Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested	)))))	OMB Control No. 3060-1186

COMMENTS OF U.S. TELEPACIFIC CORP.

U.S. TelePacific Corp. ("TelePacific") responds to the request for comment[1] on the Commission's compliance with the Paperwork Reduction Act ("PRA"), including the accuracy of the Commission's burden estimates for the information collection requirements set forth in the final rules adopted in the Rural Call Completion Order.[2]

I. The Paperwork Reduction Act Requires Agencies to Minimize the Burden on Respondents

The PRA requires the Commission to provide "a specific, objectively supported estimate of burden" imposed on respondents to the Office of Management and Budget ("OMB") when requesting approval for any new information collection requirement.[3] The PRA was enacted to "enhance the public benefit of the information collection process" and, in particular, to minimize the paperwork burden resulting from federal data collection efforts.[4] The term "burden" is

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1 *Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 78 Fed. Reg. 79448 (Dec. 30, 2013) ("*Notice of Public Information Collection*").

2 *In the Matter of Rural Call Completion,* WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-135 (rel. Nov. 8, 2013) ("Rural Call Completion Order" or "Order").

3 44 U.S.C. §3506(c)(1)(A)(iv).

4 *Tozzi v. EPA*, 148 F. Supp. 2d 35, 38 (D.D.C. 2001); 44 U.S.C. § 3501(1); *see Dole v. United Steelworkers of America*, 494 U.S. 26, 32 (1990) (Congress enacted the PRA in response to "outcries" from small businesses and other regulated entities that they "were being buried under demands for paperwork" by the federal government.).

broadly defined to include all of the "time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency."[5] OMB's regulations list several activities that must be considered when determining the burden associated with a particular information collection requirement including: "Developing, acquiring, installing, and utilizing technology and systems" for the purpose of collecting, validating, processing, maintaining, and disclosing information; "Training personnel to be able to respond to a collection of information;" "Searching data sources;" "Completing and reviewing the collection of information;" and "Transmitting, or otherwise disclosing the information."[6] All of these types of burdens will be incurred by covered providers in order to comply with the Commission's information requests contained in its rules for rural call completion.

II. The Commission Has Not Provided An Adequate Objective Basis For Its Estimated Times of Response By Covered Providers

The Commission has not yet submitted its request for approval of the information collection requirements in the final rural call completion rules to OMB. However, the Commission published an estimate of the burden of compliance with these information collection requirements in the Federal Register in December 2013.[7] The Commission's failure to provide objective support for its estimate of the response burden associated with its imposition of these new information collection requirements is inconsistent with the PRA.

In the *Notice of Public Information Collection* filed on December 30, 2013, the Commission estimates that the "Time per Response" will be "12 hours (average)."[8] However, in the earlier Supporting Statement the Commission filed with OMB in April 2013, the

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5 44 U.S.C. § 3502(2); 5 C.F.R. § 1320.3(b)(1).

6 5 C.F.R. § 1320.3(b)(1)(i)-(ix).

7 *Notice of Public Information Collection,* 78 Fed. Reg. 79448, 79449 (Dec. 30, 2013).

8 *Id.*

Commission estimated that the average response time per provider per report would be 16 hours.[9] The Commission has not provided a reasoned, objective explanation as to *why it reduced the estimated average response time by 25 percent* from 16 hours to 12 hours. This 25% reduction is unreasonable because in the Rural Call Completion Order released on November 8, 2013, the Commission increased the data items that must be reported as compared to the NPRM released in February 2013 which preceded and would have been the basis for the Supporting Statement.[10] Specifically, in addition to the information required in the NPRM, the Order "require[s] covered providers to record an indication whether the call attempt was completed to the incumbent local exchange carrier but signaled as busy, ring no answer, or unassigned number."[11] Moreover, the Commission does not describe how it arrived at either of these estimates. Further, the Commission has not provided any estimate for the non-recurring man-hours and expense that covered providers must invest to implement the systems and software revisions to comply with these data recording, retention, and reporting requirements. The non-recurring burden will be substantial as TelePacific demonstrates below.

III. The Burden Imposed On Covered Providers Is Many Times Greater Than Estimated By the Commission

TelePacific's analysis establishes that the Commission has significantly underestimated the burden that the rural call completion information collection, retention and reporting

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9 *See*, Commission's Supporting Statement filed with the request for approval of new information collection based on rules proposed in *In the Matter of Rural Call Completion*, WC Docket No. 13-39, Notice of Proposed Rulemaking, FCC 13-18, at 3 (rel. Feb. 7, 2013) ("Supporting Statement").

10 Rural Call Completion, WC Docket No. 13-39, Notice of Proposed Rulemaking, 28 FCC Rcd 1569, 1575, ¶ 20 (Feb. 2013) ("NPRM").

11 Rural Call Completion Order, at ¶ 43.

requirements adopted in the final rules will impose on covered providers and that the Commission's estimate is neither objectively supported nor supported by the record.

The Commission's final rules require "covered providers" to submit a certified report to the Commission once per calendar quarter that includes, for each full month in that quarter: (1) for each rural Operating Company Number ("OCN"), the OCN, the state, the total number of attempted interstate calls, the number of attempted interstate calls that were answered, and the number of attempted interstate calls that were not answered, reported separately for call attempts signaled as (a) busy, (b) ring no answer, or (c) unassigned number; (2) the same information described in (1), but for intrastate calls; (3) the same information regarding attempted interstate calls described in (1), but for non-rural OCNs in the aggregate; and (4) the same information regarding attempted intrastate calls described in (2), but for non-rural OCNs in the aggregate.[12] In addition, the Order requires covered providers to record and retain the following information for each call attempt to a rural OCN from subscriber lines for which the covered provider makes the initial long-distance call path choice: the calling party number; the called party number; date; time of day; whether the call is handed off to an intermediate provider and, if so, which intermediate provider; whether the call is going to a rural carrier and, if so, which rural carrier, as identified by its OCN; whether the call is interstate or intrastate; whether the call attempt was answered; and whether the call attempt was completed to the incumbent local exchange carrier but signaled as busy, ring no answer, or unassigned number.[13]

TelePacific cannot use its originating call records to report all of the requested data. First, originating call records do not contain information necessary to identify the OCN of the terminating carrier, primarily because the called number may have been ported to another

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12 47 C.F.R. § 64.2105.; Rural Call Completion Order, Appendix D, at ¶ 26.

13 47 C.F.R. § 64.2103.

carrier.[14] Second, TelePacific's originating switch records to not report three of the required categories of data (ring no answer, busy, and unassigned number).[15]

It will require a substantial investment of time, effort and technology for TelePacific to obtain terminating call records and develop an enhanced mediation process necessary to derive the ring no answer and termination by OCN information. TelePacific delivers all long distance calls between TelePacific's customers directly on its own network, without using third party carriers. However, all other long distance calls originated by its customers are handed off for termination to either (1) a terminating tandem provider with whom TelePacific is directly interconnected or (2) one of the three largest interexchange carriers ("IXCs").[16] TelePacific does not possess terminating call records for long distance calls delivered to a third party for termination.[17] Where TelePacific hands off long distance traffic directly to the terminating tandem provider, it may have an option, under contract or tariff, to obtain terminating call records. To obtain terminating call records for calls handed to other IXCs, TelePacific would have to seek them from the terminating tandem provider with whom TelePacific has no relationship. That relationship is between the IXC carrying the call and the terminating tandem provider. Moreover, its IXC current contracts do not provide an option for TelePacific to obtain terminating call records.[18] Because it does not obtain such terminating records on a regular basis today, TelePacific would have to seek all terminating call records solely for purposes of

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[14] Declaration of Nancy Lubamersky In Support of Paperwork Reduction Act Comments of U.S. TelePacific Corp., OMB Control No. 3060-1186, WC Docket No. 13-39 at ¶¶ 8, 15 (Feb. 28, 2014) ("Lubamersky Declaration") The Declaration is attached as Exhibit 1 to these Comments.

[15] Lubamersky Declaration, at ¶ 10.

[16] Lubamersky Declaration, at ¶ 13.

[17] Lubamersky Declaration, at ¶ 13.

[18] Lubamersky Declaration, at ¶ 13.

completing the Commission's quarterly reports.[19] The volume of this data is substantial. For example, in a recent seven day traffic sample, TelePacific's customers attempted to make over 3.5 million long distance calls to telephone numbers assigned to over 185 OCNs in California alone.[20]

Moreover, even if TelePacific were to obtain all necessary terminating call records, TelePacific does not have a process in place to compare the originating and terminating call records, as a part of the mediation process which is necessary to determine the information required by the FCC's rural call completion reports.[21] Thus, TelePacific estimates that it would take months to create the first quarterly report, and *cost more than $50,000 to develop an enhanced mediation process* alone.[22] This mediation process would have to be developed for the sole purpose of filing rural call completion reports. After a mediation process is developed, TelePacific estimates that it would take 50 hours to complete each quarterly report.[23] Thus, for each quarterly report, TelePacific estimates *it will take over four times the effort* to produce the report than the Commission estimated in the *Notice of Public Information Collection*.

IV. The Commission Vastly Underestimates the Total Annual Industry Cost of the Rural Call Completion Information Collection Requirements

The Commission estimated that the total annual cost of the information collection industry wide will be $793,750.[24] The Commission estimated there will be 225 respondents

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19 Lubamersky Declaration, at ¶ 13.

20 Lubamersky Declaration, at ¶ 13.

21 Lubamersky Declaration, at ¶ 16.

22 Lubamersky Declaration, at ¶ 17.

23 Lubamersky Declaration, at ¶ 18.

24 *Notice of Public Information Collection,* 78 Fed. Reg. 79448, 79449.

which means the Commission's estimated average annual cost per respondent is about $3,528.[25] This estimate vastly underestimates the overall industry cost as the cost to TelePacific alone will be at least $50,000 for the first year plus an estimated 200 man-hours per year.[26] Using the Commission's benchmark of $50 per hour for a GS14, step 1 level of employee,[27] TelePacific's estimate of 200 man-hours per year equates to an annual cost of at least $10,000 per year just to complete the quarterly reports, which far exceeds the Commission's most recent estimates.

Moreover, several other industry participants have estimated their own compliance costs to be vastly higher than the Commission's estimates. For example, AT&T has estimated its compliance costs alone at $3-$5 million or as much as six times the Commission's estimate for the entire industry.[28] CenturyLink has estimated that it will spend $7.5 to $10.5 million in non-recurring costs "to set up the storage hardware, develop the reporting, and pay the requisite license fees" and another $2.8 to $4.3 million in annually "including maintenance, software, and hardware support."[29] Sprint has estimated that it will spend $6.8 million per year to comply with the Commission's rules.[30] Frontier believes that AT&T's and CenturyLink's cost estimates provide reasonable proxies of compliance costs if proportionately scaled to the size of each

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25 Id.

26 Lubamersky Declaration, at ¶ 18 (50 hours per report times four reports annually).

27 Supporting Statement, at 4 (TelePacific expresses no view as to whether $50 per hour is reasonable for the type of employees needed for compliance.).

28 Letter of Brian J. Benison, AT&T, to Marlene H. Dortch, WC Docket No. 13-39, at n. 1 (October 23, 2013).

29 Letter of John E. Benedict, CenturyLink, to Marlene H. Dortch, *Notice of Ex Parte in Rural Call Completion*, WC Docket No. 13-39, at 1 (October 23, 2013).

30 *Petition for Reconsideration of Sprint Corporation*, WC Docket No. 13-39, at 7, n.9 (January 16, 2014) ("Sprint's estimate was for the recurring costs it would incur to deploy and maintain a platform to collect, sort, and store for a rolling 6-month period the call data proposed in the NPRM, and the additional employee costs to prepare the requisite reports and otherwise ensure compliance.").

carrier.[31] The Commission estimates that there will be 225 respondents and acknowledges that the "hourly burden on respondents may vary widely because of differences in size and organizational capacity."[32] Given the information on the burden on respondents already in the record it is evident that the Commission's estimates of both the estimated time per response and the overall annual cost to the industry are grossly understated.

The Commission's Staff Working Group on FCC Process Reform recently recommended that the Commission update its existing PRA guidance and training to focus on "the calculation of burden estimates" and "ensure that there are agency-wide standards or methods for calculating burden estimates in information collections."[33] These recommendations are prudent. In light of the substantial record evidence that the burden on covered providers and the industry as a whole greatly exceeds that presently estimated by the Commission, TelePacific urges the Commission to carefully revisit its estimates and either make substantial upward adjustments to the calculations used to arrive at the burden estimates or discuss with industry possible ways to reduce the cost and burden of the proposed reports before requesting approval from OMB.

V. Conclusion

TelePacific supports the Commission's efforts to ensure rural call completion. However, in light of the substantial record evidence discussed above, TelePacific encourages the Commission to reconsider the cost burdens associated with its proposed rural call completion rules, consider means to reduce such burdens, and revise the information it provides to OMB. Moreover, in light of the substantial cost impact, the Commission should reduce the burden on

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31 Ex parte letter from Michael Saperstein, Frontier, to Marlene H. Dortch, FCC, WC Docket No. 13-39, at 2 (October 23, 2013).

32 Supporting Statement, at 3.

33 Report on FCC Process Reform From The Staff Working Group Led By Diane Cornell at 31 (Feb. 14, 2014).

the industry overall and small providers in particular by granting COMPTEL's Petition For Reconsideration with respect to the small provider exemption. The Commission should reinstate the *100,000 subscriber* small provider exemption contained in the NPRM from the record keeping, reporting and retention requirements of the new rules as opposed to the "subscriber line" exemption it adopted in the final rules.[34]

Respectfully submitted,

/s/

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[34] COMPTEL Petition for Reconsideration, *In the Matter of Rural Call Completion*, WC Docket No. 13-39, at 3, 14 (filed Jan. 16, 2014).