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Via Email and ECFS

Mark Stephens
Managing Director
Kris Monteith
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Nicholas A. Fraser
Senior Policy Analyst
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Re: *Promoting Telehealth in Rural America*, Report and Order, FCC No. 19-78, WC Docket. No. 17-310 (rel. Aug. 20, 2019); Order Approving Proposed Rule Changes to Universal Service Support for Health Care Providers, 84 FR 54952 (Oct. 11, 2019) (to be codified at 47 C.F.R. pt. 54).

Dear Mr. Stephens, Ms. Monteith, and Mr. Fraser,

On behalf of GCI Communication Corp., we submit this letter regarding the Federal Communications Commission's ("FCC" or "Commission") summary of the rules it adopted in the *Promoting Telehealth in Rural America Order*¹ that was published in the Federal Register on October 11, 2019.² The Federal Register notice triggered the effective date of the rules adopted in the Order that do not require approval under the Paperwork Reduction Act ("PRA").³ The summary also identified rules containing proposed information collections that are not effective until they have received PRA approval from the Office of Management and Budget ("OMB"). However, the summary failed to identify every proposed information collection in the Order that is subject to review and approval under the PRA. As a result, the Commission has announced that some new provisions will go into effect on November 12, 2019, notwithstanding that they are subject to OMB review and approval under the PRA.

¹ *Promoting Telehealth in Rural America*, Report and Order, FCC No. 19-78, WC Docket. No. 17-310 (rel. Aug. 20, 2019) ("Promoting Telehealth in Rural America Order" or "Order").

² Order Approving Proposed Rule Changes to Universal Service Support for Health Care Providers, 84 FR 54952 (Oct. 11, 2019) (to be codified at 47 C.F.R. pt. 54).

³ Paperwork Reduction Act of 1995, as amended, 44 U.S.C. § 3501 *et seq.*

The Commission should immediately issue a public notice stating that the rules adopted in the Order will not go into effect on November 12, 2019, providing time for the Commission to evaluate all adopted requirements and identify all that require OMB approval. The Commission should then publish a corrected summary of the Order in the Federal Register that identifies all provisions that will not go into effect until approved by OMB. In any event, OMB should not begin its review process for any of the proposed information collections adopted in the Order unless and until the Commission properly identifies all that require OMB approval and follows the process for public comment and submission to OMB.

The PRA requires federal agencies seeking information from the public to submit these proposed information collections for OMB review. This review process aims to “minimize the paperwork burden” and “ensure the greatest possible public benefit” from federal information collections.⁴ This process helps agencies “strike a balance” between collecting necessary information and “impos[ing] unjustified costs on the American public.”⁵ OMB approval is required regardless of “whether such collection of information is mandatory [or] voluntary.”⁶

Before submitting a request to OMB, the agency must conduct an internal review to evaluate the need for the information collection and, among other requirements, produce a “specific, objectively supported estimate of [the] burden” imposed by the collection.⁷ This estimate must detail the expected “time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for” the agency.⁸ After conducting the internal review and deciding to move forward, the agency must solicit and consider public comments on whether the proposed collections are necessary, whether the agency’s burden estimate is accurate, how to improve the information collected, and how to minimize the burden on respondents.⁹ OMB must then independently assess whether the proposed collection is “necessary for the proper performance of the functions of the agency.”¹⁰ Importantly, though, this entire process is initiated by the agency publicly identifying all of its proposed collections and submitting its requests for OMB review, and the agency is prohibited by the Paperwork Reduction Act from conducting an information collection without OMB’s approval.¹¹

⁴ 44 U.S.C. § 3501(1)-(2).

⁵ Office of Mgmt. & Budget, Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies: Information Collection under the Paperwork Reduction Act (2010), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/PRAPrimer_04072010.pdf.

⁶ 5 C.F.R. § 1320.3(c).

⁷ 44 U.S.C. § 3506(c)(1)(A)(iv).

⁸ 44 U.S.C. § 3502(2).

⁹ 44 U.S.C. § 3506(c)(2).

¹⁰ 44 U.S.C. § 3508.

¹¹ 5 C.F.R. § 1320.5(a) (“An agency shall not conduct or sponsor a collection of information” unless, “in advance”, they receive OMB approval); 44 U.S.C. § 3506(c)(1)(B)(iii)(V) (stating that an agency shall “ensure that each information collection . . . informs the person receiving the collection of information of

The FCC's Federal Register summary correctly identified several rules that it adopted in the Promoting Telehealth in Rural America Order that propose information collections. For instance, the new rules allow health care providers to file forms requesting site or service substitutions, service delivery deadline extensions, or invoicing deadline extensions.¹² Each of these rules permitting providers to submit forms qualifies as a voluntary information collection under the PRA and will not go into effect until approved by OMB.¹³

The Commission's summary fails to acknowledge, however, that other rules propose information collections that require OMB approval before becoming effective. In particular, the summary fails to identify the rules instructing USAC to create a rural and urban rate database as requiring PRA review, even though these rules clearly contain new information collections.¹⁴ Specifically, the Commission's new rules direct USAC, the non-profit administrator of the Commission's universal service programs, to "create and maintain" a database of urban and rural rates for every eligible telecommunications service in every state, including through receipt of voluntary submissions.¹⁵

The new rate database is key to the Commission's restructuring of the Telecommunications Program. In the Commission's view, the current rate determination procedures are "cumbersome" and "lack[] transparency," resulting in "arbitrary and substantial inconsistencies" in approved rates.¹⁶ The existing rules, according to the Order, "threaten the ability of the Telecom Program to fund the telecommunications services that health care providers need to deliver critical health care services to their rural communities."¹⁷ The new rules, therefore, direct USAC to compare similar services, average all of the rates they receive, and set approved urban and rural rates for each eligible service within every state.¹⁸ These rates, and the underlying information, will then be made available through a public database.¹⁹

The Commission dismissed concerns that USAC will not have sufficient information to set every rate.²⁰ Nevertheless, to help populate this database, the Commission "encourage[s]"

... the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number").

¹² Order Approving Proposed Rule Changes to Universal Service Support for Health Care Providers, 84 Fed. Reg. 54,952, § 54.624, 54.626(b), 54.627(b) (Oct. 11, 2019).

¹³ *Id.* at 54,952.

¹⁴ *Id.* at 54,980.

¹⁵ 47 U.S.C. § 54.604–.605.

¹⁶ Promoting Telehealth in Rural America Order, FCC No. 19-78 ¶¶ 5, 12.

¹⁷ *Id.* ¶ 84.

¹⁸ *Id.* ¶¶ 14, 21, 47, 60.

¹⁹ *Id.* ¶ 78.

²⁰ *Id.* ¶ 82.

service providers to “bring their available urban and rural rate data to USAC’s attention.”²¹ Though the Order does not make submission of providers’ “urban and rural rate data” *mandatory*, the Commission clearly has solicited the *voluntary* disclosure of information from all telecommunications carriers.

The PRA requires that even voluntary solicitations of information from “ten or more persons” be submitted to OMB.²² The Order itself solicits thousands of carriers to submit rate information to USAC—certainly more than ten. The Commission is obligated to delay implementation of the database rules until it has complied with the PRA and received OMB approval.

Failure to correct the Federal Register notice would allow new information collections to evade statutorily mandated PRA review. And, importantly, failing to identify this information collection means that neither the public nor OMB will have an opportunity to weigh in before these rules become final. In addition, excluding the urban and rural rate voluntary information collection from the public notice also means the Commission can avoid conducting a burden analysis before USAC begins its rate information collection.

We urge the Commission immediately to issue a public notice suspending the effective date of the rules adopted in the Promoting Telehealth in Rural America Order while it reviews the Order and identifies all requirements containing new mandatory or voluntary information collections. The Commission should also estimate the burdens every information collection will place on service providers, seek public comment per the PRA rules, and then submit all of its proposed collections to OMB as required by the PRA. Doing so will allow all stakeholders and OMB to participate in the statutorily mandated review.

Respectfully,



Jennifer P. Bagg
John T. Nakahata
Matthew Miller
Counsel to GCI Communication Corp.

cc: Adam Copeland
Ryan Palmer
Elizabeth Drogula
Cathy Williams

²¹ *Id.* ¶ 78 n.216.

²² 44 U.S.C. § 3502(3); 5 C.F.R. § 1320.3(c).