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April 16, 2013

RE: Special Access Data Request in WC Docket No. 05-25

The attached comments were filed yesterday, via email, to PRA@fcc.gov, per the instructions in the request for comments published in the Federal Register on February 12, 2013.[1] The comments address the special access data request adopted in the December 18, 2012 FCC Order (FCC 12-153) in WC Docket No. 05-25. This letter is to place the comments in the record in WC Docket No. 05-25.

If you have any questions, please contact Brian Ford at (703) 351-2012 or bford@ntca.org.

Respectfully submitted,

NTCA–THE RURAL BROADBAND ASSOCIATION

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[1] Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested, 78 Fed. Reg. 9911 (published Feb. 12, 2013).

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

In the Matter of	)	
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	FCC 12-153
	)	
Information Collection(s) Being Reviewed By The Federal Communications Commission	)	78 Fed. Reg. 9911
	)	

PAPERWORK REDUCTION ACT COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

April 15, 2013

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In the Matter of	)	
	)	
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PAPERWORK REDUCTION ACT COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these comments in response to the Notice of Information Collection[2] regarding the Paperwork Reduction Act ("PRA")[3] burdens arising out of an information collection adopted in the above-captioned proceeding.[4] Many of NTCA's rural rate-of-return-regulated incumbent local exchange carrier

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[1] NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and competitive local and/or long distance services as well.

[2] Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested, 78 Fed. Reg. 9911 (published Feb. 12, 2013).

[3] 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.*

[4] *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM 10593, Report and Order and Further

("RLEC") members, or their affiliates, are either providers or customers of the special access services that are the subject of the information collection adopted by the Order. Indeed, in most cases, these services are provided or procured, as applicable, by an entity affiliated with the RLEC, and are typically provided on a competitive basis in areas served by larger, price-cap regulated ILECs.

The information collection contained in the Order will impose an unreasonable burden on small businesses that far outweighs the need for the data collected. The Federal Communications Commission (the "Commission") should therefore adopt one or more of several alternatives available to it, such as the increased use of data sampling, streamlined and/or short-form reporting options for small businesses, and/or de minimis exceptions. Each of these alternatives would reasonably minimize the burden on small businesses while still enabling the Commission to collect data that are more than sufficient for its needs in this proceeding.

II. THE COMMISSION SHOULD ADOPT LESS BURDENSOME INFORMATION COLLECTION REQUIREMENTS FOR SMALLER PROVIDERS OF THE SPECIAL ACCESS SERVICES THAT ARE THE SUBJECT OF THE ORDER.

A. The information collection will impose substantial burdens on small providers of special access services, who are already operating in the face of limited resources.

In the Federal Register notice seeking comment on the burden associated with this information collection, the Commission estimates that each respondent will expend 134 hours, on average, to complete the information collection.[5] This is no less than a staggering burden

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Notice of Proposed Rulemaking, FCC 12-153 (released Dec. 18, 2012) (Order).

[5] Information Collection(s) Being Reviewed by the Federal Communications Commission,

imposed on small providers, operating in difficult-to-serve areas of the nation, that already face limited – and decreasing – financial, and therefore employee, resources as a result of reforms that cut critical universal service and cost recovery mechanisms. Indeed, these challenges are particularly acute for the competitive local exchange carrier ("CLEC") affiliates of NTCA members, many of whom face rapid phase-downs of universal service support and reductions in intercarrier compensation revenues without any alternative for recovery beyond perhaps hoping that increased consumer rates will not result in decreased consumer subscriptions.[6]

To put the burden associated with this information collection into its proper perspective, 134 employee hours represents, accounting for an average amount of vacation and holiday time taken, approximately 7 percent of one full-time employee's annual hours of employment. Even if some NTCA members might require fewer hours than the average to complete the information collection because of the size of their CLEC operations, they also likely have fewer employees as well – and the fact remains that these are small businesses operating almost exclusively in small towns served by larger carriers that typically abut the even more rural areas served by the core RLEC operations. In fact, the average NTCA member has fewer than 25 employees, many of

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Comments Requested, 78 Fed. Reg. at 9911.

[6] *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 Link-Up*, 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) (*USF/ICC Transformation Order*), ¶¶ 512-532 (transitioning competitive ETC support to CAF and beginning the phase-down of support for these carriers).

whom are required to "wear multiple hats" in terms of both compliance and other functions for operations that span hundreds or even thousands of square miles. This includes everything from customer service representatives to plant engineers to technicians installing and maintaining network facilities throughout what are typically large but sparsely populated rural areas. This also includes office personnel with the responsibility of maintaining compliance with the numerous reporting requirements applicable to RLECs and their affiliated entities, including the "competitive providers" that would appear to be subject to the information collection contemplated by the Order.[7]

Complicating these burdens even further, the information collection adopted in the Order represents just one of numerous new reporting and compliance requirements that have been piled atop small telecommunications providers in the wake of the FCC's *USF/ICC Transformation Order*.[8] For example, one NTCA member has provided a list, attached hereto as Appendix A, of the more than two dozen *federal* reporting requirements to which it is subject. These are in addition to the numerous additional reporting requirements applicable in various individual states. Asking a small business to tackle these obligations, and to then devote potentially 7

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[7] *See*, Order ¶ 21 (stating that "some providers are 'competitive providers,' by which we mean a competitive local exchange carrier (CLEC), interexchange carrier, cable operator, wireless provider or any other provider that is not an incumbent LEC operating within its incumbent service territory. We also note that a rate-of-return carrier, which is not subject to our pricing flexibility rules, shall not be considered a 'provider' to the extent it provides special access within its rate-of-return service area.").

[8] *USF/ICC Transformation Order*, ¶¶ 576-606.

percent or even more of an employee's time to the instant data collection as well, represents an unreasonable burden.[9]

Moreover, it is likely that the average amount of time required to complete the information collection may exceed the 134 hours estimated in the notice, thereby forcing small providers to expend substantial resources to comply with the data request. More specifically, a review of Appendix A to the Order reveals that many of the questions are far more involved than simple "check the box" or "fill in the empty field" inquiries. Specifically, it appears that the Commission expects that certain of the information requested will come in more "narrative" form, requiring smaller providers to provide insight into business decisions made in perhaps dozens or even hundreds of separate instances.[10] In addition, for carriers with less sophisticated billing systems, it may be necessary to physically sort through the billing and plant records of each and every special access circuit they have deployed. Furthermore, the mapping requirements[11] contained in the information collection will likely force a number of small providers without in-house mapping software to subcontract this portion of the information collection, incurring substantial expense – and coming at a time when these providers are already

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[9] It is also worth noting that the FCC recently requested an increase in its own operating budget to accommodate, in part, the need to administer many of these new compliance and oversight obligations. Federal Communications Commission, Fiscal Year 2014 Budget Estimates Submitted to Congress April 2013, p. 12. Unfortunately, rural CLECs, in the face of market constraints and with cost recovery mechanisms that are only on the decline, have no such opportunity to seek additional budget capability to meet their end of these obligations.

[10] Appendix A, Section II. A., ¶ 8.

[11] *Id.*, ¶ 5.

subject to rather onerous (albeit necessary) mapping obligations with respect to the extent of their RLEC study areas and exchanges.

Moreover, at least some of the "narrative" form questions posed appear quite vague,[12] seeking, for example, a subjective judgment as to why certain "business rules" may have been "successful" in a particular area.[13] Not only will such vaguely worded questions impose substantial time burdens on small providers, it is difficult to grasp what possible use the Commission could have for such subjective information. As the Order states, "[a]ny effort to lessen the burdens of this information collection on small companies must be balanced against our goal of obtaining the most *accurate and useful data* possible."[14] Certainly, it is difficult to contemplate how the utility of such a "data" request would outweigh the obvious burden. In fact, the Commission provides no justification for such a request, and in light of the dozens of other data-intensive questions contained in Appendix A, a justification of why small providers should be required to expend limited resources to answer such inquiries is certainly in order prior to their inclusion in any final form of this information collection.

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[12] Requests for "data" that are so inherently subjective do not represent a request for data at all. These types of questions are simply "make-work" tasks that bear more resemblance to college application essay questions than an attempt by the Commission to obtain "data" it allegedly requires for reasoned policymaking.

[13] Appendix A, Section II. A., ¶ 8 (asking providers to "List those geographic areas in which you have built the most *Connections* to *End Users* and <u>explain why, in your view, your business rule has been most successful in those areas</u>.) (emphasis added).

[14] Order, ¶ 22 (emphasis added).

In sum, the information collection at issue is likely to severely tax small providers that are already operating with severely limited – and currently decreasing – resources. Many of these NTCA members operate in difficult-to-serve, high-cost rural areas, and like small businesses all across the nation, are being forced to "do more with less" under the current economic and regulatory environment. Finally, it is not certain that the voluminous data that the Commission will collect pursuant to the Order is necessary, or even usable, due to the sheer volume of information that will be submitted and the vague nature of some of the questions asked. Thus, the Commission should consider a number of alternatives to the information collection, as discussed further below.

B. In light of the substantial burdens to small providers that will result from this information collection, the Commission should adopt one of several available alternatives.

In June of 2012, the Executive Office of the President released a memorandum discussing Executive Order 13610, which required federal agencies to eliminate unjustified regulatory requirements, including unnecessary reporting and paperwork burdens.[15] In that memorandum, the Administrator of the Office of Information and Regulatory Affairs outlined several steps that federal agencies could take to reduce the paperwork and reporting burdens on small businesses. Among these were the use of sampling techniques and short-form options for the collection of data that should be considered here, particularly as applied to small businesses.

[15] Memorandum for the Heads of Executive Departments and Agencies, Executive Office of the President (released June 22, 2012) ("Reporting Burdens Memo").

Although the Commission declined to adopt sampling techniques that could still enable it to fulfill its need for data, it did not explore the potential use of short-form reporting, nor did it explore the use of de minimis exceptions. As discussed further below, each of these options can be utilized in a manner that also accomplishes the goals of the data collection while reducing the burdens on small businesses.

1. The Commission should utilize data sampling techniques that can accomplish the goals of this information collection while also reducing unnecessary burdens on small businesses.

As noted in the Reporting Burdens Memo,

> "[s]ampling may be useful when it is not possible or desirable to collect data from every member of the population of interest. Respondent burden, cost, and operational feasibility may justify sampling. *When the benefits of collecting information from an entire population do not justify the costs*, agencies should consider whether it is appropriate to use sampling."[16]

Unfortunately, the Commission chose not to utilize sampling for the bulk of the instant information collection. Most importantly, while the Order indicates that sampling methods were considered and rejected,[17] it does not explain how the burden now expressed in the Notice is outweighed by the need for the extremely granular data requested, from a nationwide census of markets for special access services, in nearly all circumstances.[18] In terms of the need for a

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[16] *Id*., p. 2.

[17] Order, ¶¶ 24-25.

[18] This is particularly true when one considers that the information collection still omits a great deal of information, such as the purchase of special access services by non-regulated business users. It is not at all clear why page upon page of data from a rural CLEC that obtains perhaps a dozen special access services is critical to the collection of market data while the omission of data from a multi-location national business customer that may purchase hundreds of

nationwide census, the Commission concludes that sampling as an alternative would fail to reduce the burden of the information collection.[19] On the other hand, the Commission also states that "competitive providers may serve a relatively small proportion of all locations that have special access,"[20] though this is admittedly based on older data. Thus, what the Order fails to consider is that a data collection from, for example, the top 10 or 20 Metropolitan Statistical Areas (MSAs) may prove that competitive providers in fact continue to represent a small portion of the providers of special access services. In other words, the Commission failed to investigate sampling alternatives that may ultimately prove that the nationwide census it adopted instead may impose an entirely *unnecessary* burden on this small subset of special access providers.

In fact, a sampling of the top 10 or 20 MSAs may yield statistically valid data sufficient for the Commission to conduct its analysis of competition in the special access market, particularly since these larger markets will provide a fairly large data set. This approach would balance the Commission's need for data versus burdening small providers with what could be an unnecessarily large data collection. If, after such an initial data request, the Commission determined that additional data was needed, it could certainly seek such data. Instead, the Commission has chosen to "cast a wide net" and sort out the data at a later date. This fails to balance the legitimate need for data to conduct an analysis with the very real burden on smaller providers, as required by both the PRA and the administration's reporting burdens memorandum.

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special access circuits is somehow tolerable and does not introduce any concerns with respect to the statistical integrity of the data gathered.

[19] Order, ¶ 24.

[20] *Id.*, ¶ 25.

Moreover, the volume of information that the Commission will collect pursuant to the Order is likely to result in the data being less useful than a statistical sampling. As the Federal Register notice states, approximately **856,614 hours** will be expended by respondents. Sorting through such a vast amount of data will likely consume thousands of Commission staff hours. Even with requests for an increased budget from Congress, it is difficult to imagine how the Commission can make use of this special access data compiled down to the individual tower or building along with providers' subjective judgments about the "success" of deploying services to given locations or consumers.[21] The Order rightly expresses concern about lengthening the data collection process, yet the Commission appears not to have contemplated that the large net cast gives rise to that very concern. Thus, a better use of sampling techniques will not only lessen the burden on small business providers and customers, it can facilitate the Commission's goals in this proceeding as well.

2. The Commission should utilize "short-form" data collection options that can streamline the information collection for small businesses while still accomplishing the goals of this proceeding.

Alternatively, the Commission could adopt streamlined, short-form options to enable small businesses to comply with the Order's information collection in a less burdensome manner. Despite the guidance provided by the Reporting Burdens Memo, the Commission appears not to

[21] *See*, Appendix A, Section II. A., ¶¶ 3 & 4 & Appendix A, Section I, "Definitions" defining location as "*Location* means a building, other man-made structure, a cell site on a building, a free-standing cell site, or a cell site on some other man-made structure where the *End User* is connected. A *Node* is not a *Location*. For the purposes of this data collection, cell sites are to be treated as *Locations* and not as *Nodes*."

have considered such a method for reducing the burden on small businesses. This alternative should be explored prior to going forward with the proposed information collection.

As just one example of how a short-form data collection could be accomplished in this instance, a number of the items in the information collection are requested for a three-year period.[22] The Commission could streamline the information collection by explicitly adopting a shorter time frame for small providers, requiring them to submit such data for only the most recent calendar year. Additionally, the Commission should further consider the extent to which items requested in Appendix A are duplicative or unnecessary. Again, the information collection in the Order appears to have adopted a "cast a wide net" approach to data collection that fails to consider whether each individual piece of data requested can further the Commission's goals for this proceeding, especially as collected from small businesses that are unlikely to "move the needle" with respect to the data collected when assessed on an aggregate basis. The Commission should undertake this analysis prior to proceeding with the information collection, and collect only that data which can accomplish its goals while also avoiding imposing unreasonable burdens on small providers.

3. The Commission should adopt a de minimis exception to the proposed information collection.

The Commission should also adopt a de minimis exception to the proposed information collection. Considering that the information collection does not include data on special access purchases from non-regulated business purchasers (*e.g.*, large corporate customers or other

[22] See, Appendix A, Section II. A., ¶ 10 (marketing materials), ¶ 11 (responses to Requests for Proposals, including unsuccessful bids).

private purchaser entities that do not offer communications services of one kind or another), such an exception for the smallest providers of special access services would not seem to introduce serious risk of compromising the value of the data collection in terms of the Commission's ability to understand the market that is the subject of the Order.

Such a de minimis exception could, for example, exclude from the precepts of the information collection providers or purchaers of less than 50 special access connections in a relevant geographic area. This would enable the Commission to achieve its goals of understanding the overall market for special access services while minimizing the burden on small businesses that in all likelihood comprise a statistically insignificant portion of the overall market. This will more fairly balance the Commission's legitimate needs for data in this area against the very real burdens that will be imposed on small businesses under the terms of the Order's information collection.

III. CONCLUSION

The information collection will impose substantial burdens on small providers of special access services, who are already operating in the face of limited resources. In light of the substantial burdens to small providers that will result from this information collection, the Commission should adopt one of several available alternatives.

- The Commission should utilize data sampling techniques that can accomplish the goals of this information collection while also reducing unnecessary burdens on small businesses.
- The Commission should utilize "short-form" data collection options that can streamline the information collection for small businesses while still accomplishing the goals of this proceeding.

- The Commission should adopt a de minimis exception to the proposed information collection.

Respectfully submitted,

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CHRONOLOGY OF REPORTING REQUIREMENTS

Ta	Reporting Requirement	Due Date	Comments	Filer
1	FCC Form 497 – 4th Qtr	January	Low Income Quarterly Report for local service and SLC credits	Dakota Central/DC1
2	Form 502 Due to NANPA	February	Code Utilization Report	JSI
3	FCC 499Q – 4th Qtr	February	USF Contribution factor development	JSI
4	3-Year Forecast	February	NECA data request	JSI
5	FCC Form 477	March	Local Competition & Broadband Reporting	Dakota Central/DC1
6	USF Quarterly –20xx-4 Filing	March	Voluntary Loop Support filing	JSI
7	FCC Form 508 (Feb. NECA Forecast & Line Count Forecast)	March	Interstate Common Line Support (ICLS) projections	JSI
8	FCC Form 507 & 1.3 High Cost Loop Certification (Qtr & forecast)	March	Line Count data request – Sept. data for 3 years Forecast is Mandatory	JSI
9	FCC 499A	April	True up Assessment calculation for FUSC.	JSI
10	FCC 497 – 1st Qtr	April	Low Income Quarterly Report for local service and SLC credits	Dakota Central/DC1
11	FCC 499Q - 1st Qtr	May	USF Contribution factor development	JSI
12	ICLS Certification	June	Self Certify ICLS is used for intended purposes	Dakota Central/DC1
13	FCC 497 – 2nd Qtr	July	Low Income Quarterly Report for local service and SLC credits	Dakota Central/DC1
14	Form 507 (Annual)	July	Line Count data (actual) ending 12/31 Mandatory	JSI
15	USF Annual – Mandatory	July	Calculate High Cost Loop Support	JSI
16	Toll Cost Study – Actual	July	Revenue requirement for NECA pools	JSI
17	FCC 499Q – 2nd Qtr	August	USF Contribution factor development	JSI
18	FCC Form 477	September	Local Competition & Broadband Reporting	Dakota Central/DC1
19	FCC Regulatory Fees	September	Payment for Regulatory Fee Due	Dakota Central/DC1
20	FCC Form 507 – Qtr	September	Loop Counts if competition in area	JSI
21	USF Quarterly – 20xx-2	September	Voluntary Loop Support filing	JSI
22	State Certification	September	Required if receive federal universal support funds	Dakota Central/DC1
23	Local Switching Support	September	Projected LSS	JSI
24	FCC 497 – 3rd Qtr	October	Low Income Quarterly Report for local service and SLC credits	Dakota Central/DC1
25	499Q – 3rd Qtr	November	USF Contribution factor development	JSI
26	USF Quarterly – 20xx-3	December	Voluntary Loop Support filing	JSI
27	Local Switching Support (LSS)	December	Actual LSS filing	JSI
28	FCC Form 509	December	ICLS True Up filing	JSI
29	Form 507 – Qtr	December	Loop Counts if competition in area	JSI
[illegible]	EC1050	Monthly	Data entry process to NECA Pools	JSI
[illegible]	Disbursement Notification	Monthly	Summarizes interstate cost recovery amounts	NECA