



INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

VIA ELECTRONIC MAIL

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**Re: Information Collection Regarding Local Telephone Competition and
Broadband Reporting, FCC Form 477,
73 Fed. Reg. 73931, OMB Control No. 3060-0816**

Dear Mr. Fraser and Ms. Herman:

By this letter, the Independent Telephone & Telecommunications Alliance (ITTA) submits comments to the Office of Management Budget on the above referenced request for approval of the revised FCC Form 477, as proposed by the Federal Communications Commission (the Commission) in the above-referenced proceeding.

It its comments filed in response to the initial Notice of Public Information Collection (73 Fed. Reg. 55080), ITTA urged the Commission to incorporate into its Information Collection an interim deferral of the deadline for the revised Form 477 until at least 120 days after the revised approved Form and instructions become publicly available. ITTA now urges OMB to exercise its authority under 44 U.S.C. § 3507(c) and (e), and section 1320.10(b) of its rules, to, at minimum, instruct the Commission to grant ITTA's request.¹ Such a deferral, ITTA explained, was

¹ ITTA hereby incorporates its earlier comments by reference. These comments are timely; as the Commission did not submit the proposed collection until December 24, 2008, interested parties have until *Friday, January 23, 2009* to comment on the Form 477 and Instructions, and in any case ITTA understands that OMB is treating January 23rd as the comment deadline as well. See 5 C.F.R. § 1320.10((b)).

consistent with a number of important Paperwork Reduction Act (PRA) objectives.² As discussed below, the appropriateness – and limited scope – of ITTA’s request is also evident in light of how the Commission has handled this particular Information Collection.

The Form 477 Will Pose Substantial Burdens on Broadband Providers

In its earlier comments, ITTA expressed concern that the extent to which billing and other databases can be integrated with U.S. Census Bureau map data, particularly for rural areas, appears limited, and that substantial IT upgrades and/or manual input work would be necessary.³ The Commission denied ITTA’s request, however, reasoning “that the Report and Order provided adequate notice of the elements of the new collection, such that most filers should be able to file in a timely fashion” and that “[i]f an individual filer nevertheless believes it will be unable to file before the deadline, it may seek a waiver of our rules.”⁴

A review of the Information Collection indicates that ITTA’s concerns remain valid. Citing to “a variety of public resources and commercial products for matching a street address with the Census Tract in which it is located,” the Instructions assert that “a particular Census Tract can be fully identified by” state, county, and Census Tract number. Assuming purely for argument’s sake that this data can be readily obtained, it remains apparent that the Commission itself contemplates significant IT-based and/or manual input efforts – which may also require significant training efforts, regardless of how the data is entered into the online Form.⁵ Further, the fact that the Commission affirmed the substantial average burden estimate of 337 hours (about 42 business days) per response – a burden which is likely higher for mid-sized and even some smaller LECs – underscores that this is an unusually burdensome collection.⁶ Additionally, contrary to the Commission’s assertion in the supporting statement, the particular formats required for the Census Tract-related data were not made clear until the release of the draft Form, and any unforeseen (if not inevitable) “glitches” or problems with the data entry process will not be known until the electronic version of the Form is available online. These factors also militate in favor of deferral of the March 1, 2009 deadline. A one-time deferral of the deadline would substantially mitigate the burdens of the new Form 477 while not undermining its underlying policy objectives.

The Commission Did Not Timely Seek OMB Approval In Light of the Burden Imposed by the Form 477

The Commission released its Orders adopting the new broadband reporting requirements nearly seven months ago on June 12, 2008, notifying affected parties that it contemplated an updated

² ITTA Comments at 5-8.

³ ITTA Comments at 6-8.

⁴ Supporting Statement at 5.

⁵ See Proposed Form 477 Instructions at 15-18 (discussing the various means of obtaining relevant census tract data).

⁶ Supporting Statement at 6.

Form would be required for the upcoming March 1, 2009, filing deadline. Unlike previous iterations of the Form 477, however, the Commission did not release the Form concurrently with the new rules. Rather, the Commission did not provide notice of the 60-day public comment period until more than three months later, during which time it did not make the draft Form and Instructions publicly available (despite the instructions on the notice).⁷ The Commission then announced the 30-day public comment period for OMB approval on December 4, 2008, but according to OMB's RegInfo.gov website, however, the Commission did not formally submit the required certification and draft Form 477 and Instructions *until December 24, 2008* – less than two weeks prior to the comment deadline announced in the public notice, and to make matters more complicated, the day before the Christmas holiday and a period during which many carrier personnel knowledgeable with the Form 477 data collection process had only limited (if any) availability.⁸

While the Commission may have legitimate reasons for the delays, the timing of its release of the Form 477, standing alone, will likely pose logistical problems for Form 477 filers. ITTA understands that OMB has given parties until January 23rd to file comments, but this in itself ensures that OMB approval would not occur before late January. Further, the electronic Form 477 itself may not be posted until OMB approval is obtained, and even if approval occurs by late January or early February, by the Commission's own estimates the filing could take weeks to prepare and file. A one-time deferral of the filing deadline would avoid the need for filers to seek and obtain individualized relief, thus saving both industry and Commission resources.

The Commission's Approach to this Information Collection Has Not Complied with the PRA's Public Participation Mandate.

The Commission has simply not complied with the PRA's public participation requirements. Meaningful public participation in an agency's promulgation of information collections has been a cornerstone of the PRA since its inception.⁹ Section 3506(c)(2) of the PRA, enacted as part of the 1995 amendments, enhanced that policy by requiring that the Commission "provide 60-day notice in the Federal Register ... to solicit comment to—" among other things, evaluate the "practical utility" of the collection, evaluate the accuracy of the burden estimate, "enhance the quality, utility, and clarity of the information to be collected," and "minimize the burden of the collection of information on those who are about to respond, including through the use of automated collection techniques or other forms of information technology."¹⁰

OMB's implementing rules reflect the common sense conclusion that, in order to meaningfully comment, interested parties must have timely access to the Information Collection itself. Specifically, OMB's rules expressly provide that:

⁷ See 73 Fed. Reg. at 55080 ("[t]o view a copy of this information collection request ...").

⁸ It does not appear that OMB would have been able to post the Information Collection and supporting statement until late on December 24th at the earliest.

⁹ S. Rep. No. 96-930, at 16-17 (1980), reprinted at 1980 USCCAN 6256-57.

¹⁰ 44 U.S.C. § 3506(c)(2).

If the agency does not publish a copy of the proposed collection of information, together with the related instructions, as part of the Federal Register notice, the agency should—

- (i) Provide more than 60-day notice to permit timely receipt, by interested members of the public, of a copy of the proposed collection of information and related instructions; or
- (ii) Explain how and from whom an interested member of the public can request and obtain a copy without charge, including, if applicable, how the public can gain access to the collection of information and related instructions electronically on demand.¹¹

In adopting this rule, OMB determined that the rule “ensures that the public receives” the 60-day notice required by statute.¹² The Commission, however, neither made a copy of the Information Collection publicly available, nor provided 60 days for public comment during the initial public comment period – thus leaving a far more abbreviated public comment cycle limited to the OMB-level public comment cycle in contravention of the PRA. Further, given the substantial increase in the burden imposed by the revised form and the Commission’s contemplated use of database technology, this is the very type of Information Collection that Congress anticipated would benefit from public input.

The Commission’s delay in submitting the certification and copy of the Information Collection to OMB further undermined the opportunity for meaningful public comment. Under the terms of the PRA, the notice the Commission provides to the Federal Register must “stat[e] that the agency *has made*” the submission and certification to OMB required by statute,¹³ thus contemplating that the agency’s submission would *precede* Federal Register publication. While OMB’s rules provide that it must allow 30 days for public comment from the date the Information Collection is *submitted* – and OMB itself has informally indicated that this full 30-day period will be adhered to – this fact is not apparent from the Federal Register notice and the opportunity for meaningful public comment was thus undermined by the Commission’s actions.

For the foregoing reasons, OMB should, at minimum, grant the relief requested in ITTA’s earlier comments and, even if it approves the substance of the revised Form, instruct the Commission to defer the initial filing deadline for the revised Form 477 until at least 120 days after the revised approved Form and instructions become publicly available.

Respectfully submitted,

s/Joshua Seidemann

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¹¹ 5 C.F.R. § 1320.8(d)(2).

¹² See 60 Fed. Reg. 44977, 44983 (Aug. 29, 1995).

¹³ See 44 U.S.C. § 3507(a)(1)(D).