

Comprehensive Market Data Collection for Interstate Special Access Services

SUPPORTING STATEMENT

This submission is being made pursuant to 44 U.S.C. § 3507 of the Paperwork Reduction Act of 1995 (PRA) to obtain approval from the Office of Management and Budget (OMB) for a new information collection to obtain data and information for an analysis of the special access market.

A. Justification:

1. On December 11, 2012, the Federal Communications Commission (Commission) adopted a Report and Order and Further Notice of Proposed Rulemaking calling for the mandatory collection of data and information for a comprehensive analysis of the special access market.¹ The Commission proposes to collect data from *Providers* and *Purchasers* of *Dedicated Services* as well as from certain entities that provide *Best Efforts Business Broadband Internet Access Service*.² The collected data include, among other things, information on *Locations* served with facilities, billing at the circuit-level, network maps, revenues and expenditures. The Commission delegated authority to the Wireline Competition Bureau (Bureau) to implement the collection.

Special access encompasses all communications services that do not use local switches. This includes services that employ dedicated facilities that run directly between the end user and a service provider's point-of-presence, between the service provider's network and the network of another provider, or between two discrete end user locations. Mostly provisioned via high-capacity circuits, special access – also referred to herein as *Dedicated Service* – plays a critical role in our economy and the provision of broadband services. For example, competitive local exchange carriers rely on special access to reach customers; enterprise customers rely on special access – directly or indirectly – to conduct their business; and “[s]chools, libraries, and other institutions of state and local government depend on special access to provide services to their constituents.”³

The Commission subjects *Incumbent Local Exchange Carriers (ILECs)* to dominant carrier regulation for the provision of certain special access services, capping the prices charged and only

¹ See *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (referred to as either *Special Access Data Collection Order* or *Special Access Data Collection FNPRM*); 78 Fed. Reg. 2572 (Jan. 11, 2013) (providing the public with a summary of the *Special Access Data Collection Order*).

² Capitalized and italicized terms contained herein are defined in the collection. See Attachment A § I, Definitions. The data collection uses the term *Dedicated Service*, which is defined as a service that “transports data between two or more designated points, e.g., between an *End User*’s premises and a point-of-presence, between the central office of a local exchange carrier (LEC) and a point-of-presence, or between two *End User* premises, at a rate of at least 1.5 Mbps in both directions (upstream/downstream) with prescribed performance requirements that include bandwidth-, latency-, or error-rate guarantees or other parameters that define delivery under a *Tariff* or in a service-level agreement.” See Attachment A, Definition of *Dedicated Service*. *Dedicated Service* includes regulated and unregulated “special access” service and its functional equivalents. See *Special Access Data Collection Order*, 27 FCC Rcd at 16319, para. 1 n.1 (defining special access). *Dedicated Service* does not include “best efforts” services, which are handled separately in the data collection. See Attachment A, Definitions for *Dedicated Service* and *Best Efforts Business Broadband Internet Access Service*.

³ *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order, 27 FCC Rcd 10557, 10559, para. 2 (2012) (*Pricing Flexibility Suspension Order*).

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allowing pricing flexibility when the specified regulatory triggers are satisfied. Under price cap regulation, the Commission's Price Cap Index is designed to limit the price *ILECs* charge for service. With the grant of pricing flexibility, *ILECs* can "offer special access services at unregulated rates through generally available and individually negotiated tariffs."⁴ Special access service subject to price cap regulation largely consists of time-division multiplexing (TDM)-based services, *DS1s* and *DS3s*, which have a symmetrical bandwidth of about 1.5 Mbps and 44 Mbps, respectively.⁵ The Commission estimates that the four largest *ILECs* generated more than \$12 billion in revenues from regulated special access services in 2010 alone and more than \$40 billion in revenues were generated by *Providers* when considering the broader special access market.⁶

In August 2012, the Commission suspended its rules for the further grant of pricing flexibility for special access services in areas subject to price cap regulation.⁷ The Commission took this step based on "significant evidence that these rules, adopted in 1999, are not working as predicted, and widespread agreement across industry sectors that these rules fail to accurately reflect competition in today's special access markets."⁸ As the Commission found, the pricing flexibility triggers, which are tied to the extent of collocations in an *ILEC's* wire centers within such *ILEC's* service territory within a Metropolitan Statistical Area (MSA), "are a poor proxy for the presence of competition sufficient to constrain special access prices or deter anticompetitive practices . . ."⁹ The Commission then set course for a one-time data collection "to identify a permanent reliable replacement approach to measure the presence of competition for special access services."¹⁰

On December 18, 2012, the Commission released the *Special Access Data Collection Order*, outlining the data collection.¹¹ Because the Commission found that "[c]ompetition in the provision of special access appears to occur at a very granular level—perhaps as low as the building/tower," the Commission designed the collection to obtain data at an equally granular level to better understand why competition occurs in certain locations but not in other areas.¹² Services covered by the collection include traditional TDM-based special access service (including *DS1s* and *DS3s*), *Packet-Based Dedicated Service (PBDS)* such as Ethernet, and *Best Efforts Business Broadband Internet Access Service* to ensure

⁴ *Pricing Flexibility Suspension Order*, 27 FCC Rcd at 10563, para. 11.

⁵ The Commission has granted forbearance from price cap regulation for certain packet-based and optical transmission special access services to the largest *ILECs*.

⁶ See *Pricing Flexibility Suspension Order*, 27 FCC Rcd at 10559, para. 2; Federal and State Staff for the Federal-State Joint Board on Universal Service, Universal Service Monitoring Report, CC Docket No. 98-202, Supplementary Report Material (2012), available at <http://transition.fcc.gov/wcb/iatd/monitor.html> (click Supplementary Report Material link, 2012 Monitoring Report Supplementary Material directory, Other directory, Revenue Details – 2010.xlsx).

⁷ See *Pricing Flexibility Suspension Order*, 27 FCC Rcd at 10557-58, para. 1.

⁸ *Id.* The U.S. Government Accountability Office (GAO) has also encouraged the Commission to collect data to better understand competition in the special access market. See GAO, FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services 43-44 (2006) ("Consider collecting additional data and developing additional measures to monitor competition on an ongoing basis that more accurately represents market developments and individual customer choice (e.g., price indices and the extent of competitors' networks."), available at <http://www.gao.gov/assets/260/254069.pdf>.

⁹ *Pricing Flexibility Suspension Order*, 27 FCC Rcd at 10560, para. 5.

¹⁰ *Id.* at 10560, para. 6.

¹¹ See *Special Access Data Collection Order*, 27 FCC Rcd at 16360, App. A.

¹² *Id.* at 16327-28, para. 22.

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a “clear picture of all competition in the marketplace.”¹³ Those required to respond include *Providers* and *Purchasers* of special access and certain entities providing *Best Efforts Business Broadband Internet Access Service*.¹⁴ The geographic and temporal scope includes data on a nationwide basis for areas where the *Incumbent Local Exchange Carrier (ILEC)* is subject to price cap regulation (*i.e.*, price cap areas) with the majority of the data obtained from calendar years 2010 and 2012.¹⁵ Respondents are required to retain data and information “prepared for, or in connection with, their responses . . . for a period of three years or until the Commission releases a notice relieving respondents of this retention requirement . . .”¹⁶

The general categories of data and information identified by the Commission for collection are: market structure, pricing, demand, terms and conditions, and competition and pricing decisions.¹⁷ Under each category, most of which would be collected from *Providers*, the Commission highlighted the types of data and information covered. For example, market structure included, among other things, data exclusively from *Providers* on facilities used to provide *Dedicated Service*, non-price factors affecting deployment, collocations, and network maps.¹⁸ The pricing information included data exclusively from *Providers* on the “quantities sold and prices charged for special access services, by circuit element” and required *ILECs* to “list the form of price regulation that applies . . . on a wire-center-by-wire-center basis.”¹⁹ The demand data included not only information on the bandwidth of special access sold and revenues earned by *Providers* but also on the expenditures made by *Purchasers*.²⁰ The terms and conditions section called for information and data from both *Providers* and *Purchasers*, seeking details on topics such as the discounts and benefits associated with *Tariff* plans and the business rationale for those plans.²¹ The Commission also sought information on Requests for Proposals and advertised and marketed services to help evaluate competition and pricing decisions for special access services. Lastly, the Commission described the coverage area and price information it sought to collect from entities providing *Best Efforts Business Broadband Internet Access Service*.²² The Commission provided an “initial version” of the questions and definitions for the collection as an appendix to the order.²³

On September 18, 2013, the Bureau released a Report and Order clarifying the scope of the collection; providing instructions on how to respond to the data collection questions; and providing a list of all modifications and amendments to the data collection questions and definitions.²⁴ These actions

¹³ *Id.* at 16326-27, paras. 16-19.

¹⁴ *Id.* at 16327-28, para. 22 (exempting those entities providing *Best Efforts Business Broadband Internet Access Service* with fewer than 15,000 customers and fewer than 1,500 business broadband customers).

¹⁵ *Id.* at 16328-31, paras. 23-29.

¹⁶ *Id.* at 16340, para. 54.

¹⁷ *Id.* at 16331, para. 30.

¹⁸ *Id.* at 16331-33, paras. 31-35.

¹⁹ *Id.* at 16333, paras. 36-37.

²⁰ *Id.* at 16333-34, para. 38.

²¹ *Id.* at 16334, para. 39.

²² *Id.* at 16335-37, paras. 40-46.

²³ *Id.* at 16331, para. 30.

²⁴ See *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order, DA 13-1909, para. 7 (Wireline Comp. Bur. rel. Sept. 18, 2013) (*Data Collection Implementation Order*).

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were based on feedback received from potential respondents, including the PRA comments filed with the Commission during the 60-day public comment period, and the Bureau's further internal review.²⁵

The Commission plans to use the data collected for a one-time, multi-faceted market analysis.²⁶ The analysis will evaluate "how the intensity of competition (or lack thereof), whether actual or potential, affects prices, controlling for all other factors that affect prices."²⁷ The analysis will include "econometrically sound panel regressions . . . of the prices for special access on characteristics such as 1) the number of facilities-based competitors (both actual and potential); 2) the availability of, pricing of, and demand for best efforts business broadband Internet access services; 3) the characteristics of the purchased service; and 4) other factors that influence the pricing decisions of special access providers, including cost determinants (*e.g.*, density of sales) and factors that deliver economies of scale and scope (*e.g.*, level of sales)."²⁸ Because of the various factors that may influence competition at a particular location, the Commission has designed the collection to obtain detailed data at the location level; aggregated data at the national level will not provide the level of granularity needed for the Commission's analysis of the special access market. For an additional discussion on the Commission's decision to use a census approach instead of a sample survey, see the response to Item B.2. The Commission also plans to analyze the information from *Purchasers*, as well as *Providers*, to assess the reasonableness of terms and conditions offered by *ILECs* for special access service.²⁹

Once the data are analyzed, the Commission can evaluate whether to make changes to its existing pricing flexibility rules to better target regulatory relief in particular geographic areas where "actual and potential competition for special access is likely to constrain prices."³⁰ The Commission's existing pricing flexibility rules, which are currently suspended, are based on predictive proxies instead of data and are not working as predicted. *ILECs* operating in areas that are arguably competitive are denied pricing flexibility under the current rules and relief is instead granted in areas where competition is lacking; "this mismatch is causing real harm to American consumers and businesses and hindering investment and innovation."³¹ The Commission now plans to undertake a data-driven approach to better understand the factors that influence competition in a particular location. With the data and analysis, the Commission can then evaluate whether to use a different proxy-based approach to granting regulatory relief based on the presence of specifically identified factors within an area that are indicative of actual or potential for special access competition, a case-by-case approach, or some hybrid of the two.³²

Changes to the Collection in accordance with OMB's PRA review process.

1. Where data sought for 2010 and/or 2012, only require the reporting of data for a single year, and use the most recent year (*i.e.*, calendar year 2013).

²⁵ See *id.* at para. 7.

²⁶ *Special Access Data Collection FNPRM*, 27 FCC Rcd at 16343-49, paras. 66-71.

²⁷ *Id.* at 16346-47, paras. 68-69.

²⁸ *Id.* at 16346, para. 68.

²⁹ *Id.* at 16354-56, paras. 91-93.

³⁰ See *Special Access Data Collection FNPRM*, 27 FCC Rcd at 16346, para. 69.

³¹ See *Pricing Flexibility Suspension Order*, 27 FCC Rcd at 10559, para. 3.

³² See *Special Access Data Collection FNPRM*, 27 FCC Rcd at 16352, paras. 81-84.

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2. Revise definition of *Purchasers* to exclude entities from the collection that purchased less than \$5 million in *Dedicated Services* in 2013 (in areas where the *ILEC* is subject to price cap regulation).
3. Do not require *Purchasers* to answer Questions II.E.4-8, II.E.14, II.F.3-7, and II.F.13. *Purchasers* can provide information in response to such questions on a voluntary basis.³³
4. Require the reporting of revenues and expenditures broken down by bandwidth as set forth in Questions II.A.16, II.B.9, II.E.7-8, and II.F.6-7, only if respondent keeps such information in the normal course of business. Otherwise, respondent can provide information on a voluntary basis.
5. Only require the reporting of CLLI code for *ILEC* wire center in response to Question II.E.2.d if kept in the normal course of business. Otherwise, respondent can provide information on a voluntary basis.
6. In Question II.A.11 directed at *Competitive Providers*, only require responses where the respondent was selected as the winning bidder on a Request for Proposal (RFP). Respondents can provide information on unsuccessful RFP bids and business rules relied upon to submit bids on a voluntary basis.
7. In Questions II.A.4.c and II.B.3.c regarding the reporting of *Locations* with *Connections*, *Providers* are only required to provide the geocode for the *Location* if the respondent keeps such information in the normal course of business. Respondent can, however, provide such information on a voluntary basis.
8. In Question II.A.5 directed at *Competitive Providers* regarding fiber maps and the reporting of *Nodes* used to interconnect with third party networks, do not require cable companies to show the feeder links to locations, only their interoffice transport fiber network. In addition, cable companies are only required to report their headends (*i.e.*, *Nodes*) that they have upgraded to provide metro Ethernet service, or its functional equivalent.

We have made revisions to the questionnaire and instructions consistent with the above changes.³⁴ Parts A and B of the supporting statement have also been revised to reflect these changes.

Authority for the Information Collection. There is widespread accord in the record of this docket that the Commission has the authority to require the collection of the data and information it needs to inform its future actions.³⁵ The Commission's statutory authority for the collection stems from several parts of the Communications Act of 1934, as amended (the "Act" or the "Communications Act"). Section 201 of the Act, 47 U.S.C. § 201, requires the agency to ensure that rates, terms, and conditions for communications services are just and reasonable. Section 202 of the Act, 47 U.S.C. § 202, prohibits

³³ Note that the Bureau already made optional in its September 2013 order the following questions: II.E.9-11, 13 and II.F.8-10, 12. *Data Collection Implementation Order*, 28 FCC Rcd at 13209, paras. 51-52. Accordingly, with the above revisions, the only remaining mandatory questions directed at *Purchasers* are as follows: II.E.1-3, II.E.12, II.E.15, II.F.1-2, II.F.11, and II.F.14.

³⁴ See Attachments A and B (rev. August 2014).

³⁵ See *Special Access Data Collection Order*, 27 FCC Rcd at 16339, para. 50 n.104.

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unjust or unreasonable discrimination in “charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service.” Section 706 of the Act, 47 U.S.C. § 1302(a), requires the Commission to “encourage the deployment of advanced telecommunications capability . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.”

The data that respondents submit will enable the Commission not only to determine whether carriers’ special access rates, terms, and conditions are just and reasonable under section 201, but also whether they are nondiscriminatory under section 202 and encourage the deployment of advanced telecommunications capability pursuant to section 706. Sections 201, 202, and 706 provide ample statutory authority for this collection, augmented by the Commission’s authority in 47 U.S.C. § 154(i) to “perform any and all acts . . . and issue such orders . . . as may be necessary in the execution of [our] functions” and 47 U.S.C. § 201(b), which authorizes the Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions” of the Communications Act.

The above provisions give the Commission the authority to collect data, information, and documents from *ILECs*, which is the class of providers whose services are potentially subject to regulatory change in this proceeding. Additionally, section 218 of the Act, 47 U.S.C. § 218, requires the Commission to keep itself informed of the conduct of business of all carriers subject to Title II of the Act, and permits the Commission to obtain from carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created. Thus, we also have authority under section 218 to obtain data from *ILECs*, competitive local exchange carriers (CLECs), commercial mobile radio service providers, and other common carriers, whether or not they provide or purchase special access service or other relevant services. Finally, under section 1 of the Act, 47 U.S.C. § 151, the Commission has the authority to extend the data collection beyond common carriers to include other market participants that provide interstate communications by wire or radio.

This data collection is mandatory as defined by the PRA. Those failing to comply are subject to monetary forfeitures of up to \$160,000 for each violation or each day of a continuing violation, up to a maximum of \$1,575,000 for any single act or failure to act that is a continuing violation.³⁶ False statements or misrepresentations to the Commission may be punishable by fine or imprisonment under Title 18 of the U.S. Code.

This information collection does not affect individuals or households. Therefore, there are no privacy impacts.

2. The Commission will use this data and information to conduct a one-time comprehensive evaluation of competition in the special access market, and to assess whether certain terms and conditions of sale for special access service are just and reasonable. The Commission will use the results of this analysis to evaluate potential changes to its existing pricing flexibility rules in a notice-and-comment rulemaking proceeding. Changes, if appropriate, will better target regulatory relief to areas where actual

³⁶ 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2). Part 1.80(b) of the Commission's rules was recently amended to increase penalty amounts to account for inflation. *See Amendment of Section 1.80(B) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 13-1615 (Enf. Bureau rel. Aug. 2, 2013); *see also* 78 Fed. Reg. 49370 (Aug. 14, 2013).

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or potential competition is acting as a constraint to ensure just and reasonable rates and terms and conditions for special access services.

3. The Commission will create a secure web portal for the electronic submission of responses. Filers will login using an FCC Registration Number (FRN) and password and download a data container that will include record specifications for compiling data responses and software tools to verify that data are submitted in the appropriate format. Filers will subsequently log in using their FRN and password and electronically submit responses (both data and narrative responses) to the data collection. In addition to using a web portal, we are considering using an SSH File Transfer Protocol (SFTP) for the electronic submission of larger files to the Commission (up to eleven gigabytes in size) and allowing for the manual submission of even larger files on storage devices. The Bureau will provide additional details on the electronic filing process in advance of the submission deadline. There will be no paper submissions associated with this data collection.

4. There is no avoidable duplication in any question in this information collection request. No other agency imposes a similar information collection on the respondents. No information is requested if it could reasonably be found in publicly available sources.

Certain requests for data are complimentary, as when we ask both *Providers* and *Purchasers* for information on the *Tariffs* used to provide and purchase *Dedicated Service*. Such overlapping questions allow Commission analysts to cross-check submissions for accuracy and to follow up in case of significant variation. The reliability of the data collection would be impaired without this verification. Some respondents may conclude that qualitative inquiries concerning terms and conditions could essentially require them to duplicate comments that they have already filed in this proceeding. Respondents may cut and paste prior comments that are still timely and accurate. In addition, we have made certain qualitative questions directed at *Purchasers* optional.³⁷

5. With two exceptions detailed below – entities in rate-of-return areas and certain entities providing *Best Efforts Business Broadband Internet Access Service* – the Commission declined to exempt small providers, even providers with twenty-five or fewer employees, from responding to this data collection. The Commission found that competition “appears to occur at a very granular level – perhaps as low as the building/tower” and concluded that even a very small provider can have a large effect on a local market if it competes to serve an office park or central business district.³⁸ Accordingly, the data must be comprehensive to understand how competitive entry – even the threat of entry posed by small, perhaps nascent competitors – affects the market for special access. The Commission thus declined to exclude providers of special access based on their size from this information collection.

The focus of the underlying rulemaking proceeding is on the regulation of special access services in price-cap territories. Accordingly, entities that only provide or purchase *Dedicated Service* or provide *Best Efforts Business Broadband Internet Access Service* in areas subject to interstate rate-of-return regulation are not required to provide data and information in response to the collection. However, if an entity in an interstate rate-of-return area reported broadband connections to end user locations on the Form 477 “Local Telephone Competition and Broadband Reporting,” the entity would have to certify to the Commission that it is outside the scope of the collection, but this burden is minimal.³⁹

³⁷ See response to Item A.8.

³⁸ *Special Access Data Collection Order*, 27 FCC Red at 16327, para. 22.

³⁹ See *Data Collection Implementation Order* at paras. 16-18; Response to Item B.1.

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By limiting the scope of the data collection to price cap areas, we substantially reduce the burden on smaller carriers. Price cap areas are typically more urban, metropolitan whereas rate-of-return areas are predominantly rural in nature.⁴⁰ Carriers operating in rural interstate rate-of-return areas are typically smaller in size. For example, at the holding-company level, there are 13 price cap ILECs with an average of more than 6,000,000 lines each.⁴¹ In comparison, there are 754 rate-of-return ILECs with an average of fewer than 8,000 lines each.⁴² Limiting the collection to price cap areas inevitably reduces the number of smaller carriers affected.

The Commission further reduced the burden on smaller entities by exempting entities that only provide *Best Efforts Business Broadband Internet Access Service* if they have fewer than 15,000 customers and fewer than 1,500 business broadband customers. For those entities above this threshold, the Commission will not require information if the entity did not submit data for the State Broadband Initiative (SBI) Grant Program in 2010 or 2012. In these ways, the Commission further tailors its collection to those providers with the resources to compile the data.

In addition to the limited exceptions noted above, the Bureau clarified in the *Data Collection Implementation Order* that the Commission intended a narrower scope for *Purchasers* subject to the collection. The term *Purchasers* is broadly defined by the Commission to include “any entity subject to the Commission’s jurisdiction . . . that purchases special access services.”⁴³ There are potentially hundreds of thousands of license and authorization holders, information service providers, or others that are “subject to the Commission’s jurisdiction” but otherwise are simply consumers of *Dedicated Services* and are unfamiliar with, and perhaps completely unaware of, the Commission’s requirements and proceedings involving the regulation of *ILECs* in price cap areas.

Consistent with the Commission’s overall intent, the Bureau clarified that the definition of *Purchasers* excludes from the collection entities that are subject to the Commission’s jurisdiction only because they fall within one or more of the categories listed below. These exclusions do not apply to entities that hold licenses, authorizations or registrations under any other Part of the Commission’s rules not listed below, or that provide a *Dedicated Service* or a *Best Efforts Business Broadband Internet Access Service* in a price cap area.⁴⁴

- *End Users* that provide an information service;
- Equipment authorization holders regulated under Parts 2 and 15 of the Commission’s rules;
- Accounting authorization holders in the maritime and maritime mobile-satellite radio services regulated under Part 3 of the Commission’s rules;
- Experimental radio authorization holders regulated under Part 5 of the Commission’s rules;

⁴⁰ A map depicting the study areas where incumbent local exchange carriers (ILECs) are subject to price cap and rate-of-return regulation is available on the Commission’s website. See FCC, <http://www.fcc.gov/maps/regulatory-type-holding-company-level-study-area>.

⁴¹ See FCC, Universal Service High-Cost Program Disbursements, <http://www.fcc.gov/document/universal-service-high-cost-program-disbursements> (analyzing 2010 data) (last visited July 17, 2013).

⁴² *Id.*

⁴³ *Special Access Data Collection Order*, 27 FCC Rcd at 16327, para. 20.

⁴⁴ For example, an entity holding an earth station license issued under Part 25 of the Commission’s rules that also has an experimental license issued under Part 15 (a listed exclusion category), is not excluded from the collection if it purchased *Dedicated Service* in a price cap area during the relevant reporting periods. Likewise, an entity holding an antenna structure registration under Part 17 (a listed exclusion category) is not excluded from the collection if it provided a covered *Best Efforts Business Broadband Internet Access Service* in a price cap area.

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- Commercial radio operators regulated under Part 13 of the Commission’s rules;
- Antenna structure registration holders regulated under Part 17 of the Commission’s rules;
- Television and radio broadcasters regulated under Part 73 of the Commission’s rules;
- Holders of authorizations issued pursuant to Part 74 of the Commission’s rules such as experimental radio, auxiliary, special broadcast and other program distribution service authorizations;
- Maritime service authorization holders regulated under Part 80 of the Commission’s rules;
- Aviation service authorization holders regulated under Part 87 of the Commission’s rules;
- Private land mobile radio service authorization holders regulated under Part 90 of the Commission’s rules except for holders of authorizations under Part 90 for the provision of point-to-point fixed microwave services and authorizations in the Wireless Broadband Services frequency band, 3650-3700 MHz;
- Personal radio service authorization holders regulated under Part 95 of the Commission’s rules; and
- Amateur radio service authorization holders regulated under Part 97 of the Commission’s rules.

As explained in the *Data Collection Implementation Order*, excluding the above listed entities that could potentially purchase special access from the collection will not adversely affect the Commission’s analysis. The analysis will rely more heavily on the data obtained from *Providers*, e.g., *Locations* served and prices charged at the circuit-level, than the limited information on terms and conditions obtained from *Purchasers*.⁴⁵ Although the data obtained from *Purchasers* will help to identify harmful, anticompetitive conduct in the sale of *Dedicated Service*, it need not, and indeed cannot, be comprehensive to serve this purpose. Moreover, these consumers of *Dedicated Service* are unlikely to respond with any additional information on terms and conditions that we would not otherwise obtain from a smaller respondent pool and so the benefit of having a broader array of *Purchasers* respond is outweighed by the burden. Clarifying the scope of *Purchaser* respondents was therefore appropriate.

Purchasers that purchased less than \$5 million in *Dedicated Services* in 2013 (in areas where the *ILEC* is subject to price cap regulation) are not required to respond to the collection.

For details on additional efforts taken to minimize the collection’s burden on small entities, see the responses to the concerns of smaller entities discussed in Item A.8 below.

6. As discussed in Item A.1, special access plays a critical role in our economy. The Commission has suspended its pricing flexibility rules because the regulatory mechanism for granting pricing flexibility to *ILECs* is not working as predicted. Absent reform, *ILECs* will be denied regulatory relief in areas where actual or potential competition may exist and will continue to enjoy relief where there may be insufficient competition to constrain rates, terms, and conditions at just and reasonable levels. The resulting mismatch is a “real harm to American consumers and businesses” and a hindrance to “investment and innovation.”⁴⁶

The Commission has already tried rules based on predictive judgments; according to the record evidence, these rules are a poor proxy for the presence of actual or potential competition. The

⁴⁵ See, e.g., *Special Access Data Collection FNPRM*, 27 FCC Rcd at 16346, para. 68 (proposing to undertake econometric modeling to develop panel regressions on special access prices by taking into account, among other things, the number of facilities-based competitors and the characteristics of purchased service).

⁴⁶ *Pricing Flexibility Suspension Order*, 27 FCC Rcd at 10559, para. 3.

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Commission now turns to a data-driven analysis to measure competition in the special access market, an approach that is supported by industry. Informed rulemaking for special access rates and conditions depends on the collection and analysis of the data and information sought.

Because the Commission has found that competition may occur at a very granular level, the collection is designed to capture data at an equally granular level, *e.g.*, collecting information on *Locations* served and billing at the circuit-level. This inevitably limits our ability to implement a collection that is minimally burdensome on all respondents.

7. There are no special circumstances that would cause the information collection to be conducted in an unusual manner, *i.e.*, none of the listed situations described in the instructions for this question applies to this data collection.⁴⁷ Though respondents will submit information that is commercially sensitive and considered confidential, the Commission will provide detailed procedures to maintain confidentiality.⁴⁸ Additional information on these procedures is provided in Item A.10.

8. Pursuant to 5 CFR Section 1320.8(d), the Commission published a notice in the Federal Register on February 12, 2013 (78 Fed. Reg. 9911), soliciting comment on the information collection prior to submission to OMB. Comments were due by April 15, 2013, and thirteen comments were filed by the following parties:

- American Cable Association (ACA);
- Alaska Communications Systems (ACS);
- The Ad Hoc Telecommunications Users Committee (Ad Hoc);
- AT&T Inc. (AT&T);
- BT Americas Inc. (BT Americas), Cbeyond Communications, LLC (Cbeyond), EarthLink, Inc. (EarthLink), Integra Telecom, Inc. (Integra), Level 3 Communications, LLC (Level 3), and tw telecom inc. (TW Telecom) (filing jointly and collectively referred to as “BT Americas *et al.*”);
- Chariton Valley Telephone Corporation (Chariton);
- Cincinnati Bell, Inc. (Cincinnati Bell);
- Independent Telephone and Telecommunications Alliance (ITTA);
- National Cable and Telecommunications Association (NCTA);
- NTCA—The Rural Broadband Association (NTCA);
- Smith Bagley, Inc., Cellular Network Partnership, an Oklahoma Limited Partnership d/b/a Pioneer Cellular, Cross Telephone, L.L.C., Cellular Properties, Inc. d/b/a Cellular One of East Central Illinois, and Nex-Tech Wireless, LLC (filing jointly and collectively referred to as “Smith Bagley *et al.*”);
- Sprint Nextel Corporation (Sprint); and
- Union Telephone Company, AST Telecom, LLC d/b/a Blue Sky Communications, Illinois Valley Cellular RSA 2-I Partnership and Illinois Valley RSA 2-II Partnership, d/b/a Illinois Valley Cellular, Leaco Rural Telephone Cooperative, Bluegrass Cellular, Inc., and Eastern

⁴⁷ See OMB, <http://www.whitehouse.gov/sites/default/files/omb/inforeg/83i-fill.pdf> (providing instructions for the supporting statement for PRA submissions).

⁴⁸ See *Wireline Competition Bureau Seeks Comment on Protective Order for Special Access Data Collection*, Public Notice, DA 13-1470 (Wireline Comp. Bur. rel. June 28, 2013).

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Kentucky Network, LLC d/b/a Appalachian Wireless (filing jointly and collectively referred to as “Union Telephone *et al.*”).⁴⁹

The comments are summarized and discussed below as follows: (1) comments on the general utility and necessity of the collection; (2) comments on the specific topics and questions contained in the collection; (3) comments on the burden on small entities; and (4) comments on the burden hour and costs estimates.

General Utility/Necessity of the Collection

Support for the collection: Many commenters affirm the usefulness and need for this data collection. Ad Hoc (at 12) states that the Commission needs the information to set rates and send pricing signals that let purchasers make economically rational technology choices, and that the compliance costs are offset by avoided litigation costs. Ad Hoc (at 3-4) and BT Americas *et al.* (at 14-15) state that the burden of the data collection is justified by the need to prevent harmful effects of inflated special access prices on the national economy, which the Commission cannot regulate without a data-based evidentiary record. BT Americas *et al.* (at 6-7) and Sprint (at 3-4) state that the collection is needed to investigate firms with “substantial and persisting market power” that have both the incentive and ability to charge rates that are unreasonable high and/or discriminatory. BT Americas *et al.* (at 8-9 and 11-12) states that gathering data over two non-consecutive years is justified in order to examine how competition develops (or does not develop) over time. BT Americas *et al.* (at 9-10 and 12-13) and Sprint (at 4-5) state that collecting data for both circuit-based and packet-based special access services is useful and necessary in light of the Commission’s statutory obligation to ensure that special access rates, terms, and conditions are just and reasonable. AT&T (at 11-12) states that requesting data about the location of providers’ network facilities is important because such data reasonably measure competition, and the Commission must collect the data because it has suspended the pricing flexibility rules for special access services pending this data collection.⁵⁰

Excessive or unreasonable burden: ACS (at 4-6) and Cincinnati Bell (at 5-6) state that the collection requires manual, labor-intensive review of data stored in archived paper records or not kept at all. AT&T (at 22) states that developing, running, and testing queries against billing tables for AT&T’s regions would be challenging and complex, and that the results would need to be manually verified. Cincinnati Bell (at 5) states that the request would require both a substantial programming effort to design, develop, code, implement and operate systems to extract existing data, and to arrange and format the data in order to respond to the information collection. ITTA (at 6) states that many respondents have not been required to comply with relevant recordkeeping or reporting obligations, and for this reason gathering, creating, compiling, and submitting the requested information will require substantial time from employees who are already fully occupied with other roles and functions within their companies. Cincinnati Bell (at 3) and NTCA (at 2-3) state the collection includes information that is not necessary or useful and the level of detail requested is unjustified in light of the burden on respondents. Cincinnati Bell (at 9-10) and NCTA (at 9) state the Commission should only require carriers to supply data that currently exist and then only in formats that are readily retrievable in an automated manner and that do not require manual analysis. NCTA (at 8-13) states its members will have to manually sort through records of every special access circuit they have deployed in order to provide pricing data (at 8); revenue data (at 9); purchaser and tariff data (at 12); and headquarters affiliate data (at 13). Smith Bagley *et al.* (at

⁴⁹ Union Telephone *et al.* submitted their comments after expiration of the 60-day comment period but we nonetheless include their comments in this supporting statement.

⁵⁰ AT&T and BT Americas *et al.* generally support the data request, but, as discussed below, AT&T opposes collecting data on prices and BT Americas *et al.* opposes collecting data on best-efforts services.

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5, 10-11) and AT&T (at 13) raise the concern that the sheer volume of information collected will prevent the Commission from processing the data in a useful and timely fashion.

The suspended pricing flexibility rules, based on predictive judgments, are not working as predicted. To evaluate improvements to these rules, the Commission will conduct a one-time, data-driven analysis of the market; an approach supported by industry and the GAO.⁵¹ Until the data are collected and analyzed, *ILECs* are unable to obtain further grants of pricing flexibility and relief granted in any non-competitive areas will continue. There is an urgent need to move quickly on this data collection.

The new collection seeks with limited exception information from 2013. *Providers* and *Purchasers* could not have retroactively designed their databases to track every conceivable data point required by the Commission for its analysis. However, given the urgency of the proceeding, the Commission cannot structure the collection to obtain data prospectively. In addition, the Commission cannot design a collection that will seamlessly work with the databases and billing systems used by the various types of providers that supply *Dedicated Service*, *i.e.*, traditional telephone companies, cable system operators, wireless providers, etc. To produce quality data for the Commission's analysis, certain types of respondents will inevitably incur a significant burden, especially those not familiar or designed to comply with the Commission's regulation of incumbent telephone companies. Nonetheless, the Commission has decided that the benefit to the American public gained from reforming the Commission's special access rules outweighs the burden of a large-scale data collection.

The Bureau released the *Data Collection Implementation Order* on September 18, 2013, providing clarifications and instructions for responding to the collection.⁵² The order largely addresses the more burdensome aspects of the collection raised by commenters. That said, the collection remains a significant undertaking for *Providers* and *Purchasers*. The hour and cost estimates in Items A.12 and A.13 incorporate the burden of processing the requested data manually, coordinating disparate data sets, and gathering new data.

The Commission is capable of making thorough and timely use of the data. Resources devoted to timely processing of the data are quantified in the response to Item A.14. In brief, the Commission is prepared to categorize and reconcile data; convert disparate values into a coherent format permitting analysis; and perform the analysis. The Commission will also purchase and configure secure storage and networking resources for the data collection and will segregate data from other Commission data collections. A web portal and data container are also under development specifically for this collection, and the Commission will provide for the general maintenance of the dedicated IT infrastructure as well as ongoing IT support.

Comments on Specific Questions or Topics

Location Data: In the collection, the Commission plans to obtain detailed information from *Providers* on their *Connections to Locations* for the competition analysis. This data will help the Commission evaluate market structure and demand. AT&T (at 3-4, 13) supports the collection of this information, saying that, although the volume of the facilities information collected is sizable, the Commission can analyze the information in a reasonable amount of time without extraordinary effort.

⁵¹ See GAO, FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services 43-44 (2006), available at <http://www.gao.gov/assets/260/254069.pdf>.

⁵² *Data Collection Implementation Order*.

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According to AT&T (at 12-13), omitting geocode data (latitude and longitude) would adversely affect the utility of the collection.

Several commenters are concerned about the *Location* information sought in the data collection, namely the requirement that the *Provider* (1) indicate whether the connected *Location* is a building, cell site, or other man-made structure, *i.e.*, reporting the location type and (2) report the geocode for each *Location*. For example, ACS (at 5-6) states that data such on facilities, geocoding, and location types are not programmed into its systems. ACA (at 7, 11-12) states that almost all of its members rely on customers' addresses rather than geocoding and asks the Commission to accept information that already exists. ACA (at 5-6) further states that small cable operators are relatively new entrants in the provision of *Dedicated Services*, and their local market presence is not significant enough to warrant the hours of staff time and physical visits to survey sites and obtain geographic coordinates. Cincinnati Bell (at 3-4, 7) states that it does not relate billing and inventory data to geographic coordinates of a certain degree of accuracy, that the Commission has not justified collecting coordinates instead of addresses, and that geocoding to a certain level of precision might underestimate competition if not all *Providers* report serving the exact same geocoded *Location*. NCTA (at 10) states that collecting information on geographic coordinates and location type is inordinately burdensome because site visits may be necessary to confirm such information.

After considering the burdens and benefits of the *Location* information fields, we have clarified in the instructions that if the filer does not know the location type, it can simply report the type as "unknown." While we intend to use the location type to further understand the demand segments for *Dedicated Services*, we can offset gaps in this data with information reported elsewhere in the collection. As for the location geocode, we intend to use this information to identify where *Connections* and *Locations* are located, which gives us a better understanding of where special access competition exists. We understand that *Providers* are more likely to have coordinate information for connected cell sites than for connected buildings. As a result of the further changes to the collection pursuant to the OMB review process, *Providers* are now only required to provide the geocode for the *Location* if the respondents keep such information in the normal course of business. Respondents can, however, provide such information on a voluntary basis. Where geographic coordinates are not provided, the Commission will use the street addresses provided by respondents to determine the geocode through use of a geocoding platform.

These clarifications will eliminate the need for site visits to verify location type and geographic coordinates, significantly decreasing the collection burden. For example, Comcast Corporation (Comcast), a larger cable company, will not have to incur "expenses close to \$450,000" and spend "in excess of 15,000" hours for such site visits (NCTA, L. Panepinto Decl. at 4). ImOn Communications, LLC (ImOn) and Frankfort Plant Board (Frankfort Plant), both smaller cable companies, will no longer need to spend nearly 200 and 60 hours, respectively, on this facet of the collection (ACA, M. Edl Decl. at 3, J. Higginbotham Decl. at 3). For Cox Communications Inc. (Cox), another large cable company, this will significantly reduce the "most onerous aspect of this data collection" (NCTA, R. Hattori Decl. at 4).

Mapping requirements: The collection requires *Competitive Providers* to file maps showing the fiber routes constituting their network, including those fiber routes connecting their network to *Locations*. *Competitive Providers* must also include the *Nodes* used to interconnect with other providers and the year each *Node* went live. The maps showing fiber routes help the Commission identify where *Competitive Providers* can or potentially could provide *Dedicated Service*. The location of the interconnection *Nodes* helps the Commission understand the "non-price factors that may impact where special access providers build facilities or expand their network via [*Unbundled Network Elements (UNEs)*]." ⁵³ In addition, cable

⁵³ See *Special Access Data Collection Order*, 27 FCC Rcd at 16332, para. 33.

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companies in their local franchise service areas are now not required to show the feeder links to locations on their maps, only their interoffice transport fiber network. In addition, cable companies are only required to report their headends (*i.e.*, *Nodes*) that they have upgraded to provide metro Ethernet service, or its functional equivalent.

AT&T (at 12-13) supports the submission of maps, saying the burden is outweighed and justified by the importance of detailed maps to accurately gauge competition. According to AT&T, reducing this request would adversely affect the practical utility of the entire collection effort.

Some commenters, namely those representing cable companies and smaller carriers, object to the request for maps. ACA (at 6, 10-11) and NCTA (at 6-7) state that their members do not have fiber maps showing facilities to *Locations*, and that the requirement to create maps is the most burdensome element of the collection. NCTA (at 7) alternatively proposes that the Commission: (1) allow companies to simply submit whatever network maps they have or “a list or ‘airline’ map showing the network footprint (headend locations and customer locations served by those headends)” and (2) eliminate the *Node* identification requirements. ACS (at 5-6) states that it does not record whether a connection is fiber or copper. Cincinnati Bell (at 7) states that the Commission has not provided enough detail about the required format for fiber route maps.

As discussed in the *Data Collection Implementation Order*, although we do not eliminate the mapping obligations, we did make certain clarifications to reduce the burdens while ensuring the Commission has sufficient data for its analysis.⁵⁴

Because the Commission has found that competition for *Dedicated Service* “appears to occur at a very granular level—perhaps as low as the building/tower,”⁵⁵ it needs to collect information at an equally granular level, *i.e.*, the level of the connected *Location*. The mapping obligation is already limited by focusing solely on fiber routes and not requiring the mapping of other transmission media. Relative to copper or coaxial cable, a *Competitive Provider* can easily add additional *Dedicated Services* or other managed services to a fiber line. The presence of fiber down a street is thus a good indicator of a *Competitive Provider*’s ability to serve nearby *Locations*. To further reduce the burdens, we clarify in the instructions that the scale used for shapefile mapping data is 1:24,000, which is the standard used by the U.S. Geological Survey National Map and the same scale used by the Bureau for the study area boundary (SAB) map collection. This standard will give the Commission sufficient data on the streets and paths traversed by fiber while eliminating the need to report the exact location of fiber on the street. We expect that *Competitive Providers* would know the streets and routes where their fiber runs without having to conduct site surveys so this clarification should significantly reduce the reporting burden for *Competitive Providers* while still giving the Commission data on fiber routes to a sufficient level of accuracy for its analysis. We do not intend to penalize filers who undertake reasonable, good faith efforts to identify the routes and paths traversed by fiber.

We rejected NCTA’s alternative proposal to otherwise reduce the mapping requirement for two reasons. First, the alternatives would produce non-uniform and less granular data, affecting the Commission’s analysis. Maps would vary by respondent with some simply showing the boundaries of their network coverage and others providing details on some fiber routes but unlikely to the level of the connected *Location*. Even a “list or ‘airline’ map showing the network footprint” would not necessarily give the Commission the fiber routes to *Locations*, at least not to a sufficient level of accuracy. Second, the variability of the maps would substantially increase the burden on Commission staff. For example,

⁵⁴ See *Data Collection Implementation Order* at paras. 34-45.

⁵⁵ See *Special Access Data Collection Order*, 27 FCC Rcd at 16327-28, para. 22.

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the Commission would have to create a base map from the non-uniform data and offset gaps with information collected elsewhere or through third-party data sets. Even if the Commission could somehow fill any data gaps, the result would not be as detailed, uniform, or accurate as with having *Competitive Providers* submit maps showing their fiber facilities to each *Location*. It would also divert Commission resources from analyzing the data to create data necessary to begin the analysis. That said, the additional changes to the mapping requirements for cable companies, *i.e.*, only providing maps showing their interoffice transport network, go towards addressing NCTA's concerns.

In addition to addressing the mapping of fiber routes, we clarified the obligations for identifying interconnection *Nodes* in the instructions to reduce burdens. First, we clarified that *Competitive Providers* can provide information reported to the Central Location Online Entry System (CLONES) database on their interconnection points in lieu of reporting information from their own internal records.⁵⁶ *Competitive Providers* electing this option must certify that their CLONES data are current and accurately identify their points of interconnection and the associated "live" dates to the best of their knowledge.⁵⁷ Second, we clarified in the instructions that *Node* locations need only be accurate to the nearest ± 0.0005 decimal degrees. Third, respondents do not have to report the year the *Node* went "live" if it occurred before 1995 and is unknown.⁵⁸ In addition, cable companies are now only required to report their headends (*i.e.*, *Nodes*) that they have upgraded to provide metro Ethernet service, or its functional equivalent

These clarifications and changes will not adversely affect the data needed for the Commission's analysis but will reduce burdens. The Commission intends to gather data on interconnection points to understand whether the decision to deploy in an area is in response to the demand for *Dedicated Service*. The deployment and interconnecting decisions of non-cable *Competitive Providers* are largely driven by the demand for high-capacity, business services. The reporting of interconnection points by these entities is thus valuable to the Commission. In contrast, a cable system operator's incentives for deploying and interconnecting its facilities, unlike those of non-cable *Competitive Providers*, were historically driven by the demand for residential services.

The CLONES database is widely used by industry to create, update, and maintain codes to uniquely identify the location of geographic places and certain equipment. It also contains historical data on interconnection points as reported by the service providers. *Competitive Providers* can therefore provide the information reported to CLONES without affecting the analysis provided they certify to the best of their knowledge that the data accurately reflect their interconnecting points and "live" dates.

As for the location accuracy level for those *Nodes* identified, the Commission needs to know the neighborhood of the interconnection point. Clarifying the accuracy level for *Nodes* to the nearest ± 0.0005 decimal degrees accomplishes this. In addition, reporting the year a *Node* went "live" going as far back as 1995 will help the Commission understand decisions to deploy facilities to meet the demand for *Dedicated Service*. After 1995, significant competitive entry and merger activity occurred following the enactment of the Telecommunications Act of 1996.⁵⁹ This timeframe will capture that activity along with

⁵⁶ The CLONES database is managed by Telcordia Technologies, Inc. d/b/a Iconectiv, a wholly owned subsidiary of Ericsson. See Systems and Tools, Iconectiv, <https://codecenter.commonlanguage.com/systems.asp?#clones> (providing information about CLONES) (last visited Sept. 9, 2013).

⁵⁷ See Attachment B, Instructions at 14.

⁵⁸ See *id.* at 17.

⁵⁹ The number of reported Competitive Access Providers/CLECs increased substantially from 20 in 1993 to 109 in 1996 with an annual average growth rate of 76 percent during that timeframe. See *Trends in Telephone Service*, FCC, Common Carrier Bur., Industry Analysis Div. at Table 8.1 (July 1998). In addition, from 1995-1999, the

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those headends recently upgraded by cable operators to provide Metro Ethernet (or its equivalent) service.⁶⁰ Accordingly, we will not adversely affect the Commission's analysis if we permit respondents to only report "live" dates prior to 1995 if available.

These clarifications will ease the reporting burden for *Competitive Providers* while ensuring that the Commission has sufficient data for its analysis. Entities do not always retain historical data on interconnection points, so allowing for the submission of CLONES data and for the reporting of "live" dates prior to 1995 only if available will ease the burden on these respondents. These clarifications will also reduce, or completely eliminate, the need to conduct walkouts or surveys at the street or manhole level.

Billing information: The collection contains a section of questions asking for data on the *Dedicated Services* billed to customers by *Competitive Providers* and *ILECs*. The billing section consists of three interrelated questions: (1) reporting monthly billing information, billed at the level of the rate element, but tied to the circuit; (2) identifying adjustment codes; and (3) identifying billing codes. Pricing information plays an important role in any competition analysis.

BT Americas *et al.* (at 8) supports the collection of billing data, saying it will allow the Commission to compare *ILECs*' wholesale and retail prices for *DS1*, *DS3*, and *PBDS* to the prices charged by other *ILECs* and competitors, and that such comparisons will enable the Commission to assess whether *ILECs* are exercising market power in violation of Sections 201(b) or 202(a) of the Act.

Although AT&T supports the data collection as a whole, AT&T opposes the collection of pricing data (at 4-5, 16-17, 23-24), saying that pricing data have no practical utility for a regression analysis because location-specific prices do not exist for most special access arrangements, and *Providers* will have to arbitrarily derive a "by circuit" price. AT&T (at 5-6 and 17-19) further states that peer-reviewed regression analysis of pricing information would require years, so the data collection would be out of date by the time it was analyzed. In addition, ACS (at 5-6) states that it does not record non-recurring charges or adjustments outside the billing cycle. ACA (at 12-14) states that its members cannot supply the data from automated systems but would rather have to manually review customer contracts to respond to the request, which would be unreasonably time-consuming. NCTA (at 9) agrees, and states that pricing data in particular should be limited to automated billing records.

There is no insight into whether or where competition disciplines price without first collecting information indicating what those prices are. It is an open question whether or not the results of a regression analysis will yield meaningful or coherent patterns from which inferences can be drawn. But even if there were no regression analysis, pricing data are still vital to any market analysis. For example, the Commission would need the data to compare prices for similar services supplied at similar locations

number of telecom mergers filed for governmental approval increased almost 50 percent. *Mergers in the Telecomm. Indus.: Hearing before the Senate Comm. on Commerce, Science, and Transp.*, 106th Cong. 2 (1999) (opening statement of John McCain, U.S. Senator from Arizona). Further, between 1996 and 2001, 42 mergers between telecom providers were consummated, 33 of which occurred in 1997 and 1998 alone. See Mark N. Cooper *et al.*, *Successes and Failures of the 1996 Telecommunications Act: Telecom Mergers (1996-2001)*, available at http://www.civilrights.org/publications/1996_telecommunications/telecom-mergers.html (last visited Sept. 9, 2013).

⁶⁰ A cable company's decision to upgrade headends to provide Metro Ethernet (or its equivalent) service is relevant to the demand for *Dedicated Services* because these upgrades reflect areas in which the cable system operator anticipated that sufficient demand was likely to exist for *Dedicated Services*. We therefore also clarify in the instructions that cable system operators must separately indicate those *Nodes* that have been upgraded to provide a Metro Ethernet (or its equivalent) service. See Attachment B, Instructions at 15.

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by different carriers; or to compare prices for similar services supplied across different territories by the same carriers; or to compare price structures for similar services supplied at similar locations by different carriers. Without pricing data, the Commission is forced to largely rely on a market structure analysis, focusing on the market shares of *Providers* and barriers to entry, only augmented by the highly limited and aggregated data on market conduct, including pricing changes that can be gleaned from public sources.

Moreover, the Commission needs data in a uniform format that allows for comparison. Because different companies and industry sectors record billing differently, respondents cannot simply upload automated records. Such uploads would be unintelligible. We do not discount the burden on some *Providers* to convert their records to fit the questions, but it is at least possible for respondents to answer the questions either with in-house resources or by hiring consultants. By contrast, no amount of Commission resources can replicate the capacity of the companies' owners, managers, and staff to report what their special access prices are. The burden estimates in Items A.12 and A.13 factor in all estimates in the record, including the burden of collecting pricing data.

With respect to the concerns raised about the lengthy time period associated with analyzing price data, the Commission is devoting substantial resources to ensure that the market analysis is timely, as discussed in Item A.14. In a dynamic market like this one, any data collection can be disparaged as a snapshot of the past and not the future. But the alternative—making policy without data—has been tried without success.

Marketing and Requests for Proposals (RFPs): The Commission asks *Competitive Providers* in the collection to provide (1) data, maps, information, marketing materials, and/or documents identifying areas where *Dedicated Services* were advertised or marketed as of December 31, 2010 and as of December 31, 2012 and (2) information on the five most recent RFPs won and the five largest RFPs where the bid was unsuccessful.⁶¹ The Commission seeks the advertising and marketing information to evaluate assertions by parties that such efforts may impact pricing and deployment decisions. RFP information will also help the Commission assess competition in the market. With the additional changes to Question II.A.11 regarding RFPs, *Competitive Providers* are now only required to provide information where the respondent was selected as the winning bidder. Respondents can provide information on unsuccessful RFP bids and business rules relied upon to submit bids on a voluntary basis.

Commenters argue that the burden of collecting this information outweighs the benefit. NCTA (at 14-15) and ACA (at 7) state that the Commission should inquire only about 2013 marketing because backward-looking information is irrelevant and future marketing plans are speculative. NCTA (at 15) and ACA (at 7) state that the Commission should ask only about those winning RFP responses where the facilities are not yet operational, as served *Locations* are covered elsewhere in the collection, and the “customer location associated with losing RFP responses,” as it might show where a competitor might be able to serve. NCTA (at 11) further states that the requirement to rank RFPs should be replaced by a sample of RFPs because the request for “largest unsuccessful” RFPs calls for records that companies do not keep, and the request for “most recent” successful RFPs calls for information that is constantly changing.

On the marketing materials, the Commission seeks information over a two-year time series to help determine whether plans for expansion and providing service actually materialize – and have bearing

⁶¹ See Attachment A, Questions II.A.10-11.

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on the market – or are merely speculative.⁶² Limiting the information to 2013 will not accomplish this task. Moreover, the question is not particularly burdensome and provides the respondent with ample flexibility on how to respond. The Commission is not asking for *all* relevant documents but gives the respondent the option of providing relevant material from several different categories of documents. It is not so difficult for a company to map, or at least describe, the territory where it marketed its services.

As for RFPs, parties urged the Commission to collect such information, saying that for a forward-looking analysis, it is necessary to obtain data on where competitors respond to RFPs.⁶³ The Commission therefore plans to collect and investigate the value of such information. We cannot fully assess the predictive value of RFPs until collected. Moreover, the burden of submitting RFP information is overstated. *Competitive Providers* are not required to submit their actual RFPs but only report information about them, *e.g.*, the geographic areas covered, prices offered, etc. That said, the recent changes go towards addressing the commenters' concerns.

Headquarters Information: In the collection, the Commission asks *Competitive Providers* to report the location of their U.S. headquarters and the headquarters of certain acquired entities and affiliates, going as far back as 1995.⁶⁴ The purpose of this question is to assess certain non-price factors that may be relevant to where *Competitive Providers* build or expand their network.

ACA (at 7) and NCTA (at 14), representing the interest of cable system operators, state the headquarters location and affiliate structure information going back to 1995 is irrelevant for the purpose of analyzing the current market for special access and that compiling such information could be extremely burdensome because such information that is not readily available or normally maintained by companies.

In the *Data Collection Implementation Order*, we acknowledged that for certain *Competitive Providers*, namely cable system operators, the decision of where to deploy *Dedicated Service* facilities is significantly influenced by the franchise areas awarded to the cable operator, which are often unrelated to the location of its headquarters.⁶⁵ Accordingly, we clarified in the instructions that cable operators are not required to provide information in response to this question other than to say, "Not Applicable."⁶⁶ The same reasoning, however, does not apply to other *Competitive Providers*, so only cable providers are excused from reporting headquarters and affiliate data.

Best Efforts Business Broadband Internet Access Service: The collection asks for coverage and pricing information on the *Best Efforts Business Broadband Internet Access Service* provided by entities with 15,000 or more customers or 1,500 or more business broadband customers.⁶⁷ The Commission is looking to collect this data because some parties contend that, in some circumstances, enterprise customers may view such services as special access substitutes based on record showings that such services are marketed with express comparisons to special access services.

⁶² By cross-checking data on *Locations* served, the Commission can confirm whether the advertised coverage footprints match deployments in existence at the time.

⁶³ See Letter from Donna Epps, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, at (filed Sept. 18, 2012).

⁶⁴ See Attachment A, Question II.A.9.

⁶⁵ See *Data Collection Implementation Order* at para. 49.

⁶⁶ See Attachment B, Instructions at 20-22.

⁶⁷ See Attachment A, Question II.C.1.

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BT Americas *et al.* (at 15-17) and Sprint (at 4) urge the Commission to eliminate this inquiry because “best efforts” services and *Dedicated Services* do not belong in the same product market. BT Americas *et al.* (at 17-18) further states that, if best efforts data were truly necessary, the Commission would not limit the requirement to only those providers that submitted data in connection with the SBI Grant Program.

It is an open question whether or not “best efforts” services compete in the same market as special access services. Given the record, the Commission cannot completely discount the possibility that *Best Efforts Business Broadband Internet Access Service* is a substitute without obtaining additional information. We limit the burden as much as possible by tailoring the requirement to entities that have already submitted data in connection with the SBI Grant Program. We also excuse carriers with smaller customer bases from this requirement.

Miscellaneous comments on terminology, bandwidth, and revenue: ACA (at 9) states that small cable companies are overwhelmed by the complexity of the questions, which use terminology that small cable companies do not understand. Cincinnati Bell (at 6-7) states that, if “billing codes” refers to anything other than “universal service ordering codes” (USOCs) the revenue request unreasonably burdens respondents, and also states that the term “adjustments” is vague. Cincinnati Bell (at 8) and NCTA (at 9) state that carrier billing systems do not track the bandwidth level of their sales or purchases in accord with the categories in the data request, and do not record the accumulation of available bandwidth over multiple circuits to different customers at the same location. ACS (at 5-6) states that it does not record the bandwidth of *UNEs* (or how *UNEs* are used). ACA (at 7) states that it is not necessary to collect revenue data from competitors to determine the market power of *ILECs*.

Much of the clarification sought is contained in the instructions that were released by the Bureau after these comments were filed. For example, the instructions contain a detailed breakdown of how to interpret and respond to each required data field for billing questions, including clarifying that the term “billing codes” includes, but is not limited to, USOCs and clarifying how to determine the bandwidth sold to a *Location*. The Commission also plans to conduct outreach events where respondents can ask additional questions about terminology used in the collection. As for collecting revenue information from all *Providers*, it is necessary for the Commission to size the broader special access market. That said, the recent changes go towards addressing the commenters’ concerns.

Confidentiality: ACS (at 6) states that data must be kept confidential because the information requested would provide sensitive information about every special access customer, detailing what they purchase and at what price. Chariton (at 1) states that information concerning its business rules, marketing plans, and notice of winning bids could jeopardize its survival. ITTA (at 7-8) states that improperly managed and stored data would be subject to cyber security threats from a variety of sources, including criminals, foreign nations, terrorists and other adversarial groups.

The Commission recognizes certain data and information sought are commercially sensitive and will implement procedures to maintain confidentiality. The Bureau released a public notice on June 28, 2013, seeking comment on a draft Protective Order outlining the procedures for designating, handling, submitting and accessing the confidential and highly confidential data and information sought in the collection.⁶⁸ We will finalize the Protective Order based on the public comments received. Item A.10 contains additional details on the proposed procedures.

⁶⁸ See *Wireline Competition Bureau Seeks Comment on Protective Order for Special Access Data Collection*, Public Notice, DA 13-1470 (WCB rel. June 28, 2013).

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Duplicative requests: ACA (at 7), NCTA (at 12), Chariton (at 1), and Smith Bagley *et al.* (at 10-11) state the Commission should not require *Purchasers* to produce tariff data because the best source of this information is the incumbent local exchange carrier providers, and the request is burdensome and duplicative. NCTA (2-3, 10, 12, and 16) states the Commission has not taken steps to the extent practical and appropriate to identify data it already has and remove that data from the request. NCTA (at 16) further states the Commission already has ample comment on terms and conditions so questions on those issues are duplicative and should be eliminated or made voluntary.

Seemingly duplicative requests for complimentary information on the identity and characteristics of *Tariffs* used to provide and purchase *Dedicated Service* provide an important cross-check to ensure quality and reliable information. In addition, qualitative inquiries concerning terms and conditions are intended to provide an opportunity for *Purchasers* to highlight and for the Commission to further investigate allegations of unjust and unreasonable practices. In the instructions, we clarify that many of these qualitative questions are now optional so that *Purchasers* not experiencing or wanting to provide information highlighting problems can respond saying as much. *Purchasers* wanting to reference material previously provided to the Commission can cut and paste prior comments if they are still timely and accurate.

Efforts to Minimize Burden on Small Entities

De minimis exception, waivers. In the *Special Access Data Collection Order*, the Commission balanced the burden on small companies against the “goal of obtaining the most accurate and useful data possible.”⁶⁹ Because competition “appears to occur at a very granular level,” the Commission found “it necessary to obtain data from special access providers and purchasers of all sizes.”⁷⁰ The Commission did exclude, however, entities providing *Best Efforts Business Broadband Internet Access Service* with fewer than 15,000 customers or fewer than 1,500 business broadband customers. This exclusion only exempts entities from responding to those questions about *Best Efforts Business Broadband Internet Access Service* and is not an exemption from the collection entirely. In the *Data Collection Implementation Order*, the Bureau further clarified a narrower scope for *Purchasers* subject to the collection as discussed further in response to Item A.5. In addition, *Purchasers* that purchased less than \$5 million in *Dedicated Services* in 2013 (in areas where the *ILEC* is subject to price cap regulation) are now excluded from the scope of the collection.

According to ACS (at 2-3, 8-9), the burden of the collection is not justified where the Commission has granted pricing flexibility and there are no complaints. Chariton (at 1), ITTA (at 5), and NTCA at (3-4) state they lack the staff to respond to the data request because they are already burdened by other regulatory reporting requirements. NTCA (at 11-12), Smith Bagley *et al.* (at 5), and Union Telephone *et al.* (at 2) state the Commission should adopt a *de minimis* exception for small carriers. NTCA (at 11-12) proposes to exclude *Providers* and *Purchasers* with fewer than fifty special access connections in a relevant geographic area. Smith Bagley *et al.* (at 7) seeks an exemption for *Purchasers* that buy less than \$5 million annually in special access facilities in price cap areas. Smith Bagley *et al.* (at 7-8, 11-12) and Union Telephone *et al.* (at 2-4) alternatively ask for reduced requirements for *Purchasers*.

⁶⁹ *Special Access Data Collection Order*, 27 FCC Rcd at 16327, para. 22.

⁷⁰ *Id.* at 16328, para. 22.

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The Commission has already considered and rejected a *de minimis* exception for smaller *Providers* and *Purchasers*.⁷¹ That said, the burden on smaller *Providers* and *Purchasers* is proportionally less than the burden on larger entities as they will have significantly fewer facilities and expenditures to account for and report. In addition, we have further reduced the burden of the collection for smaller entities with the clarifications in the instructions on the location data and mapping requirements and by making certain qualitative questions optional, (see above discussions on *Location Data*, *Mapping requirements* and *Duplicative requests*). In addition, the recent changes go towards addressing these concerns.

Sampling: NTCA (at 7, 8-10) states the Commission failed to investigate data sampling alternatives. The Commission considered and rejected sampling, except in one narrow instance, because the Commission believes “that the process of identifying and collecting a representative sample would be unlikely to substantially reduce provider burdens, and could significantly lengthen the data collection process.”⁷² For an additional explanation of the Commission’s decision not to use sampling, except for one facet of the collection, see the response to Item B.2.

Need for clarification: Smith Bagley *et al.* (at 12-13) states the Commission should clarify which carriers must provide data and which carriers must provide only a completed form and a certification. We have addressed these concerns in the *Data Collection Implementation Order* and accompanying instructions that were released after receiving the initial round of PRA comments.

Burden hour and cost estimates

In-house burden hours: The Commission’s initial average estimated time per response was 134 hours. BT Americas *et al.* (at 13-14) found the Commission’s estimate “fairly accurate” and is consistent with its own estimates. For example, BT Americas estimates 100-120 hours to respond; Cbeyond calls 134 hours to respond a reasonable approximation; EarthLink estimates 320 hours to respond, Integra estimates 260 hours to respond, and TW Telecom estimates 115-130 hours to respond. Sprint (at 2-3) also commented that 134 hours seems reasonable.

Some commenters disagreed with the Commission’s estimate. For example, according to ACA (at 3), the average small operation will take at least 500 hours to respond. ACS (at 6-7) states it will take more than ten times the Commission’s estimate for it to respond. Cincinnati Bell (at 4-5) will require nearly 8,000 hours to respond. NCTA’s (at 4) members, Cox and Comcast, will need more than 8,400 hours and 30,000 hours, respectively, to respond not counting the burden associated with the mapping requirements. NCTA (at 4) anticipates that “in some cases the burden could be more than 200 times higher than the average estimated by the Commission.”

ITTA (at 4, 6) points to a prior filing in the rulemaking docket where CenturyLink said it will take about 40,000 hours to respond to the collection. According to BT Americas *et al.* (at 14), the CenturyLink estimate “hardly seems credible.” BT Americas *et al.* (at 14) mentions a preliminary estimate previously provided by AT&T in the proceeding, saying the 15,000 hour estimate appears designed to bolster AT&T’s advocacy against a market power analysis.

⁷¹ The Commission has already included *Providers* and *Purchasers* of “all sizes” in the collection. *Special Access Data Collection Order*, 27 FCC Rcd at 16327-28, para. 22.

⁷² *Special Access Data Collection Order*, 27 FCC Rcd at 16328-29, paras. 24-25 (explaining decision not use a sampling approach).

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The commenters' estimates do not take into account the burden-reducing clarifications made by the Bureau in the *Data Collection Implementation Order* and the recent changes to the collection.⁷³ That said, we anticipate that much of the collection's total industry burden will fall on a relatively few number of *Providers* that provide the bulk of special access services and purchase special access out of region. For a large number of respondents, *i.e.*, those Form 477 filers that are merely certifying that they do not fall within the scope of the collection, the burden is minimal. We have incorporated all the new data points from the comments in our revised estimate in Item A.12.

The cost estimate for consultants and contractors: In the notice published in the Federal Register, we provided an estimated "total annual cost" of N/A because we did not expect respondents would need to purchase equipment or obtain the services of outside consultants or contractors to comply. ACA (at 13) says its members will need outside assistance and support to comply. ACS (at 4-6) states that restoring data from 2010 and other burdens related to archived data would require outside consultants. To satisfy the Commission's mapping requirement, Chariton (at 1) states it would have to hire an outside engineering firm to produce electronic maps. NCTA (at 5-6) also comments that small providers without in-house mapping software will have to subcontract this portion of the collection. Smith Bagley *et al.* (at 5) states that its companies have very small accounting and finance staffs and would therefore have to hire outside help to work with their staff to prepare the requisite reports. We have revised our cost estimate in Item A.13 based on these comments.

9. There are no payments or gifts to respondents associated with this information collection. Responses are mandatory.

10. This collection calls for *Providers* and *Purchasers* of special access and certain entities providing "best efforts" services to file data and information on their facilities, served locations, prices, revenues, and expenditures. Recognizing that much of the collected information is commercially and competitively sensitive, the Commission plans to issue a Protective Order, outlining the procedures for handling and treating the information. The Protective Order will provide limited access to the competitively sensitive information for certain representatives of persons participating in the proceeding, while protecting that competitively sensitive information from improper disclosure, and thereby will serve the public interest.

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, generally requires agencies to make information publicly available. FOIA does not, however, require the disclosure of "trade secrets and commercial or financial information obtained from a person and privileged or confidential."⁷⁴ Under the Protective Order, documents and information designated by submitting parties as confidential will be deemed to have submitted a request that the material not be made routinely available for public inspection under the protections from disclosure afforded by FOIA and the Commission's implementing rules.⁷⁵ Any person wishing to challenge the designation of a document, portion of a document or information as confidential must file such a challenge at the Commission and serve it on the submitting party. The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and all subsequent appeal and stay proceedings have been exhausted.⁷⁶

⁷³ For example, Comcast's estimate of more than 30,000 hours includes 15,000 hours associated with site visits for verifying the location type and geocode for *Locations* that is no longer necessary given the recent clarifications by the Commission's Wireline Competition Bureau. See Item A.8 "Location data;" *Data Collection Implementation Order* at paras. 32-33.

⁷⁴ 5 U.S.C. § 552(b)(4).

⁷⁵ See 47 C.F.R. §§ 0.459(a), 0.459(a)(3).

⁷⁶ See 47 C.F.R. § 0.459(g).

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Any decision on whether the materials should be accorded confidential treatment, however, will not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon a proper request under the Commission's rules implementing FOIA.⁷⁷

The Bureau sought comment on a draft Protective Order on June 28, 2013.⁷⁸ Five comments were filed by AT&T, CenturyLink, Cox, NCTA, and Verizon and Verizon Wireless. All commenters except AT&T supported the proposed procedures with some suggested improvements. We will finalize the Protective Order based on the comments received. The measures included in the Protective Order will meet or exceed merger review standards to adequately protect commercially sensitive information from any unauthorized disclosure.⁷⁹ An overview of the procedures, as proposed, is provided below.

Overview of Proposed Procedures

As described in the draft Protective Order, submitted data and information are divided into three categories: (1) data and information that is presumptively highly confidential; (2) information designated by the filing parties as confidential; and (3) information that is not confidential and will be made available to the general public. Appendix A to the Protective Order identifies those types of data and information that we propose to treat as highly confidential.

Submission of data and information. We plan to have parties electronically submit confidential and highly confidential data and information through a secure web portal. In addition to using a web portal, we are considering using an SSH File Transfer Protocol (SFTP) for the electronic submission of larger files to the Commission (up to eleven gigabytes in size) and allowing for the manual submission of even larger files on storage devices. Parties will submit information considered public, including redacted versions of confidential and highly confidential documents, through the Commission's Electronic Comment Filing System (ECFS). This is consistent with past practice in merger transactions.

Access to Data and Information. Only parties signing the Acknowledgement of Confidentiality (Acknowledgement) attached to the Protective Order will have access to confidential information. We plan to further limit access to highly confidential data and information to outside counsel and consultants that are not involved in the decision-making activities of a competitor to the submitting party or a person with whom the submitting party does business. Submitting parties will have the opportunity to object to persons or entities seeking to review confidential information and highly confidential data and information.

Secure Data Environment. We propose to restrict access to highly confidential data through a secure data environment due to its heightened sensitivity, *e.g.*, either through a secure data enclave in a specific, physical location or by accessing a virtual private network using thin clients to provide virtual desktops.⁸⁰ Under either scenario, we would not allow parties to store or print data or analyses on a local device.

⁷⁷ See 47 C.F.R. §§ 0.459(h), 0.461.

⁷⁸ See *Wireline Competition Bureau Seeks Comment on Protective Order for Special Access Data Collection*, Public Notice, DA 13-1470 (WCB rel. June 28, 2013).

⁷⁹ See *Id.*

⁸⁰ The highly confidential data identified in Appendix A to the Protective Order, which is presumptively highly confidential, includes data on locations served, network maps, revenues and billing.

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We are exploring how software programs such as SAS[®] and Stata[®] could be made available (or installed) for parties to analyze highly confidential data in the secure data enclave.⁸¹ We are also examining measures to protect a submitting party's highly confidential data by restricting the removal of research results from the secure environment. Specifically, we are evaluating whether to require that data research results conform to one or more standard rules for identifying disclosure risk before permitting those results to leave the secure environment.⁸² We are also assessing whether aggregation rules are sufficient to protect commercially sensitive data or whether other rules should apply.

These procedures will protect the confidentiality of submitted information while still giving parties an opportunity to review and analyze the data, subject to restrictions, to effectively participate in the underlying rulemaking proceeding.

11. This information collection includes no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

12. The following represents the estimated hour burden of the collection of information:

- (1) Number of Respondents: The estimated number of potential respondents is **4,000**.

While there may be some not-for-profit institutions and state, local, or tribal government respondents, the vast majority of the respondents are businesses or other for-profit entities. For a more detailed explanation as to how we determined the potential respondent pool, see the response to Item B.1.

- (2) Frequency of response: one-time response.

This is a one-time data collection to assess competition in the special access market. Respondents will not be required to respond on a recurring basis.

- (3) Total number of responses annually: approximately **4,000** responses.

As detailed above, this data collection will require a one-time only response. Thus, 4,000 potential respondents x 1 response per year = 4,000 responses.

- (4) Estimated industry-wide hour burden: approximately **536,000** burden hours.

- (5) Included in the 536,000 hour burden estimate are about 2,000 hours for recordkeeping.

We estimate that each respondent, on average, will spend approximately 0.5 hours (30 minutes) storing the data prepared for, or used in connection with, their data collection response.

⁸¹ See SAS website, <http://www.sas.com/software/> (providing information on SAS, which is an integrated system of software products that enables persons to conduct statistical analysis, econometrics, and data mining) (last visited June 24, 2013); STATA website, <http://www.stata.com/why-use-stata/> ("Stata statistical software is a complete, integrated statistical software package that provides everything you need for data analysis, data management, and graphics.") (last visited June 24, 2013).

⁸² For example, any cell released must be made up of at least "x" number of unique observations and /or a cell can be released only if any "x" number of unique observations contributes no more than "y" percent of the value of the cell.

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4,000 respondents x 0.5 hours/recordkeeping = 2,000 hours for recordkeeping.

The methodology used to calculate this burden estimate is provided below. In the Federal Register notice seeking comments on the collection, we initially calculated an estimated potential respondent pool of 6,387, and subsequently rounded this number up to 6,400.⁸³ By excluding certain *Purchasers* from the collection, we have significantly decreased the respondent pool size to about 4,000. The methodology for calculating this estimate is discussed in response to Item B.1.

Initially we calculated the estimated average burden hours per respondent to be 134 hours with a total burden hour estimate of 856,614 hours.⁸⁴ We subsequently revised these numbers based on burden hour and cost estimates information received from commenters, *i.e.*, average burden per respondent of 146 hours and total burden hour estimate of 934,400 hours. With the recent changes to the collection, we have revised these estimates even further. Our further revised average burden hour estimate per respondent is **134 hours** and the estimated total annual burden has significantly decreased to **536,000** hours. We explain our conservative methodology, and how each aspect of it contributes to the burden hour estimate, below.

Methodology. To estimate the hour burden of the varied respondents to our data request, we first estimated the number of expected respondents by dividing them into two categories for which we had data. Second, we estimated the fixed and variable costs. Third, we made some adjustments for ACA members. Our variable hour estimates rely on evidence submitted by thirteen *Providers* in comments, as well as comments from ACA, which provide estimates of the average hourly burden for their responding members. The new information contained in these comments led us to substantially change our approach to the burden estimates. Of course, our results still remain an approximation, made relying on the information available to us.

Number of Potential Respondents. To estimate the time burden of our data request, we began by identifying the total number of *Providers*, which we expect will encompass those entities covered by the scope of the collection that provide *Best Efforts Business Broadband Internet Access Service*, and the total number of *Purchasers* who are not *Providers*. We made this split, as the former group must answer substantially more, and more burdensome questions than the latter. As described in Item B.1, we estimate there are between 1,700 and 1,800 *Providers* and mobile wireless providers who must respond to our data request, and between 2,200 and 2,300 *Purchasers* who are not *Providers*. For simplicity, we picked the midpoint of these ranges for calculations, *i.e.*, 1,750 *Providers* and 2,250 *Purchasers*. Some of the first group of 1,700-1,800 respondents will only need to identify themselves, and the basic nature of their business, while others in the same group, will only additionally answer the “best efforts” broadband question, often merely by certifying that their SBI data submission meets the purposes of our data request. In addition, mobile service providers will only need to report their purchases. Despite this, our analysis assumes all of these parties have burdens that reflect the costs of a full-fledged *Provider*, based on the burdens reported by the thirteen commenters. This will bias our burden estimate upwards, perhaps significantly so.

Estimated Fixed Cost. The Commission has assumed that the respondents’ costs (reflected in the form of burden hours) are in part fixed, *i.e.*, do not vary with the scale of the respondent’s operations, and, in the case of the 1,750 *Providers* identified above, in part vary with the size of the respondent as

⁸³ See 78 Fed. Reg. 9911.

⁸⁴ *Id.*

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measured by total telecommunications revenues.⁸⁵ Fixed costs may include things like the time it takes to read the instructions and plan responses, the time it takes to code programs that are then run to collect data, the time to clear results internally before submitting responses to the Commission, some of the setup costs of data submission, and certain costs associated with the requirement to retain the data, information, and documents that are submitted in response to the collection for a two-year time series. These processes apply to all respondents, and to the extent that they are incurred regardless of the size of the respondent, they are fixed, *i.e.*, the fixed cost is the same number of hours for each potential respondent.

We set our estimate of fixed cost for the 1,750 *Providers* to 100 hours, being the lowest total burden hour reported by any entity, in this case BT Americas. Given that fixed costs do not vary with a firm's size, it is reasonable to assume that if BT Americas' total estimated cost of responding to the collection (*i.e.*, fixed + variable cost) is 100 hours, then the fixed cost incurred equally by all respondents must fall within the 100 hour estimate. We therefore take a conservative approach and consider the full 100 hours reported by BT Americas as the fixed cost for each respondent even though some portion of that estimate probably includes some variable cost incurred by BT Americas. This approach is likely to exaggerate the fixed cost associated with this collection for each respondent, which will, in turn, overstate the total cost burden.

Purchasers who are not also *Providers* must answer considerably fewer and less burdensome questions than *Providers*. We assume these respondents also face a fixed cost but no variable cost. We believe it is likely that even the largest *Purchasers* who are not *Providers* will face lower fixed costs than a *Provider*. In addition, because all but a handful of the questions directed at *Purchasers* are now optional, *i.e.*, not required, the estimated fixed burden cost to each *Purchaser* respondent as compared to that of each *Provider* is decreased to 80 hours. Therefore, with an estimated potential respondent pool of 4,000, we estimate the total fixed cost of responding to the collection for the entire estimated respondent pool is about 355,000 hours.

Estimated Variable Cost. In estimating variable costs, we looked at the following burden hour estimates provided by potential respondents in either their PRA comments or in other filings with the Commission in this proceeding. These estimates do not take into account the recent changes which significantly reduce further the overall burden of the collection for respondents.⁸⁶

- ACS: at least 1,340 hours;⁸⁷
- BT Americas: 100-120 hours;⁸⁸
- Cbeyond: 134 hours;⁸⁹
- CenturyLink: 40,000 hours;⁹⁰
- Cincinnati Bell: nearly 8,000 hours for a total cost of \$500,000 (or an hourly rate of \$62.50);⁹¹

⁸⁵ We would have preferred to use revenues more closely associated with *Dedicated Services*, but this proved impossible. It is likely this choice leads to our burden estimate being somewhat exaggerated.

⁸⁶ See Response to Item A.1.

⁸⁷ ACS at 7.

⁸⁸ BT Americas *et al.* at 13.

⁸⁹ *Id.*

⁹⁰ See Letter from Melissa Newman, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, at 1 (filed Jan. 10, 2013).

⁹¹ Cincinnati Bell at 5.

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- Comcast: more than 30,000 hours at a total cost of \$1.5 million (or an hourly rate of \$50) without counting the burden associated with the mapping requirements and more than 500,000 hours at a total cost of more than \$50 million counting the mapping requirements (or an hourly rate of \$100);⁹²
- Cox: 8,400 at a total cost of \$1.2 million (or an hourly rate of \$142.86);⁹³
- EarthLink: 320 hours at an estimated hourly cost of \$58.82 for a total cost of \$18,823;⁹⁴
- Frankfort Plant: 765 hours at an hourly cost of \$50 for a total cost of \$38,250;⁹⁵
- Integra: 260 hours;⁹⁶
- ImOn: 560 hours, at an hourly rate of \$35 for a total cost of \$19,600;⁹⁷
- Verizon: more than 15,000 hours;⁹⁸ and
- TW Telecom: 115-130 hours.⁹⁹

We use all of these estimates in our analysis even if we consider some of them to be surprisingly high with one exception. For Comcast, we find the 500,000 burden hour estimate provided (when counting the burden associated with the mapping requirement) strikingly excessive, more than twelve times the next largest estimate of 40,000 hours provided by CenturyLink.¹⁰⁰ We find that Comcast's estimate of more than 470,000 hours just for the mapping requirements (500,000 hours minus the 30,000 hours for the remaining obligations in the collection) greatly overestimates the total burden for Comcast and fails to account for the burden-reducing clarifications to the mapping requirements in the *Data Collection Implementation Order* and the changes since then.¹⁰¹ Accordingly, we have discounted this estimate in our burden hour calculation. We have instead used a 22,500 hour burden estimate for Comcast. Even with the discounted estimate for Comcast of 22,500 hours, the burden for Comcast is

⁹² NCTA, L. Panepinto Decl. at 2. These estimates, however, include 15,000 hours associated with site visits for verifying the location type and geocode for *Locations* that are no longer necessary given the recent clarifications by the Commission's Wireline Competition Bureau. See Item A.8 "Location data;" *Data Collection Implementation Order* at paras. 32-33.

⁹³ *Id.*, R. Hattori Decl. at 1. This estimate did not include the "time and resources needed from compliance" with the mapping requirement. *Id.*, R. Hattori Decl. at 6.

⁹⁴ BT Americas *et al.* at 14. The hourly cost is based on an estimate provided by EarthLink for the reporting of data for the SBI Grant Program. Letter from Thomas Jones and Nareli Patel, Counsel for Cbeyond, EarthLink, and Integra, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, at 1 (filed Nov. 21, 2012).

⁹⁵ ACA, M. Edl Decl. at 4.

⁹⁶ BT Americas *et al.* at 13.

⁹⁷ ACA, J. Higginbotham Decl. at 4.

⁹⁸ See Letter from Maggie McCready, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, at 3 (filed Oct. 2, 2012).

⁹⁹ BT Americas *et al.* at 13.

¹⁰⁰ While CenturyLink has CLEC operations subject to the mapping requirements, these may not be as onerous as those that apply to Comcast. However, its *ILEC* operations are subject to additional reporting requirements in the collection. While it is possible the mapping effect dominates, it is implausible that this could explain the difference between 40,000 and 500,000 hours.

¹⁰¹ See *Data Collection Implementation Order* at paras. 34-45.

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likely an overestimate given all of the burden-reducing clarifications in the *Data Collection Implementation Order* and the recent changes.¹⁰²

Four of these entities, Comcast, Cox, Frankfort Plant, and ImOn, are cable companies; four are *ILECs* (ACS, Cincinnati Bell, CenturyLink and Verizon); and five are something else (BT Americas, Cbeyond, EarthLink, Integra, and TW Telecom). After accounting for fixed costs, we used the average hourly burden for each group, cable company, *ILEC* and other, relative to their total telecommunications revenues as reported in Form 499-A “Annual Telecommunications Reporting Worksheet,” and extrapolated the total variable cost burden for each group scaling by Form 499-A telecommunications revenues.¹⁰³ In doing so, we treat mobile service providers as if they were a *Provider* categorized as other. As noted, this likely tends to overstate our burden estimates, because the questions that mobile providers must answer are considerably less extensive and onerous than those that *Providers* must answer. We also assume all *Providers* are also *Purchasers*, and so answer the *Purchaser* questions. This may mildly overstate our burden estimates. Based on these assumptions, we estimate the variable cost of the collection on potential respondent pool to be approximately 156,000 hours (but see cost adjustment discussion below).¹⁰⁴ This estimate includes any recordkeeping costs associated with the collection for retaining data and information prepared for, or in connection with, their response that is not otherwise accounted for within the respondent’s customary business practices.

Cost Adjustment. ACA (at 3) expects between 100 and 150 of their members will have to respond to the data request at an average hourly burden of 500 hours. We ensured that we counted 500 hours for the estimated reporting ACA members as follows. First, we choose the mid-point of their respondent range, assuming that 125 ACA members would respond to the data request. Since we did not have a list of ACA members, we approximated who they were by counting all companies identified as cable companies in the Form 499-A filings that were the same size or smaller than MediaCom Communications Corporation, ACA’s largest member. There were 93 such companies. We counted the remaining 32 firms as *ILECs*. To the extent that the responding ACA members belong in the *ILEC*, rather than the cable, category, and to the extent ACA members belong in the other category, rather than in the cable or *ILEC* categories, our approach overstates burden hours (the average cost per unit of telecommunications revenue declines from cable to *ILEC* to other). For each set of companies, that is, the 93 cable companies, and the 32 *ILECs*, we added in the necessary burden hours to ensure that respectively 93 and 32 companies had a burden of 500 hours. While we accepted the ACA numbers to calculate our burden estimates, we consider the 500 hour average to be a high estimate. With the adjustment, we add almost 25,000 hours to the total cost.

Total estimate of annualized cost to respondents for the in-house burden hours for this information collection:

The Commission estimates an industry-wide burden of approximately **536,000** hours resulting from this collection (Total = 355,000 fixed cost hours + 156,000 variable cost hours + 25,000 adjusted

¹⁰² Even if we did accept Comcast’s entire estimate of more than 500,000 burden hours and used it for our calculation, we find the benefits of the collection, *i.e.*, helping the Commission evaluate potential changes to its pricing flexibility rules using a data-driven approach, exceed the burden imposed on industry.

¹⁰³ For Comcast, we extrapolated using the 40,000 hour estimate as discussed above.

¹⁰⁴ We do not have data on telecommunications revenues that directly aligns with the Form 477 filers, so we have relied on the Form 499-A revenue data reported. This meant that in scaling up from the thirteen commenters to all potential respondents, we included the revenue of more than two thousand carriers that are probably not *Providers*, and hence not subject to the most onerous parts of the data request (and in some cases, not subject to it at all). As a consequence, for any fixed cost estimate, our estimate of variable costs is likely overstated significantly.

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hours). Dividing our estimate of total burden hours by the total number of respondents (4,000) results in an estimated average hour burden per respondent per report in a single reporting period of **134** hours per respondent (536,000 hours total / 4,000 respondents = 134 hours per respondent).

The average hourly burden conceals substantial variation across respondents. For example, the average burden hour estimate for respondents that are *Purchasers* is only 80 hours, while the average burden hour estimate for all others is 203 hours, and larger *Providers* will have a much higher burden than this. For example, as discussed above CenturyLink estimates its burden to be around 40,000 hours. .

The Commission estimates the total annualized in-house cost to respondents for the hour burdens for the collection of information is about **\$33.5 million**, based on the relatively high hourly rate implied in Cincinnati Bell's comments of \$62.50.¹⁰⁵ For example, a more reasonable rate might be the estimate of wireline telecommunications firms' hourly costs for accountants and auditors of \$36.33 from the Bureau of Labor Statistics (BLS),¹⁰⁶ marked up to \$47.56 to account for total compensation.¹⁰⁷ In that case, the annualized in-house cost to respondents for the hour burdens for the collection of information is unlikely to exceed **\$26 million**.

Total number of potential respondents: 4,000.

Total number of responses: 4,000.

Total burden hours: 536,000 burden hours (134 hours per respondent).

13. The estimated total cost burden to respondents resulting from this one-time collection of information that is not already accounted for in Item A.12 is between **\$6-10 million**.

Total capital start-up costs component annualized over its expected useful life: \$1,750,000.

Total operation and maintenance and purchase of services component: \$5-8.25 million.

Total Annual Costs: \$10,000,000

Capital Costs

Cincinnati Bell, CenturyLink, and Verizon all submit estimates of their costs, and these included no capital component. We therefore assume large and medium-sized *ILECs* will not incur such costs.

¹⁰⁵ All other estimates of hourly rates that we obtained were lower than the Cincinnati Bell estimate with two exceptions; the implied Comcast and Cox estimates of \$100 (if counting the mapping requirement) and \$142.86, respectively, which seem excessive. The other estimates we considered were the Bureau of Labor Statistics' (BLS) average wireline salary rate, \$30.07; ImOn's hourly cost, \$35; BLS rate for wireline accountants and auditors, \$36.33; the federal public service GS12, Step 10 rate, \$37.54; the BLS wireline management analyst rate, \$43.09; the Frankfort Plant hourly cost, \$50; the federal public service GS14, Step 10 rate, \$52.76; and EarthLink's hourly cost, \$58.82. *See supra* notes 95-98; Occupational Employment Statistics, BLS, http://www.bls.gov/oes/current/naics4_517100.htm (providing BLS hourly rates) (last visited Sept. 23, 2013); Pay and Leave, Office of Personnel Management, http://www.opm.gov/oca/12tables/html/gs_h.asp (providing Federal public service rates) (last visited Sept. 23, 2013). With the exception of ImOn, all the commenters' estimates seem high for hourly rates and are likely estimates of total compensation. In any case, it would be inappropriate to markup any of the commenters' implied rates. For the other rates, the BLS provides a markup factor for total compensation of 30.9%. *See* Employer Costs for Employee Compensation - March 2013, BLS, <http://www.bls.gov/news.release/ecec.nr0.htm> (last visited Sept. 23, 2013).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

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NCTA submits detailed cost analyses from two of the ten large cable systems operators, Cox and Comcast.¹⁰⁸ Cox says it may need to spend approximately \$350,000 to acquire and install additional software to cull and produce the requested data from Cox's existing databases. (NCTA, Hattori Decl. at 2). We find the size of the Cox estimate surprising but could not determine whether this was because they were assuming the need for mapping software, or any other reason for this usually large estimate, and consequently have accepted it at face value. However, this acceptance is likely to lead us to overstate the capital costs of large cable companies. Comcast, the only other large cable systems operator to submit a detailed cost analysis, does not identify software or any other capital costs as an expense. (Comcast does say it will require a third-party vendor to determine geocodes, but the simplified geocode instructions no longer support this assertion.)

NCTA (at 5) states that the Cox and Comcast declarations reflect the experience of the rest of its member companies, including with regard to software upgrades or other capital costs. We take this to mean that some, but not all, large cable companies will require software upgrades. Extrapolating from the two declarations, we estimate that, on average, roughly half of large cable systems operators will purchase software upgrades.

Large cable systems operators: $10/2 = 5$ $5 \times \$350,000 = \$1,750,000$

Purchase of Services

No large or medium sized *ILECs* or cable systems operators reported that they would purchase outside services. As a result, we assumed no such purchases necessary for these types of providers. Some small cable systems operators, small wireless carriers, and small *ILECs* report a need to hire outside contractors or consultants to complete their responses, *see* Item A.8 above. The data are drawn from the regulatory flexibility analysis (Appendix B) of the *Special Access Data Collection Order* (78 Fed. Reg. 2572, Jan. 11, 2013).

ACA (at 3-4), which represents small cable systems operators, reports that between 100 and 150 of its 850 members will have to answer this survey. The midpoint of this range is 125. In addition to small cable systems operators, Smith Bagley *et al.* (at 5), representing small wireless providers, says it has very small accounting and finance staffs – and therefore they would have to hire outside help, at a high cost, to work with their staff to prepare the requisite reports. Small ILEC ACS states (at 4-6) that it will need outside consultants where data were never programmed into systems and where out-of-date versions of software must be reinstalled.

There are 1,066 small cable companies,¹⁰⁹ 1,368 small wireless companies, and 1,006 small incumbent LECs,¹¹⁰ for a total of 3,440 small companies.¹¹¹ If we apply the midpoint of the ACA's ratio of members that respond to the members (125/850) to all 3,440 small carriers, then that suggests there will be 506 small providers who respond to our data request.

$(125/850) = (506/3,440)$

¹⁰⁸ *See* 78 Fed. Reg. 2572, Jan. 11, 2013 at para. 113 (Cable Systems Operators); NCTA Comments, Hattori Decl. (Cox) and Panepinto Decl. (Comcast).

¹⁰⁹ 78 Fed. Reg. 2572, Jan. 11, 2013 at para. 113 (Cable Systems Operators).

¹¹⁰ *Id.* at para. 76 (Wireless Telecommunications Carriers, except satellite).

¹¹¹ *Id.* at para. 66 (Incumbent Local Exchange Carriers).

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The response rate from the wireless entities could be lower than this (because smaller wireless Internet service providers would very often operate in interstate rate-of-return territories). More importantly, we find it surprising that any small wireless providers will need to incur outside service costs. In particular, it is unlikely that any of the small wireless providers supply *Dedicated Services* and hence will only have to provide information about their broadband coverage, which is not difficult, and which they may already do; and backhaul purchases, which in many instances, will amount to only a handful or two of facilities. Taking this into account and subtracting the wireless companies (assuming they have the same ratio of respondents as ACA, this is 1,368 wireless companies * (125/850), which equals 201) reduces our estimate of 506 small company respondents to 305.

Two ACA-represented small providers, ImOn and Frankfort Plant, provide estimates for their outside costs (ACA, M. Edl Decl. at 4, J. Higginbotham Decl. at 4). ImOn estimates its outside costs at \$15,000, and Frankfort Plant estimates its outside costs to be \$15,000 to \$20,000. Taking the mean of the ImOn estimate and the midpoint of the Frankfort Plant estimate, the resulting outside cost estimate is \$16,250. Although ACA's estimate includes requirements that have since been clarified and made less burdensome, it remains the only cost estimate in the record with regard to contracting out services necessary for the collection. Hence, we apply the \$16,250 estimated cost to all three classes of small-entity respondents that asserted this need.

\$16,250 (average cost) x 506 (average total small entities) equals \$8,222,500.

If we remove the 201 small wireless providers, so the total number of small providers is 305, then total outside service costs fall to \$4,956,250 (= \$16,250 * 305).

14. Data-related work preparing for this request has been ongoing, but we begin our calculation with the submission of the data collection to OMB. The total estimated annualized cost to the Federal government is almost **\$1 million**.

In-House Work Costs

The major phases of in-house work are:

Categorizing data, setting up cataloging system.

Estimated hours: 2 staff, 2 weeks each = 4 weeks.

4 weeks x 40 hours = 160 hours.

Reconciling data, checking responses for completeness, scrubbing.

Estimated hours: 3 staff, 16 weeks each = 48 weeks.

48 weeks x 40 hours = 1920 hours

Massaging data for analysis, unifying data, converting values into something we can analyze.

Estimated hours: 2 staff x 3 weeks = 6 weeks.

6 weeks x 40 hours = 240 hours.

Performing analysis, running data through many variations.

Estimated hours: 5 staff x 8 weeks = 40 weeks.

40 weeks x 40 days = 1600 hours.

Total hours = 160 + 1920 + 240 + 1600 = 3920 hours

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We expect all work to be performed by GS 14, average step 5, Data Specialists. GS 14, step 5 base hourly rate = \$45.99. See U.S. Office of Personnel Management, Salary Table 2012-GS, http://www.opm.gov/oca/12tables/html/g_s_h.asp. Given the range of actual GS hourly rates, which vary by locality, we consider it reasonable to round the expected hourly salary of federal in-house professional staff to the nearest dollar: \$46.00.

Total estimated in-house cost = 3920 hours x \$46.00 = \$180,320.00

Data Storage Costs

This is a one-time cost (*i.e.*, capital investment) to create a secure infrastructure for storage of the data collected in the data request. Specifically, costs cover the purchase and configuration of secure storage and networking resources for the data collection to segregate the data from other FCC data collections. The hardware costs are \$440,000.00, and installation costs are \$14,000.00.

Total estimated capital cost = \$454,000.00.

Data Collection Costs

The Commission has also budgeted funds to develop software to lower the industry burden of collecting the data. The major components of the Data Collection costs are as follows:

Filer Data Tools: Development of scripts and other tools to assist filers in tracking data format validation and data submitted
Estimated cost: \$30,000.00

Automated Randomization Dispersion: Development of software and interface for generating additional questions on infrastructure expansion analysis
Estimated cost: \$20,000.00

For further information on the way this software and interface will be employed, see the response to Item B.2.

Data Validation and Processing Pipeline: Software for the ingestion of submitted data including data format validation and data quality testing and data normalization.
Estimated cost: \$30,000.00

Internal Datamart, Data Management, and Visualization: Software for internal interfaces for controlled staff access to collected data. Various interfaces for management and visualization of data and usage tracking.
Estimated cost: \$60,000.00

Database Management and Administration
Estimated cost: \$80,000.00

On-site Data Access: Secure management of data and FCC on-premises data access by authorized third parties' analysts/consultants/attorneys. Costs associated with allowing secure on-site use of the data by authorized third parties. This includes secured computers and secured interfaces.
Estimated cost: \$40,000.00

Total estimated data collection costs: 30K + 20K + 30K + 60K + 80K + 40K = \$260,000.00

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Annual Recurring Costs

The Commission also anticipates additional annual costs of \$90,000.00 (30,000/year for 3 years). These costs may include, for example, general maintenance on the IT infrastructure, changes in data processing needs, and ongoing IT support.

Total estimated federal costs: \$180,320 + \$454,000 + \$260,000 + \$90,000 = **\$984,320**.

15. This is a new, one-time request for information.
16. Because the large majority of the collected data are commercially sensitive, the Commission will not publish the data collected.
17. The expiration date for OMB's approval of the information collection may be displayed.
18. The Commission notes the following changes since the publication of the *Federal Register* notice for the 60-day comment period:
 - (1) Revised the number of respondents from 6,387 to 4,000 to account for the recent changes to the collection (*see* Item B.1).
 - (2) Revised the total annual hourly burden from 856,614 hours to 536,000 hours based on further evaluation of the data collection methodology, additional information received from commenters and the recent changes to the collection. (*see* Item A.12);
 - (3) Revised the estimated total annual cost estimate to respondents as reported in the sixty day Federal Register notice from no cost to no more than \$10 million (*see* Item A.13); and
 - (4) Revised the list of Statutory Authorities to now include 47 U.S.C. §§ 155, 203, 204, 205, 211, 215, 219, 303(r), 332, 403, and 503.

There are no other exceptions to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of the OMB Form 83-I.