

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**COMMENTS  
of  
UNITED STATES CELLULAR CORPORATION**

Grant B. Spellmeyer  
Executive Director – Federal Affairs &  
Public Policy

David A. LaFuria  
Steven M. Chernoff  
John Cimko

UNITED STATES CELLULAR CORPORATION  
8410 West Bryn Mawr  
Chicago, Illinois 60631  
(773) 399-4280

LUKAS, NACE, GUTIERREZ & SACHS, LLP  
8300 Greensboro Drive, Suite 1200  
McLean, Virginia 22102  
(703) 584-8678

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## SUMMARY

U.S. Cellular welcomes this opportunity to address the Wireline Competition Bureau's proposed implementation of various information collections required by the Commission in the *CAF Order*. U.S. Cellular's Comments demonstrate that the implementation measures are problematic in several respects.

U.S. Cellular respectfully urges the Bureau and the Commission to take corrective actions expeditiously, in light of the fact that the Commission may seek to impose the information collection requirements in connection with annual reports scheduled to be filed by eligible telecommunications carriers on July 1, 2013, if the Commission is able to secure approval of the information collections from the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 prior to that filing deadline.

**Progress Reports.**—Competitive ETCs whose Universal Service Fund support is being phased down should not be required to file annual progress reports with the Commission during the phase-down period. The burden of filing annual progress reports should not be imposed on competitive ETCs because provision of the information to the Commission would serve no useful purpose.

**Adjusted Build-Out Projections.**—If the Commission does require competitive ETCs to submit annual progress reports, it should nonetheless clarify that competitive ETCs are exempt from the requirement to submit adjustments to five-year build-out plans they have previously filed with the Commission. No such filing requirement is currently in place, and the provision of information concerning adjustments to build-out projections would not be useful to the Commission because it would not shed any light on the manner in which competitive ETCs have been using USF support to further the Commission's universal service objectives.

**Mobility Fund Phase II.**—The Commission already has indicated that recipients of Mobility Fund Phase I support are not required to comply with reporting requirements contained in Section 54.313 of the Commission’s Rules. The Commission should clarify that Mobility Fund Phase II support recipients also are not obligated to comply with Section 54.313 filing requirements.

**Broadband Services.**—Proposed FCC Form 481 and its Instructions impose certain Section 54.313(a) filing requirements on competitive ETCs with respect to their broadband services. The Commission should clarify that such a requirement conflicts with the *CAF Order* and therefore will not be imposed. In any event, the broadband information filing requirement cannot be imposed in the case of the July 1, 2013, reports because the information collections for 2012 (which would be included in the July 1, 2013, reports) were not approved by OMB.

**Burden Estimates.**—Various burden estimates made by the Commission for information collections required in the *CAF Order*, the basis for which has not been explained by the Commission, should be reduced because they understate the time, effort, and financial resources that would be expended by competitive ETCs and other ETCs for purposes of complying with the collection and reporting requirements.

**Revisions to FCC Form 481.**—The Commission should revise provisions in Form 481 relating to Tribal lands reporting because the Form improperly seeks information regarding ETCs’ compliance with Tribal government laws and regulations. The Form also erroneously requires competitive ETCs to file information relating to voice telephony service rate floor deficiencies. Other data reporting requirements in the Form relating to voice service price offerings should be modified because they are overly broad and beyond the scope of the Commission’s rules.

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United States Cellular Corporation (“U.S. Cellular”), by counsel, hereby submits these Comments, in response to the Notice published by the Commission in the Federal Register<sup>1</sup> seeking comments pursuant to the Paperwork Reduction Act of 1995 (“PRA”)<sup>2</sup> concerning certain information collections required by the *CAF Order*.<sup>3</sup>

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<sup>1</sup> FCC, *Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, Notice, 78 Fed. Reg. 12750 (Feb. 25, 2013) (Office of Management and Budget (“OMB”) Control No. 3060-0986) (“February 25 Notice” or “Notice”). The filing deadline for Comments is April 26, 2013. *Id.* at 12751, col. 1. As instructed in the *Notice*, U.S. Cellular is providing a copy of these Comments to Judith B. Herman, Office of the Managing Director, FCC. *See id.*

<sup>2</sup> 44 U.S.C. §§ 3501-3520.

<sup>3</sup> *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17717 (para. 137) (2011) (“*CAF Order*” and “*CAF FNPRM*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

U.S. Cellular provides cellular services and Personal Communications Service in 44 Metropolitan Statistical Areas, 100 Rural Service Areas, one Major Trading Area, and numerous Basic Trading Areas throughout the Nation. U.S. Cellular has received eligible telecommunications carrier (“ETC”) status and is currently receiving high-cost support for its operations in Illinois, Iowa, Kansas, Maine, Missouri, Nebraska, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Tennessee, Virginia, Washington, West Virginia, and Wisconsin.

U.S. Cellular has been an active and ongoing participant in the Commission’s Connect America Fund (“CAF”), Universal Service Fund (“USF”) contribution reform, Intercarrier Compensation, Mobility Fund, and related rulemaking proceedings since their initiation by the Commission. U.S. Cellular and its affiliates also participated in the Mobility Fund Phase I auction, placing 26 winning bids covering 2,168.42 road miles.<sup>4</sup>

## **I. INTRODUCTION.**

Two months ago the Commission published the *February 25 Notice* in the Federal Register, requesting comments on information collections required by various universal service reforms it adopted 17 months ago in the *CAF Order*. The Commission’s likely intention is to seek to obtain approval of the information collections from OMB pursuant to the PRA in time to enable the Commission to impose these requirements on ETCs required to submit annual reports to the Commission two months from now, on July 1, 2013.

This timetable could be characterized as aggressive even if the Commission had the luxury of seeking to implement its information collections in the best of circumstances. The Commission does not have that luxury, however, because a number of the information collections for

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<sup>4</sup> *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, FCC Public Notice, 27 FCC Rcd 12031, 12045-46 (Att. A) (2012).

which the Commission has sought comment are vague, contradictory, overly broad, or in conflict with the underlying Commission rules on which they purport to be based. Matters are made worse by the fact that the Commission has not yet offered any explanation of how its information collections minimize burdens on ETCs in compliance with PRA requirements. Further, in several cases the rules themselves must be revised because they are vague or inconsistent with the *CAF Order*.

As U.S. Cellular explains in the following sections, the Commission, before it seeks to impose the information collection requirements referenced in the *February 25 Notice*, must clarify and make revisions to its rules and the proposed information collection requirements in order to bring them into compliance with the PRA and the *CAF Order*.

## **II. COMPETITIVE ETCs SHOULD NOT BE REQUIRED TO SUBMIT PROGRESS REPORTS OR ADJUSTED BUILD-OUT PROJECTIONS RELATING TO PREVIOUSLY FILED FIVE-YEAR PLANS.**

Competitive ETCs whose legacy USF support is being phased down by direction of the Commission should not be required to provide the Commission with any progress reports concerning five-year plans these ETCs have previously filed with the Commission. If the Commission insists upon imposing such a progress report filing obligation, then competitive ETCs should not be required to provide adjustments to previously filed future-year deployment and upgrade projections as part of their progress reports.

### **A. Requiring Competitive ETCs To File Progress Reports Would Not Serve Any Useful Purpose.**

Under the rules adopted by the Commission in the *CAF Order*, “all ETCs [generally are required to] file a new five-year build-out plan [to account for new broadband obligations] in a

manner consistent with section 54.202(a)(1)(ii) in 2013, and annual progress reports thereafter.”<sup>5</sup>

The Wireline Competition Bureau (“Bureau”) has explained, however, that “competitive ETCs whose support is being phased down do not have to file new five-year plans.”<sup>6</sup>

The Bureau “underscore[d, however,] that competitive ETCs must continue to file annual updates on any five-year plan already filed with the Commission[,]”<sup>7</sup> claiming that, “[w]hile competitive ETCs may have their support phased down, and aspects of their original five-year plans may change because of the reduction in support, there is significant value in those ETCs continuing to file annual updates to their respective five-year plans.”<sup>8</sup>

The Commission should revisit the imposition of this information collection on competitive ETCs whose support is being phased down, which calls for these ETCs to submit annual updates to their previously-filed five-year build-out plans, because the information is not necessary for the performance of the functions of the Commission and the information would not have any

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<sup>5</sup> *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Order, 28 FCC Rcd 2051, 2052-53 (para. 4) (Wireline Comp. Bur. 2013) (“*March 5 CAF Clarification Order*”) (footnote omitted). The provisions of the *March 5 CAF Clarification Order*, other than those requiring OMB approval, will take effect May 15, 2013. 78 Fed. Reg. 22198, col. 3 (Apr. 15, 2013).

<sup>6</sup> *March 5 CAF Clarification Order*, 28 FCC Rcd at 2053 (para. 6) (emphasis in original). The Bureau explained that:

The Commission required ETCs to file new five-year plans to account for new broadband obligations in a manner consistent with section 54.202(a)(1)(ii). But the Commission also exempted from new broadband obligations those competitive ETCs whose support is being phased down. Because the five-year plans are intended to reflect new broadband obligations, those competitive ETCs do not have to file such plans.

*Id.* (footnotes omitted) (citing *CAF Order*, 26 FCC Rcd at 17853, 17854 (paras. 583, 587)).

<sup>7</sup> *Id.* at 2053 (para. 7).

<sup>8</sup> *Id.* (citing *CAF Order*, 26 FCC Rcd at 17852 (para. 580) (concluding that “it is necessary and appropriate to obtain . . . information [regarding progress on five-year build-out plans] from all ETCs, both federal- and state-designated, to ensure the continued availability of high-quality voice services and monitor progress in achieving our broadband goals and to assist the FCC in determining whether the funds are being used appropriately”)).



practical utility.<sup>9</sup> The information collection thus would impose an unnecessary burden on competitive ETCs.<sup>10</sup>

The Commission imposed in the *CAF Order* a five-year phase down of competitive ETCs' frozen legacy high-cost support, beginning July 1, 2012.<sup>11</sup> Beginning July 1, 2013, the second step of the phase down will take effect, with each competitive ETC receiving 60 percent of its 2011 baseline support during the period beginning July 1, 2013, and ending June 30, 2014. The phase-down of legacy support is scheduled to be complete as of July 1, 2016.

This phase down of competitive ETCs' support calls into question the practical utility of requiring these ETCs to provide annual progress reports pursuant to Section 54.313(a)(1) of the Commission's Rules. U.S. Cellular agrees with CTIA and USTelecom that, because competitive ETCs' existing five-year plans "were predicated on the availability of universal service support at the levels authorized under the Commission's prior rules and not the phased-down levels,"<sup>12</sup>

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<sup>9</sup> See 44 U.S.C. § 3508; *February 25 Notice*, 78 Fed. Reg. at 12750, col. 3.

<sup>10</sup> See 44 U.S.C. § 3501(1) (indicating that a 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 information by or for the Federal Government").

<sup>11</sup> The Commission provided that:

Competitive ETC support per study area will be frozen at the 2011 baseline, and that monthly baseline amount will be provided from January 1, 2012 to June 30, 2012. Each competitive ETC will then receive 80 percent of its monthly baseline amount from July 1, 2012 to June 30, 2013, 60 percent of its baseline amount from July 1, 2013, to June 30, 2014, 40 percent from July 1, 2014, to June 30, 2015, 20 percent from July 1, 2015, to June 30, 2016, and no support beginning July 1, 2016.

*CAF Order*, 26 FCC Rcd at 17832 (para. 519). The funding phase-down is codified in Section 54.307(e) of the Commission's Rules, 47 C.F.R. § 54.307(e). The Commission also noted that, "[i]f the Mobility Fund Phase II is not operational by June 30, 2014, [it] will halt the phase-down of support until it [Mobility Fund Phase II] is operational." *CAF Order*, 26 FCC Rcd at 17832 (para. 519).

<sup>12</sup> CTIA—The Wireless Association® ("CTIA") and United States Telecom Association ("USTelecom"), Petition for Clarification and Reconsideration or, in the Alternative, for Waiver, WC Docket No. 10-90, *et al.*, filed June 25, 2012 ("CTIA and USTelecom Petition"), at 17.

required by the Commission’s revised rules, “[m]andating that competitive ETCs report their progress in meeting targets that do not reflect the support they will receive and that they should not be expected to meet at reduced support levels would serve no useful purpose.”<sup>13</sup>

Moreover, the Commission has already determined “that a five-year transition will be sufficient for competitive ETCs that are currently receiving high-cost support to adjust and make necessary operational changes to ensure that service is maintained during the transition.”<sup>14</sup> This finding by the Commission buttresses the conclusion that imposing on competitive ETCs the burden of providing annual updates pursuant to Section 54.313(a)(1)—for the ostensible purpose of validating a determination the Commission has already made through the exercise of its expert agency predictive judgment—is not necessary to enable the Commission to perform its duties, nor would it generate any information that would have any practical utility.

**B. The Commission Should Clarify That the Filing of Adjustments to Competitive ETCs’ Previous Build-Out Projections Is Not Required.**

If the Commission decides to retain its requirement that competitive ETCs with phased down support must submit annual progress reports regarding voice services pursuant to Section 54.313(a)(1) of the Commission’s Rules, then the Commission also should clarify that competitive ETCs are not required to file—in addition to these progress reports—adjustments to previously submitted five-year plan projections.

Such a clarification would be consistent with the plain wording of Section 54.313(a)(1), which limits the required submission to “[a] progress report on [the ETC’s previously filed] five-year service quality improvement plan . . . .”<sup>15</sup> In discussing its prom-

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<sup>13</sup> *Id.*

<sup>14</sup> *CAF Order*, 26 FCC Rcd at 17831 (para. 513).

<sup>15</sup> 47 C.F.R. § 54.313(a)(1) (emphasis added).

ulgation of the new Section 54.313, the Commission concluded “that all ETCs must include in their annual reports the information that is currently required by section 54.209(a)(1)-(a)(6)—specifically, a progress report on their five-year build-out plans . . . .”<sup>16</sup> It is reasonable to conclude that “progress” can be sufficiently conveyed in a competitive ETC’s annual report by showing what happened during the preceding calendar year. There is no basis for requiring that the “progress” report include any revisions to prior projections of what is expected to happen in future years.

Clarifying that competitive ETCs are required only to file a progress report regarding the previous year—and are not obligated to submit revised projections for future years—would not compromise the Commission’s objective of “ensur[ing] the continued availability of high-quality voice services . . . .”<sup>17</sup> As U.S. Cellular explained in the previous section, the Commission can advance this objective without requiring competitive ETCs to file annual progress reports, but, even if the Commission decides to impose the progress report requirement, it should conclude that the filing of revisions to build-out projections by competitive ETCs is not necessary to further this objective.

In addition, clarifying that competitive ETCs are not required to file revisions to their previously filed build-out projections is appropriate because requiring competitive ETCs to submit these revisions would only result in the production of information that is irrelevant to advancing the Commission’s goal of “ensur[ing] that ETCs comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes.”<sup>18</sup>

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<sup>16</sup> *CAF Order*, 26 FCC Rcd at 17852 (para. 580) (emphasis added).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

U.S. Cellular notes that the *March 5 CAF Clarification Order* indicates that “it would be appropriate for [competitive] ETCs to reflect any adjustments to their original five-year plans in [their] annual updates.”<sup>19</sup> The Bureau presumably is referring to adjustments to build-out projections contained in the original five-year plans filed by competitive ETCs, but it provides no explanation for its assertion that the submission of revised projections would be appropriate, other than to suggest that “annual updates [from competitive ETCs whose support is being phased down] will assist the Commission in monitoring the impact of its universal service reforms on competitive ETCs’ provision of voice service.”<sup>20</sup> Adjusted projections of future build-out plans, however, would not be a useful tool in facilitating these monitoring efforts.

In any event, the *March 5 CAF Clarification Order* does not require that competitive ETCs must adjust their previous build-out projections, and the Commission should now further clarify that no such requirement is in effect or intended. As U.S. Cellular has explained, such a requirement would not produce any information having any practical utility and therefore is not “necessary for the proper performance of the functions”<sup>21</sup> of the Commission. Given the fact that collection of the information would serve no useful purpose, there is no basis for the Commission to impose on competitive ETCs the burden of generating and submitting the information.

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<sup>19</sup> *March 5 CAF Clarification Order*, 28 FCC Rcd at 2054 (para. 7).

<sup>20</sup> *Id.*

<sup>21</sup> 44 U.S.C. § 3508.

### **III. THE COMMISSION SHOULD CLARIFY THAT SECTION 54.313 ANNUAL REPORTING REQUIREMENTS DO NOT APPLY TO RECIPIENTS OF MOBILITY FUND PHASE II SUPPORT.**

The Commission has already acted to exempt Mobility Fund Phase I support recipients from any filing or other requirements established in Section 54.313 of the Commission's Rules,<sup>22</sup> and the Commission should now clarify that neither the information collections required by Section 54.313, nor any other obligations imposed by that section, will apply to service providers receiving support from Mobility Fund Phase II.

In the *March 5 CAF Clarification Order* the Bureau notes that “[p]etitioners . . . ask the Commission to clarify that the reporting requirements in section 54.313(a)(1) do not apply to recipients of Phase II Mobility Fund support[,]”<sup>23</sup> but the Bureau does not provide any such clarification or otherwise address the issue.

The Bureau does indicate, however, that “the question of what reporting requirements should apply to Mobility Fund Phase II support is an issue explicitly raised in the Further Notice of Proposed Rulemaking” that accompanied the *CAF Order*.<sup>24</sup> The Commission indicated in the *CAF Order* that, “[i]n the [CAF] FNPRM, we seek comment on alternative reporting requirements for Mobility Fund support to reflect basic differences in the nature and purpose of the support provided for mobile services.”<sup>25</sup> U.S. Cellular, in commenting on the *CAF FNPRM*, has argued that “[i]t should be sufficient, and certainly would be less burdensome and

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<sup>22</sup> 47 C.F.R. § 54.313(k). Winning bidders authorized to receive Mobility Fund Phase I support are required to file annual reports pursuant to Section 54.1009 of the Commission's Rules, 47 C.F.R. § 54.1009.

<sup>23</sup> *March 5 CAF Clarification Order*, 28 FCC Rcd at 2053 (para. 5).

<sup>24</sup> *Id.* at 2054 (para. 8 n.28).

<sup>25</sup> *CAF Order*, 26 FCC Rcd at 17850 (para. 573 n.946).

intrusive, for [Mobility Fund Phase II] support recipients only to be required to certify that they meet the minimum metrics for support.”<sup>26</sup>

U.S. Cellular agrees with CTIA and USTelecom that, in the meantime, “[u]ntil [the Commission] resolves these [reporting] issues [raised in the *CAF FNPRM*], the Commission should clarify that the reporting requirements in section 54.313(a)(1) do not apply to recipients of Phase II Mobility Fund support.”<sup>27</sup>

#### **IV. THE COMMISSION SHOULD CLARIFY THAT RECENT REVISIONS TO SECTION 54.313(a) ARE NOT INTENDED TO REQUIRE COMPETITIVE ETCs TO REPORT DATA RELATING TO THEIR BROADBAND SERVICES.**

The Commission has stressed from the outset that competitive ETCs whose support is being phased down “will not be required to submit any of the new information or certifications [adopted by the Commission] related solely to the new broadband public interest obligations . . . .”<sup>28</sup> This policy makes sense, of course, because the Commission’s requirements concerning the provision of broadband service apply only to recipients of CAF or Mobility Fund support, and not to recipients of legacy USF support.

The Bureau, however, in adopting revisions to Section 54.313(a) of the Commission’s Rules in the *March 5 CAF Clarification Order* (pursuant to authority delegated to the Bureau

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<sup>26</sup> U.S. Cellular Reply Comments, WC Docket No. 10-90, *et al.*, filed Jan. 7, 2013, at 39 (footnote and internal quotation marks omitted).

<sup>27</sup> CTIA and USTelecom Petition at 18 (emphasis added).

<sup>28</sup> *CAF Order*, 26 FCC Rcd at 17853 (para. 583) (emphasis added). *See Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Third Order on Reconsideration, 27 FCC Rcd 5622, 5625 (para. 8) (2012) (“*CAF Third Reconsideration Order*”). U.S. Cellular notes that, to the extent there is any doubt regarding whether the Commission intended to require competitive ETCs to adhere to the new broadband reporting requirements, USTelecom has asked the Commission to reconsider any such reporting obligation. USTelecom, Petition for Reconsideration, WC Docket No. 10-90, *et al.*, filed Dec. 29, 2011, at 15. The Commission has not yet acted on this petition.

in the *CAF Order*<sup>29</sup>), appears to have inadvertently contradicted the Commission’s policy to refrain from imposing broadband data reporting requirements on competitive ETCs. Specifically, the Bureau has revised the introductory text of Section 54.313(a) to read as follows: “(a) Any recipient of high-cost support shall provide the following, with the information and data required by paragraphs (a)(1) through (7) of this section separately broken out for both voice service and broadband service.”<sup>30</sup>

Proposed FCC Form 481<sup>31</sup> compounds the confusion generated by the *March 5 CAF Clarification Order* by proposing to require that all carriers must, for example, provide information concerning unfulfilled broadband service requests (Lines 320, 330) and concerning the number of complaints per 1,000 customers receiving mobile broadband service (Line 450).<sup>32</sup> The application of these and other broadband-related reporting requirements by FCC Form 481 to all carriers is particularly confusing in light of an indication in the draft FCC Form 481 Instructions that “[c]ompetitive ETCs whose support is being phased down are not required to submit a new five-year build-out plan, but must continue to submit information or certifications with respect to their provision of voice service . . . .”<sup>33</sup>

Moreover, as USTelecom has argued, the Bureau, in imposing these broadband reporting requirements on competitive ETCs and other ETCs, did not explain how these requirements are

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<sup>29</sup> *CAF Order*, 26 FCC Rcd at 18149 (para. 1404). See *March 5 CAF Clarification Order*, 28 FCC Rcd at 2058 (para. 22).

<sup>30</sup> *March 5 CAF Clarification Order*, 28 FCC Rcd at 2056 (para. 14) (emphasis added) (footnote omitted).

<sup>31</sup> FCC Form 481–Carrier Annual Reporting Data Collection Form (Draft Pending OMB Approval), Mar. 5, 2013 (“FCC Form 481” or “Form 481”).

<sup>32</sup> *Id.* at 1.

<sup>33</sup> Instructions for Completing 54.313/54.422 Data Collection Form (Draft Pending OMB Approval), Mar. 2013 (“FCC Form 481 Instructions” or “Instructions”), at 4 (emphasis added).

consistent with the Commission’s decision not to designate broadband as a “supported service”<sup>34</sup> or how these requirements would be consistent with furthering the Commission’s goals of monitoring progress in achieving its broadband goals and ensuring that support is used for its intended purposes.<sup>35</sup>

In addition, U.S. Cellular agrees with USTelecom’s argument that the imposition by the *March 5 CAF Clarification Order* of broadband reporting requirements pursuant to paragraphs (a)(1) through (7) of Section 54.313 on ETCs whose support is being phased down does not pass the “practical utility” test established in the PRA rules.<sup>36</sup> In providing that an information collection must have practical utility, the PRA rules require that information proposed to be collected must have actual (and not merely theoretical or potential) usefulness to the agency involved.<sup>37</sup>

Because the Commission “exempted from new broadband obligations those competitive ETCs whose support is being phased down[,]”<sup>38</sup> requiring these competitive ETCs to submit broadband-related data pursuant to paragraphs (a)(1) through (7) of Section 54.313(a) would have no practical utility because these carriers are not receiving any CAF or Mobility Fund support to provide broadband service.

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<sup>34</sup> USTelecom, Petition for Reconsideration and Clarification and Comments in Response to Paperwork Reduction Act, WC Docket No. 10-90, *et al.*, filed Apr. 4, 2013 (“USTelecom Petition and Comments”) at 7. USTelecom’s petition seeks reconsideration of the *March 5 CAF Clarification Order*. *Id.* at 3. *See Wireline Competition Bureau Seeks Comment on the United States Telecom Association Petition for Reconsideration and Clarification of Certain High-Cost Universal Service Reporting Rules*, WC Docket No. 10-90, Public Notice, DA 13-676 (rel. Apr. 10, 2013).

<sup>35</sup> USTelecom Petition and Comments at 7-8.

<sup>36</sup> *Id.* at 9.

<sup>37</sup> 5 C.F.R. §§ 1320.1, 3502(11), *cited in* USTelecom Petition and Comments at 8.

<sup>38</sup> *March 5 CAF Clarification Order*, 28 FCC Rcd at 2053 (para. 6) (footnote omitted).



The Commission should address the confusion created by the *March 5 CAF Clarification Order* by revising the amended text of Section 54.313(a) to make it clear that the broadband reporting requirements referenced in the rule do not apply in the case of competitive ETCs whose support is being phased down. The Commission should also revise the proposed FCC Form 481, and the accompanying Instructions, accordingly. As U.S. Cellular has explained, both the *CAF Order* and the *CAF Third Reconsideration Order* make clear that competitive ETCs are required to provide data only with respect to their provision of voice service. U.S. Cellular agrees with CTIA and USTelecom that “no purpose would be served in requiring an ETC to report broadband data when it is not receiving support intended exclusively to promote broadband deployment.”<sup>39</sup>

U.S. Cellular also notes that, even if the Commission were to conclude that Section 54.313(a) reporting requirements are applicable to broadband services provided by competitive ETCs whose support is being phased down, then, at a minimum, competitive ETCs (and other ETCs) should not be required to provide any information specified in Section 54.313(a)(1)-(a)(7) relating to broadband in their July 1, 2013, annual reports. The reason for this is that, since OMB has not approved these information collections, “carriers were not required to collect that information in 2012 and, consequently, cannot be required to report that information in their July 1, 2013 reports.”<sup>40</sup>

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<sup>39</sup> CTIA and USTelecom Petition at 4.

<sup>40</sup> Ex Parte Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, Docket No. 10-90, *et al.*, filed Apr. 15, 2013 (“Verizon Ex Parte Letter”), at 1.

**V. THE COMMISSION SHOULD REVISE ITS ESTIMATE OF BURDENS IMPOSED ON ETCs BY PROPOSED FCC FORM 481 AND OTHER NEW AND MODIFIED INFORMATION COLLECTION REQUIREMENTS.**

As previously indicated in these Comments,<sup>41</sup> a purpose of the PRA is to “minimize the paperwork burden for individuals, small businesses . . . and other persons resulting from the collection of information by or for the Federal Government . . . .”<sup>42</sup> The PRA defines burdens to mean the “time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency . . . .”<sup>43</sup>

The Commission has estimated in the FCC Form 481 Instructions that the “Estimated Average Burden Hours Peer Response” will be 20 hours.<sup>44</sup> In addition, the Commission estimates separately in the *Public Notice* that each respondent will expend approximately 0.5 hours to 100 hours to submit the new FCC Form 481 and comply with other new and modified information collection requirements.<sup>45</sup>

Given the scope of the new information collection requirements established in the *CAF Order* and reflected in FCC Form 481, these burden estimates appear to be optimistic, and their credibility is further called into question by the fact that the Commission apparently has provided no explanation of the methodology it used in producing the various estimates.<sup>46</sup>

U.S. Cellular agrees with USTelecom that, as a general matter, “an agency does not and cannot fulfill its PRA responsibilities unless the agency accurately considers the burdens of its

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<sup>41</sup> See Section II.A., *supra*.

<sup>42</sup> 44 U.S.C. § 3501(1).

<sup>43</sup> 44 U.S.C. § 3502(2).

<sup>44</sup> FCC Form 481 Instructions at 1.

<sup>45</sup> *February 25 Public Notice*, 78 Fed. Reg. at 12751, col. 1.

<sup>46</sup> See USTelecom Petition and Comments at 28.

proposed rules.”<sup>47</sup> U.S. Cellular further agrees with the various reasons articulated by USTelecom in support of its argument that “the Commission severely underestimates the time and resources necessary to collect, analyze, update, verify, submit, and certify the information being collected and reported on Form 481.”<sup>48</sup>

Specifically, USTelecom explains that ETCs would be required “to engage and train a wide range of personnel . . . to develop the processes needed to collect the requisite data, analyze the data’s accuracy, and format the data in a way that enables the ETC to accurately complete Form 481, and then actually complete and file the Form 481.”<sup>49</sup> The burden estimates presented by the Commission do not accurately account for the time and effort that would be necessary to undertake these tasks. Thus, as USTelecom concludes, “[a]n accurate reflection of the time and resources necessary for ETCs to comply with the proposed Form 481 would confirm that the proposed information collection is extremely burdensome and is inconsistent with the policies underlying the PRA.”<sup>50</sup>

## **VI. THE COMMISSION SHOULD MAKE VARIOUS REVISIONS AND CLARIFICATIONS REGARDING PROPOSED FCC FORM 481 TO CORRECT ERRORS AND OTHER DEFICIENCIES IN THE FORM.**

The draft FCC Form 481 and the FCC Form 481 Instructions are deficient in several respects and should be clarified or corrected by the Commission before they are adopted in final form. Most significantly, Form 481 and the Instructions, without any basis in the *CAF Order* or the Commission’s rules, seek to require ETCs serving Tribal lands to file documentation with the

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<sup>47</sup> *Id.* at 27 (footnote omitted).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 29.

<sup>50</sup> *Id.*

Commission showing that the ETCs are in compliance with various specified substantive requirements enacted or adopted by Tribal governments.

FCC Form 481 and the Instructions also incorrectly propose to require competitive ETCs to collect and submit information pertaining to voice telephony service rate floor deficiencies. In addition, information collections reflected in Form 481 relating to competitive ETCs' voice service price offerings should be revised to bring them into compliance with the PRA.

**A. FCC Form 481 Improperly Requires ETCs To Document Compliance with Various Requirements Adopted by Tribal Governments.**

FCC Form 481 and the accompanying Instructions require ETCs to confirm that they have met certain affirmative and substantive obligations in connection with their "operational coordination" with Tribal governments. Form 481, for example, requires an indication of whether an ETC has complied with Tribal government rights-of-way processes,<sup>51</sup> land use permitting requirements,<sup>52</sup> facilities siting rules,<sup>53</sup> environmental review processes,<sup>54</sup> cultural preservation review processes,<sup>55</sup> and Tribal business and licensing requirements.<sup>56</sup>

Although the FCC Form 481 Instructions indicate that the purpose of the Tribal lands reporting provisions is to require "documents or information demonstrating that the ETC had operational coordination with tribal governments[,]"<sup>57</sup> the Instructions also state that ETCs' reports must confirm compliance with substantive obligations prescribed by Tribal govern-

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<sup>51</sup> FCC Form 481, Line 924.

<sup>52</sup> *Id.*, Line 925.

<sup>53</sup> *Id.*, Line 926.

<sup>54</sup> *Id.*, Line 927.

<sup>55</sup> *Id.*, Line 928.

<sup>56</sup> *Id.*, Line 929.

<sup>57</sup> FCC Form 481 Instructions at 24.

ments. For example, the Instructions for completing Line 924 of Form 481 state that the ETC must confirm that the narrative discussion attached to its Form 481 submission (relating to its discussions with Tribal governments) “contains an explanation of your company’s actions to comply with the right-of-way processes for the tribal lands.”<sup>58</sup>

These provisions in FCC Form 481 and the accompanying Instructions relating to documentation of compliance with Tribal government laws and regulations extend well beyond the reporting requirements established in the Commission’s rules. Section 54.313(a)(9) of the Commission’s Rules requires that an ETC serving Tribal lands must provide “documents or information demonstrating that the ETC had discussions with Tribal governments[.]”<sup>59</sup> but makes no mention of ETCs’ having to provide documentation of their compliance with Tribal government statutes or regulations.

The reporting requirement in Section 54.313(a)(9) is drawn from the Commission’s determination in the *CAF Order* that “ETCs serving Tribal lands must include in their reports documents or information demonstrating that they have meaningfully engaged Tribal governments in their supported areas.”<sup>60</sup> Thus, the Commission—both in the *CAF Order* and in its rules—has made it clear that ETCs serving Tribal lands must report on discussions they have with Tribal governments on certain specified topics, but that ETCs are not required to report to the Commission on their compliance with Tribal government requirements.

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<sup>58</sup> *Id.* at 25 (emphasis added).

<sup>59</sup> 47 C.F.R. § 54.313(a)(9) (emphasis added). The discussion topics must include (1) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (2) feasibility and sustainability planning; (3) marketing services in a culturally sensitive manner; (4) rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (5) compliance with Tribal business and licensing requirements. *Id.*

<sup>60</sup> *CAF Order*, 26 FCC Rcd at 17858 (para. 604).

U.S. Cellular recognizes that the *ONAP Further Guidance*<sup>61</sup> suggests, in certain instances, that ETCs, in their meetings with Tribal government representatives, should be prepared to present documentation to the Tribal representatives of the ETCs' compliance with applicable Tribal laws and regulations. For example, in addressing the issue of Tribal business license requirements, the *Further Guidance* recommends that, "[a]s part of the Tribal engagement obligation, Tribal governments and communications providers should come to the table prepared to discuss in detail the relevant Tribal business and licensing requirements[.]"<sup>62</sup> and further suggests that "[c]ommunications providers should be prepared to provide evidence of compliance with any Tribal business practice licenses with which they currently comply for [the] Tribe [involved]."<sup>63</sup>

This suggestion that ETCs "should be prepared" to provide documentation to Tribal governments of the ETCs' compliance with various Tribal government laws and regulations does not impose any requirement on ETCs—it is merely a guidance given to ETCs in connection with the discussions they have with Tribal governments.<sup>64</sup>

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<sup>61</sup> *Office of Native Affairs And Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, WC Docket No. 10-90, *et al.*, Public Notice, 27 FCC Rcd 8176 (ONAP 2012) ("*ONAP Further Guidance*" or "*Further Guidance*").

<sup>62</sup> *Id.* at 8184 (para. 29).

<sup>63</sup> *Id.* The *Further Guidance* also suggests that ETCs maintain documentation of their compliance with all "relevant rights of way and other permitting and review processes on Tribal lands . . . ." *Id.* at 8183 (para. 26).

<sup>64</sup> See USTelecom Petition and Comments at 12 (arguing that the Commission should clarify that "the contents of ONAP's *Further Guidance* are not requirements to which ETCs are legally obligated to comply but merely suggestions to guide ETC activities"). USTelecom also explains that, if the *Further Guidance* is intended to impose binding requirements on ETCs, then the *Further Guidance* "would run afoul of the APA [Administrative Procedure Act], the First Amendment, the President's and the Chairman's stated goals of minimizing regulatory burdens on businesses, and the PRA." *Id.* With respect to PRA compliance, USTelecom argues that:

Moreover, even if the *ONAP Further Guidance* did require that an ETC must provide evidence to Tribal representatives of the ETC's compliance with Tribal government requirements—which it did not—any such requirement that an ETC demonstrate its compliance to the Tribal government does not translate into an obligation that the ETC must also demonstrate compliance to the Commission. In addition, as U.S. Cellular has explained, the Commission in fact has not promulgated any requirement that ETCs must make any such demonstration to the Commission.

FCC Form 481 and the accompanying Instructions should be revised to make it clear that ETCs are under no obligation to document in their annual reports to the Commission their compliance with various substantive obligations adopted by Tribal governments. As U.S. Cellular has shown, there is no basis in the Commission's rules or orders for the imposition of any such obligation.

Even if there were such a basis, the obligation should not be imposed because the information collection involved is not necessary for the proper performance of the Commission's functions and the information would have no practical utility for the Commission. There is no reason or need for the Commission to gather information concerning ETCs' compliance with Tribal rights of way and other permitting and review processes or with Tribal business and licensing requirements. Moreover, providing such information to the Com-

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[T]he *Further Guidance* was issued without complying with the PRA. ONAP did not seek OMB approval of the information collection contained in the *Further Guidance*, nor did OMB issue a control number for this collection. Notably, the Commission itself also failed to request or receive OMB approval for the information collection contained in its original Tribal engagement rule. Absent compliance with the PRA, neither the Commission's Tribal engagement rule nor the *Further Guidance* is legally enforceable . . . .

*Id.* at 14.

mission would be burdensome, especially in the case of ETCs that must coordinate with many Tribal governments.

In addition, U.S. Cellular agrees with Verizon and other parties who have pointed out that none of the information collection requirements imposed by Section 54.313(a)(9) can be made applicable by the Commission to the July 1, 2013, annual reports because the Commission did not secure OMB approval of the information collections in time to obligate ETCs to collect the information during 2012.<sup>65</sup>

**B. FCC Form 481 Erroneously Seeks To Collect Information from Competitive ETCs Relating to Voice Telephony Service Rate Floor Deficiencies.**

Line 700 of FCC Form 481 requires all ETCs, including competitive ETCs, to “report their voice telephony service price offerings, and to the extent the sum of the residential local service rate and state fees are below the rate floor, as specified in 47 C.F.R. §54.318, report the number of customers subscribing to those lines for each rate specified.”<sup>66</sup> The data required to be reported by competitive ETCs must include a calculation of any deficiency below the Urban Rate Floor.<sup>67</sup>

There is no basis for imposing these requirements related to rate floor deficiencies on competitive ETCs. The reporting obligations encompassed in Line 703 of FCC Form 481, relating to rate floor deficiencies, are based on Section 54.313(h) of the FCC’s Rules, which provides:

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<sup>65</sup> See Verizon Letter at 1.

<sup>66</sup> FCC Form 481 Instructions at 17. Specifically, Line 703, Col. a4, requires competitive ETCs to supply Study Area Codes, and the Instructions for Line 703 indicate: “*For CETCs: Each line with the worksheet should cover a residential rate level which applies to the entire study area . . .*” *Id.* (italicized in original).

<sup>67</sup> FCC Form 481, Line 703; FCC Form Instructions at 17-19.



All incumbent local exchange carrier recipients of high-cost support must report all of their flat rates for residential local service, as well as state fees as defined pursuant to §54.318(e) of this subpart. Carriers must also report all rates that are below the local urban rate floor as defined in §54.318 of this subpart, and the number of lines for each rate specified.<sup>68</sup>

The provisions of Section 54.318, which are referenced in Section 54.313(h), specifically “apply only to rate-of-return carriers . . . and carriers subject to price cap regulation . . . .”<sup>69</sup> The Commission adopted Section 54.318 “to limit high-cost support where end-user rates do not meet a specified local rate floor. This rule will apply to both rate-of-return carriers and price cap companies.”<sup>70</sup>

The Commission should revise FCC Form 481 and the accompanying Instructions to reflect the fact that reporting requirements in Line 700 relating to voice service rates below the urban rate floor do not apply to competitive ETCs.

**C. The Wireline Competition Bureau’s Implementation of Section 54.313 Reporting Requirements Regarding Voice Service Price Offerings Is Too Broad in Scope and Should Be Revised or Clarified.**

In addition to the rate floor deficiency issue discussed in the previous section, U.S. Cellular also agrees with U.S. Telecom’s assessment that the format proposed by the Bureau in FCC Form 481 “by which ETCs must collect and report [voice service price offerings] information . .

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<sup>68</sup> 47 C.F.R. § 54.313(h) (emphasis added).

<sup>69</sup> 47 C.F.R. § 54.318(c).

<sup>70</sup> *CAF Order*, 26 FCC Rcd at 17749 (para. 235). Pursuant to the rule, which is intended to “limit high-cost support where local end-user rates plus state regulated fees (specifically, state SLCs [subscriber line charges], state universal service fees, and mandatory extended area service charges) do not meet an urban rate floor representing the national average of local rates plus such state regulated fees[.]” *id.* at 17751 (para. 238), the Commission “will reduce, on a dollar-for-dollar basis, HCLS [high-cost loop support] and CAF Phase I support to the extent that a carrier’s local rates (plus state regulated fees) do not meet the urban rate floor.” *Id.* at 17752 (para. 239).

. does not pass PRA muster.”<sup>71</sup> In implementing Section 54.313(a)(7) of the Commission’s Rules, the Bureau has adopted collection requirements that would obligate competitive ETCs to provide information “that has no practical utility, contrary to the PRA.”<sup>72</sup> USTelecom explains, for example, that there is no basis for requiring ETCs to provide data for bundled service offerings, “residential local service charge effective dates” for each voice service offering, and “pricing information for every town in every state and to delineate information by exchange (for incumbent ETCs) and by study area (for competitive ETCs).”<sup>73</sup>

Although the Commission may justify the collection of voice service pricing information to the extent the collection is necessary to monitor whether “universal service funds are used for their intended purposes[.]”<sup>74</sup> neither the *March 5 Clarification Order* nor the FCC Form 481 Instructions attempt to demonstrate any nexus between the granular data collection requirements reflected in Line 700 of Form 481 and the Commission’s fulfillment of its regulatory duties.<sup>75</sup> Absent such a demonstration, U.S. Cellular agrees with USTelecom that the data collection requirements related to Section 54.313(a)(7) should be revised and clarified.

## VII. CONCLUSION.

If the Commission intends to make the information collections referenced in the *February 25 Notice* applicable to the July 1, 2013, annual ETC reports, it must first revise and clarify

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<sup>71</sup> USTelecom Petition and Comments at 17. Section 54.313(a)(7) of the Commission’s Rules, as revised by the *March 5 Clarification Order*, requires “[a]ny recipient of high-cost support” to provide “[t]he company’s price offerings in a format as specified by the Wireline Competition Bureau . . . .” 47 C.F.R. § 54.313(a)(7). As U.S. Cellular has explained, the *March 5 Clarification Order* erroneously attempts to extend this reporting requirement to broadband services provided by competitive ETCs. See Section IV., *supra*.

<sup>72</sup> USTelecom Petition and Comments at 17.

<sup>73</sup> *Id.* at 18.

<sup>74</sup> *CAF Order*, 26 FCC Rcd at 17852 (para. 580), *quoted in* USTelecom Petition and Comments at 17.

the information collections, and the Commission's underlying rules, in various respects to make them compliant with the Paperwork Reduction Act. U.S. Cellular respectfully requests that the Commission undertake these tasks, and seek to obtain approval of the information collections from the Office of Management and Budget, expeditiously so that competitive ETCs and other ETCs have a clear and unambiguous explanation of the applicable reporting requirements and also have sufficient time to prepare their July 1 annual reports.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION



By:\_\_\_\_\_

David A. LaFuria  
Steven M. Chernoff  
John Cimko

LUKAS, NACE, GUTIERREZ & SACHS, LLP  
8300 Greensboro Drive, Suite 1200  
McLean, Virginia 22102  
(703) 584-8678

Grant B. Spellmeyer  
Executive Director – Federal Affairs &  
Public Policy

UNITED STATES CELLULAR CORPORATION  
8410 West Bryn Mawr  
Chicago, Illinois 60631  
(773) 399-4280

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<sup>75</sup> See USTelecom Petition and Comments at 17-18.