

In the Matter of	)	
	)	
Notice of Information Collection	)	OMB Control No. 3060-0986
Pursuant to the Paperwork Reduction Act	)	

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ WTA – Advocates for Rural Broadband (“WTA”)² (collectively “The Rural Associations”) respectfully submit these comments in response to the Notice of Information Collection³ published in the Federal Register on February 17, 2016. The Notice seeks comment, pursuant to the Paperwork Reduction Act (“PRA”),⁴ on the burdens arising out of a modification to an information collection first adopted in the Federal Communications Commission’s (“Commission”) High Cost Universal Service Fund (“USF”) proceeding.⁵ The Rural Associations urge the Commission to make clear that the

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

² WTA – Advocates for Rural Broadband is a national trade association representing more than 300 rural telecommunications providers offering voice, broadband and video services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

³ Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested, 81 Fed. Reg. 8065 (published Feb. 17, 2016) (“Notice”).

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

5 Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up,

Section 54.313(f)(1)(iii) certification as to compliance with the Section 54.308(b) reasonably comparable rate requirement applicable to Schools and Libraries (“E-rate”) providers that also receive high-cost support is not applicable until the first E-rate funding year after the rate benchmarks are developed and implemented. As that implementation process has not even started, RLECs cannot be expected to complete the Section 54.313(f)(1)(iii) certification on July 1, 2016 and this certification simply should not be required as part of Form 481.⁶

II. THE COMMISSION SHOULD NOT INCLUDE THE 54.313(f)(1)(iii) CERTIFICATION AS TO COMPLIANCE WITH THE 54.308(b) “REASONABLY COMPARABLE” RATE REQUIREMENT APPLICABLE TO E-RATE SERVICE PROVIDERS ON FORM 481 FOR JULY 1, 2016, AS THAT REQUIREMENT HAS NOT BEEN IMPLEMENTED

In December 2014, the Commission created a requirement that a RLEC high-cost USF recipient bid on any Form 470 posted by a school or library seeking broadband service within the RLEC’s service area.⁷ Section 54.308(b) also requires that such bids to provide broadband

WC Docket No. 03-109, Universal Service – Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) (“2011 USF/ICC Transformation Order”), ¶¶ 580-584.

⁶ As a separate matter related to reduction of paperwork burdens generally and Form 481 more specifically, the Commission should also waive, *sua sponte*, the Section 54.313 five-year plan annual progress reports due July 1, 2016 as part of Form 481. The recently released *High Cost Modernization Order* eliminated this requirement altogether in favor of modified buildout and reporting requirements applicable to High Cost USF support recipients. Connect America Fund, WC Docket No. 10-90, ETC Annual Reports and Certifications, WC Docket No. 14-58, Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. Mar. 30, 2016) (“*High Cost Modernization Order*”), ¶ 205. With the Commission having not included this amendment in its action seeking PRA approval for modifications to Form 481 for 2016, rate-of-return eligible telecommunications carriers will be required to file five-year plan annual progress report on July 1, 2016 despite the fact that the Commission has now eliminated the requirement. Waiving the requirement on its own motion with respect to the 2016 Form 481 filing would relieve these small carriers with limited resources of the burden of filing such progress reports (which consume substantial staff resources) for annual progress reports that the Commission already agrees are no longer needed. Indeed issuance of such a waiver would be entirely consistent with the goals of the PRA, which is to limit the burdens associated with information collections by governmental agencies.

⁷ 47 C.F.R. § 54.308(b); *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-84, *Connect America Fund*, WC Docket No. 10-90, Second Report and Order and Order on Reconsideration, FCC 14-189 (rel. Dec. 19, 2014) (“*Second Report and Order*”), ¶ 60.

services be offered at rates reasonably comparable to those charged in urban areas for similar services.⁸ The *Second Report and Order* stated that E-rate providers' compliance with the latter requirement would be judged based on a "reasonable comparability benchmark."⁹ The Commission then directed the Wireline Competition Bureau ("Bureau") to "develop national benchmarks for broadband services offered to schools and libraries,"¹⁰ "seek more focused comment on proposed benchmarks,"¹¹ and finally stated that "[u]pon adoption of such benchmarks, recipients of high-cost support subject to an obligation to provide fixed broadband will be obligated to offer services at or below these benchmarks in response to the posting of an FCC Form 470 requesting broadband service."¹² The *Second Report and Order* also amended FCC Form 481, codified in Section 54.313(f)(1)(iii), to add a requirement that RLECs certify compliance with this reasonable comparability requirement annually.

The obligation to offer broadband services to eligible schools and libraries at reasonably comparable rates is therefore contingent "upon adoption" of the "reasonable comparability benchmarks," and such adoption is in turn predicated upon Bureau action seeking comment on how to structure such benchmarks and then establishing what such benchmarks will be. While most of the provisions contained in the *Second Report and Order* (including specifically, section 54.308(b) of the Commission's rules) became effective on July 1, 2015,¹³ as of the date of this

⁸ *Id.*

⁹ *Id.*, ¶¶ 71-73.

¹⁰ *Id.*, ¶ 72.

¹¹ *Id.*

¹² *Id.*

¹³ Modernization of the Schools and Libraries "E-rate" Program and Connect America Fund, 80 Fed. Reg 5961 (Published Feb. 4, 2015).

filing none of the actions triggering the certification as to compliance with the reasonable comparability requirement has occurred. As such, the certification as to compliance with the “reasonable comparability” requirement¹⁴ and the provision for which the Commission seeks PRA approval for inclusion on an amended Form 481¹⁵ is likewise not effective until such time as the process set forth by the *Second Report and Order* is completed.

Indeed, this reading of the *Second Report and Order* is already reflected in the Form 481 instructions recently released by the Universal Service Administrative Company (“USAC”). Pointing to paragraph seventy-two of the *Second Report and Order*, the instructions state that “[t]his filing is required by 47 C.F.R. § 54.313(f)(1)(iii)”¹⁶ and “[t]he certification will not be required until the July 1 following the E-Rate program year that this obligation has been fully implemented.”¹⁷

Rather than having reporting entities “skip” certification questions appearing on a federal reporting form, the Commission should ensure that this certification – even if OMB grants approval of the amended information collection that includes it – does not appear on Form 481 due July 1, 2016. The Rural Associations understand that, even as the Commission can seek and

¹⁴ 47 C.F.R. § 54.313 (f)(1)(iii).

¹⁵ Notice, 80 Fed. Reg. 8066 (“Here, the Commission proposes to revise FCC Form 481 and its instructions to reflect information collection requirements that the Commission recently adopted. This includes reporting and certification requirements for price cap carriers that elected to receive Phase II model-based support, reporting and certification requirements for recipients of rural broadband experiment support, a reasonably comparable rate certification for broadband for recipients of high-cost support, and an *E-rate bidding certification for Phase II model-based support and rate-of-return carrier high-cost recipients*.”) (emphasis added).

¹⁶ Instruction for Completing FCC Form 481, Universal Service Administrative Company OMB Control No. 3060-0986 (High-Cost) OMB Control No. 3060-0819 (Low-Income) November 2015, available at: [http://www.usac.org/_res/documents/hc/pdf/forms/FCC-Form-481-Instructions .pdf?utm_source=iContact&utm_medium=email&utm_campaign=USAC%20Outreach&utm_content=FCC+Form+481+Announcement](http://www.usac.org/_res/documents/hc/pdf/forms/FCC-Form-481-Instructions.pdf?utm_source=iContact&utm_medium=email&utm_campaign=USAC%20Outreach&utm_content=FCC+Form+481+Announcement)

¹⁷ *Id.*

in fact obtain PRA approval from OMB for the amended Form 481, including the Section 54.313(f)(1)(iii) certification, it is technically feasible for that particular certification to be omitted from Form 481 due July 1, 2016. As the USAC instructions already recognize that the certification is not applicable for this year's Form 481 filing, the better and more appropriate approach would be for the Commission to work with USAC to ensure that it simply does not appear on the form due July 1, 2016.¹⁸

III. CONCLUSION

For all of the reasons discussed above, the Commission should ensure that the Section 54.313(f)(1)(iii) certification as to compliance with Section 54.308(b) does not appear on Form 481 due July 1, 2016 or any subsequent filing until such time as the reasonable comparability benchmark is fully implemented. .

¹⁸ The Rural Associations, along with NECA, have a petition for reconsideration pending before the Commission regarding the bidding and benchmark requirements. FCC Form 481 should not include the certification pursuant to Section 54.313(f)(1)(iii) until such time that the Commission addresses the petition and/or conducts the proceeding required by the Second Report and Order. *Second Report and Order*, ¶ 72 (directing the Bureau to “provide an opportunity for public comment on its proposed methodology and benchmarks before adopting the benchmarks”).

Respectfully Submitted

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