Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90

PAPERWORK REDUCTION ACT COMMENTS OF AT&T

Cathy Carpino
Gary L. Phillips
Peggy Garber

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 457-3046 - telephone
(202) 457-3073 - facsimile

April 26, 2013

Its Attorneys

TABLE OF CONTENTS

I. INTRODUCTION 1

II. DISCUSSION 2

A. **SIGNIFICANT ASPECTS OF THE PROPOSED INFORMATION COLLECTION ARE UNNECESSARY FOR THE PROPER PERFORMANCE OF THE FUNCTIONS OF THE COMMISSION AND LACK PRACTICAL UTILITY.** 2

1. **BROADBAND REPORTING** 3
2. **TRIBAL ENGAGEMENT REPORTING** 7
3. **REPORTING VOICE AND BROADBAND PRICE OFFERINGS** 10

B. **SOME OF THE INFORMATION PROPOSED TO BE COLLECTED THROUGH FCC FORM 481 IS UNNECESSARILY DUPLICATIVE OF INFORMATION OTHERWISE REASONABLY ACCESSIBLE TO THE AGENCY, AND DOES NOT MINIMIZE THE BURDEN ON RESPONDENTS.** 12

C. **THE PROPOSED INFORMATION COLLECTION ASSUMES THAT CARRIERS HAVE ALREADY COLLECTED THESE DATA DESPITE THE FACT THAT THE COMMISSION HAS NOT SOUGHT AND RECEIVED OMB APPROVAL.** 14

III. CONCLUSION 17

I. INTRODUCTION

In a Federal Register notice published on February 25, 2013, the Commission sought comment on whether a proposed information collection complies with the Commission's obligations under the Paperwork Reduction Act (PRA). 78 Fed. Reg. 12750 (Feb. 25, 2013). The proposed information collection would be accomplished through a new form, FCC Form 481, a draft of which the Commission released on or around March 5, 2013. Prior to submitting a proposed information collection to the Office of Management and Budget (OMB) for its review, the PRA requires the Commission to evaluate: the need for the information collection; the specific, objectively supported estimate of burden; and the plan for the efficient and effective management and use of the information to be collected.[1] Additionally, as the Commission notes in its Federal Register notice, the PRA also requires it to consult with members of the public on each proposed information collection and solicit comment to determine:

> whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; [and] ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology . . . .[2]

As proposed, some of the information the Commission seeks to collect through this new form does not satisfy its statutory PRA obligations such that the Commission will be unable to certify to OMB, as it must, that its proposed information collection "is necessary for the proper performance of the functions of the agency, including that the information has practical utility; is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

[1] 44 U.S.C. § 3506(c)(1).

[2] 78 Fed. Reg. 12750 (Feb. 25, 2013). *See also* 44 U.S.C. § 3506(c)(2)(A).

reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency . . .; [and] is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond. . . ."[3] The OMB defines "practical utility" as

> the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion . . . In the case of recordkeeping requirements . . . 'practical utility' means that actual uses can be demonstrated. 5 C.F.R. § 1320.3(l).

We discuss the proposed information collection's deficiencies below.

II. DISCUSSION

A. SIGNIFICANT ASPECTS OF THE PROPOSED INFORMATION COLLECTION ARE UNNECESSARY FOR THE PROPER PERFORMANCE OF THE FUNCTIONS OF THE COMMISSION AND LACK PRACTICAL UTILITY.

Simply stated, the purpose of requiring federal high-cost recipients to report certain information to the Commission is to facilitate the Commission's review into whether these providers spent their support consistent with section 254(e) of the Communications Act, as amended (Act). Section 254(e) requires high-cost recipients "to use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e). In its *USF/ICC Transformation Order*, the Commission explained that it was requiring all high-cost recipients to comply with specific reporting requirements "to ensure the continued availability of high-quality voice services and monitor progress in achieving our broadband goals and to assist the FCC in determining whether the funds are being used appropriately." *USF/ICC Transformation Order*, 26 FCC Rcd 17663, ¶ 580

[3] 44 U.S.C. § 3506(c)(3).

(2011). With the statute and these Commission-stated goals in mind, we discuss why certain aspects of the proposed information collection are not "necessary for the proper performance of the functions of the agency" and why "the information has [no] practical utility," as required by the statute and OMB's rules.

1. BROADBAND REPORTING

The Commission asserts that requiring *all* high-cost recipients to provide, for example, the number of requests for broadband service that went unfulfilled during the prior calendar year, the number of broadband customer complaints per 1,000 connections in the prior calendar year, as well as data on broadband service outages from the prior calendar year, is "necessary and appropriate" to "monitor progress in achieving our broadband goals and to assist the FCC in determining whether the funds are being used appropriately."[4] However, this reasoning does not hold true for high-cost recipients whose existing high-cost support, which was designed and intended to achieve other objectives (such as the reduction of interstate switched access charges) is being eliminated. For reasons detailed in USTelecom's initial petition for reconsideration[5] and, subsequently, in its joint petition filed with CTIA,[6] extending broadband reporting obligations to these eligible telecommunications carriers (ETCs) will provide the Commission with no insight into whether its "broadband goals" are being achieved or whether legacy funds "are being used appropriately." In other words, as we explain below, this information has no "practical utility," as that term is defined by OMB.

---

[4] *USF/ICC Transformation Order* at ¶ 580.

[5] Petition for Reconsideration of USTelecom, WC Docket No. 10-90 et al. (filed Dec. 29, 2011) (Petition).

[6] Petition for Clarification and Reconsideration or, in the Alternative, for Waiver of CTIA and USTelecom, WC Docket No. 10-90 et al. (filed June 25, 2012) (Joint Petition).

If broadband reporting requirements were applied to price cap ETCs receiving frozen high-cost support or CAF Phase I incremental support (collectively referred to by the Commission as "CAF Phase I support"), these ETCs would be required either to: (i) report broadband data for the entire study area; or (ii) develop the systems and processes to track and report broadband data only in those areas where the ETC is using CAF Phase I support for broadband deployment. Neither option is reasonable.

First, reporting broadband data on a study area basis would not provide the Commission with any meaningful information about the achievement of its "broadband goals" or the "appropriate[]" use of CAF Phase I support, which are the justifications offered by the Commission for its reporting requirements. *USF/ICC Transformation Order* at ¶ 580. Study-area wide data would skew the impact of CAF Phase I support because only a fraction of a price cap ETC's broadband facilities will have been deployed using such support. For example, even if a price cap carrier is repurposing one-third of its frozen support in 2013 to broadband deployment (and two-thirds in 2014), the amount of broadband facilities deployed with those dollars would pale in comparison to the amount of broadband facilities deployed through private investment.[7]

Assume a study area in which 95 percent of the housing units have access to wireline broadband that meets the Commission's definition of at least 4 Mbps downstream and 1 Mbps upstream – an assumption that would be consistent with the Commission's most recent analysis

[7] The Columbia Institute for Tele-Information has estimated that broadband providers will invest more than $240 billion between 2008 and 2015, or approximately $30 billion annually. *See* Robert C. Atkinson & Ivy E. Schultz, Columbia Institute for Tele-Information, *Broadband in America*, Preliminary Report Prepared for the Staff of the FCC's Omnibus Broadband Initiative, at 66, Table 15 (Nov. 11, 2009). By contrast, the entire amount of CAF support that will be available in price cap territories is less than $2 billion annually. *USF/ICC Transformation Order* ¶ 126.

of broadband deployment nationwide.[8] Assume further that an ETC uses CAF Phase I support to construct broadband facilities to serve some segment of the 5 percent of housing units in the study area without broadband. If an ETC were required to report the number of broadband complaints per 1,000 connections under section 54.313(a)(4) for the entire study area, as an example, the majority of such complaints would involve broadband connections not constructed with CAF Phase I support. Thus, the complaint data being reported would tell the Commission nothing about the efficacy of its CAF Phase I program and thus has no practical utility.[9]

The same would be true for information regarding the "number of requests for service . . . that were unfilled during the prior calendar year," which is information that an ETC must report under section 54.313(a)(3). The vast majority of requests for broadband service likely would be in those areas where most households already have access to the service – households to which broadband was deployed using private investment, not CAF Phase I support. Similarly, reporting broadband outages at the study area level would provide the Commission with no indication about whether it is achieving its broadband goals and funds are being used appropriately.[10]

---

[8] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Eighth Broadband Progress Report, FCC 12-90, ¶ 45 (2012).

[9] The General Accounting Office has questioned the need for the Commission's collection of data related to the universal service program absent "a specific data-analysis plan for the carrier data it will collect" and a clear indication of how "the FCC plans to use the data." United States Government Accountability Office, "Telecommunications – FCC Has Reformed the High-Cost Program, but Oversight and Management Could be Improved, at 20 (July 2012). Not only has the Commission failed to explain how it would or could use a carrier's study area-wide broadband data, for example, to evaluate the efficacy of its high-cost programs, AT&T does not believe it could ever make such a demonstration.

[10] While we note that the Wireline Competition Bureau (Bureau) stated last month it is not seeking PRA approval to collect broadband outage data "*at this time*," AT&T urges the Commission to clarify its rules to make clear that it will not require high-cost recipients to report broadband service outage information. *See Connect America Fund*, WC Docket No. 10-90 et al., Order, DA 13-332, n.46 (rel. March 5, 2013)

Second, broadband reporting targeted to the precise geographic areas where a price cap ETC uses CAF Phase I support for broadband deployment is impractical. ETCs would have to expend significant resources to modify systems and procedures in order to track and report the information for just those connections constructed with CAF Phase I funds. The cost associated with the modifications required to produce data at such a granular level would be tremendous. If that was the Commission's intent, it seems unlikely that it could justify such an exorbitant cost when it performs a cost/benefit analysis consistent with President Obama's directives, which the Commission has yet to do.[11] Moreover, the estimated burden hours to collect such granular data would be significant and certainly would be exponentially larger than the 20 hours that the Commission proposed as being necessary, on average, to complete the entire FCC Form 481. *See* FCC Form 481 Instructions at 1.[12]

Furthermore, extending broadband data reporting requirements to the handful of price cap carriers electing CAF Phase I incremental support is unnecessarily duplicative of the other reporting requirements that govern such support. *See* 44 U.S.C. § 3506(c)(3)(B). Specifically,

---

(*March 2013 Order*). *See also* Joint Petition at 6 (requesting that the Commission reconsider requiring high-cost recipients to provide broadband outage data).

[11] In January 2011, President Obama released Executive Order 13563 that called on all executive agencies to "propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify)." Executive Order, *Improving Regulation and Regulatory Review* (Jan. 18, 2011), *available at* http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order. In July 2011, the President took this burden-reducing initiative a large step further by calling on independent regulatory agencies – including the FCC – to follow these same requirements. Executive Order 13579, *Regulation and Independent Regulatory Agencies* (July 11, 2011), *available at* http://www.whitehouse.gov/the-press-office/2011/07/11/executive-order-regulation-and-independent-regulatory-agencies.

[12] In comments filed last year, AT&T stated that one of its wireless affiliates that is a high-cost recipient required more than 45 hours to comply with the Commission's old high-cost reporting rules, which the Commission significantly expanded in its *USF/ICC Transformation Order*. *See* AT&T Comments, WC Docket No. 10-90 et al., at 12 (filed Feb. 9, 2012). This particular wireless affiliate had experience with the prior reporting rules but, even with that experience, still could not approach the estimated 20 hours proposed in FCC Form 481. Due to the new reporting requirements, it seems likely that this affiliate's estimated burden will be well north of 45 hours.

section 54.313(b) of the Commission's rules obligates a price cap carrier receiving CAF Phase I incremental support to file annual reports that include certifications to the effect that the carrier has met its deployment and related obligations associated with such support. These section 54.313(b) reports are more than adequate for the Commission to ensure that CAF Phase I incremental support is achieving the Commission's broadband goals and is being used appropriately.

2. TRIBAL ENGAGEMENT REPORTING

Section 54.313(a)(9) of the Commission's rules requires all high-cost recipients to provide "documents or information demonstrating that the ETC had discussions with Tribal governments that, at a minimum, included: a needs assessment and deployment planning with a focus on Tribal community anchor institutions; feasibility and sustainability planning; marketing services in a culturally sensitive manner; rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and compliance with Tribal business and licensing requirements." 47 C.F.R. § 54.313(a)(9). Proposed FCC Form 481 requires high-cost recipients to attach a document "demonstrating that the ETC had operational coordination with tribal governments" consistent with the Commission's Tribal engagement rule. *See* FCC Form 481 Instructions at 24.

The Commission's stated purpose in creating the Tribal engagement requirement is to facilitate "the successful deployment and provision of service" on Tribal lands in order to narrow the "deep digital divide" in those areas. *USF/ICC Transformation Order* at ¶¶ 636-37. To accomplish this goal, the Commission must, of course, provide "sufficient" high-cost support to providers in order to enable them to deploy and maintain broadband service in high-cost Tribal areas that are otherwise uneconomic to serve. *See* 47 U.S.C. § 254(e) (requiring support to be

"explicit and sufficient to achieve the purpose of this section"). A carrier cannot be expected – or required – to deploy broadband service in such areas absent "specific, predictable, and sufficient" support. 47 U.S.C. § 254(b)(5). If the Commission fails to provide sufficient support to enable a carrier to deploy broadband service on high-cost Tribal lands, there is little point in mandating that the carrier commence broadband deployment discussions with the relevant Tribal government. As a consequence, the information collection required by section 54.313(a)(9) has no practical utility except for Tribal Mobility Fund recipients, who will receive high-cost support for the sole purpose of deploying mobile broadband to unserved Tribal lands. *See, e.g.*, *USF/ICC Transformation Order* at ¶ 481. Moreover, this particular rule is the subject of at least four pending petitions for reconsideration, all of which identify statutory and constitutional violations.[13] By extending this rule to non-Tribal Mobility Fund high-cost recipients, the Commission also adds a PRA violation to this list.

In the context of the Tribal Mobility Fund Public Notice, which is the only public notice where the Commission sought comment on a Tribal engagement requirement, there is some logic to the Commission's proposal that, if it were to require Tribal Mobility Fund bidders to engage the affected Tribal governments in "needs assessment" and "deployment planning" discussions pre-auction (the merits of which we do not address here), it may make sense to require bidders to demonstrate that such discussions in fact occurred.[14] But, that logic falls apart when the

[13] Petition at 18-19; Rural Incumbent Local Exchange Carriers Serving Tribal Lands Petition for Reconsideration, WC Docket No. 10-90 et al., 3-5 (filed Dec. 29, 2011); Petition for Reconsideration and Clarification of USTelecom, WC Docket No. 10-90 et al., 4-16 (filed Aug. 20, 2012) (USTelecom August 2012 Petition); USTelecom's Petition for Reconsideration and Clarification and Comments in Response to Paperwork Reduction Act, WC Docket No. 10-90 et al., 11-14 (filed April 4, 2013).

[14] *Further Inquiry into Tribal Issues Relating to Establishment of a Mobility Fund*, WT Docket No. 10-208, Public Notice, 26 FCC Rcd 5997, at ¶ 6 (WTB rel. April 18, 2011).

Commission extended the proposed Tribal engagement reporting requirements to all high-cost support recipients. Under the Commission's new rules, a large price cap carrier that only receives interstate access support (IAS) (which the Commission refers to as "frozen" CAF Phase I support) now has to document having had discussions with all Tribal governments in its large service area on, among other topics, "a needs assessment and deployment planning." As the Commission knows, IAS was intended to replace implicit universal service subsidies in interstate access charges,[15] not to provide supported services in particular high-cost areas. While AT&T has long encouraged the Commission to redesign its high-cost support mechanisms for so-called non-rural carriers to target support to specific high-cost areas that otherwise would be uneconomic to serve, until the *USF/ICC Transformation Order*, the Commission steadfastly refused to do so. Instead, it has continued to rely on statewide averaging to mask the cost of, and avoid actually supporting, the provision of services in those areas. The result is that the Commission cannot directly tie any frozen high-cost support to a Tribal area any more than to any other area in a state – at least in the case of non-rural carriers. And, consequently, it makes no sense to subject such carriers to the Tribal engagement reporting requirements with respect to such support.

Applying the Tribal engagement requirement to any ETC whose high-cost support the Commission is eliminating (possibly, on a flash-cut basis beginning next year) seems similarly misguided.[16] There is no purpose in requiring Tribal governments and carriers whose support is being zeroed out to discuss, for example, deployment or feasibility planning when these carriers are assured of losing all of their support in a few years. Given the circumstances, the

[15] *CALLS Order*, 15 FCC Rcd 12962, ¶185 (2000).

[16] *USF/ICC Transformation Order* at ¶¶ 180, 519.

Commission should expect these carriers to spend their high-cost support on maintaining, not expanding, service.[17] Because these ETCs "do not know whether and how much funding they will receive and in what areas, nor do they know whether they will choose to participate in the future funding programs,"[18] it does not make financial sense for ETCs to invest significant sums to deploy facilities in high-cost areas when those facilities might be stranded in a few short years. The Commission has failed to explain what value there possibly could be in mandating that carriers have discussions with Tribal governments on network deployment plans when the carriers likely have no such plans – or, at least, no such plans relying on high-cost support.

3. REPORTING VOICE AND BROADBAND PRICE OFFERINGS

To date, the Commission has yet to explain why requiring high-cost recipients to provide the prices of their voice and broadband offerings is necessary to "determin[e] whether the funds are being used appropriately." *USF/ICC Transformation Order* at ¶ 580. The relevant section of the *USF/ICC Transformation Order*, which created this requirement, states in its entirety that "ETCs must also report pricing information for both voice and broadband offerings. They must submit the price and capacity range (if any) for the broadband offering that meets the relevant speed requirement in their annual reporting." *Id*. at ¶ 594. Elsewhere in the Commission's reporting rules, a high-cost recipient is required to certify that "the pricing of [its] voice services is no more than two standard deviations above the applicable national average urban rate for voice service . . . ." 47 C.F.R. § 54.313(a)(10). *See also* FCC Form 481 at 10. Consequently, it

[17] Carriers are permitted to use high-cost support to maintain facilities and services. *See* 47 U.S.C. § 254(e) (requiring universal service support recipients to use that support for the "provision, *maintenance*, and upgrading of facilities and services for which the support is intended" (emphasis added)).

[18] USTelecom August 2012 Petition at 8.

is unclear why the Commission also requires high-cost recipients to provide detailed pricing information for their voice service offerings.

As for broadband pricing, until such time as the Commission makes broadband a supported service, it has no statutory obligation to ensure that broadband rates in rural and urban areas are "reasonably comparable" and thus collecting broadband pricing data from high-cost recipients has no practical utility. *See* 47 U.S.C. § 254(b)(3). If the rates for a supported service were not reasonably comparable between rural and urban areas, Congress would expect the Commission to take action by, among other things, making available high-cost funding to those providers offering the supported service in rural areas. Congress would not expect the Commission to make available such support to providers of non-regulated, non-USF-supported services that, nonetheless, charge significantly more for their service in rural areas than in urban areas. The fact that section 254(b)(3) requires rates for information services – which broadband service unquestionably is – to be reasonably comparable does not undermine this interpretation because the Commission has the statutory authority to make broadband service a supported service and thus support it directly with high-cost funding. It would be illogical *not* to limit the reach of section 254(b)(3) to supported services only because what would be the basis for Commission action in the event that a high-cost recipient chooses to charge customers in rural areas significantly more than customers in urban areas for the provider's enterprise web hosting service, as an example?

While broadband pricing data may have some "theoretical or potential [] usefulness," a point that we do not concede, that is not the standard that the Commission must satisfy. Instead, the Commission is required to demonstrate that the requested information collection has "actual . . . usefulness." 5 C.F.R. § 1320.3(l). Until such time as the Commission makes broadband

service a supported service, it will be unable to certify that requiring high-cost recipients to provide broadband pricing data "is necessary for the proper performance of the functions of the agency, including that the information has practical utility." 44 U.S.C. § 3506(c)(3)(A).

B. SOME OF THE INFORMATION PROPOSED TO BE COLLECTED THROUGH FCC FORM 481 IS UNNECESSARILY DUPLICATIVE OF INFORMATION OTHERWISE REASONABLY ACCESSIBLE TO THE AGENCY, AND DOES NOT MINIMIZE THE BURDEN ON RESPONDENTS.

There are several instances in the proposed information collection where the Commission seeks to collect "unnecessarily duplicative" information[19] and/or it fails to "reduce[] . . . the burden on persons who shall provide information to . . . the agency."[20] For example, if the Commission had performed the requisite PRA analysis, it would have, among other things, eliminated its ETC outage reporting requirement. Section 54.313(a)(2) requires high-cost recipients to report detailed network outage information to the Commission. However, the Commission already receives carrier-supplied outage information[21] and it is unclear why the Commission finds this other outage information collection inadequate.[22]

---

[19] 44 U.S.C. § 3506(c)(3)(B).

[20] 44 U.S.C. § 3506(c)(3)(C). *See also USF/ICC Transformation Order*, App. O at ¶ 114 (incorrectly stating that the "Order seeks to minimize reporting burdens where possible by requiring certifications rather than data collections and by permitting the use of reports already filed with other government agencies, rather than requiring the production of new ones.").

[21] *See* 47 C.F.R. § 4.9.

[22] In its 2005 *ETC Report and Order*, the Commission stated that it wanted to track ETC outage information based on a 10 percent customer threshold "because populations can vary." *Federal-State Joint Board on Universal Service*, 20 FCC Rcd 6371, n.194 (2005). If the Commission believes it needs to maintain this separate standard to capture outages by small providers that would not otherwise submit network outage information to the Commission pursuant to the thresholds contained in section 4.9 of its rules, then it is required under the PRA to revise the rule to target only those ETCs serving small populations.

Requiring high-cost recipients to provide voice and broadband pricing data is another example of how the Commission made no effort to minimize the reporting burden on respondents. Assuming that there was some practical utility for this particular data collection, which there is not, the Commission nonetheless could have minimized the reporting burden by permitting high-cost recipients to certify that their voice and/or broadband prices in rural areas are reasonably comparable to their prices in urban areas. If a carrier could make that certification, there would be no need for it to supply the detailed and unnecessarily burdensome pricing data proposed in FCC Form 481. *See* FCC Form 481 at 6 (requesting, for example, voice rate data for every town and exchange), 7 (e.g., requesting detailed data on every residential broadband offering, including broadband rates for various types of bundles, for every town and exchange). At a minimum, the Commission should adopt a presumption of reasonable comparability between urban and rural rates if the provider certifies that its rates in rural and urban areas are identical or within a certain percentage since the statute does not demand "identical" rates but, rather, "reasonably comparable" rates. *See* 47 U.S.C. § 254(b)(3). The Federal Register notice thus is incorrect in stating that there must be "*parity* between urban and rural areas for broadband and voice rates." 78 Fed. Reg. 12751 (emphasis added).

The proposed information collection also requires high-cost recipients to list all "affiliates," as that term is defined in the Act, "associated with the study area reported in [FCC Form 481]." FCC Form 481 Instructions at 22. In the order establishing this requirement, the Commission stated that this information would "simplify[] the process of determining the total amount of public support received by each recipient, regardless of corporate structure." *USF/ICC Transformation Order* at ¶ 603. If true, then the Commission should limit the type of affiliate that must be reported on the form to other ETCs, since under the Commission's current

rules, non-ETCs are ineligible for high-cost support. Moreover, collecting lists of affiliates that may not provide any telecommunications has no practical utility as it does nothing to further the Commission's stated goal of "determining whether the funds are being used appropriately." *Id.* at ¶ 580.

Finally, the proposed form unnecessarily requires multiple officer signatures and thus fails to reduce the burden on respondents. 44 U.S.C. § 3506(c)(3)(C). For a large company like AT&T, it is likely that multiple officers will have to sign the form due to how the Commission worded the specific certifications.[23] Instead, the Commission should revise the proposed form to require just one officer signature, which is consistent with the *USF/ICC Transformation Order*. *See USF/ICC Transformation Order* at ¶ 581 (requiring "that an officer of the company certify to the accuracy of the information").

C. THE PROPOSED INFORMATION COLLECTION ASSUMES THAT CARRIERS HAVE ALREADY COLLECTED THESE DATA DESPITE THE FACT THAT THE COMMISSION HAS NOT SOUGHT AND RECEIVED OMB APPROVAL.

There is no question that the Commission has not sought OMB approval for a number of items contained in proposed FCC Form 481. Specifically, the Commission has not sought approval for the reporting requirements set forth in section 54.313(a)(7)-(11). It is important to note that when the Commission sought OMB approval for the reporting requirements contained in section 54.313(a)(1)-(6), those paragraphs required high-cost recipients to provide responsive information for voice services only. It was not until March of this year – one year after the

[23] For example, the proposed service quality and consumer protection certification requires the signature of an individual whose "responsibilities include ensuring compliance with the applicable service quality standards as well as the consumer protection rules." FCC Form 481 at 4. That individual most likely will be different from the officer required to sign the proposed emergency functionality certification, which requires the individual to certify that his/her "responsibilities include ensuring compliance with the requirement[] . . . that the carrier be able to function in emergency situations." FCC Form 481 at 5.

Commission sought OMB approval of section 54.313(a)(1)-(6) – that the Bureau revised section 54.313(a) to clarify that any high-cost recipient must provide information and data required by paragraphs (a)(1)-(7) separately broken out for both voice and broadband service. *March 2013 Order* at ¶ 14. Until the *March 2013 Order*, section 54.313(a)(11) was the paragraph that required high-cost recipients to provide the information required by paragraphs (a)(1)-(7) separately broken out by voice and broadband service. Consequently, the Commission has yet to seek OMB approval for requiring high-cost recipients to provide broadband data for paragraphs (a)(1) through (7).

Just as there is no question about which paragraphs in section 54.313 the Commission has not sought PRA approval, there also is no doubt that, until the Commission obtains such approval, those requirements are not effective. *See USF/ICC Transformation Order* at ¶ 1428 ("The rules that contain information collections subject to PRA review WILL BECOME EFFECTIVE following approval by the Office of Management and Budget.") (emphasis in original)). It is well-settled that the Commission lacks authority to compel parties to collect information prior to the Commission obtaining OMB approval for that information collection and prior to the rule becoming effective.[24]

In addition to not having obtained OMB approval to require high-cost recipients to report broadband data for section 54.313(a)(1)-(7), the Commission also does not have approval for its Tribal engagement rule (section 54.313(a)(9)) or its rate comparability certification for voice services (section 54.313(a)(10)). *See, e.g.,* FCC Form 481 at 7, 9, 10. For this reason, the

[24] *See, e.g., Saco River Cellular, Inc v. FCC,* 133 F.3d 25, 32 (D.C. Cir. 1998) (an "agency may not, having belatedly gotten OMB approval of an information collection requirement, punish a respondent for its faulty compliance while the collection was still unauthorized.").

Commission cannot certify to OMB that the proposed information collection contained in FCC Form 481 is consistent and compatible with the "*existing* reporting and recordkeeping practices of those who are to respond." *See* 44 U.S.C. § 3506(c)(3)(E) (emphasis added). To the contrary, requiring high-cost recipients to provide broadband data for section 54.313(a)(1)-(7) and documents demonstrating compliance with section 54.313(a)(9) on July 1, 2013, for example, would turn the purpose of the PRA on its head by ostensibly requiring parties to have collected this information before the Commission even sought OMB approval. Just as it did in its *March 2013 Order* with respect to revised section 54.313(a)(11), which requires broadband performance testing, the Commission should confirm that no high-cost carrier has any obligation to comply with a rule containing an information collection subject to PRA review until OMB approves the collection and the rule becomes effective.[25] Consequently, the Commission should not submit for OMB approval those pages of its proposed FCC Form 481 and instructions that would have high-cost recipients report information required by rules that are not in effect.

[Remainder of page left intentionally blank]

[25] *See March 2013 Order* at ¶ 16.

III. CONCLUSION

AT&T urges the Commission to modify its proposed information collection consistent with our recommendations described above. By following these recommendations, the Commission will be in compliance with its PRA obligations, which will enable it to obtain OMB approval for the modified FCC Form 481.

Respectfully Submitted,

/s/ Cathy Carpino
Cathy Carpino
Gary L. Phillips
Peggy Garber

AT&T Services, Inc.
1120 20th Street NW
Suite 1000
Washington, D.C. 20036
(202) 457-3046 – phone
(202) 457-3073 – facsimile

April 26, 2013

Its Attorneys