

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

In the Matter of	)	
	)	
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

**NTCA–THE RURAL BROADBAND ASSOCIATION,  
THE NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.,  
THE EASTERN RURAL TELECOM ASSOCIATION, AND  
THE WESTERN TELECOMMUNICATIONS ALLIANCE  
REPLY TO OPPOSITIONS TO THE USTELECOM PETITION FOR  
RECONSIDERATION**

**I. INTRODUCTION AND SUMMARY**

NTCA–The Rural Broadband Association (“NTCA”), the National Exchange Carrier Association, Inc. (“NECA”), the Eastern Rural Telecom Association (“ERTA”), and the Western Telecommunications Alliance (“WTA”) (collectively, the “Rural Associations”)<sup>1</sup> hereby submit

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<sup>1</sup> NTCA represents nearly 900 rural rate-of-return regulated local exchange carriers (“RLECs”). All of NTCA’s members are full service telecommunications service and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

this reply<sup>2</sup> to oppositions filed in response to the petition for reconsideration submitted by USTelecom on April 4, 2013.<sup>3</sup> In that Petition, USTelecom seeks reconsideration and/or clarification of various reporting requirements contained in Section 54.313 of the Federal Communications Commission's (the "Commission") rules. The USTelecom Petition also discusses the Commission's responsibilities pursuant to the Paperwork Reduction Act ("PRA").<sup>4</sup>

Whereas the Rural Associations recognize that the Commission has an obligation to monitor the use of high-cost support, the record in this proceeding demonstrates that the Commission has overestimated the utility and underestimated the time and cost of compiling substantial portions of the information required by FCC Form 481. The reporting requirements included in Form 481 will impose substantial and unnecessary burdens on small providers, burdens which the Commission has failed to mitigate despite its responsibilities to do so pursuant to the PRA. The Commission should suspend the application of FCC Form 481 until such time as a more thorough and realistic evaluation of the requirements is conducted.<sup>5</sup>

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NECA is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). ERTA is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River. WTA is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River.

<sup>2</sup> Petition for Reconsideration of Action in Rulemaking Proceedings, Public Notice, Report No. 2975 (released May 1, 2013).

<sup>3</sup> The United States Telecom Association's 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").

<sup>4</sup> Paperwork Reduction Act of 1995, Public Law No. 104-13, 109 Stat. 163 (May 22, 1995), codified at 44 U.S.C. § 3501, *et seq.*

<sup>5</sup> As a related matter, NTCA applauds the Commission for its recent action suspending the application of the five-year service quality improvement plan for RLECs until July 1, 2014. *Connect America Fund*, WC Docket No. 10-90, Order, DA 13-1115 (released May 16, 2013).

The Commission should modify the Tribal engagement provisions of Section 54.313(a)(9) to balance the important needs of Tribes with reasonable management of the reporting burdens. If the objective is to ensure that residents on Tribal lands are receiving the same quality of service as other customers of the carrier in question, a certification that reasonable efforts have been made to deliver service to Tribal lands that is reasonably comparable in price and service quality to that provided by an RLEC in the remainder of its service area, when paired with other information that is likely to be contained in Form 481, should provide the necessary assurance that this objective is being served.

Finally, the Commission should clarify which service quality and consumer protection provisions are applicable pursuant to the certification provisions of Section 54.313(a)(5).

**II. THE USTELECOM PETITION, ALONG WITH OTHER PAPERWORK REDUCTION ACT COMMENTS IN THE RECORD, DEMONSTRATE THAT THE COMMISSION SHOULD RECONSIDER THE BURDENS THAT FORM 481 WILL IMPOSE ON ETCS.**

Both the USTelecom Petition, and comments recently filed in regards to the PRA burdens associated with FCC Form 481,<sup>6</sup> demonstrate that reconsideration of the reporting requirements

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While that requirement is therefore not applicable for 2013, NTCA and its member companies remain concerned that the burden of this requirement, which will fall within the scope of Form 481 each year for purposes of submission, remains unjustified. As noted in comments filed in this proceeding by the Associations on April 26, 2013, these five-years plans will not serve as a reliable indicator of future investment, as, among other things, RLECs are faced with substantial uncertainty due to the unpredictable nature of the Quantile Regression Analysis-based caps on high-cost support. They also require the collection and preparation of information (such as detailed maps) that will impose significant burdens without providing commensurate benefit. Despite the welcome near-term relief provided through suspension of the five-year plan filing requirement for 2013, these broader concerns regarding the five-year plans, and other concerns highlighted in the April 26 filing are largely unresolved, and thus NTCA hereby incorporates those arguments into this filing.

<sup>6</sup> See, comments of NTCA, NECA, ERTA, ITTA & USTelecom (“the Associations”), WC Docket No. 10-90 (filed Apr. 26, 2013); comments of Cellular Network Partnership d/b/a Pioneer Cellular, *et al.*, WC Docket No. 10-90 (filed Apr. 26, 2013); comments of CenturyLink,

is warranted. This should include both a more thorough and accurate estimate of the burden that the information collection will impose, along with a more in-depth analysis of whether the reporting burden is justified by the benefit the data will provide to the Commission if collected.

In the Federal Register Notice seeking comment on the burden associated with Form 481, the Commission estimated that each respondent will expend between .5 hours to 100 hours to complete the information collection.<sup>7</sup> In the instructions for completing Form 481, however, the Commission provided a burden estimate of 20 hours.<sup>8</sup> Such a wide spread in the Commission's own estimates makes it appear that an accurate assessment of the burdens the new reporting requirements will place on companies has eluded the Commission.

Indeed, a simple read-through of the form reveals that an estimate of 20 hours is grossly understated. As the USTelecom Petition states, completing Form 481 will require eligible telecommunications carriers ("ETCs") to:

engage and train a wide range of personnel—including corporate executives, business planning teams, engineers, network managers, regulatory advisors, customer service personnel, and pricing experts—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

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WC Docket No. 10-90 (filed Apr. 26, 2013); comments of John Staurulakis, Inc, WC Docket No. 10-90 (filed Apr. 26, 2013); comments of Texas Statewide Telephone Cooperative, Inc. ("TSTCI"), WC Docket No. 10-90 (filed Apr. 26, 2013); comments of AT&T, WC Docket No. 10-90 (filed Apr. 26, 2013); comments of the Western Telecommunications Alliance, WC Docket No. 10-90 (filed Apr. 26, 2013); comments of the Blooston Rural Carriers, WC Docket No. 10-90 (filed Apr. 26, 2013); comments of US Cellular, WC Docket No. 10-90 (filed Apr. 26, 2013).

<sup>7</sup> *Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 78 Fed. Reg. 12750 (published Feb. 25, 2013) ("Notice"), p. 12751.

<sup>8</sup> Draft FCC Form 481 -Carrier Annual Reporting, available at [http://www.usac.org/\\_res/documents/hc/pdf/fcc/DRAFT-FCC-Form-481.pdf](http://www.usac.org/_res/documents/hc/pdf/fcc/DRAFT-FCC-Form-481.pdf) (Draft FCC Form 481), p. 1.

actually complete and file the Form 481. These efforts would take an average ETC considerably longer than 20 hours.<sup>9</sup>

Even worse, the Commission appears not to have even considered whether ETCs, particularly small providers, even have the in-house resources available to complete the form.<sup>10</sup> Most RLECs have one or at most two employees with the experience or training necessary to comply with Commission reporting requirements, and many must rely on expert consultants to do so.<sup>11</sup> This further exacerbates the burden on these carriers, particularly in an era of reduced resources that have stretched RLECs' operating budgets.

Moreover, while 100 hours (if not an *underestimate*) may not be an overwhelming burden for the nation's largest communications providers, it will impose an unjustified burden on RLECs.<sup>12</sup> With their small staffs, 100 hours, just over two full work weeks for one employee, is a significant use of resources.

Unfortunately, there is no indication in the record that the Commission considered alternatives that would enable it to accomplish the goals of Section 54.313 in a manner that also

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<sup>9</sup> USTelecom Petition, p. 29. *See also*, JSI April 26 comments, p. 2 (stating that "The FCC vastly underestimates the burden of Form 481 for Rate-of-Return ETCs").

<sup>10</sup> *See*, USTelecom Petition p. 28 ("Equally unclear is whether the Commission's estimates include all the categories of employees and third-party consultants that ETCs would need to engage in order to complete the proposed information collection and all the time required of each employee or consultant. Also unexplained is the Commission's apparent assumption that carriers can rely exclusively on existing in-house resources in collecting and reporting the required information.").

<sup>11</sup> As the Blooston Rural Carriers note, the mapping provisions of the 54.313(a) five year service quality improvement plan will require most RLECs to engage outside consultants. Blooston Rural Carriers, p. 3 (stating that "because most rural ROR ETCs do not have the in-house ability to make maps, this requirement will require them to expend considerable resources to hire outside technical experts who are capable of performing this function. Accordingly, the Commission underestimates the time and cost of compliance on ROR ETCs.").

<sup>12</sup> USTelecom is correct that "the burdens on small entities would be proportionality greater than the already sizable burdens imposed on larger ETCs." USTelecom Petition, p. 31.

minimizes the burden on small providers, such as RLECs. Options such as “differing compliance or reporting requirements”<sup>13</sup> for smaller providers, “simplified reporting requirements” and like approaches, as laid out in the PRA, do not appear to have been considered in this instance. Nor does it appear that the Commission heeded direction from the Administration that all federal agencies take steps to minimize the reporting burdens applicable to small businesses.<sup>14</sup>

The Commission should therefore adopt the USTelecom Petition’s suggestion, seconded in full by the record in this proceeding, that it “go back to the drawing board” and reconsider these reporting requirements. This should include an evaluation of alternatives that would minimize the burden on small entities, along with a consideration of whether the information sought via Form 481 will have any “practical utility” as it relates to the Commission’s efforts to carry out its duties. Until such time as that evaluation is complete, the enforcement of Form 481 should be suspended.

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<sup>13</sup> 44 U.S.C. § 3506(c)(3)(C).

<sup>14</sup> In June of 2012, the Executive Office of the President released a memorandum discussing Executive Order 13610, which required federal agencies to eliminate unjustified regulatory requirements, including unnecessary reporting and paperwork burdens. In that memorandum, the Administrator of the Office of Information and Regulatory Affairs outlined several steps that federal agencies could take to reduce the paperwork and reporting burdens on small businesses. Among these were the use of short-form options for the collection of data that should be considered here, particularly as applied to small businesses. *Memorandum for the Heads of Executive Departments and Agencies*, Executive Office of the President (released June 22, 2012) (“Reporting Burdens Memo”).

### III. THE COMMISSION SHOULD MODIFY THE TRIBAL ENGAGEMENT PROVISIONS OF 54.313 TO BALANCE THE IMPORTANT NEEDS OF TRIBAL CONSUMERS AND THE BURDENS OF COMPLIANCE.

The Associations' members are committed to providing communications services to Tribal lands that are "reasonably comparable" in both price and quality to that available to consumers in urban areas. Tribal consumers, like many other rural consumers, have historically been underserved in some areas, and every effort must be made to reach these consumers – like any others – with high-quality network facilities.

Unfortunately, the Tribal engagement provisions of Section 54.313(a)(9) are likely to divert resources away from RLECs' efforts to improve service to any consumers. As the Associations stated in a recent filing,<sup>15</sup> the reforms contained in the *USF/ICC Transformation Order*<sup>16</sup> have caused a significant "tightening of the belt" for RLECs operating with limited resources in high cost rural areas. As a result, each additional reporting obligation imposed on RLECs will reduce the extent to which scarce financial and staff resources can be devoted to serving rural and Tribal communities and meeting the universal service goals of the Order. Put another way, the resources necessary to comply with the Tribal engagement requirements, and to comply with the reporting obligations as to these engagement efforts, would be far better spent on *improving and expanding network facilities* that can actually make a real difference to these

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<sup>15</sup> Comments of NTCA, NECA, ERTA, ITTA & USTelecom ("the Associations"), WC Docket No. 10-90 (filed Apr. 26, 2013), p. 9.

<sup>16</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 – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) (*USF/ICC Transformation Order*).

communities. Moreover, it's difficult to see how providing the information contained in Section 54.313(a)(9) to the Commission will assist policymakers in improving service to these areas, which is the goal of the *Transformation Order*.

This is not to say that the Commission should not take additional steps to ensure that reasonably comparable levels of service are being delivered at reasonably comparable rates to Tribal areas. But such an effort should be tailored to solve the problem where it is perceived to exist, rather than casting the net widely in the hope of sweeping up those who may have neglected investments in Tribal areas in the past. To this end, in lieu of the currently contemplated engagement process, the Commission should permit each carrier to certify that they have taken reasonable steps to deliver services to Tribal lands that are reasonably comparable in price and quality to those offered in other portions of that carrier's serving area. Other information required to be gathered by Section 54.313 and reported on Form 481, such as local service rates and service quality information, would help to verify such assertions. In turn, carriers that can make such a certification are by definition meeting the goal of Section 54.313(a)(9), which is to ensure that all efforts are being made to deliver high-quality, affordable communications services to Tribal lands. In lieu of a potentially burdensome process where substantive goals are already being met, the Commission should use the certification to isolate where the substantive goals are *not* being met, and then require information *in those specific cases* about attempts at Tribal engagement through the kinds of initiatives outlined on the draft of Form 481.



#### **IV. THE COMMISSION SHOULD CLARIFY THE SERVICE QUALITY AND CONSUMER PROTECTION CERTIFICATION PROVISIONS OF FORM 481 AND ITS ACCOMPANYING INSTRUCTIONS.**

As the USTelecom Petition notes, the service quality and consumer protection provisions of Form 481 do not specify which service quality standards or consumer protection rules are applicable.<sup>17</sup> While companies have long been required to comply with service quality standards and consumer protection rules for voice services, there is a lack of common understanding as to what rules apply to largely unregulated broadband Internet access services. Thus, it would be unreasonable to require RLEC managers to certify as to their companies' compliance with standards they may not even know are considered applicable by the FCC. In addition, USTelecom is correct that, absent clarification, "an ETC's failure to achieve a particular service quality metric specified under state commission rules means that the ETC is not *complying with* 'applicable service quality standards' and thus is disqualified from receiving universal service support."<sup>18</sup> As USTelecom suggests, the Commission could clarify this provision by allowing ETCs to word their certifications on this requirement in a manner that is applicable to the state in which they provide service.

#### **V. CONCLUSION**

The Commission should suspend the application of FCC Form 481 until such time as a thorough and realistic evaluation of the reporting requirements contained therein is conducted. The Commission should modify the Tribal engagement provisions of Section 54.313(a)(9) as described herein, to balance the important needs of Tribal areas with the burdens imposed on carriers of all kinds. Finally, the Commission should clarify which service quality and

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<sup>17</sup> US Telecom petition, pp. 20-26.

<sup>18</sup> *Id.*, p. 23.

consumer protection provisions are applicable pursuant to the certification provisions of Section 54.313(a)(5).

Respectfully Submitted,

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