

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

In the Matter of	)	
	)	
Comprehensive Market Data Collection for Interstate Special Access Services, FCC 12-153	)	OMB Control No. 3060-XXXX
	)	
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
	)	

**PAPERWORK REDUCTION ACT COMMENTS  
OF MTPCS, LLC DBA CELLULAR ONE**

MTPCS, LLC d/b/a Cellular One and its affiliates (collectively, “Cellular One”) hereby submit comments with respect to the above-captioned information collection<sup>1</sup> and the Petition of the Small Purchasers Coalition (SPC) in the above-captioned Federal Communications Commission proceedings.<sup>2</sup> Cellular One provides switched wireless GSM and CDMA voice and data communications services over its networks of hundreds of cell sites in Montana, Wyoming, Texas, Louisiana, and the Gulf of Mexico. Cellular One supports the goals underlying this

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<sup>1</sup> These comments respond to the *Mandatory Data Collection Order*, Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB), 78 FR 73861 (Dec. 9, 2013), in connection with In the Matter of Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 12-153, 27 FCC Rcd 16318 (“*Mandatory Data Collection Order*”) (rel. December 18, 2012); *see also* Wireline Competition Bureau *Report and Order* in WC Docket No. 05-25, FCC 13-909, 78 FR 67053 (Nov. 8, 2013) (“*Clarifying Order*”).

<sup>2</sup> *See* Small Purchasers Coalition, Petition for Blanket Exemption or, in the Alternative, Petition for Reconsideration, WC Docket No. 05-25, RM-10593 (December 9, 2013).

information collection. Ironically in a proceeding involving marketplace evaluation, however, the collection poses questions that would materially burden small entities in particular.

Failure to effectively minimize this burden would violate the Paperwork Reduction Act (PRA),<sup>3</sup> which requires the agency to “take into account the resources available to those who are to respond,”<sup>4</sup> as well as the Regulatory Flexibility Act (RFA), which requires agencies to minimize the significant economic impact of information collections on small businesses.<sup>5</sup>

In order to provide a tailored solution to this matter, Cellular One urges the Commission to grant the Small Purchasers’ exemption request, but instead define the pool of eligible entities as consisting of “small entities,” a classification already made law in the Paperwork Reduction Act. In the alternative, Cellular One asks the Commission to exempt “small entities” from the mandatory nature of the collection, only in connection with questions and subparts as to which such entities certify that responding would be unduly and excessively burdensome.

## **DISCUSSION**

The *Mandatory Data Collection Order*, as modified by the *Clarifying Order*, requires submission of extensive quantities of information for important purposes. While Cellular One supports the goals of this proceeding, and commends the efforts of the Commissioners and staff, it agrees with the SPC regarding the need to equitably modify the current requirements.

We urge the Commission to accommodate the difference between an ideal situation and the reality: despite good faith and diligent efforts, there exist responsible businesses that will not be able to provide all of the information desired within a reasonable time.

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<sup>3</sup> Paperwork Reduction Act of 1995, as amended, Pub. L. 96-511, 94 Stat. 2812, codified at 44 U.S.C. §§ 3501-3521.

<sup>4</sup> See 44 U.S.C. 3506(c)(3)(i).

<sup>5</sup> Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, *codified at* 5 U.S.C. § 601 *et seq.*, at § 601(6).

The exemption proposed by SPC is reasonable if expanded to include all “small entities,” as defined in the PRA, because the burden falls on entities in proportion to their resource availability, as recognized in that definition. In order that the purposes of the proceeding can be fulfilled where reasonably feasible, Cellular One requests that the agency provide a method such as certification for streamlining responses with respect to information a small business purchaser does not have or cannot reasonably obtain or compile.

The Commission estimates the average hours expended by each respondent will be 146 hours. 146 hours may be feasible for a carrier with thousands of employees, but would disproportionately burden a company with just one or a few employees available to address carrier billing matters along with other work responsibilities.<sup>6</sup> The 146 hour estimate, moreover, unfortunately falls short of the reality for numerous carriers. In our case, as discussed below, the endeavor would take many weeks of solid labor if only one hour per circuit is required, and more weeks if, as appears likely, more hours of research are entailed for certain circuits.

The purposes of the Paperwork Reduction Act of 1995 (“PRA”) include “minimiz[ation of] the paperwork burden for individuals, small businesses, ... and other persons resulting from the collection of information by or for the Federal Government”.<sup>7</sup> Accordingly, agencies must certify, among other matters, that the information collection:

reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601 (6) of title 5, the use of such techniques as—

- (i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

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<sup>6</sup> Examples include accounting, bill payments, reporting regarding outages, enhanced 911 deployments, responding to audits, drafting broadband deployment updates to state commissions, drafting filings regarding hearing aid compatible handsets, reporting on access to telecommunications for persons with disabilities, tribal outreach, and facilities deployments with universal service support or RUS loans or grants, CPNI certifications, annual or quarterly state commission report filings, and tax compliance.

<sup>7</sup> 44 U.S.C. § 3501(1), (2).

- (ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or
- (iii) an exemption from coverage of the collection of information, or any part thereof.<sup>8</sup>

Furthermore, under the Regulatory Flexibility Act (RFA),<sup>9</sup> agencies must minimize the significant economic impact of information collections on small businesses.<sup>10</sup> Cellular One and many other entities meet the definition of “small business” in the RFA, which, like the PRA definition of a “small entity,” reflects the definition of “small business concern” in the Small Business Act. The Commission noted that for this purpose, a “small business concern”: “(1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.”<sup>11</sup>

Cellular One purchases hundreds of special access facilities in the state of Texas alone. If it expended just one hour for each such circuit in Texas, the compilation would take several hundred hours. Adding our other markets, the response time would be almost 1,000 hours, equivalent to 25 forty-hour labor weeks – if only one hour per circuit was entailed. (The Oklahoma market was sold in early 2013. Nevertheless, Cellular One also would be required to report data for the Oklahoma market it no longer owns.)

Importantly, however, compilation will take far more than one hour per circuit. Many questions require comprehensive research in voluminous tariffs filed by unrelated special access service providers. A single question in Appendix A, Section II.E.4 (in the *Clarifying Order*; formerly Appendix A Section II.F.3 in the *Mandatory Data Collection Order*) asks providers to:

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<sup>8</sup> See 44 U.S.C. § 3506(c)(3).

<sup>9</sup> Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, *codified at* 5 U.S.C. § 601 *et seq.*

<sup>10</sup> See 5 U.S.C. § 601(6); *see also supra* n.6.

<sup>11</sup> *Clarifying Order* at ¶ 59 & nn.168-170.

Provide your company's expenditures, *i.e.*, dollar volume of purchases, for *DS1s*, *DS3s*, and/or *PBDS* purchased from *ILECs* pursuant to a *Tariff* in 2010 and in 2012. For each of the following categories, report expenditures for each year in total and separately for *DS1s*, *DS3s* and *PBDS*:

- a. All *DS1s*, *DS3s*, and *PBDS*;
- b. *DS1s*, *DS3s*, and *PBDS* purchased at *One Month Term Only Rates*;
- c. *DS1s*, *DS3s*, and *PBDS* purchased under *Tariff Plans*;
- d. *DS1s*, *DS3s*, and *PBDS* purchased under *Contract-Based Tariffs*;
- e. *DS1s*, *DS3s*, and *PBDS* purchased under *Tariff Plans* that contained a *Term Commitment* but not a *Volume Commitment*;
- f. *DS1s*, *DS3s*, and *PBDS* purchased under *Tariff Plans* that contained a *Prior Purchase-Based Commitment*;
  - i. Of the total (and for the separate *DS1*, *DS3*, and *PBDS* totals where applicable), indicate the average discount from the *One Month Term Only Rate* incorporated in the expenditures.

For purposes of calculating the percentages described above, an example would be a *Tariff Plan* that requires a purchase of 20 *DS1s* and 10 *DS3s* and generates expenditures of \$2,000 for calendar-year 2012. If those same circuits were purchased at *One Month Term Only Rates* of \$100 per *DS1* and \$200 per *DS3*, then total expenditures would instead be \$4,000. Since the *Tariff Plan* under this scenario generated 50% of the expenditures that would be generated from *One Month Term Only Rates*, the discount would be 50%.

- g. *DS1s*, *DS3s*, and *PBDS* purchased under *Contract-Based Tariffs* that contained a *Term Commitment* but not a *Volume Commitment*; and
- h. *DS1s*, *DS3s*, and *PBDS* purchased under *Contract-Based Tariffs* that contained a *Prior Purchase-Based Commitment*;
  - i. Of the total (and for the separate *DS1* and *DS3* totals if available), indicate the average discount from the *One Month Term Only Rate* incorporated in the expenditures.  
An example of how to calculate this percentage can be found at question II.F.3.f.i.
- i. What percentage of your expenditures in 2012 were subject to a *Term Commitment* of five or more years?

Responding to subsection II.E.4(h)(i) alone could take hours for small purchasers unrelated to the ILEC. This question appears to require review of tariffs, thousands of historic purchase orders, and contracts to determine a discount provided months or years previously – not the amount paid, but the discount percentage. After negotiators agree to a percentage discount, a purchaser may permanently record only the dollar amount to be charged. To reconstruct a discount percentage now, most small purchasers would need to pore over voluminous tariffs, if

historic tariffs remain available, in hopes of locating a discount available for similar facilities, reflecting pricing received in a deal struck months before. Purchase orders and invoices often do not specify pricing plans or discount names, so the researcher would need to determine which of multiple pricing plans could have been offered, and then consider which discounts could have been offered, taking into account specific mileage calculations, bandwidth, service and discount definitions, relating to those circuits as they existed a year or more previously.

The multiple other subparts of this question also require burdensome collection of information. For example, purchasers must describe facilities purchased under contract-based tariffs, term commitments, volume commitments, prior purchase-based commitments, and the like. While some purchasers affiliated with LECs, for invoicing or reporting reasons, may track facilities using these categories, other purchasers would have no reasonable means of compiling such information by circuit, or could do so only by means of research through hundreds of files in varying formats. This is, moreover, but one of the questions that would need to be addressed by limited in house resources, who also must fulfill ongoing negotiations, operational and regulatory compliance responsibilities. Alternatively, data collection could be carried out in part by outside firms, at significant expense. Nevertheless, such firms would not know the location of individual records in-house. The time expended by in-house labor would remain significant.

For all of these reasons, *to the extent information cannot be ascertained by reasonably diligent efforts, the Commission should exempt from responding purchasers that are “small entities” as defined in the Paperwork Reduction Act, including but not limited to those meeting criteria proposed by the Small Purchasers.* Each such purchaser could certify, in an attachment, that it had determined, after review, that it had no reasonable way of obtaining or

compiling the requested information. Such an entity would still be required to respond to the remaining questions that it determined it could answer.

## CONCLUSION

Cellular One respectfully urges the agency to take the following steps to reduce the extraordinary burden the requirements of the *Mandatory Data Collection Order*, as modified by the *Clarifying Order*, would impose on many responding purchasers. For example, responding to some questions would require extensive research in unaffiliated companies' voluminous historic tariff offerings, which may or may not contain answers. In addition, the Commission should adopt a carve-out for reporting regarding special access circuits to sites no longer owned by respondents, because such dispositions can eliminate reasons to track information.

The Commission can and should easily resolve these issues by providing limited relief to "small entities" as defined in the Paperwork Reduction Act (identical to related definitions in the Regulatory Flexibility Act and the Small Business Act). The "small entities" classification has the advantage of existing legal codification, and targets attributes that result in proportionately greater burdens on certain entities. The Commission may narrowly tailor its solution to responses that small entities certify cannot be compiled without undue burden, if available at all.

Respectfully submitted,

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January 15, 2014

## CERTIFICATE OF SERVICE

I hereby certify that, on January 15, 2014, I caused a true and correct copy of the foregoing Comments to be served by electronic mail on the following:

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