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VIA E-MAIL

Nicholas A. Fraser
The Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Re: OMB Control Number 3060-XXXX
Review of the FCC's Comprehensive Market Data Collection for Interstate
Special Access Services, FCC 12-153

Dear Mr. Fraser:

The National Cable & Telecommunications Association (“NCTA”), the principal trade association representing the cable television industry in the United States, hereby submits comments in response to the Federal Communications Commission’s (“FCC’s”) request for Office of Management and Budget (“OMB”) approval of the FCC’s proposed data collection for interstate special access services.

EXECUTIVE SUMMARY

The FCC’s proposed data collection violates the letter and the spirit of the Paperwork Reduction Act (“PRA”). It is a massive exercise in paperwork creation that will impose substantial new burdens on thousands of companies that have never before been subject to recordkeeping or reporting requirements with respect to the services that are the subject of the collection. As explained in these comments and the attached declarations from senior executives at NCTA member companies Comcast and Cox, the FCC has underestimated the burden of the collection by hundreds of thousands of hours and tens of millions of dollars. Moreover, the FCC inappropriately rejected concrete alternative suggestions that would have provided useful data in a far less burdensome manner. Instead, changes made by the FCC in response to its initial PRA notice have increased, not decreased, the overall burden on cable operators. Even using the FCC’s erroneously low burden estimates, this data collection is one of the 10 largest (in terms of hours) on the entire roster of OMB-approved FCC collections.

NCTA also demonstrates in these comments that much of the requested data has no practical utility because it is too voluminous and too granular for the FCC to analyze in a meaningful and timely manner. The FCC also has failed to address significant concerns regarding data security that arise due to its decision to collect highly detailed network maps and sensitive data about every single customer in the United States that purchases special access

services. The net effect of the collection is that thousands of companies will be compelled to devote substantial resources to gathering data for the federal government rather than using those resources to serve their customers and achieve other important objectives identified by the FCC, such as expanding broadband options for schools and low-income communities. For all of these reasons, OMB should reject the FCC's planned collection of pricing and revenue data and scale back the collection of mapping and location data as proposed below.

BACKGROUND

A. The FCC's Regulation of Special Access Services

Special access services (referred to as "dedicated services" in the FCC's data collection) are telecommunications services that provide a dedicated connection between two or more locations. They are pathways over wires or cables that can connect customer locations to each other, or connect customer locations to a telecommunications provider's network. Special access services typically are purchased when a customer has a high volume of traffic running between the connected locations. Such services are purchased almost exclusively for use by businesses or other communications service providers to use as inputs for their services, not for ordinary residential use. Special access services can be provided over a variety of types of network facilities, although copper networks are most common for services with lower speed performance and fiber-optic facilities are most common for higher speed services.

Historically, special access services were offered only by incumbent local exchange carriers ("LECs"), with only one such provider offering service in any particular geographic area. In 1991, the FCC implemented a system of price cap regulation for the special access services offered by the largest incumbent LECs. As the name suggests, price cap regulation generally caps the prices that may be charged for regulated services, subject to periodic adjustments to reflect inflation and productivity gains.¹

In 1999, in response to actual and anticipated competition in the market for special access services following enactment of the Telecommunications Act of 1996, the FCC relaxed its price cap rules and established a regime in which price cap LECs could seek pricing flexibility in geographic areas that showed certain indicia of competition. Specifically, the FCC established a set of triggers to serve as a proxy for competition within predominantly urban geographic areas ("Metropolitan Statistical Areas" or "MSAs"), and if the level of competition was robust enough, the LECs could raise prices above the previously established caps. The proxy established by the FCC was the number and location of collocation arrangements established by competitive providers within a MSA.²

¹ *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6787, ¶¶ 2-5 (1990).

² *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switch Access Services Offered by Competitive Local Exchange Carriers; Petition of U.S. West Comm'ns, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, CC Docket Nos. 96-262, 94-1, 98-157, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14234-35 (1999). Under a requirement implemented in the Telecommunications Act of 1996,

In 2002, AT&T petitioned the FCC to commence a rulemaking to reassess the pricing flexibility triggers.³ AT&T argued that the competition the FCC had predicted was not materializing in areas where pricing flexibility had been granted and that rates in those areas exceeded a reasonable level. The FCC commenced the requested rulemaking in 2005 (following action by the United States Court of Appeals for the District of Columbia Circuit on a mandamus petition filed by AT&T in 2003),⁴ but took no action for the next seven years.

In August 2012, after another mandamus request had been filed with the D.C. Circuit, the FCC issued an order suspending the pricing flexibility triggers.⁵ The FCC found that the triggers were not functioning as previously predicted in that they were both under-inclusive (because they did not capture the presence of competition from cable operators, who generally do not collocate in incumbent LEC central offices) and over-inclusive (because collocated carriers were not offering competitive service throughout the area covered by the central office in which they were collocated).⁶ The FCC's decision was based on limited anecdotal evidence and the FCC conducted no analysis to determine the extent of the purported imprecision in the pricing flexibility triggers, e.g., it made no attempt to determine whether there was any correlation between the areas served by cable operators and the areas where pricing flexibility had been granted using the collocation-based triggers.

Although the FCC concluded that it had a sufficient basis on which to suspend the pricing flexibility triggers, it found that it could not adopt new pricing flexibility rules without a better understanding of the special access marketplace.⁷ Consequently, pending completion of a data collection and the subsequent consideration and adoption of new rules, the status of pricing flexibility for special access services offered by price cap LECs is essentially frozen, with no opportunity for price cap LECs to seek new grants of pricing flexibility in competitive areas and

incumbent LECs are required to enter into agreements allowing competitive providers to locate equipment on the incumbent LECs' premises for purposes of interconnecting the competitive providers' networks. This is referred to as "collocation." 47 U.S.C. § 251(c)(6).

³ At the time, AT&T was primarily a long distance carrier purchasing special access services, not a local exchange carrier providing such services. As a result of a merger with SBC in 2005, AT&T is now one of the largest providers of special access services. It also continues to be a significant purchaser of special access services for use in its provision of long distance and wireless services.

⁴ *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005). In 2004, the D.C. Circuit convened a merits panel to hear oral argument on the mandamus petition, and required the FCC to file status reports on the special access proceeding. *Id.* at 2003-04, ¶ 21. After the FCC commenced the rulemaking proceeding, the D.C. Circuit dismissed the mandamus petition. *AT&T Corp., et al.*, D.C. Circuit Case No. 03-1397, Order (Feb. 4, 2005).

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, Report and Order, 27 FCC Rcd 10557 (2012).

⁶ *Id.* at 10573-73, 10598-99, ¶¶ 35-36, 72-75.

⁷ *Id.* at 10559-60, ¶ 3.

no opportunity for purchasers to ask the FCC to revoke existing grants of pricing flexibility in non-competitive areas.

B. The FCC's Proposed Data Collection and Initial PRA Review

In December 2012, the FCC adopted an order setting forth the data it proposed to collect from all providers of special access services, as well as from purchasers of such services, and explaining how it planned to analyze that data.⁸ Rather than gathering data from a sample of geographic markets or providers or types of services, the FCC decided to collect data on every type of special access service from every single provider in every geographic area of the country. Providers must submit maps showing the location of all of their facilities that are capable of providing dedicated services, every node that is used to connect to another network, and every customer location they serve (or could serve) with dedicated services. Not only did the FCC decide to make the scope of the collection as large as possible, it also made the decision to collect data at a highly granular level. For example, providers must submit the name of every customer of dedicated services, every address where those customers take service, every service element they have purchased, and every price they have paid, for every month of the two years the FCC is examining (2010 and 2012).

Once that data is collected, the FCC expects to conduct an analysis that is “designed to determine where and when special access prices are just and reasonable, and whether our current special access regulations help or hinder this desired outcome.”⁹ The FCC stated that it plans to “identify measures of actual and potential competition,” “consider evidence as to what leads firms, including competitive providers, to undertake infrastructure investments,” and “determine whether any market participants have market power and, if so, where such market power exists.”¹⁰ The FCC proposed to accomplish all of this by conducting “panel regressions designed to determine how the intensity of competition (or lack thereof), whether actual or potential, affects prices, controlling for all other factors that affect prices.”¹¹ The FCC expects “that the output of such panel regressions will assist us in delineating both relevant product and geographic markets” and that it “will also help us predict where and how potential competition will occur.”¹²

Notwithstanding the incredible scope and granularity of the proposed data collection, as well as significant objections from a vast range of providers and purchasers detailing the substantial burden involved in responding to the data request, the FCC did not address PRA-

⁸ *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) (*Data Collection Order*).

⁹ *Id.* at 16346, ¶ 67.

¹⁰ *Id.*

¹¹ *Id.* at 16346, ¶ 68.

¹² *Id.*

related issues in the *Data Collection Order*. Rather, the FCC adopted a template for the data collection and delegated to its Wireline Competition Bureau (“Bureau”) responsibility for “amend[ing] the data collection based on feedback received through the PRA process.”¹³ In September 2013, the Bureau released an order clarifying and finalizing the data collection.¹⁴ The Bureau did make some changes to the data collection, some of which slightly reduced the burden on respondents.¹⁵ But the core requirements to provide massive amounts of highly granular data regarding provider networks and customer purchases were left unchanged, and in some cases the Bureau even took steps that significantly increased the burden. The Bureau made clear that PRA compliance was not a factor in making these changes. Specifically, it stated 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.”¹⁶ The Supporting Statement that the FCC submitted to OMB did discuss many of NCTA’s concerns regarding PRA compliance, but in many cases the FCC’s analysis of these concerns is incorrect, as these comments will demonstrate.

On December 9, 2013, NCTA filed an Application for Review of the *Bureau Order* asking the full FCC to review the order and make any changes necessary to bring it into compliance with the PRA.¹⁷ While we hope that the FCC will fix the problems we have identified, we have no assurance that it will do so without direction from OMB, which has independent statutory authority to deny PRA approval for a data collection that will violate the PRA statute and regulations as is the case here.

C. The Cable Industry’s Interest in this Proceeding

Cable operators played a relatively minor role in the market for telecommunications services when the FCC adopted the pricing flexibility triggers back in 1999. At the time, cable operators generally were more focused on providing traditional multi-channel video services and developing new high-speed broadband services for residential customers. Over time, however, as cable operators deployed more high-capacity fiber optic facilities in their networks, they found increased opportunities to provide the type of dedicated services purchased by small and mid-sized businesses. In recent years, many of NCTA’s member companies have made a concerted effort to expand their presence in the market for dedicated services, investing significant private capital to upgrade their networks and extend those networks to commercial areas that were not traditionally the focus of the cable business.

¹³ *Id.* at 16340, ¶ 52.

¹⁴ *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, 28 FCC Rcd 13189 (Wireline Comp. Bur. 2013) (*Bureau Order*).

¹⁵ *Id.* at 13201, ¶ 27.

¹⁶ *Id.* at 13192, ¶ 7 n.24.

¹⁷ Application for Review of the National Cable & Telecommunications Association, WC Docket No. 05-25 (filed Dec. 9, 2013).

The growing presence of cable operators in the market for special access services adds new complexity to the FCC's objective of determining what sort of price regulation, if any, is most appropriate for price cap LECs,¹⁸ and we recognize that information on the extent of cable's participation in the special access marketplace is important to understanding the extent of competition that exists in that marketplace. That said, cable operators have consistently expressed concerns about the potential burdens that they would face under a mandatory data collection. In particular, we have explained that there are significant differences between cable operators and LECs in terms of the networks we operate, the services we offer, and the records we keep, and that it will be difficult for cable operators to comply with any data request that does not respect those differences. Cable operators also purchase special access services to complement their own networks and NCTA identified a number of concerns regarding the collection of data from purchasers of special access services. NCTA raised these concerns repeatedly with the FCC staff (starting as early as 2009) and we submitted a detailed proposal for addressing these concerns in response to the FCC's request for comments on its initial PRA analysis.¹⁹ Unfortunately, the final version of the data collection, as supplemented by the Supporting Statement, fails to resolve NCTA's PRA-related concerns.

I. GENERAL CONCERNS REGARDING THE PROPOSED DATA COLLECTION

In this section, NCTA identifies a number of general concerns regarding the burden imposed by the collection, the FCC's proposal for using the collected data, and its discussion of the supposed benefits that will result from this process. The scope and granularity of the proposed special access data collection is staggering, particularly given that most of the potential respondents have not previously been subject to recordkeeping or reporting requirements with respect to special access services. The sworn declarations submitted by cable operators and others demonstrate that the burden of the collection will be overwhelming. Even the FCC's own estimates peg the overall cost at \$70 million and we believe it could be substantially more if changes are not made. There is no way that companies will be able to devote the necessary resources to this data collection without diminishing their ability to serve their customers and achieve other important objectives identified by the FCC, such as expanding broadband service to schools and low-income communities.

Moreover, much of the data that is collected will have no practical utility because the FCC will not be able to process and analyze the data in a timely and meaningful manner. Consequently, the purported benefits of doing the collection, which the FCC has not even attempted to quantify, are entirely speculative. Given that the special access data collection is one of the ten largest FCC collections (in terms of hours) on the entire roster of OMB-approved FCC collections,²⁰ the FCC's justification for the collection is strikingly inadequate and its

¹⁸ To its credit, the FCC has long recognized that it does not make sense to impose price regulation (or other forms of burdensome regulation) on cable operators and other competitive providers of special access services.

¹⁹ Comments of the National Cable & Telecommunications Association, WC Docket No. 05-25 (filed Apr. 15, 2013) (NCTA PRA Comments).

²⁰ Using the FCC's own estimate of 934,400 hours for the special access data collection, NCTA was able to identify only eight existing FCC rules that are more burdensome. *See* Office of Information and Regulatory

failure to make changes to the collection that would have reduced the burden on respondents and addressed concerns regarding data security is inconsistent with its obligations under the PRA.

A. The FCC Has Underestimated The Burden The Data Collection Will Place On Respondents And It Has Not Taken Sufficient Steps To Reduce That Burden

The fundamental purpose of the PRA is to “minimize the paperwork burden . . . resulting from the collection of information by or for the Federal Government.”²¹ Consistent with this objective, the PRA requires each agency to “minimize the burden of the collection of information on those who are to respond.”²² And it requires the Director of the Office of Information and Regulatory Affairs to “minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected.”²³ As demonstrated in these comments, the FCC has not taken the steps necessary to “minimize the paperwork burden” of the special access data collection and consequently OMB must take steps to require the FCC to make the necessary changes.

NCTA filed extensive comments in response to the FCC’s initial PRA notice demonstrating the significant burdens that will result from the data collection. In those comments, NCTA identified the most burdensome questions and explained the challenges that cable operators would face in responding. In particular, we explained that in many cases the FCC was seeking data that companies either do not keep in the normal course of business operations or that would require significant manual processing to be submitted in the format required by the FCC.

In addition to a detailed narrative describing the concerns raised by a number of the questions, NCTA also submitted sworn declarations from executives at Comcast and Cox documenting in great detail the burdens that those companies will face in complying with the collection adopted by the FCC in the *Data Collection Order*. Those companies initially estimated that they would require roughly 30,000 and 8,400 hours respectively to respond to the data request even if some of the most burdensome questions, such as the mapping requirements, were not counted.²⁴ These estimates were far in excess of the FCC’s estimate of 134 hours per company. NCTA explained that its other members companies would face similar burdens in responding to the data request.

Affairs (OIRA), Inventory of Currently Approved Information Collections, available at <http://www.reginfo.gov/public/do/PRAMain;jsessionid=6EAEC76BC04AF8C1D10524BF877260BD>. The special access data collection would be even higher on the list if the FCC had estimated the burden more accurately.

²¹ 44 U.S.C. § 3501(1).

²² *Id.*, § 3506(c)(2)(A)(iv).

²³ *Id.*, § 3504(c)(3).

²⁴ NCTA PRA Comments at 4; *id.*, Exhibit B at 2 (Comcast estimate of 500,000 hours for all questions including mapping).

While the FCC's Supporting Statement concedes that the data collection will be burdensome, the FCC asserts that cable operators' estimates of that burden are excessive, particularly in light of clarifications contained in the *Bureau Order*.²⁵ As explained below, and documented in the attached declarations, the reductions in cable's estimate of the burdens that were made in the Supporting Statement are not justified. Moreover, the *Bureau Order* added new burdens that are not reflected in the Supporting Statement and that have the effect of increasing the overall burden of the collection on cable operators. OMB should be hesitant to dismiss industry concerns and approve a proposed collection when there is such a wide disparity between the agency's burden estimate and the sworn declarations of company executives with day-to-day knowledge and responsibility for the relevant data. OMB should find that the FCC's failure to accurately estimate the burdens of the collection and its failure to take steps to reduce that burden are inconsistent with its obligations under the PRA and it should require the FCC to take the additional steps identified in Section II below to address these concerns.

1. Other than adjustments to reflect changes made in the *Bureau Order*, the FCC had no basis whatsoever for adjusting the estimates contained in sworn declarations from cable operators

As described above, NCTA consistently raised with FCC staff our concerns about the burden that a mandatory data collection might impose on cable operators. Notwithstanding these efforts, the template of the data collection that was released by the FCC in December 2012 included numerous questions that would impose substantial burdens on NCTA's member companies. Because these burdens were so excessive in relationship to the benefits of the data collection, not only did NCTA file comments in response to the FCC's initial PRA notice, but we submitted sworn declarations from two senior executives of cable operators providing an extensive and detailed discussion of how the collection would affect their companies. In both cases those declarations were based on weeks of discussions with company personnel and analysis of billing systems, reporting structures and other factors with direct bearing on the logistics of responding to the data collection.²⁶ Based on internal discussions with other NCTA members, we explained that those declarations were representative of challenges that all cable operators likely would face, even if the specific challenges varied somewhat from company to company.²⁷

In the Supporting Statement, the FCC states that it used all of the estimates it received from NCTA and others with the exception of the one submitted by Comcast. The FCC states that Comcast's estimate is "strikingly excessive, more than twelve times the next largest estimate of 40,000 hours provided by CenturyLink."²⁸ Accordingly, the FCC discounted the Comcast

²⁵ Supporting Statement at 11 (claiming that the *Bureau Order* "largely addresses the more burdensome aspects of the collection").

²⁶ NCTA PRA Comments at 4-5.

²⁷ *Id.*

²⁸ Supporting Statement at 26.

estimate from 500,000 hours to 40,000 hours. The FCC also rejected the estimates submitted by Cox and Comcast of the labor cost associated with these estimates, using an hourly rate of \$62.50, rather than hourly rates of \$100 or more as those companies estimated.

OMB should use the estimates that NCTA and its members submitted to the FCC rather than the reduced estimates submitted by the FCC. Simply put, the FCC staff has no expertise in the workings of individual cable operators that would warrant second-guessing a sworn statement of a senior company executive who has spent weeks considering how to implement the data collection. In particular, the FCC had no basis for reducing Comcast's estimate simply because its estimate was higher than any other company. Comcast is likely the largest competitor in the special access marketplace (in terms of size and number of employees), Comcast has not previously been subject to any reporting or recordkeeping requirements with respect to special access (unlike CenturyLink, to which the FCC wrongly compared it), and Comcast fully explained the basis for its estimates.²⁹

Moreover, Comcast has prepared the attached declaration of Wilfredo Colón to provide an updated assessment of the burdens imposed by the FCC's mapping requirement.³⁰ As explained in the Colón Declaration, Comcast is conducting a multi-year internal mapping project that is providing relevant, first-hand data regarding the time and expense required to convert its existing maps into the far more detailed records the FCC has requested. Based on this experience, Comcast estimates that the FCC requirement continues to impose a burden of approximately \$20 million and 400,000 person hours on the company.³¹

Similarly, the FCC had no basis for discounting the hourly wage figures underlying the Comcast and Cox estimates. As with the other elements of the estimates submitted by these companies, the hourly wage estimates were part of a sworn declaration from a senior executive with operational responsibility for responding to the data collection. The FCC's suggestion that the hourly rate for "accountants and auditors" was a reasonable estimate ignores the challenge created by the volume and complexity of the collection. Given the obligation for a company officer to certify the accuracy of a submission that will involve millions of data points, and the significant company-wide effort that will be involved in gathering (and in some cases creating) this data, the FCC cannot assume that only lower-level workers will be involved in responding to the collection. Moreover, because of the large burden, it will not be possible for most respondents to rely solely on in-house company resources to respond to the data request because

²⁹ In contrast to the thorough explanation provided by Comcast in a sworn declaration from a senior executive with operational responsibilities, the estimate for CenturyLink was contained in a letter filed with the FCC that reads, in its entirety, as follows: "CenturyLink has reviewed the FCC's Data Request in the above-captioned proceeding. Based on prior discussions with the FCC, CenturyLink estimates that the burden hours to comply with the data request will be about 40,000 hours." Letter from Melissa Newman, CenturyLink, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (filed Jan. 10, 2013). The FCC's suggestion that CenturyLink's conclusory and unsupported estimate is a more accurate estimate of the burden on Comcast than is the detailed and sworn declaration submitted by Comcast itself does not withstand scrutiny.

³⁰ Declaration of Wilfredo Colón, Comcast Corporation (Colón Declaration), attached as Exhibit B.

³¹ *Id.* at ¶ 5.

doing so would disrupt the business and service to customers.³² Therefore, for example, Cox's wage figure is a blend of in-house, outside consultant, and outside legal resources that likely will be needed to comply with the data request.³³ In the face of this evidence, the FCC's off-hand observation that the estimates "seem excessive" should carry no weight.³⁴

OMB should find disturbing the serious gulf between the agency's time and cost estimates and those submitted by cable operators, and should not condone the FCC's dismissal of inconvenient data points or its substitution of its own data. The goal of the PRA is to reduce the burdens of data collection on affected companies.³⁵ That is simply not achievable by ignoring real world data. There is no way in the face of these concerns or the dispute about the cost evidence that OMB could conclude that the impact of this data collection is acceptable.

2. **The *Bureau Order* increased the burden of the data collection**

Throughout the Supporting Statement, the FCC points to changes made in the *Bureau Order* as evidence that it has tailored the data collection to respond to concerns about the burden of the collection where it was feasible to do so. In a number of cases, however, the Supporting Statement overstates the benefits of certain clarifications contained in the *Bureau Order*. For example, the *Data Collection Order* required companies to identify the location and in-service date of all nodes used to interconnect with other networks.³⁶ As NCTA explained to the FCC, a large cable operator may have thousands of such nodes and documenting their precise location is one of the most burdensome elements of the collection.³⁷ The *Bureau Order* clarified that providers may submit data from the Central Location Online Entry System ("CLONES") database in lieu of the required data regarding node locations.³⁸ CLONES is a private service available only to entities willing to pay the applicable fees. Most cable operators either do not participate or participate in only a limited manner and consequently the clarification adopted by the Bureau is not particularly helpful to cable operators, as explained in the Hattori Declaration.³⁹ Similarly, while the FCC points to clarifications regarding the scale of the required fiber maps, the attached declaration of Wilfredo Colón of Comcast explains that the FCC's assertion that this clarification reduces the burden of the collection is incorrect.⁴⁰

³² Because this is a one-time collection of data, it generally would be impractical for companies to augment their staffing by adding new employees to be responsible for the data collection.

³³ See Declaration of Robert T. Hattori, Cox Communications at 2 (Hattori Declaration), attached as Exhibit A.

³⁴ Supporting Statement at 28 n.104.

³⁵ 44 U.S.C. § 3501(1).

³⁶ *Data Collection Order*, 27 FCC Rcd at 16365, App. A, question II.A.5. The FCC defines a "node" as "an aggregation point, a branch point, or a point of interconnection on a provider's network, including a point of interconnection to other provider networks." *Id.* at 16325, ¶ 15.

³⁷ NCTA PRA Comments at 6-7.

³⁸ *Bureau Order*, 28 FCC Rcd at 13206, ¶ 41.

³⁹ Hattori Declaration at ¶ 20.

⁴⁰ See Colón Declaration at ¶11.

In addition to overstating the benefits of the *Bureau Order*, the Supporting Statement fails to acknowledge, let alone explain, certain changes the Bureau made to the data collection that increase the burden of compliance. For example, the *Data Collection Order* required providers to report the location of all special access customers in Question II.A.4 only for year-end 2010 and year-end 2012.⁴¹ Under the *Bureau Order*, however, that location data now must be reported on a monthly basis for each of those two years, i.e., 12 times as many data points.⁴² Similarly, the *Bureau Order* clarified that, in many areas, cable operators would be required to provide data regarding non-fiber facilities that are capable of providing dedicated services even if they were not actually used to provide such services during the relevant time periods.⁴³

Each of these changes will substantially increase the burden of responding to those particular questions, as explained in the Hattori Declaration.⁴⁴ Moreover, the net effect of the *Bureau Order*, for Cox and likely for other cable operators, is to increase the anticipated burden of the data collection.⁴⁵ Respondents did not have any opportunity to raise concerns about these decisions in response to the FCC's initial PRA notice earlier this year, which was submitted before the issuance of the *Bureau Order*,⁴⁶ and consequently NCTA's concerns are not addressed in the Supporting Statement filed by the FCC with OMB.

B. There Is No Basis For The FCC's Assertion That It Is Capable Of Making Thorough And Timely Use Of The Data

To obtain approval for a data collection from OMB, the PRA requires agencies to demonstrate that they have "a plan for the efficient and effective management and use of the information to be collected, including necessary resources."⁴⁷ The FCC asserts that it meets this test and that it is "capable of making thorough and timely use of the data."⁴⁸ Specifically, it states that it anticipates needing roughly 4000 hours of staff time (at a cost of \$180,000) over a seven month period to process and analyze the data that is collected and that it will need to spend roughly \$1 million on installation and operation of new computer systems for the collection.⁴⁹

⁴¹ *Data Collection Order*, 27 FCC Rcd at 16364, App. A, question II.A.4.

⁴² *Bureau Order*, 28 FCC Rcd at 13212, ¶ 53.

⁴³ *Id.* at 13200-01, ¶ 26.

⁴⁴ Hattori Declaration at ¶¶ 13-14.

⁴⁵ *Id.* at ¶ 3 (estimating a 30-40 percent increase in the burden for Cox as compared to prior estimates submitted in response to the initial PRA notice).

⁴⁶ The FCC's initial PRA notice was published in the Federal Register on February 12, 2013, requiring comments by April 15, 2013, and the *Bureau Order* was released on September 18, 2013.

⁴⁷ 44 U.S.C. § 3506(c)(1)(A)(vi).

⁴⁸ Supporting Statement at 11.

⁴⁹ *Id.* at 30-32.

The FCC's estimates, particularly with respect to staff time, appear to be woefully inadequate in light of the effort involved in producing other reports. For example, the unprecedented volume and granularity of the requested special access data make the proposed analysis substantially more complex than the National Broadband Map, which was developed by the National Telecommunications and Information Administration ("NTIA") over a period of years, with assistance from 50 state agencies and \$350 million in appropriated funds. While both exercises involve collection of data on the availability of particular communications services on a geographic basis, the special access data collection, as currently constituted, will be performed at a far more granular geographic level (street address as compared to census block), will incorporate highly detailed pricing information for different types of services (as compared to no pricing data in the National Broadband Map), and will cover multiple time periods (24 monthly snapshots as compared to the single point in time for broadband mapping data). It is highly implausible that a group of 2-5 staff employees will be able to accomplish this work in only seven months.

The proposed analysis is far more complex than the reports the FCC issues with respect to other services it regulates, such as mobile wireless service and multichannel video programming service. Those reports tend to be similar from one year to the next and tend to be relatively straightforward compilations of data.⁵⁰ In contrast, the FCC has no history of gathering, analyzing, and publishing any data related to the special access marketplace. For example, in the 15 years in which it has administered pricing flexibility for special access, the FCC has never even published a list of the MSAs where pricing flexibility has been granted, let alone done any follow-up analysis to determine the consequences of those decisions. Based on this history, for the FCC to suggest that it will now be able to prepare an exhaustive nationwide analysis of pricing trends at the building level in a mere seven months is not plausible.

C. The Benefits Of The Data Collection Are Entirely Speculative

The FCC acknowledges that one reason the data collection is so burdensome is that many of the potential respondents, such as cable operators, were not previously subject to any recordkeeping or reporting obligations with respect to special access services. But it states that it would not be possible to "structure the collection to obtain data prospectively" due to "the urgency of the proceeding."⁵¹ Furthermore, the FCC states that it "has decided that the benefit to the American public gained from reforming the FCC's special access rules outweighs the burden of a large-scale data collection."⁵² Indeed, it goes so far as to suggest that even if the burden on a

⁵⁰ In some cases, such as the FCC's annual broadband progress report, even these straightforward reports take the FCC much more time than Congress has provided. Congress required the FCC to complete the annual broadband progress inquiries within 180 days of their initiation. 47 U.S.C. § 1302(b). The FCC initiated the current inquiry on August 21, 2012. *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 12-228, Ninth Broadband Progress Notice of Inquiry, 27 FCC Rcd 1523 (2012). Fifteen months later, the FCC has not yet released the report completing it.

⁵¹ Supporting Statement at 11.

⁵² *Id.*

single cable operator was 500,000 hours (which equates to more than \$30 million in labor cost using FCC estimates), “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.”⁵³

These statements suggest that the FCC may have lost perspective with respect to the need to balance the agency’s regulatory objectives with its obligations under the PRA. As an initial matter, the FCC’s newfound sense of urgency with respect to a rulemaking that started almost a decade ago might be more compelling if it was pursuing ways to speed up this proceeding, such as making greater use of public data or using statistical sampling for some categories of data. But as described throughout these comments, the FCC has eschewed a variety of tactics that would accelerate the collection of data and instead has decided on the most cumbersome, burdensome process imaginable. As just one example of a decision by the FCC that will slow down the collection process (and increase the burden), the Hattori Declaration explains that the requirement to provide information for each month of 2010 will create more significant costs than providing data for 2012 because Cox typically archives this type of data after three years.⁵⁴ If the FCC considers completion of this proceeding to be an urgent matter, it should abandon its continued insistence on collecting 2010 data that will be irrelevant to any analysis of the marketplace in 2014.

With respect to the FCC’s suggestion that the benefits of the collection far outweigh the burdens, even if the burden on a single company involved \$30 million in labor costs, it is important to note that the FCC has never made any attempt to quantify this benefit. As noted above, the FCC never performed any analysis regarding the harm caused by the purported lack of precision of its previous rules, nor did it even attempt to assess how imprecise those rules were, e.g., by analyzing the number of competitors in areas where pricing flexibility was granted as compared to the number in areas where it was not granted. Because it has no idea what level of harm was caused by the old imprecise rules, the FCC necessarily has no idea what benefit would result from new, more precise rules, assuming for the moment that the data collection would in fact enable the FCC to adopt more precise rules. Nor does the FCC have any idea how that speculative benefit compares to the real and substantial burden imposed by the data collection, which providers must bear immediately and which will interfere with their ability to serve customers efficiently and achieve other objectives. While the FCC can and should strive to improve the precision of its rules, the mere fact that the agency’s rules are imperfect does not give it carte blanche to collect any and all data that might prove useful in adopting better rules. Indeed, one of the primary objectives of the PRA is to constrain such behavior.⁵⁵

⁵³ *Id.* at 26 n.101.

⁵⁴ Hattori Declaration at ¶ 8.

⁵⁵ 44 U.S.C. § 3501(1).

D. The Data Collection Raises Significant Data Security Concerns

One purpose of the PRA is to ensure that any federal data collection is consistent with applicable privacy and data security laws.⁵⁶ In this case, the FCC is aggregating massive volumes of highly sensitive information and making it available for review by third parties. From a data security perspective, this situation is fraught with peril, particularly given existing concerns about the state of the FCC's computer systems. Specifically, in a report released last year, GAO concluded that:

FCC did not effectively implement appropriate information security controls in the initial components of the ESN project. Although the commission deployed enhanced security controls and tools for monitoring and controlling security threats as of August 2012, it had not securely configured these tools and other network devices to sufficiently protect the confidentiality, integrity, and availability of its sensitive information. These weaknesses occurred, at least in part, because FCC did not fully perform key security risk management activities during the development and deployment of the ESN project. As a result, FCC limited the effectiveness of its security enhancements and its *sensitive information remained at unnecessary risk of inadvertent or deliberate misuse, improper disclosure, or destruction.*⁵⁷

The concerns raised by GAO are troubling in the context of the overwhelming amount of special access data the FCC is proposing to collect from cable operators and other providers. NCTA has two particular concerns – the collection of detailed network maps and the collection of highly detailed information about the purchasing history of customers – that we address in the following section. While the Supporting Statement suggests that the FCC recognizes the need to create a secure environment for the data that it is collecting, the FCC has yet to provide any significant details as to what this entails. In facing similar issues, we note that other federal agencies have either amended their data collections to limit the amount of sensitive data that is collected or have taken significant steps to address such concerns, such as encrypting sensitive data. The FCC should be compelled to provide more detail on how it will keep sensitive data secure before OMB approves the collection.

II. CONCERNS REGARDING SPECIFIC QUESTIONS

In this section, we identify a number of specific questions that raise the most significant concerns under the PRA. As noted above, in response to the initial PRA notice, NCTA proposed changes to these questions that are intended to ameliorate these concerns. The *Bureau Order* made changes that had the effect of reducing the burden of some of these questions, but in most cases no changes were made and in a few cases the Bureau made changes that increased the

⁵⁶ 44 U.S.C. § 3501(8).

⁵⁷ United States Government Accountability Office, *INFORMATION SECURITY: Federal Communications Commission Needs to Strengthen Controls over Enhanced Secured Network Project*, GAO-13-155 at 9 (Jan. 2013) (emphasis added), at <http://gao.gov/assets/660/651559.pdf>.

burden of a question. As noted above, at least for some companies the net effect of the *Bureau Order* was an increase in the estimated burden of the collection.⁵⁸ We encourage OMB to take a particularly close look at the burden estimates and justification for the questions identified below.

A. The Questions Seeking Collection of Mapping/Location Data Should Be Scaled Back

NCTA recognizes that the FCC's special access analysis will be enhanced by data on the buildings served and the general location of providers' networks, but the FCC's approach to gathering such data does not comport with its obligations under the PRA. As explained below, the level of detail the FCC is requiring is beyond what companies keep in the normal course of business operations and beyond what the FCC is capable of processing in a meaningful manner. Nor has the FCC demonstrated that street level detail regarding thousands of miles of network facilities and tens of thousands of nodes is essential to conducting an analysis of the marketplace. OMB should require the FCC to scale back the collection of mapping and location data as proposed below to increase the utility of the collected data, reduce the burden on respondents, and ameliorate concerns regarding data security in accordance with the requirements of the PRA.

1. Fiber Maps (Question II.A.5)

The *Data Collection Order* requires competitive providers to submit highly detailed maps identifying the routes of their fiber optic networks.⁵⁹ NCTA explained that many cable operators do not keep maps of their entire network at the required level of granularity in the normal course of their business and that those companies would be required to spend millions of dollars creating new maps solely for purposes of the data collection. As NCTA explained, such a requirement "would seem to directly conflict with the PRA's mandate that information collections 'be implemented in ways [that are] consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond.'"⁶⁰ As an alternative to the requirements adopted in the *Data Collection Order*, NCTA proposed that providers be permitted to submit existing maps used in running their business or that they be permitted to submit an "airline map" that shows their headend location and the location of buildings they serve with fiber. The *Bureau Order* rejected that approach and clarified that providers must submit a street-level map in "shapefile" format.⁶¹

⁵⁸ Hattori Declaration at ¶ 3.

⁵⁹ *Data Collection Order*, 27 FCC Rcd at 16332, ¶ 35.

⁶⁰ NCTA PRA Comments at 6.

⁶¹ *Bureau Order*, 28 FCC Rcd at 13205, ¶ 38. A shapefile is a multi-file format created by the geographic information system (GIS) software firm esri for storing geographic data. *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, 27 FCC Rcd 13528, ¶ 1 n.3 (Wireline Comp. Bur. 2012).

The Bureau's clarifications continue to impose significant and unnecessary burdens and do not resolve NCTA's PRA concerns. With respect to Comcast, for example, these burdens are especially large for a number of reasons, including that: (1) Comcast has not routinely collected or stored the required information at the required fidelity for a significant portion of its markets; (2) extensive work would be necessary to understand, extract, and convert the data into the single new mapping format because Comcast's maps and other records are not standardized across its markets; (3) substantial training is necessary before individuals can interpret and translate the maps; (4) for historical reasons, Comcast uses many types of software to track the information that would be necessary to produce the required maps; and (5) a physical survey of some fiber routes would be necessary to complete and confirm the required data.⁶² Based on its own recent experience with similar mapping projects, Comcast estimates that it would require 400,000 hours at a cost of approximately \$20 million to comply with the FCC's requirement.⁶³

The additional burden of creating maps with the significant level of granularity required by the FCC, as compared to providing existing, less granular, maps, will not be offset by any significant increase in the benefits of the collection. The FCC's primary justification for rejecting NCTA's proposal to submit less granular maps is that competition occurs at a granular level and consequently it must collect information at an equally granular level.⁶⁴ But this argument ignores that the fact that the FCC has no practical ability to adopt rules that vary from one street or building to another and always uses a larger geographic area (e.g., census block, census tract, wire center, study area, density zone) when its rules vary based on competitive conditions. Indeed, even preparing an analysis of the marketplace at the street or building level is implausible because most other data sources (e.g., census data) are not kept at such a granular level.

In addition to concerns about the burden associated with producing these maps and the limited value of the granularity the FCC is requiring, NCTA also raised concerns about the data security consequences of the mapping requirement.⁶⁵ Individually such maps would have tremendous value to anyone trying to disrupt telecommunications and broadband services in this country and consequently extreme caution is warranted in the treatment of such maps.⁶⁶ The

⁶² Colón Declaration, at ¶¶ 6-10.

⁶³ *Id.* at ¶ 5.

⁶⁴ Supporting Statement at 13. In recognition of how burdensome the mapping requirement will be for some companies, the FCC states that it does "not intend to penalize filers who undertake reasonable, good faith efforts to identify the routes and paths traversed by fiber." *Id.*; see also *Bureau Order*, 28 FCC Rcd at 13205, ¶ 38 n. 100. While we appreciate the FCC's stated intention not to penalize reasonable, good faith actions, the generality of this statement leaves providers with insufficient guidance to avoid penalties.

⁶⁵ Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (filed Feb. 28, 2013) ("NCTA also raised concerns about the security risks that would be created by requiring companies to create extremely detailed maps that they do not currently possess and then aggregating those maps at the Commission. The resulting product – a map of the entire U.S. telecommunications network, including every single location where two or more providers connect – obviously would be a target for hackers and others who might be intent on disrupting communications services in the United States.").

⁶⁶ See, e.g., *New York Times, As Hacking Against U.S. Rises, Experts Try to Pin Down Motive* (Mar. 3, 2013) ("There is no doubt that attacks of all kinds are on the rise. The Department of Homeland Security has been

FCC's decision to aggregate such maps from every provider across the country raises the stakes considerably. Such a comprehensive map likely does not even exist today, let alone reside under the auspices of an independent regulatory agency like the FCC.

Because these maps would be so valuable and such a prime target for hackers and others, the FCC must take steps to protect them. The simplest approach is the one recommended by NCTA – permit submission of fiber maps at a less granular level and eliminate reporting of nodes (discussed immediately below). We note that other agencies, such as NTIA, have considered similar issues and ultimately decided not to collect the detailed information that is being sought here.⁶⁷ The FCC, however, ignored NCTA's concerns and failed to provide any meaningful explanation as to how it plans to protect the security of mapping information submitted by cable operators and other providers.

2. Nodes (Question II.A.5)

In addition to fiber maps, the *Data Collection Order* requires competitive providers to submit highly detailed maps identifying the location of all nodes used to interconnect with other providers, as well as information on the date each node was placed in service going back to 1995.⁶⁸ In response to the initial PRA notice, NCTA explained that the location of thousands of nodes where networks connect is not relevant to a competitive analysis of the marketplace, nor is the vintage of each of those nodes. The *Bureau Order* acknowledges that, with respect to cable companies, this detailed information on all interconnection nodes would not provide relevant information.⁶⁹ Yet, the requirement was retained because the Bureau staff felt compelled by the limits on its delegated authority from the FCC to retain this requirement.⁷⁰ On this basis alone, imposing this requirement on cable operators violates the PRA.

Not only does this data have no practical utility, but the burden of gathering it is enormous as well. In response to NCTA's concerns about the burden imposed by these requirements, the *Bureau Order* clarified that parties may instead submit data that they submit to

responding to intrusions on oil pipelines and electric power organizations at 'an alarming rate,' according to an agency report last December. Some 198 attacks on the nation's critical infrastructure systems were reported to the agency last year, a 52 percent increase from the number of attacks in 2011."), at http://www.nytimes.com/2013/03/04/us/us-weighs-risks-and-motives-of-hacking-by-china-or-iran.html?_r=0.

⁶⁷ See Letter from Matt Polka, *et al.* to Larry Strickling, NTIA (August 6, 2009) ("Given the burdens and significant security risks of collecting such data and, more importantly, the network security risks associated with the aggregation of highly-detailed network infrastructure data, NTIA should revise the NoFA requirement that awardees obtain data concerning points of network traffic aggregation and interconnection."), at http://www.ntia.doc.gov/legacy/broadbandgrants/correspondence/JointProviderLetter_090807.pdf; NTIA Notice of Funds Availability Clarification (Aug. 7, 2009) ("3. Broadband Service Infrastructure in Provider's Service Area, (a) Last-Mile Connection Points -- Awardees are not required to report the data identified in this section."), at http://www2.ntia.doc.gov/files/NTIA_MappingFAQ_NOFAClarity.pdf.

⁶⁸ *Data Collection Order*, 27 FCC Rcd at 16332, ¶ 35.

⁶⁹ *Bureau Order*, 28 FCC Rcd at 13206, ¶ 42 n.109.

⁷⁰ *Id.*

the CLONES database, a privately-managed service that imposes significant fees to participate.⁷¹ While most LECs participate in the CLONES database, most (if not all) cable operators either do not participate or participate in a more limited manner than traditional phone companies. For example, the Hattori Declaration explains that CLONES does not contain information on “meet points” where fiber is spliced together outside of a facility owned by Cox or the provider with which it is connecting.⁷² For cable operators, therefore, the clarification adopted by the Bureau is not helpful.

Finally, as with the fiber maps discussed above, the FCC’s collection and aggregation of data on nodes where networks interconnect raises significant data security concerns. Detailed data identifying the specific locations where thousands of networks interconnect with each other is not generally available today and creating such a database would be an obvious target for hackers. In light of the limited relevance of the requested data and the significant burden that many providers will face in gathering it, the collection of such sensitive data is not consistent with the FCC’s obligations under the PRA. The FCC can address this concern by eliminating the requirement to report node locations as proposed by NCTA.

3. Locations (Question II.A.4)

The *Data Collection Order* required companies to identify every location where they provided dedicated services in 2010 and 2012, as well as the type of location (e.g., building, cell site, etc.).⁷³ NCTA demonstrated through sworn affidavits that this requirement would cost tens of millions of dollars and we proposed alternative methods by which the FCC could gather this information.⁷⁴ The *Bureau Order* clarified these requirements in some ways that help reduce the burden (e.g., by allowing parties to identify the type of location as “unknown” rather than doing a site visit to determine the type of location).⁷⁵ But the *Bureau Order* also multiplied the burden by requiring respondents to list every location they serve for every month of the review period, rather than once for each year.⁷⁶ As explained in the Hattori Declaration, that decision substantially increases the burden without any corresponding benefit.⁷⁷

Similarly, the FCC purported to address concerns regarding the burden of responding to Question A.3, which asks companies to provide separate totals of locations served by their own facilities, IRUs and UNEs.⁷⁸ However, because Question II.A.4.e still requires respondents to

⁷¹ *Id.* at 13206, ¶ 41. The *Bureau Order* also clarified that node locations should be submitted in a list rather than on a map. The change in format does not materially change the burden of providing this data.

⁷² Hattori Declaration at ¶ 20.

⁷³ *Data Collection Order*, 27 FCC Rcd at 16364, App. A, questions II.A.3 and 4.

⁷⁴ NCTA PRA Comments, Ex. A at 1, 3-5; Ex. B at 2, 4.

⁷⁵ *Bureau Order*, 28 FCC Rcd at 13203, ¶ 33.

⁷⁶ *Id.* at 13212, ¶ 53.

⁷⁷ Hattori Declaration at ¶ 13.

⁷⁸ *Bureau Order*, 28 FCC Rcd at 13212, ¶ 53 n.148. The FCC defines an Indefeasible Right of Use (“IRU”) as “an indefeasible long-term leasehold interest that gives the grantee the right to exclusively use specified strands of

identify whether a location is served with an IRU, the burden of gathering this data has not been reduced. As explained in the Hattori Declaration, providing this information is tremendously burdensome for Cox because the database that tracks locations served by the company does not flag whether a circuit is leased pursuant to an IRU.⁷⁹

B. The Questions Seeking Collection of Pricing/Revenue Data Should Be Rejected

In addition to the network and location data necessary to document where competition exists, the FCC also has included a significant number of questions that are intended to gather data that it states will be used in identifying the factors that influence the development of competition. The data the FCC proposes to collect includes highly detailed and sensitive information regarding every customer in the United States that purchases special access services, including the name of the customer, the locations where service is purchased, and the prices charged for each service element that is purchased. The collection of this sensitive data raises obvious data security concerns that have yet to be adequately addressed by the FCC. Moreover, the analysis the FCC proposes to conduct is (1) unnecessary to its primary objective of documenting competition in today's marketplace; (2) implausible given the challenges of comparing prices for different services during different time periods at different locations; and (3) incredibly burdensome for companies that are required to submit millions of data points documenting every aspect of the dedicated services they sell. For all these reasons, the collection of this data violates the PRA and should not be approved by OMB.

1. Billing Data (Questions II.A.12-14)

The *Data Collection Order*, as modified by the *Bureau Order*, requires respondents to identify every customer of dedicated services, every address where those customers take service, every service element they have purchased, and every price they have paid, for every month of the relevant periods. The amount of data that will be produced in response to this request is simply staggering and raises a number of significant concerns.

First, because of the overwhelming volume and granularity of data, and the fact that it will be submitted by different types of companies offering different services in different locations, it strains credulity for the FCC to suggest that it has the resources to process and analyze that information in a timely manner. As noted above, the proposed analysis is far more complex than the National Broadband Map, which NTIA created with the assistance of 50 state agencies and \$350 million in appropriated funds. Moreover, the FCC has not explained how it plans to analyze such granular data given that no other data (e.g., census data) is kept at a

fiber or allocated bandwidth to provide a service as determined by the grantee.” An Unbundled Network Element (“UNE”) is “a local loop provided by an [incumbent] LEC to a requesting telecommunications carrier on a non-discriminatory basis pursuant to 47 C.F.R. § 51.319(a).” *Data Collection Order*, 27 FCC Rcd at 16361, 16364, App. A.

⁷⁹ Hattori Declaration at ¶ 17.

similarly granular level.⁸⁰ And even if it were somehow plausible for the FCC to prepare an analysis at the street level, the FCC has not explained how such analysis could be put to use given that it could not possibly develop rules that varied from street to street or building to building.

Second, producing this data will be extraordinarily burdensome. Companies will not be able to provide that information solely based on their billing databases. Rather, significant manual processing will be required to gather and submit the requested data. In response to the initial PRA notice, Comcast and Cox both demonstrated that these questions would require thousands of hours of labor, far in excess of the 134 hours estimated by the FCC.⁸¹ The FCC did not make any material changes before submitting the collection for OMB approval and consequently these burdens remain, as documented in detail in the Hattori Declaration. As that declaration explains, even seemingly innocuous requests such as identifying the closing date of the monthly billing cycle, providing a circuit identification number for different elements of a circuit, or identifying outage credits provided to a customer are quite burdensome to implement.⁸²

Finally, the FCC's collection of billing data raises security concerns. As noted, the FCC is proposing to require companies to report every single service element purchased by every single customer of dedicated services throughout the country, including the name of the customer, the locations where each service element is provided, and the amount that is paid for every element. The requested information is defined as Customer Proprietary Network Information under the Communications Act and providers are subject to special rules in terms of how that data is handled, including a general prohibition on unauthorized disclosure to third parties.⁸³ The combination of the sensitivity of this information and its limited value strongly support rejection of this portion of the collection. If OMB permits any portion of this data to be collected, it should require the FCC to provide a detailed explanation of how the data will be secured.

2. Revenue Information (Questions II.A.16, II.F.6-7)

The *Data Collection Order* required providers and purchasers of special access services to provide detailed information on their revenues (for providers) or costs (for purchasers), broken down based on various categories of bandwidth.⁸⁴ The FCC provided no meaningful explanation for why this data is relevant to determining the extent of competition in the marketplace for special access services or how this data would be used in such an analysis. Moreover, NCTA

⁸⁰ In other contexts the FCC has recognized the value of collecting data at the census block or census tract level rather than street level. See *Modernizing the FCC Form 477 Data Collection*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd at 9887, 9904-05, ¶ 35 (2013).

⁸¹ NCTA PRA Comments at 8-9.

⁸² Hattori Declaration at ¶¶ 29-31.

⁸³ 47 U.S.C. § 222(c)(1).

⁸⁴ *Data Collection Order*, 27 FCC Rcd at 16333, ¶ 38.

explained that many companies do not track sales or purchases based on the bandwidth categories proposed by the FCC and that answering these questions therefore might require extensive manual processing of sales or purchase records.⁸⁵ As an alternative to this incredibly burdensome process, NCTA proposed that the FCC clarify that these detailed breakdowns of sales or purchases only be required where a company tracks such information in the ordinary course of business. Neither the *Bureau Order* nor the Supporting Statement address the concerns that have been raised regarding the infeasibility of reporting revenue by bandwidth category or the limited relevance of that data to a marketplace analysis. For all these reasons, the collection of this information violates the PRA.

3. Purchaser Tariff Information (Questions II.F.3-5)

The *Data Collection Order* requires purchasers of dedicated services to conduct painstaking manual reviews of tariffs in order to extract, interpret and manipulate information that is not contained in company databases. Question F.3 asks for a detailed breakdown of expenditures for three different types of services (DS1s, DS3s, and packet based services), through seven different types of tariffs. Questions F4 and F5 ask similar questions based on three different types of competitive LEC tariffs (F4) and three different types of contracts (F5). Purchasers must further disaggregate expenditures by the bandwidth of the circuit purchased. In addition to providing total expenditures, these questions require purchasers to analyze tariffs in order to inform the FCC whether, for example, the tariff contains a term commitment but not a volume commitment or a volume commitment but not a term commitment.

The FCC's proposed data collection also would require purchasers to conduct complex calculations to provide an overall average discount between discounted rates and month-to-month tariffed rates. The data collection masks the complexity of this question by proffering an overly simplistic example.⁸⁶ In practice, extracting the comparable monthly rates for circuits purchased under a volume commitment may be extremely difficult because tariffed monthly rates often vary by geographic pricing zone, the length, capacity and configuration of the circuit, and the number of different circuit elements (local loop, transport, multiplexing) comprising the circuit. The FCC would also have purchasers ascertain whether certain purchases occur in areas where the incumbent price cap carrier selling the services has been granted pricing flexibility by the FCC. There is, however, no list of such areas and determining whether any particular incumbent LEC service is in an area where pricing flexibility has been granted may be problematic. Compounding the difficulty is that purchasers must unearth the tariff terms that existed in 2010 or 2012 in order to answer many of the proffered questions. These tariff terms change frequently. As explained in the Hattori Declaration, the complexity of the questions is "staggering," to the point that Cox was "unable to provide a good faith estimate for the length of time it might take Cox to respond."⁸⁷

⁸⁵ NCTA PRA Comments at 9.

⁸⁶ See Appendix B, II.F.3.f.

⁸⁷ Hattori Declaration at ¶ 35.

The FCC rejected NCTA's concerns that the providers that drafted the tariffs are the best source for this data and that requiring purchasers to submit the same data as providers is "unnecessarily duplicative" and therefore inconsistent with the PRA. The FCC justifies the burden imposed by these questions by claiming that responses from purchasers will provide a cross check to ensure quality and reliable information.⁸⁸ The FCC's justification is implausible because not all purchasers are required to respond to the collection and those that do may interpret the questions differently than the providers from whom they purchase service. As a result, the FCC's attempt to use purchaser data to create "apples to apples" comparisons of highly complicated tariff provisions is more likely to produce a chaotic "mash up" of data than a neat validation of the data submitted by providers. The FCC should eliminate the purchaser questions that require tariff analysis, or, at the least, create a far more limited set of categories and give respondents the option of simply identifying the tariff through which the service was purchased.

4. RFP Responses (Question II.A.11)

The *Data Collection Order* required competitive providers to submit up to 15 winning responses to Requests for Proposals ("RFPs") from commercial customers and up to 15 losing responses.⁸⁹ In response, NCTA suggested that this broad request violated the PRA because a more narrow set of data would provide the FCC the same information. Specifically, NCTA explained that only the location of a losing response to an RFP was relevant (because the price of a bid that is not selected offers no useful information) and that winning responses were only relevant if they were not operational (and therefore not reflected in the location data that will be collected in response to Question II.A.4).⁹⁰ Neither the *Bureau Order* nor the Supporting Statement explain why losing RFP bids or winning bids that are operational have any relevance to a competitive analysis of the special access marketplace.

The FCC also significantly understated the burden associated with gathering, reviewing, selecting, and summarizing those responses. Some companies may not even retain RFP responses, particularly if the company was not the winning bidder. Even if a company does retain such documents, the Hattori Declaration explains that ranking and summarizing RFPs in the manner required by the FCC is not an activity that occurs in the normal course of business and therefore substantial manual activity would be needed for every step of this exercise.⁹¹ For Cox, the burden for responding to this question alone is estimated at 530 hours, more than triple the FCC's estimated average burden for the entire collection.

⁸⁸ Supporting Statement at 18-19.

⁸⁹ *Data Collection Order*, 27 FCC Rcd at 16335, ¶ 41.

⁹⁰ NCTA PRA Comments at 15.

⁹¹ Hattori Declaration at ¶¶ 25-27.

Mr. Nicholas Fraser

January 8, 2014

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CONCLUSION

OMB should require the FCC to modify the proposed data collection so that it is more relevant to the task at hand and far less burdensome on respondents, consistent with proposals that NCTA previously has made to the FCC. Specifically, the FCC should scale back the collection of mapping and location data and it should eliminate the collection of pricing and revenue data. To the extent OMB approves the collection of network maps and sensitive customer data, it should require the FCC to explain how it intends to safeguard such data before it proceeds with the collection.

Respectfully submitted,

/s/ Steven F. Morris

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Attachments

Exhibit A

Declaration of Robert Hattori

Cox Communications

Exhibit B

Declaration of Wilfredo Colón

Comcast Corporation