

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**COMMENTS  
of  
CELLULAR NETWORK PARTNERSHIP d/b/a PIONEER CELLULAR  
CELLULAR SOUTH, INC. d/b/a C SPIRE WIRELESS  
N.E. COLORADO CELLULAR, INC. d/b/a VIAERO WIRELESS  
NEX-TECH WIRELESS, LLC  
UNION TELEPHONE COMPANY d/b/a UNION WIRELESS**

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April 26, 2013

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## SUMMARY

The Parties filing these Comments are concerned that various information collections implementing the *CAF Order* not only will place unwarranted and excessive burdens on the Parties' limited resources, but also are not justified under the terms of the Paperwork Reduction Act of 1995, in part because the information required to be collected cannot be put to any useful purpose by the Commission.

In addition, as the Parties demonstrate in their Comments, certain of the rule amendments and information collection requirements issued by the Wireline Competition Bureau conflict with the *CAF Order*, creating ambiguity and confusion regarding the nature and scope of requirements that are intended to apply to competitive eligible telecommunications carriers.

### ■ ***Broadband Reporting Requirements***

The *CAF Order* indicates that competitive ETCs will not be required to comply with any new reporting requirements pursuant to Section 54.313 of the Commission's Rules relating to their provision of broadband services. Rule amendments adopted by the Bureau, however, contradict the *CAF Order*, appearing to impose broadband reporting requirements on competitive ETCs. The applicable rules should be clarified to remove any conflict with the Commission's findings in the *CAF Order*.

### ■ ***Annual Progress Reports***

The Commission also should revise or clarify its rules to indicate that competitive ETCs whose legacy Universal Service Fund support is being phased down are not required to file annual progress reports. In light of the funding phase-down, these progress reports have become an unnecessary burden and would not supply the Commission with any data useful to its administration of its universal service programs.

■ ***Build-Out Projections***

Competitive ETCs whose support is being phased down should not be required to file adjustments to annual build-out projections previously submitted to the Commission because this information would be even less useful to the Commission than annual progress reports. The Commission should clarify that competitive ETCs are under no obligation to file annual adjustments to their build-out plans.

■ ***Tribal Engagement Requirements***

FCC Form 481, as proposed by the Bureau, requires ETCs to describe in their annual reports how they have achieved compliance with applicable laws and regulations established by Tribal governments. This requirement violates the PRA because it is overly burdensome and has no utility, since the Commission has no need for information regarding ETCs' compliance with Tribal government laws and regulations. In addition, the proposed information collection is beyond the scope of the *CAF Order*, which does not include any requirement that such information must be filed by ETCs.

■ ***Voice Service Price Offerings***

Form 481 proposes information collections concerning ETCs' voice service prices that are not sustainable under the PRA because they are overly broad and have no practical utility for the Commission. The requirements should be revised and clarified to ensure that burdensome information collection requirements are not imposed on ETCs.

■ ***Voice Service Rate Floors***

The proposed Form 481 also requires competitive ETCs to report, with respect to their voice telephony service pricing, a calculation of any deficiency below the Urban Rate Floor. The Commission should remove this requirement because it conflicts with the Commission's

rules, which impose the rate floor deficiency reporting requirement only on incumbent local exchange carriers.

■ ***Mobility Fund Phase II Reporting***

The Commission should clarify that the reporting requirements and other provisions contained in Section 54.313 do not apply to recipients of Mobility Fund Phase II support. A pending rulemaking will develop reporting requirements for such funding recipients, and the Commission has already specified, in Section 54.313(k), that Section 54.313 does not apply to Mobility Fund Phase I support recipients.

■ ***Burden Estimates***

The Commission has released several estimates of the burdens that would be imposed by the various information collections implementing the *CAF Order*, including the proposed FCC Form 481, but has not yet issued any analysis supporting the estimates. The estimates that have been published by the Commission significantly understate the time and effort ETCs would be required to expend in collecting data for, preparing, and submitting their annual reports.

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Cellular Network Partnership d/b/a Pioneer Cellular (“Pioneer Cellular”), Cellular South, Inc. d/b/a C Spire Wireless (“C Spire”), N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless, Nex-Tech Wireless, LLC, and Union Telephone Company d/b/a Union Wireless (“Union Wireless”) (collectively, the “Parties”), by counsel, hereby submit these Comments, in response to the Notice published by the Commission in the Federal Register on February 25, 2013,<sup>1</sup> seeking com-

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<sup>1</sup> FCC, *Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, Notice, 78 Fed. Reg. 12750 (Feb. 25, 2013) (Office of Management and Budget (“OMB”) Control No. 3060-0986) (“February 25 Notice” or “Notice”). The filing deadline for Comments is April 26, 2013. *Id.* at 12751, col. 1. Pursuant to instructions in the Notice, the Parties are providing a copy of these Comments to Judith B. Herman, FCC, Office of the Managing Director. *See id.*

ments in accordance with the Paperwork Reduction Act of 1995 (“PRA”)<sup>2</sup> concerning certain information collections required by the *CAF Order*.<sup>3</sup>

## I. INTRODUCTION.

Section 54.313 of the Commission’s Rules,<sup>4</sup> which implements provisions in the *CAF Order* relating to the submission of annual reports by eligible telecommunications carriers (“ETCs”), poses particular challenges for smaller competitive ETCs with limited resources available to dedicate to the collection and preparation of information necessary to comply with the annual reporting requirement.

These challenges have now been magnified by recent actions taken by the Wireline Competition Bureau (“Bureau”) in connection with its efforts to clarify the *CAF Order*, revise Section 54.313, and develop a new FCC Form 481<sup>5</sup> and Instructions<sup>6</sup> for use by ETCs in filing their annual reports. A further complication is the Commission’s presumed intent to seek and obtain approval of certain of the information collections imposed under Section 54.313 from OMB pursuant to the PRA in time for the Commission to impose the requirements in connection with the annual ETC reports that are due to be filed on July 1, 2013.

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<sup>2</sup> 44 U.S.C. §§ 3501-3520.

<sup>3</sup> *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 Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17717 (para. 137) (2011) (“*CAF Order*” and “*CAF FNPRM*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

<sup>4</sup> 47 C.F.R. § 54.313.

<sup>5</sup> FCC Form 481–Carrier Annual Reporting Data Collection Form (Draft Pending OMB Approval), Mar. 5, 2013 (“FCC Form 481” or “Form 481”).

<sup>6</sup> Instructions for Completing 54.313/54.422 Data Collection Form (Draft Pending OMB Approval), Mar. 2013 (“FCC Form 481 Instructions” or “Instructions”).

As a result of these actions by the Bureau, competitive ETCs are now confronted with a number of information collection requirements that are ambiguous, confusing, and beyond the scope of, or in direct conflict with, determinations made by the Commission in the *CAF Order*. In addition, the Commission has announced various estimates of the burdens that would be imposed by the proposed information collections, all of which appear to be seriously understated. The Commission has not yet attempted to explain or justify these burden estimates.

Before it seeks to impose the information collection requirements referenced in the *February 25 Notice*, the Commission should clarify and make revisions to its rules and the proposed information collection requirements in order to bring them into compliance with the PRA and the decisions made by the Commission in the *CAF Order*.

## **II. DISCUSSION.**

The Bureau's recent revisions to Section 54.313 of the Commission's Rules, and its proposed FCC Form 481 and Instructions, raise numerous issues that the Commission should address. As the Parties discuss in the following sections, the Commission should clarify that competitive ETCs are not required to submit information in their annual reports relating to their provision of broadband services. Further, the Commission should indicate that competitive ETCs whose legacy support is being phased down are not required to file annual progress reports or, in the alternative, are not required to file annual adjustments to build-out projections made in annual reports they have previously filed with the Commission.

The Commission also should clarify or modify several provisions in the draft FCC Form 481 and Instructions in order to correct various errors that appear in the drafts. Specifically, ETCs serving Tribal lands should not be required to document to the Commission their compliance with applicable Tribal government laws and regulations, and competitive ETCs should

not be required to submit various data relating to their voice service price offerings or relating to voice service rate floor deficiencies. In addition, the Commission should clarify that Section 54.313 reporting requirements do not apply to recipients of Mobility Fund Phase II support, and should revise its understated burden estimates for the information collections addressed in the *February 25 Notice*.

**A. Changes to Section 54.313(a) of the Commission’s Rules Made by the Wire-line Competition Bureau Must Be Revised To Make Clear That Competitive ETCs Receiving Legacy Support Are Not Required To Report Data Relating to Their Broadband Services.**

The Bureau adopted changes to Section 54.313(a) of the Commission’s Rules in the *March 5 CAF Clarification Order*,<sup>7</sup> exercising its authority delegated to the Bureau by the Commission in the *CAF Order*,<sup>8</sup> that conflict with the Commission’s decision not to require competitive ETCs whose support is being phased down to report broadband data.

The Commission stated in the *CAF Order* that competitive ETCs “will not be required to submit any of the new information or certifications [adopted in the *CAF Order*] related solely to the new broadband public interest obligations . . . .”<sup>9</sup> This Commission finding is grounded in the fact that the new broadband requirements adopted by the Commission in the

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<sup>7</sup> *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Order, 28 FCC Rcd 2051, 2052-53 (Wire-line Comp. Bur. 2013) (“*March 5 CAF Clarification Order*”). The provisions of the *March 5 CAF Clarification Order*, other than those requiring approval by OMB, will take effect May 15, 2013. 78 Fed. Reg. 22198, col. 3 (Apr. 15, 2013).

<sup>8</sup> *CAF Order*, 26 FCC Rcd at 18149 (para. 1404). See *March 5 CAF Clarification Order*, 28 FCC Rcd at 2058 (para. 22).

<sup>9</sup> *CAF Order*, 26 FCC Rcd at 17853 (para. 583) (emphasis added). See *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Third Order on Reconsideration, 27 FCC Rcd 5622, 5625 (para. 8) (2012) (“*CAF Third Reconsideration Order*”) (footnote omitted) (noting that “competitive ETCs that have been designated by the Commission are required to file information with respect to their provision of voice service during 2011, as previously required by section 54.209 of the Commission’s rules [but] [t]hese competitive ETCs, who have been subject to these reporting obligations since Commission designation, are not subject to new reporting obligations”).

*CAF Order* apply to recipients of Connect America Fund (“CAF”) or Mobility Fund support, but not to recipients of legacy Universal Service Fund (“USF”) support. Notwithstanding this Commission finding, however, the Bureau has revised the introductory text of Section 54.313(a) to read: “(a) Any recipient of high-cost support shall provide the following, with the information and data required by paragraphs (a)(1) through (7) of this section separately broken out for both voice service and broadband service.”<sup>10</sup>

The Bureau repeats this mistake in the proposed FCC Form 481 by indicating that all carriers must provide information relating to unfulfilled broadband service requests (Lines 320, 330 in Form 481) and relating to the number of complaints per 1,000 customers receiving mobile broadband service (Line 450).<sup>11</sup> The imposition of broadband-related reporting requirements by FCC Form 481 on all ETCs not only contradicts the Commission’s finding in the *CAF Order* but also conflicts with a statement in the draft FCC Form 481 Instructions that “[c]ompetitive ETCs whose support is being phased down are not required to submit a new five-year build-out plan, but must continue to submit information or certifications with respect to their provision of voice service . . . .”<sup>12</sup>

In addition, the Parties agree with USTelecom’s arguments that the Bureau’s imposition of broadband reporting requirements on competitive ETCs whose support is being phased down is inconsistent with the Commission’s decision not to designate broadband as a “supported service”<sup>13</sup> and does not pass the “practical utility” test established in the PRA rules.<sup>14</sup>

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<sup>10</sup> *March 5 CAF Clarification Order*, 28 FCC Rcd at 2056 (para. 14) (emphasis added) (footnote omitted).

<sup>11</sup> FCC Form 481 at 1.

<sup>12</sup> FCC Form 481 Instructions at 4 (emphasis added).

<sup>13</sup> USTelecom, Petition for Reconsideration and Clarification and Comments in Response to Paperwork Reduction Act, WC Docket No. 10-90, *et al.*, filed Apr. 4, 2013 (“USTelecom Petition and Comments”)

The Parties suggest that the Commission should eliminate the contradiction contained in the rule amendments made by the Bureau in the *March 5 CAF Clarification Order*. This can be accomplished by revising the amended text of Section 54.313(a) of the Commission’s Rules—as well as FCC Form 481 and the Instructions—to make it clear that the broadband reporting requirements do *not* apply to competitive ETCs whose support is being phased down.

**B. The Commission Should Clarify That Competitive ETCs Previously Filing Five-Year Plans with the Commission Are Not Required To Submit Progress Reports for Those Plans or Annual Adjustments to Build-Out Projections.**

Competitive ETCs receiving legacy support should not be required to provide the Commission with progress reports relating to five-year plans that they have previously filed with the Commission. If, on the other hand, the Commission decides to impose such a requirement for the filing of progress reports, then these progress reports should not be required to include adjustments to previously-filed future-year projections.

**1. Progress Reports Would Not Serve Any Useful Purpose.**

ETCs generally are required to file a new five-year build-out plan to account for new broadband obligations imposed in the *CAF Order*, and to file annual progress reports thereafter.<sup>15</sup> However, the Bureau explained in the *March 5 CAF Clarification Order* that “competitive ETCs whose support is being phased down do not have to file *new* five-year plans.”<sup>16</sup> The

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at 7. USTelecom’s petition seeks reconsideration of the *March 5 CAF Clarification Order*. *Id.* at 3. See *Wireline Competition Bureau Seeks Comment on the United States Telecom Association Petition for Reconsideration and Clarification of Certain High-Cost Universal Service Reporting Rules*, WC Docket No. 10-90, Public Notice, DA 13-676 (rel. Apr. 10, 2013).

<sup>14</sup> USTelecom Petition and Comments at 9. See 5 C.F.R. § 1320.1. The PRA defines “practical utility” to mean “the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion.” 44 U.S.C. § 3502(11).

<sup>15</sup> *March 5 CAF Clarification Order*, 28 FCC Rcd at 2052-53 (para. 4) (footnote omitted).

<sup>16</sup> *Id.* at 2053 (para. 6) (emphasis in original) (citing *CAF Order*, 26 FCC Rcd at 17853, 17854 (paras. 583, 587)).

Bureau nonetheless indicated that competitive ETCs must continue to file annual updates to their previously-filed five-year plans. The Bureau reasoned that, “[w]hile competitive ETCs may have their support phased down, and aspects of their original five-year plans may change because of the reduction in support, there is significant value in those ETCs continuing to file annual updates to their respective five-year plans.”<sup>17</sup>

While the filing of annual updates may be appropriate for other ETCs, it does not make sense for competitive ETCs whose support is being phased down. As of July 1, 2013, such carriers will receive 60 percent of their frozen monthly support, and they will cease to receive any support on July 1, 2016. The Parties therefore suggest that the Commission should remove this information collection requirement in the case of competitive ETCs because the information is not necessary for the performance of the functions of the Commission and the information would not have any practical utility.<sup>18</sup> Therefore, the information collection would impose an unnecessary burden on competitive ETCs.<sup>19</sup>

The phase down of competitive ETCs’ support adopted by the Commission in the *CAF Order*<sup>20</sup> negates any practical utility that could be associated with requiring these ETCs to submit annual progress reports to the Commission under Section 54.313(a)(1) of the Commission’s Rules. CTIA and USTelecom have argued, for example, that the requirement that competitive ETCs must file five-year plans with the Commission would be reasonable if it were based on

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<sup>17</sup> *Id.* (citing *CAF Order*, 26 FCC Rcd at 17852 (para. 580)).

<sup>18</sup> See 44 U.S.C. § 3508; *February 25 Notice*, 78 Fed. Reg. at 12750, col. 3.

<sup>19</sup> See 44 U.S.C. § 3501(1).

<sup>20</sup> *CAF Order*, 26 FCC Rcd at 17832 (para. 519). The funding phase-down is codified in Section 54.307(e) of the Commission’s Rules, 47 C.F.R. § 54.307(e). The Commission indicated that, “[i]f the Mobility Fund Phase II is not operational by June 30, 2014, we will halt the phase-down of support until it [Mobility Fund Phase II] is operational.” *CAF Order*, 26 FCC Rcd at 17832 (para. 519).

these ETCs continuing to receive universal service support at the levels authorized under the Commission's prior rules, before the support phase-down was adopted.<sup>21</sup> But the Parties agree with the conclusion of CTIA and USTelecom that “[m]andating that competitive ETCs report their progress in meeting targets that do not reflect the support they will receive and that they should not be expected to meet at reduced support levels would serve no useful purpose.”<sup>22</sup>

For these reasons the Parties believe that there is no policy basis to impose an information collection requirement relating to annual progress reports on competitive ETCs whose support is being phased down, particularly since the information would not be useful to the Commission. A determination has been made in the *CAF Order* that competitive ETCs will be able to meet their ETC obligations, even as their support is reduced pursuant to the Commission's phase-down rule.<sup>23</sup> Given this determination, there is no basis for adding to the competitive ETCs' burdens by requiring them to file progress reports, especially since the original premise for these reports—namely, that the competitive ETCs would be receiving support disbursements at their full levels—no longer applies.

## **2. Annual Adjustments to Competitive ETCs' Previously Filed Build-Out Projections Should Not Be Required.**

If competitive ETCs with phased down support must continue submitting annual progress reports regarding voice services, notwithstanding the fact that the requirement serves no useful purpose and would be unduly burdensome, then, at a minimum, the Com-

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<sup>21</sup> CTIA—The Wireless Association® (“CTIA”) and United States Telecom Association (“USTelecom”), Petition for Clarification and Reconsideration or, in the Alternative, for Waiver, WC Docket No. 10-90, *et al.*, filed June 25, 2012 (“CTIA and USTelecom Petition”), at 17.

<sup>22</sup> *Id.*

<sup>23</sup> *CAF Order*, 26 FCC Rcd at 17831 (para. 513).

mission should clarify that competitive ETCs are *not* required to file adjustments to previously submitted five-year plan projections, in addition to the progress reports.

Section 54.313(a)(1) of the Commission’s Rules limits the reporting requirement to a “*progress report* on [the] five-year service quality improvement plan [previously filed by the ETC] . . . .”<sup>24</sup> The Commission has indicated “that all ETCs must include in their annual reports the information that is currently required by section 54.209(a)(1)-(a)(6)—specifically, a *progress report* on their five-year build-out plans . . . .”<sup>25</sup> In the Parties’ view, requiring competitive ETCs to adjust their previously submitted deployment and service upgrade *projections* would have nothing to do with a progress report covering deployments and upgrades in prior years, and therefore the imposition of a reporting requirement relating to the adjustment of projections is beyond the scope of Section 54.313(a)(1).

The relevant Commission policy in this context is its goal of “ensur[ing] that ETCs comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes.”<sup>26</sup> Requiring competitive ETCs whose support is being phased down to submit adjustments to their projected build-out plans has no relevance to this goal. Adjusting projections sheds no light on the issue of whether competitive ETCs are properly using their USF support or whether they are meeting the conditions of their designations. Further, revised projections are not necessary to further the Commission’s objective of “ensur[ing] the continued availability of high-quality voice services . . . .”<sup>27</sup> The Commission, for example, can rely on audits

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<sup>24</sup> 47 C.F.R. § 54.313(a)(1) (emphasis added).

<sup>25</sup> *CAF Order*, 26 FCC Rcd at 17852 (para. 580) (emphasis added).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

and enforcement mechanisms, as necessary, to ensure that competitive ETCs—assuming their level of USF support is sufficient to do so—are maintaining high-quality voice services.

Finally, the *March 5 CAF Clarification Order* states that “it would be appropriate for [competitive] ETCs to reflect any adjustments to their original five-year plans in [their] annual updates.”<sup>28</sup> The Bureau expresses the view that “annual updates [from competitive ETCs whose support is being phased down] will assist the Commission in monitoring the impact of its universal service reforms on competitive ETCs’ provision of voice service . . . .”<sup>29</sup> The Parties disagree, since *projections* of future build-out plans would have no bearing on the manner in which competitive ETCs have used support they have already received to provide voice services.

The Parties also note that, significantly, the *March 5 CAF Clarification Order* does not require that competitive ETCs must adjust their previous build-out projections, merely surmising that such adjustments would be appropriate. Given that information resulting from the adjustments would not be useful to the Commission and would be burdensome to produce, the Commission should confirm that competitive ETCs are not under any obligation to file adjustments to their previously submitted five-year build-out plans.

**C. Proposed FCC Form 481 Contains Various Errors and Other Deficiencies That Should Be Corrected by the Commission.**

In several instances, the proposed FCC Form 481 and Instructions depart from the Commission’s rules in ways that would impose unwarranted burdens on ETCs without furnishing the Commission with any information necessary to enable it to carry out its statutory functions. The

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<sup>28</sup> *March 5 CAF Clarification Order*, 28 FCC Rcd at 2054 (para. 7).

<sup>29</sup> *Id.*

Commission should revise the proposed Form 481 and Instructions to bring them into conformity with the PRA and with the provisions of the Commission's rules.

**1. There Is No Basis in the Commission's Rules for the FCC Form 481 Provision That ETCs Must Document Compliance with Various Requirements Adopted by Tribal Governments.**

Provisions contained in the draft FCC Form 481 and the draft Instructions impose an obligation on all ETCs serving Tribal lands to confirm in their annual reports that they meet various obligations in connection with their "operational coordination" with Tribal governments.<sup>30</sup> The obligations are substantive, and not merely procedural, in nature.<sup>31</sup>

The FCC Form 481 Instructions explain that the purpose of the Tribal lands reporting provisions is to require "documents or information demonstrating that the ETC had operational coordination with tribal governments."<sup>32</sup> But the Instructions also include the conflicting statement that ETCs must confirm compliance with substantive obligations prescribed by Tribal governments. For example, the draft instructions for completing Line 924 of Form 481 state that the ETC must confirm that the narrative discussion attached to its Form 481 submission (relating to its discussions with Tribal governments) "contains an explanation of your company's *actions to comply* with the right-of-way processes for the tribal lands."<sup>33</sup>

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<sup>30</sup> Of the five Parties filing these Comments, C Spire, Pioneer Cellular, and Union Wireless serve Tribal lands and therefore are directly affected by the provisions of FCC Form 481 and the Instructions discussed in this section.

<sup>31</sup> For example, Form 481 requires that each ETC serving Tribal lands must specify whether it has complied with Tribal government rights-of-way processes, land use permitting requirements, facilities siting rules, environmental review processes, cultural preservation review processes, and Tribal business and licensing requirements. FCC Form 481, Lines 924-929.

<sup>32</sup> FCC Form 481 Instructions at 24.

<sup>33</sup> *Id.* at 25 (emphasis added). *See id.* (the instructions for Lines 925 through 929 contain the same "actions to comply" requirement).

The Commission specified in the *CAF Order* that “ETCs serving Tribal lands must include in their reports documents or information demonstrating that they have meaningfully engaged Tribal governments in their supported areas.”<sup>34</sup> The reporting requirement in Section 54.313(a)(9) is based on this requirement adopted in the *CAF Order*. Thus, the Commission—both in the *CAF Order* and in its rules—has indicated that any ETC serving Tribal lands must report on discussions it has with Tribal governments on certain topics designated by the Commission, but the ETC is not required to describe for the Commission how it has complied with applicable Tribal government requirements.

The provisions in FCC Form 481 and the Instructions cited above, relating to documentation of compliance with Tribal government laws and regulations, exceed the scope of the reporting requirements established by the Commission. Section 54.313(a)(9) of the Commission’s Rules requires only that an ETC serving Tribal lands must provide “documents or information demonstrating that the ETC had discussions with Tribal governments . . . .”<sup>35</sup> Section 54.313(a)(9) does not include any requirement that ETCs must provide documentation of their compliance with Tribal government statutes or regulations.

The *ONAP Further Guidance*,<sup>36</sup> issued last year by the Office of Native Affairs and Policy (“ONAP”) in conjunction with the Bureau and the Wireless Telecommunications Bu-

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<sup>34</sup> *CAF Order*, 26 FCC Rcd at 17858 (para. 604).

<sup>35</sup> 47 C.F.R. § 54.313(a)(9) (emphasis added). The discussion topics must include (1) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (2) feasibility and sustainability planning; (3) marketing services in a culturally sensitive manner; (4) rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (5) compliance with Tribal business and licensing requirements. *Id.*

<sup>36</sup> *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 No. 10-90, *et al.*, Public Notice, 27 FCC Rcd 8176 (ONAP 2012) (“*ONAP Further Guidance*” or “*Further Guidance*”).

reau, makes the suggestion that, in certain instances, ETCs meeting with Tribal government representatives should be prepared to present documentation to the Tribal representatives of the ETCs' compliance with applicable Tribal laws and regulations.<sup>37</sup>

This guidance provided by ONAP cannot serve as a basis for the reporting requirements that the draft FCC Form 481 seeks to impose on ETCs.<sup>38</sup> The *Further Guidance* merely indicates that ETCs “should be prepared” to provide documentation to Tribal governments of the ETCs' compliance with various Tribal government laws and regulations. It does not impose any requirement on ETCs. In addition, USTelecom argues that the *Further Guidance* was issued in violation of PRA requirements, explaining that “ONAP did not seek OMB approval of the information collection contained in the *Further Guidance*, nor did OMB issue a control number for this collection. . . . Absent compliance with the PRA, . . . the *Further Guidance* is [not] legally enforceable . . . .”<sup>39</sup>

Given the absence of any underlying requirement in the Commission's rules, the Parties request that the Commission should revise FCC Form 481 and the Instructions to clarify that ETCs are under no obligation to document their compliance with various substantive obligations adopted by Tribal governments.

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<sup>37</sup> For example, in addressing Tribal business license requirements, the *Further Guidance* recommends that, “[a]s part of the Tribal engagement obligation, Tribal governments and communications providers should come to the table prepared to discuss in detail the relevant Tribal business and licensing requirements[.]” and suggests that “[c]ommunications providers should be prepared to provide evidence of compliance with any Tribal business practice licenses with which they currently comply for [the] Tribe [involved].” *Id.* at 8184 (para. 29).

<sup>38</sup> See USTelecom Petition and Comments at 12 (seeking clarification that “the contents of ONAP's *Further Guidance* are not requirements to which ETCs are legally obligated to comply but merely suggestions to guide ETC activities”).

<sup>39</sup> *Id.*

Even if there were such a basis in the Commission’s rules—which there is not—the obligation that ETCs must document in their annual reports compliance with Tribal government laws and regulations should not be imposed because it would not satisfy PRA requirements. In the Parties’ view, the Commission does not need the information proposed to be collected in the draft FCC Form 481 to perform its functions, and the information therefore would have no practical utility for the Commission. In addition, providing such information to the Commission would be burdensome, especially for ETCs that must coordinate with many Tribal governments pursuant to Section 54.313(a)(9).<sup>40</sup>

**2. Requirements in Proposed FCC Form 481 Relating to Voice Service Price Offerings Exceed the Scope of the Commission’s Rules.**

U.S. Telecom has argued that the format proposed by the Bureau in FCC Form 481 “by which ETCs must collect and report [voice service price offerings] information . . . does not pass PRA muster.”<sup>41</sup> The Parties agree. The Bureau has adopted information collection requirements that would obligate competitive ETCs to provide information “that has no practical utility, contrary to the PRA.”<sup>42</sup> As USTelecom explains, there is no basis for requiring ETCs to provide any information relating to bundled service offerings, “residential local service charge effective dates” for each voice service offering, or “pricing information for every town in every state and

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<sup>40</sup> See the discussion of this issue in Section II.E., *infra*.

<sup>41</sup> USTelecom Petition and Comments at 17. The *March 5 Clarification Order* revises Section 54.313(a)(7) of the Commission’s Rules to require “[a]ny recipient of high-cost support” to provide “[t]he company’s price offerings in a format as specified by the Wireline Competition Bureau . . .” 47 C.F.R. § 54.313(a)(7). The *March 5 Clarification Order* erroneously seeks to extend this reporting requirement to broadband services provided by competitive ETCs. See Section II.A., *supra*.

<sup>42</sup> USTelecom Petition and Comments at 17.

to delineate information by exchange (for incumbent ETCs) and by study area (for competitive ETCs).”<sup>43</sup>

The *March 5 Clarification Order* does not explain how or why the extensive data collection requirements in FCC Form 481 relating to voice service price offerings are necessary in connection with the Commission’s fulfillment of its regulatory duties.<sup>44</sup> Because neither the *March 5 Clarification Order* nor the Instructions offer any justification for the requirements that would satisfy the PRA, the Parties agree with USTelecom that the requirements should be revised and clarified to avoid the imposition of burdensome information collection requirements on competitive ETCs and other ETCs.

**3. Proposed FCC Form 481 Mistakenly Applies to Competitive ETCs an Information Collection Requirement Relating to Voice Telephony Service Rate Floor Deficiencies.**

In addition to the data collection requirements relating to voice service price offerings discussed in the previous section, proposed FCC Form 481 (at line 700) requires competitive ETCs and other ETCs to “report their voice telephony service price offerings, and to the extent the sum of the residential local service rate and state fees are below the rate floor, as specified in 47 C.F.R. §54.318, report the number of customers subscribing to those lines for each rate specified.”<sup>45</sup> A calculation of any deficiency below the Urban Rate Floor must also be included in the data reported by competitive ETCs.<sup>46</sup>

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<sup>43</sup> *Id.* at 18.

<sup>44</sup> *See id.* at 17-18.

<sup>45</sup> FCC Form 481 Instructions at 17. Line 703, Col. a4, of Form 481 requires competitive ETCs to supply Study Area Codes (“SACs”), and the Instructions for Line 703 indicate: “*For CETCs: Each line with the worksheet should cover a residential rate level which applies to the entire study area . . . .*” *Id.* (italicized in original).

<sup>46</sup> FCC Form 481, Line 703; FCC Form 481 Instructions at 17-19.

FCC Form 481, in imposing this reporting requirement on competitive ETCs, contradicts the Commission's rules. Specifically, Section 54.313(h) of the Commission's Rules provides:

All *incumbent local exchange carrier recipients* of high-cost support must report all of their flat rates for residential local service, as well as state fees as defined pursuant to §54.318(e) of this subpart. Carriers must also report all rates that are below the local urban rate floor as defined in §54.318 of this subpart, and the number of lines for each rate specified.<sup>47</sup>

Section 54.313(h) references the provisions of Section 54.318, which specifically “apply only to rate-of-return carriers . . . and carriers subject to price cap regulation . . . .”<sup>48</sup> The Commission promulgated Section 54.318 “to limit high-cost support where end-user rates do not meet a specified local rate floor. This rule will apply to both rate-of-return carriers and price cap companies.”<sup>49</sup>

The Parties suggest that the Commission should revise FCC Form 481 and the Instructions to reflect the fact that competitive ETCs are not required to comply with reporting requirements in Line 700 relating to voice service rates below the urban rate floor.

**D. Annual Reporting Requirements in Section 54.313 Should Not Apply to Recipients of Mobility Fund Phase II Support.**

The Commission should make it clear that the information collection provisions in Section 54.313 of the Commission's Rules, as well as all other requirements established in that section, do not apply to mobile wireless broadband providers receiving Mobility Fund Phase II support.

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<sup>47</sup> 47 C.F.R. § 54.313(h) (emphasis added).

<sup>48</sup> 47 C.F.R. § 54.318(c).

<sup>49</sup> *CAF Order*, 26 FCC Rcd at 17749 (para. 235). The rule is intended to “limit high-cost support where local end-user rates plus state regulated fees . . . do not meet an urban rate floor representing the national average of local rates plus such state regulated fees.” *Id.* at 17751 (para. 238).

The Bureau has acknowledged that this issue was raised prior to the issuance of the *March 5 CAF Clarification Order*,<sup>50</sup> but the Bureau did not address the issue in that Order. The clarification the Parties suggest is consistent with prior action taken by the Commission, specifically its decision to exempt Mobility Fund Phase I support recipients from any filing requirements established in Section 54.313 of the Commission’s Rules.<sup>51</sup>

Moreover, clarification that Section 54.313 does not apply to Mobility Fund Phase II support recipients is appropriate because the issue of what reporting requirements should apply is currently pending in a Commission rulemaking proceeding. Specifically, the Commission indicated in the *CAF Order* that, “[i]n the [CAF] FNPRM, we seek comment on alternative reporting requirements for Mobility Fund support to reflect basic differences in the nature and purpose of the support provided for mobile services.”<sup>52</sup> CTIA and USTelecom argue persuasively that, in the meantime, “[u]ntil [the Commission] resolves these [reporting] issues [raised in the *CAF FNPRM*], the Commission should clarify that the reporting requirements in section 54.313(a)(1) do *not* apply to recipients of Phase II Mobility Fund support.”<sup>53</sup>

**E. The Commission’s Estimate of Burdens Imposed on ETCs by Proposed FCC Form 481 and Other Information Collection Requirements Is Unrealistically Low and Should Be Revised.**

A purpose of the PRA is to “minimize the paperwork burden for individuals, small businesses . . . and other persons resulting from the collection of information by or for the Federal

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<sup>50</sup> See *March 5 CAF Clarification Order*, 28 FCC Rcd at 2053 (para. 5).

<sup>51</sup> 47 C.F.R. § 54.313(k). Winning bidders authorized to receive Mobility Fund Phase I support are required to file annual reports pursuant to Section 54.1009 of the Commission’s Rules, 47 C.F.R. § 54.1009.

<sup>52</sup> *CAF Order*, 26 FCC Rcd at 17850 (para. 573 n.946). See *March 5 CAF Clarification Order*, 28 FCC Rcd at 2054 (para. 8 n.28); *CAF FNPRM*, 26 FCC Rcd at 18082 (para. 1173).

<sup>53</sup> CTIA and USTelecom Petition at 18 (emphasis added).

Government . . . .”<sup>54</sup> The term “burden” is defined by the PRA to mean the “time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency . . . .”<sup>55</sup>

The Commission thus far has not provided any information or analysis documenting any efforts it may have undertaken to “minimize the paperwork burden” imposed by Section 54.313 of the Commission’s Rules.<sup>56</sup> Instead, the Commission has merely stated in the FCC Form 481 Instructions that the “Estimated Average Burden Hours Per Response” will be 20 hours.<sup>57</sup>

Given the scope of the new information collection requirements adopted in the *CAF Order* and reflected in FCC Form 481, including those discussed in these Comments, the Commission’s burden estimates are not realistic. As USTelecom has stated, as a general matter, “an agency does not and cannot fulfill its PRA responsibilities unless the agency accurately considers the burdens of its proposed rules.”<sup>58</sup> In this case, the Commission has considered the burdens, at least to the extent of producing various estimates of the burdens involved, but these time burden estimates do not demonstrate that the Commission has “accurately considered” the impact its rules will have on competitive ETCs and other ETCs that are required to file annual reports.

In fact, as USTelecom indicates, “the Commission severely underestimates the time and resources necessary to collect, analyze, update, verify, submit, and certify the information being

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<sup>54</sup> 44 U.S.C. § 3501(1).

<sup>55</sup> 44 U.S.C. § 3502(2).

<sup>56</sup> See USTelecom Petition and Comments at 28.

<sup>57</sup> FCC Form 481 Instructions at 1. The Commission also estimates separately that each respondent will expend approximately 0.5 hours to 100 hours to submit the new FCC Form 481 and comply with other new and modified information collection requirements. *February 25 Public Notice*, 78 Fed. Reg. at 12751, col. 1.

<sup>58</sup> USTelecom Petition and Comments at 27 (footnote omitted).

collected and reported on Form 481.”<sup>59</sup> The burden estimates presented by the Commission do not accurately account for the time and effort that would be necessary to undertake the various tasks that ETCs would need to carry out in connection with preparing and submitting their annual filings.

In previous years, ETCs filing annual reports have not been required to utilize a Commission-prescribed form, but instead have had the flexibility to develop their own reporting formats, so long as all required information was included. The Commission’s introduction of FCC Form 481 will result in a time-consuming addition to the report filing tasks faced by ETCs. For example, the 21-page draft Form includes approximately 470 separate line entries and requests for the submission of PDF documents.<sup>60</sup> In addition, ETCs will need to review, and ensure their entries conform to, a 34-page set of Instructions for completing Form 481.

Preparing and submitting the proposed FCC Form 481, however, would be the “easy” part. The Commission’s burden estimate of 20 hours for Form 481<sup>61</sup> becomes highly suspect when the time necessary to “generate [and] maintain”<sup>62</sup> the information required to be filed is taken into account and added to the time needed to prepare and provide the information to the Commission.

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<sup>59</sup> *Id.* USTelecom explains that ETCs would be required “to engage and train a wide range of personnel . . . to develop the processes needed to collect the requisite data, analyze the data’s accuracy, and format the data in a way that enables the ETC to accurately complete Form 481, and then actually complete and file the Form 481.” *Id.* at 29.

<sup>60</sup> The number of entries and PDF documents that must be completed and submitted will vary depending upon the nature of a filing ETC’s services and activities. The approximate number of Form 481 entries calculated by the Parties is a conservative figure, due to several factors. For example, the number of Line 703 entries (relating to price offerings including voice rate data) that a competitive ETC must make will vary depending on the number of SACs assigned to it. The Parties’ approximation of entries does not account for the possibility of multiple Line 703 entries.

<sup>61</sup> FCC Form 481 at 1.

<sup>62</sup> 44 U.S.C. § 3502(2).

For example, Line 703, which implements the Section 54.313(a)(7) requirement that all ETCs must provide “price offerings in a format as specified by the Wireline Competition Bureau[,]”<sup>63</sup> requires each competitive ETC to generate and maintain information—for each SAC assigned to it—relating to the rate type, the residential local service rate, the state subscriber line charge, the state universal service fee, the mandatory extended area service charge, the total per line rates and fees, the calculated amount of any rate floor deficiency,<sup>64</sup> and, if there is a rate floor deficiency, the number of residential customers to which the carrier provides service as of June 1 of the year covered by the annual report.<sup>65</sup> These are reporting requirements on just one page of the 21-page Form 481.<sup>66</sup>

In addition to FCC Form 481, “other new and modified information collection requirements”<sup>67</sup> for which the Commission is required to obtain OMB approval would impose substantial burdens on ETCs, well beyond the 0.5 to 100 hours estimated by the Commission.<sup>68</sup> Reporting requirements relating to Tribal engagements are illustrative.

Before examining these reporting requirements, however, it is important to note the urgency of the Commission’s task of pursuing policies aimed at closing “[t]he deep digital divide that persists between the Native Nations of the United States and the rest of the country . . . .”<sup>69</sup>

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<sup>63</sup> 47. C.F.R. § 54.313(a)(7).

<sup>64</sup> The Parties have argued that FCC Form 481 erroneously applies the rate floor deficiency reporting obligation to competitive ETCs. See Section II.C.3., *supra*.

<sup>65</sup> FCC Form 481, Line 703; FCC Form 481 Instructions at 19.

<sup>66</sup> See USTelecom Petition and Comments at 29 (discussing specific burdens ETCs would face in generating and submitting information required by FCC Form 481).

<sup>67</sup> *February 25 Notice*, 78 Fed. Reg. at 12751, col. 2.

<sup>68</sup> *Id.* at 12751, col. 1. This estimate includes burdens relating to both FCC Form 481 and other new and modified information collection requirements.

<sup>69</sup> *CAF Order*, 26 FCC Rcd at 17868 (para. 636).

C Spire, Pioneer Cellular, and Union Wireless are committed to continuing to utilize their resources, combined with universal service support, to bring their broadband networks to Tribal lands. Moreover, the Parties agree with the Commission’s view that “engagement between Tribal governments and communications providers either currently providing service or contemplating the provision of service on Tribal lands is vitally important to the successful deployment and provision of service.”<sup>70</sup>

In this regard, the Parties commend ONAP for its efforts in establishing goals and best practices “to ensure the effective exchange of information that will lead to a common understanding between Tribal governments and communications providers receiving USF support, on the deployment and improvement of communications services on Tribal lands.”<sup>71</sup>

The Parties’ concern, however, is that, if Tribal engagement requirements become too burdensome, then the requirements could have the unintended and counter-productive effect of discouraging efforts to deploy broadband networks on Tribal lands. The Parties suggest that the Tribal engagement and reporting requirements adopted by the Commission and the Bureau should be evaluated, in part, from the perspective of this concern.

Form 481 requires any ETC serving Tribal lands to file a PDF document indicating that the ETC:

has had discussions with Tribal governments that, at a minimum, included: (i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions; (ii) Feasibility and sustainability planning; (iii) Marketing services in a culturally sensitive manner; (iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (v) Compliance with Tribal business and licensing requirements.<sup>72</sup>

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<sup>70</sup> *Id.* at 17868 (para. 637).

<sup>71</sup> *ONAP Further Guidance*, 27 FCC Rcd at 8176 (para. 2).

<sup>72</sup> FCC Form 481 Instructions at 24 (footnote omitted).

In addition, the PDF document must include an explanation of how the ETC has acted to comply with various Tribal government laws and regulations.<sup>73</sup>

ETCs serving Tribal lands would be required to dedicate significant resources, and allocate substantial amounts of time, to arrange for and participate in discussions with Tribal government representatives covering the issues delineated in the *CAF Order*<sup>74</sup> and listed in the Instructions. To take one example, CTIA has argued that “[g]iven the number of federally recognized Tribes, carriers operating in multiple states would have to devote overwhelming numbers of senior executive hours to travel to and meet with Tribal officials. These costs would be burdensome for both large and small carriers.”<sup>75</sup>

USTelecom has also itemized numerous specific burdens associated with the Commission’s Tribal engagement rules and the *Further Guidance* issued by ONAP, concluding that the requirements “amount to a scatter-shot approach that imposes significant burdens on ETCs[.]”<sup>76</sup> in violation of the substantive provisions of the PRA.<sup>77</sup>

Based on these considerations, the Parties agree with U.S. Telecom’s conclusion that “[a]n accurate reflection of the time and resources necessary for ETCs to comply with the proposed Form 481 would confirm that the proposed information collection is extremely burden-

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<sup>73</sup> *Id.* at 25. As the Parties have demonstrated, requiring this explanation is beyond the scope of the *CAF Order* and the Commission’s rules, and does not meet PRA requirements. See Section II.C.1., *supra*.

<sup>74</sup> See *CAF Order*, 26 FCC Rcd at 17868 (para. 637).

<sup>75</sup> CTIA Comments, WC Docket No. 10-90, *et al.*, filed Sept. 26, 2012, at 5 (footnote omitted).

<sup>76</sup> USTelecom, Petition for Reconsideration and Clarification, WC Docket No. 10-90, *et al.*, filed Aug. 20, 2012, at 16.

<sup>77</sup> *Id.* at 15. USTelecom analyzes costs associated with preparing presentations to Tribal governments, involving ETC senior executives in the engagement process, and conducting marketing analyses. *Id.* at 12-14.



that the information collections are unambiguous and consistent with the rules, and so that both the rules and the information collections comply with the Paperwork Reduction Act of 1995.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION



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