

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Development of Nationwide Broadband Data to) WC Docket No. 07-38
Evaluate Reasonable and Timely Deployment of)
Advanced Services to All Americans, Improvement)
of Wireless Broadband Subscribership Data, and)
Development of Data on Interconnected Voice over)
Internet Protocol (VoIP) Subscribership)

ORDER

Adopted: February 23, 2009

Released: February 23, 2009

By the Deputy Chief, Wireline Competition Bureau:

1. In this Order, we extend the FCC Form 477 filing deadline from March 2, 2009 to March 16, 2009. Several prospective filers and associations representing prospective filers have requested extensions of time. Upon consideration of the merits of these requests, we conclude that a two-week extension is consistent with our obligations under section 706 and will accommodate the need of filers to

1 See 47 C.F.R. § 1.7002; 47 C.F.R. § 43.01(d); see also Form 477 Instructions (requiring filers to report data as of December 31 by March 1 of the following year). Pursuant to section 1.4(j) of the Commission's rules, where the filing date falls on a holiday, the required submission shall be filed on the next business day. 47 C.F.R. § 1.4(j).

2 See, e.g., National Telecommunications Cooperative Association, Rural Telecommunications Group, and the Organization for the Promotion and Advancement of Small Telecommunications Companies Request for Extension, WC Docket No. 07-38 (filed Feb. 3, 2009) (requesting a 120-day extension of the March 1 deadline for small providers on the grounds that Form 477 was not approved by OMB until January 30, 2009, and small providers lack the resources to complete the form in time); Western Telecommunications Alliance Request for Extension, WC Docket No. 07-38 (filed Feb. 6, 2009) (arguing that small carriers have not previously maintained census tract data and that the new reporting will be time-consuming); American Cable Association Request for Extension, WC Docket No. 07-38 (filed Feb. 6, 2009) (requesting a 120-day extension on the grounds that the new form requires a substantial amount of new data and an extension would ensure more accurate data); Request for Extension of Fred Williamson and Associates, WC Docket No. 07-38 (filed Feb. 12, 2009) (arguing that extension will ensure more accurate data because census tract mapping software inaccurately maps approximately 25% of broadband subscribers and thus requires personnel to go into the field to geocode); Wireless Communications Association International, Inc., Wireless Internet Service Providers, COMPTTEL, and TEXALTEL Request for Extension, WC Docket No. 07-38 (filed Feb. 13, 2009) (requesting a 30-day extension after the form becomes available online); Texas Statewide Cooperative Request, WC Docket No. 07-38 (filed Feb. 13, 2009) (requesting a 120-day extension for small broadband providers because they have small staffs, do not currently use Census Tracts, and have rural customers who lack street addresses); DeltaCom and Business Telecom Request for Extension, WC Docket No. 07-38 (filed Feb. 18, 2009) (requesting a 30-day extension); RCN Request for Extension or in the Alternative a Significant Hardship Waiver, WC Docket No. 07-38 (filed Feb. 18, 2009) (requesting a 30 day extension or, in the alternative, the significant hardship exemption to instead submit subscriber street address data); Rural Telephone Companies Request for Extension. WC Docket No. 07-38 (filed Feb. 18, 2009) (requesting a 45-day extension from the date that the form is available online); Sprint Nextel Request for Extension of Time, WC Docket No. 07-38 (filed Feb. 10, 2009) (requesting a 15-day extension from Monday, March 2, 2009 or from the date the electronic form becomes available) (collectively, the Requests for Extension).

ensure that their data are accurate.³

2. The Commission may waive any provision of its rules on its own motion, or on the motion of a petition, for good cause shown.⁴ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁶ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁷

3. We do not agree that the revised FCC Form 477 imposes an undue hardship upon smaller filers. These arguments were considered and rejected in the order adopting the revisions.⁸ We also reject arguments that filers will need several weeks after they see the revised Form 477 in an electronic format in order to file accurate data. The ability to input and review data in this electronic form was not necessary for filers to initiate the collection of the new data required by the revisions, especially with regard to the identification of Census Tracts. The key details of the new data requirements have been available since the revisions were released on June 12, 2008. In addition, filers have been able to view an electronic version of the revised form since December 24, 2008, when screenshots were posted on the Office of Management and Budget website.⁹

4. We also find that the public interest is better served by adhering as closely as possible to the March 2 deadline. Data collected by this agency will enable policymakers and industry to better understand where broadband is deployed so that they may make timely decisions as to how to promote further deployment. While the broader objectives of section 706 and the rationale explained in the *2008 Data Gathering Order* require expeditious collection of these broadband subscribership data, the timely collection is even more compelling as a result of the subsequent passage of broadband data and stimulus legislation – both of which contain deadlines for government action that may rely upon this information.¹⁰

5. Nevertheless, in order to provide for an orderly filing process, we find that providing limited additional time for filing would be in the public interest and reasonably accommodate the concerns of the requesting parties. We therefore find good cause to waive our rules¹¹ that require filing by March 2, 2009

³ See 47 U.S.C. § 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996)).

⁴ 47 C.F.R. § 1.3.

⁵ *Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), affirmed by *WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

⁷ *Cellular Telephone*, 897 F.2d at 1166.

⁸ See *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 2708, para. 32 (2008) (*2008 Data Gathering Order*); Order on Reconsideration, 23 FCC Rcd 9800 (2008).

⁹ See http://www.reginfo.gov/public/do/PRAICList?ref_nbr=200807-3060-004.

¹⁰ Broadband Data Improvement Act, Pub. L. No. 110-385, § 103, 122 Stat. 4096, 4096–98 (2008); American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009).

¹¹ See *supra* note 1.

and extend this filing deadline until Monday, March 16, 2009.¹² Several prospective filers assert that additional time will prevent inadvertent errors,¹³ and we rely upon parties' representations of improved accuracy. In addition, such an extension is a measure of flexibility in the filing process, consistent with OMB's conditional approval of this data collection.¹⁴ We note that filers may begin filing their data as soon as February 23, 2009 and, accordingly, this new deadline will give filers almost three weeks to file their data.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the March 1, 2009 FCC Form 477 filing deadline is EXTENDED to March 16, 2009.

7. IT IS FURTHER ORDERED that sections 1.7002 and 43.01(d) of the Commission's rules, 47 C.F.R. §§ 1.7002, 43.01(d), are WAIVED to the extent indicated herein.

8. IT IS FURTHER ORDERED that the Requests for Extension related to the March 1, 2009 FCC Form 477 filing deadline are GRANTED to the extent indicated herein and are otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach,
Deputy Chief
Wireline Competition Bureau

¹² Because many of the Form 477 filers that submit broadband data also submit local telephone service data in the same filing, we are extending the deadline for all Form 477 filings.

¹³ See e.g., Sprint Request at 2.

¹⁴ Notice of OMB Action, ICR Reference Number 200807-3060-004, OMB Control Number 3060-0816 (dated Jan. 30, 2009)