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By Electronic Mail

Mr. Nicholas A. Fraser
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th St., NW
Washington, DC 20503
Nicholas_A._Fraser@omb.eop.gov

Re: OMB Control Number: 3060-xxxx; WC Docket No. 05-25

Dear Mr. Fraser:

The Small Purchasers Coalition (“Coalition”)¹, by counsel, hereby submits the following comments in response to the request submitted by the Federal Communications Commission (“FCC” or “Commission”) to the Office of Management and Budget (“OMB”) for approval, under the Paperwork Reduction Act (“PRA”),² of the data collection requirements adopted in the *Data Collection Implementation Order* in the above-captioned proceeding,³ which implemented and clarified in part the Commission’s *Mandatory Data Collection Order*.⁴

¹ The Coalition is comprised of the following small wireless carriers: Carolina West Wireless, Inc., Cellular Network Partnership, an Oklahoma Limited Partnership d/b/a Pioneer Cellular, Cellular Properties, Inc. d/b/a Cellular One of East Central Illinois, Cross Telephone, L.L.C., East Kentucky Network, LLC d/b/a Appalachian Wireless, Illinois Valley Cellular RSA 2-I and Illinois Valley Cellular, RSA 2-II Partnership, d/b/a Illinois Valley Cellular, N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless, Nex-Tech Wireless, LLC, Pine Cellular Phones, Inc., Smith Bagley, Inc. and Union Telephone Company d/b/a Union Wireless.

² Notice and Request for Comments, Information Collection Being Submitted for Review and Approval to the Office of Management and Budget, 78 FR 73861 (Dec. 9, 2013) (“*PRA Notice*”) and Supporting Statement submitted to OMB in connection with the PRA review, December 2013 (“*Supporting Statement*”).

³ In the Matter of Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25, *Report and Order*, released September 18, 2013, FCC 13-909, 78 FR 67053 (Nov. 8, 2013) (“*Data Collection Implementation Order*”). The *Data Collection Implementation Order* was adopted by the Chief of the Wireline Competition Bureau (“WCB”) acting under delegated authority.

⁴ 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*, released December 18, 2012, FCC 12-153, 27 FCC Rcd 16318 (“*Mandatory Data Collection Order*”).

Each member of the Coalition is a mobile wireless carrier, a purchaser of special access facilities, and a small business entity providing service predominantly in rural areas of the United States. Each member of the Coalition would be subject to the new data collection requirements. The purchase of special access facilities by Coalition members constitutes an almost infinitesimal level of spending on special access facilities. The highest level of spending on *all* special access facilities (backhaul from cell sites plus other special access facilities) by any member of the Coalition is less than \$5 million – less than 1/80th of 1% (0.08%) of the \$40 billion market for special access facilities.⁵

I. Summary

The data collection requirements imposed by the *Mandatory Data Collection Order* violate the PRA, insofar as they are applied to Small Purchasers, and therefore OMB should not approve the data collection request unless the FCC makes the changes outlined below. The Coalition defines a “Small Purchaser” as any purchaser of special access facilities that: (1) purchases less than \$5 million annually in special access facilities in price cap areas or (2) purchases 200 or fewer special access facilities in price cap areas.

The PRA requires that each collection of information (1) have practical utility, (2) not be unnecessarily duplicative, and (3) be reduced as appropriate for small businesses by the use of such techniques as establishing different reporting requirements or providing an exemption from some or all of the collection requirement.⁶ More generally, the PRA prohibits data collection requirements that impose undue cost with no corresponding public benefit. In this case, the data collection requirements adopted in the *Mandatory Data Collection Order* impose an enormous burden and substantial cost on Small Purchasers that is utterly disproportionate to any possible public benefit. Further, the data collection requirements lack practical utility and are highly duplicative. Finally, the FCC failed to adequately consider alternatives for reducing or eliminating the reporting requirements for small businesses. For these reasons, the Coalition urges OMB not to approve the data collection, insofar as it applies to Small Purchasers, unless the FCC makes the changes set forth below.

The monetary and resource burden on Small Purchasers to collect and report this data will massively outweigh any possible benefit to the Commission of having this data. The FCC estimates that the average burden per respondent will be 146 hours. The Coalition estimates that the average burden per Small Purchaser will be 140 – 180 hours. The average respondent would, therefore, require more than four full-time weeks of dedicated work by one employee to comply with the data collection requirements. Members of the Coalition have very small carrier access billing staffs, in some cases as small as two employees – and therefore they would have to hire outside help, at a high cost, to work with their staff to prepare the requisite reports. In many

⁵ See *Supporting Statement* at p. 3.

⁶ 44 U.S.C. § 3506(c)(3).

cases, available data is not easily accessed. In such cases, members of the Coalition will have to gather the data manually.

To obtain OMB approval, the Commission should grant Small Purchasers a blanket exemption from the data collection requirements adopted in the *Mandatory Data Collection Order*. If Small Purchasers are not granted a blanket exemption, then the FCC must, at a minimum, scale back its data collection requirements by: (1) eliminating the requirement to furnish data for calendar year 2010, and requiring data for 2013 rather than 2012; (2) exempting self-provisioned special access facilities from the data collection requirements; (3) exempting the provision of special access facilities among affiliated entities from the data collection requirements; and (4) narrowing the scope of quantitative data to be provided by purchasers of special access facilities. Eliminating the requirement to submit data for calendar year 2010 is particularly important: that data will be more than four years old by the time it is submitted.

II. Background

In its *Mandatory Data Collection Order*, the FCC required all providers and all purchasers of special access services to submit data for calendar years 2010 and 2012. The FCC did not exempt any carrier, regardless of how small that carrier might be or how few special access services that carrier purchased. In its Final Regulatory Flexibility Act (“FRFA”) analysis, the FCC:

note[d] concerns regarding the burden that this data collection will impose on small companies, and is mindful of the importance of seeking to reduce information collection burdens for small business concerns⁷

The FCC gave little consideration to these concerns, concluding that:

[c]ompetition in the provision of special access ... appears to occur at a very granular level – perhaps as low as the building/tower. Accordingly, the Commission finds it necessary to obtain data from special access providers and purchasers of all sizes.⁸

The scope of quantitative data to be provided by Small Purchasers is onerous. Small Purchasers must provide, among other things, extensive data for each and every cell site on their networks, including a complex categorization and detailed quantification of the special access facilities serving each site, including facilities that are self-provisioned and/or provided by affiliated entities.⁹ Small Purchasers must also provide even more detailed information, including the dollar value of special access purchases broken down into numerous categories

⁷ *Mandatory Data Collection Order*, Appendix B, Final Regulatory Flexibility Analysis (“FRFA”) at ¶ 73, citing the Small Business Paperwork Relief Act of 2002, § 2(c)(3), Pub. L. No. 107-198, see 44 U.S.C. § 3506(c)(4).

⁸ FRFA at ¶ 73. See also Supporting Statement submitted to OMB in connection with the PRA review, December 2013 (“*Supporting Statement*”) at ¶ 5.

⁹ *Mandatory Data Collection Order* at Appendix A, page 61.

depending on the nature of the facilities and the provider of the facilities, and whether the facilities were purchased under tariff or by contract.¹⁰ Even worse, Small Purchasers must provide all of this information not only for 2012, but also for 2010.

III. Discussion

The PRA prohibits data collection requirements that impose undue cost with no corresponding public benefit. In this case, the data collection requirements adopted in the *Mandatory Data Collection Order* impose an enormous burden and substantial cost on Small Purchasers that is utterly disproportionate to any possible public benefit. Further, the data collection requirements lack practical utility and are highly duplicative. Finally, the FCC failed to adequately consider alternatives for reducing or eliminating the reporting requirements for small businesses.

A central purpose of the PRA is to “minimize the paperwork burden for individuals, small businesses ... and other persons resulting from the collection of information by or for the Federal Government.”¹¹ Notably, on March 20, 2012, OMB issued a Memorandum exhorting agencies “to simplify requirements on the public and private sectors; to ensure against unjustified, redundant, or excessive requirements; and ultimately to increase the net benefits of regulations.”¹² Under the PRA, an agency must estimate the burden of proposed information collections and justify the need for the collection. Significantly, an agency must:¹³

(3) Certify ... that each collection of information ...

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

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

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

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

¹⁰ *Id.* at Appendix A, pages 61 – 62.

¹¹ 44 U.S.C. § 3501(1).

¹² See MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, Office of Management and Budget, at 1 (March 20, 2012).

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

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

OMB's regulations further explain that "[p]ractical utility means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account ... the agency's ability to process the information it collects ... in a useful and timely fashion."¹⁴

A. The FCC Should Grant a Blanket Exemption for Small Purchasers

In order to obtain OMB approval, the FCC should adopt a blanket exemption so that Small Purchasers are not unduly burdened by the data collection requirements. The FCC has not complied with its obligation under the PRA to adequately explore alternatives to "reduce[] to the extent practicable and appropriate the burden on ... small entities"¹⁵ Instead, the FCC simply pays lip service to this critical requirement by repeatedly asserting that "[c]ompetition in the provision of special access appears to occur at a very granular level" and therefore, the Commission needs to "obtain data at an equally granular level".¹⁶ At the same time, the FCC itself concedes that "certain types of respondents will inevitably incur a significant burden" and that the data "collection [constitutes] a significant undertaking for Providers and Purchasers."¹⁷

The burden on Small Purchasers of collecting the data will be enormous. The FCC initially estimated that the average burden for each respondent would be 134 hours,¹⁸ and now estimates that the average burden per respondent will be 146 hours.¹⁹ In its *Supporting Statement*, the FCC asserts that purchasers (1) will face lower costs than the estimated fixed cost of 100 hours for all respondents,²⁰ and (2) will not need outside help because backhaul purchases "will amount to only a handful or two of facilities."²¹

The FCC severely understates the burden on Small Purchasers. Coalition members estimate that the average burden for Small Purchasers will be approximately 140 - 180 hours, which is consistent with the FCC's initial estimate for respondents. Purchasers will have to familiarize themselves with the full scope of the data collection requirements and set up processes and systems for collecting and electronically reporting the data. Purchasers will then have to compile the data for both 2010 and 2012. In many cases, Small Purchasers will have to

¹⁴ 5 C.F.R. § 1320.3(1).

¹⁵ 44 U.S.C. § 3506(c)(3).

¹⁶ See *Supporting Statement* at p. 2 (Section A.1) and p. 19.

¹⁷ See *id* at p. 11.

¹⁸ *Mandatory Data Collection Order*, Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested, 78 FR 9911 (Feb. 12, 2013).

¹⁹ *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) ("*PRA Notice*").

²⁰ *Supporting Statement* at pp. 24 - 25

²¹ *Id.* at 30.

re-construct the data, particularly the data for 2010. The FCC did not provide any notice until December 2012 that such data might have to be collected and submitted.²² Many Small Purchasers maintain the data for each of their cell sites in a separate file, whether electronic or paper. Even the smallest mobile wireless carrier is likely to have more than 10 (two handfuls) of cell sites, and therefore more than 10 backhaul facilities. A more likely number is 40 – 80 backhaul facilities. The Coalition estimates that it will take approximately 15 – 30 minutes to locate, compile and report the data for each backhaul facility. If a Small Purchaser has 80 facilities, this adds up to 20 – 40 hours for each year, which equates to 40 – 80 hours if data must be submitted for both 2010 and 2012. Added to the fixed cost of 100 hours, the total time required would be 140 – 180 hours.

The average respondent would, therefore, require more than four weeks of dedicated work by one employee to comply with the data collection requirements. Members of the Coalition have very small carrier access billing staffs, in some cases as small as two employees – and therefore they would have to hire outside help, at a high cost, to work with their staff to prepare the requisite reports.

While the burden will be extraordinarily high, the practical utility of the information will be remarkably low. In the first instance, the purchase of special access facilities by Coalition members constitutes an almost infinitesimal level of spending on special access facilities. The highest level of spending on *all* special access facilities (backhaul from cell sites plus other special access facilities) by any member of the Coalition is less than \$5 million – less than 1/80th of 1% (0.08%) of the \$40 billion market for special access facilities.²³ Second, the data will lack practical utility, because there is little, if anything, the FCC can do (beyond its current rules) to provide relief to mobile wireless carriers in rural areas. Competition in the provision of special access to cell towers in rural areas is highly unlikely. As a result, the FCC's assertion that "even a very small provider can have a large effect on a local market if it competes to serve an office park or central business" is wholly inapplicable to Small Purchasers.²⁴

The purchase of special access facilities by Small Purchasers, in the aggregate, constitutes a tiny portion of the market for special access facilities. As a result, relieving Small Purchasers from providing such data will have an insignificant impact on the Commission's review of the special access market. It makes no sense for the FCC to excuse commercial enterprises that purchase huge amounts of special access facilities from the data collection requirement, while requiring Small Purchasers to provide such data.

There is significant recent precedent for adopting a *de minimis* exemption for small carriers. In this very proceeding, the FCC has, in fact, provided an exemption -- based on a

²² The *Mandatory Data Collection Order* was not preceded by a Notice of Proposed Rulemaking. As a result, carriers had no notice whatsoever of the data collection requirements until the *Mandatory Data Collection Order* was released on December 18, 2012.

²³ See *Supporting Statement* at p. 3.

²⁴ See *id.* at p. 6 (Section A.5).

threshold level of customers -- to the requirement to submit data regarding best efforts business broadband Internet access services.²⁵ In its *Rural Call Completion Order*, the FCC exempted providers of long-distance voice service that make the initial long-distance call path choice for fewer than 100,000 customers.²⁶ Such providers were exempted from *all* reporting requirements. In its *Lifeline Reform Order*, the FCC exempted all carriers with under \$5 million in annual Lifeline revenue from the biennial audit requirement.²⁷

B. At a Minimum, the FCC Must Substantially Reduce the Data Collection Burden on Small Purchasers.

If Small Purchasers are not granted a blanket exemption, then the FCC must be required to reduce the data collection burden on such carriers by: (1) eliminating the requirement to furnish data for calendar year 2010 and require data for 2013, not 2012; (2) exempting self-provisioned special access facilities from the data collection requirements; (3) exempting the provision of special access facilities among affiliated entities from the data collection requirements; and (4) narrowing the scope of quantitative data to be provided by purchasers of special access facilities.

Such reductions in the data collection would be consistent with the PRA, which requires an agency to “reduce to the extent practicable and appropriate the burden on persons who shall provide information to ... the agency, *including with respect to small entities ... the use of such techniques as – establishing different ... reporting requirements ... that take into account the resources available to those who are to respond*”²⁸

1. Small Purchasers Should Not be Required to Furnish Data for Calendar Year 2010

The requirement to provide data for calendar year 2010 is particularly burdensome for Small Purchasers and should be eliminated. Small Purchasers would be required to produce data that will be more than four years old by the time it is collected. Importantly, far more work will be required to collect the data for 2010 than for 2013, and the data will be far less useful to any FCC analysis. As a result, the burden will be far outweigh the benefit of collecting such data, particularly from Small Purchasers. *By simply eliminating the requirement to furnish data for 2010, the FCC will be reducing the overall burden by approximately 50%.*

²⁵ *Mandatory Data Collection Order* at ¶ 22.

²⁶ In the Matter of Rural Call Completion, *Report and Order and Further Notice of Proposed Rulemaking*, WC Dkt. No. 13-39, FCC 13-135 (“*Rural Call Completion Order*”) at ¶ 20.

²⁷ In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012), 77 FR 12952 (“*Lifeline Reform Order*”) and 77 FR 12784 (“*Further NPRM*”) at ¶¶ 291, 294 (“Performing a baseline audit of the carriers drawing \$5 million from the fund annually, which collectively draw more than 90% of Lifeline support, is warranted”).

²⁸ 44 U.S.C. § 3506 (3)(C)(i)(emphasis added).

In many cases, Small Purchasers have not identified and tracked such data in their electronic databases. These carriers would now have to retroactively try to identify and capture this data. In many cases, such work will have to be done manually. This will make the task all the more daunting – and expensive. Some of the information may not be available at all. It is grossly unfair and unduly burdensome to now require – without any prior notice – each and every carrier to furnish data that will be more than four years old.²⁹

Furthermore, to the extent Small Purchasers are required to submit any data, the requirement should apply to calendar year 2013 data, not calendar year 2012 data. The *Mandatory Data Collection Order* states that calendar year 2012 was selected “because it is the most recent year for which data will be available once Paperwork Reduction Act approval is obtained for the information collection adopted in this order.”³⁰ In fact, the Commission will not be able to collect data until the first quarter of 2014, at the earliest.³¹ Further, it is likely that data would not have to be provided until the second quarter of 2014 or later. In all events, calendar year 2013 will be “the most recent year for which data will be available.”³²

2. Small Purchasers Should be Exempt from Providing Data Regarding Self-Provisioned Special Access Facilities

Small Purchasers, many of whom self-provision a significant number of their backhaul facilities, should be exempt from providing data regarding such facilities. Members of the Coalition self-provision many of their backhaul facilities, particularly from their cell sites. One Coalition member self-provisions over 90% of its backhaul facilities to its cell towers. These facilities are not part of the “market” for special access facilities. There is no market price for the use of such facilities – and therefore, there is no useful data to be obtained from mandatory reporting requirements regarding these facilities. If the Commission does not entirely relieve Small Purchasers of the obligation to provide data regarding self-provisioned facilities, Small Purchasers should only be required to report the aggregate number of self-provisioned facilities.

In all events, OMB should require the FCC to confirm that -- at most -- self-provisioned facilities must only be reported under Section II.E of Appendix A, which applies to purchasers of special access facilities. It would be unduly burdensome and wholly unnecessary to require such

²⁹ The Coalition notes that the *Mandatory Data Collection Order* was not preceded by a Notice of Proposed Rulemaking. As a result, carriers had no notice whatsoever of the data collection requirements until the *Mandatory Data Collection Order* was released on December 18, 2012.

³⁰ *Mandatory Data Collection Order* at ¶ 27.

³¹ Comments on the *PRA Notice* are due on January 8, 2014. OMB must then review the comments. If, and when, OMB approves the data collection, the *Mandatory Data Collection Order* is not effective until the OMB approval is published in the Federal Register. At some point thereafter, the Commission will issue a Public Notice, presumably providing sufficient advance notice of the deadline for filing the requisite data.

³² *Mandatory Data Collection Order* at ¶ 27.

entities to comply with the massive data collection requirements imposed upon providers of special access facilities. In the case of self-provisioning, the purchaser and the provider are the same entity, and the “provider” has no customers except itself for such self-provisioned facilities.

3. Small Purchasers Should be Exempt from Providing Data Regarding Special Access Facilities Purchased from Affiliates

Small Purchasers should be exempt from providing data regarding special access facilities purchased from affiliates. Several Coalition members purchase some of their special access facilities from affiliated entities. The combined burden on the affiliated purchaser and provider would be onerous. OMB should require the Commission to implement a *de minimis* threshold for any mandatory reporting requirement for such facilities. If the purchaser and the provider are each below the \$5 million threshold or 200 special access facilities threshold, both entities should be exempt from reporting affiliate transactions. At most, if an affiliate of a Small Purchaser is below the threshold, the affiliate should be subject only to a limited data collection requirement to simply report the aggregate number of special access facilities it provides to each of its affiliated entities and the Small Purchaser itself should not be subject to any data collection requirement.

4. The FCC Should Eliminate Any Requirements for Small Purchasers to Furnish Data that Duplicates the Data Provided by Providers of Special Access

OMB should require the FCC to narrow the scope of quantitative data to be provided by Small Purchasers in order to eliminate any requirement to furnish data that duplicates the data provided by providers of special access. The FCC concedes that certain requests for data from purchasers are duplicative, describing these requests as “overlapping questions”.³³ The FCC charitably characterizes such requests as “complimentary” and asserts that “overlapping questions allow Commission analysts to cross-check submissions for accuracy”³⁴ The Coalition submits that this is an egregious example of data collection overkill. Providers must certify that the information they have submitted is true and correct, and providers are reminded that false statements or misrepresentations may be punishable by fine or imprisonment.³⁵ In light of the fact that the very same information is already being collected from the providers, and that the providers face criminal sanctions for making false statements, there is no need for the FCC to collect the identical information from purchasers. In all events, even if there is some limited purpose in collecting the same data from purchasers, the burden on purchasers far outweighs the marginal utility of collecting this duplicative information.

If the FCC is going to collect from Small Purchasers any of the same data it collects from providers, it should be more than sufficient for a Small Purchaser to simply identify each of

³³ *Supporting Statement* at p. 6 (Section 4).

³⁴ *Id.*

³⁵ *Data Collection Implementation Order*, Appendix B, page 31.

its cell sites where it purchases special access from a third-party provider, to provide the address and geographic coordinates for the site, the number of dedicated access facilities serving the site, and the name of the service provider(s). The Commission can then match that information to the more detailed information required to be furnished by the service provider(s).

The *Mandatory Data Collection Order* also requires all purchasers of special access facilities to provide even more detailed information, including the dollar value of special access purchases broken down into numerous categories depending on the nature of the facilities and the provider of the facilities, and whether the facilities were purchased under tariff or by contract.³⁶ To the extent this data must be furnished, it should be furnished by the service provider. The service provider has all of this data, and is in a much better position to provide this data to the Commission. It is duplicative, and therefore wholly unnecessary, to require both the provider and the purchaser to furnish such data. At most, Small Purchasers should be required only to furnish the minimum data required for the Commission to identify the corresponding, detailed data filed by the provider.

IV. Conclusion

For the reasons set forth herein, OMB should not approve the data collection unless the FCC eliminates, or substantially reduces, the data collection requirements applicable to Small Purchasers. Specifically, the FCC should grant a blanket exemption from the mandatory data collection requirement for Small Purchasers, defined as any carrier that purchases (1) less than \$5 million annually in special access facilities in price cap areas or (2) 200 or fewer special access facilities.

If OMB does not require the FCC to exempt Small Purchasers, then OMB should require the FCC to reduce the data collection burden on Small Purchasers by: (1) eliminating the requirement to furnish data for calendar year 2010, and require data for 2013 rather than 2012;

³⁶ *Id.* at pages 61 – 62.

(2) exempting self-provisioned special access facilities from the data collection requirements; (3) exempting the provision of special access facilities among affiliated entities from the data collection requirements; and (4) narrowing the scope of quantitative data to be provided by purchasers of special access facilities.

Respectfully submitted,



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January 8, 2014

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