January 8, 2014

By Electronic Mail

Nicholas A. Fraser
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th St., NW
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Re: *Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB)*, 78 Fed. Reg. 73861 (Dec. 9, 2013), OMB Control Number: 3060-xxxx, Comprehensive Market Data Collection for Interstate Special Access Services, FCC 12-153 (WC Docket No 05-25)

Dear Mr. Fraser,

Alaska Communications Systems ("ACS")[1] hereby submits these comments in response to the above-referenced *Federal Register* Notice (the "Notice") published by the Office of Management and Budget ("OMB") inviting comments on the compliance with the Paperwork Reduction Act ("PRA"), 44 U.S.C. §§ 3501 *et. seq.*, of the information collection regarding special access services proposed by the Wireline Competition Bureau ("Bureau")[2] and the Federal Communications Commission ("FCC" or "Commission").[3]

Contrary to the requirements of the PRA, the Bureau's proposed information collection fails to "manage information resources to (A) reduce information collection burdens on the public; (B) increase program efficiency and effectiveness; and (C) improve the integrity, quality, and utility of information to all users within and outside

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[1] In these comments, ACS signifies the subsidiaries of Alaska Communications Systems

[2] *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, 28 FCC Rcd. 13189 (2013) ("*Bureau Order*").

[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 and Further Notice of Proposed Rulemaking, FCC 12-153, 27 FCC Rcd. 16318 (2012) ("*Data Collection Order*").

the agency . . . ."[4] Rather, the proposed information collection is breathtaking in scope, wholly out of proportion to that required to address the limited issues before it, and has been subject to no meaningful evaluation under the PRA. Any possible benefit from collecting the information, particularly from ACS, is far outweighed by the extraordinary burden associated with collecting the necessary information, and preparing and generating the response.

Accordingly, ACS requests that OMB withhold approval of the proposed information collection until it is appropriately narrowed to focus on the issue at hand in the associated rulemaking, *i.e.*, the rates for special access services being charged by the Bell Operating Companies and their competitors in the geographic markets they serve.

Background and Scope of the Proposed Information Collection. In the *Data Collection Order*, the FCC addressed an AT&T Corp. petition dating from 2002, which alleged that, under the Commission's longstanding pricing flexibility framework for special access services, Bell Operating Company special access rates exceeded competitive levels.[5] The AT&T petition made no reference whatsoever to special access rates in Alaska or, indeed, those being charged by any incumbent local exchange carriers ("ILECs") other than the Bell Operating Companies. Over a decade after this petition was filed, the FCC's *Data Collection Order* suspended the pricing flexibility framework for special access rates, and ordered a sweeping nationwide data collection with only minimal consideration of the crushing burden compliance will produce on the industry, particularly its smallest participants.

While the FCC purportedly seeks data to understand competitive dynamics for special access services, the Commission's data collection is drawn in the broadest possible terms, with the Commission declining even to determine the appropriate definition of the product market involved.[6] Rather, the FCC determined to cover "the full array of traditional special access services, including DS1s and DS3s, and packet-based dedicated services such as Ethernet" and "best efforts business broadband Internet access services, which we define as best efforts Internet access data services with a capacity equal to or greater than a DS1 connection that are marketed to enterprise customers (including small, medium, and large businesses, as well as existing special access customers)."[7] Despite

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[4] 44 U.S.C. § 3506(b)(1).

[5] *Data Collection Order*, at ¶ 7; *see AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593 at 1, 6, 39-40 (filed Oct. 15, 2002).

[6] *Data Collection Order*, at ¶ 18 ("We need not resolve the market-definition issue here—for purposes of this data collection, we conclude it is best to simply take a broad approach.").

[7] *Id.* at ¶¶ 17-18.

evident jurisdictional issues, the Commission also announced its intention to collect data on similar jurisdictionally intrastate services.[8] The Commission made this determination despite its earlier conclusion that at least some of these services – intrastate services and broadband Internet access services in particular – are not subject to Commission regulation under Title II of the Communications Act of 1934, as amended.[9]

Further, the Commission's overbroad data collection mandate applies to every "entity subject to the Commission's jurisdiction under the Communications Act, as amended, that provides special access services or provides a connection that is capable of providing special access services," as well as every "entity subject to the Commission's jurisdiction under the Communications Act, as amended, that purchases special access services,"[10] with only certain limited exceptions for special access services provided in areas where the ILEC is subject to rate-of-return price regulation.[11]

In designing this information collection, the Commission briefly "note[d] concerns regarding the burden that this data collection will impose on small companies," but asserted that "[a]ny effort to lessen the burdens of this information collection on small companies must be balanced against our goal of obtaining the most accurate and useful data possible."[12] Despite this acknowledgement, the FCC articulated only the briefest of attempts to engage in such balancing. While the FCC correctly observed that small providers may compete in highly localized areas, it utterly failed to articulate any analysis of how the tremendous burden on the industry –particularly on small providers such as ACS – of generating these data might be outweighed by the incremental benefit of such information to the redesign of a regulatory framework that is necessarily macroscopic in nature.[13] This failure is particularly egregious in the case of areas, such as Alaska, where

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[8] *Id.* at ¶ 19.

[9] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, FCC 05-150, 20 FCC Rcd 14853 (2005), at ¶ 12.

[10] *Data Collection Order* at ¶ 20.

[11] *Id.* at ¶ 23.

[12] *Id.* at ¶ 22.

[13] *See* Application for Review of the National Cable & Telecommunications Association, WC Docket No. 05-25 (filed Dec. 9, 2013), at 7 ("[I]t is implausible for the Commission to regulate at a building level, or even a street level. Such minutely granular rules would be impossible to implement and unworkable to apply. Since there is no meaningful possibility of establishing rules that vary by street or building, whether fiber runs down K Street or L Street or M Street ultimately will have no effect on any rules the Commission adopts and therefore that level of detail is simply unnecessary.").

the Commission has received no complaints regarding special access pricing or competition.

The Bureau Failed to Conduct the Required Paperwork Reduction Act Analysis. The Commission apparently recognized that, in light of the broad scale and scope of its proposed information collection, its burden analysis was lacking. Accordingly, the Commission explicitly acknowledged the "complexities associated with ensuring that the specific questions asked meet the Commission's needs as expressed in this Report and Order, [and] navigating the Paperwork Reduction Act process," and directed the Bureau to, among other things, "amend the data collection based on feedback received through the PRA process."[14]

Subsequently, pursuant to this delegation of Authority, the Bureau sought comment on the proposed information collection.[15] ACS, together with numerous other parties responded with detailed comments explaining that the estimated burden of the information collection was woefully and unreasonably low, and that the scope of the information collection proposed by the Bureau substantially exceeded what would be necessary to achieve the Commission's regulatory goals, and would create extraordinary burdens on respondents, in a number of specific ways.[16] ACS's comments are attached as **Exhibit A**, hereto.

The *Bureau Order* improperly failed to consider any of these comments when complying with the Commission's Paperwork Reduction Act obligations. The Ordering Clauses of the *Bureau Order* assert that "[t]he actions taken in the Report and Order are based on comments received during the initial 60-day PRA comment period, meetings with industry, and our own internal further review to enhance the quality, utility, and clarity of the collection."[17] Yet, the body of the *Bureau Order* explicitly contradicts this

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[14] *Id.* at ¶ 52.

[15] *Comprehensive Market Data Collection for Interstate Special Access Services, FCC 12-153; Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 78 Fed. Reg. 9911 (Feb. 12, 2013) ("*Special Access PRA Request*").

[16] In addition to ACS, the Bureau received comments from, among others, the Ad Hoc Telecommunications Users Committee, the American Cable Association, Cincinnati Bell, Inc., the Independent Telephone and Telecommunications Alliance, the National Cable & Telecommunications Association, NTCA—The Rural Broadband Association, Smith Bagley, Inc., Sprint Nextel, and a coalition consisting of BT Americas, Inc., Cbeyond Communications, LLC, EarthLink, Inc., Integra Telecom, Inc., Level 3 Communications, LLC, and tw telecom inc.

[17] *Bureau Order* at ¶ 58.

assertion, stating that, "[a]llegations as to whether the collection complies with the PRA are not addressed here however. We will address those allegations as part of the PRA approval process."[18] The Bureau thus shifted the burden of conducting a meaningful analysis of this information collection to the Office of Information and Regulatory Affairs ("OIRA"). Reversing course again, the December 9, 2013 Federal Register Notice, points *backward*, asserting that PRA compliance was indeed previously handled in the *Bureau Order*, which "(1) clarified the scope of the collection to reduce burden where doing so is consistent with our delegated authority and will not impact the Commission's ability to analyze the data; (2) provided instructions and record format specifications for submitting information; and (3) modified and amended questions and definitions contained in the collection."[19]

The FCC and the Bureau therefore failed to comply with the PRA in at least three ways:

First, the Commission and Bureau failed to "carry[] out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness."[20] Among the goals of the PRA are to:

> "(1) [M]inimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;
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> "(2) [E]nsure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;
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> "(3) . . . [I]mprove the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;
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> "(4) [I]mprove the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society; [and]
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> "(5) [M]inimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information."[21]

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[18] *Bureau Order* at ¶ 7, n. 24.

[19] Notice at 73861-62.

[20] 44 U.S.C. § 3506(a)(1)(A).

[21] 44 U.S.C. § 3501(1-5).

To achieve these goals, the PRA requires that "information resources management operations and decisions are integrated with . . . program decisions."[22] Only through such integration can the Commission shape its information collection decisions contemporaneously within the context of these goals, while weighing the anticipated cost and burden its actions will produce on the public.

The conduct of the full Commission and Bureau here, in contrast, has produced cursory, superficial, *post hoc* justifications only after the design of the information collection was largely complete. The *Data Collection Order* contained a 25-page draft of the proposed data collection questionnaire. Yet, rather than conducting a full PRA analysis, the full Commission delegated responsibility to conduct this analysis to the Bureau after the fact, and with no further involvement required from the full Commission.

Following receipt of numerous comments on the Commission's proposed PRA analysis, however, the Bureau further deferred analysis of "whether the collection complies with the PRA" to this proceeding before the OIRA.[23] In finalizing the proposed information collection, the Bureau made only superficial changes and clarifications to the scope of individual questions, while virtually ignoring the pleas of numerous commenters, ACS included, that the information collection was unnecessarily overbroad and supremely burdensome to the intended respondents. While some of these changes may have incrementally reduced the burden of the proposed information, others appear to have increased it. Regardless, there is no indication in the *Bureau Order* that the changes were made with the requirements of the PRA in mind; the majority of the changes appear to be mere clarifications of points the Bureau decided were ambiguous in the original proposal. This is plainly inadequate under the PRA.

The FCC's OIRA Supporting Statement sweeps away the myriad of concerns raised by commenters in a brief few paragraphs, which sidestep the issues without meaningful analysis. The FCC initially asserts that (1) "[t]here is an urgent need to move quickly on this data collection."[24] Given that the original AT&T petition was filed more than ten years ago, some explanation of why the matter has become suddenly urgent is plainly required. The Commission's self-imposed moratorium on further grants of pricing flexibility falls well short of the mark.

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[22] 44 U.S.C. § 3506(b)(3(A).

[23] *Bureau Order* at ¶ 7, n. 24.

[24] FCC Supporting Statement, "WCB Comprehensive Market Data Collect for ISAS_SS Part A 120713 final.doc," Dec. 9, 2013 ("Supporting Statement'), *available at:* http://www.reginfo.gov/public/do/DownloadDocument?documentID=437246&version=0, at 11.

Next, the Supporting Statement acknowledges the "significant burden" the information collection will impose on respondents, but justifies the burden because, "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."[25] This amounts to nothing more than bootstrapping. The Commission's *Data Collection Order* explicitly delegated PRA compliance authority to the Bureau, and directed the Bureau to engage in the balancing such a decision would require and to "amend the data collection based on feedback received through the PRA process."[26] The entire PRA statute will be reduced to a nullity if the FCC can issue rules without the benefit of PRA analysis and delegate its compliance authority to the agency staff, which in turn may simply defer to the Commission's original decision as support for imposing the burden of the information collection the Commission discussed. The FCC should not be permitted to turn PRA compliance into a regulatory shell game, constantly insisting that the rigorous analysis the PRA requires is taking place elsewhere.

Finally, the Supporting Statement erroneously claims that the *Bureau Order* "largely addresses the more burdensome aspects of the collection raised by commenters."[27] This is simply not the case. Not only did the *Bureau* Order explicitly defer consideration of "whether the collection complies with the PRA"[28] the changes it made to the data collection, as explained in the Notice were merely to "(1) clarify the scope of the collection to reduce burden where doing so is consistent with our delegated authority and will not impact the Commission's ability to analyze the data; (2) provide instructions and record format specifications for submitting information; and (3) modify and amend questions and definitions contained in the collection."[29] None of these changes materially reduced the burden of the information collection; even the modifications and amendments were mere technical corrections, many of which in fact *expanded* the scope and burden of the questions involved.[30] Indeed, the Supporting Statement's inference that the changes in the *Bureau Order* reduced the burden is belied by the fact that the December 9, 2013 Federal Register Notice *increased* the estimated burden by some 17.7 percent over the FCC's initial estimate contained in the February 12, 2013 *Special Access PRA Request.* (And, as discussed below, even that revised estimate is unrealistically low.)

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[25] *Id.*

[26] *Data Collection Order* at ¶ 52.

[27] Supporting Statement at 11.

[28] *Bureau Order* at ¶ 7, n. 24.

[29] *Bureau Order* at ¶ 1.

[30] *See, e.g., Bureau Order* at ¶ 53 (expanding definitions of "Affiliated Company," "End User," "Packet Based Dedicated Service," and "Tariff," among other expansions of the data request.

Second, the Commission and Bureau failed to "manage information resources to (A) reduce information collection burdens on the public; (B) increase program efficiency and effectiveness; and (C) improve the integrity, quality, and utility of information to all users within and outside the agency . . . ."[31] To meet these requirements when requesting OMB clearance for the information collection, the Commission must develop a record to permit it to certify, among other things, that the information collection:

- "[I]s necessary for the proper performance of the functions of the agency, including that the information has practical utility;"[32]
- "[R]educes 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 . . . ;"[33] and
- "[I]s to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond."[34]

Here, the *Bureau Order* and Supporting Statement largely ignored the consensus in the record before it that its estimate of 124 hours to respond to the proposed questionnaire was unreasonably and absurdly low.[35] The *Bureau Order* failed even to mention the original 124-hour estimate, or to address the many comments explaining the true, much higher, burden. This failure alone should preclude the Commission from making the necessary PRA certifications discussed above. The December 19, 2013

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[31] 44 U.S.C. § 3506(b)(1).

[32] 44 U.S.C. § 3506(c)(3)(A).

[33] 44 U.S.C. § 3506(c)(3)(C).

[34] 44 U.S.C. § 3506(c)(3)(E).

[35] *See, e.g.,* ACS Comments (attached as Exhibit A), at 7 ("The data collection might take more than ten times the number of hours estimated by the Commission."); Cincinnati Bell Comments (available at: http://apps.fcc.gov/ecfs/document/view?id=7022293669), at 5 ("Cincinnati Bell companies would require nearly 8,000 hours and approximately half a million dollars to comply with the information collection."); ITTA Comments (available at: http://apps.fcc.gov/ecfs/document/view?id=7022293515), at 4 (CenturyLink estimates burden of compliance at 40,000 hours); NTCA Comments (available at: http://apps.fcc.gov/ecfs/document/view?id=7022293698) at 5 (burden exceeds 134 hours, in part because many of the questions require subjective narrative responses and manual, physical sorting of orders and billing records, and mapping of service locations); American Cable Association Comments (available at: http://apps.fcc.gov/ecfs/document/view?id=7022287304) at 3 (average small operator will require at least 500 hours to respond).

Notice provides a different – but no less unreasonable – estimate of 146 hours to respond, but offers no discussion whatsoever of the compelling record evidence that the Commission's estimate is wildly mistaken, not by dozens of hours, but by orders of magnitude. Largely disregarding the extensive discussion and record evidence offered by the PRA commenters, the Supporting Statement asserts that these "commenters' estimates do not take into account the burden-reducing clarifications made by the Bureau" in the *Bureau Order*.[36] Yet, as discussed above, these clarifications did little, if anything, to reduce the burden of the information collection in any meaningful way, and this brief sentence cannot refute commenter assertions that the estimate understates the burden by *up to 300 times or more*. To the extent it has not fully considered the record evidence detailing the true burden of the proposed information collection, there is no way for the Bureau to balance that burden "against our goal of obtaining the most accurate and useful data possible," as directed by the full Commission.[37] No meaningful analysis was possible given the Commission's too-rosy estimates of the burden the information collection entails.[38]

Further, the Bureau failed to consider ACS's explanations of reduced utility of the requested data in Alaska, as well as the many obstacles ACS would face in any attempt to comply with the information collection, as constructed. As ACS explained in its comments, the Commission failed to address a fundamental threshold question whether reform is needed in Alaska, in light of the fact that there have been no complaints regarding pricing or competitive access to special access services there.[39]

Particularly in light of such questionable utility of the Alaska data to the Commission's reform process, the information collection poses an untenable compliance burden for ACS. Indeed, in ACS's case, the Commission's information collection cannot be characterized as one that is being "implemented in ways consistent and compatible, to

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[36] Supporting Statement at 20.

[37] *Id.* at ¶ 22.

[38] *See* Letter to Nicholas A. Fraser, Office of Management and Budget, from Glenn Reynolds, Vice President, Policy, USTelecom, 77 Fed. Reg. 52354: Information Collection Regarding Emergency Backup Power for Communications Assets as set forth in the Commission's Rules (47 C.F.R. § 12.2) at 4 (filed Oct. 9, 2008) ("USTelecom Backup Power Letter"). USTelecom observed at that time, "the Commission's first estimate of 70 hours provided LECs with just 10 seconds per wireline asset to comply with the reporting requirements. Yet after reviewing the extensive record in this proceeding, the Commission's revised estimate of 116.64 hours allows for a mere *16.79 seconds per wireline asset*." USTelecom Backup Power Letter at 2 (emphasis in original).

[39] ACS Comments at 3.

the maximum extent practicable, with the existing reporting and recordkeeping practices" of ACS.[40] Specifically, as ACS has previously explained to the Bureau, much of the data the Commission seeks from 2010 and 2012 is simply not reasonably available to ACS. To respond to many of the Commission's data requests, ACS would be required manually to match up information from its billing systems with corresponding facility information from its provisioning systems. Because these systems operate separately, this matching would be a purely manual, labor-intensive process.

Compounding the problem, as a result of system and software upgrades that ACS performed to its provisioning systems in 2010 and 2012, the necessary data from those years exist only in archived back-up files, meant for access only in the case of catastrophic, total failure or destruction of ACS's primary systems. To access these provisioning system data, ACS would need to reinstall an older version of its provisioning software – several versions out of date – because its current software is incompatible with the archived data files. Only after that software is reinstalled could ACS generate reports, which then would need to be manually reviewed, that would in turn produce a portion of the Commission's requested data. This exercise would require ACS to divert substantial employee resources from pressing operational tasks, and hire costly outside consultants to supplement their efforts.[41]

Some of the data simply cannot be produced from ACS business records at all. In this regard, even the one change the Bureau made in an attempt to address ACS's concerns falls short. ACS explained in its comments that it does not keep records of the geocode for each location where special access services are deployed, nor does it record the location type,[42] whether the service has been provisioned using fiber or copper,[43] the bandwidth of each unbundled network element ("UNE") used; how unbundled loops are

[40] 44 U.S.C. § 3506(c)(3)(E).

[41] ACS would need to divert various employees from their normal functions, crossing multiple departments such as Information Technology ("IT"), Operations, Finance, End User Billing, and Carrier Access Billing, in order to produce the requested data. IT consultants would be needed to assist with restoring systems and validating that the restore was successful, both of which would require a significant amount of effort. Once the data had been restored, consultants would also be required to assist with matching data between systems, as well as to assist with collecting information that can only be procured manually.

[42] Every location would need to be researched manually to provide location type.

[43] ACS's provisioning systems are not programmed to capture the type of connection, that is, fiber or copper. ACS would need to research each connection manually to make this determination.

used;[44] charges that are non-recurring;[45] or adjustments that are made outside the billing cycle.[46]

The Bureau's response was inadequate. While the *Bureau Order* permits providers to report the location type as "unknown," the Bureau failed to address another concern raised by ACS. With respect to geocode data, the Commission explicitly directed the Bureau to "reduce the burden of this data collection . . . [by] facilitat[ing] whenever possible the conversion of street addresses to geocoded coordinates for small providers and purchasers."[47] In response, the Bureau merely permitted providers that lack actual geocode data to report "a location geocode derived from a postal address through use of a geocoding platform," such as Bing maps, Google, Yahoo, batchgeo.com, Texas A&M Geoservices or other geocoding solution.[48] This response, however, utterly ignores the fact that *many Alaska locations lack sufficiently specific street addresses to enable these platforms to provide reliable geocode information at all.*

Third, the PRA process the Commission and Bureau followed violates the strictures of the statute. The PRA requires the Commission to "establish a process within the office headed by the Chief Information Officer designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this subchapter."[49] Here, while the

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[44] In most cases ACS does not know the true use of a UNE because the UNE does not connect to any ACS equipment. Competitors can be using UNEs as switched or special access circuits. Importantly the circuit equipment used by the competitor determines the facility's capability.

[45] ACS bills non-recurring charges ("NRCs") through its billing systems, but does not track NRCs in its provisioning systems. The NRC from the billing system would need to be manually matched to the specific provisioned circuit from the provisioning systems.

[46] Out of cycle billing adjustments are not tracked in ACS's provisioning systems. Rather, most adjustments arise from differences in the billing system as compared to the company's provisioning systems. For example, a circuit may have been disconnected in the provisioning system, but the billing system did not stop billing, resulting in the need for a billing adjustment. This type of correction would not be reflected in ACS's provisioning data. Rather ACS manually corrects order errors directly in the billing system and the billing system automatically makes the correction.

[47] *Data Collection Order* at ¶ 53.

[48] *Bureau Order* at ¶ 33.

[49] 44 U.S.C. § 3506(c)(1).

February 12, 2013 *Federal Register* notice was signed by Judith B. Hermann of the Commission's Office of the Managing Director, the evaluation of the PRA comments submitted to the agency, and the final PRA analysis, to the extent these activities took place at all, were conducted by the staff of the Bureau, who share programmatic responsibility for the rulemaking itself, including collection and analysis of the information they propose to collect. Indeed, the full Commission explicitly delegated such authority to the Bureau staff in the *Data Collection Order*.[50] Further, the *Bureau Order* finalizing the design of the information collection was in fact released over the signature of the Wireline Competition Bureau Chief, whose primary responsibility is to lead the programmatic staff, not to provide an independent voice.[51] The Supporting Statement submitted to OIRA has a title and author indicating that it, too, was prepared by the Wireline Competition Bureau; in any event, the Supporting Statement's twin reliance on the superficial clarifications contained in the *Bureau Order* and the Commission's original imposition of the information collection requirement with no contemporaneous consideration of PRA issues is plainly inadequate.

In short, far from being a "sufficiently independent" process, responsibility for PRA compliance was lodged with the very agency staff members that had originally concocted the information collection proposal. Even had they made an earnest attempt to do so, it would have been virtually impossible under such circumstances for those same staff members to "evaluate fairly" whether the proposed information collection should be approved under the PRA.

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[50] *Data Collection Order* at ¶ 52 (Given the complexities associated with . . . navigating the Paperwork Reduction Act process . . . , we delegate limited authority to the Bureau to . . . (a) draft instructions to the data collection and modify the data collection based on public feedback; (b) amend the data collection based on feedback received through the PRA process . . . .").

[51] 44 U.S.C. § 3506(a)(3).

For the foregoing reasons, ACS requests that OIRA withhold clearance of the proposed special access data information collection, and require the Commission to conduct a meaningful analysis of the burden this proposal would entail, as well as meaningful opportunities to reduce that burden by narrowing its scope to seek only that data necessary for the Commission to meet its regulatory goals in the associated rulemaking docket.

Very truly yours,

Leonard A. Steinberg
General Counsel and Corporate Secretary
Richard R. Cameron, Consultant

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Exhibit A

Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25,
Comments of Alaska Communications Systems (filed April 15, 2013)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Special Access for Price Cap Local Exchange Carriers:	)	WC Docket No. 05-25
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593
	)	
Comprehensive Market Data Collection for Interstate Special Access Services, FCC 12-153; Information Collection(s) Being Reviewed By the Federal Communications Commission, Comment Requested	)	78 Fed.Reg. 9911

COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS

Alaska Communications Systems ("ACS")[1] hereby submits these comments in response to the Commission's request published in the Federal Register pursuant to the Paperwork Reduction Act in the above-referenced docket and rulemaking.[2] ACS addresses in these comments the Commission's questions about the accuracy of its burden estimate and the practical utility of the proposed collection.[3]

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[1] In these comments, ACS signifies the four incumbent local exchange carrier ("ILEC") subsidiaries of Alaska Communications Systems Group, Inc. (ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC).

[2] *Comprehensive Market Data Collection for Interstate Special Access Services, FCC 12-153; Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 78 Fed. Reg. 9911 (Feb. 12, 2013) ("*Special Access PRA Request*").

[3] The Commission seeks comment on "whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including use of automated collection techniques or other forms of information technology; and ways to further reduce the information

The Commission proposes to conduct an extensive mandatory data collection as part of its "comprehensive market analysis" of special access services that will inform its adoption of new rules on pricing flexibility and pricing deregulation for special access services.[4] While ACS previously has been granted some pricing flexibility on special access services, it has "found that the pricing flexibility it obtained for specific municipalities was of very little value to the company in the marketplace, where customers' service needs typically do not follow the boundaries established by the MSA-based regulatory scheme. ACS's chief competitors for special access services are not so constrained. … [They] have the unfettered right to offer term discounts or individual case basis ('ICB') contracts, and [are] not subject to any prescribed rate structure."[5] Despite the highly competitive nature of special access service offerings in Alaska, ACS still would be subjected to the burdens of the proposed data collection, which would require ACS to submit detailed information about its special access facilities, billing, and revenue, terms and conditions, and would require the company's affiliated mobile wireless service provider to submit information about it special access expenditures and terms and conditions.

Before implementing any data collection that will be used to rewrite regulations and potentially alter existing forbearance relief from regulation, ACS believes the gating question should be whether there have been any complaints about competitive access to special access

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burden for small business concerns with fewer than 25 employees." *Special Access PRA Request* at 9911.

4 *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*, Report and Order, 27 FCC Rcd 10557 (2012) ("*Special Access Suspension Order").*

5 *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, Comments of Alaska Communications Systems, at 3 (filed Feb. 11, 2013) ("ACS Comments").

services in a particular market.[6] For special access services in Alaska markets where ACS has been granted pricing flexibility, the answer to that question would be a resounding "no," thereby making any data collection from ACS's regulated ILECs unnecessary and burdensome.[7] ACS should not be subjected to the proposed data collection because there is no basis to alter regulatory forbearance in the areas where ACS has been granted pricing flexibility.[8] Moreover, the burden that would be imposed on ACS is far greater than the Commission's estimate of 134 hours for response, calling into question the benefit gained for the cost incurred.

I. THE PROPOSED DATA COLLECTION IMPOSES UNACCEPTABLE BURDENS ON ACS

The requirements of the data collection are particularly burdensome to ACS stemming from the fact that much of the 2010 and 2012 data requested from ILECs is simply not available in ACS's provisioning systems,[9] and the data that is available from ACS's billing systems[10] in

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6 "The Commission has reaffirmed the competitive nature of the special access market in many carrier-specific rulings during … [the past two decades]. Despite the availability of the complaint process under Section 208 of the Communications Act, ACS is aware of no findings against special access carriers in complaint proceedings alleging abuse of market power where pricing flexibility was granted. Yet, the Commission has been considering revoking or curtailing pricing flexibility for more than seven years." ACS Comments at 4 (footnotes omitted).

7 "While the Commission should conduct a multi-faceted analysis of the special access market to determine what criteria would be useful triggers for pricing flexibility and deregulation, the Commission would do well to approach this analysis with the goal of granting relief *except* where the balance of evidence clearly suggests market power. If an ILEC asserts, based on objective criteria, that it is subject to actual or potential competition, and neither its customers nor its competitors present compelling evidence to the contrary, the ILEC should be granted relief." ACS Comments at 5.

8 If anything, data collection about the special access market in Alaska should focus on where the Commission can grant greater de-regulation and pricing flexibility to ILECs where competition has already taken hold, using data collected from ACS's competitors as justification.

9 The type of requested data that is found in ACS's provisioning systems is only available real time. In other words, the data would be derived from a snapshot in time, not an interactive system that can be parsed for the data requested.

10 Billing data is retrieved from ACS's accounting systems and Carrier Access Billing ("CABs") system.

most cases would need to be matched up to data from provisioning systems before ACS could report that data as responsive.[11] An example of the need for matching data between the provisioning and billing systems is demonstrated by the billing information requested in the ILEC request number 4, where the Commission asks for the corresponding facility information from request number 3. In order to tie the information together, ACS must review data from two or more different systems. This match-up would be a purely manual, labor-intensive process.

Providing the responsive data from ACS's provisioning systems would be complicated by system and software upgrades performed by ACS in 2010 and 2012, as well as the nature of the data in the provisioning systems. To retrieve responsive data from the provisioning systems, ACS would need to restore backed-up data. Restoring data from 2010 would require ACS to re-install an older version of the software, which is several versions out-of-date.[12] Undoubtedly, collection and production of data from ACS's provisioning and billing systems would require extensive manual attention. This would require ACS to use operations employees as well as outside consultants.[13] Only after older software is re-installed and data is restored could reports

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[11] For example, location IDs, circuit IDs, and CLLI codes captured in ACS's billing systems would need to be cross-referenced with location and connection information produced from ACS's provisioning systems.

[12] ACS cannot simply restore backed up data to run reports without re-installing older versions of the provisioning system software. Older data fields are not compatible with newer software. Importantly, re-installing older versions of software just to run reports with backed up data may cause problems for ACS's current operating systems because the older software programs may not be compatible with current operating systems.

[13] ACS would need to divert various employees from their normal functions, crossing multiple departments such as Information Technology ("IT"), Operations, Finance, End User Billing, and Carrier Access Billing, in order to produce the requested data. IT consultants would be needed to assist with restoring systems and validating that the restore was successful, both of which would require a significant amount of effort. Once the data is restored, consultants would also be required to assist with matching data between systems, as well as to assist with collecting information that can only be procured manually.

be generated and reviewed manually to produce some of the responsive data.[14] In short, it is not a simple exercise to produce data from ACS's systems for 2010 or 2012.

Some of the data requested from 2010 and 2012 cannot be produced programmatically from ACS's data systems at all, even with re-installed software and restored data.[15] Data such as facilities, geocoding, and location types are not programmed into ACS's systems and would require a manual review of each service in order to collect and produce. The manual process could require ACS to obtain archive paper copies of the original work orders or make field visits to the central office and customer locations. Notably, ACS does not keep records of the geocode for each location where special access services are deployed,[16] nor does the company maintain records on the location type.[17] Also, ACS does not keep records on whether a special access connection is fiber or copper;[18] the bandwidth of the unbundled network element ("UNE"); how unbundled loops are used;[19] charges that are non-recurring;[20] or adjustments that are made

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[14] With all the processes that would be required to produce responsive data, ACS cannot guarantee the accuracy of the data and expects that glitches may cause the data to be unreliable.

[15] For example, as detailed *infra*, the data collection request numbers 3, 4, and 5 for ILECs require information for which ACS does not keep records, specifically information on the geocode for the location, the location type, whether the connection is fiber, non-recurring charges, adjustments to billing, bandwidth for unbundled network elements, and unbundled loops.

[16] Geocoding a location would require ACS to hire an outside consultant to perform the identification, followed by ACS testing the findings.

[17] Every location would need to be researched manually to provide location type.

[18] ACS's provisioning systems are not programmed to capture the type of connection, that is, fiber or copper. ACS would need to research each connection manually to make this determination.

[19] In most cases ACS does not know the true use of a UNE because the UNE does not connect to any ACS equipment. Competitors can be using UNEs as switched or special access circuits. Importantly the circuit equipment used by the competitor determines the facility's capability.

outside the billing cycle.[21] While, in some cases, diverted ACS employees could perform the manual searches (to the detriment and cost of normal operations), in other cases ACS would need to hire an outside consultant to perform the search and incur an outlay of significant financial resources when every dollar is already closely monitored to preserve the viability of the company. The amount of time that would be required, in addition to lost manpower, to conduct manual searches to retrieve this type of data is wholly inconsistent with the apparent assumptions underlying the amount of time the Commission estimates to complete the data collection.

Beyond the burdens associated with producing the requested data – both for re-creating systems and data that could produce historical data and for the manual searches that would be required where systems do not already capture data – there are other concerns associated with the data requests. For example, confidentiality of the data to be provided is a significant concern. If not protected, the information requested would provide ACS's competitors with a road map to every special access customer, detailing what they purchase and at what price.[22]

The burdens of producing the data requested are therefore far greater than the 134 hours that the Commission estimates. The processes described here for the efforts involved in producing the data, to the extent it even exists, highlight the enormity of the production effort the

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[20] ACS bills non-recurring charges ("NRCs") through its billing systems, but does not track NRCs in its provisioning systems. The NRC from the billing system would need to be manually matched to the specific provisioned circuit from the provisioning systems.

[21] Out of cycle billing adjustments are not tracked in ACS's provisioning systems. Rather, most adjustments arise from differences in the billing system as compared to the company's provisioning systems. For example, a circuit may have been disconnected in the provisioning system, but the billing system did not stop billing, resulting in the need for a billing adjustment. This type of correction would not be reflected in ACS's provisioning data. Rather ACS manually corrects order errors directly in the billing system and the billing system automatically makes the correction.

[22] Notably some language in customer contracts may prohibit ACS from providing detailed information about the access services it provided.

request would entail, and explain why ACS finds it difficult even to assess the amount of time that would be required to comply with the data collection. The data collection might take more than ten times the number of hours estimated by the Commission. At a minimum, ACS can confirm that it currently lacks the resources to determine the precise amount of time that the data collection would require, and ACS does not have ready access to the data requested.[23]

This lack of ready access to the data requested is an important factor in assessing the reasonableness of the burden hours imposed by the data collection. As USTelecom noted in Paperwork Reduction Act comments submitted in 2008 regarding the Commission's emergency backup power requirements, Office of Management and Budget ("OMB") guidelines for information collection state: "'[a]gencies must first identify all the steps a respondent takes in order to comply with the survey request, and then estimate the time for each step to arrive at a total burden per respondent.' The OMB Guidelines also state that with respect to assessing burden hours, agency surveys should include the time it takes to 'locate the source data and aggregate them.'"[24] The OMB ultimately disapproved the Commission's information collection

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[23] Alaska Communications Systems' mobile wireless service provider, ACS Wireless, LLC ("ACS Wireless"), also purchases special access services and would also be subject to the data collection. It also has the same problems with ready access to the requested data. ACS Wireless does not keep records at the level that the requested data could be produced through its systems. Rather, ACS Wireless would need to review every bill and create data from invoices. This process would be further complicated if the invoices do not have the level of detail required, necessitating that ACS Wireless request data from the provider. The data collection would also be a labor intensive and time-consuming process for ACS Wireless.

[24] Letter to Nicholas A. Fraser, Office of Management and Budget, from Glenn Reynolds, Vice President, Policy, USTelecom, 77 FR 52354: Information Collection Regarding Emergency Backup Power for Communications Assets as set forth in the Commission's Rules (47 CFR 12.2) at 4 (filed Oct. 9, 2008) ("USTelecom Backup Power Letter"). USTelecom observed at that time, "the Commission's first estimate of 70 hours provided LECs with just 10 seconds per wireline asset to comply with the reporting requirements. Yet after reviewing the extensive record in this proceeding, the Commission's revised estimate of 116.64 hours allows for a mere *16.79 seconds per wireline asset*." USTelecom Backup Power Letter at 2 (emphasis in original).

on emergency backup power for many reasons, including failure to demonstrate a reasonable effort made to reduce the burden placed on respondents "due to a lack of sufficient clarity on how respondents are to satisfy compliance with this collection."[25] The same issues are present in the Commission's current data collection on special access services. The steps involved in gathering the requested data, at least for ACS, would require ACS to expend many multiples of the hours estimated. The burden is not justified in light of the competitive nature of special access services in Alaska where pricing flexibility has already been granted. Any data collection imposed on ACS must account for the unique circumstances that would be required for it to gather the requested data.

II. COLLECTING DATA FROM ACS IS A WASTEFUL USE OF CRITICAL RESOURCES

The practical utility of a data collection such as the one proposed by the Commission should be gauged by the circumstances of each area. The Commission only should have concerns about competition for special access services when there are actual complaints from customers about lack of competitive choices or pricing. ACS is not aware of any Commission findings involving a complaint about abuse of market power by special access carriers in Alaska.[26] The market naturally will reveal problem areas where it may be appropriate to gather information and assess the benefit of regulation, but the market has not revealed any such problems in Alaska where competition has already taken hold. While special access competition has taken hold in most of Alaska, there are some locations where ACS has not been able to enter

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25 *See* http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200802-3060-019.

26 *See* ACS Comments at 4.

the market as a competitor due to the prohibitive costs and the lack of available infrastructure. It is not always the ILEC that can foreclose competitive entry into markets.[27]

Where customers are satisfied, there is no need for regulation and no justification to collect data. This is the case where ACS has obtained pricing flexibility. The Commission does not need data from ACS for this area of Alaska. However, where customers are not satisfied, then data collection and regulation may be necessary. Based on the competitive nature of the market where ACS has pricing flexibility as well as the lack of competition in areas where ACS and other competitors face barriers, it is simply not necessary to require ACS to submit to the proposed data collection. Imposing this data collection on ACS would be a waste of the critical resources that ACS needs to provide services and maintain its network.

III. CONCLUSION

The proposed data collection would impose a burden far beyond the Commission's expectations. In order to produce the requested data, ACS would need to re-install multiple older versions of software that were used in 2010 and 2012, as well as restore backed up data. Producing data from these systems would require further manual attention. ACS also would need to conduct time and labor intensive manual searches of its network for a large amount of data that was not captured by its electronic systems. The manual nature of data collection would require ACS to divert employees from their normal duties, and employ consultants at significant cost to the company. Quite simply, the requested data cannot be collected easily or cheaply, and

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[27] For example, in those areas served by the TERRA-SW facilities that are controlled by GCI and constructed with federal Broadband Technology Opportunities Program grant funds, GCI's unjust, unreasonable, and unreasonably discriminatory pricing has foreclosed competitive entry through bottleneck facilities, justifying increased regulatory vigilance by the Commission so that ACS and other would-be competitors are provided with rights of access at just and reasonable rates, terms, and conditions. *See* ACS Comments at 12-13. Any data provided by ACS to demonstrate this discriminatory treatment would be highly confidential.

certainly not within the timeframe estimated by the Commission. The burdens imposed on ACS by this data collection are intensified by the fact the Commission does not need data from ACS to show what is already evident in areas where ACS has been granted pricing flexibility: competition is strong and thriving. The Commission's focus for any data collection in Alaska should be consistent with its ultimate goal of deregulation, investigating only in areas where competition is struggling, and seeking data only from entities that constrain competition.

Respectfully submitted,

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