



Thomas Cohen

Kelley Drye & Warren LLP
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007

Tel: (202) 342-8518
tcohen@kelleydrye.com

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Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20002

Re: ***Ex Parte* Filing of ACA Connects – America’s Communications Association in Establishing the Digital Opportunity Data Collection, WC Docket No. 19-195, and Modernizing the FCC Form 477 Data Program – WC Docket No. 11-10**

Dear Ms. Dortch:

On November 13, 2020, Ross Lieberman, Senior Vice President of Government Affairs, ACA Connects, and the undersigned, outside counsel to ACA Connects, met with Kirk Burgee, Chelsea Fallon, Michael Ray, and Steve Rosenberg of the Federal Communications Commission (“Commission”) to discuss the Third Further Notice of Proposed Rulemaking (“FNPRM”) in the above-referenced proceedings,¹ which sets forth a series of proposals to implement the Digital Opportunity Data Collection (“DODC”) and the Broadband DATA Act.² ACA Connects supports the Commission’s efforts to collect more granular and accurate broadband deployment data through the DODC and has commented at length on issues and proposals in the FNPRM.³ At this meeting, ACA Connects Representatives focused on two issues: the proposed challenge process and relief for smaller providers.

¹ *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195 and 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 20-94 (rel. July 14, 2020).

² 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”).

³ Comments of ACA Connects – America’s Communications Association on the Third Further Notice of Proposed Rulemaking, WC Docket Nos. 19-195 and 11-10 (Sept. 8, 2020); Reply Comments of ACA Connects – America’s Communications Association on the Third Further Notice of Proposed Rulemaking, WC Docket Nos. 19-195 and 11-10 (Sept. 17, 2020).

DODC Challenge Process

ACA Connects has long advocated for a well-designed challenge process, which will result in more accurate data about broadband availability, and the Commission's proposals in the FNPRM for establishing that process largely are on target. That said, the ACA Representatives urged the Commission to adopt the following measures to enhance the value and credibility of the process while reducing burdens on providers, as well as on the Commission:

- **Self-Help** – The Commission should urge consumers and others, before instituting a challenge, to contact the provider about the issue in an effort to resolve it. Further, following on Commission precedent in resolving other types of disputes,⁴ the Commission should consider making this a requirement, with the challenger certifying that it has contacted the provider.
- **Process Guardrails for Ensuring the Credibility of a Challenge** – To ensure challenges are credible, the Commission should require a challenger to provide complete, accurate, and relevant information, including the following, before it transmits the challenge to a provider for a response:
 - **Challenges must relate to service availability** – No challenge should be permitted unless it relates to actual service unavailability and not, for instance, to installation delays due to scheduling problems or other unforeseen circumstances.
 - **Individual Challengers must provide to the Commission specific data about the location and, where relevant, service performance in dispute** – So that challenges only deal with broadband availability issues legitimately in dispute under the statute and regulations, any challenge by a consumer should be brought on a location-specific and, where relevant, performance-specific basis. Further, a challenger must provide detailed information and supporting documentation for the location and, where relevant, the service challenged. ACA Connects supports the FNPRM's proposal for the type of information required, which includes certification that the challenger owns the relevant location or is authorized to request service at that location and "documentary evidence"

⁴ See e.g., *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178, para. 16 (2018) ("We adopt a requirement that Section 208 and Disability Access formal complaints include a certification of pre-filing settlement efforts that included "executive-level" discussions among representatives with settlement authority. The pole attachment complaint rules presently contain the "executive-level" obligation, and it has significantly improved prospects for resolving disputes quickly.").

regarding the date, method, and content of their broadband service requests and the provider's responses, if any.⁵

- **Bulk challengers should provide additional information** – To ensure a bulk challenge is credible, non-consumer challengers, such as government entities or competitors, that contest numerous locations should not only provide detailed information identifying each location and the performance at each location, but they should provide information about the timeframe when testing occurred at each location, the testing methodology, including whether it is consistent with industry standards, and, if so, how that process was followed in collecting data.
- **Burden of Proof** -- The burden of proof should be on the challenger at all times under a “preponderance of the evidence” standard, which would be consistent with existing complaint procedures⁶ and would help weed out challenges that are not fully supported.
- **Process Guardrails for Responding to Challenge** – Because, especially for smaller providers, responding to a challenge will often take time and divert resources from other activities, providers should be given 60-days – and not 30 as proposed in the FNPRM – to respond to challenges involving a single location and 180-days to respond to bulk challenges involving multiple locations. Providers also should be given the opportunity to request waivers of the response deadline for bulk challenges and other particularly complex disputes. By providing this additional time, the Commission will help ensure that providers can gather all relevant information and documentation to respond to challenges.
- **Correction of Data Errors** – The Commission should permit providers to file corrected DODC reports for any reporting errors affecting the FCC's coverage maps prospectively at the next DODC filing opportunity.

DODC Relief for Smaller Providers

The FNPRM proposes that the Commission offer technical assistance (*e.g.*, GIS data processing, help desk support) to smaller providers to help them comply with their DODC reporting obligations. ACA Connects believes this proposal is a good start, but the Commission should do more to assist smaller providers that lack the staff or resources to undertake complex broadband data reporting tasks. As

⁵ FNPRM, para. 130.

⁶ *Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers, et al.*, CC Docket No. 96-238, Report and Order, 12 FCC Rcd 22497, para. 294 (1997); *Amendment of Subpart E of Chapter 1 of the Commission's Rules to Improve the Efficiency and Clarity of Informal Complaint Procedures and Requirements*, Order, 104 FCC 2d 12, paras. 1-6 (1986).

ACA Connects has indicated, only a few smaller providers today produce the broadband coverage polygons required under the DODC. ACA Connects, therefore, proposes the following:

- **Very Small Providers Should Have Additional Time to Respond to New Collection and Reporting Requirements** – Very small providers (*i.e.*, those with fewer than 1,500 subscribers) have few employees, none of which are dedicated to regulatory compliance. As such, they outsource many compliance functions and, because of their size, tend to be the last ones to get the attention of outsourcing vendors. Accordingly, very small providers should be given an additional six months to comply with the DODC reporting rules – both polygon reporting and eventually broadband fabric reporting. As ACA Connects Representatives emphasized, this additional time will give these providers sufficient opportunity to adjust to the new requirements, get the attention of outsourcing vendors, and learn from the experience of providers that already filed. Further, because these very small providers cover only a small percentage of reportable areas and the additional time requested is limited, any reporting delay will have a *de minimis* impact on the collection.
- **Smaller Providers Should Have Flexibility in Shapefile Reporting Formats** – While ACA Connects understands that the DODC mapping efforts would be simplified if all providers reported data in the proprietary ESRI format, the cost of software to produce polygons in that format is substantial. In fact, smaller providers that today have the capability to produce polygons only do so in the KMZ file format, which relies on free access to Google Earth. Accordingly, ACA Connects proposes that the Commission give smaller providers (those with fewer than 100,000 subscribers) flexibility in the format they use to file polygons. ACA Connects recognizes that this will require the Commission to convert broadband data filed in different formats by providers into a single format for DODC mapping purposes, but the Commission can accomplish this task by purchasing software more cost-effectively than requiring hundreds of smaller providers to make such purchases individually.
- **Smaller Providers Should Have Flexibility to Use Existing Data Sets** – To reduce burdens on smaller providers, the Commission should permit smaller providers in reporting polygons to (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) make predictive judgments about where service is available and the performance attributes for such service so long as their judgments are reasonable and consistent with the broadband coverage reporting buffers adopted earlier this year. The Commission then can use its crowdsourcing and challenge processes to further hone provider data, if necessary.

Marlene H. Dortch
November 17, 2020

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.⁷

Sincerely,



Thomas Cohen
J. Bradford Currier

*Counsel to ACA Connects – America's
Communications Association*

cc: Kirk Burgee
Chelsea Fallon
Michael Ray
Steve Rosenberg

⁷ 47 C.F.R. § 1.1206.