WILTSHIRE & GRANNIS LLP

1200 18TH STREET, NW
WASHINGTON, DC 20036

TEL 202.730.1300 FAX 202.730.1301
WWW. WILTSHIREGRANNIS.COM

ATTORNEYS AT LAW

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Nicholas A. Fraser
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th St., NW
Washington, DC 20503
Nicholas_A._Fraser@omb.eop.gov

Re: OMB Control Number: 3060-0819; WC Docket Nos. 12-23, 11-42, 03-109; CC Docket No. 96-45

Dear Mr. Fraser:

General Communication, Inc. ("GCI") hereby comments on the request submitted by the Federal Communications Commission ("FCC" or "Commission") for Office of Management and Budget ("OMB") approval, under the Paperwork Reduction Act ("PRA"), of the Lifeline program regulations pending under the above control number.

I. Introduction and Summary.

On February 6, 2012, the FCC issued an order adopting far-reaching changes to the Commission's low-income or "Lifeline" program rules.[1] On March 6, 2012, the Commission published notice in the Federal Register seeking comment on the information collections imposed by the reformed Lifeline rules and requesting emergency approval from OMB, as required by the PRA.[2] GCI and several other parties submitted comments arguing that certain aspects of the revised Lifeline rules did not meet PRA requirements and, on April 13, 2012, OMB issued a "Notice of Office of Management and Budget Action" granting the requested emergency approval except with respect to two provisions that GCI and others had challenged:

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[1] *See Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Joint Board on Universal Service; Advancing Broadband Availability Through Digital Literacy Training*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, 27 FCC Rcd. 6656 (2012) ("Lifeline Order").

[2] *See Information Collection Being Submitted to the Office of Management and Budget (OMB) for Emergency Review and Approval*, Notice and Request for Comments, 77 Fed. Reg. 13,319 (Mar. 6, 2012).

the temporary address confirmation and recertification requirement codified at 47 C.F.R. §§ 54.410(g) & 54.405(e)(4), and the biennial audit requirement codified at 47 C.F.R. § 54.420(a).[3] OMB's notice stated that its approval of the other information collections contained in the revised Lifeline rules will expire on October 31, 2012. On August 30, 2012, the FCC published notice in the Federal Register that it is now seeking OMB approval on a non-emergency basis for the revised Lifeline rules, and it invites comments filed on or before October 1, 2012.[4]

GCI hereby raises concerns that, as to two aspects of the revised Lifeline rules, the Commission has not adequately justified the corresponding information collections by failing to balance the burdens imposed against the claimed incremental benefits:

1. The requirement that eligible telecommunications carriers ("ETCs") recertify all of their Lifeline subscribers every year[5] is ambiguous on its face as to whether recertification must occur every twelve months or every calendar year. However, FCC staff has informed industry in Lifeline training seminars and in meetings that each subscriber must be recertified within twelve months of that subscriber's most recent certification or recertification. This approach imposes undue cost and burden with no corresponding public benefit because it requires larger staff commitments to track individual subscribers' certification timing and because it effectively requires recertification more often than once per year. The cost and burden could be alleviated by clarifying that ETCs are required to recertify their subscribers once per calendar year (not within twelve months of the most recent certification or recertification). GCI estimates that this clarification would reduce compliance costs by up to 30 percent. GCI also notes that the FCC has failed to justify the information collections required by Form 555, which relates to data gathered during the recertification process.

2. The biennial audit requirement again is not supported by any fact-based Commission evaluation of the burden imposed.[6] The FCC instead relied on

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[3] *See* Notice of Office of Management and Budget Action (OMB Control Number 3060-0819) (April 13, 2012), available at http://www.reginfo.gov/public/do/DownloadNOA?requestID=241698. GCI had also challenged the marketing disclosure rule codified at 47 C.F.R. § 54.405(c), but OMB did not take any action on that rule because the FCC had not included it in its request for emergency approval. The FCC has not submitted the temporary address recertification rule as part of its current request for approval, but it does seek approval for a revised version of the marketing disclosure rule. GCI does not comment on or challenge the FCC's request related to the marketing disclosure rule because the Commission's revisions to that rule since the last OMB approval process have largely addressed GCI's concerns.

[4] *See Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB)*, Notice; request for comments, 77 Fed. Reg. 52,718 (Aug. 30, 2012).

[5] *See* 47 C.F.R. § 54.410(f).

[6] *See* 47 C.F.R. § 54.420.

> hypothetical figures that GCI provided in earlier PRA comments. The Commission used these illustrative figures despite having access to directly relevant data that is unavailable to the private sector: the cost of actual Lifeline audits conducted by the Universal Service Administrative Company ("USAC"). Moreover, the FCC has failed to show that this requirement is not duplicative of other audit requirements—including USAC audits and, as a backstop, the annual financial audits required for all publicly-traded ETCs. GCI urges that this rule be rejected as written or, alternatively, revised such that it applies only to companies not already subject to duplicative audit requirements.

Because these new requirements do not satisfy the PRA,[7] OMB should disapprove them.

It is important to note that the FCC's current burden estimates nearly swamp the benefits of the reforms. The FCC estimates that its reforms to the Lifeline rules will save the USF Fund $2 billion over three years.[8] But the FCC's supporting statement filed with OMB in September 2012 acknowledges that the information collections associated with the revised rules impose costs of $624 million per year[9]—which is equivalent to $1.872 billion over three years, or nearly enough to swamp the hoped-for savings. When implementation costs that are not information collections are added (such as for the "one per household" rule applicable to all providers and the "no usage" rule applicable to prepaid providers), the total additional costs on providers likely push the aggregate burden above the Commission's presumed savings. The compliance burden also takes an enormous bite out of ETCs' Lifeline revenues. Lifeline disbursements currently total about $2.1 billion per year, meaning that about 30 percent of ETCs' Lifeline revenues must be devoted to navigating the labyrinth of information collections associated with the rules—and not, unfortunately, to providing service to qualifying subscribers. To avoid approving rules that impose costs greater than their aggregate savings and that siphon off nearly a third of Lifeline revenues, GCI urges OMB to either reject the challenged rules outright or to condition approval on the common-sense and cost-saving revisions that GCI proposes. As GCI suggests below, the Lifeline rules can be implemented in a manner that preserves the savings to the universal service fund but without imposing such outsized burdens on the industry.

II. The Commission Offers No Justification for These Paperwork Burdens Under the Standards of the Paperwork Reduction Act.

As its name suggests, a core purpose of the PRA is to "minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of

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7 44 U.S.C. § 3501 *et seq*.

8 *See* Lifeline Order, 27 FCC Rcd. at 6659 ¶ 2.

9 *See* Federal Communications Commission, Supporting Statement (OMB Control Number 3060-0819) (Sept. 2012), available at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201207-3060-011 ("FCC Supporting Statement"). The $624 million figure is the result of adding up the annualized costs listed on pages 9 through 15 of the Supporting Statement.

information by or for the Federal Government."[10] As applied here, the PRA covers "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format," affecting 10 or more persons.[11] Under the PRA, agencies must estimate the burden of proposed information collections, justify the need for the collection, and certify that the collection is necessary for the proper performance of agency functions,[12] and the Director of OMB must then independently assess and determine "whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility."[13] OMB's regulations further explain that "[p]ractical utility means the actual, *not merely the theoretical or potential*, usefulness of information to or for an agency, taking into account…the agency's ability to process the information it collects…in a useful and timely fashion."[14] In other words, an agency cannot impose paperwork burdens without demonstrating the real-world need for doing so.

The Commission's Supporting Statement accompanying its request for OMB approval makes no such showing of practical utility.[15] The Statement merely recites the history of the low-income program and previous orders leading up to the current Lifeline Order and states that, in the Lifeline Order, the Commission took "immediate action to address potential waste, fraud, and abuse in the universal service low income program."[16] Such a recitation is not a justification; nowhere does the Commission attempt to explain the "practical utility" of burdens imposed by the new Lifeline Order. As demonstrated below, the extra burdens at issue will produce little or no benefit, and there is no justification under the Act for adding these to the already extraordinary paperwork burden of the Lifeline program.

III. OMB Should Reject the Annual Recertification Requirement Because, as Applied by the FCC, It Increases ETCs' Compliance Costs by up to Thirty Percent With Little Practical Utility.

The annual recertification requirement is the 800-pound gorilla lurking in the FCC's request for OMB approval. Out of a total annual Lifeline burden of 24 million hours and $624

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10 44 U.S.C. § 3501(1).

11 44 U.S.C.A. § 3502(3)(A).

12 *See* 44 U.S.C. § 3506(c).

13 44 U.S.C. § 3508. The PRA regulations further explain that the purpose of the Act is "to reduce, minimize and control burdens and maximize the practical utility and public benefit" of information collected by or for the Federal government. 5 C.F.R. § 1320.1. The President last year emphasized the importance of improving regulation and the regulatory review process. *See* Exec. Order No. 13,563, *Improving Regulation and Regulatory Review*, 76 Fed. Reg. 3821 (Jan. 18, 2011).

14 5 C.F.R. § 1320.3(l) (emphasis added).

15 *See* Supporting Statement.

16 *Id.* at 1.

million, the annual recertification requirement is responsible for more than 16 million hours and $419 million.[17] This is clearly the requirement that tips the balance on whether the overall slate of Lifeline rules complies with the requirements of the PRA. Indeed, some ETCs have petitioned the FCC to waive the rule, in part or in its entirety, because of the enormous compliance costs it imposes compared with the relatively miniscule savings it generates for the Universal Service Fund.[18] One ETC—Smith Bagley, Inc.—has informed the FCC that its recertification efforts have cost $340,000 so far in 2012 but resulted in program savings of only $21,000.[19] It expects further that its aggregate recertification costs will total nearly $2 million by the end of the year, with total savings for the Lifeline program of less than $60,000.[20] Clearly, the FCC should be required to adopt any practical revisions that can bring down these extraordinary and unjustified implementation costs.

GCI does not challenge the very existence of a recertification rule, but the FCC is applying the new rule in a way that inflates the compliance cost unnecessarily and that undermines some of the new rule's benefits. The FCC has informed ETCs in public training sessions, in one-on-one meetings with companies, and in other forums that the rule requires them to obtain a recertification of eligibility from every customer within twelve months of the customer's most recent eligibility certification. As a practical matter, this means that ETCs must track recertification timing for each customer individually. It also means that ETCs must seek recertification substantially before twelve months go by or else they risk letting individual subscribers slip past their individual twelve-month deadlines, at which point the ETC is no longer entitled to support for that subscriber from USAC. The result of these two realities—the need to track each customer's certification timing individually, and the need to recertify each customer long before twelve months expire—is that ETCs have to hire substantially more staff to handle the process and develop individualized tracking systems to keep tabs on the timing for each individual customer.

GCI did not comment on the recertification rule during the initial emergency PRA review process because the Commission had not yet indicated that it would apply this rule in such a burdensome way. Indeed, nothing in the text of the rule indicates that it should be implemented in this manner. Rather, the rule states only that ETCs "must annually re-certify all subscribers,"[21] without indicating whether that means recertifying them once per calendar year (a more sensible and administrable approach) or within twelve months of each individual subscriber's last certification or recertification (the unnecessarily costly and complicated approach the FCC has taken). GCI submits that a far more reasonable, cost-effective, and efficacious application of the rule would require ETCs to recertify every subscriber once per

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17 *See* FCC Supporting Statement at 10-11.

18 *See, e.g.,* Smith Bagley, Inc. Petition for Limited Waiver, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45 (filed June 26, 2012).

19 *See* Letter from David A. LaFuria to Marlene H. Dortch at 1, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45 (filed Sept. 20, 2012).

20 *See id.* at 2; attachment at 6.

21 47 C.F.R. § 54.410(f).

calendar year. GCI estimates that its own compliance burden would fall by roughly 30 percent if the FCC were to adopt this common-sense approach. The savings would come from needing fewer employees devoted to the recertification effort and from more simplified processes for tracking which customers have recertified and when their next recertifications are due.

The Commission may believe that a once-per-calendar approach poses a risk because some subscribers may not recertify for as long as 23 months or more. (For example, under a once-per-calendar-year approach, an ETC could a recertify a customer once on January 15, 2013, and then again 23 months later on December 15, 2014.) This concern is overblown for a number of reasons. First, as required by the revised Lifeline rules, all ETCs are *already* undertaking a complete recertification of their entire customer base that must be completed by the end of 2012.[22] This means that by the end of this year, every existing Lifeline subscriber will have been recertified under the new, more stringent rules, and all new subscribers will be certified under them as well. This robust new certification and recertification requirement adopted by the FCC means that there should not be material numbers of non-eligible subscribers lurking on any ETC's subscriber rolls. (Because every existing Lifeline subscriber will be recertified at some point between June 1 and December 31, 2012, ETCs face an unpleasant choice with respect to the 2013 recertification requirement. They can either ask subscribers to recertify again in early 2013—which may aggravate subscribers who have recertified so recently in 2012—or they can wait until the second half of 2013, which will impose another shortened recertification window, likely requiring them to hire additional staff to meet the requirement before the applicable individual deadlines.)

Second, as a practical matter, even an unscrupulous ETC could not afford to develop systems designed to take advantage of the risk the FCC believes exists. In order to recertify their entire subscriber pools in a cost-effective way, ETCs need to spread out the work over the course of a year—meaning that it is impossible as a practical matter to try to recertify all subscribers in January of one year and then delay recertifying them again until December of the following year. Moreover, that strategy would not produce any lasting value for the ETC because it would have to recertify all of the subscribers again during the very next calendar year, meaning it could not continuously stretch out the timeline between recertifications.

Third, even if a particular subscriber were recertified in a particular year after, say, eighteen months rather than twelve, the FCC has not suggested that the impact would be materially negative for the fund. In the Lifeline Order, the FCC explained that the new rules require ETCs to recertify their entire subscriber base every year because the pre-existing sample-based recertification system "fail[ed] to assess the actual eligibility of a large number of subscribers nationwide."[23] But a once-per-calendar-year approach cures that flaw just as effectively as the far more burdensome approach the FCC has implemented. Simply put, there is nothing to suggest that a once-per-calendar-year approach would generate so much more waste that the FCC is justified in implementing an approach that increases ETCs' compliance costs by as much as 30 percent.

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22 *See* Lifeline Order, 27 FCC Rcd. at 6715 ¶ 130.

23 *Id.* at 6717 ¶ 135.

Finally, the manner in which the FCC is currently imposing the rule undermines part of its potential benefit. Under the rule, ETCs must submit annual reports to USAC providing the data generated from the previous calendar year's recertification effort.[24] This data could provide valuable information to the Commission and to USAC about trends in the Lifeline marketplace, about areas of concern, and about ETCs whose processes may merit greater scrutiny. But the FCC's implementation of the rule will skew the data and degrade its utility because, by practical necessity, some subscribers will be recertified twice in the same calendar year and will therefore be included twice on the same form submitted annually to USAC. If, for example, an ETC recertifies a customer on January 3, 2013, the ETC will need to recertify that person again in late December 2013 to avoid possibly slipping past the individualized less-than-twelve-months deadline that the FCC is imposing. The annual recertification report for calendar year 2013 would therefore include data twice for this single person, possibly even including different results. Moreover, the number of subscribers that the ETC attempts to recertify (as reported on the annual USAC form) will never match the number of subscribers the ETC actually serves—because, again, it will need to recertify some subscribers more than once per year.

This problem will erode the value and utility of the reports flowing from the recertification effort. Switching to a once-per-calendar year approach would rectify the problem immediately. In other words, switching to once-per-calendar year would not only reduce the compliance burden and address the Commission's concern about the pre-existing "sampling" approach, it would also improve the value and utility of the data generated under the rule—which is clearly a more appropriate outcome under the PRA. Considering that adopting a once-per-calendar-year approach could reduce the compliance burden by as much as 30 percent while still assessing the eligibility of *every* customer and improving the data output, GCI urges OMB to reject the rule unless the FCC alters the manner in which it is applied.

OMB should also decline to approve of FCC Form 555,[25] which ETCs are supposed to use to provide the Commission and USAC with data from the previous year's recertification effort. The Form requests a variety of data beyond simply reporting the number of subscribers the ETC attempted to recertify and the number who were found to be eligible. The form also directs ETCs to identify how many subscribers failed to respond, how many were found to be ineligible, and how many de-enrolled before the ETC even sent out its recertification request.[26] Gathering and maintaining these subcategories of information—none of which are reflected in the Lifeline Order—imposes substantial administrative costs on ETCs. Despite the burden, the FCC has completely failed to justify the collection, and OMB should therefore decline to approve Form 555 as written. Instead, it should direct the FCC and USAC to develop a version

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[24] *See id.* at 6721-22 ¶¶ 147-148. The form that USAC has developed for ETCs to report this information is available here: http://www.usac.org/_res/documents/li/pdf/cert-ver/CertificationFormandInstructions.pdf ("Proposed Form 555"). As noted below, GCI challenges some of the information collections included in this form.

[25] *See* Supporting Statement at 11.

[26] *See* Proposed Form 555 at 2, Columns E, F and H.

of the form limited to the information called for by the regulation the form is supposed to implement: the number of subscribers each ETC seeks to recertify, and the number that it finds remain eligible.

IV. OMB Should Reject the Requirement for Biennial Outside Audits of Lifeline Compliance by All ETCs Receiving More Than $5 Million in Lifeline Support.

The Commission adopted a rule requiring ETCs that receive $5 million or more annually in the aggregate, on a holding company basis, in Lifeline reimbursements to commission a biennial third-party audit to "assess the ETC's overall compliance with the program's requirements."[27] But obvious errors in the FCC's Supporting Statement show a much greater burden than the Commission represents to OMB. As with the other burdens at issue here, this requirement is superfluous because there are already multiple reviewers of the "overall compliance" of such ETCs with Lifeline regulations.

In its prior comments on the FCC's emergency request for approval of this audit requirement, GCI pointed out that the numbers the Commission had used—25 audit hours per year at $40 per hour—were fanciful. To offer OMB a rough sense of the magnitude of the Commission's underestimate, we noted that three-year-old data put the average hourly auditor rate in 2009 in the $200-per-hour range, pointed out the patent impossibility of conducting a Lifeline audit in 25 hours, and, by simple extrapolation, argued that the FCC's estimate would be off by a factor of 100 even if the Commission's hours estimate were off only by a factor of 10 and hourly auditor fees had not increased in three years.[28]

But the Commission did not respond constructively to those comments by offering a realistic estimate of audit costs. Instead, it simply plugged the hypothetical numbers GCI provided in its March submission—250 hours per audit at $200 per hour—into its revised estimate for the cost of the biennial audit cost.[29] Thus, the Commission assures OMB that these audits will cost the afflicted carriers only $50,000 per year.

Without effective access to hard data, it is difficult for private-sector commenters to reliably project the total cost of producing the required audit reports. But it is easy to see that the Commission's numbers remain so haphazard (yet consistently understated) that they do not even meet the PRA's requirement of "an estimate of the burden that shall result from the collection of information."[30]

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[27] Lifeline Order ¶ 291. *Id*., Appendix A, Rule 54.420(a).

[28] *See* Letter from John Nakahata to Nicolas A. Fraser at 12-14, OMB Control Number 3060-0819, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45 (filed March 23, 2012) ("GCI March 2012 PRA Comments").

[29] *See* FCC Supporting Statement at 13. Inexplicably, it still estimates that first-year audits can be had from an auditor bargain bin for $40 per hour. *Id.*

[30] 44 U.S.C. § 3507(a)(1)(D)(ii)(V).

First, in plucking the hypothetical numbers from GCI's March filing and holding them out as an actual government estimate, the Commission has ignored useful data uniquely available to it to estimate the cost of audits of Lifeline program compliance: the actual audits of carriers that its agent, USAC, conducts directly or hires audit firms to conduct. USAC no longer provides the public with the cost-per-audit nor the basic data needed to calculate such costs, such as the number of Lifeline audits conducted annually and its audit budget. But that data is available to the FCC for the asking. Moreover, it is apples-to-apples: these are audits of carriers' handling of the USF program, including specifically Lifeline.

Smith Bagley ("SBI") noted in its earlier PRA comments that USAC performs audits like this regularly, and some generalized cost information from past years is available publicly.[31] Based on USAC reports, SBI calculated that an average USF recipient audit cost $59,000 in 2007. That five-year-old figure is already nearly 20 percent higher than the per-audit figure of $50,000 that the FCC's Supporting Statement assumes,[32] but the actual cost of the new audit requirement is certainly much higher. For one thing, the $59,000 figure reflects the costs of routine USAC audits—meaning they are conducted by auditors who (for government audits) do not need to carry the same kind of liability insurance applicable to third-party audits, who have the efficiency benefit of performing multiple Lifeline audits for USAC, and who typically focus much of their attention on the process of calculating line counts and for submitting forms to USAC rather than the more time consuming compliance issues raised in the new audit rule. In addition, the $59,000 USAC average is based on audits of all kinds of providers, including much smaller ETCs for which audit costs should be comparatively low. The cost of third-party audits of ETCs with Lifeline revenues of at least $5 million or more per year, performed by auditors relatively unfamiliar with the program, is therefore surely larger than $59,000.

Second, the FCC's rosy estimates of the audit cost are clearly incorrect in one important respect: they address only the time that the outside auditors will need to devote to the task, but they ignore the ETCs' internal staff time needed to prepare and produce records for the auditors, meet with the auditors, and assess and comment on the auditors' conclusions. Accounting for the internal time commitment required to produce an audit report therefore substantially expands the cost that the FCC has calculated.

Third, GCI now has real-world experience with a Lifeline-compliance audit, having gone through one itself, completed after its March PRA comments, for calendar year 2011. For 2011, GCI paid approximately $99,500 for its Lifeline-compliance audit, consisting of $82,950 in outside auditor fees, $11,500 in contractor costs, and $5,000 in internal costs.[33] We hope that next year's outside auditor fee will be about $14,500 lower because one-time planning costs can be avoided, but we also anticipate fee and expense escalation of about 3-5% per year—on the optimistic assumption that Lifeline regulations do not continue to change.

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31 *See* Letter from David A. LaFuria to Nicholas A. Fraser at 4, OMB Control Number 3060-0819, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45 (filed March 29, 2012).

32 *See* Supporting Statement at 13 (250 hours per audit x $200 per hour = $50,000).

33 This excludes costs for legal fees related to the audit.

Fourth, the FCC's estimate[34] continues to ignore the legal costs attendant with any Lifeline audit, but the FCC's requirement to audit each ETC's "overall compliance with the program's requirements" appears to call for a legal opinion, since the requirements are defined not by accounting principles but by hundreds of pages of Commission orders and federal regulations.[35] The USF program is so complex, and evaluating compliance with its legal requirements so distinct from the normal work of auditors, that a USF-related audit can actually be *more* burdensome than a comprehensive financial audit. A financial audit has to assess compliance with generally accepted accounting practices (with which auditors are generally familiar), but not compliance with federal law.

The outside-audit requirement is not only more expensive and burdensome than the Commission asserts, it is also pure administrative overkill. The ETCs covered by the rule already face periodic compliance audits by outside auditors hired by USAC, not to mention the possibility of investigations by the FCC's own Office of Inspector General and Enforcement Bureau. Moreover, for all of these entities that are public corporations (like GCI), they are also subject to the additional backstop of annual financial audits that will include Lifeline revenues whenever material. The ETCs' own personnel, outside auditors hired by USAC, and FCC enforcement officials thus already enforce "overall compliance with the program's requirements." Under these circumstances, the added requirement that ETCs commission and undergo a special Lifeline audit so that a *fourth* party may also review compliance, then prepare and submit to the government a report on that compliance, is not "necessary for the proper performance of the functions of the agency" and hence cannot be approved consistent with the PRA.

As if the third-party audit requirement were not enough, the Commission may even intend to seek OMB approval of its requirement that the third-party auditor, within 60 days after completion of the audit work, but prior to the finalization of the report, also submit a *draft* of that report to the Commission and the Administrator.[36] But the FCC has not requested approval for the "draft report" portion of the rule anywhere in the Supporting Statement, and it did not offer any justification for the rule in the Lifeline Order. Accordingly, GCI submits that OMB should either (a) take the view that the FCC has not requested approval for the "draft report" portion of the rule or (b) reject the "draft report" portion of the rule since the FCC has completely failed to justify it.

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[34] We repeat many of the points we have previously made about this requirement because the FCC's new submission repeats many of the same flaws we previously identified. *See* GCI March 2012 PRA Comments at 13-15.

[35] Other commenters have also called to the attention of OMB and the FCC this omission in the Commission's PRA analysis. *See* Letter from Scott K. Bergmann to Nicholas A. Fraser at 7, OMB Control Number 3060-0819 (filed April 5, 2012) ("The FCC's estimates also do not include any estimate of fees for a legal opinion, which the rule seems to require, given that financial auditors may not be able to 'assess the company's overall compliance with [the Lifeline] rules.'").

[36] Lifeline Order, Appendix A, Rule 54.420(a)(4).

The Commission does not explain how the draft audit reports will be used, but in any event, draft audit reports would be of little utility to the Commission and USAC. A draft is by definition tentative, incomplete, subject to further review, not held out to invite reliance, and superseded by the final report. Draft audit reports would therefore be "unnecessarily duplicative of information otherwise reasonably accessible to the agency."[37] Moreover, draft audit reports can be misleading, because they may reflect tentative views based on an incomplete or incorrect understanding of the facts, processes, or the law. Requiring submission of draft audit reports is also likely to lack practical utility because it will mean, for all intents and purposes, that auditors only prepare "drafts" when they are near "final." For these reasons, and entirely separate from the reasons for disapproving the third-party Lifeline audit requirement in whole, the Office should disapprove the rule requiring submissions of draft audits.

IV. Conclusion.

The FCC's Paperwork Reduction Act justification for requiring recertification before each subscriber's one year anniversary since the last certification, and its audit requirement for recipients of greater than $5 million in annual low-income support are not adequately supported and impose burdens that outweigh their benefits. Some of these flaws were pointed out six months ago, clearly and cogently, and yet the Commission repeats rather than addresses them in the pending request for permanent approval. But even the Commission's own numbers, however faulty, illustrate that the private-sector paperwork burden of the "annual" recertification requirement is, by itself, nearly as great as the hoped-for savings of all of the reforms combined.

OMB should reject the specific burdens highlighted here because they are so clearly unnecessary, unjustified, and costly. The Commission can remedy some of the flaws by minor amendments or clarifications to its regulations, but allowing them to go into effect now, in their present form, will impose extraordinary and unwarranted compliance costs on carriers.

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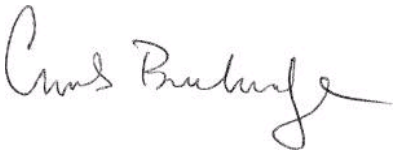
[37] *See* 44 U.S.C. § 3506(c)(3)(B).

Respectfully submitted,



Tina Pidgeon
General Counsel and Senior Vice President, Governmental Affairs
F.W. Hitz, III
Vice President, Regulatory Economics and Finance
Chris Nierman
Director, Federal Regulatory Affairs
GENERAL COMMUNICATION, INC.
1350 I Street, N.W., Suite 1260
Washington, D.C. 20005
(202) 457-8812

John T. Nakahata
Patrick P. O'Donnell
Charles D. Breckinridge
WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036
(202) 730-1300
jnakahata@wiltshiregrannis.com
Counsel to General Communication, Inc.

cc: Judith B. Herman (Judith-b.herman@fcc.gov)
Kimberly Scardino (Kimberly.Scardino@fcc.gov)
FCC (pra@fcc.gov)