaller providers face in complying with DODC requirements.⁶ As ACA Connects explained, smaller providers generally do not have staff dedicated to regulatory compliance and often cannot afford to hire outside consultants or counsel to handle this work.⁷ Smaller providers therefore will need to pull personnel from ongoing projects, rededicate funds to hire outside help, or potentially do both to comply with DODC requirements. This would reduce provider resources better spent on broadband deployment, contrary to the Commission’s aims for the RDOF and other proceedings.⁸ Thus, ACA Connects suggests that the Commission strive to keep its rules simple and straightforward and provides the following comments and recommendations to ensure the quest for more granular and accurate broadband data is balanced with the burdens imposed on providers under the DODC.

⁶ See Comments of ACA Connects – America’s Communications Association on the Second Further Notice of Proposed Rulemaking, WC Docket Nos. 19-195, 11-10, 5-11 (Sep. 23, 2019) (“ACA Connects Comments”) (recommending the Commission provide regulatory relief to smaller providers regarding their DODC obligations); Reply Comments of ACA Connects – America’s Communications Association on the Second Further Notice of Proposed Rulemaking, WC Docket Nos. 19-195, 11-10, 4-12 (Oct. 7, 2019) (“ACA Connects Reply Comments”) (same); see also *Ex Parte* Letter from Thomas Cohen and J. Bradford Currier, Counsel to ACA Connects, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 19-195, *et al.*, 5 (July 24, 2019) (“ACA Connects July Ex Parte”) (stating the Commission must ensure the DODC regulatory regime “is not overly burdensome for smaller providers”); *Ex Parte* Letter from Thomas Cohen and J. Bradford Currier, Counsel to ACA Connects, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 19-195, 11-10, 2 (July 9, 2020) (stating the DODC rules should enhance broadband data granularity and accuracy “without overly burdening smaller broadband providers”).

⁷ ACA Connects Comments at 5; ACA Connects Reply Comments at 5.

⁸ See, e.g., *Rural Digital Opportunity Fund, Connect Am. Fund*, WC Docket Nos. 19-126, 10-90, Report and Order, 35 FCC Rcd 686, para. 5 (2020) (“*RDOF Order*”) (highlighting the Commission’s goal of “ensur[ing] continued and rapid deployment of broadband networks to unserved Americans”).

A. DODC Challenge Process

The Commission proposes establishing a DODC challenge process through which consumers as well as government entities and other third parties may contest broadband data reported by providers.⁹ As ACA Connects explained in its prior comments, responding to disputes over broadband data can be a time-consuming and costly exercise, particularly for smaller providers, and smaller providers often will need to divert resources from deployments and other work to address disputes.¹⁰ Therefore, there should be guardrails to ensure DODC challenges are credible before directing providers to respond and the Commission should give providers, especially smaller providers, sufficient time to respond.¹¹ Accordingly, ACA Connects supports many of the Commission's DODC challenge process proposals and recommends targeted reforms thereto to better balance the relative burdens placed on challengers and providers.

1. DODC Challenge Evidentiary Standards

ACA Connects agrees with the Commission that consumers should be required to submit detailed information to support their DODC challenges.¹² The Commission's proposed consumer challenge evidentiary requirements should weed out wholly unsupported challenges. The Commission, for instance, will require consumer

⁹ ACA Connects' comments focus on the proposed DODC challenge process for broadband data submitted by fixed providers. See *FNPRM* at paras. 130-39, 145-46.

¹⁰ ACA Connects Comments at 11-12; ACA Connects Reply Comments at 12.

¹¹ See ACA Connects July Ex Parte at 6 (stating it would be onerous to require smaller providers to respond to every dispute involving their reported broadband data).

¹² *FNPRM* at paras. 130-34.

challengers to demonstrate they own the challenged location or are authorized to request service there.¹³ The Commission also will require consumer challengers to submit “documentary evidence” regarding the date, method, and content of their broadband service requests and the provider’s responses, if any.¹⁴ The Commission should evaluate such information to assess whether a challenge is credible *before* directing a provider to respond.¹⁵ This will ensure consumer challenges only involve valid service requests for locations actually within a provider’s service territory.

Government entities and other third parties should provide even more detailed information to support their DODC challenges.¹⁶ As the Commission recognizes, such challenges typically will take the form of bulk disputes of provider broadband data for multiple locations.¹⁷ ACA Connects therefore agrees with USTelecom that the Commission should subject non-consumer challenges to heightened scrutiny to ensure providers are not inundated with unsupported bulk challenges.¹⁸ As a baseline, non-consumer challenges should at least include documentation detailing the methodology used to collect or analyze the broadband data in dispute, the basis for the determinations underlying the challenge, and all communications with the provider

¹³ *Id.* at para. 130.

¹⁴ *Id.*

¹⁵ ACA Connects Comments at 11; ACA Connects Reply Comments at 2. See *Ex Parte* Letter from B. Lynn Follansbee, Vice President – Policy & Advocacy, USTelecom – The Broadband Association, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 19-195, 2-3 (Aug. 14, 2020) (“USTelecom Ex Parte”) (urging the Commission to vet all DODC challenges fully before requiring providers to respond).

¹⁶ *FNPRM* at paras. 145-46.

¹⁷ *Id.* at para. 145.

¹⁸ USTelecom Ex Parte at 3.

regarding service as well as any responses.¹⁹ Importantly, non-consumer challengers also should be required to show that any testing conducted to support the challenges was consistent with industry standards and disclose the time periods when testing occurred.²⁰ This will help to eliminate bulk challenges based on anecdotal or statistically insignificant data.

ACA Connects backs USTelecom's recommendation that the Commission conduct an initial relevance "screen" of all DODC challenges after filing so that providers are not directed to respond to unreliable or malicious challenges.²¹ As with provider DODC reports, all DODC challenges should be accompanied by a certification that the facts contained therein are true and correct.²² ACA Connects concurs with USTelecom and AT&T that a challenger must fill out all required data fields in the DODC challenge portal for a challenge to be considered complete by the Commission.²³ In addition, all challenges (including bulk challenges) should be brought on a location-specific and performance-specific basis, and challengers should provide all required information and supporting documentation for each location and service challenged before a provider

¹⁹ *FNPRM* at para. 146.

²⁰ *See, e.g., Ex Parte* Letter from Brendan F. Haggerty, Director, Federal Regulatory, AT&T Services Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 19-195, 11-10, 3 (Aug. 18, 2020) ("AT&T Ex Parte") (recommending the Commission require challengers to use standard testing procedures and detail their testing methodologies in their challenges). For testing of DOCSIS networks, the challenger should indicate that it has tested from the customer modem to the provider's CMTS.

²¹ USTelecom Ex Parte at 3.

²² *FNPRM* at paras. 134, 146.

²³ USTelecom Ex Parte at 3; AT&T Ex Parte at 3.

should be directed to respond.²⁴ This will allow providers and the Commission to focus only on those locations where broadband data actually are in dispute. ACA Connects also supports the Commission's proposal that challengers only should be allowed to contest broadband service availability from a particular provider at the maximum advertised speeds reported by the provider.²⁵ The Commission therefore should clarify that the DODC challenge process should not be used to address other quality of service issues, such as service latency or throughput.²⁶

ACA Connects agrees with the Broadband Mapping Coalition that the burden of proof in the DODC challenge process should be on the challenger at all times.²⁷ Under the DODC, providers will certify to the truth and accuracy of their reported broadband data, subject to the Commission's enforcement procedures and other penalties for misrepresentations/lack of candor.²⁸ The evidentiary onus therefore should be on the challenger to demonstrate that a provider's certified data for a location are inaccurate or incomplete. However, ACA Connects acknowledges that the evidentiary standard for DODC challenges should not be so high as to effectively preclude valid broadband data disputes. ACA Connects therefore supports the Commission's proposed "preponderance of the evidence" standard, which ensures challengers will need to

²⁴ *FNPRM* at para. 133.

²⁵ *Id.* at para. 130, n.344.

²⁶ *Id.*

²⁷ Joint Comments of USTelecom – The Broadband Association, ITTA – The Voice of America's Broadband Providers and the Wireless Internet Service Providers Association, WC Docket Nos. 19-195, 11-10, 33-34 (Sep. 23, 2019) ("Broadband Mapping Coalition Comments").

²⁸ *Second DODC Order* at para. 61.

present credible evidence supported by documentation based on verifiable broadband data and effectuates the best balance between the relative burdens imposed on challengers and providers.²⁹

While ACA Connects generally supports the proposed DODC challenge process evidentiary framework, it shares USTelecom's concerns about the list of "category of dispute" options that challengers could select.³⁰ As with USTelecom, ACA Connects finds this list is too broad, in part because it includes "provider failed to install within ten business days of valid order for service" and "installation attempted but unsuccessful" as options.³¹ These options could result in DODC challenges unrelated to actual service unavailability when a provider is able to provide service within ten business days as required but circumstances beyond the provider's control, such as the inability to schedule installation, delay the provision of service. As USTelecom explains, a provider's inability or unwillingness to offer broadband service within ten business days may constitute a denial of service, but a delay in installation due to scheduling problems or other unforeseen circumstances that result in installation outside the ten-day window is not.³² The Commission should clarify this point in its final DODC challenge procedures or remove such ill-defined options from the proposed category of dispute list.

²⁹ *FNPRM* at para. 138.

³⁰ USTelecom Ex Parte at 2-3.

³¹ *Id.* See *FNPRM* at para. 130.

³² USTelecom Ex Parte at 2-3.

Further, the Commission should caution consumers that, prior to filing a challenge, they should first seek to resolve the issue with the provider and allow the provider time to resolve the broadband installation issue. As indicated above, there could be many justifiable reasons why service is not provided within ten business days of a valid service request. By having consumers first go to the provider to address the problem, the Commission would likely cut back on unnecessary disputes and time spent by the Commission and providers on resolving challenges.³³

2. DODC Challenge Provider Response Timeframe

The Commission proposes requiring providers to submit a reply to a DODC challenge within 30 days of receiving notice.³⁴ ACA Connects agrees with USTelecom and NTCA that a 30-day response deadline would place significant burdens on providers, particularly smaller providers that lack the personnel and resources to dedicate to handling DODC challenges.³⁵ The Commission therefore should adopt a 60-day response deadline for challenges involving a single location and a 180-day response deadline for bulk challenges involving multiple locations. The Commission

³³ The Commission therefore should consider establishing a cure period to resolve broadband installation issues before a challenge can be filed. Under such an approach, challengers would not be allowed to file a challenge for a certain time period after denial of a valid service request (*i.e.*, 20 days) and they would be required to certify that they did not receive service at the time of the challenge's filing.

³⁴ *FNPRM* at para. 136.

³⁵ USTelecom Ex Parte at 3. See Comments of NTCA – The Rural Broadband Association, WC Docket Nos. 19-195, 11-10, 10 (Sep. 23, 2019) (“NTCA Comments”); Reply Comments of NTCA – The Rural Broadband Association, WC Docket Nos. 19-195, 11-10, 5, n.12 (Oct. 7, 2019).

also should allow providers the opportunity to request waivers of the response deadline for bulk challenges and other particularly complex disputes.

As USTelecom emphasizes, the Commission should “value accuracy over speed” when it comes to the challenge process, particularly in its early stages, and should allow providers sufficient time to gather all relevant information to respond to a challenge.³⁶ NTCA similarly notes that providers will need significant time to identify, analyze, and provide relevant broadband data needed for the Commission to evaluate a contested DODC challenge.³⁷ Imposing an unnecessarily short challenge response deadline therefore would skew the process against providers and may result in Commission decisions based on incomplete or otherwise-deficient evidence. Establishing a longer provider response timeframe is reasonable at this stage of the DODC’s development. Neither the Commission, providers, nor potential challengers can know with any certainty at this time how long a “typical” challenge process will take before resolution. Thus, the Commission should see how the challenge process operates with a longer response timeframe before imposing an overly aggressive deadline on providers.

Moreover, the Commission should recognize that some DODC challenges may be particularly burdensome for providers, warranting additional response time. For example, bulk challenges from governmental entities and other third parties likely will implicate the broadband data for hundreds of locations and potentially many more,³⁸

³⁶ USTelecom Ex Parte at 3.

³⁷ See NTCA Comments at 8-10.

³⁸ See *FNPRM* at para. 145.

and providers will require more time to identify, analyze, and provide relevant information in response. The Commission should grant provider challenge response deadline waivers under such circumstances upon request to reduce provider burdens and ensure its challenge decisions are based on adequate evidence. ACA Connects therefore requests that the Commission amend its proposed rule 1.7006(c) to (1) give a provider 60 days to respond to challenges involving a single location and 180 days to respond to bulk challenges involving multiple locations, and (2) allow the Commission to grant provider challenge response deadline waivers upon request for bulk challenges and other complex disputes.³⁹

B. DODC Technical Assistance for Providers

The Commission proposes offering limited technical assistance to providers related to their broadband data reporting obligations under the DODC.⁴⁰ ACA Connects submits that the Commission's proposal is a good start, but it must do more to provide relief to smaller providers that often lack the personnel and resources to undertake complex broadband data reporting. The Broadband DATA Act requires the Commission to establish a process in which a provider with fewer than 100,000 active broadband connections may request and receive Commission assistance with GIS data processing.⁴¹ The Commission also proposes making service-desk help available and providing clear instructions for DODC submissions to aid providers with their broadband

³⁹ See *id.* at Appendix B, Proposed Rules, 47 C.F.R. § 1.7006(c).

⁴⁰ *Id.* at para. 186.

⁴¹ 47 U.S.C. § 644(d).

data reporting.⁴² Such assistance is critical to ensure providers are able to comply with their DODC obligations. However, further Commission assistance for smaller providers is necessary to ensure the collection of quality broadband data through the DODC.

As ACA Connects and others explained, only a few smaller providers today produce (or have software capable of producing) the broadband coverage polygons required under the DODC.⁴³ In ACA Connects' experience, most smaller providers do not have personnel that could be dedicated to broadband data reporting tasks full-time.⁴⁴ Thus, without further assistance, smaller providers will need to redirect staff and money to DODC reporting obligations, leaving fewer resources to extend and improve broadband networks. The Commission recognized in the *First DODC Order* concerns that smaller providers "will struggle to comply" with DODC reporting requirements unless they get assistance with creating their broadband coverage polygons.⁴⁵ The Commission therefore should take action now to reduce the DODC burdens imposed on smaller providers by adopting ACA Connects' previous recommendations.

⁴² *FNPRM* at para. 186.

⁴³ ACA Connects Comments at 3-4; ACA Connects Reply Comments at 4. See Comments of the Smithville Telephone Company, WC Docket Nos. 19-195, 11-90, 11 (Sep. 23, 2019) (explaining it would take most providers many months to collect the data to produce the broadband coverage polygons required under the DODC); Comments of Connected Nation, Inc., WC Docket Nos. 19-195, 11-90, 4-5 (Sep. 23, 2019) ("Connected Nation Comments") (stating more than half of Kansas providers required some level of GIS processing assistance); Comments of WTA – Advocates for Rural Broadband, WC Docket Nos. 11-10, 10-09, 4 (Sep. 23, 2019) (noting DODC reporting "will likely take time and could put a strain on limited staff and financial resources," even for providers that already invested in mapping tools).

⁴⁴ ACA Connects Comments at 5; ACA Connects Reply Comments at 4.

⁴⁵ *Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC Rcd 7505, para. 78 (2019) ("*First DODC Order*").

First, the Commission should give very small providers (*i.e.*, fewer than 1,500 subscribers) an additional six months to comply with the DODC reporting rules, which will enable them to adjust to the new requirements and learn from the experience of providers that already filed.⁴⁶ It also will ensure they will have access to help from the limited number of mapping vendors in the market who are expected to dedicate their own limited resources to their larger, more revenue-generating customers first. Further, because these providers cover only a small percentage of broadband serviceable locations and the additional time requested is limited, any reporting delay will have, at most, a *de minimis* impact on the DODC.⁴⁷

Second, the Commission should permit providers with fewer than 100,000 subscribers to report shapefile broadband data in the format of their choosing.⁴⁸ ACA Connects understands that the Commission's DODC mapping efforts would be simplified if all providers reported data in a single format (*i.e.*, the proprietary ESRI format). But as ACA Connects explained, the cost to purchase software to produce polygons in the ESRI file format is significant.⁴⁹ Even the smaller providers that today

⁴⁶ ACA Connects Comments at 5-6; ACA Connects Reply Comments at 4-5. See ACA Connects July Ex Parte at 6 (asserting very small providers should have additional time to file their initial DODC broadband data reports and receive Commission assistance with preparing these reports).

⁴⁷ ACA Connects notes that, to the best of its knowledge, there is no evidence to indicate that smaller providers disproportionately serve partially served areas, are more proximate to unserved areas, or are less likely to offer high-performance broadband service. Thus, ACA Connects is not aware of any evidence indicating that the requested extension would disproportionately impact the outcome of the DODC.

⁴⁸ ACA Connects Comments at 6-7; ACA Connects Reply Comments at 5; ACA Connects July Ex Parte at 6.

⁴⁹ ACA Connects Comments at 6; ACA Connects July Ex Parte at 6.

have the capability to produce polygons only do so in the KMZ file format, which relies on free access to Google Earth.⁵⁰ ACA Connects' proposal will require the Commission to convert broadband data filed in different formats by providers into a single format for DODC mapping purposes. However, the Commission can accomplish this task by purchasing software more cost-effectively than requiring hundreds of smaller providers to make such purchases individually.

Third, the Commission should allow providers to rely on existing data sets when reporting broadband coverage polygons for the DODC. In particular, the Commission should clarify that providers can (1) rely on their homes passed databases or network maps so long as they make good faith efforts to ensure they are reasonably accurate and (2) consistent with the broadband coverage reporting buffers adopted in the *Second DODC Order*,⁵¹ make predictive judgments about where service is available and the performance attributes for such service so long as their judgments are reasonable.⁵² The Commission then can use its DODC crowdsourcing and challenge processes to further hone provider data, if necessary. This will reduce burdens on smaller providers by avoiding the substantial costs associated with "walking the network."

⁵⁰ ACA Connects Comments at 6. See ACA Connects July Ex Parte at 6 ("[T]he KMZ file format, which can be derived from Google Earth, is free and is relatively easy to use.").

⁵¹ See *Second DODC Order* at paras. 16-23.

⁵² ACA Connects Comments at 7-8; ACA Connects Reply Comments at 6-7. See Comments of Verizon, WC Docket Nos. 19-195, 11-10, 2-4 (Sep. 23, 2019) (stating Commission should not impose unnecessary broadband data reporting specifications on providers); Comments of Alexicon Consulting, WC Docket Nos. 19-195, 11-10, 4 (Sep. 23, 2019) (warning that overly strict broadband reporting obligations would "increase cost and burden for reporting carriers, and will add little, if any, benefit in terms of broadband data accuracy").

ACA Connects is willing to work with the Commission to publicize provider outreach and technical assistance efforts and is ready to assist with developing fact sheets, webinars, and other education initiatives aimed at helping smaller providers navigate their DODC obligations. Such assistance is needed to obtain quality broadband data and enhance the accuracy of the Commission's DODC coverage maps.⁵³ The Commission therefore should provide the regulatory relief and other assistance requested herein for smaller providers to ensure the DODC's success.

C. DODC Enforcement

The Commission seeks comment on enforcement procedures and penalties for DODC rule violations.⁵⁴ As ACA Connects explained in its prior comments, the Commission's DODC enforcement regime should focus on facilitating compliance rather than punishing providers for broadband data mistakes submitted in good faith.⁵⁵ ACA Connects therefore supports the Commission's proposed enforcement approach that will "distinguish[] between those entities that make a conscientious, good faith effort to provide accurate data and those that fail to take their reporting obligations seriously or affirmatively manipulate the data being reported."⁵⁶

The Broadband DATA Act states it is unlawful to "willfully and knowingly" or "recklessly" submit materially inaccurate or incomplete broadband data to the

⁵³ Connected Nation Comments at 4-6.

⁵⁴ *FNPRM* at paras. 174-83.

⁵⁵ ACA Connects Comments at 9-11; ACA Connects Reply Comments at 10-12; ACA Connects July Ex Parte at 6-7.

⁵⁶ *FNPRM* at para. 179.

Commission.⁵⁷ This standard generally tracks ACA Connects' proposal in its prior comments that a DODC violation occurs when a provider's broadband data reports are "intentionally and persistently inaccurate."⁵⁸ ACA Connects agrees with the Commission that the "willfully and knowingly" standard presumes a provider reported inaccurate or incomplete broadband data intentionally.⁵⁹ The Commission therefore would need to show a provider's DODC report was inaccurate or incomplete along with proof that the provider intentionally filed the report knowing it was inaccurate or incomplete to meet this standard.⁶⁰ This will ensure providers are not sanctioned for DODC reports filed in good faith that were later determined to be somehow inaccurate or incomplete. ACA Connects similarly agrees with the Commission that the "recklessness" standard presumes something less than intent but more than mere negligence by the provider.⁶¹ In line with its prior comments, ACA Connects submits that a provider acts recklessly when it persistently fails to file accurate or complete DODC reports and files such reports without a reasonable basis for believing they are accurate and complete.⁶² This will encourage providers to conduct reasonable due diligence before filing DODC reports without sanctioning isolated mistakes.

⁵⁷ 47 U.S.C. § 643.

⁵⁸ ACA Connects Reply Comments at 10. See ACA Connects Comments at 11. See ACA Connects July Ex Parte at 7 ("[T]he Commission should not sanction a provider for submitting inaccurate data unless there is clear evidence the provider intentionally and persistently did so.").

⁵⁹ *FNPRM* at para. 175.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See ACA Connects Comments at 11; ACA Connects Reply Comments at 10; ACA Connects July Ex Parte at 7.

Like AT&T, T-Mobile, the Broadband Mapping Coalition, and others, ACA Connects urges the Commission not to penalize providers for every instance in which their DODC reports proved to be flawed, so long as the reports were submitted in good faith following reasonable due diligence.⁶³ As ACA Connects and others explained, an unreasonably aggressive DODC enforcement regime will cause providers to be overly cautious and underreport broadband service availability, distorting the Commission’s DODC coverage maps.⁶⁴ ACA Connects also agrees with Next Century Cities and others that the DODC enforcement regime should offer “multiple warnings” to providers before the Commission imposes penalties.⁶⁵ The Commission therefore should not penalize providers for DODC violations unless the providers previously received

⁶³ See Reply Comments of AT&T, WC Docket Nos. 19-195, 11-10, 8-9 (Oct. 7, 2019) (stating Commission should not impose penalties for non-willful broadband data errors); *Ex Parte* Letter from Steve B. Sharkey, Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 19-195, 11-10, 3 (Aug. 17, 2020) (asserting alleged DODC violations must reach a “threshold” level of materiality before the Commission should take action); Joint Reply Comments of USTelecom – The Broadband Association, ITTA – The Voice of America’s Broadband Providers and the Wireless Internet Service Providers Association, WC Docket Nos. 19-195, 11-10, 18-20 (Oct. 7, 2019) (arguing providers should not be penalized for broadband data errors absent evidence of willful misreporting or negligence); Comments of NCTA – The Internet & Television Association, WC Docket Nos. 19-195, 11-10, 5 (Sep. 23, 2019) (“NCTA Comments”) (“[T]he Commission should focus on correcting data so that its future maps are as accurate as possible, not punishing providers for good-faith mistakes.”); see also USTelecom *Ex Parte* at 2 (noting the difficulties of establishing clear DODC enforcement standards prior to the implementation of the Fabric).

⁶⁴ ACA Connects Reply Comments at 10; Broadband Mapping Coalition Comments at 25; Reply Comments of California Internet, L.P. dba GeoLinks, WC Docket Nos. 19-195, 11-10, 7 (Oct. 7, 2019). See *FNPRM* at para. 179.

⁶⁵ See Reply Comments of Next Century Cities, the Institute for Local Self-Reliance, Center for Rural Strategies, Tribal Digital Village Network, National Digital Inclusion Alliance, and X-Lab, WC Docket Nos. 19-195, 11-10, 6 (Oct. 7, 2019) (“The Commission should set a simple and transparent standard that offers multiple warnings before an escalating set of sanctions.”).

multiple notices within a certain period of potential issues with their broadband data reporting through the Commission’s crowdsourcing and/or challenge processes or some other mechanism, such that the Commission has a sound basis to conclude that there are material concerns about the accuracy of their reports.

The Commission requests input on the appropriate penalties for DODC violations, including the failure to file required broadband data reports.⁶⁶ ACA Connects agrees with the Commission that its existing forfeiture adjustment rules – which account for the nature, circumstances, extent, and gravity of violations as well as a violator’s degree of culpability, history of prior offenses, ability to pay, and other relevant factors – provide sufficient flexibility to punish wrongdoers while protecting providers from draconian fines.⁶⁷ Indeed, the Commission recently applied its forfeiture adjustment rules in its proposed fine against BarrierFree for apparent Form 477 violations, taking into account the alleged duration, harm, egregiousness, and intentional nature of the apparent violations.⁶⁸ ACA Connects notes that a failure to provide required forms or information to the Commission is subject to a \$3,000 base forfeiture under the Commission’s rules and this amount could serve as a rational starting point for the Commission’s forfeiture calculations for DODC violations.⁶⁹ The Commission also

⁶⁶ *FNPRM* at paras. 178-81.

⁶⁷ *See id.* at para. 178; *see also* 47 U.S.C. § 503(b)(2); 47 C.F.R. § 1.80(b)(9).

⁶⁸ *Barrier Commc’ns Co.*, File No. EB-IHD-19-00029003, Notice of Apparent Liability for Forfeiture, FCC 20-123, paras. 39-44 (Sep. 2, 2020) (“*BarrierFree*”).

⁶⁹ 47 C.F.R. § 1.80, Section I. *See BarrierFree* at para. 40 (applying the \$3,000 base forfeiture to apparent Form 477 violations before upwardly adjusting the proposed fine).

should exercise its existing authority to impose fines for misrepresentations/lack of candor related to broadband data reports where warranted.⁷⁰

ACA Connects recognizes that enforcement action beyond forfeitures may be appropriate in certain egregious cases, particularly where there is clear evidence of fraud. In such instances, which should be limited, ACA Connects supports the State of Colorado's recommendation that appropriate penalties could include declaring a provider ineligible to receive universal service funds or clawbacks of previously-committed universal service funds.⁷¹ This will ensure bad actors do not act as a drain on the support available to providers taking their DODC obligations seriously.

The Commission also proposes that providers be required to file corrected DODC reports within 45 days of discovering that their current broadband data are inaccurate or incomplete.⁷² ACA Connects submits that the Commission should adopt targeted reforms to this proposal to reduce the burdens imposed on smaller providers. First, ACA Connects recommends that the Commission only require corrected DODC reports for "significant reporting errors" that would impact the Commission's coverage maps.⁷³ Adopting the Commission's proposal to require a corrected DODC report "any time" a provider's broadband data prove to be inaccurate or incomplete, regardless of

⁷⁰ 47 C.F.R. § 1.80, Section I. See 47 C.F.R. § 1.17.

⁷¹ Comments of the State of Colorado, WC Docket Nos. 19-195, 11-10, 8-9 (Sep. 23, 2019). Such actions would be governed by the evidentiary standards and procedural protections of the Commission's suspension and debarment rules. See 47 C.F.R. § 54.8; see also Comments of INCOMPAS, NTCA – The Rural Broadband Association, and ACA Connects – America's Communications Association, GN Docket No. 19-309 (Feb 13, 2020) (proposing reforms to the Commission's suspension and debarment rules).

⁷² *FNPRM* at para. 182.

⁷³ See *id.*

the error's impact on Commission mapping efforts, would be unduly burdensome for smaller providers that often lack personnel that could be dedicated to DODC reporting tasks full-time.⁷⁴

Second, the Commission should limit the obligation to file a corrected DODC report to instances where the broadband data correction was identified through provider self-discovery or the challenge process.⁷⁵ The Commission determined in the *Second DODC Order* that information obtained through the crowdsource process will “inform, but not decide” broadband deployment data issues.⁷⁶ Consequently, providers should not be required to file a corrected DODC report each time a crowdsourced submission identifies a potential broadband data issue in the absence of a specific Commission inquiry.⁷⁷ As the Commission notes, “a crowdsourced data filer can file a challenge if it seeks a more formal response regarding a broadband data dispute.”⁷⁸ This will ensure that the alleged broadband data issue is credible before requiring a provider to incur the time and effort to file a corrected DODC report.

Third, the Commission should not adopt its proposed 45-day correction timeframe and should instead allow providers to submit any necessary corrections to their broadband data at their next DODC filing opportunity. ACA Connects agrees with the Broadband Mapping Coalition that “having a fixed and known schedule for data

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Second DODC Order* at 72.

⁷⁷ *Id.* at para. 71 (stating providers “generally will not be required” to respond to crowdsourced data submissions in the absence of a Commission inquiry).

⁷⁸ *Id.*

updates and enabling providers to avail themselves of efficiencies in submitting batch data corrections best balances the need for data corrections against the burdens to which providers otherwise would be subject with an unbounded or more frequent data update requirement.”⁷⁹ ACA Connects similarly agrees with NCTA that “[i]t is not practical or useful to have the deployment map in a constant state of flux or to impose a perpetual filing obligation on providers” as part of the DODC.⁸⁰ The Commission therefore should streamline the broadband data correction reporting process by allowing providers to make any necessary corrections at their next DODC filing opportunity.

Finally, ACA Connects supports the Commission’s proposal that providers should not be required to correct and refile past DODC reports where it is determined that their current data are incorrect, but only file one corrected DODC report to address the identified data issues prospectively.⁸¹ As ACA Connects, the Broadband Mapping Coalition, and NCTA demonstrated, the costs of retroactive DODC filings would be substantial yet provide minimal benefit to the Commission in its mapping efforts.⁸² The Commission can reduce such costs by only requiring corrections based on the provider’s most recent broadband data and only requiring the filing of a single corrected DODC report to address the data issues. ACA Connects therefore urges the

⁷⁹ Broadband Mapping Coalition Comments at 29-30.

⁸⁰ NCTA Comments at 16.

⁸¹ *FNPRM* at para. 183. This means that challengers may only dispute the broadband data included on a provider’s most recent DODC report.

⁸² ACA Connects Comments at 13, n.37; Broadband Mapping Coalition Comments at 30, n.96; NCTA Comments at 17.

Commission to adopt its proposal that DODC report corrections made by providers should be forward-looking only.⁸³

D. Processes for Verifying DODC Provider Reports

ACA Connects opposes requiring wireline providers using DOCSIS or FTTx network technologies to submit an engineering certification for their DODC reports in addition to a corporate officer certification.⁸⁴ The Commission previously found that, for wireline broadband service via DOCSIS and FTTx technologies, transmission performance is largely known and consistent across the entire network, ameliorating the need for an engineering certification.⁸⁵ Wireline broadband service availability and quality are determined to a great extent by the type of network technology deployed, and in the case of DOCSIS and FTTx technologies, they are known and proven to deliver virtually consistent performance as set forth in the vendor specifications.⁸⁶ Wireline providers will submit information on their network locations and technologies in their DODC reports, and a corporate officer will certify to the truth and accuracy of such information.⁸⁷ The Commission therefore can, with assurance, know they are accurate

⁸³ *FNPRM* at para. 183.

⁸⁴ *Id.* at para. 112.

⁸⁵ See Eighth Measuring Broadband America Fixed Broadband Report, Federal Communications Commission, Office of Engineering and Technology, Sections 2.C-2.D (Dec. 14, 2018), <https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixed-broadband-eighth-report> (last visited Sep. 8, 2020) (“MBA Report”) (finding DOCSIS and FTTx technologies regularly provided consistent speeds and latency across networks). By contrast, as the Commission recognizes in the *FNPRM*, wireless broadband service is subject to numerous variables affecting performance. See *FNPRM* at para. 107.

⁸⁶ See ACA Connects Comments at 8.

⁸⁷ *Second DODC Order* at para. 61.

and complete by checking wireline provider DODC reports against vendor specifications and industry standards.

Not only is there no discernable benefit from requiring DOCSIS or FTTx providers to submit an engineering certification, but imposing such a requirement on them would be burdensome, particularly for smaller providers who generally do not have certified engineers on staff. The limited supply of outside qualified engineers, especially in rural areas, means wireline providers will have to incur significant costs and endure long wait times to obtain the required certification. Thus, the Commission should find that a cost/benefit analysis does not support imposing an engineering certification requirement on DODC reports from wireline providers certifying that they use DOCSIS or FTTx technology.

The Commission also proposes using information submitted by government entities and other third parties to verify provider broadband data outside of the challenge process.⁸⁸ ACA Connects submits that this approach is unsound. The Broadband DATA Act requires the Commission to collect and use “verified” data from government entities and other third parties as a check on provider DODC reports.⁸⁹ However, as ACA Connects explained in its prior comments, broadband data from government entities and other third parties can be informative for the Commission’s DODC mapping efforts only to the extent they are credible.⁹⁰ Thus, the Commission should require government entities and other third parties to submit any disputes regarding provider

⁸⁸ *FNPRM* at paras. 113-16.

⁸⁹ 47 U.S.C. § 642(a)(2).

⁹⁰ ACA Connects Comments at 11; ACA Connects Reply Comments at 15.

broadband data through the DODC challenge process, which offers the procedural safeguards identified above to ensure providers and the Commission's mapping efforts are not bogged down by unreliable or incomplete data generated by government entities and other third parties.⁹¹

E. Broadband Serviceable Location Fabric

The Commission requests comment on the appropriate definition for a broadband serviceable "location" for inclusion in the Fabric on which DODC data will be overlaid.⁹² ACA Connects recommends that the Commission adopt the proposed definition in the *FNPRM*, which mirrors the definition of a serviceable location from the CAF proceeding. The Broadband DATA Act requires the Fabric to include "all locations in the United States where fixed broadband Internet access service can be installed."⁹³ The Broadband DATA Act also states that broadband installations should occur within a commercially reasonable time of ten days after a valid service request is submitted.⁹⁴ In the CAF, the Commission defined a serviceable location as a residential or business location to which providers had or would extend mass market broadband and voice services within ten business days upon request.⁹⁵ The CAF serviceable location definition would encompass locations where fixed broadband Internet access service

⁹¹ See *supra* Section II.A.

⁹² *FNPRM* at para. 169.

⁹³ 47 U.S.C. § 642(b)(1)(A)(i).

⁹⁴ 47 U.S.C. § 641(14)(B).

⁹⁵ See *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect Am. Fund Support Regarding Their Broadband Location Reporting Obligations*, WC Docket 10-90, Public Notice, 31 FCC Rcd 12900, 3-4 (WCB 2016) ("*CAF Guidance*").

can be installed within ten business days upon request, as required by the Broadband DATA Act.⁹⁶ Accordingly, adopting the CAF definition of a serviceable location for the DODC will promote regulatory uniformity across Commission broadband deployment programs and lower provider burdens by adopting a familiar reporting standard.

The Commission also requests comment on how units in MTEs should be incorporated into the Fabric.⁹⁷ Again, ACA Connects agrees with the Commission that the CAF provides an appropriate model.⁹⁸ In the CAF, the Commission required providers to report a served MTE as a single location and then denote the number of units in the MTE.⁹⁹ The Commission should adopt the same approach for the Fabric. As the Commission highlights, at least for wireline providers, it is unlikely that they would offer service only to some units in an MTE but not others.¹⁰⁰ In addition, it would be infeasible for many smaller providers to record the location (latitude, longitude, and potentially altitude) of each individual MTE unit for the Fabric. Certainly, the costs of such a data collection would far exceed its limited utility for the Commission's DODC

⁹⁶ ACA Connects agrees with USTelecom that this definition would encompass mobile homes where those homes are stationary with unique addresses and/or receipt of electricity service. USTelecom Ex Parte at 3. Individuals residing in such homes typically subscribe to broadband service independently of a mobile home community and such homes therefore should be considered individual broadband serviceable locations under the Fabric.

⁹⁷ *FNPRM* at para. 171.

⁹⁸ *Id.*

⁹⁹ *CAF Guidance* at 4.

¹⁰⁰ *FNPRM* at para. 171. Even if some non-wireline providers could determine their coverage for each MTE unit (e.g., a satellite provider determining coverage based on dishes installed in MTE units), nothing indicates that the costs of imposing such a data collection requirement on *all* providers would be less than the minimal benefit the information would provide for the Commission's DODC coverage maps.

mapping efforts. The Commission therefore should allow providers to report an MTE as a single broadband serviceable location and then denote the number of MTE units for the Fabric.

F. DODC Standards for Reporting Broadband Availability and Service Quality

The Commission plans to require fixed providers to report the maximum advertised download/upload speeds for their broadband services in an area as part of the DODC.¹⁰¹ ACA Connects supports this proposal. The Broadband DATA Act requires fixed providers to report information on their download/upload broadband service speeds¹⁰² and fixed providers must submit broadband coverage polygons reflecting service speed under the *First DODC Order*.¹⁰³ Service speed information is critical to determining where high-performance broadband is available, which is necessary for the Commission's DODC mapping efforts and the RDOF.¹⁰⁴

The Commission also seeks comment on whether it should require all fixed providers to report latency data by indicating whether their service in an area has a latency less than or equal to a 100 ms round-trip threshold (based on the 95th percentile of measurements).¹⁰⁵ Alternatively, the Commission asks whether the latency data reporting obligation only should apply to a subset of providers in light of the significant

¹⁰¹ *Id.* at para. 91.

¹⁰² 47 U.S.C. § 642(b)(2)(A)(ii).

¹⁰³ *First DODC Order* at para. 12.

¹⁰⁴ See *RDOF Order* at para. 9 (stating RDOF support will be available in areas lacking 25/3 Mbps broadband service speeds); see also *id.* at para. 39 (assigning weights to RDOF bids based, in part, on broadband service speeds).

¹⁰⁵ *FNPRM* at para. 92.

variation in latencies among fixed services.¹⁰⁶ ACA Connects agrees that significant latency differences exist among fixed providers and recommends that the latency reporting requirement only apply to fixed wireless and satellite broadband service providers.

The Broadband DATA Act requires latency data reporting from fixed providers only “if applicable.”¹⁰⁷ ACA Connects noted in its prior comments that many broadband subscribers, particularly online gamers and video conference users, want access to low-latency services.¹⁰⁸ Indeed, the Commission has recognized “the importance of latency to interactive, real-time applications.”¹⁰⁹ Thus, latency is a relevant broadband quality of service attribute for the DODC. But ACA Connects demonstrated that latency generally is not an issue for all-fiber or DOCSIS networks, which do not rely on wireless transmission.¹¹⁰ By contrast, the record shows that latency issues more often arise with fixed wireless and satellite networks due the transmission distances involved.¹¹¹ The Commission therefore should apply the DODC latency reporting requirement to the broadband services where latency issues most often arise (*i.e.*, fixed wireless and satellite) to best balance provider burdens. This will allow the Commission to determine the areas where high-performance broadband service currently is provided, furthering

¹⁰⁶ *Id.* at para. 93.

¹⁰⁷ 47 U.S.C. § 642(b)(2)(A)(ii). See USTelecom Ex Parte at 2.

¹⁰⁸ ACA Connects Comments at 8.

¹⁰⁹ *RDOF Order* at para. 41.

¹¹⁰ ACA Connects Comments at 8 (citing MBA Report at Section 2.D).

¹¹¹ See *RDOF Order* at paras. 31-41.

its DODC mapping efforts and the RDOF.¹¹² If the Commission requires latency data reporting, the reporting burden on providers should be light. Specifically, ACA Connects supports USTelecom’s recommendation that latency reporting should be no more than a “check-box exercise,” where a provider simply affirms in the DODC portal that its service in an area meets the proposed threshold.¹¹³

Finally, the Commission seeks comment on requiring fixed providers to distinguish between “residential-only” and “business-and-residential” services in their broadband data reports for the DODC.¹¹⁴ The Commission further asks whether it should require fixed providers to report on “business-only” services, including non-mass-market business data services.¹¹⁵ The Commission should not adopt these proposals. As USTelecom explained, most providers currently do not distinguish between residential-only and business-and-residential services when coding data internally or for Form 477 reporting.¹¹⁶ This distinction also is irrelevant to determining whether broadband service actually is available in an area, which is the DODC’s primary goal.¹¹⁷ The Broadband DATA Act does not require information collection on non-mass-market business-only services and the collection of such information could

¹¹² See *id.* at para. 39 (assigning weights to RDOF bids based, in part, on broadband service latencies).

¹¹³ USTelecom Ex Parte at 2.

¹¹⁴ *FNPRM* at para. 90.

¹¹⁵ *Id.*

¹¹⁶ USTelecom Ex Parte at 1.

¹¹⁷ See *Second DODC Order* at 9 (stating the DODC is designed to collect data on broadband service availability).

reveal trade secrets or other competitively-sensitive information.¹¹⁸ Consequently, the Commission's proposal would impose new costs and data processing obligations on providers with little concurrent benefit.

The Commission suggests in the *FNPRM* that collecting data on non-mass-market business services could help inform its efforts in the schools/libraries and health care universal service programs by preventing overbuilding.¹¹⁹ However, the Commission has not shown (or attempted to show) that the benefits of making this data collection part of the DODC outweigh the resulting provider reporting burdens. As a result, the Commission should consider the benefits of such a data collection, if any, in a separate proceeding better targeted at the specific needs of the schools/libraries and health care universal service programs. ACA Connects therefore supports USTelecom's recommendation that the Commission require fixed providers to report broadband data only on their mass market services,¹²⁰ which would streamline provider reporting obligations while still enabling the Commission to identify served and unserved areas for its DODC coverage maps.

G. Sunsetting Form 477

The Commission plans to continue the Form 477 census block-based broadband data collection for at least one reporting cycle after the DODC commences and seeks

¹¹⁸ See USTelecom Ex Parte at 1 (“[E]xposing the existence and locations of those services raises serious confidentiality and antitrust concerns for service providers.”).

¹¹⁹ *FNPRM* at para. 90.

¹²⁰ USTelecom Ex Parte at 1.

comment on sunseting this data collection.¹²¹ ACA Connects supports this proposal. As ACA explained in its prior comments, even if the Commission quickly adopts broadband data collection and reporting rules in this proceeding, it will take time to develop and implement the DODC portal.¹²² In the meantime, the Commission will need broadband deployment data to award RDOF support and for other purposes.¹²³ Further, providers already are accustomed to submitting census block-based broadband data through Form 477 and will incur relatively few costs by continuing such reporting. Accordingly, the benefits of continuing the Form 477 data collection outweigh the associated costs in the near-term.

But after the DODC is fully implemented and the Commission obtains more granular and accurate broadband data, the Form 477 information will diminish in value, become outweighed by its collection costs, and should be sunsetted. ACA Connects previously recommended that the Commission establish a two-year Form 477 sunset timeframe.¹²⁴ However, ACA Connects agrees with the Commission that a one-year Form 477 sunset timeframe still can facilitate the comparison of existing broadband data to the information gathered through the DODC, as mandated by the Broadband DATA Act, while reducing provider reporting obligations on an expedited basis.¹²⁵ The

¹²¹ *FNPRM* at para. 191.

¹²² ACA Connects Comments at 18. See *First DODC Order* at para. 11 (describing development and implementation of DODC portal).

¹²³ See *RDOF Order* at paras. 9-10 (stating the Commission will use current Form 477 data to determine the census blocks eligible for support under RDOF Phase I).

¹²⁴ ACA Connects Comments at 18-19; ACA Connects Reply Comments at 18.

¹²⁵ See *FNPRM* at para. 188 (citing 47 U.S.C. § 642(b)(6)(A)).

Commission therefore should sunset the Form 477 census block-based broadband data collection one year after the DODC commences, unless it finds after issuing a public notice that the DODC is not performing as expected and the Form 477 data collection remains necessary.¹²⁶

III. CONCLUSION

ACA Connects supports the Commission's efforts to collect more granular and accurate broadband data from service providers through the DODC to identify unserved areas where support is necessary to help close the digital divide. Here, ACA Connects comments on the Commission's proposals and provides targeted recommendations to improve the DODC and avoid imposing unwarranted burdens on providers, particularly smaller providers that often lack the resources and personnel to dedicate to DODC

¹²⁶ See ACA Connects Comments at 18-19; see *also* USTelecom Ex Parte at 4 (recommending the Commission sunset the Form 477 census block-based broadband data collection one year after all DODC reporting mechanisms are in place).

compliance. By adopting these recommendations, the Commission will facilitate robust broadband data reporting and ensure the DODC's success.

Respectfully submitted,

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