Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
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 a 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

THE UNITED STATES TELECOM ASSOCIATION'S PETITION FOR RECONSIDERATION AND CLARIFICATION AND COMMENTS IN RESPONSE TO PAPERWORK REDUCTION ACT

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I. INTRODUCTION AND SUMMARY

Despite issuing various orders clarifying and reconsidering certain aspects of its *USF/ICC Transformation Order*,[1] the Commission has left unresolved fundamental issues associated with the scope of the reporting requirements applicable to eligible telecommunications carriers ("ETCs") under the Commission's new universal service regime. Most recently, the Wireline Competition Bureau ("Bureau") released its *March 5, 2013 Order*

[1] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*") *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

that, while clarifying and waiving certain rules relating to five-year plans and broadband performance testing, did not address requests for reconsideration regarding the entities that must collect and file broadband data under section 54.313 of the Commission's rules or the requirements that apply to ETCs in engaging with Tribal governments – requests that have been pending since December 2011.[2]

It is imperative that the Commission resolve once and for all outstanding issues related to the reporting requirements to which ETCs are expected to adhere. First, the Commission has requested that the Office of Management and Budget ("OMB") approve under the Paperwork Reduction Act ("PRA") the proposed annual report implementing section 54.313 that ETCs will be expected to complete. FCC Form 481, which is 21 pages in length with more than 30 pages of instructions, seeks information that, absent reconsideration and clarification, violates the requirements of the PRA. Second, the July 1, 2013 deadline by which ETCs must submit their annual reports is fast approaching.[3] Under the circumstances, the Commission must address the scope of an ETC's reporting obligations, if affected carriers are to be given "sufficient time to respond" after the Commission has provided notice of any PRA approval.[4]

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[2] *Connect America Fund*, WC Docket No. 10-90, Order, DA 13-332 (rel. March 5, 2013) ("*March 5, 2013 Order*"); *see Connect America Fund*, WC Docket No. 10-90, Petition for Reconsideration of the United States Telecom Association (filed Dec. 29, 2011) ("First Reconsideration Petition"); *Connect America Fund*, WC Docket No. 10-90, Petition for Clarification and Reconsideration or, in the Alternative, Waiver of CTIA – The Wireless Association® and the United States Telecom Association (filed June 25, 2012) ("Second Reconsideration Petition"); *Connect America Fund*, WC Docket No. 10-90, Petition for Reconsideration and Clarification of the United States Telecom Association (filed Aug. 20, 2012) ("Third Reconsideration Petition").

[3] *Connect America Fund*, Third Order on Reconsideration, 27 FCC Rcd 5622, ¶¶ 9-10 (2012) ("*Third Reconsideration Order*").

[4] *See Connect America Fund*, Fifth Order on Reconsideration, 27 FCC Rcd 14549, ¶ 4, n.5 (2012); *see also Connect America Fund*, Order, 27 FCC Rcd 605, ¶ 13 (2012) (noting that April

Accordingly, the United States Telecom Association ("USTelecom") respectfully seeks reconsideration of the Bureau's *March 5, 2013 Order*. While revising section 54.313(a)(11) of the Commission's rules to address USTelecom's concerns about the original wording of that rule, the Bureau modified section 54.313(a) to purport to require ETCs receiving high-cost support to collect and report broadband performance data for each of the categories of information specified in paragraphs (a)(1) through (7) of section 54.313. *See March 5, 2013 Order* ¶ 14. However, in so doing, the Bureau did not address USTelecom's arguments – first raised more than a year ago – that the section 54.313(a)(1)-(7) requirements should not be extended to broadband for any ETC whose support is being eliminated. Nor did the Bureau attempt to justify the imposition of sweeping broadband reporting requirements on ETCs receiving Connect America Fund ("CAF") Phase I incremental support or frozen high-cost support. Indeed, as explained below, there is no justification for imposing such broadband reporting requirements on ETCs whose support is being phased down and doing so would violate the PRA. Accordingly, the Commission should reconsider the Bureau's *March 5, 2013 Order* and only require that ETCs receiving broadband support pursuant to CAF Phase II comply with the broadband reporting requirements in section 54.313.

USTelecom also renews its request that the Commission reconsider and clarify its Tribal engagement rule. *See* First Reconsideration Petition at 17-19; Third Reconsideration Petition at 4-16. Despite resolving various implementation issues related to the *USF/ICC Transformation Order*, neither the Bureau nor the Commission has resolved any of the long-standing challenges

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(footnote cont'd.)
1 deadline for privately held rate-of-return carriers to submit financial reports "will not be applicable if PRA approval is not received prior to April 1 with sufficient time for respondents to comply") ("*USF/ICC Clarification Order*").

to its Tribal engagement rule or the *Further Guidance* from the Office of Native Affairs and Policy ("ONAP") purporting to provide additional details regarding the manner by which ETCs must engage with Tribal governments.[5] The need for the Commission to resolve these issues has taken on greater urgency in light of the fact that Form 481 purports to require ETCs to collect, report, and certify on their compliance with such requirements.

While USTelecom supports efforts to increase broadband deployment and adoption in Tribal areas, the industry is facing substantial uncertainty surrounding an ETC's Tribal engagement obligations. To resolve this uncertainty, the Commission should reconsider or clarify that: (a) neither the Tribal engagement rules nor the *Further Guidance* apply to ETCs that receive no universal service support for serving tribal areas or whose support is being eliminated; and (b) for a provider receiving USF for tribal areas (via the Tribal Mobility Fund), the contents of ONAP's *Further Guidance* should not be considered auditable requirements but merely suggestions to guide ETC activities. To the extent the *Further Guidance* imposes substantive obligations on ETCs and directs the manner and nature of their speech, the Commission should reconsider the *Further Guidance* because it violates the Administrative Procedure Act ("APA") and the First Amendment and was adopted without compliance with the PRA. The Commission also should reconsider the *Further Guidance* because ONAP failed to consider that compliance would unduly burden ETCs, while offering little offsetting benefits for Tribes – a result that contravenes the Commission's policies and the requirements of the PRA.

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[5] *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*, Public Notice, DA 12-1165, WC Docket Nos. 10-90 *et al.* (July 19, 2012) ("*Further Guidance*"). The ONAP prepared the *Further Guidance* in coordination with the Wireless Telecommunications and Wireline Competition Bureaus.

USTelecom also requests that the Commission reconsider and clarify certain aspects of its proposed Form 481 and related instructions. Such reconsideration and clarification is necessitated by the PRA.

First, the Commission should clarify the specific information that ETCs will be expected to report on July 1, 2013, utilizing whatever form OMB may approve. Although Form 481 purports to require that an ETC report information for the 2012 calendar year, under the PRA, an ETC has no legal obligation to collect information until that information collection has been approved by OMB. To date, OMB has not yet approved much of the information ostensibly being reported on Form 481, including, for example, information relating to an ETC's broadband service offerings. Furthermore, other information that OMB may have approved was not required to be collected for much of 2012 and thus cannot be timely reported by the July 1, 2013 deadline. Under the circumstances, and consistent with the requirements of the PRA, the Commission should identify the specific information collected and reported on Form 481 that OMB has approved and that ETCs will be expected to provide by the July 1, 2013 deadline.

Second, the Commission should reconsider the reporting requirements related to rates for voice and broadband service. The template of Form 481 and accompanying instructions developed by the Bureau are overbroad, seeking extensive and granular pricing information. Such information is unrelated to ETCs' universal service obligations and thus would have no practical utility as required under the PRA. Furthermore, the Bureau made no effort to minimize the burden of collecting pricing information from ETCs, which also contravenes the PRA and warrants reconsideration by the Commission.

Third, the Commission should reconsider or clarify aspects of the proposed Form 481 and accompanying instructions that appear inconsistent with the Commission's rules and the

USF/ICC Transformation Order. These include reporting requirements related to: (i) outage reporting; (ii) affiliates; (iii) service quality certifications; (iv) emergency functionality certification requirement; (v) Tribal engagement; (vi) officer certifications; and (vii) Lifeline service.

Fourth, the Commission should clarify the confidentiality of Form 481 and the information reported therein. Although the Commission has represented that the Universal Service Administrative Company ("USAC") will be required to keep Form 481 confidential, it also has required that ETCs file copies with state public service commissions and Tribal governments (as well as with the Commission itself). Because some states and Tribal governments do not have protections to prevent the public disclosure of confidential information, the Commission should clarify that ETCs can file a redacted Form 481 in those states and with those Tribal governments.

Finally, the Commission should revisit its PRA analysis, which severely underestimates the burden associated with collecting, reviewing, submitting, and certifying the myriad data required to complete Form 481. The Commission's estimates that each response will only take 20 hours and will not cost ETCs anything are plainly incorrect in light of the information that ETCs will need to provide, much of which they do not currently collect. Furthermore, contrary to the PRA's requirements, the Commission did not attempt to minimize the burden of the proposed information collection on respondents, particularly small business entities. Under the circumstances, OMB should not and cannot approve Form 481 and its accompanying instructions in their present form.

II. THE COMMISSION SHOULD RECONSIDER AND DECLINE TO APPLY NEW BROADBAND REPORTING REQUIREMENTS IN SECTION 54.313 TO ETCS WHOSE SUPPORT IS BEING ELIMINATED.

Since December 2011, USTelecom has requested that the Commission reconsider the imposition of any broadband reporting requirements on ETCs whose support is being eliminated. Reconsideration Petition at 15. As USTelecom explained in its filing at the time – and reiterated in June 2012 – no purpose would be served in requiring an ETC to report broadband data when it is not receiving CAF Phase II support, which is intended exclusively to promote broadband deployment. *Id.*; *see also* Second Reconsideration Petition at 4-9.

Unfortunately, the Commission has failed to address these issues, and the Bureau's *March 5, 2013 Order* is but the latest example.[6] In fact, the *March 5, 2013 Order* amends section 54.313(a) to require ETCs receiving high-cost support to collect and report broadband performance data for each of the categories of information specified in paragraphs (a)(1) through (7) of section 54.313. *See March 5, 2013 Order* ¶ 14. In doing so, however, the Bureau did not explain how imposing such broadband reporting requirements on all ETCs could be reconciled with the Commission's decision not to designate broadband as a "supported service" under section 254(c)(1). *USF/ICC Transformation Order* ¶¶ 76 & 86. Nor did the Bureau explain how requiring all ETCs to report broadband performance would be consistent with the

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[6] In the *Third Reconsideration Order*, the Bureau confirmed that competitive ETCs whose support is being phased down "will not be required to submit any of the new information or certifications below 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." *Id.* ¶ 8 (*quoting USF/ICC Transformation Order* ¶ 583); *see also USF/ICC Clarification Order* ¶ 9. Price cap carriers receiving only CAF Phase incremental support or frozen high-cost support face a similar phase down of their support. However, neither the *Third Reconsideration Order* nor the *March 5, 2013 Order* addressed the obvious tension between imposing new broadband requirements on price cap carriers whose support – like that of competitive ETCs – also is being phased down.

Commission's reasoning in establishing its reporting regime – "to monitor progress in achieving our broadband goals" and to ensure "that universal service funds are used for their intended purposes." *USF/ICC Transformation Order* ¶ 580.

The Bureau did not address USTelecom's argument that the requirements of section 54.313(a)(1)-(7) should not be applied to broadband for ETCs receiving CAF Phase I incremental support or frozen high-cost support. The Bureau addressed only the network testing requirement in section 54.313(a)(11), claiming that it would "be in a better position to assess the merits of that argument once it has taken further action to define the scope of the requirement" to report network performance test results under section 54.313(a)(11). *March 5, 2013 Order* ¶ 17.

The Commission is obligated to explain why CAF Phase I support recipients should file section 54.313(a)(1)-(7) data for both voice and broadband under the PRA, which requires that an information collection have "practical utility." *See* 5 C.F.R. § 1320.1. The PRA defines "practical utility" as "the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion." 44 U.S.C. § 3502(11). OMB's rules clarify that "practical utility means the actual, not merely the theoretical or potential, usefulness of information." 5 C.F.R. § 1320.3(l). The rules also require that an agency establish a "plan for the efficient and effective management and use of the information to be collected." 5 C.F.R. § 1320.8(a)(7). OMB takes these requirements seriously and has disapproved of information collections when the agency failed to demonstrate the "practical utility" of the collection in question.[7]

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[7] For example, OMB previously disapproved of the Commission's information collection requirement that would have required wireline and wireless carriers to maintain emergency backup power for their communications networks. OMB concluded that the Commission failed to "demonstrate[], given the minimal staff assigned to analyze and process this information, that

Here, any requirement that an ETC whose support is being phased down collect and report for its broadband services the information specified in paragraphs (a)(1) through (7) of section 54.313 fails the practical utility test because such information is unnecessary to and would never be used in the Commission's performance of its regulatory functions. For example, requiring such an ETC to report for broadband the number of unfilled requests for service (section 54.313(a)(3)) or the number of complaints per 1,000 connections (section 54.313(a)(4)) would provide no insight into whether "the performance of broadband available in rural and high cost areas is 'reasonably comparable' to that available in urban areas," which is the ostensible purpose underlying the Commission's broadband reporting requirements. *USF/ICC Transformation Order* ¶ 87.

Nor would extending the reporting requirements in paragraphs (a)(1) through (7) of section 54.313 to the broadband services of an ETC whose support is being phased down assist the Commission in monitoring "progress in achieving our broadband goals" or ensuring "that universal service funds are used for their intended purposes." *USF/ICC Transformation Order* ¶ 580. For ETCs whose support has been frozen, such detailed reporting requirements would have no practical utility in monitoring compliance with the very general requirement imposed on frozen high-cost recipients to use support "consistent with the goal of achieving universal availability of voice and broadband." 47 C.F.R. § 54.313(c)(1). Furthermore, frozen high-cost

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(footnote cont'd.)
the collection ha[d] been developed by an office that ha[d] planned and allocated resources for the efficient and effective management and use of the information collected." *See Notice of Office of Management and Budget Action*, ICR Reference Number 200802-3060-019, at 1 (Nov. 28, 2008) (citing 44 U.S.C. § 3506(c)(3)(H)). Similarly, OMB disapproved of an agency's information collection because its "practical utility" showing was not commensurate with the burden of the collection. *See Notice of Office of Management and Budget Action*, ICR Reference No: 199805-2040-001, at 1 (Sept. 11, 1998).

support is scheduled to be phased out once CAF Phase II becomes operational, which, according to the Bureau, should occur "in the months ahead." *March 5, 2013 Order* ¶ 8. It would be inconsistent with the PRA, which obligates the Commission to "minimize" the burden of a proposed information collection, to require carriers whose support may be phased out in a matter of months to put in place complex new mechanisms for gathering broadband-related data.[8]

Similarly, even if frozen support continues throughout 2013 and beyond, broadband reporting would have no practical utility to the Commission in monitoring progress toward the broadband-related obligations imposed in those years. In 2013, for example, carriers are required to use only a portion of their frozen support "to build and operate broadband-capable networks," and to use such support only in specific areas "substantially unserved by an unsubsidized competitor." *USF/ICC Transformation Order* ¶ 150. Broadband performance reporting across a provider's entire network would not have any practical utility in assessing the partial and geographically limited use of frozen support for broadband-related expenditures.

Likewise, extending the reporting requirements in paragraphs (a)(1) through (7) of section 54.313 to the broadband services of an ETC receiving CAF Phase I incremental support would have no practical utility within the meaning of the PRA. CAF Phase I incremental support is a limited mechanism intended to fund broadband deployment to selected unserved locations on a one-time basis. *USF/ICC Transformation Order* ¶ 147. It does not and is not intended to support broadband coverage over large swaths of geography and thus cannot serve as justification for broadband performance reporting across an ETC's entire network. Moreover, the Commission's rules already provide reporting requirements that are specifically tailored to

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[8] 44 U.S.C. §§ 3501(1), (2) & 3504(c)(3), (4); *see also* 5 C.F.R. § 1320.1 (noting that OMB's rules aim to "to reduce, minimize and control burdens and maximize the practical utility and public benefit" of information collected by the Federal Government").

the obligations of incremental support recipients. 47 C.F.R. § 54.313(b). Thus, imposing additional broadband reporting requirements on ETCs receiving CAF Phase I incremental support is flatly inconsistent with the Commission's duty under the PRA to "minimize" the burden of a proposed information collection and "maximize the practical utility of and public benefit from information collected." 44 U.S.C. §§ 3501(1), (2) & 3504(c)(3), (4); 5 C.F.R. § 1320.1.

For these reasons, the Commission should reconsider the *March 5, 2013 Order* to the extent it requires all ETCs to collect and report the information in paragraphs (a)(1) through (7) of section 54.313 for their broadband services. Consistent with its obligations under the PRA, the Commission should limit any broadband reporting requirements to only those ETCs that receive universal service support in CAF Phase II.

III. THE COMMISSION SHOULD RECONSIDER OR CLARIFY ITS TRIBAL ENGAGEMENT REQURIEMENTS.

USTelecom has raised serious concerns about the Commission's Tribal engagement requirements – concerns that the Commission has yet to resolve. First Reconsideration Petition at 18-19; Third Reconsideration Petition at 4-16. These concerns include the Commission's APA and First Amendment violations.[9] Consistent with its obligations under the PRA, however, the Commission should reconsider or clarify that any requirements related to Tribal engagement

[9] The Commission violated the APA by failing to apprise interested persons that it was planning to impose a Tribal engagement obligation on *all* high-cost recipients, and not just Tribal Mobility Fund participants, which was the context of the only public notice in which this issue was raised. *See, e.g.*, First Reconsideration Petition at 18; Comments of AT&T, WC Docket 10-90, at 14-17 (filed Feb. 9, 2012) ("AT&T Comments"). The Commission also violated the First Amendment by mandating speech – *e.g.*, that ETCs have certain discussions with Tribal governments – and directing the nature of that speech – e.g., that ETCs "market[] services in a culturally sensitive manner." *See* First Reconsideration Petition at 18; AT&T Comments at 18-20.

– whether embodied in its rules or the *Further Guidance* – apply only to Tribal Mobility Fund recipients, and not to ETCs that do not receive support specifically targeted to fund deployment on Tribal lands or whose support is being eliminated.

For an ETC that applies for and receives funds to deploy facilities to serve Tribal lands, a narrowly crafted engagement requirement may have practical utility as required under the PRA, because it could provide some assurances that the USF-funded deployment would meet Tribal needs. However, the same could not be said for an ETC whose support is being eliminated or for ETCs that do not receive funding targeted at Tribal areas. The premise of those rules and the *Further Guidance* is that ETCs will engage in meaningful discussions with Tribal communities regarding the ETC's "deployment" plans in those individual communities. Such discussions would be of no value – and thus collecting and reporting information related to such discussions would have no practical utility – if the ETC will not be receiving support for network deployments in a Tribal area.

The Commission also should clarify that—for a provider receiving new USF support for tribal areas—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. As USTelecom has explained previously, a contrary conclusion—that the *Further Guidance* is binding—would run afoul of the APA, the First Amendment, the President's and the Chairman's stated goals of minimizing regulatory burdens on businesses, and the PRA. Third Reconsideration Petition at 4-16.

First, to the extent the *Further Guidance* is intended to impose mandatory obligations on ETCs serving Tribal areas, it is unlawful because it was adopted without adherence to the APA's

notice-and-comment rulemaking requirements.[10] The Commission made no effort to "fairly apprise interested persons" of the nature of the Tribal engagement requirements set forth in the *Further Guidance*, nor can the *Further Guidance* be considered a "logical outgrowth" of the Tribal engagement obligations originally proposed.[11]

Second, to the extent the *Further Guidance* mandates that an ETC provide certain documents to and share certain information with Tribal representations, this mandate expands upon the initial First Amendment violation triggered by the Tribal engagement rule itself and is grounds for reconsideration. By purporting to require ETCs to prepare and deliver presentations to Tribal representatives on a host of specified topics and to dictate the manner by which ETCs must deliver such presentations, the *Further Guidance* (as well as the *USF/ICC Transformation Order*) plainly compel speech. Yet, neither the *USF/ICC Transformation Order* nor the *Further Guidance* discusses the harms (real or otherwise) such requirements are intended to rectify or any explanation of how its forced speech will alleviate such harms to a material degree.[12]

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[10] As noted above, the same is true for the Commission's Tribal engagement rules, which also were adopted without adhering to the notice-and comment requirements of the APA. *See* First Reconsideration Petition at 18; *see, e.g.*, *Wilderness Soc'y v. Norton*, 434 F.3d 584, 597 (D.C. Cir. 2006) (denying claims based on document entitled "MANAGEMENT POLICIES" "because they are predicated on unenforceable agency statements of policy"); *Farrell v. Department Of Interior*, 314 F.3d 584, 590 (C.A. Fed. 2002) ("If an agency policy statement is intended to impose obligations or to limit the rights of members of the public, it is subject to the Administrative Procedure Act, and, with certain exceptions, must be published in the Federal Register as a regulation. If it is not, it is invalid.") (citations omitted).

[11] *See United Steelworkers of America, AFL-CIO-CLC v. Marshall*, 647 F.2d 1189,1221 (D.C. Cir. 1980); *Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 951-52 (D.C. Cir. 2004).

[12] Platitudes about the importance of "[c]reating a substantive, meaningful dialogue" between ETCs and Tribal governments are insufficient to satisfy the harms-are-real test. *Further Guidance* ¶ 4. Under this standard, "[t]he State's burden is not slight," *Ibanez v. Fla. Dept. of Bus. and Prof'l. Reg.*, 512 U.S. 136, 142 (1994), because, as the Supreme Court has made clear, intrusion on First Amendment rights "may not be . . . lightly justified." *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 648-49 (1985).

Accordingly, the *Further Guidance* violates the First Amendment, which warrants reconsideration.

Third, the *Further Guidance* was adopted in contravention of the Commission's duty to "adopt regulation only upon a reasoned determination that its benefits justify its costs"[13] and to "reduce unneeded burdens on the private sector."[14] ONAP failed to conduct any cost-benefit analysis of its Tribal engagement guidance or to explain why a complex set of mandatory engagement obligations is preferable to more flexible, voluntary engagement efforts. Furthermore, as USTelecom has explained previously, the costs of complying with the *Further Guidance* significantly outweigh any claimed benefits, and compliance with the *Further Guidance* imposes significant costs. Third Reconsideration Petition at 11-13.

Fourth, the *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, and the Commission should either reconsider or clarify an ETC's Tribal engagement obligations accordingly.[15]

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[13] Exec. Order No. 13,563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (2011); *see also* Exec. Order No.13,579 (Jul. 11, 2011).

[14] *See International Reporting Requirements Order*, 26 FCC Rcd 7274, 7365 (2011) (Statement of Chairman Julius Genachowski).

[15] Reconsideration or clarification is also warranted because many aspects of the Further Guidance—as well as the underlying Tribal engagement rules—violate other substantive provisions of the PRA. Neither the Commission nor ONAP has demonstrated that mandatory Tribal engagement requirements will have any practical utility to promoting broadband deployment in Tribal lands or improving existing voluntary relationships between ETCs and

IV. THE COMMISSION SHOULD CLARIFY THAT ETCS WILL NOT BE REQUIRED ON JULY 1, 2013 TO REPORT ON OR CERTIFY TO INFORMATION THAT ETCS WERE NOT LEGALLY OBLIGATED TO COLLECT DURING THE 2012 REPORTING PERIOD.

The Commission should clarify that ETCs are not required on July 1, 2013, to report on or certify to any information on Form 481, the collection of which OMB has yet to approve. The PRA requires that federal agencies obtain approval and a control number from OMB for any new or modified collection of information requirements and requires the agency to display the control number on any published information request. 44 U.S.C. § 3507(a), (f). Furthermore, the PRA prohibits an agency from imposing "any penalty" on a person who fails to comply with an information requirement that did not receive OMB approval or, in the words of the statute, "does not display a current control number assigned by the Director, or fails to state that such request is not subject to this chapter." 44 U.S.C. § 3512.

Here, OMB has not approved the vast majority of the information collection contemplated in section 54.313 and embodied in Form 481. For example, the proposed broadband reporting requirements, the granular pricing information set forth in Form 481 (which is discussed below), the Tribal engagement disclosures, among other information and related certifications on Form 481, have yet to be approved by OMB. Unless and until the Commission obtains such approval, ETCs are not legally obligated to collect or report this information or provide the related certifications.[16] As the D.C. Circuit has emphasized, an "agency may not,

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(footnote cont'd.)
Tribal leaders. Furthermore, the Tribal engagement requirements impose significant burdens on ETCs – burdens that the *USF/ICC Transformation Order* and the *Further Guidance* overlooked rather than sought to "minimize" as required under the PRA.

[16] *Saco River Cellular, Inc. v. FCC*, 133 F.3d 25, 32 (D.C. Cir. 1998) ("Because § 22.917(b) lacked a control number when the Commission required that PortCell submit

having belatedly gotten OMB approval of an information collection requirement, punish a respondent for its faulty compliance while the collection was still unauthorized."[17] Thus, the Commission should clarify that the only information that ETCs must report by the July 1, 2013 deadline is that information for which OMB approval has been timely secured.

Even with respect to the collection of any information that OMB has already approved, the Commission should clarify that 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 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.[18]

V. THE COMMISSION SHOULD RECONSIDER OR CLARIFY THE REPORTING REQUIREMENTS RELATED TO PRICES FOR VOICE AND BROADBAND SERVICE OFFERINGS.

The Commission should reconsider or clarify the reporting requirements reflected on Form 481 that relate to the prices for an ETC's voice and broadband service offerings (even assuming that such information should be collected from ETCs whose support is being phased down, which is not the case for the reasons explained above). Such requirements seek granular

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(footnote cont'd.)
information about its financial commitment, the Commission could not punish PortCell for failing to submit the information it required").

[17] *Saco River Cellular*, 133 F.3d at 32. Pursuant to 44 U.S.C. § 3502(3), the term "collection of information" means the "obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format …." Accordingly, in evaluating the proposed information collection, OMB will concentrate on the burden of collecting and analyzing the information necessary to complete Form 481, in addition to the burden of filling out the actual form. *See* 5 C.F.R. § 1320.3(b)(1).

[18] *See USF/ICC Clarification Order* ¶ 10 ("If state-designated ETCs did not collect this information during 2011, then it would be impossible for them to report it to the Commission in 2012, and they are not required to do so"); *see also* First Reconsideration Petition at 19-20.

pricing information that serve no practical utility, nor were such requirements structured in a manner so as to minimize the burdens of the information collection on affected ETCs, as required by the PRA.

Section 54.313(a)(7) requires an ETC to collect and report information on its "price offerings in a format as specified by the Wireline Competition Bureau." In proposed Form 481, the Bureau specifies the proposed format by which ETCs must collect and report this information – an information collection that does not pass PRA muster.

For pricing data related to voice offerings, the Bureau seeks information that has no practical utility, contrary to the PRA. Specifically, Form 481 and the related instructions appear to require that an ETC provide pricing data for every voice service offering, including bundled service offerings.[19] However, to the extent pricing information is being collected to monitor that "universal service funds are used for their intended purposes," *USF/ICC Transformation Order* ¶ 580, the only relevant pricing information would relate to standalone voice telephony service, since that it is the supported offering that ETCs must make available "throughout their designated service area." *Id.* ¶ 80. The Commission should make clear that incumbent LEC ETCs are only required to report pricing for flat-rate local exchange service, not measured service (unless the incumbent LEC ETC has no flat-rate offering) or bundled service offerings.

Form 481 requires other information that has no practical utility, such as the "Residential Local Service Charge Effective Date" that ETCs apparently must provide for each of their voice

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[19] Line 703 – Instructions, p. 18 ("report each of your company's voice telephony service price offerings"); *id.* ("For customers subscribing to bundled service, carriers should report the local service rate as tariffed, if applicable, or as itemized on end-user bills").

service offerings.[20] How the Commission intends to use such information in fulfilling its regulatory responsibilities is never explained, and the failure to address this issue is contrary to the PRA.

In addition to seeking information that has no practical utility, the Bureau has failed to minimize the burden of the proposed information collection on affected ETCs. For example, most, if not all, of the pricing information that ETCs would be required to report on Form 481 is publicly available, either in tariffs or online. It is unclear why it is necessary or appropriate for ETCs to report information that USAC can readily obtain from public sources.[21]

Furthermore, the template appears to require ETCs to report pricing information for every town in every state and to delineate information by exchange (for incumbent ETCs) and by study area (for competitive ETCs). Because prices for standalone voice services may be the same across large geographic areas within a state or may not vary across an entire state, ETCs should have the flexibility to report prices of their voice service offerings at a consolidated geographic level rather than repeat the same information in seriatim.

The Bureau's proposed collection of pricing data related to an ETC's broadband service offerings suffers from many of the same infirmities. For example, Form 481 appears to require an ETC to report the price of every broadband service it offers, whether offered on a bundled or

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[20] Line 702 – Instructions, p. 17 ("Provide the effective date of the local service rates which has [sic] been approved by the state or territorial regulatory agency with jurisdiction").

[21] *See* 5 C.F.R. § 1320.5(d)(1) ("To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information … (ii) Is not duplicative of information otherwise accessible to the agency").

standalone basis.[22] The practical utility of such information is never explained. Also unexplained is whether an ETC must report all "broadband service price offerings," including price offerings that may no longer be available or that were only offered on a promotional basis, and, if so, how the Commission would use such information in performing its regulatory functions. The Commission should make clear that ETCs are only required to report pricing for current offerings and not promotional pricing.

Likewise, Form 481 appears to require that ETCs report rates for each broadband service offering made available to customers disaggregated by upload and download speeds and capacity limits.[23] Any broadband reporting should be limited to speeds and packages that are relevant to the broadband service obligations to which an ETC is subject – specifically, the service offerings that enable a CAF Phase II support recipient to meet the 4 Mbps/1 Mbps and 6 Mbps/1.5 Mbps requirements – not every conceivable broadband service offering that an ETC may make available to its customers. Thus, for example, collecting information related to the price of a triple play package that includes a broadband service with download speeds of 150 Mbps would serve no practical utility.[24]

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[22] Line 711, column b1 – Instructions, p. 20 ("report the total rate offered to residential customers for the relevant service e.g., standalone broadband, bundled broadband and voice, bundled broadband voice, and video; bundled broadband voice, video, and mobile"); *id.* columns e-f (referring to "Bundled Services").

[23] Line 711, columns d1, d2, d3 – Instructions, p. 21.

[24] As is the case with the reporting of price for voice services, Form 481 requires that broadband prices be disaggregated by town and state as well as wire center or study area, even though broadband rates may not vary across a state or even an entire geographic region. Consistent with its duty to minimize any information collection on affected carriers, the Commission should permit consolidated geographic reporting of broadband pricing information.

VI. THE COMMISSION SHOULD RECONSIDER OR CLARIFY THOSE ASPECTS OF FORM 481 AND ACCOMPANYING INSTRUCTIONS THAT ARE INCONSISTENT WITH THE COMMISSION'S RULES OR THE *USF/ICC TRANSFORMATION ORDER*.

Form 481 and its accompanying instructions contain several provisions that are inconsistent with the Commission's rules or the *USF/ICC Transformation Order*. The Commission should reconsider or clarify these provisions.

A. Outage Reporting Requirements

The instructions to Form 481 provide as follows:

> The carrier must report any service outage, in this study area, which occurred in the prior calendar year. It is deemed a reportable incident (as per 47 C.F.R. § 4.5) if it has a duration of at least 30 minutes *or* impacts at least ten percent of the end users served in the service area or 911 special facility.[25]

Requiring that an ETC report a service outage when either the outage lasts at least 30 minutes or impacts at least ten percent of end users or a 911 special facility is inconsistent with the *USF/ICC Transformation Order* and 47 C.F.R. § 4.5. Both the order and the rule require that the outage last at least 30 minutes *and* have other defined impacts before the incident is reportable. *See* 47 C.F.R. § 54.313(a)(2)(i), (ii); *see also* 47 C.F.R. § 4.9(a), (b), (f). The Commission should reconsider or clarify Form 481 accordingly.

B. Affiliate Reporting Requirements

The instructions to Form 481 state that ETCs should report the name of "any corporate affiliates associated with" a particular study area, noting that "[t]he term 'affiliates' has the meaning set forth in section 3(2) of the Act."[26] To the extent these instructions purport to require an ETC to collect and report the name of all affiliates associated with a particular study area,

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[25] Purpose – Instructions, p. 15 (emphasis added).

[26] Line 813, column a1 – Instructions, p. 22.

regardless of whether the affiliate receives universal service support, such a requirement would run afoul of the *USF/ICC Transformation Order* as well as the PRA.

In requiring the reporting of affiliate information, the Commission concluded that such information would assist in reducing "waste, fraud, and abuse" and increasing "accountability in our universal service programs by simplifying the process of determining the total amount of public support received by each recipient, regardless of corporate structure." *USF/ICC Transformation Order* ¶ 603. According to the Commission, "Such information is necessary in order for the Commission to ensure compliance with various requirements adopted today that take into account holding company structure." *Id.*

However, the Commission's purported need for information regarding affiliates is predicated on the affiliate's receipt of universal service support. To the extent an affiliate is not receiving support from the federal universal service fund, collecting and reporting information regarding that affiliate would not serve any practical utility. Accordingly, the Commission should reconsider or clarify the language in Form 481 to include only those affiliates that are ETCs and receive universal service support.

Likewise, the instructions to Form 481 purport to require that an ETC provide the "doing business as" designation for each affiliate associated with the study area.[27] This requirement is contrary to the *USF/ICC Transformation Order*, which only obligates an ETC to report "any branding" that the ETC may use, not the "doing business as" or brand designation of each of the ETC's affiliates. *USF/ICC Transformation Order* ¶ 603; 47 C.F.R. § 54.313(a)(8).

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[27] Line 813, column a2 – Instructions, p. 23.

C. Service Quality and Consumer Protection Certification Requirements

The Commission should reconsider or clarify the proposed certification in Form 481 and related instructions that would require an ETC to certify that the carrier "is in compliance with applicable service quality standards and consumer protection rules."[28]

Neither the *USF/ICC Transformation Order* nor the instructions for the proposed Form 481 explain what is meant by "applicable service quality standards and consumer protection rules." For wireless ETCs designated by the Commission, the Commission has previously stated that compliance with the CTIA Consumer Code for Wireless Service satisfies this requirement. The Commission, however, has never addressed the definition of the term "applicable service quality standards and consumer protection rules" for other ETCs, including incumbent LEC ETCs designated by state commissions. In fact, for ETCs other than Commission-designated wireless ETCs, the Commission stated that it would address the sufficiency of other service quality commitments on a case-by-case basis.[29] Moreover, the Commission specifically *declined* to adopt state-specific consumer protection requirements as part of its ETC designation process, noting that doing so "might require the Commission to interpret state statutes and rules."[30]

Given that the Commission has to date provided no guidance concerning the phrase "applicable service quality standards and consumer protection rules" for ETCs other than

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[28] Line 500 – Instructions, p. 10; Form 481 at 4 (requiring certification that "the carrier is in compliance with applicable service quality standards and consumer protection rules").

[29] *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, ¶ 28 (2005) ("*Report and Order*").

[30] *Id.* ¶ 29. Furthermore, the Commission expressed concern about consumer protection requirements imposed on state-designated ETCs, cautioning states "that impose requirements on an ETC to do so only to the extent necessary to further universal service goals." *Id.* ¶ 30.

Commission-designated wireless ETCs, the Commission should either provide such clarification or reconsider the requirement altogether.

The Commission should not suggest that an ETC's failure to achieve a particular service quality metric specified under state commission rules means that the ETC is not *complying with* "applicable service quality standards" and thus is disqualified from receiving universal service support. Such an interpretation would be unreasonable because it would require near perfection as the benchmark for receiving universal service support – a benchmark that rarely, if ever, will be met given the lofty standards in many states. It also could suggest that carriers failing to achieve near perfection would lose high-cost universal service support, even though many states – which chose the particular service quality measures to review and what metrics would satisfy them – do not impose *any* monetary penalties on a carrier that fails to meet them. Moreover, some states simply require that a carrier prepare a corrective action plan if it misses a particular service quality target for some specified time period. Thus, a carrier's failure to hit a state metric for the requisite time period may have a range of consequences. Nothing in the *USF/ICC Transformation Order* or any sound public policy seeks to replace the states' enforcement prerogative with the Commission's. Nor do either compel such a draconian result as the loss of all universal service support for the failure to achieve a particular service quality metric.

Therefore, rather than dictating generic text for the service quality and consumer protection certification in Form 481, the Commission should follow the previous approach with respect to wireless ETCs and permit ETCs to word the service quality certification to take into account the individual circumstances in each state. Moreover, ETCs should be permitted to attach any additional information with respect to service quality metrics for the individual state. This approach is vastly preferable – and, indeed, is the only workable arrangement – given that

most, if not all, incumbent LECs face some form of service quality oversight at the state level, the nature and degree of which can vary considerably from state to state.

D. Emergency Functionality Certification Requirement

Similarly, the Commission should clarify the proposed certification in Form 481 that requires an ETC to certify compliance with 47 C.F.R. § 54.202(a)(2) regarding the carrier's ability to function in emergency situations and specifically certify that the carrier "has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations." When the Commission originally adopted this provision, it did so in the context of developing criteria for designating carriers, primarily wireless carriers, as ETCs. In adopting the language, the Commission expressly noted that a specific benchmark for back-up power and the ability to re-route traffic was not appropriate because "although an ETC may have taken reasonable precautions to remain functional during an emergency, the extreme or unprecedented nature of the emergency may render the carrier inoperable despite any precautions taken, including battery back-up and plans to reroute traffic." *Report and Order* ¶ 26.

The Commission should clarify that an ETC can certify that it has a sufficient ability to function in emergency situations where it has a reasonable plan and ability to maintain functionality in emergency situations. This includes reasonable back-up power, and a reasonable ability – not an absolute ability – to re-route traffic around damaged facilities. Further, as with the service quality and consumer protection certifications, rather than dictating the text of the certification in the Form 481, the Commission should permit ETCs to word the certification consistent with the Commission's purposes for the certification and provide any additional information pertaining to the certification that they deem appropriate.

E. Tribal Engagement Reporting Requirements

The instructions to Form 481 appear to require that an ETC document its compliance with the Commission's Tribal engagement rule and the *Further Guidance*.[31] In addition to the legal and procedural problems underlying the rule and the *Further Guidance*, which are explained above, this requirement is inconsistent with the *USF/ICC Transformation Order*, which only obligates an ETC to provide "documents or information demonstrating that" an ETC serving Tribal lands "had discussions with Tribal governments" and that those discussions included specified topics. 47 C.F.R. § 54.313(a)(9). For the reasons explained previously, the Commission should reconsider its entire Tribal engagement regime and, at the very least, should refrain from imposing additional requirements under the guise of reporting obligations in Form 481.

F. Officer Certification Requirements

The proposed 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. This approach also contravenes the *USF/ICC Transformation Order*, which merely requires "that an officer of the company certify to the accuracy of the information" in any section 54.313 report. *Id.* 581. Accordingly, the Commission should modify Form 481 to include a single officer certification, which would be consistent with the *USF/ICC Transformation Order* and the PRA, which obligates the Commission to minimize the burden of an information collection on affected entities.

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[31] Lines 920 through 929 – Instructions, pp. 24-25.

G. Lifeline Service Reporting Requirements

The Commission should clarify the reporting requirements in Form 481 that apply to ETCs receiving both high-cost and Lifeline support. The instructions to Form 481 state that "ETCs that receive both high-cost support and low-income support should follow the high-cost support requirements."[32] This language suggests that an ETC receiving high-cost and Lifeline support is not required to complete section 1200 of Form 481 (Terms and Conditions for Lifeline Customers Lifeline Service). Although USTelecom supports minimal reporting obligations, the Commission should make clear which ETCs will be required to complete section 1200, assuming Form 481 is approved by OMB.

VII. THE COMMISSION SHOULD CLARIFY THE CONFIDENTIALITY OF FORM 481 AND THE INFORMATION REPORTED THEREIN.

According to the Commission, USAC will be required to keep confidential Form 481 and the information reported therein.[33] USTelecom supports this confidentiality requirement, particularly given the commercially sensitive nature of much of the information contained in Form 481.

However, the Commission also has required that ETCs file copies of Form 481 with state public service commissions and Tribal governments (as well as with the Commission itself). *USF/ICC Transformation Order* ¶ 581. Because some states and Tribal governments do not have protections to prevent the public disclosure of confidential information, the Commission

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32 Introduction and Background – Instructions, p. 2.

33 *Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 78 Fed. Reg. 12750 (Feb. 25, 2013) ("*PRA Notice*") (noting that "USAC must preserve the confidentiality of all data obtained from respondents and contributors to the universal service program mechanism; must not use the data except for purposes of administering the universal service support program; and must not disclose data in company-specific form unless directed to do so by the Commission").

should clarify that ETCs can file a redacted Form 481 in those states and with those Tribal governments.

VIII. THE COMMISSION SHOULD RECONSIDER ITS ASSESSMENT OF THE BURDENS ASSOCIATED WITH PROPOSED FORM 481.

A. The Commission's PRA Analysis Underestimates the Substantial Burdens of the Proposed Information Collection.

The PRA is a critical part of the regulatory process, enabling federal agencies to appreciate fully and weigh carefully the burdens and benefits of information collections on industry and the public.[34] The analysis is essential to ensuring that the central purpose of the PRA – to "*minimize the paperwork burden*" for reporting entities – has been met. 44 U.S.C. § 3501(1) (emphasis added). However, an agency does not and cannot fulfill its PRA responsibilities unless the agency accurately considers the burdens of its proposed rules.[35]

Here, 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. Form 481 requires an ETC to file annually information on numerous topics, including deployment plans, service quality, outages, unfulfilled service requests, complaints, emergency functionality, pricing, Tribal consultation, and network performance. Despite the substantial size of this information collection and reporting effort, the Commission estimates that

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[34] The stated purposes of the PRA include: (1) minimizing the burden of federal paperwork on individuals, small businesses, state and local governments, and others; (2) ensuring the greatest public benefit from federal information; (3) coordinating federal information resources management policies; and (4) improving the quality and use of federal information. 44 U.S.C. § 3501(1).

[35] The term "burden" is broadly defined to include all of the "time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency." 44 U.S.C. § 3502(2). The burden-hour estimate for an information collection is a function of: (1) the frequency of the information collection; (2) the estimated number of respondents; and (3) the amount of time that the agency estimates it takes each respondent to complete the collection.

it would take an ETC an average of 20 hours annually to collect, review, and disclose the requisite information at no external cost to the carrier.[36] On their face, these estimates are grossly understated, and the Commission must revisit these burden estimates before sending the information collection to OMB for final review.

It is unclear how the Commission arrived at these estimates, which are clearly erroneous. Indeed, USTelecom has been unable to locate a copy of any supporting statement that the Commission may have prepared in developing its burden estimates, and no such statement is publicly available on OMB's website. Equally unclear is 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.

Regardless of the actual assumptions underlying its estimates, the Commission has substantially misjudged the burdens associated with its proposed information collection. In determining the burden associated with a particular information collection, the Commission must consider the time, effort, and cost required to train personnel to respond to the collection; to acquire, install, and develop systems and technology to collect, validate, and verify the requested information; to process and maintain the required information; and to provide the required

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[36] *See* Form 481 at 1. Although the proposed Form 481 estimates the total hour burden at 20 hours, the *PRA Notice* estimates that the hours burden could range from 0.5 to 100 hours per response. 78 Fed. Reg. at 12750. As discussed below, even the 100 hour estimate understates dramatically the time required to complete this form.

information. 5 C.F.R. § 1320.3(b)(1). None of these tasks is reflected accurately in the Commission's burden estimates.

For 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—significant time and resources would be required to design and implement a compliant information collection and reporting process.

Specifically, ETCs would need to engage and train a wide range of personnel—including corporate executives, business planning teams, engineers, network managers, regulatory advisors, customer service personnel, and pricing experts— 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. These efforts would take an average ETC considerably longer than 20 hours and cost considerably more than $0.[37]

In short, the Commission's burden estimates are not realistic. An 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.

B. The Commission Ignored the PRA's Mandate to Mitigate the Burden of the Proposed Information Collection, Particularly on Small Entities.

The Commission's proposed information collection violates the PRA's mandate to reduce the burdens of collection requirements, particularly on small entities. Consistent with the

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[37] The Commission's burden estimates are unrealistic even for an ETC that currently maintains some of this data. Such ETCs will have collected and maintained this information for their own business purposes, not to comply with any regulatory obligation. Thus, substantial time and effort would be required for an ETC to review and verify the accuracy of the data.

underlying purpose of the PRA to "minimize the paperwork burden" for reporting entities, the Commission was required to consider reasonable, less burdensome alternatives. 44 U.S.C. § 3501(1); *see also* 5 C.F.R. § 1320.1. In addition, the Commission was required to reduce the paperwork burden to the extent practicable "with respect to small entities." 44 U.S.C. § 3506(c)(3)(C). Here, the Commission did not comply with either of these requirements.

First, the Commission did not adequately "reduce, minimize and control [the] burdens" associated with the proposed information collection. 5 C.F.R. § 1320.1. For example, the level of detail that Form 481 requires for service outage reporting and voice and broadband price offerings is excessively granular and unnecessarily burdensome. Yet, the Bureau apparently did not consider any less intrusive means to collect any relevant information, which violates the PRA requirement to "minimize the paperwork burden" on reporting entities.

OMB has rejected collections that "fail[] to take the least burdensome approach possible for the collection's intended purpose."[38] By virtue of the Commission's failure to consider less burdensome but viable information collection approaches, the proposed Form 481 violates the PRA and should not be approved by OMB in its current form.

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[38] *See Notice of Office of Management and Budget Action*, ICR Reference No. 199607-1880-002, at 1 (Sept. 23, 1996) (OMB disapproved an information collection relating to Human Subjects Research submitted by the Department of Education because it "fail[ed] to take the least burdensome approach possible for the collection's intended purpose."). In another example of the Commission's failure to minimize the burden of a proposed information collection, OMB disapproved the FCC's proposal to reduce from fifteen days to three days the time in which cable TV system operators would need to respond to requests from potential programmers for leased access information. OMB concluded that the FCC failed to demonstrate that it had "taken reasonable steps to minimize the burden on respondents who will be required to hire new staff in order to maintain the capacity to comply with the reduced deadline for leased access requests." *See Notice of Office of Management and Budget Action*, ICR Reference Number 200804-3060-012, OMB Control No. 3060-0568, at 1-2 (July 9, 2008).

Second, in addition to failing to minimize the burden of the proposed information collection on all respondents, the Commission failed to take any steps to reduce the burden of the proposed information collection on small business entities as required by the PRA.[39] That the Commission failed to reduce the burdens of the proposed information collection requirements on small business entities is evident from the proposed Form 481, which fails to make any distinctions in reporting requirements based on an ETC's size.

If anything, the burdens on small entities would be proportionality greater than the already sizable burdens imposed on larger ETCs. Indeed, the Commission failed to consider the significant disparities in the resources available to small ETCs, which are less likely to have in-house resources and more likely to have to hire external consultants to develop processes to collect and report the data required by Form 481. As the Commission revisits its proposed information collection, it should look for ways to mitigate the burdens on small entities consistent with the requirements of the PRA.

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[39] 44 U.S.C. § 3506(c)(3)(C) (authorizing an agency to reduce the burdens on small business entities by: (i) establishing differing compliance or reporting requirements or timetables for smaller and larger respondents; (ii) adopting clarified, consolidated, or simplified compliance and reporting requirements; or (iii) exempting smaller carriers from coverage of any parts of the information collection).

IX. CONCLUSION

For the foregoing reasons, the Commission should grant USTelecom's Petition for Reconsideration and Clarification.

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