

**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**

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ATTACHMENT: U.S. Cellular Comments, WC Docket No. 10-90, WT Docket No. 10-208,
filed April 26, 2013

SUMMARY

As the Commission rushes forward with efforts to secure Office of Management and Budget approval of a wide range of burdensome and costly information collection requirements applicable to eligible telecommunications carriers receiving universal service support, U.S. Cellular urges OMB to subject the Commission's submission to careful and extensive scrutiny.

In undertaking its review, OMB must also be cognizant of the fact that the Commission has failed to address or resolve several issues raised by interested parties concerning information collection requirements that are reflected in the proposed FCC Form 481, that extend beyond the scope of the Commission's orders and rules transforming its universal service support mechanisms, and that are not compliant with the Paperwork Reduction Act of 1995.

Deficiencies in FCC Form 481

The Commission must revise several provisions in Form 481 to bring the form within the scope of the Commission's rules and orders, and into compliance with the PRA. Form 481, for example, requires competitive ETCs receiving only legacy universal service support to report various information for both the carriers' voice and broadband services. This reporting requirement conflicts with a Commission policy that competitive ETCs will not be required to report data relating to their broadband services, and also violates the PRA because it is not necessary for the proper performance of the Commission's functions.

Form 481 further violates the PRA by imposing unnecessarily burdensome requirements on ETCs with respect to their reporting of voice rate data. The Form requires this data to be reported at a granular level that is beyond what the Commission needs to evaluate whether rates for voice service in rural areas are comparable to rates for voice service in urban areas.

Form 481 and its accompanying Instructions also conflict with the Commission's rules by requiring that ETCs serving Tribal lands must confirm that they are complying with various Tribal government statutes and regulations, and must describe specific actions they have taken to achieve this compliance. These requirements conflict with the Commission's rules, which only require that ETCs serving Tribal lands must report on their efforts to engage with Tribal governments to discuss various issues, including ways to achieve compliance with Tribal laws and regulations. The Commission's rules do not require ETCs to report whether they are in compliance with these laws and regulations or to report specific actions taken to comply. The Form 481 reporting requirement must be narrowed to bring it within the scope of the Commission's rules.

Finally, OMB should not permit the Commission to impose its new information collection requirements with respect to ETC operations in calendar year 2012. The Commission did not have any authorization from OMB to require the collection in 2012 of information covered by the new reporting requirements. In fact, various aspects of these new information collection requirements remain undefined in July 2013. Thus, ETCs could not possibly have been on notice regarding data they would be required to collect during 2012.

Flaws in the Commission's Burden Hour and Cost Estimates

When OMB looks behind the Commission's estimates that ETCs will spend 100 hours preparing their annual reports, and that each ETC's cost burden for its annual report will be \$4,000, OMB will find that the Commission fails to explain the methodology it used to produce these estimates, and that it provides no support for its apparent conclusion that the estimates are reasonable. In cases in which the Commission provides a glimpse of the assumptions underlying its estimates—the Commission's view, for example, is that ETCs' costs in preparing the annual

reports will be limited to administrative staff time and overhead and will be exclusively in-house—these assumptions are exposed as being unreasonable and unsupported.

The Commission's handling of burden estimates for ETCs' Tribal engagement obligations illustrates the deficiencies in the Commission's Supporting Statement for its information collections. The Commission estimates that each ETC serving Tribal lands will spend four hours providing information required in Form 481 relating to Tribal lands reporting.

The problem with the Commission's estimate is that it addresses burdens associated with reporting on an ETC's Tribal engagement activities, but it ignores burdens relating to an ETC's actually engaging with Tribal governments. The PRA applies to these engagement activities, in addition to the reporting requirements, and the Commission has ignored evidence in the record that hour burdens and costs associated with these engagement activities are significant.

Next Steps

The Commission's proposed Form 481 does not comply with the PRA, and it also extends beyond the scope of the Commission's rules and orders. In addition, the Commission's hour burden and cost estimates are unexplained and unreasonable. OMB should withhold any approval of the information collections submitted by the Commission until the Commission has addressed and resolved challenges and issues in the record that it has heretofore ignored, and until the Commission provides sufficient explanation and support for its burden and cost estimates.

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

¹ FCC, *Information Collection Being Submitted for Review and Approval to the Office of Management and Budget*, Notice and Request for Comments, 78 Fed. Reg. 34096 (June 6, 2013) (Office of Management and Budget (“OMB”) Control No. 3060-0986) (“*June 6 Notice*” or “*Notice*”). The filing deadline for comments is July 8, 2013. *Id.* at 34096, col. 1. As instructed in the *Notice*, U.S. Cellular is providing a copy of its Comments to Nicholas A. Fraser, OMB, and to Judith B. Herman, Office of the Managing Director, FCC. *See id.*

² 44 U.S.C. §§ 3501-3520.

³ *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 (2011) (“*CAF Order*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (and consolidated cases) (“*CAF Order Appeal*”).

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 United States. 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.⁴

I. INTRODUCTION.

After waiting nearly two years following the adoption of the *CAF Order*, the Commission is now pushing ahead with its efforts to obtain OMB approval of new information collection requirements applicable to ETCs adopted in the *CAF Order*, even though the Commission has not yet addressed numerous challenges in the record regarding various aspects of these new requirements. U.S. Cellular agrees with USTelecom that “the Commission has left unresolved fundamental issues associated with the scope of the reporting requirements applicable to [ETCs] under the Commission’s new universal service regime.”⁵

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

⁵ United States Telecom Association (“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 1. USTelecom explains that some of these challenges have been pending with the Commission since December 2011. *Id.* at 2 & n.2 (citing USTelecom, Petition for

The latest chapter in the Commission’s failure to address concerns raised by interested parties involves the proposed new FCC Form 481,⁶ which the Commission has now asked OMB to approve. Although the Commission rules upon which Form 481 is based were adopted in October 2011—20 months ago—the Commission has only recently prepared this new form and submitted it for OMB review. While the Commission has made some modifications to the initial draft of Form 481 in response to comments from interested parties, several issues have been ignored by the Commission, and, as U.S. Cellular urges in these Comments, OMB should insist upon the resolution of these issues before taking any action to approve the form.

In addition, in its last-minute rush to impose new information collection requirements applicable to this year’s annual ETC reports, the Commission has failed to invest the time and resources necessary to develop sufficient explanations and supporting data for the information collection requirements. Specifically, as U.S. Cellular discusses in its Comments, the Commission’s submission to OMB fails to make the required demonstrations that each of the Commission’s new requirements has practical utility, that the burdens imposed on ETCs are not excessive, and that sufficient efforts have been made by the Commission to develop the least burdensome reporting requirements.

Reconsideration, WC Docket No. 10-90, *et al.*, filed Dec. 29, 2011; CTIA—The Wireless Association® (“CTIA”) and USTelecom, Petition for Clarification and Reconsideration or, in the Alternative, Waiver, WC Docket No. 10-90, *et al.*, filed June 25, 2012; USTelecom Petition for Reconsideration and Clarification, WC Docket No. 10-90, *et al.*, filed Aug. 20, 2012 (“USTelecom 2012 Reconsideration Petition”).

⁶ FCC Form 481—Carrier Annual Reporting Data Collection Form (Draft Pending OMB Approval), OMB 3060-0986, June 7, 2013 (“FCC Form 481” or “Form 481”).

II. CERTAIN INFORMATION COLLECTION REQUIREMENTS IN FCC FORM 481 FAIL TO COMPLY WITH THE PAPERWORK REDUCTION ACT OF 1995 OR ARE INCONSISTENT WITH THE COMMISSION’S RULES AND ORDERS.

Several of the information collection requirements submitted to OMB by the Commission should not be approved because they do not comply with the PRA or they extend beyond the rules and orders adopted by the Commission. For example, reporting provisions in FCC Form 481 requiring competitive ETCs to submit information relating to broadband services, and requiring ETCs serving Tribal lands to demonstrate their compliance with Tribal government laws and regulations, are not consistent with the Commission’s rules and orders and therefore have no basis.

FCC Form 481 reporting provisions developed by the Wireless Competition Bureau (“Bureau”) relating to the submission of voice rate data by competitive ETCs require information to be submitted at an unnecessarily granular level, thus producing data that would have no practical utility, and suggesting a failure by the Bureau to consider less burdensome data collection alternatives.

In addition, the Commission is unreasonably attempting to require ETCs to collect information relating to their operations in 2012, for submission to the Commission in the ETCs’ 2013 annual reports. The Commission did not seek or obtain OMB approval of these new collection requirements before attempting to apply the requirements to ETC data generated during 2012. In fact, the Commission did not submit its request for OMB approval for most of the new requirements until just over a month ago, on June 6.

A. FCC Form 481 Mistakenly Requires Competitive ETCs To Submit Information Concerning Their Provision of Broadband Service.

The Commission has noted that, “[i]n response to comments filed [by interested parties responding to a notice published by the Commission in the Federal Register on February 25, 2013⁷], the Commission clarified reporting obligations and modified FCC Form 481.”⁸ The Commission, however, in making these clarifications and modifications, failed to address a request made by U.S. Cellular that the Commission should clarify that competitive ETCs are not required to report data pursuant to Section 54.313(a) of the Commission’s Rules⁹ relating to their provision of broadband services.¹⁰

Revisions to Section 54.313 of the Commission’s Rules adopted by the Bureau in the *March 5 CAF Clarification Order*¹¹ require all ETCs, including competitive ETCs whose high-cost support is being phased down,¹² to report certain information required in Section 54.313(a) “separately broken out for both voice service and broadband service.”¹³ These reporting requirements are reflected in FCC Form 481 at Lines 320, 330, and 450.¹⁴

⁷ FCC, *Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, Notice, 78 Fed. Reg. 12750 (Feb. 25, 2013).

⁸ FCC, Supporting Statement, OMB 3060-0986, June 2013 (“Supporting Statement”) at 10.

⁹ 47 C.F.R. § 54.313(a).

¹⁰ U.S. Cellular Comments, WC Docket No. 10-90, WT Docket No. 10-208, filed Apr. 26, 2013 (“U.S. Cellular April 26 Comments”), at 10-13. A copy of these Comments is attached.

¹¹ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013) (“*March 5 CAF Clarification Order*”). The Commission delegated authority to the Bureau “to make any further rule revisions as necessary to ensure that the reforms adopted in [the *CAF Order*] are properly reflected in the rules.” *CAF Order*, 26 FCC Rcd at 18149 (para. 1404).

¹² The Commission decided in the *CAF Order* to “phase down [competitive ETCs’] existing support over a five-year period beginning on July 1, 2012.” *CAF Order*, 26 FCC Rcd at 17675 (para. 29).

¹³ *March 5 CAF Clarification Order*, 28 FCC Rcd at 2056 (para. 14) (footnote omitted).

¹⁴ The Instructions for FCC Form 481 appear to conflict with the form itself, by indicating that “[c]ompetitive ETCs whose support is being phased down are not required to submit a new five-year

U.S. Cellular has argued that this broadband reporting requirement imposed by the Bureau on competitive ETCs conflicts with a Commission policy that ETCs receiving only legacy support would not be required to report any information pertaining to their provision of broadband service.¹⁵ U.S. Cellular also has agreed with another commenter who observed that the Bureau, in imposing the broadband reporting requirements, has failed to explain how these requirements are consistent with the Commission’s decision not to designate broadband as a “supported service” for purposes of its new CAF and Mobility Fund support mechanisms.¹⁶

A further difficulty with the Bureau’s imposition of broadband reporting requirements on competitive ETCs is that collection of the required information is not “necessary for the proper performance of the functions”¹⁷ of the Commission, nor would the information have any “practical utility.”¹⁸ The Commission’s newly established CAF and Mobility Fund support mechanisms are intended for use in deploying broadband services,¹⁹ but, at the same time, the Commis-

build-out plan, but must continue to submit information or certifications with respect to their provision of voice service” Instructions for Completing FCC Form 481, 54.313/54.422 Data Collection Form, OMB Control No. 3060-0986 (High-Cost), May 2013 (“FCC Form 481 Instructions” or “Instructions”), at 3-4 (emphasis added). The Instructions thus do not reference a reporting requirement applicable to broadband service. On the other hand, the instructions for completing Lines 320, 330, and 450 of Form 481 appear in a section of the Instructions under the heading “Annual Reporting for All Carriers.” Instructions at 9, 10-11.

¹⁵ U.S. Cellular April 26 Comments at 10-11 (citing *CAF Order*, 26 FCC Rcd at 17853 (para. 583), explaining that “[c]ompetitive ETCs whose support is being phased down will not be required to submit any of the new information or certifications . . . related solely to the new broadband public interest obligations, but must continue to submit information or certifications with respect to their provision of voice service”); *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Third Order on Reconsideration, 27 FCC Rcd 5622, 5625 (para. 8) (2012)).

¹⁶ *Id.* at 11-12 (citing USTelecom Petition and Comments at 7).

¹⁷ PRA, 44 U.S.C. § 3508.

¹⁸ *Id.*

¹⁹ The Commission has explained that, as part of its transformation of its universal service regime, it has adopted “support for broadband-capable networks as an express universal service principle under section 254(b) of the Communications Act” *CAF Order*, 26 FCC Rcd at 17672 (para. 17). The theories developed by the Commission in its attempt to support its assertion of jurisdiction and authority to make

sion has observed that “recipients [of legacy support] lack any obligations or accountability for advancing broadband-capable infrastructure.”²⁰ Thus, to the extent that competitive ETCs are not receiving any CAF or Mobility Fund support—receipt of which is subject to compliance with the Commission’s new requirements adopted in the *CAF Order*—they “lack any obligations” with regard to the provision of broadband services. Given the absence of any such obligations, the proper performance of the Commission’s functions does not make it necessary for the Commission to collect any information from competitive ETCs relating to their provision of broadband services.

Because the Bureau’s revision of the Commission’s rules to require competitive ETCs to submit data relating to broadband services conflicts with the *CAF Order*, and because the collection of such data is not necessary and the data would have no practical utility, OMB should withhold its approval of FCC Form 481 until the Commission adopts appropriate revisions to its rules and to Form 481 to rescind the broadband reporting requirements imposed by the Bureau.

B. FCC Form 481 Conflicts with the Commission’s Rules By Requiring ETCs Serving Tribal Lands To File Documentation Demonstrating Their Compliance with Tribal Government Statutes and Regulations.

U.S. Cellular has argued that FCC Form 481 and its Instructions are inconsistent with the Commission’s rules because they indicate that ETCs must confirm that they have met certain substantive obligations in connection with their “operational coordination” with Tribal governments.²¹ Specifically, Form 481 requires an ETC to confirm whether it has complied with Tribal government rights-of-way processes, land use permitting requirements, facilities siting

support available for broadband services have been challenged by U.S. Cellular and other parties in the pending *CAF Order Appeal* proceeding.

²⁰ *Id.* at 17669 (para. 7).

²¹ U.S. Cellular April 26 Comments at 16-20.

rules, environmental review processes, cultural preservation review processes, and Tribal business and licensing requirements.²² The compliance requirements in Form 481 are reflected in the Instructions.²³ The instructions for Line 926, for example, state that the ETC must indicate whether its Form 481 filing “contains an explanation of your company’s actions to comply with the facilities siting rules for the Tribal lands.”²⁴

By requiring confirmation of compliance, and descriptions of actual compliance activities, Form 481 and the draft Instructions go far beyond the Commission’s rules, which only require a demonstration that an ETC has made a meaningful attempt to engage Tribes on specified topics. Specifically, Section 313(a)(9) of the Commission’s Rules requires ETCs serving Tribal lands to provide “documents or information demonstrating that the ETC had discussions with Tribal governments that, at a minimum, included . . . (v) [c]ompliance with Tribal business and licensing requirements.”²⁵ The rule implements a provision in the *CAF Order* that “require[s] that, at a minimum, ETCs [must] demonstrate on an annual basis that they have meaningfully engaged Tribal governments in their supported areas [in] discussions [that] include . . . compliance with Tribal business and licensing requirements.”²⁶

Thus, both the *CAF Order* and the Commission’s rules only require that ETCs serving Tribal lands must engage with Tribal governments regarding issues related to the ETCs’ compliance with Tribal government laws and regulations, and submit a report to the Commission describing such engagement. Neither the *CAF Order* nor Section 54.313(a)(9), however, requires

²² FCC Form 481, Lines 924-929.

²³ See FCC Form 481 Instructions at 26.

²⁴ *Id.* (emphasis added).

²⁵ 47 C.F.R. § 54.313(a)(9) (emphasis added).

²⁶ *CAF Order*, 26 FCC Rcd at 17868 (para. 637) (footnotes omitted) (emphasis added).

ETCs to confirm their compliance with Tribal laws and regulations or to describe the steps they have taken to comply.

OMB therefore should not approve the provisions of FCC Form 481 pertaining to Tribal lands reporting. The Form 481 requirement that ETCs demonstrate the manner in which they are complying with Tribal facilities siting rules and other Tribal business and licensing requirements violates the PRA because the information collection is not “necessary for the proper performance of the functions of the agency”²⁷ Specifically, the information collection is not necessary because it is beyond the scope of the *CAF Order* and the Commission’s rules, neither of which requires any such demonstration of compliance.

C. Requirements Imposed by the Wireline Competition Bureau Regarding the Submission of Voice Rate Data in FCC Form 481 Do Not Comply with the Paperwork Reduction Act of 1995.

The Commission’s rules relating to annual ETC reports require each ETC to provide its “price offerings in a format as specified by the Wireline Competition Bureau”²⁸ Both U.S. Cellular and USTelecom have criticized the format developed by the Bureau in FCC Form 481 because the format requires the submission of data at an unnecessarily granular level.²⁹ Specifically, Form 481 requires ETCs to report pricing information by exchange (for incumbent ETCs) or by study area (for competitive ETCs).³⁰

Requiring voice rate data to be submitted at the exchange and study area levels is not necessary for the proper performance of the Commission’s functions. The purpose of the voice rate data reporting requirement is to ensure achievement of the objective of the *CAF Order*

²⁷ 44 U.S.C. § 3508.

²⁸ 47 C.F.R. § 54.313(a)(7).

²⁹ U.S. Cellular April 26 Comments at 21-22; USTelecom Petition and Comments at 17-18.

“to ensure parity between urban and rural areas for broadband and voice rates.”³¹ It is not necessary for the Bureau, in developing a format for the reporting of voice price offerings, to impose on ETCs the burden of submitting voice rate data on a highly granular level in order for the Commission to effectively assess whether universal service support is promoting the objective of rural and urban rate parity.

Collecting voice rate information at a less granular level would be consistent with the Commission’s formulation that, for “voice services, [and] for broadband services[,] we will consider rural rates to be ‘reasonably comparable’ to urban rates . . . if rural rates fall within a reasonable range of urban rates for reasonably comparable [voice or] broadband service.”³² The Commission can successfully undertake this comparison of urban and rural rates without collecting and analyzing voice rates for every single exchange and study area served by carriers receiving universal service support.

OMB therefore should withhold its approval of FCC Form 481 until the Bureau devises a format for reporting voice rate data that avoids imposing the unnecessary burden on ETCs of reporting this data on an exchange and study area basis.

³⁰ FCC Form 481, Line 703, Col. a2, Col. a3.

³¹ Supporting Statement at 2. *See* Section 254(b)(3) of the Communications Act of 1934, 47 U.S.C. § 254(b)(3) (providing that “[c]onsumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas”).

³² *CAF Order*, 26 FCC Rcd at 17708 (para. 113).

D. The Commission Has No Authority To Apply Its New Information Collection Requirements to Data Relating to ETC Operations in Calendar Year 2012.

Even if FCC Form 481 is approved by OMB, ETCs should not be required to submit information covered by the newly approved reporting requirements reflected in Form 481 until 2014. The annual reports submitted by ETCs this year should not be required to include these new data collections because the program year covered by this year's reports is 2012, the prior calendar year,³³ and the Commission did not have any authorization from OMB to require the collection in 2012 of information covered by the new reporting requirements. Given that the new information collection requirements remain undefined in July 2013, ETCs could not possibly have been on notice of the types of data they would be required to collect during 2012.

U.S. Cellular agrees with AT&T that "the Commission lacks authority to compel parties to collect information prior to the Commission obtaining OMB approval for that information collection and prior to the rule becoming effective."³⁴ OMB should therefore insist that the Commission adhere to the approach described by USTelecom:

[W]ith respect to the collection of any information that OMB has . . . approved, . . . such information must only be reported to the extent it was being collected at the time of or subsequent to OMB approval. Unless an ETC was already collecting information that the Commission now requires be reported, an ETC would have

³³ See Instructions at 9 (indicating that "[t]he time period . . . associated with data filed in the [2013] reporting" is the "prior calendar year")

³⁴ AT&T Comments, WC Docket No. 10-90, *et al.*, filed June 3, 2013, at 3. See 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, at 1, *cited in* U.S. Cellular April 26 Comments at 13 (explaining that, even if the Commission "obtains approval from OMB for the proposed Form 481 before July 1 [the then applicable date for filing the annual ETC reports], carriers' 2013 reports are not required to include" broadband information or Tribal lands reporting, because "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").

no reason to collect such information prior to OMB approval, and it would be unreasonable to expect an ETC to recreate such information in order to complete Form 481.³⁵

Thus, unless an ETC was already collecting, in 2012, the information covered by the Commission's new reporting requirements, the ETC should not be required to include the information in its 2013 annual report.

III. THE OFFICE OF MANAGEMENT AND BUDGET SHOULD REQUIRE THE COMMISSION TO CORRECT SIGNIFICANT FLAWS IN ITS BURDEN AND COST ESTIMATES BEFORE CONSIDERING WHETHER TO APPROVE THE COMMISSION'S INFORMATION COLLECTIONS.

The Commission has provided data indicating that, as the result of changes in collection requirements made by the Commission, the total hourly burden faced by ETCs in complying with all of the Commission's reporting requirements in 2013 that are reflected in the *June 6 Notice* will increase by 66.4 percent (163,435 hours in 2012 compared to 272,017 hours in 2013).³⁶ The Commission also estimates that the annual hour burden for each respondent required to file an annual ETC report will be 100 hours,³⁷ and each ETC's cost burden associated with its annual report is estimated by the Commission to be \$4,000.³⁸

It is important to note, in the context of evaluating the impact of these burden hours and costs imposed on competitive ETCs, that the Commission is in the process of phasing down legacy universal service support available to competitive ETCs. Legacy support is scheduled to be reduced to zero by July 1, 2016.³⁹ At the same time, the Commission has decided to make only \$500 million available annually for Mobility Fund Phase II (\$100 million of which is set aside

³⁵ USTelecom Petition and Comments at 16 (footnote omitted).

³⁶ Supporting Statement at 22.

³⁷ *Id.* at 13.

³⁸ *Id.* at 14.

for use on Tribal lands),⁴⁰ which provides a level of funding that “amounts to approximately one-third of the funding available for mobile wireless deployment and operations in rural areas under the [legacy] capped high-cost funding mechanism”⁴¹ prior to the phase-down of this legacy funding. In U.S. Cellular’s view, it makes little sense for the Commission to increase competitive ETCs’ reporting burdens and costs significantly, while also making substantial reductions in the level of support available to competitive ETCs.

Moreover, the substantial increase in burden hours, compared to the burden hours for 2012, places a burden on the Commission to demonstrate a sound basis for the increased burdens and to show that it sought to establish reporting requirements that would mitigate burdens as much as possible.⁴² In addition, the Commission should demonstrate the reasonableness of its burden estimates by showing that all burdens have been taken into account and that the Commission has developed and employed a reasonable methodology in estimating the extent of all of the burdens.

As U.S. Cellular discusses in the following sections, the Commission has not made these demonstrations to the extent necessary to warrant OMB’s approval of the information collections submitted by the Commission.

³⁹ *CAF Order*, 26 FCC Rcd at 17832 (para. 519).

⁴⁰ *Id.* at 17711 (para. 126).

⁴¹ U.S. Cellular Comments, WC Docket No. 06-122 *et al.*, filed July 9, 2012, at 3 (emphasis added).

⁴² See 44 U.S.C. § 3501(1); 5 C.F.R. § 1320.1 (stating that OMB’s rules are designed “to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government”).

A. Neither the Commission's Hour Burden Estimates Nor Its Cost Assumptions Are Sufficiently Supported.

The Commission in the Supporting Statement has “estimate[d] that each carrier will spend a total of at least 100 hours tracking, filtering, tabulating, assessing and preparing [annual ETC] reporting requirements”⁴³ The Commission does not, however, provide any explanation of the methodology it used to arrive at this estimate of hours, nor does it otherwise present any basis for its apparent conclusion that the estimate is reasonable. U.S. Cellular agrees with USTelecom that “an agency does not and cannot fulfill its PRA responsibilities unless the agency accurately considers the burdens of its proposed rules[.]”⁴⁴ but, in this case, the Commission has failed to provide OMB with any documentation or other evidence that could confirm the accuracy of the Commission's estimates.

The Commission estimates that the cost that ETCs will incur in complying with the annual reporting requirements will be \$40 per hour (administrative staff time and overhead),⁴⁵ and that all these costs will be in-house.⁴⁶ Again, the Commission does not explain how it arrived at this cost estimate, nor does it give any basis for its assumption that all costs will be in-house and will be limited to administrative staff time and overhead. In some instances in the Supporting Statement, the Commission has included costs in addition to administrative staff time and overhead,⁴⁷ but it gives no explanation for its decision not to do so with respect to its cost estimate for the annual ETC reports.

⁴³ Supporting Statement at 14.

⁴⁴ USTelecom Petition and Comments at 27 (footnote omitted).

⁴⁵ Supporting Statement at 14.

⁴⁶ *Id.* at 20, 22.

⁴⁷ *See id.* at 10 (indicating that the hours and costs associated with reporting working loops at the cost-zone level will include attorney time, administrative staff time, and overhead).

In light of these deficiencies in the Commission’s case for justifying its estimate of the burdens and costs associated with its new information collection requirements, OMB should require the Commission to provide more specific information demonstrating the reasonableness of its estimate of burden hours and its assumptions regarding the level of costs imposed on responding ETCs. Further, in reviewing the Commission’s estimates, OMB should take into account concerns previously expressed in the record regarding the shaky foundation on which the Commission’s estimates rest.

USTelecom, for example, has argued that “the 100 hour estimate understates dramatically the time required to complete [FCC Form 481]”⁴⁸ because “the Commission has substantially misjudged the burdens associated with its proposed information collection.”⁴⁹ USTelecom suggests that the Commission’s burden estimates should take into account the time, effort, and cost required:

- To train personnel to respond to the new data collection requirements.
- To acquire, install, and develop systems and technology to collect, validate, and verify the requested information.
- To process and maintain the data required by the Commission.
- To provide the required information to the Commission.⁵⁰

⁴⁸ USTelecom Petition and Comments at 28 n.36. US Telecom’s petition and comments, which were filed before the draft Supporting Statement was released by the Commission, observe that it is:

unclear . . . whether the Commission’s estimates include all the categories of employees and third-party consultants that ETCs would need to engage in order to complete the proposed information collection and all the time required of each employee or consultant. Also unexplained is the Commission’s apparent assumption that carriers can rely exclusively on existing in-house resources in collecting and reporting the required information.

Id. at 28. As U.S. Cellular has discussed, the Supporting Statement has not cured these deficiencies identified by USTelecom.

⁴⁹ *Id.* at 28.

⁵⁰ *Id.* at 28-29.

U.S. Cellular agrees with USTelecom’s observation that these various tasks could require significant time and resources, especially in the case of “any ETC that does not currently maintain the specific data to the level of granularity required by Form 481[,] which USTelecom believes is the vast majority of ETCs”⁵¹

In addition, even assuming, *arguendo*, that the Commission’s estimate of 100 hours for tracking, filtering, tabulating, assessing and preparing each annual ETC report, is not understated, the fact is that such a resource commitment would impose an unjustified burden, particularly on smaller ETCs. As the Rural Associations explain:

[T]he Commission appears not to have even considered whether ETCs, particularly small providers, even have the in-house resources available to complete the form. Most RLECs [rural local exchange carriers] have one or at most two employees with the experience or training necessary to comply with Commission reporting requirements, and many must rely on expert consultants to do so. This further exacerbates the burden on these carriers, particularly in an era of reduced resources that have stretched RLECs’ operating budgets.⁵²

The Rural Associations’ analysis applies with equal force to the operations of smaller competitive ETCs. The Commission has made no effort to show that its burden estimate of 100 hours reflects any actions taken to mitigate burdens as much as possible, nor to explain what, if any, specific steps were taken to consider or implement alternative reporting requirements that would have mitigated burdens on respondents.

In light of the Commission’s failure to explain the assumptions and other factors it used to develop the time and cost estimates contained in the Supporting Statement, or the efforts it

⁵¹ *Id.* at 29.

⁵² NTCA-The Rural Broadband Association, National Exchange Carrier Association, Inc., Eastern Rural Telecom Association, Western Telecommunications Alliance (collectively, “Rural Associations”), Reply to Oppositions, WC Docket No. 10-90, *et al.*, filed June 11, 2013 (“Rural Associations Reply to Oppositions”), at 5 (footnotes omitted). See Fred Williamson & Associates (“FWA”) Reply to Oppositions, WC Docket No. 10-90, *et al.*, undated (“FWA Reply to Oppositions”), at 2.

undertook to ensure that burdens would be mitigated to the extent practicable, U.S. Cellular supports suggestions in the record that OMB should require the Commission to resubmit its proposed new data collection requirements for OMB review.

FWA argues that implementation of FCC Form 481 should be suspended until a more thorough burden estimate is prepared, together with a more in-depth analysis of whether the burden that the reporting requirements will impose is justified by the benefit the data will provide to the Commission if collected.⁵³ Such a suspension of the implementation of Form 481 would provide the Commission with an opportunity to assess whether, instead of “transferring the burden of its oversight responsibilities”⁵⁴ to ETCs through the extensive collection of information, “the Commission should, if it believes that there are problems, selectively review individual ETCs.”⁵⁵

B. The Commission’s Estimates of Burdens and Costs Relating to Tribal Engagement Requirements Are Incomplete and Must Be Revised.

In its estimate of burdens associated with ETCs’ Tribal engagement obligations, the Commission addressed only the time necessary for “preparing, reviewing, and submitting [an ETC’s] report on Tribal engagement”⁵⁶ The Commission estimated that each of the 300 ETCs subject to Tribal engagement requirements “will spend a total of at least 4 hours” in preparing, reviewing, and submitting its report.⁵⁷

The Commission’s estimate is substantially understated because it fails to take into account the burdens associated with an ETC’s complying with the Commission’s rules by actually

⁵³ FWA Reply to Oppositions at 3. *See* Rural Associations Reply to Oppositions at 6.

⁵⁴ FWA Reply to Oppositions at 3.

⁵⁵ *Id.*

⁵⁶ Supporting Statement at 15.

⁵⁷ *Id.*

engaging, or attempting to engage, with Tribal governments. The Bureau has acknowledged that ETCs' Tribal engagement obligations constitute "the substance of the [Tribal lands] reporting" required by the Commission.⁵⁸ Given this recognition by the Bureau of the relationship between the Tribal engagement requirements and the Tribal lands reporting requirements, there is no basis for omitting ETCs' Tribal engagement activities from the Commission's burden estimates.

The Commission, in sidestepping in its Supporting Statement the issue of the burdens associated with the Commission's Tribal engagement requirements, has ignored numerous arguments in the record that these burdens are significant and should be included. For example, CTIA has explained that "[g]iven the number of federally recognized Tribes, carriers operating in multiple states would have to devote overwhelming numbers of senior executive hours to travel to and meet with Tribal officials. These costs would be burdensome for both large and small carriers."⁵⁹ USTelecom also has discussed burdens associated with an ETC's preparing presentations, involving senior executives in Tribal engagements, and engaging in marketing.⁶⁰

In addition to the Commission's failure to include relevant burdens associated with ETCs' Tribal engagement obligations in the Supporting Statement, it is also important to note that the Commission failed to obtain the required approval from OMB before imposing the Tribal engagement requirements.

⁵⁸ *Connect America Fund*, WC Docket No. 10-90, *et al.*, Order, DA 12-147 (Wireline Comp. Bur. & Wireless Telecom. Bur., rel. Feb. 3, 2012) at para. 11 (footnote omitted) (explaining that "ETCs are required to undertake their Tribal engagement obligations in 2012 after ONAP [the Office of Native Affairs and Policy] provides engagement process guidance, which will be the substance of the reporting beginning [in] 2013 and annually thereafter").

⁵⁹ CTIA Comments, WC Docket No. 10-90, *et al.*, filed Sept. 26, 2012 ("CTIA Comments"), at 5 (footnote omitted). *See* Cellular Network Partnership, a Limited Partnership d/b/a Pioneer Cellular and U.S. Cellular Comments, WC Docket No. 10-90, *et al.*, filed Sept. 26, 2012, at 10-15 (discussing numerous burdens associated with the Tribal engagement requirements). U.S. Cellular has noted that it provides service coverage in more than 20 separate Tribal jurisdictions. *Id.* at 10 n.28.

CTIA, for example, has explained that the definition of information collections in the PRA applies to ETCs' engagements with Tribal governments as mandated by the Commission. Specifically, the Commission has set out identical disclosure requirements and a plan requiring ETCs to disclose information to Tribal governments relating to network deployment, marketing, and other matters.⁶¹ U.S. Cellular agrees with CTIA's conclusion that "ETCs cannot be required to follow the [Tribal] engagement steps . . . or report to the Commission on them until OMB has issued its approval under the PRA."⁶²

IV. CONCLUSION.

U.S. Cellular respectfully requests the Office of Management and Budget to refrain from issuing any approval of the Commission's submission of new information collection require-

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⁶⁰ USTelecom 2012 Reconsideration Petition at 11-14.

⁶¹ CTIA Comments at 7-8.

⁶² *Id.* at 8.

ments applicable to ETCs until OMB is satisfied that the Commission has rectified the various deficiencies in proposed FCC Form 481, and the flaws in its hour burden and cost estimates, that have been identified in the record of this proceeding and that have been discussed in these Comments.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION



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July 8, 2013

ATTACHMENT

U.S. Cellular Comments

**WC Docket No. 10-90, WT Docket No. 10-208
Filed April 26, 2013**

**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
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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.

**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**

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 Register¹ seeking comments pursuant to the Paperwork Reduction Act of 1995 (“PRA”)² concerning certain information collections required by the *CAF Order*.³

¹ 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.*

² 44 U.S.C. §§ 3501-3520.

³ *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.⁴

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

⁴ *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.”⁵

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.”⁶

The Bureau “underscore[d, however,] that competitive ETCs must continue to file annual updates on any five-year plan already filed with the Commission[,]”⁷ 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.”⁸

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

⁵ *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).

⁶ *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)).

⁷ *Id.* at 2053 (para. 7).

⁸ *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.⁹ The information collection thus would impose an unnecessary burden on competitive ETCs.¹⁰

The Commission imposed in the *CAF Order* a five-year phase down of competitive ETCs' frozen legacy high-cost support, beginning July 1, 2012.¹¹ 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"¹²

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

¹⁰ 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").

¹¹ 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).

¹² 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.”¹³

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.”¹⁴ 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”¹⁵ In discussing its prom-

¹³ *Id.*

¹⁴ *CAF Order*, 26 FCC Rcd at 17831 (para. 513).

¹⁵ 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”¹⁶ 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”¹⁷ 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.”¹⁸

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

¹⁷ *Id.*

¹⁸ *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.”¹⁹ 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.”²⁰ 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”²¹ 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.

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

²⁰ *Id.*

²¹ 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,²² 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[,]”²³ 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*.²⁴ 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.”²⁵ U.S. Cellular, in commenting on the *CAF FNPRM*, has argued that “[i]t should be sufficient, and certainly would be less burdensome and

²² 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.

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

²⁴ *Id.* at 2054 (para. 8 n.28).

²⁵ *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.”²⁶

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.”²⁷

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”²⁸ 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

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

²⁷ CTIA and USTelecom Petition at 18 (emphasis added).

²⁸ *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*²⁹), 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.”³⁰

Proposed FCC Form 481³¹ 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).³² 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”³³

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

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

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

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

³² *Id.* at 1.

³³ 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”³⁴ 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.³⁵

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.³⁶ 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.³⁷

Because the Commission “exempted from new broadband obligations those competitive ETCs whose support is being phased down[,]”³⁸ 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.

³⁴ 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).

³⁵ USTelecom Petition and Comments at 7-8.

³⁶ *Id.* at 9.

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

³⁸ *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.”³⁹

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.”⁴⁰

³⁹ CTIA and USTelecom Petition at 4.

⁴⁰ 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,⁴¹ 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”⁴² 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”⁴³

The Commission has estimated in the FCC Form 481 Instructions that the “Estimated Average Burden Hours Per Response” will be 20 hours.⁴⁴ 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.⁴⁵

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.⁴⁶

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

⁴¹ See Section II.A., *supra*.

⁴² 44 U.S.C. § 3501(1).

⁴³ 44 U.S.C. § 3502(2).

⁴⁴ FCC Form 481 Instructions at 1.

⁴⁵ *February 25 Public Notice*, 78 Fed. Reg. at 12751, col. 1.

⁴⁶ See USTelecom Petition and Comments at 28.

proposed rules.”⁴⁷ 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.”⁴⁸

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.”⁴⁹ 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.”⁵⁰

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

⁴⁷ *Id.* at 27 (footnote omitted).

⁴⁸ *Id.*

⁴⁹ *Id.* at 29.

⁵⁰ *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,⁵¹ land use permitting requirements,⁵² facilities siting rules,⁵³ environmental review processes,⁵⁴ cultural preservation review processes,⁵⁵ and Tribal business and licensing requirements.⁵⁶

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[,]"⁵⁷ the Instructions also state that ETCs' reports must confirm compliance with substantive obligations prescribed by Tribal govern-

⁵¹ FCC Form 481, Line 924.

⁵² *Id.*, Line 925.

⁵³ *Id.*, Line 926.

⁵⁴ *Id.*, Line 927.

⁵⁵ *Id.*, Line 928.

⁵⁶ *Id.*, Line 929.

⁵⁷ 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.”⁵⁸

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[.]”⁵⁹ 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.”⁶⁰ 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.

⁵⁸ *Id.* at 25 (emphasis added).

⁵⁹ 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.*

⁶⁰ *CAF Order*, 26 FCC Rcd at 17858 (para. 604).

U.S. Cellular recognizes that the *ONAP Further Guidance*⁶¹ 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[,]"⁶² 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]."⁶³

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.⁶⁴

⁶¹ *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*").

⁶² *Id.* at 8184 (para. 29).

⁶³ *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).

⁶⁴ 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-

[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 2012.⁶⁵

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.”⁶⁶ The data required to be reported by competitive ETCs must include a calculation of any deficiency below the Urban Rate Floor.⁶⁷

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:

⁶⁵ See Verizon Letter at 1.

⁶⁶ 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).

⁶⁷ 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.⁶⁸

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”⁶⁹ 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.”⁷⁰

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 . .

⁶⁸ 47 C.F.R. § 54.313(h) (emphasis added).

⁶⁹ 47 C.F.R. § 54.318(c).

⁷⁰ *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.”⁷¹ 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.”⁷² 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).”⁷³

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[.]”⁷⁴ 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.⁷⁵ 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

⁷¹ 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*.

⁷² USTelecom Petition and Comments at 17.

⁷³ *Id.* at 18.

⁷⁴ *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,

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⁷⁵ See USTelecom Petition and Comments at 17-18.