

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Information Collection Being Reviewed by the)	OMB Control No. 3060-0986
Federal Communications Commission,)	
Comments Requested, Competitive Carrier)	
Line Count Report and Self Certification as a)	
Rural Carrier, FCC Form 525 and FCC Form)	
481)	

TO: Office of Managing Director

**PAPERWORK REDUCTION ACT COMMENTS OF
THE BLOOSTON RURAL CARRIERS**

The Blooston Rural Carriers,¹ by their attorneys, hereby submit comments on the Commission's proposed information collection as reflected in draft Form 481 and its accompanying instructions.² As shown herein, the Commission's proposed information collection should be modified in a number of respects in accordance with the Paperwork Reduction Act (PRA); the Commission's estimated burden of complying with the reporting requirement is grossly underestimated; and the Commission fails to accurately reflect that compliance with this reporting requirement will impose significant cost on rural incumbent local exchange carriers (ILECs).

The PRA process is an important one which must be taken seriously by the Commission to ensure that federal requirements do not unnecessarily burden those required to comply with

¹ A list of the participating carriers is attached hereto.

² Federal Register, Vol.78, No. 37, 12750-12752.

the requirements, such as rural ILECs. In evaluating the burdensomeness and validity of its proposed draft Form 481 information collection, the Commission states that comments should focus on: (a) 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; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Based on these criteria, the Commission's proposed information collection in connection with a service quality improvement plan, as applied to rural rate-of-return (ROR) eligible telecommunications carriers (ETCs), and its tribal engagement requirement must be modified to comply with the PRA.

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. Lines 112- 118 of the Worksheet require an ETC to file an annual progress report on the ETC's service quality improvement plan (line 112); maps detailing progress towards meeting plan targets (line 113); a report on how much universal service support was received (line 114); how USF was used to improve service quality (line 115); how USF was used to improve service coverage (line 116); how USF was used to improve service capacity (line 117); and provide an explanation of network improvement targets not met in the prior calendar year (line 118). In its Order released on March 5, 2013, the Wireline Competition Bureau (WCB) indicates that these

requirements in draft Form 481 also apply to the five-year plan that a state designated, ROR ETC must file pursuant to section 54.202(a)(1)(ii) of the Commission's rules.³

Line item 113 of the worksheet, which requires ETCs to submit maps detailing progress towards 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 it 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. 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. Accordingly, the Commission underestimates the time and cost of compliance on ROR ETCs.

Further, the Commission's objective can be met in a less burdensome and costly way by a written description, instead of a map. Accordingly, rural ROR ETCs should only have to provide a written description of their voice services in their service territory, to comply with section 54.202(a)(1)(ii) of the Commission's rules for the initial five-year plan and a written description of proposed improvements or upgrades to the network for the subsequent progress reports on the plan. To the extent ROR ETCs are required to provide information on broadband services, Line

³ *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, et al., Order, 28 FCC Rcd 2051, (March 5, 2013) at p.5, footnotes 30, 31.

item 113 of the worksheet also should not be required for broadband services for the same reasons discussed in this paragraph.

With respect to the broadband services of ROR ETCs, the information that will be collected in Line 100 of Form 481 and Lines 010 through 118 of the attached Worksheet is not necessary for the proper performance of the functions of the Commission and the information shall have no practical utility. The WCB states that the purpose of Line 100, Service Quality Improvement Plan Report, is to explain the carrier's "progress towards meeting its deployment targets, amount of universal service support received, how support 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."⁴ Similarly, the instructions for Worksheet Line 112 asks for a progress report on proposed network improvements; Line 113 asks for a progress report and maps detailing progress toward meeting targets; and Line 118 asks for information on why certain targets were not met. ROR ETCs, however, 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."⁵ 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 WCB seeks to collect information on five-year broadband build out plans that are not based on reasonable requests received by the ETC. By

⁴ Instructions for Completing FCC Form 481 at 12.

⁵ *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.

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.

Similarly, Line 330- Unfilled Broadband Service Requests Resolution, is not necessary for the proper performance of the functions of the Commission and the information shall have no practical utility. Line 330 requires ETCs to provide "a detailed description of how you attempted to provide broadband service to potential customers whose initial requests for service were unfilled in the prior calendar year..."⁶ 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." Accordingly, the information collection in Line 330 will have no practical utility and it will impose an unnecessary burden on ROR ETCs and, therefore, it should be eliminated.

Line 900 and the Attached Worksheet Should Be Modified

Line 900 of the draft 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 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:

⁶ Instructions for Completing FCC Form 481 at 9.

- 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.

In the *USF/ICC Order*, the Commission found that these reporting requirements are "vitally important to the successful deployment and provision of service"⁷ on tribal lands. However, the Commission failed to consider the comments of various ILECs and the data in the National Broadband Map 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.

The Commission also failed to consider the burden and cost of the specific consultation and reporting requirements on ROR ETCs. In most cases, ROR ETCs have limited employees and resources. 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

⁷ *USF/ICC Reform Order* at ¶637.

hire outside consultants to perform these functions for the Tribal lands they serve. 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 some cases, the tribal lands contain no people or premises. Some ROR ETCs also serve portions of multiple Tribal lands, which would necessitate that they engage in multiple assessment, planning and marketing efforts for each specific Tribal land area that they serve. For carriers serving Alaska, the Commission has failed to make clear which Tribal entities must be consulted (i.e. Regional Native Corporations or Village Corporations).

The "guidance" provided by the Bureaus, specifying what ETCs must do to comply with rule section 54.313(a)(9), also serves to reinforce and increase the burdensome nature of the rule. For example, 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. These specifications only serve to increase the burdensomeness of the Commission's rule.

In comments filed at the Commission, the Navajo Nation stated that to reduce the burden of the reporting requirement for carriers that provide service to only a small portion of a reservation it was "considering establishing an automatic waiver from engagement for carriers with a *de minimis* footprint on Navajo soil, and providing a waiver mechanism for other carriers who believe that engagement with NNTRC is overly burdensome."⁸ At a minimum, the

⁸ See, *Opposition of the Navajo Nation Telecommunications Regulatory Commission to Petition for Reconsideration*, WC Docket No. 10-90, et al., filed January 9, 2012 at 6-7 (Navajo Nation Opposition).

Commission should adopt a *de minimis* exception to reduce the burdensomeness of the information collection.

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.⁹ 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 shall have no practical utility. In the *Western Wireless Order* the Commission found that the Communications Act does not expressly delegate authority to the tribes to regulate nonmembers.¹⁰ The Commission also found that its decision did not affect the "continued state

⁹ See, *United States Telecom Association Petition for Reconsideration and Clarification and Comments in Response to Paperwork Reduction Act*, WC Docket No. 10-90, et al., filed April 4, 2013, at pp. 11-13.

¹⁰ *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*).

regulation of wireline carriers serving Reservations,"¹¹ 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.

Finally, draft Form 481 seeks to require the reporting of information collected during the year 2012 and before the information collection was authorized by the Office of Management and Budget. The Commission must modify any information collection in connection with tribal engagement to ensure that the actions to be taken by ETCs only are required to occur after OMB approval of the information collection. Accordingly, the Commission must make clear that ETCs have no requirement to report on tribal engagement in their section 54.313 compliance filing due on July 1, 2013.

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 shall 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

¹¹ *Id.* at 18152.

or fewer premises within the tribal land of a specific tribe should be exempt from any reporting requirement.

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.
4. The information collection should not be required for the year 2012, with reporting on July 1, 2013, and should only be required after OMB approval.

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

Respectfully submitted,

THE BLOOSTON RURAL CARRIERS

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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