

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
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 an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Line-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

Comments of the Blooston Rural Carriers

The Blooston Rural Carriers,¹ by their attorneys, hereby submit comments in support of the Petition for Reconsideration and Clarification of the United States Telecom Association (Petition) asking the Commission to reconsider or clarify the *Further Guidance*² released by the Office of Native Affairs and Policy, Wireless Telecommunications Bureau and Wireline Competition Bureau (the Bureaus) on July 19, 2012, concerning the Tribal engagement

¹ The rural incumbent local exchange carriers listed in Attachment A are participating in the filing of these Comments.

² *Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, released July 19, 2012.

requirement in the *Order*.³ As shown in the Petition, the Commission has not yet complied with the Paperwork Reduction Act (PRA) in connection with the tribal engagement rule.

Accordingly, the Commission should make clear that eligible telecommunications carriers (ETCs) are not required to comply with the Commission's tribal engagement rule or the Bureau's *Further Guidance* at this time. Further, because the Bureaus have not complied with the Administrative Procedure Act (APA) or the PRA in issuing the *Further Guidance*, the Commission must clarify that the *Further Guidance* does not create a legal obligation on the part of ETCs.

I. The Commission Must Clarify that ETCs Are Not Required to Initiate Tribal Engagement At This Time.

In the *Further Guidance*, the Bureaus state that "communications providers should take immediate steps to prepare for and initiate engagement with the Tribal governments whose lands they serve."⁴ Further, the Bureaus state that "[c]ertifications articulating the steps taken to comply with the annual Tribal engagement obligation in 2012 are due on July 1, 2013 and each year thereafter."⁵ This language incorrectly indicates that the Commission's tribal engagement reporting requirement found in Section 54.313(a)(9) of the Commission's rules, is in effect and enforceable. However, as demonstrated in the Petition, the Commission has not complied with the PRA and, therefore, the tribal engagement reporting requirement is not enforceable.

Accordingly, the Commission must reconsider this aspect of the *Further Guidance* and clarify

³ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Reform – Mobility Fund*; Report and Order and Further Notice of Proposed Rulemaking, WC Dockets No. 10-90, 07-135, 05-337, 03-109; CC Dockets No. 01-92, 96-45; GN Docket No. 09-51; WT Docket No. 10-208, released November 18, 2011, at ¶¶636-637, §54.313(a)(9)(*Order*).

⁴ *Further Guidance* at ¶14.

⁵ *Id.*

that ETCs are not required to take steps or initiate engagement with Tribal governments pursuant to Section 54.313(a)(9) of the Commission's rules at this time.

Pursuant to the PRA, the Commission must seek public comment on the proposed collection in the tribal engagement rule and submit the proposed collection for review and approval by the Office of Management and Budget (OMB). Although the *Order* was released almost a year ago, the Commission still has not complied with the PRA in connection with Section 54.313(a)(9) of its rules.

The PRA process is an important one which must be taken seriously by the Commission, to ensure that federal requirements do not unnecessarily burden those required to comply with the requirements, such as rural ILEC ETCs. The unduly burdensome nature of the rules has already been shown in petitions asking the Commission to reconsider Section 54.313(a)(9). As shown, the Commission's consultation and reporting requirements will be especially burdensome and costly for small local exchange carriers who have limited employees and resources and may have to hire outside consultants to perform needs assessments and feasibility and sustainability planning or marketing plans. Some ETCs also serve portions of multiple Tribal lands, which would necessitate that they engage in multiple assessment, planning, and marketing efforts for each specific Tribal land area that they serve.

The rules also fail to consider that some ETCs serve only a small portion of Tribal lands, with very few subscribers such that separate assessment and planning studies and marketing efforts cannot be cost justified on any basis. Since the adoption of Section 54.313(a)(9), it also has been discovered that the study area of some ETCs include tribal lands where there are no

inhabitants at all. No legitimate purpose can be served by requiring tribal engagement in these circumstances.

The Commission's requirements are all the more burdensome because they are not needed to advance the goal of universal service. As discussed in the Petition, neither the Commission nor the Bureaus "has demonstrated that mandatory Tribal engagement requirements will add any value to existing broadband deployment efforts in Tribal lands or will improve existing voluntary relationships between ETCs and Tribal leaders."⁶ On the other hand, record evidence and the data in the National Broadband Map make clear that a consultation obligation on all ETCs serving Tribal lands, particularly rural ILECs, is not necessary to promote the universal deployment of broadband service.⁷

The *Further Guidance* provided by the Bureaus, specifying what ETCs must do to comply with rule section 54.313(a)(9), serves to reinforce and increase the burdensome nature of the rule. For example, the *Further Guidance* requires ETCs to research, prepare documentation, and deliver presentations on topics including deployment priorities and compliance with rights of way, permitting and business practice licenses for each tribal community served. The *Further Guidance* also requires that the ETC make available a high level employee, authorized to make decisions on behalf of the company, for face-to-face meetings. Thus, the additional requirements specified in the *Further Guidance* only serve to increase the burdensomeness of the Commission's rule.

⁶ Petition at 15-16.

⁷ *Petition for Reconsideration of the Rural ILECs Serving Tribal Lands*, WC Docket No. 10-90, et al., Filed December 29, 2011.

The Blooston Rural Carriers note that under the PRA, before submitting a collection of information to OMB for approval, the Commission must provide 60-days notice in the Federal Register and before OMB makes its decision on the collection request, it must provide 30 days for public comment after the receipt of the proposed information collection. Accordingly, it is likely that OMB approval for rule section 54.313(a)(9) will not be obtained before the end of 2012. Therefore, the Commission must reconsider the Bureaus' statement in the *Further Guidance* and declare that ETCs are not required to comply with the Commission's tribal engagement rule or the Bureau's *Further Guidance* at this time. In light of the short period of time remaining in year 2012 before the rule can be effective, the Blooston Rural Carriers also support US Telecom's request that the filing date of any reporting associated with rule Section 54.313(a)(9) should be delayed until at least one year following the effective date of the rule.⁸

II. The Commission Must Clarify that the *Further Guidance* Does Not Create a Legal Obligation on the Part of ETCs.

As shown in the Petition, to the extent the *Further Guidance* imposes new requirements on ETCs, it is not in compliance with the PRA or the APA. As argued by US Telecom, "[t]o the extent the *Further Guidance* is intended to impose mandatory obligations on ETCs serving Tribal areas, it is unlawful because it was adopted without adherence to the APA's notice-and-comment rulemaking requirements."⁹ Further, to the extent the *Further Guidance* is mandatory and requires the mandatory collection of information, OMB approval also must be sought for this information collection as well. Since the Bureaus have not obtained OMB approval, any mandatory information collection requirements in the *Further Guidance* also are not effective or

⁸ Petition at n. 45.

⁹ Petition at 8.

enforceable. Accordingly, the Commission must clarify that the *Further Guidance* is not intended to impose legal obligations.

III. Conclusion

Based on the foregoing, the Blooston Rural Carriers ask the Commission to find that eligible telecommunications carriers (ETCs) are not required to comply with the Commission's tribal engagement rule or the Bureau's *Further Guidance* at this time. The Blooston Rural Carriers also ask the Commission to delay the filing date of any reporting associated with rule Section 54.313(a)(9) until at least one year following the effective date of the rule.

Respectfully submitted,

The Blooston Rural Carriers

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September 26, 2012

Attachment A

Golden West Telecommunications Cooperative, Inc.

Interstate Telecommunications Cooperative, Inc.

Midstate Communications, Inc.

Penasco Valley Telephone Cooperative, Inc.

Range Telephone Cooperative, Inc.

Red River Rural Telephone Association, Inc.

Table Top Telephone Company, Inc.

The Ponderosa Telephone Co.

Townes Telecommunications, Inc.

Valley Telephone Company

Venture Communications Cooperative, Inc.

West River Cooperative Telephone Company

West River Telecom of Hazen, North Dakota