

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

**APPLICATION FOR REVIEW OF THE
UNITED STATES TELECOM ASSOCIATION**

Pursuant to section 1.115 of the Commission’s Rules, 47 C.F.R. Sec. 1.115, the United States Telecom Association (“USTelecom”)¹ respectfully requests the Commission review the Report and Order (“*Order*”)² issued November 6, 2012, by the Chief, Wireline Competition Bureau (“Bureau”), in the above captioned proceeding and modify its implementation to eliminate unnecessary and burdensome boundary data collections. The *Order* adopts data specifications for collecting study area boundaries and other geographic data in esri shapefile format, and establishes a procedure for resolving overlaps and voids in submitted data. Late yesterday, the Bureau released a *sua sponte* order on reconsideration³ of the *Order*, addressing to some degree concerns that parties have expressed about the *Order* over the past several months. USTelecom continues to evaluate the order on reconsideration but, while appreciative of this

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² See *In the Matter of Connect America Fund, High-Cost Universal Service Support*, WC Docket Nos. 10-90 and 05-337, Report and Order (rel. Nov. 6, 2012).

³ See *In the Matter of Connect America Fund High-Cost Universal Service Support*, WC Docket Nos. 10-90 and 05-337, Order on Reconsideration (rel. February 26, 2013) (“*Reconsideration Order*”).

most recent Bureau order, continues to have concerns about this information collection and, as a result, is compelled to proceed with this Application for Review.

The *Order's* requested data vastly exceeds what is necessary to implement the universal service reforms adopted as part of the *USF/ICC Transformation Order* (“*Transformation Order*”)⁴ and, in doing so, places large and unnecessary burdens on potential respondents.⁵ This application seeks relief from aspects of these data specifications that are overbroad, as specified below. To the extent that this relief can be granted through other vehicles, including waivers filed by individual companies or groups of companies, USTelecom reserves the right to modify or withdraw this application for review.

I. The Information Collection is Beyond the Scope of the Wireline Competition Bureau’s Authority

Portions of the information proposed for collection in the *Order* exceed the delegation of authority granted to the Bureau in the *Transformation Order*. The Commission should reverse the Bureau’s unauthorized mandate to Incumbent Local Exchange Carriers (“ILECs”) for such portions of the mapping data.

Although the *Transformation Order* contains numerous delegations of authority to the Bureau to implement its various rules and procedures,⁶ it does not include an explicit delegation

⁴ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order* and *FNPRM* or *Order* or *FNPRM*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. Filed Dec. 8, 2011).

⁵ See Comments of the United States Telecom Association, In the Matter of Connect America Fund, High-Cost Universal Service Support, Study Area Boundary Maps Reported in Esri Shapefile Format, WC Docket No. 10-90, WC Docket No. 05-337, OMB Control Number: 3060-XXXX, ICR Reference No: 201212-3060-006.

⁶ See, for example, Public Notice, Wireline Competition Bureau Seeks Comment on Proposed Urban Rates Survey and Issues Relating to Reasonable Comparability Benchmarks and the Local Rate Floor, WC Docket No. 10-90, DA 12-1199, rel. July 26, 2012. The explicit delegation of authority to collect this data is in the *Transformation Order* at para. 1018.

with respect to this proposed information collection. Thus the Bureau should ensure that, in this instance, the information requested is closely tied to purposes in the *Transformation Order* for which it was explicitly granted delegated authority. Those purposes include implementation of the benchmarking rule for rate-of-return companies,⁷ determination of 100% coverage by unsubsidized voice and broadband providers in rate-of-return company areas and less than 100% coverage subsequent to adoption of rules pursuant to the Further Notice of Proposed Rulemaking (“*FNPRM*”) issued in conjunction with the *Transformation Order*,⁸ and enforcement of the revised “parent trap” rule.⁹ Such purposes certainly do not include obtaining study area boundary data from price cap carriers or “using these data as a general map base for universal service and other landscape level analysis for which these data area useful.”¹⁰

II. The Bureau’s Information Collection Violates the Paperwork Reduction Act

Requiring all ILECs to “submit certified study area boundary data in esri shapefile format” runs afoul of the Paperwork Reduction Act (“PRA”), the primary purpose of which is “to reduce, minimize and control burdens and maximize the practical utility and public benefit” of information collected by a federal agency.¹¹ First, the information collection violates the PRA by seeking study area boundary data from price cap carriers without a demonstrated need for such data. The purported justification for the proposed information collection is that ILEC study area boundary data are necessary to enforce the Commission’s high-cost loop support (“HCLS”)

⁷ See explicit delegation of authority in *Transformation Order*, ¶ 210.

⁸ See explicit delegation of authority in *Transformation Order*, ¶ 284.

⁹ See 47 C.F.R. §54.305(b), (“*parent trap rule*”).

¹⁰ See *Order*, Appendix A, Footnote 1, page 11.

¹¹ See *Order*, ¶ 1; 5 C.F.R. §1320.1.

benchmarking rule and its unsubsidized competitive overlap rule.¹² However, by their plain language, these rules only apply to rate-of-return ILECs, as the Bureau itself acknowledges. Thus the data has no practical utility as required by the PRA.

Second, the Bureau's PRA analysis severely underestimates the burden associated with collecting, reviewing, submitting, and certifying study area boundary data in esri shapefile format. The *Order* purports to require ILECs to produce and certify shapefiles for each *exchange area* within their study areas.¹³ Not only is there no common definition of "exchange," collecting boundaries for exchanges would be extremely burdensome. Moreover, there is no need to collect exchange area data from price cap carriers. Any exchanges or other geographic areas involved in transactions with rate-of-return carriers which may be subject to the parent trap rule, can and more appropriately should be identified by the rate-of-return carrier to whom the rule applies. There are very few rate-of-return carriers to whom the parent trap rule applies – the Bureau should collect the information from those carriers and as a condition of the approval of future transactions in which it will apply. It is not necessary to burden hundreds of carriers with this requirement when it is only relevant to a handful of situations.

The *Order* erroneously assumes that ILECs either already have available or readily can create exchange area boundary data in an esri shapefile format "at minimal additional cost."¹⁴

The Bureau does not provide any support for this assumption, which is belied by the record

¹² See *Order*, ¶¶ 2-5.

¹³ While the *Reconsideration Order* allows price cap carriers to submit wire center boundary data, as long as the filer indicates the exchange or exchanges associated with each wire center, it does not remove the requirement to file such data for rate-of-return carriers.

¹⁴ See *Order*, ¶ 9.

evidence.¹⁵ There historically has been no need for ILECs to maintain accurate exchange area boundary records to the level required by the *Order*. Nor do most ILECs maintain such records in esri shapefile format, and the conversion of paper or even digital exchange boundary records into this format is not as simple as the Bureau presupposes. In short, the Bureau’s estimates of the time and cost involved in complying with the information collection – an average of 26 hours and \$489 per respondent – are grossly understated because they are based on a wholly unrealistic view of the burdens required for compliance.¹⁶

Third, contrary to the requirements of the PRA, the Bureau did not attempt to minimize the burden of the information collection on respondents, particularly for small business entities. The Bureau could have minimized the regulatory burdens by collecting exchange area boundary data only from those ILECs for which such data are reasonably necessary. Alternatively, exchange area boundary data are available from third-party vendors or from state public service commissions that determine and control exchange area boundaries, and the Bureau could obtain such data directly from these sources, which would obviate the need for the information collection. Although the Bureau purports to reduce the information collection burden by permitting state entities to submit the required data, the benefits of this option are illusory because state involvement is “voluntary. And, by failing to make any distinctions in the

¹⁵ See Letter from Mark Guttman, CostQuest Associates, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket 10-90 (filed July 2, 2012) (“CostQuest Ex Parte”).

¹⁶ See *Information Collection Being Submitted to the Office of Management and Budget for Emergency Review and Approval*, 77 Fed. Reg. 75159, 75160 (Dec. 19, 2012) (“PRA Notice”). The *PRA Notice* estimates that each ILEC will take 26 hours to comply with the information collection and that there will be 1,443 respondents. See *id.* Using these figures, the total annual hour burden for all respondents should be 37,518 hours. But the *PRA Notice* inexplicably estimates that the “Total Annual Burden” will be 7,924 hours. *Id.*; see also “View ICR – Agency Submission,” Office of Information and Regulatory Affairs, ICR Reference No: 201212-3060-006, http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201212-3060-006 (same). This translates to 5.5 hours per response, which is only 21% of the 26 hour burden estimate, which itself is grossly understated. The Bureau did not explain why this discrepancy exists.

information being collected based on an ILEC's size, the Bureau has not taken any steps to reduce the burden of the information collection on small business entities, as required by the PRA.

The information collection is also unduly burdensome in that it requires ILECs to certify the accuracy of study area boundaries despite the fact that ILECs are not the arbiters of such boundaries. Indeed, boundary disputes between neighboring ILECs are commonly taken to state commissions to resolve, which suggests that those commissions rather than the companies are the entities that can attest to the accuracy of study area boundaries. In fact, the Commission has a greater role in the establishment of study area boundaries than do the ILECs. ILECs are not free to alter their study area boundaries and, indeed, Commission approval is required even after a state commission has altered a study area boundary.

While OMB did approve the information collection requirements contained in Appendix A of the *Order* (which requests exchange boundary data as well as study area boundary data), as a matter of fact, neither the abstract nor the emergency justification provided by the Bureau to OMB included a reason for collection of exchange boundary data, or a discussion of the substantially greater burden of providing exchange boundary data, and both made specific reference to study area data with no mention of exchange data. While both sets of data are extraordinarily expensive and burdensome to collect, because there are many more exchanges than study areas the omission of a request and justification for exchange boundary data is significant.

OMB granted the Bureau PRA approval on a temporary basis, expiring July 31, 2013,¹⁷ based on the Bureau's request for streamlined, emergency processing. It is highly doubtful that

¹⁷ See 78 Fed. Reg. 10,100.

companies that do not currently have esri shapefile information for their study area and exchange boundaries, and which may be dealing with exchanges and study areas for which they do not have electronic maps, could complete collecting, verifying, formatting and certifying all the necessary information within the next five months. The impossibility of completing this task in a timely way would essentially render the PRA approval moot.

III. There is No Need to Collect Study Area Data from Price Cap Companies

There is no need to collect study area boundary data from price cap companies, nor does the Bureau have authority to do so. The *Order* makes no reference to portions of the *Transformation Order* relating to price cap carriers, nor to any rules or procedures affecting price cap carriers. And it is certainly not necessary to collect study area boundaries from price cap carriers merely to see if such boundaries are consistent with study area boundary information submitted by rate-of-return carriers which may border a price cap carrier study area. There are sufficient safeguards to ensure the accuracy of the rate-of-return carrier study area boundary submissions as to make such submission by price cap carriers redundant. The Commission should relieve price cap ILECs of this obligation imposed upon them in the *Order*.

IV. It is Premature to Collect Study Area Boundary Data from Average Schedule Rate-of-Return Companies

The Commission adopted a rule to phase out universal service support where an unsubsidized competitor – or a combination of unsubsidized competitors – offers voice and broadband service throughout 100 percent of a rate-of return carrier’s study area,¹⁸ but the Commission has not yet adopted a clear definition of broadband service for making such a determination. The Commission is currently using a proxy of 3Mbps download speed and 768 kbps upload speed as a proxy for its 4Mbps/1Mbps definition of broadband and it has not yet

¹⁸ See *Transformation Order*, ¶103.

defined latency or capacity. Until such definitions are adopted, defining the boundaries of a study area for application of the 100 percent coverage area standard is premature.

Moreover, there are simpler and less burdensome methods of enforcing this rule once the definitions are finalized. Average schedule rate-of-return carriers could certify that a portion or portions of their study area are unserved by a qualifying voice and broadband provider. Such certification could be subject to challenge. Since it is not unreasonable to assume that 100 percent coverage by a qualifying carrier in an average schedule rate-of-return carrier's study area will be a rare occurrence, it does not make sense to burden all average schedule rate-of-return carriers with study area boundary mapping obligations.

As far as areas the immediate necessity to obtain study area boundaries from average schedule rate-of-return carriers where an unsubsidized competitor offers voice and broadband service to a substantial majority, but not 100 percent of the study area, the *Order* admits that the Commission sought comment on a process to reduce support in such areas in the *FNPRM*. The Commission has not yet adopted such a process. Moreover, it is unclear as to what boundary data would be relevant to such a process until a process is adopted.

V. The Commission Should Proceed with Collection of Study Area Boundary Data from Cost Settlement Rate-of-Return Companies

The Commission should proceed with the collection of study area boundary data from cost-settlement rate-of-return companies. USTelecom agrees with the Bureau that information on study area boundaries would be useful in implementing the Commission's benchmarking rule. USTelecom and others have expressed concerns over the Commission's use of admittedly

inaccurate study area boundary detail to develop regression-based benchmark models.¹⁹ There is no need to collect exchange boundaries from cost-settlement rate-of-return companies since exchanges have no relevance to the benchmarking rule, and “parent trap” issues can be addressed in a much less burdensome way.

The Commission should recognize that small companies may or may not have the resources at hand to submit study area shapefiles and should accordingly allow substantial time for submission of initial maps. The Commission should also recognize that data on geographical study area boundaries may not be available in all instances; companies facing such situations should be given substantial latitude to submit data approximating service territories. Comparing submitted data to state maps where available, and seeking input from state public utility commissions or other state agencies on boundary issues, are useful steps adopted by the Bureau in the *Order*.²⁰

VI. The Commission Should Collect Boundary Data from Rate-of-Return Companies Involved in Certain Transactions

The Commission should collect boundary data from rate-of-return companies for areas purchased by rate-of-return carriers from price cap carriers which are subject to the restrictions of Sec. 54.305(b) of the Commission’s rules, commonly known as the “parent trap.” Such data are needed to determine the areas subject to the parent trap restriction and thus not be included in the high-cost support mechanisms usually applicable to rate-of-return carriers. While Sec. 54.305(b) makes reference to “exchanges,” such transactions may involve entire study areas, one or more wire centers, or other geographical areas which may or may not be classified as an

¹⁹ See Application for Review of the United States Telecom Association, WC Docket Nos. 10-90 and 05-337, at 7 (filed June 22, 2012) and Application for Review of NECA, NTCA OPASTCO, and WTA, WC Docket Nos. 10-90 and 05-337 (filed May 25, 2012).

²⁰ See *Order*, ¶¶17 and 18.

exchange. So the data collected in these very limited instances for purposes of enforcement of the parent trap rule should reflect the area involved in the transaction, however such area is characterized.

If the transaction implicating the parent trap rule involves an entire study area, the study area boundary data collected under the *Order* from rate-of-return carriers would be sufficient. If the transaction involves an area smaller than a study area, the rate-of-return carrier should be required to provide boundary data for the geographic area involved in the transaction. If a rate-of-return carrier engages in a transaction which does not implicate the parent trap rule, such as the purchase of an area from a carrier in which the support is not less than the actual costs of the acquired area, there is no reason for the rate-of-return carrier to separately identify the boundaries of that area by submitted esri shapefile boundary data.

VII. Conclusion

The Commission should dramatically scale back the information requested by the Bureau to only that mapping data necessary to implement, monitor and enforce the Commission's rules. None of the rules referenced in the *Order* are applicable to price cap ILECs – they should be entirely relieved of this requirement. Cost-settlement rate-of-return ILECs should submit study area boundary data as it is necessary for the accurate calculation of the Quantile Regression Analysis. It is premature for the Commission to collect study area boundary data from average schedule rate-of-return carriers until it is prepared to implement the rule barring such carriers from receiving high-cost support in area in which an unsubsidized provider offers voice and broadband service throughout 100 percent of a rate-of return carrier's study area. There is no

reason for exchange area boundary data to be submitted by any carrier – boundary information relevant to implementation and enforcement of the parent trap rule can be collected as a condition to Commission approval of transactions in which this is relevant.

Respectfully submitted,

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