

**Before the
Office of Management and Budget**

In the Matter of)	
)	
Information Collection Being Submitted For)	78 Fed. Reg. 73861
Review And Approval To The Office Of)	OMB Control No. 3060-XXXX
Management And Budget (OMB))	

**PAPERWORK REDUCTION ACT COMMENTS
OF
THE RURAL INDEPENDENT COMPETITIVE ALLIANCE
AND
NTCA–THE RURAL BROADBAND ASSOCIATION**

January 8, 2014

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Exhibit 1: RICA Special Access Data Collection Estimate

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I. INTRODUCTION & SUMMARY

The Rural Independent Competitive Alliance (“RICA”)¹ and NTCA–The Rural Broadband Association (“NTCA”)² hereby submit these comments in response to the Notice of Information Collection³ regarding the Paperwork Reduction Act (“PRA”)⁴ burdens arising out of an information collection adopted by the Federal Communications Commission (“FCC”) in December, 2012.⁵ Certain of NTCA’s rural rate-of-return-regulated incumbent local exchange

¹ RICA is a national association of rural competitive local exchange carriers (“CLECs”) that are affiliated with incumbent rural telephone companies (“ILECs”).

² NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and competitive local and/or long distance services as well.

³ Information Collection(s) Being Submitted for Review and Approval To The Office of Management and Budget (OMB), 78 Fed. Reg. 73861 (published Dec. 9, 2013).

⁴ Paperwork Reduction Act of 1995, Public Law No. 104-13, 109 Stat. 163 (May 22, 1995), *codified at* 44 U.S.C. §3501, *et seq.*

⁵ *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, AT&T

carrier (“RLEC”) members, or their affiliates, are either providers or customers of the special access services that are the subject of the information collection adopted by the Order. Indeed, in most cases, these services are provided or procured, as applicable, by an entity affiliated with the RLEC, and are typically provided on a competitive basis in areas served by larger, price-cap regulated ILECs. Similarly, RICA members are users, providers or both of special access services.

As demonstrated below, the information collection contained in the Order will impose on the small businesses that RICA and NTCA represent an unreasonable burden that far outweighs the need for the data collected. As further demonstrated below, the FCC had several options to minimize this burden in a way that would have also maintained its ability to accomplish the goals of the data collection. It chose not to do so. The Office of Management and Budget (“OMB”) should therefore decline to approve the data collection as submitted by the FCC.

II. THE COMMISSION IMPROPERLY FAILED TO ADHERE TO THE REQUIREMENTS OF THE PAPERWORK REDUCTION ACT, AND THE OMB SHOULD THEREFORE DECLINE TO APPROVE THE INFORMATION COLLECTION

Pursuant to the PRA, all federal agencies are required to estimate the burden of proposed information collections and justify the need for the data collection. As the PRA states, the FCC was in this instance required to certify that the information collection:⁶

Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM 10593, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-153 (released Dec. 18, 2012) (“*Order*”).

⁶ 44 U.S.C. § 3506 (c)(3) (emphasis added).

(A) is necessary for the proper performance of the functions of the agency, including that the information has *practical utility*;

(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency; [and]

(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, *including with respect to small entities* ... the use of such techniques as –

(i) establishing different ... reporting requirements ... that take into account the resources available to those who are to respond;

(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

(iii) an exemption from coverage of the collection of information, or any part thereof

To begin with, the FCC estimated the total burden on all respondents from this data request would be 934,400 hours.⁷ An information collection of this magnitude necessarily raises the question of whether the FCC has the resources to effectively absorb and analyze all of this data, and thus calls into question the “practical utility” of the information collection. Pursuant to the PRA, practical utility “means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account ... the agency’s ability to process the information it collects ... in a useful and timely fashion.”⁸ At no point in the information collection does the FCC address its ability to process this volume of data, or provide a justification of why small businesses should be required to expend limited resources to provide data that may ultimately be unused. In fact, as demonstrated in Section III, *infra*, the FCC

⁷ Information Collection(s) Being Submitted for Review and Approval To The Office of Management and Budget (OMB), 78 Fed. Reg. 73861 (published Dec. 9, 2013).

⁸ 5 C.F.R. § 1320.3(l)

severely underestimated the burden that will be imposed on small carriers that must respond to the data request, further calling into question whether the vast amount of information that will be gathered will ever advance any function of the agency, should the OMB approve of this collection.

Moreover, as demonstrated in Section IV, *infra*, the FCC failed to properly consider alternative measures (such as data sampling) that could have lessened the burden on the small entities that NTCA and RICA represent while enabling the collection of data sufficient to conduct the market analysis at issue in the special access services proceeding. As NTCA noted in comments to the FCC on this issue in April 2013, rural carriers have, on average 25 employees.⁹ To put the burden associated with the instant information collection into its proper perspective, 134 employee hours¹⁰ represents, accounting for an average amount of vacation and holiday time taken, approximately 7 percent of one full-time employee's annual hours of employment. While the FCC made passing reference to small entities in the Order's final Regulatory Flexibility Act analysis,¹¹ it made no effort to "reduce[] to the extent practicable"¹² the burden of this request by adopting alternative measures that "take into account the resources

⁹ Paperwork Reduction Act comments of NTCA–The Rural Broadband Association, WC Docket No. 05-25 (fil. Apr. 15, 2013) ("NTCA April 15 comments"), p. 3.

¹⁰ The FCC originally estimated that each respondent would require 134 hours to complete the information request. Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested, 78 Fed. Reg. 9911 (published Feb. 12, 2013). That FCC estimate has increased to 146 hours. Information Collection(s) Being Submitted for Review and Approval To The Office of Management and Budget (OMB), 78 Fed. Reg. 73861 (published Dec. 9, 2013).

¹¹ *Order*, Appendix B, Final Regulatory Flexibility Analysis ("FRFA"), ¶ 73.

¹² 44 U.S.C. § 3506 (c)(3).

available to those who are to respond.”¹³ Sampling techniques, discussed in Section IV in greater detail, could have provided the Commission with the data it needs to analyze the special access services market while taking into account the limited resources of small business respondents.

In short, the instant information collection represents a decision by the FCC to gather as much information as could possibly be requested from industry and “sort it out later.” The FCC has failed to justify the need for the data at issue and has failed to adhere to the PRA’s directive to “minimize the paperwork burden for...small businesses...and other persons resulting from the collection of information by or for the Federal Government” and to “ensure the greatest possible public benefit from and maximize the utility of information...collected...by or for the Federal Government.”¹⁴ The OMB should therefore decline to approve the information collection.

III. THE FCC SEVERELY UNDERESTIMATED THE SUBSTANTIAL BURDENS THE INFORMATION COLLECTION WILL IMPOSE ON SMALL PROVIDERS AND PURCHASERS OF SPECIAL ACCESS SERVICES

Even assuming, *arguendo*, the accuracy of the FCC’s burden estimate, the burden on respondents would be substantial. This is particularly troubling when one considers that it is not the rates of the great majority of respondents that are the subject of complaints to the Commission, but those of a handful of very large carriers. The FCC burden estimate, however, is extremely unrealistic, and the burden on respondents will probably be several times that estimate. Some RICA member companies have made a careful analysis of the proposed

¹³ 44 U.S.C. § 3506 (c)(3)(i).

¹⁴ 44 U.S.C. § 3501 (Laying out the purposes of the Paperwork Reduction Act.).

collection and estimate that response to the proposed collection would require between 490 and 800 hours of employee time, to which must be added consultant fees for a total cost of between \$24,000 and \$45,000 per company.¹⁵

In addition to the inaccuracy of its time estimates, the labor cost implicit in the FCC submission of approximately \$11.00 per hour (\$10,000,000/934,400 hours) is probably 50 years out of date for the type of skilled employee required to provide the response. If the 934,400 total hours estimated by the FCC were more accurately priced at a conservative \$50.00/hour the total increases from \$10 million to almost \$47 million. If the time estimates are increased from 146 hours to 645 hours, the mid- point of RICA member's estimates, and priced at \$50 per hour, the total cost increases from \$10 million to over \$200 million.

The FCCs estimates are thus not accurate, and when the burden is properly assessed and priced out, the only reasonable conclusion is that the FCC proposal should be withdrawn and the process restored to reasonableness. In this regard, there are at least two petitions before the FCC challenging the underlying collection.¹⁶

¹⁵ Although we have not provided individual company estimates in this public comment, a copy of the template used to develop these estimates is attached as Exhibit 1.

¹⁶ National Cable & Telecommunications Association (NCTA), Application for Review, WC Docket No. 10-90 (fil. Dec. 9, 2013); Small Purchasers Coalition Petition for Blanket Exemption or, In the Alternative, Petition for Reconsideration, WC Docket No. 10-90 (fil. Dec. 9, 2013)

IV. THE COMMISSION IMPROPERLY FAILED TO UTILIZE A DATA SAMPLING MECHANISM THAT WOULD HAVE MINIMIZED THE BURDEN ON SMALL BUSINESSES WHILE MAINTAINING THE FCC'S ABILITY TO GATHER SUFFICIENT DATA TO ANALYZE THE MARKET AT ISSUE

In the *Order* that adopted the data collection at issue, the FCC proposes “requir[ing] providers and purchasers of special access services to submit data, information and documents to allow the Commission to conduct a comprehensive evaluation of competition in the special access market.”¹⁷ While the FCC’s intent to evaluate competition in this market is proper (and long overdue), the large scale data collection effort adopted by the *Order* will unnecessarily place a substantial burden on the small businesses that NTCA and RICA represent that will far outweigh the utility of the data in question to the evaluation. A well-designed sample, on the other hand, would provide all the data necessary with sufficient accuracy for a proper evaluation of the market, while substantially lessening the aggregate burden on respondents.

As with any data collection, the question of whether to use a census as opposed to a sample entails a tradeoff between absolute precision and respondent burden. A June 2012 memorandum from the Executive Office of the President, which directs federal agencies to eliminate unnecessary reporting burdens, aptly summarizes this consideration as follows:

“Sampling may be useful when it is not possible or desirable to collect data from every member of the population of interest. Respondent burden, cost and operational feasibility may justify sampling. *When the benefits of collecting information from an entire population do not justify the costs, agencies should consider whether it is appropriate to use sampling.*”¹⁸

¹⁷ *Order*, ¶ 13.

¹⁸ Memorandum for the Heads of Executive Departments and Agencies, Executive Office of the President (released June 22, 2012) (“Reporting Burdens Memo”).

Assuming, *arguendo*, that the data resulting from a full-blown census would be more accurate than that obtained via a sample, the FCC failed to properly evaluate whether the margin of error of a correctly designed sample would be so small that the data would allow a valid market evaluation and any increased accuracy from a 100% sample would be worth the additional aggregate resources that would be expended to collect the data. Nor did the FCC properly evaluate whether, with a smaller, but representative, number of responses, its reviewers would be better able to determine the accuracy of the individual responses, thus reducing the risk of “garbage-in-garbage-out.”

In the *Order*, the FCC unfortunately breezes past these considerations, merely stating that all providers and purchasers must respond to the data request in order to make it “comprehensive.”¹⁹ The closest the FCC comes to a thoughtful analysis is in noting that “[a]ny effort to lessen the burdens of this information collection on small companies must be balanced against [the] goal of obtaining the most accurate and useful data possible.”²⁰ The FCC ends its analysis there without any attempt to quantify that balance. It thus fails to provide satisfactory justification for undertaking the *most* comprehensive—and most burdensome—approach available. It also fails to analyze whether a sample would truly yield less accurate data.

Indeed, utilizing a sampling methodology need not necessitate the elimination of all semblance of data accuracy. Within a well-designed survey it is possible to calculate a margin of error, and thus still retain a very high level of confidence in the results. The key phrase here is

¹⁹ *Order*, ¶ 20.

²⁰ *Id.*, ¶ 22.

“well-designed.” That entails expertise and effort, which the FCC as the expert agency in the field of communications policy should possess or be able to retain.

In addition, a wide ranging data request such as that at issue here would be, by its very nature, extremely regressive: the relative burden on smaller entities would be greater than that on larger entities. As NTCA notes in its April 15, 2013 comments to the FCC, “[e]ven if some NTCA members might require fewer hours than the average to complete the information collection because of the size of their CLEC operations, they also likely have fewer employees as well[.]”²¹ An industry-wide census would thus place a regressive burden on smaller carriers. Regressivity, be it in tax codes or elsewhere, is widely recognized as unfair and something that should be avoided whenever possible.

Rather than operating from a standpoint of collecting as much data as possible and determining later what is (and is not) useful, the FCC could have begun by determining what the absolute minimum data needs are to conduct a proper analysis of the special access services market and proactively seek out ways to lessen the overall burden on respondents. In other words, will the data obtained via a survey, at a lower overall burden to respondents, be sufficient for the Commission’s intended purposes?

In answering that question, the FCC irrationally declined “to adopt a sampling approach because we believe that the process of identifying and collecting a representative sample would be unlikely to substantially reduce provider burdens, and could significantly lengthen the data

²¹ NTCA April 15 comments, p. 3.

collection process.”²² The whole point of the science of sampling as developed over the last 100 years is to reduce overall burdens, yet the FCC claims without citing any evidence that any reduction would not be substantial.

Nor is there any reason to believe that a sampling process would lengthen the data collection process. Not only is the contrary more likely, but when the analysis function time is added to the collection time, the total process should be completed much sooner. The *Order* addresses the issue of sampling by *each* respondent with the statement that “respondents likely would be required to search multiple databases and compare the results of those searches to determine which of their customer locations were in the selected geographies, resulting in substantial setup costs.”²³ This analysis, even if it were correct, does not address the point that data should be collected only from a sample of respondents. In fact, in his separate statement attached to the Order, Commissioner Ajit Pai laments the fact that the full Commission did not take greater care, as he suggested, to minimize the burden on respondents. Indeed, as to certain data points, he states that FCC should have shouldered the burden in place of industry.²⁴

Additionally, the FCC claims that “a random sample from all locations would need to be very large—perhaps approaching a census—to obtain sufficient data from all competitive

²² *Order*, ¶ 24.

²³ *Id.*

²⁴ *Order*, STATEMENT OF COMMISSIONER AJIT PAI APPROVING IN PART AND DISSENTING IN PART, “I wish the data collection took more steps to...reduce the burden of compliance. For example,...I had proposed putting the burden of geocoding street addresses on the Commission rather than private industry.”

providers.”²⁵ Yet, again, it offers up no justification whatsoever for that claim. While the *Order* proposes a two-stage effort, whereby providers could identify all relevant locations and a sample could then be drawn from that data,²⁶ this is dismissed as being too time consuming (requiring two separate data submissions), and resulting in greater statistical errors than a census. This alternative approach, while promising, did not receive the further investigation it merits. The first stage, it would seem, could be conducted fairly quickly. Having access to the full universe of locations would then facilitate the development of a well-crafted survey. And, as noted previously, the magnitude of the error could be estimated with a relatively high degree of accuracy.

In addition to moving from a census to a sample, NTCA in its April 15 comments to the FCC offered two other possible means of reducing respondents’ burdens while satisfying the Commission’s data needs. These are implementing “short form” data collection, and/or adopting a *de minimis* exemption.²⁷ Either of these proposals would reduce the burden on small businesses while still providing the FCC with sufficient data to conduct a careful and thoughtful analysis of the special access market.

To be clear, the Associations remain concerned that even a “sampling” alternative adopted by the Commission could impose unnecessary burdens on certain providers. That is, if the FCC chooses an alternative under which selected respondents could submit data, it should

²⁵ *Order.*, ¶ 25.

²⁶ *Id.*

²⁷ NTCA April 15 Comments, pp. 11-12.

remain mindful of the burden imposed on those individual selected companies. The average NTCA member has fewer than 25 employees, many of whom are required to “wear multiple hats” in terms of both compliance and other functions for operations that span hundreds or even thousands of square miles. Any sampling technique adopted must account for this reality. In short, should the OMB decline to approve the instant data collection, it should also make clear that the form (census vs. sampling) is not the only infirmity that exists in this data collection. Rather, it is the FCC’s disregard for balancing its needs against the burdens imposed on small businesses.

As the above discussion demonstrates, the FCC could have utilized a sampling alternative to minimize the burden on small providers while still gathering data sufficient to analyze the special access services market. Instead, the Commission has chosen to “cast a wide net” and sort out the data at a later date. The data collection as currently constituted thus fails to balance the legitimate need for data to conduct what is a truly necessary market analysis with the very real burden on smaller providers, as required by both the PRA and the administration’s reporting burdens memorandum. The OMB should therefore decline to approve the data collection and should instead remand it to the FCC for further consideration.

V. CONCLUSION

As demonstrated herein, the information collection contained in the Order will impose on the small businesses that RICA and NTCA represent an unreasonable burden that far outweighs the need for the data collected. The FCC failed to accurately estimate the burden and failed to utilize available options to minimize this burden in a way that would have also maintained its

ability to accomplish the goals of the data collection. The OMB should therefore decline to approve the data collection as submitted by the FCC.

Respectfully submitted,

THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

By: /s/ David Cosson

David Cosson
Counsel for RICA
5151 Wisconsin Ave., N.W.
Washington, D.C. 20016

NTCA–THE RURAL BROADBAND ASSOCIATION

By: /s/ Michael R. Romano

Michael R. Romano
Senior Vice President – Policy
mromano@ntca.org

By: /s/ Brian J. Ford

Brian J. Ford
Regulatory Counsel
bford@ntca.org

4121 Wilson Blvd, 10th Floor
Arlington, VA 22203
(703) 351-2000

cc: Leslie Smith
Office of Managing Director
Federal Communications Commission

Exhibit 1: RICA Special Access Data Collection Estimate
December-13

EXAMPLE							
XYZ Telephone Company							
	Hours	Locations	Circuits	Total Hours	Labor Rate	Labor Cost	Labor Consulting
Low estimate							
General preparation and filing				50	\$78.40	\$3,920	\$10,000
Per location information	1	102		102	\$46.50	\$4,743	
Fiber shapefile map				20	\$77.00	\$1,540	\$6,000
Node mapping				2	\$77.00	\$154	
Billing information per connection	3		102	306	\$41.60	\$12,730	
Purchaser information				10	\$62.00	\$620	
				<u>490</u>		<u>\$23,707</u>	<u>\$16,000</u>
Total hours and cost				490			\$39,707
High estimate							
General preparation and filing				50	\$78.40	\$3,920	\$10,000
Per location information	2	102		204	\$46.50	\$9,486	
Fiber shapefile map				20	\$77.00	\$1,540	\$6,000
Node mapping				2	\$77.00	\$154	
Billing information per connection	5		102	510	\$41.60	\$21,216	
Purchaser information				10	\$62.00	\$620	
				<u>796</u>		<u>\$36,936</u>	<u>\$16,000</u>
Total hours and cost				796			\$52,936

RICA Member Company Name							
	Hours	Locations	Circuits	Total Hours	Labor Rate	Labor Cost	Labor Consulting
				0	\$0.00	\$0	\$0
	0	0		0	\$0.00	\$0	\$0
				0	\$0.00	\$0	\$0
	0		0	0	\$0.00	\$0	\$0
				0	\$0.00	\$0	\$0
				<u>0</u>		<u>\$0</u>	<u>\$0</u>
Total hours and cost				0			\$0
				0	\$0.00	\$0	\$0
	0	0		0	\$0.00	\$0	\$0
				0	\$0.00	\$0	\$0
	0		0	0	\$0.00	\$0	\$0
				0	\$0.00	\$0	\$0
				<u>0</u>		<u>\$0</u>	<u>\$0</u>
Total hours and cost				0			\$0

Note: Please complete yellow highlighted cells. Thank you.