

LAW OFFICES
BLOOSTON, MORDKOFKY, DICKENS, DUFFY & PRENDERGAST, LLP
2120 L STREET, NW, SUITE 300
WASHINGTON, DC 20037

HAROLD MORDKOFKY
BENJAMIN H. DICKENS, JR.
JOHN A. PRENDERGAST
GERARD J. DUFFY
RICHARD D. RUBINO
MARY J. SISAK
D. CARY MITCHELL
SALVATORE TAILLEFER, JR.

ARTHUR BLOOSTON
1914 – 1999

(202) 659-0830
FACSIMILE: (202) 828-5568

AFFILIATED SOUTH AMERICAN OFFICES

ESTUDIO JAUREGUI & ASSOCIATES
BUENOS AIRES, ARGENTINA

ROBERT M. JACKSON
OF COUNSEL

PERRY W. WOOFER
LEGISLATIVE CONSULTANT

EUGENE MALISZEWSKYJ
ENGINEERING CONSULTANT

July 8, 2013

VIA INTERNET: [Nicholas A. Fraser@omb.eop.gov](mailto:Nicholas.A.Fraser@omb.eop.gov)

Nicholas A. Fraser
Office of Management and Budget

VIA INTERNET AND EMAIL: Judith-b.herman@fcc.gov; PRA@fcc.gov

Judith B. Herman
Federal Communications Commission

Re: OMB Control Number: 3060-0986

Title: Competitive Carrier Line Count Report and Self-Certification as a Rural Carrier

Form Numbers: FCC Forms 525 and 481

Dear Mr. Fraser:

The Blooston Rural Carriers,¹ by their attorney, hereby submit comments in opposition to the Federal Communications Commission's (FCC's or Commission's) proposed Form 481 and urge the Office of Management and Budget to reject the form as specified herein.

On April 26, 2013, the Blooston Rural Carriers submitted comments to the FCC objecting to various aspects of the proposed Form 481. The Blooston Rural Carriers argued that the collection should be modified in a number of respects in accordance with the Paperwork Reduction Act (PRA); that the Commission's estimated burden of complying with the reporting requirement is grossly underestimated; and that the Commission failed to accurately reflect that

¹ A list of the participating carriers is attached hereto.

compliance with this reporting requirement would impose significant cost on rate of return (ROR) eligible telecommunications carriers (ETCs).

The FCC did not accept the recommendations made by the Blooston Rural Carriers. In addition, its estimates continue to grossly underestimate the time and cost of complying with the reporting requirements. For example, the FCC estimates a cost of \$40.00 per hour to prepare the report. However, a more reasonable hourly rate for employees to complete the form, considering the cost of insurance and other benefits, is \$60 to \$80 per hour. Further, for small companies that do not have employees who can complete the form, the cost of hiring a consultant to do so would be approximately \$150.00 per hour. At these rates, the cost to complete Form 481 could easily exceed \$11,000. The Blooston Rural Carriers ask OMB to reject Form 481 as stated herein.

Line 100 and the Attached Worksheet Should Be Modified For ROR ETCs

Line 100 of the draft Form 481, Annual Reporting for All Carriers, requires all ETCs to complete the Service Quality Improvement Reporting Worksheet for their voice and broadband services. Form 481 states that ETCs are to submit an initial 5 year plan and annual updates to the plan pursuant to section 54.202(a)(1)(ii) of the Commission's rules for both voice and broadband services. This requirement should be modified as follows.

The preparation of a 5 year plan will be extremely expensive and time consuming for small companies to generate. To make this requirement more reasonable, rural ROR ETCs should be required to produce only a 2 or 3 year plan.

Line item 113 of the worksheet, which requires ETCs to submit maps detailing progress toward meeting plan targets, goes far beyond what is required in section 54.202(a)(1)(ii) of the

Commission's rules and, therefore, it is not necessary for the proper performance of the functions of the Commission and will have no practical utility. Section 54.202(a)(1)(ii) of the Commission's rules states that ETCs must "[s]ubmit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements." The submission of maps, as required in proposed line 113, is not necessary to describe the proposed improvement or upgrades of ETCs. Rather, the Commission's objective can be met in a less burdensome and costly way by a written description, instead of a map. The Blooston Rural Carriers note that the Commission specifically states that ETCs are not required to submit maps with their initial 5 year plans. Therefore, the Commission acknowledges that maps are not required to comply with section 54.202(a)(1)(ii) of the Commission's rules. The Commission provides no explanation or justification as to why maps are necessary in the annual progress reports.

In addition, because most rural ROR ETCs do not have the in-house ability to make maps, this requirement will require them to expend considerable resources to hire outside technical experts who are capable of performing this function. The Commission fails to consider the additional burden when a consultant must be hired and, therefore, it underestimates the time and cost of compliance on ROR ETCs. To reduce the burden on small carriers and to bring the reporting requirement into compliance with the FCC's rule, ROR ETCs should only have to provide a written description of proposed improvements or upgrades to the network for the subsequent progress reports on the plan and, therefore, line 113 should be eliminated. To the extent ROR ETCs are required to provide information on broadband services, Line item 113 of

the worksheet also should not be required for broadband services for the same reasons discussed in this paragraph.

With respect to broadband services, ROR ETCs should not be required to provide any of the information that will be collected in Line 100 of Form 481 and Lines 010 through 118 of the attached Worksheet. The information requested in these line items, with respect to the broadband services of ROR ETCs, is not necessary for the proper performance of the functions of the Commission and the information will have no practical utility. This is because ROR ETCs do not have a general obligation to provide broadband service throughout their service area, to some portion of their service area or to meet certain "targets." Rather, ROR ETCs only are required to provide broadband service "on reasonable request."² The information requested in Lines 100 through 118 for broadband services is not appropriately tailored to collect information that would have practical utility in determining whether ROR ETCs are providing broadband service "on reasonable request." On the contrary, the FCC seeks to collect information on five-year broadband build out plans that are not based on reasonable requests received by the ETC. By seeking to collect information that is not related to a ROR ETC's service obligation, the information collection also imposes an unnecessary burden on ROR ETCs. In addition, some small ROR ETCs must rely entirely on consultants and outside engineers to provide the information necessary to comply with the proposed reporting, which would increase the burden and cost of compliance for these carriers. Accordingly, the Commission underestimates the time and cost of compliance on ROR ETCs.

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Reform Order*), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) at ¶853, ¶918.

Similarly, Line 330- Unfilled Broadband Service Requests Resolution, is not necessary for the proper performance of the functions of the Commission and the information will have no practical utility. The instructions for Line 330 require ETCs to provide a detailed description “of how you attempted to provide broadband service to potential end-user customers whose initial requests for service were unfulfilled in the prior calendar year....” However, ROR ETCs only have an obligation to provide service "on reasonable request." Once a ROR ETC makes the determination that a request is not reasonable, it has no requirement to attempt to provide broadband service to potential end-user customers. Accordingly, the information collection in Line 330 will have no practical utility and it will impose an unnecessary burden on ROR ETCs. Therefore, it should be eliminated.

Line 900 and the Attached Worksheet Should Be Modified

The FCC estimates that each respondent will spend 4 hours per year preparing, reviewing and submitting the Tribal engagement report at a cost of \$160 (the FCC estimates \$40 per hour for administrative staff time and overhead). The FCC significantly underestimates the time it will take and the cost of complying with Line 900 and the attached worksheet. Line 900 of the Form 481 requires all ETCs serving Tribal lands to complete the documents required by lines 910-929 of the Worksheet, to "validate coordination with Tribal Governments." Line 910 requires the ETC to report the Tribal lands on which it serves. The FCC has not identified any database that identifies the Tribal lands served by a particular ETC. Further, the FCC has not identified a reliable map of Tribal land boundaries that ETCs can use to determine whether their study area overlaps Tribal land and the FCC has failed to consider that the boundary of Tribal lands can change. The FCC also has not identified the “Tribal lands” that ETCs must identify.

Without clear information provided by the FCC, it could easily take ETCs 4 hours or more to determine Tribal land boundaries and whether their study area crosses them.

The FCC's estimate also is entirely unrealistic given the extensive obligations imposed. Line 920 requires the company to attach a document that the company had discussions with Tribal governments and includes an explanation of the company's actions to address the following points:

- i. A needs assessment and deployment planning with a focus on Tribal community anchor institutions;
- ii. Feasibility and sustainability planning;
- iii. Marketing services in a culturally sensitive manner;
- iv. Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and
- v. Compliance with Tribal business and licensing requirements. Tribal business and licensing requirements include business practice licenses that Tribal and non-Tribal business entities, whether located on or off Tribal lands, must obtain upon application to the relevant Tribal government office or division to conduct any business or trade, or deliver any goods or services to the Tribes, Tribal members, or Tribal lands. These include certificates of public convenience and necessity, Tribal business licenses, master licenses, and other related forms of Tribal government licensure.

Further, Form 481 requires ETCs to comply with the guidance issued by the FCC's Bureaus in connection with this reporting requirement. The guidance requires ETCs to research, prepare documentation, and deliver presentations on topics including deployment priorities and compliance with rights of way, permitting and business practice licenses for each Tribal community served. The guidance also requires that the ETC make available a high level employee, authorized to make decisions on behalf of the company, for face-to-face meetings.

It could easily take an ETC employee over 4 hours to drive to and from Tribal lands to engage in face-to-face-meetings, let alone prepare documents and presentations on all of the

required topics. In many cases, ROR ETCs do not have in-house staff to perform needs assessments and feasibility and sustainability planning or marketing plans, and they will have to hire outside consultants to perform these functions for the Tribal lands they serve. Also, while the FCC requires the involvement of a high-level employee, it only accounts for the cost of administrative staff.

The FCC also fails to consider that some ROR ETCs serve portions of multiple Tribal lands. This means that the ETC would be required to engage in the Tribal engagement process and provide all the supporting documents and presentations for multiple Tribal lands. Further, some ROR ETCs serve only a small portion of Tribal lands, with very few subscribers, such that separate assessment and planning studies and marketing efforts cannot be cost justified on any basis. In the most egregious example, the FCC also requires an ETC to comply with and report on Tribal engagement even where the Tribal land in the ETC's study area contains no people or premises or telecommunications facilities. Accordingly, the FCC's estimate of the time and cost of complying with this requirement is grossly understated and fails to capture the significant burden and harm imposed on ROR ETCs. At a minimum, to reduce the burden of the reporting requirement for carriers that provide service to only a small portion of a reservation, a *de minimis* exception should be established.

In addition, the Tribal engagement requirement is not necessary for the proper performance of the functions of the Commission and the information will have no practical utility and it violates the Constitution and law. In the *USF/ICC Order*, the Commission found that these reporting requirements are "vitally important to the successful deployment and provision of service"³ on Tribal lands. However, the Commission failed to consider the

³ *USF/ICC Reform Order* at ¶637.

comments of various incumbent local exchange carriers (ILECs) and the data in the National Broadband Map (NBM) which shows that many ROR ETCs already provide access to voice and broadband service to the vast majority of areas on Tribal lands and within their service territory. In many cases, ROR ETCs provide access to service to 95% and even 100% of the Tribal lands within their service area. Clearly, the reporting requirements imposed by the Commission are not necessary for the successful deployment and provision of service in these cases. OMB should not approve the FCC's Tribal engagement reporting requirement, which is based on old data and which fails to recognize the significant progress in providing voice and broadband service to Tribal lands by ROR ETCs, as demonstrated in the NBM.

In addition, the Commission's rule and the proposed information collection in Form 481 violate the law and the Constitution and should be modified to cure these defects. By requiring specific speech and marketing by ROR ETCs, the rule and information collection violates the First Amendment. Any reporting requirement should be tailored so that it does not violate the First Amendment.

The reporting requirement unlawfully requires reporting to comply with "guidance" issued by the Commission's Bureaus. On its face, "guidance" does not amount to a rule or order by the Commission. Moreover, the Bureaus did not comply with the Administrative Procedure Act as no notice and comment was provided to interested parties before issuing their "guidance." Accordingly, the reference in the instructions that ETCs must comply with the guidance issued by the Bureaus must be deleted.

The requirement that ETCs must comply with Tribal business and licensing requirements, including certificates of public convenience and necessity requirements, violates

the law and is not necessary for the proper performance of the functions of the Commission and the information will have no practical utility. In the *Western Wireless Order*⁴ the Commission found that the Communications Act does not expressly delegate authority to the tribes to regulate nonmembers. The Commission also found that its decision did not affect the "continued state regulation of wireline carriers serving Reservations,"⁵ including the authority of the states to issue certificates of authority to and to designate ILECs as ETCs.

Further, the purpose of the Commission as expressed in the Communications Act is to ensure the availability of communications throughout the United States. The Commission has shown no connection between an enforcement of local jurisdiction and the functions of the Commission. Moreover, as shown herein, many ROR ETCs already provide access to voice and broadband service to the vast majority of the areas on Tribal lands that are within the ROR ETC's service territory.

To reduce the burdensomeness of the Tribal engagement requirement, to bring the information collection into compliance with the Constitution and law, and to ensure that the information collection is necessary for the proper performance of the functions of the Commission and the information will have practical utility, the following specific modifications should be made:

1. The Commission should adopt a *de minimis* exception to the reporting requirement as follows: any ETC whose service territory includes 10% or less of the land included within the Tribal land of a specific tribe or any ETC whose service territory includes 100 or fewer premises within the Tribal land of a specific tribe should be exempt from any reporting requirement.

⁴ *In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota; Federal-State Joint Board on Universal Service*, 16 FCC Rcd 18145, 18154 (FCC 2001) (*Western Wireless Order*).

⁵ *Id.* at 18152.

2. Any ETC that certifies that it provides access to voice service to 90% or more of the premises within its service territory that is within the Tribal land of a specific tribe should be exempt from any additional reporting requirement.

3. A ROR ETC should be required to report only the number of premises within its service territory that are also within the Tribal land of a specific tribe; the number of those premises that have access to voice and broadband service; and the number of those premises where service was requested and not provided.

The Blooston Rural Carriers request that the modifications as described herein be made to the draft Form 481.

Respectfully submitted,

THE BLOOSTON RURAL CARRIERS

By: /s/ Mary J. Sisak
Mary J. Sisak

Their Attorney

The Blooston Rural Carriers

Participating Carriers

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Buggs Island Telephone Cooperative

Butler-Bremer Communications

Choctaw Telephone Company

Electra Telephone Company

Golden West Telecommunications Cooperative, Inc.

Haxtun Telephone Company

Interstate Telecommunications Cooperative, Inc.

Kennebec Telephone Co. Inc.

Lonsdale Telephone Company

Midstate Communications, Inc.

MoKan Dial, Inc.

Peñasco Valley Telephone Cooperative, Inc.

Pymatuning Independent Telephone Company

Smithville Communications, Inc.

Spring Grove Communications

Tatum Telephone Company

Valley Telephone Company

Van Buren Telephone Company, Inc.

Venture Communications Cooperative, Inc.

Walnut Hill Telephone Company, Inc.

Walnut Telephone Company, Inc.

West River Telecommunications Cooperative