

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	78 Fed. Reg. 12750
)	OMB Control Number: 3060-0986

**PAPERWORK REDUCTION ACT COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.,
NTCA-THE RURAL BROADBAND ASSOCIATION, the
EASTERN RURAL TELECOM ASSOCIATION, the
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE, and
the UNITED STATES TELECOM ASSOCIATION**

April 26, 2013

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I. INTRODUCTION AND SUMMARY

The National Exchange Carrier Association, Inc. (“NECA”), NTCA–The Rural Broadband Association (“NTCA”), the Eastern Rural Telecom Association (“ERTA”), the Independent Telephone and Telecommunications Alliance (“ITTA”), and the United States Telecom Association (“USTelecom”) (the “Associations”)¹ hereby submit these comments in

¹ NECA is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well. ERTA is a trade association representing rural community based telecommunications service companies operating in states east of the Mississippi River. ITTA represents mid-size communications companies that provide a broad range of high quality wireline and wireless voice, broadband, Internet, and video services to 24 million access lines in 44 states. USTelecom is the premier trade association representing service providers and

response to the Commission's Notice of Information Collection in the above-captioned proceeding.² The *Notice* seeks information on the Paperwork Reduction Act ("PRA") burdens arising out of information collections adopted by the Commission in its 2011 *USF/ICC Order*³ in section 54.313, which have been incorporated into a new Form 481 Annual Reporting Form for High-Cost Recipients.⁴

The Commission indicates it will request OMB approval for Form 481, and other new and modified information collection requirements, after it has received comments from the public on whether the information collections meet the requirements of the PRA. To this end, the Commission specifically requests comment on: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection on respondents, including the use of automated

suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested, 78 Fed. Reg. 12750 (published Feb. 25, 2013) (*Notice*).

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 – Mobility Fund*, WT Docket No. 10-208, Report and Order and FNPRM, 26 FCC Rcd. 17663 (2011), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (*USF/ICC Order*).

⁴ Draft FCC Form 481 - Carrier Annual Reporting, *available at* http://www.usac.org/_res/documents/hc/pdf/fcc/DRAFT-FCC-Form-481.pdf (Draft FCC Form 481).

collection techniques or other forms of information technology, and ways to further reduce the information burden for small business concerns with fewer than 25 employees.⁵

As discussed herein, the information collections contained in the proposed Form 481 will impose an unreasonable burden on all local exchange carriers (“LECs”), including rural rate-of-return local exchange carriers (“RLECs”), many of which are small businesses with limited resources and few employees. Moreover, the Commission’s burden estimate grossly understates the time and effort required to complete required forms and certifications. In addition, several of the proposed information collections contained in new Form 481, notably provisions relating to the five-year service quality improvement plans and Tribal engagement reporting, will be of limited utility to the proper performance of the Commission’s functions and therefore fail the PRA’s requirements. Under the circumstances, OMB should not approve Form 481 and its accompanying instructions in their present form.

The Commission should at a minimum clarify in the very near future what specific information ETCs will be expected to report on July 1, 2013, utilizing whatever form OMB may approve. As discussed below, a number of the data collections have not yet been approved by OMB. As a result, there is significant uncertainty over what exactly will be required to be reported on July 1, 2013.

II. THE INFORMATION COLLECTIONS PROPOSED BY THE COMMISSION ARE UNDULY BURDENSOME AND IN SOME CASES WILL NOT PRODUCE INFORMATION OF ANY PRACTICAL USE.

The Associations’ member companies are Eligible Telecommunications Carriers (“ETCs”) who provide reliable voice, data, and broadband communications services throughout the United States, including some of the most sparsely-populated, highest cost rural areas of the

⁵ Notice, at 12750.

country. These services, and the networks that supply them, have been made possible, in part, through existing high-cost Universal Service Fund (“USF”) mechanisms.

As ETCs, they will be required to fill out and file the new Form 481 on an annual basis if the Form is approved as proposed. Many are small RLECs with limited resources and few employees. The amount of information ETCs will be required to collect, process, and report via the proposed Form 481 is daunting, to say the least, and will in many cases require small RLECs to hire additional employees or consultants at a time when they already face limited – and decreasing – financial resources resulting, in part, from Commission reforms that have cut critical universal service and cost recovery mechanisms.

In the following paragraphs the Associations describe how several aspects of Form 481 would impose unreasonable burdens on ETCs in general, including RLECs, and why in some cases the proposed collections will not produce information of practical use to the Commission.

A. Five-Year Service Quality Improvement Plan

Pursuant to §§ 54.202 (a) and 54.313(a)(1) of the Commission’s rules, carriers receiving high-cost support must submit a five-year service quality improvement plan by July 1, 2013.⁶ The plan must describe with specificity proposed improvements or upgrades to the ETC’s network throughout its proposed service area, and estimate the area and population that will be served as a result of the improvements specified in the plan.⁷ Carriers will then be required to file annual progress reports on this plan, including maps by census block and/or wire center detailing its progress toward meeting plan targets, with an explanation of how much universal

⁶ In response to a petition filed by USTelecom and CTIA, the Commission waived the date for submission of initial five-year service quality improvement plans by price cap carriers until July 1, 2014. *See Connect America Fund*, WC Docket No. 10-90, *et al.*, Order, DA 13-332, ¶ 8 (rel. Mar. 5, 2013).

⁷ 47 C.F.R § 54.202(a)(1)(ii).

service support was received and how it was used to improve service quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year.⁸ RLECs will also be required to provide a letter certifying they have taken reasonable steps to provide, upon reasonable request, broadband service at actual speeds of at least 4 Mbps downstream/1 Mbps upstream,⁹ and the number, names, and addresses of community anchor institutions to which they have newly begun providing access to broadband service in the preceding calendar year.¹⁰

On April 1, 2013, NTCA, ERTA, ITTA, NECA, USTelecom, and WTA filed an emergency petition for clarification or, in the alternative, waiver of the requirement that RLECs submit five-year service quality improvement plans pursuant to sections 54.202(a)(1)(ii) and 54.313(a)(1).¹¹ Given that many of the specific data-gathering activities required to develop five-year plans were not effective in 2012, the ongoing need for OMB approval of this data collection, and the need for RLECs to have time to prepare these investment plans following such approval, the Associations requested the initial filing deadline be no earlier than July 1, 2014.

The burden associated with preparation of five-year plans is unjustified. This is a new requirement for many ETCs. Since there was not already a federal requirement in place, it cannot be presumed these companies have existing documentation in the required format ready to file. Many LECs are not currently required to file such plans with their state commissions, or in some cases may only be required to file short-term capital improvement plans. To prepare a

⁸ 47 C.F.R. § 54.313(a)(1).

⁹ 47 C.F.R. § 54.313(f)(1)(i).

¹⁰ 47 C.F.R. § 54.313(f)(1)(ii).

¹¹ Emergency Petition for Clarification, or in the Alternative, Waiver of NTCA, ERTA, *et al.*, WC Docket No. 10-90, *et al.* (filed Apr. 1, 2013) (*Emergency Petition*).

five-year plan, a company necessarily needs to gather an enormous amount of information on the current state of its deployment, as well as projected costs and demand going out well beyond the five-year planning horizon. Because this is a federal regulatory requirement, companies will reasonably feel compelled to do more than simply submit some planning document(s) that may have been used at some point during the reporting period as the “official” five-year plan. Moreover, many RLECs are thinly staffed and would likely need to hire outside experts and consultants to complete this extensive data-gathering and planning exercise.

More importantly, these five year plans cannot be used as reliable indicators of future investment because ETCs do not have a clear picture with respect to what investments in broadband networks will be recoverable over the five year planning horizon. This is due in large part to the unpredictable nature of the Quantile Regression Analysis (“QRA”) caps on high-cost support imposed under the Commission’s *USF/ICC Order*, which remain untested and subject to year-over-year change, and the Commission’s failure to date to provide a CAF mechanism for broadband-only services provided by RLECs.¹² Similarly, price cap carriers face significant uncertainty regarding the extent to which CAF Phase II support will be available under the Commission’s cost model.

Furthermore, as pointed out in the *Emergency Petition*, reporting companies are likely to approach such filings much as public companies approach filings with the Securities and Exchange Commission.¹³ *I.e.*, just as any prudent publicly-traded company would only provide carefully crafted financial forecasts that have been vetted thoroughly by executive management,

¹² *E.g.*, Initial Comments of NECA, NTCA, *et al.*, WC Docket No. 10-90, *et al.*, at 22 (filed Jan. 18, 2012) (*NECA, NTCA, et al. Initial Comments*), Reply Comments at 10, n. 23 (filed Feb. 17, 2012); Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Jan. 28, 2013); Letters from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed Jan. 28, 2013 and Apr. 10, 2013).

¹³ *Emergency Petition* at 7.

lawyers, accountants, and auditors, companies subject to the Commission's reporting requirements must follow similar time-consuming and expensive processes. And they will also likely include with each such report a litany of risk factors, caveats, and warnings to inform the reader that any projections provided therein, despite being carefully crafted, reviewed, and vetted at substantial expense and effort, are subject to substantial change depending on circumstances.¹⁴ Thus, an enormous amount of work and resources will be committed to the preparation of plans that, in the end, will have very limited (if any) value to the Commission.

In sum, because LECs will incur substantial expense and burden to prepare five-year plans containing information with very little practical utility for the Commission, or anyone else, this particular proposed information collection clearly fails the PRA requirements. At a minimum, the Commission should consider requiring less onerous five-year service quality improvement plans with less detailed information, beginning no sooner than July 2014, and consider requiring that plan progress reports be submitted every four or five years, rather than annually.¹⁵

B. Service Quality and Consumer Protection Rules Certification

Section 500 of the proposed Form 481 requires an officer of the company to certify that the company is in "compliance with the applicable service quality standards as well as consumer protection rules."¹⁶ The instructions to Form 481, however, do not specify which service quality standards or consumer protection rules apply. While companies have long been required to comply with various state and federal service quality standards and consumer protection rules for

¹⁴ *Id.*

¹⁵ The Commission should also clarify what year is to constitute the first year of a service quality improvement plan. For example, should a plan filed in July 2014 begin with activities occurring in the current year, or should it begin with activities planned for 2015?

¹⁶ *Draft FCC Form 481* at 4, line 500, Service Quality Certification.

voice services, there is a lack of common understanding as to what rules apply to largely unregulated broadband Internet access services. The Form 481 instructions should accordingly make clear what rules apply to voice, and what rules apply to broadband services.

C. Broadband Reporting

As several of the undersigned associations have pointed out in prior filings,¹⁷ some ETCs, including most RLECs, do not offer broadband Internet access service directly, and thus may not be able to report on consumer complaints, emergency preparedness, unfulfilled service requests, service offerings, or prices related to this service. They can, however, report with regard to their provision of wholesale broadband transmission services, which are often used as inputs to the provision of end-user Internet access services.

Section 800 of the Form 481 requires an ETC to report the names of affiliates associated with a particular study area (regardless of whether the affiliate receives USF support).¹⁸ The instructions are entirely unclear, however, if ETCs must report all the various information required on end-user broadband Internet access service that is being provided by their ISP affiliates, which are not ETCs.¹⁹ The Associations suggest the Commission make clear what information is to be reported on broadband services and by whom. Without very clear directions in the Form 481 instructions, the Commission is likely to get inconsistent responses.

¹⁷ See e.g., *NECA, NTCA, et al. Initial Comments* at 35; Comments of NECA, NTCA, et al., WC Docket No. 10-90, at 7, 12 (filed Sept. 28, 2012).

¹⁸ Section 800 of Form 481 requires ETCs to report the names of the reporting carrier, the holding company, the operating company, and all affiliates, with their Doing Business As (“DBA”) names or brand designations, for each study area.

¹⁹ In its Petition, USTelecom correctly points out that such a requirement would run afoul of the *USF/ICC Order* as well as the PRA. If an affiliate is not receiving USF support, collecting and reporting information regarding that affiliate would not serve any practical utility. See USTelecom’s Petition for Reconsideration and Clarification and Comments in Response to Paperwork Reduction Act, WC Docket No. 10-90, at 20-21 (filed Apr. 4, 2013) (*USTelecom’s Petition for Reconsideration and Clarification*).

D. Tribal Engagement Reporting

Form 481 requires ETCs serving tribal lands to report compliance with section 54.313(a)(9) of the Commission's rules regarding interactions with tribal entities.²⁰ The burdens of complying with these requirements vastly outweigh any potential benefit the information will provide in terms of the Commission's ability to ensure that tribal lands are provided with high quality voice and broadband services. The Commission should defer this reporting requirement and consider adopting less burdensome tribal engagement alternatives.

It is important to note at the outset that the Associations' members are committed to the provision of high quality communications services to tribal lands. Tribal consumers, like many other rural consumers, have historically been underserved and every reasonable effort should be made to reach these consumers with high-quality network facilities.

Unfortunately, the Commission's tribal engagement rules will likely divert resources away from accomplishing this goal rather than advancing it. As the Commission is aware, the reforms contained in the *USF/ICC Order* have caused a significant "tightening of the belt" for most, if not nearly all, LEC recipients of high cost support. Each additional reporting obligation imposed on LECs will reduce the extent to which scarce financial and staff resources can be devoted to serving rural and tribal communities and meeting the universal service goals of the Order. LECs have every incentive to comply with the rights of way, environmental, and cultural preservation and other requirements at issue on tribal lands, as these areas are a part of their communities.

With this in mind, the Commission should consider the extent to which detailed reporting on these matters will likely impede efforts to better serve these communities. More specifically,

²⁰ 47 C.F.R. § 54.313(a)(9).

data on LECs' compliance with tribal licensing, rights of way, facilities siting, and other provisions are not likely to provide the Commission with any information that can help policymakers determine how to improve service to these areas, which is the overriding goal of high-cost USF support and the *USF/ICC Order*. Resources necessary to comply with the tribal engagement requirements, and to comply with the reporting obligations as to these engagement efforts, would be far better spent on *improving and expanding network facilities* that can actually make a real difference to these communities.

Considering that the information the Commission will receive is likely to be of little utility, the tribal engagement provisions of Form 481 should be suspended while a more thorough review and justification of this requirement is underway. At the very least, this requirement should be suspended for 2013, as it would be entirely unreasonable to require carriers to comply with this requirement in the very short timeframe that will exist between OMB approval of Form 481 and the July 1, 2013 reporting deadline. If and when these reporting requirements take effect, the Commission should permit carriers to provide self-certifications explaining what steps they have taken to reasonably comply with the requirements of the rule, including a simple showing that their service offerings in tribal areas are reasonably comparable to those in other areas they serve.

E. Officer Certifications

Form 481 contains seven separate certification provisions that an officer must sign on behalf of the reporting ETC. Such a multitude of certifications is duplicative and unnecessary. The Associations support USTelecom's petition for the Commission to modify Form 481 to include a single officer certification for the entire Form.²¹ The Commission should also consider

²¹ *USTelecom's Petition for Reconsideration and Clarification* at 25.

a single certification form with checkboxes in which the company officer can indicate specific rules to which the certification applies; this would make it more efficient for both ETCs and the Commission.

III. THE COMMISSION HAS SIGNIFICANTLY UNDERESTIMATED REPORTING BURDENS IMPOSED BY FORM 481 IN ITS CURRENT FORM.

In the Federal Register Notice seeking comment on the burden associated with this information collection, the Commission estimates that each respondent will expend between .5 hours to 100 hours to complete the information collection.²² In the instructions for completing Form 481, however, the Commission provides a burden estimate of 20 hours.²³ Such a wide spread in the Commission's own estimates makes it appear the Commission has not given adequate consideration to developing an accurate assessment of the burdens the new reporting requirements will place on companies, especially on small companies.

In fact, the Commission has seriously underestimated the burden it is proposing to place on companies for the collection, preparation and reporting of Form 481. Establishing the necessary internal company procedures, resources and/or systems for collecting the required data, analyzing it, creating the required attachments, and filling out required forms and certifications will impose a staggering burden on ETCs, who already face limited and decreasing financial resources as a result of Commission USF and ICC reforms.

To put this in perspective, 100 hours, the Commission's top estimate, is just over two full work weeks for one employee. One employee could not possibly be expected to prepare the five-year service quality improvement plan in this time frame, let alone collect the required

²² Notice, at 12751.

²³ Draft FCC Form 481 at 1.

financial reporting forms for the company and any affiliates, fill out forms for the various pricing plans for both voice services and broadband services, and get officer sign-off on seven certifications.²⁴

Controversy and uncertainty surrounding the Commission's reporting requirements may also affect ETC certification filings with some state commissions. For example, the Minnesota PUC has directed ETCs to submit their filings, which are due June 3 this year, based on the draft Form 481 and to file later additional information as needed to reflect the final version of Form 481.²⁵ Also, the South Dakota PUC is requesting comments on whether its ETC filing requirements, also with a June 3 due date this year, should be modified to reflect the (yet-to-be-decided) new FCC filing requirements.²⁶ Other state commissions may adopt other approaches. Companies operating in multiple jurisdictions thus face extremely complex regulatory reporting requirements, all of which divert resources away from providing improved services to consumers.

Contrary to the PRA's requirements, the Commission did not attempt to minimize the burden of the proposed information collection on respondents, particularly small companies. The Commission should therefor consider ways to mitigate burdens on reporting companies prior to

²⁴ In its Petition for Reconsideration and Clarification, USTelecom (at 25) asks the Commission to modify Form 481 to include a single officer certification, noting the current approach contravenes the *USF/ICC Order*, which merely requires "that an officer of the company certify to the accuracy of the information" in any section 54.313 report, and the PRA, which obligates the Commission to minimize the burden of an information collection on affected entities.

²⁵ *In the Matter of Annual Certifications Related to Eligible Telecommunications Carriers' (ETCs) Use of the Federal Universal Service Support*, State of Minnesota Public Utilities Commission Notice of ETCs' Annual Certification Procedures for 2013, PUC Docket No. P999/PR-13-8 (rel. Mar. 25, 2013).

²⁶ *In the Matter of the Consideration of Eligible Telecommunications Carrier Certification Requirements*, State of South Dakota Public Utilities Commission Order Opening Docket; Order Setting Comment Deadline, PUC Docket No. TC13-027 (rel. Mar. 28, 2013).

requiring submission of this information. For example, the Commission could consider requiring that Form 481 be submitted only once every five years, rather than annually. In particular, as discussed above, the Commission should consider ways to reduce or eliminate burdens associated with service quality improvement plans and tribal engagement requirements.

IV. THE COMMISSION SHOULD AT A MINIMUM PROMPTLY CLARIFY REPORTING REQUIREMENTS APPLICABLE ON JULY 1, 2013.

The information collections contained in new Form 481 have not all been approved by OMB. The comment period in this proceeding extends until late April, and significant changes may be made in Form 481. Even if OMB were to approve some of these requirements on an expedited bases, at this point such approval will come too late for companies to actually begin collecting required information and preparing the reports and certifications.²⁷ Thus, much of the information that may be required on Form 481 will not be available by the July 1st reporting deadline.²⁸

The Rural Associations and USTelecom have previously recommended the Commission clarify what specific information ETCs will be expected to report on July 1, 2013, utilizing

²⁷ Under the PRA, an ETC has no legal obligation to collect information until that information collection has been approved by OMB. *See* Paperwork Reduction Act of 1995, Public Law No. 104-13, 109 Stat. 163 (May 22, 1995), *codified at* 44 U.S.C. § 3501, *et seq.*

²⁸ The draft instructions (at 5) do indicate that ETCs are not required, “at this time,” to submit the results of network performance tests in a format to be determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology pursuant to Section 54.313(a)(11). This is appropriate, as there is no indication of what the format in question may be, nor is it possible at this point to identify what burdens might be imposed by indistinct, prospective testing requirements. The Commission should clarify that ETCs will not be required to submit network performance testing reports prior to a thorough review of the testing and reporting burdens and opportunity for public comment, in addition to the required Regulatory Flexibility and Paperwork Reduction Analyses.

whatever form OMB may approve.²⁹ Confusion is rampant over what is required to be reported within the next few months. Regardless of whatever other steps the Commission takes to reduce or minimize reporting burdens associated with Form 481, the Associations agree it is imperative the Commission resolve within very short order the scope of the reporting requirements that ETCs are expected to meet by July 1, 2013.

V. CONCLUSION

The proposed information collections contained in new Form 481 fail the PRA requirements. As demonstrated above, the proposed collection of information has not been shown to be necessary for the proper performance of the functions of the Commission; much of the information lacks practical utility; and the Commission's burden estimate is grossly underestimated. Prior to approval, the Commission should consider ways to enhance the quality, utility, and clarity of the information collected, along with ways to minimize the burden of the collection on all respondents, particularly for small business concerns with fewer than 25

²⁹ *E.g.*, Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed Mar. 13, 2013); Letter from Alan Buzacott, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed Apr. 15, 2013).

employees, as required by the PRA. Under the circumstances, OMB should not and cannot approve Form 481 and its accompanying instructions in their present form.

Respectfully submitted,

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