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August 29, 2013

**VIA: ELECTRONIC MAIL
ELECTRONIC FILING**

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

**Re: Connect America Fund, Universal Service Reform – Mobility Fund,
WC Docket No. 10-90, WT Docket No. 10-208
OMB Control Number 3060-0986**

Madam Secretary:

The Wireline Competition Bureau (“Bureau” or “WCB”), in the wake of the Office of Management and Budget’s (“OMB”) approval of new information collections adopted by the Commission in the *CAF Order*¹ relating to annual reports submitted by eligible telecommunications carriers (“ETCs”) receiving high-cost or low-income support,² has announced in the *August*

¹ *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 (2011) (“*CAF Order*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

² Notice of OMB Action, ICR Ref. No. 201302-3060-001, OMB Control No. 3060-0986 (rel. July 22, 2013); see FCC, *Explanation of Non-Substantive Changes to OMB Control Number 3060-0986* (rel. July 23, 2013) (“*FCC Explanation*”). The OMB action also approved the new FCC Form 481, FCC Form 481–Carrier Annual Reporting Data Collection Form, OMB 3060-0986, OMB 3060-0819, undated (“FCC Form 481” or “Form 481”), available at <http://www.usac.org/hc/tools/forms.aspx>. The form will be used by ETCs in filing their annual reports. See *FCC Explanation*. The effective date of the new information collections is August 5, 2013. FCC, *Connect America Fund, Final Rule, Announcement of Effective Date*, 78 Fed. Reg. 47211 (Aug. 5, 2013) (“*August 5 Announcement*”).

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6 *Public Notice* that ETCs must file their 2013 annual ETC reports not later than October 15, 2013.³

The *Public Notice*, however, does not address a number of pending issues that relate to the annual reporting requirements. Several of these issues—which were not addressed by OMB in its review of the new information collection requirements—are summarized in the following sections. There is sufficient time for the Commission, before the October 15 filing deadline, to resolve these issues and to provide ETCs with further guidance and clarification regarding the new filing requirements.

Tribal Engagement Reporting Requirements

The Commission should resolve issues regarding the Tribal engagement reporting requirements,⁴ that are discussed below and that were not addressed in the *August 6 Public Notice*.⁵

Compliance with Tribal Laws and Regulations

The Commission should make it clear that ETCs are *not* required to demonstrate their *compliance* with Tribal government statutes and regulations, but instead are required only to engage with Tribal governments regarding issues related to the ETCs' compliance with Tribal government laws and regulations, and to submit a report to the Commission describing this engagement.

U.S. Cellular has explained that FCC Form 481 is not consistent with Tribal engagement filing requirements specified in the Commission's rules and its decision in the *CAF Order*.⁶ The rules require only that ETCs must show that they "had discussions with Tribal governments"⁷

³ *Wireline Competition Bureau Announces Filing Deadline of October 15, 2013 for Eligible Telecommunications Carriers To File High-Cost and Low-Income Annual Reports, and Announces Filing Deadline of December 16, 2013 for States and ETCs To File Annual Use Certifications*, WC Docket Nos. 10-90 and 11-42, Public Notice, DA 13-1707 (WCB Aug. 6, 2013) ("*August 6 Public Notice*" or "*Public Notice*").

⁴ 47 C.F.R. § 54.313(a)(9).

⁵ The *Public Notice* merely indicates that "competitive ETCs that serve Tribal lands, [must] report on Tribal government engagement pursuant to section 54.313(a)(9)." *August 6 Public Notice* at 2.

⁶ U.S. Cellular Comments, WC Docket No. 10-90 *et al.*, filed July 8, 2013 ("U.S. Cellular Comments"), at 7-8 (citing 47 C.F.R. § 54.313(a)(9)); *see CAF Order*, 26 FCC Rcd at 17868 (para. 637).

⁷ 47 C.F.R. § 54.313(a)(9) (emphasis added).

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regarding “[c]ompliance with Tribal business and licensing requirements.”⁸ If a Tribe is unresponsive to requests for meetings, the ETC must document its repeated efforts to engage with the Tribe, and certify to those efforts.⁹

Form 481, however, seeks information confirming an ETC’s “compliance 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.¹⁰ The Form 481 Instructions¹¹ underscore this need to address compliance, stating, for example, that a reporting ETC must indicate whether its Form 481 filing “contains an explanation of your company’s *actions to comply* with the facilities siting rules for the Tribal lands.”¹²

U.S. Cellular requests the Commission to revise FCC Form 481 and the Instructions by clarifying that ETCs are not required to demonstrate to the Commission their compliance with the laws and regulations of Tribal governments.

Effective Date of Reporting Requirements

As AT&T Inc. (“AT&T”) noted, “[t]he rules that contain information collections subject to PRA review WILL BECOME EFFECTIVE following approval by the Office of Management and Budget.”¹³ OMB approval was issued on July 22, 2013, and ETCs were under no obligation to comply with the Tribal engagement requirements in Section 54.313(a)(9) before the subsequent effective date of August 5, 2013.¹⁴

⁸ 47 C.F.R. § 54.313(a)(9)(v).

⁹ *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*, Public Notice, 27 FCC Rcd 8176, 8180 (para. 15) (ONAP 2012) (“ONAP Guidelines”).

¹⁰ FCC Form 481, Lines 924-929.

¹¹ Instructions for Completing FCC Form 481, 54.313/54.422 Data Collection Form, OMB Control No. 3060-0986 (High-Cost), OMB Control No. 3060-0819 (Low-Income), July 2013 (“Instructions”).

¹² *Id.* at 26 (emphasis added). The *FCC Form 481 Online User Guide* also indicates that ETCs serving Tribal lands must include data in Form 481 demonstrating “[c]ompliance with Tribal business and licensing requirements” *FCC Form 481 Online User Guide*, accessed at <http://www.usac.org/hc/tools/forms.aspx> (“*Form 481 Online User Guide*” or “*Online User Guide*”), at 50.

¹³ *CAF Order*, 26 FCC Rcd at 18153 (para. 1428) (emphasis in original), cited in AT&T Paperwork Reduction Act Comments, WC Docket No. 10-90, filed Apr. 26, 2013 (“AT&T PRA Comments”), at 15.

¹⁴ See *August 5 Announcement*.

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Thus, prior to August 5, ETCs were not obligated to collect or provide to the Commission any “documents or information demonstrating that the ETC had discussions with Tribal governments”¹⁵ regarding various matters specified by the Commission.¹⁶ U.S. Cellular notes, however, that, even though the Commission lacked authority to impose information collections on ETCs serving Tribal lands in 2012, U.S. Cellular responded to the *ONAP Guidelines* by making extensive and comprehensive efforts during 2012 to contact and engage with Tribal governments in Tribal areas served by U.S. Cellular. These actions were taken not only out of an abundance of caution to ensure compliance with the guidelines established by ONAP but also because of U.S. Cellular’s ongoing commitment to work closely with Tribal governments and to evidence due respect for the Tribal nations that U.S. Cellular serves.

U.S. Cellular agrees with AT&T that “[i]t 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.”¹⁷

In light of these considerations, U.S. Cellular requests the Commission to clarify that ETCs are not required to include in their 2013 annual reports any information or documents relating to their Tribal engagement activities during calendar year 2012. Instead, this data should not be required to be filed until 2014, covering calendar year 2013. It would be impermissible for the Commission to require the collection and filing of information regarding Tribal engagement activities during calendar year 2012, because the information collection requirement was not approved by OMB until last month and did not take effect until August 5.

It is also useful to note that the Commission, in the latest version of the Instructions, posted on the Universal Service Administrative Company (“USAC”) website on August 8, 2013, indicates that ETCs are not required to report local service rates for their voice or broadband services in their 2013 filings.¹⁸ Although the Bureau did not provide any reason in the *August 6 Public Notice* for this shift in reporting requirements, it is logical to conclude that the requirement—which would have required carriers to report rates in effect as of June 1, 2012¹⁹—was removed for purposes of the 2013 annual reports because the Commission lacks authority to impose the requirement, having failed to obtain OMB approval until last month.

¹⁵ 47 C.F.R. § 54.313(a)(9).

¹⁶ These matters include 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. *Id.*

¹⁷ AT&T PRA Comments at 15 (citing *Saco River Cellular, Inc v. FCC*, 133 F.3d 25, 32 (D.C. Cir. 1998)).

¹⁸ Instructions at 19, 22. *See Form 481 Online User Guide* at 38, 42.

¹⁹ *See Form 481 Online User Guide* at 39.

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Because the same logic applies to the collection of information concerning Tribal engagement responsibilities, the Bureau's decision to eliminate the Section 54.313(a)(7) reporting requirements for the 2013 filings provides a further reason for the Commission's clarifying that no information or documents relating to Tribal engagement activities during calendar year 2012 is required to be included in the 2013 reports.²⁰

Competitive ETC Broadband Data

The Commission explained in the *CAF Order* that “[c]ompetitive ETCs whose support is being phased down will not be required to submit any of the new information or certifications . . . related solely to the new broadband public interest obligations”²¹ A subsequent Bureau amendment to Section 54.313, however, requires all ETCs, including competitive ETCs whose legacy high-cost support is being phased down, to report certain information required in Section 54.313(a) “separately broken out for both voice service and broadband service.”²²

The Commission has explained that “recipients [of legacy support] lack any obligations or accountability for advancing broadband-capable infrastructure.”²³ This is logical, since the phase-down may leave competitive ETCs with insufficient support to build broadband-capable facilities, let alone maintain and operate them. Thus, competitive ETCs that are not receiving any Connect America Fund (“CAF”) or Mobility Fund support are not subject to any Commission-imposed obligation to deploy or provide mobile broadband services.²⁴

This issue of broadband service reporting requirements has been further complicated by the *August 6 Public Notice*. Specifically, the *Public Notice* provides that “[a]ll competitive ETCs that receive high-cost support must file information pursuant to section 54.313(a)(2) through (a)(6) as it relates to their provision of voice telephony service in calendar year 2012”²⁵ By

²⁰ U.S. Cellular notes that an additional issue related to Tribal engagement reporting requirements that remains pending with the Commission and should be resolved. Specifically, AT&T has argued that only Tribal Mobility Fund high-cost support recipients should be required to engage in discussions with Tribal governments and submit reports related to these engagements. *See* AT&T, Opposition to Aspects of Proposed FCC Form 481 and Instructions, OMB Control No. 3060-0986, filed July 8, 2013, at 6.

²¹ *CAF Order*, 26 FCC Rcd at 17853 (para. 583). *See* U.S. Cellular Comments, WC Docket No. 10-90, WT Docket No. 10-208, filed Apr. 26, 2013, at 10-13.

²² *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Order, 28 FCC Rcd 2051, 2056 (para. 14) (footnote omitted) (WCB 2013).

²³ *CAF Order*, 26 FCC Rcd at 17669 (para. 7).

²⁴ *See* U.S. Cellular Comments at 7.

²⁵ *August 6 Public Notice* at 2.

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omitting any reference to information relating to broadband service, the *Public Notice* attempts to solve the problem that the rule—by imposing a broadband data collection requirement on competitive ETCs—conflicts with the *CAF Order*. In U.S. Cellular’s view, however, this indirect approach taken in the *Public Notice* fails to provide a satisfactory resolution of the issue.

Moreover, even though the *August 6 Public Notice* apparently attempts to relieve competitive ETCs of broadband filing requirements imposed by the amended version of Section 54.313(a), the most recent versions of FCC Form 481 and the Instructions still require the submission of certain broadband information.²⁶ In addition, presentation slides posted earlier this month by USAC on its website indicate that certain information relating to broadband services must be included in the electronic filings of Form 481.²⁷

U.S. Cellular therefore urges the Commission to either (1) amend Section 54.313(a) to make it consistent with the decision in the *CAF Order* not to require competitive ETCs receiving legacy support to file information relating to their broadband services; or (2) clarify directly and specifically its intention that no broadband data is required from competitive ETCs for calendar year 2012, and confirm that competitive ETCs that do not submit any such broadband data, in reliance upon the terms of the *August 6 Public Notice*, will not be deemed to be in violation of Section 54.313(a) of the Commission’s Rules.²⁸

* * * * *

U.S. Cellular respectfully requests the Commission to clarify, preferably in an Order, all open issues set forth above. The clarification should include a revised FCC Form 481 (and re-

²⁶ See FCC Form 481 at 1 (Lines 320, 330, 440, and 450); Instructions at 10-11. The *Online User Guide* also refers to broadband reporting requirements. See, e.g., *Form 481 Online User Guide* at 33, 35.

²⁷ See USAC, *2013 Filing of Section 54.313 and Section 54.422 Annual Reporting: Electronic Filing of FCC Form 481*, Aug. 15, 2013, at 30-31, available at <http://www.usac.org/hc/about/outreach/training/081513.aspx>.

²⁸ U.S. Cellular notes that, during an August 15, 2013, webcast relating to the FCC Form 481 filings, USAC staff indicated that information relating to service outages, unfulfilled service requests, and complaints is *not* required for broadband services in the 2013 annual reports, even though Form 481 provides for the inclusion of this data for broadband services. USAC staff did not address the fact that Section 54.313(a) also requires service quality, consumer protection, and emergency functionality certifications for both voice and broadband services, and Form 481 requires descriptive documents explaining how ETCs have complied with applicable service quality standards and consumer protection rules, and how they are able to function in emergency situations. Although informal guidance from USAC staff is helpful, a more formal and comprehensive clarification issued by the Commission would be more appropriate and definitive.

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vised Instructions).²⁹ The October 15 filing deadline announced in the *Public Notice* provides the Commission with sufficient time to take action to provide the necessary clarifications and guidance.

At a minimum, if the Commission decides not to issue a revised version of Form 481, it should clarify certain of the reporting requirements contained in the Form. For example, the Commission should clarify that ETCs are not required to confirm that they are complying with Tribal government laws and regulations, and that competitive ETCs are not required to submit any data relating to their broadband services and will not be deemed to be in violation of Section 54.313(a) of the Commission's Rules if they do not file such data in their 2013 reports.

If there are any questions, or if any further information is required, please contact undersigned counsel directly.

Sincerely,



David A. LaFuria
Steven M. Chernoff
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Counsel for United States Cellular Corporation

cc (via electronic mail):

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²⁹ We note that revising Form 481 in the manner requested above will not require further OMB review, as this will reduce, not increase, paperwork burdens. *See August 5 Announcement*, 78 Fed. Reg. at 47211 (inviting “any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby”).