

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Study Area Boundary Maps Reported in Esri Shapefile Format)	OMB Control Number: 3060-XXXX ICR Reference No: 201212-3060-006

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

I. INTRODUCTION AND SUMMARY

The United States Telecom Association (“USTelecom”) respectfully submits these comments on the Paperwork Reduction Act (“PRA”) implications of the information collection proposed in the Wireline Competition Bureau’s (“Bureau”) *Study Area Boundary Order*.¹ As detailed below, requiring that all incumbent local exchange carriers (“ILECs”) “submit certified study area boundary data in esri shapefile format” would run afoul of the PRA, the primary purpose of which is “to reduce, minimize and control burdens and maximize the practical utility and public benefit” of information collected by a federal agency.²

First, the proposed information collection violates the PRA by seeking study area boundary data from price cap carriers without a demonstrated need for such data. The purported justification for the proposed information collection is that ILEC study area boundary data are necessary to enforce the Commission’s high-cost loop support (“HCLS”) benchmarking rule and

¹ See *Connect America Fund; High Cost Universal Service Support*, Report and Order, 27 FCC Rcd 13528, DA 12-1777 (rel. Nov. 6, 2012) (“*Study Area Boundary Order*”).

² *Id.* ¶ 1; 5 C.F.R. § 1320.1.

its unsubsidized competitive overlap rule.³ However, by their plain language, these rules only apply to rate-of-return ILECs, as the Bureau itself acknowledges. Nor would the data be appropriate for Connect America Fund Phase II cost modeling, which requires a different construct than the requested data as it will be based on network boundaries, such as wire centers. Absent a demonstrated need for study area boundary data from price cap ILECs, the proposed collection of such data does not have any practical utility as required by the PRA.

Second, the Bureau's PRA analysis severely underestimates the burden associated with collecting, reviewing, submitting, and certifying study area boundary data in esri shapefile format. As a threshold matter, although couched as an information collection at the study area level, the *Study Area Boundary Order* purports to require ILECs to produce and certify shapefiles for each *exchange area* within their study areas. While there are approximately 2,000 study areas in the United States, there are more than 20,000 exchange areas for which esri shapefiles would be required under the *Study Area Boundary Order*. Thus, the data subject to the proposed information collection are voluminous, an important fact that the Bureau's PRA analysis does not even acknowledge. Even more significant than the volume of data, the required level of accuracy is extreme and inconsistent with any reasonable measure of cost, much less the unrealistically low estimate provided in the PRA analysis. Companies have no need to maintain boundary data at such levels of accuracy and extensive field studies would be required to achieve accuracy to within 40 feet. By way of comparison, there are several geospatial road databases available today from providers such as Google, OpenStreetMap, and TomTom that do not place road segments with an accuracy of +/- 40 feet, despite the fact that those providers reportedly have multimillion dollar annual budgets dedicated to the creation of

³ *Study Area Boundary Order* ¶¶ 2-5.

accurate maps.⁴ Perhaps an even better comparison is with the National Broadband Map, which was produced with a \$300 million dollar budget and only achieved accuracy to 500 feet from the nearest road segment.

Furthermore, the *Study Area Boundary Order* erroneously assumes that ILECs either already have available or readily can create exchange area boundary data in an esri shapefile format “at minimal additional cost.”⁵ However, the Bureau does not provide any support for this assumption, which is belied by the record evidence.⁶ There historically has been no need for ILECs to maintain accurate exchange area boundary records to the level required by the *Study Area Boundary Order*. Nor do most ILECs maintain such records in esri shapefile format, and the conversion of paper or even digital exchange area boundary records into this format is not as simple as the Bureau presupposes. In short, the Bureau’s estimates of the time and cost involved in complying with the proposed information collection – an average of 26 hours and \$489 per respondent – are grossly understated because they are based on a wholly unrealistic view of the burdens required for compliance.⁷

⁴ In many instances a road segment is displayed differently by each mapping source.

⁵ *Study Area Boundary Order* ¶ 9.

⁶ See Letter from Mark Guttman, CostQuest Associates, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket 10-90 (filed July 2, 2012) (“CostQuest Ex Parte”).

⁷ See *Information Collection Being Submitted to the Office of Management and Budget for Emergency Review and Approval*, 77 Fed. Reg. 75159, 75160 (Dec. 19, 2012) (“PRA Notice”). The *PRA Notice* estimates that each ILEC will take 26 hours to comply with the information collection and that there will be 1,443 respondents. See *id.* Using these figures, the total annual hour burden for all respondents should be 37,518 hours. But the *PRA Notice* inexplicably estimates that the “Total Annual Burden” will be 7,924 hours. *Id.*; see also “View ICR – Agency Submission,” Office of Information and Regulatory Affairs, ICR Reference No: 201212-3060-006, http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201212-3060-006 (same). This translates to 5.5 hours per response, which is only 21% of the 26 hour burden estimate, which

Third, contrary to the requirements of the PRA, the Bureau did not attempt to minimize the burden of the proposed information collection on respondents, particularly for small business entities. The Bureau could have minimized the regulatory burdens by collecting exchange area boundary data only from those ILECs for which such data are reasonably necessary.

Alternatively, exchange area boundary data are available from third-party vendors or from state public service commissions that determine and control exchange area boundaries, and the Bureau could obtain such data directly from these sources, which would obviate the need for the proposed information collection. Although the Bureau purports to reduce the information collection burden by permitting state entities to submit the required data, the benefits of this option are illusory because: (i) state involvement is “voluntary”; and (ii) ILECs must certify to the accuracy of any state-submitted boundary information, which likely requires that the ILEC review, analyze, and verify such information before providing the requisite certification. And, by failing to make any distinctions in the information being collected based on an ILEC’s size, the Bureau has not taken any steps to reduce the burden of the proposed information collection on small business entities, as required by the PRA.

The proposed information collection is also unduly burdensome in that it requires ILECs to certify the accuracy of study area boundaries despite the fact that ILECs are not the arbiters of such boundaries. Indeed, boundary disputes between neighboring ILECs are commonly taken to state commissions to resolve, which suggests that those commissions rather than the companies are the entities that can attest to the accuracy of study area boundaries. In fact, the Commission has a greater role in the establishment of study area boundaries than do the ILECs. ILECs are

(footnote cont’d.)

itself is grossly understated. The Bureau did not explain why this discrepancy exists, which is yet another reason why OMB cannot approve the proposed information collection.

not free to alter their study area boundaries and, indeed, Commission approval is required even after a state commission has altered a study area boundary.

Finally, the proposed information collection does not qualify for streamlined, emergency processing. The PRA sets forth specific circumstances that warrant emergency OMB processing of a proposed information collection, none of which is present here. In fact, the Commission provides no explanation for why the proposed information collection is entitled to emergency OMB processing, and an agency cannot circumvent the PRA process merely by making a request for emergency processing without more explanation.

II. THE COLLECTION OF STUDY AREA BOUNDARY DATA FROM PRICE CAP CARRIERS WOULD VIOLATE THE PRA BECAUSE SUCH DATA WOULD HAVE NO PRACTICAL UTILITY.

In order to pass muster under the PRA, an information collection must have “practical utility.”⁸ The PRA defines “practical utility” as “the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion.”⁹ OMB’s rules clarify that “practical utility means the actual, not merely the theoretical or potential, usefulness of information.”¹⁰ The rules also require that an agency establish a “plan for the efficient and effective management and use of the information to be collected.”¹¹

Here, the proposed information collection fails the practical utility test by seeking to collect exchange area boundary data from price cap ILECs without any demonstration that such

⁸ See 5 C.F.R. § 1320.1.

⁹ 44 U.S.C. § 3502(11).

¹⁰ 5 C.F.R. § 1320.3(l).

¹¹ 5 C.F.R. § 1320.8(a)(7) (calling upon the agency to provide for a “plan for the efficient and effective management and use of the information to be collected.”).

data are necessary to or would ever be used in the Commission’s performance of its regulatory functions. According to the Bureau, the Commission needs ILEC exchange area boundary data to enforce the Commission’s HCLS benchmarking rule and its unsubsidized competitive overlap rule.¹² The benchmarking rule limits the amount of capital costs and operation expenses a rate-of-return carrier can recover for HCLS.¹³ Under the unsubsidized competitive overlap rule, a rate-of-return carrier’s universal service support is phased out where unsubsidized competitors offer voice and broadband services throughout 100 percent of the rate-of-return carrier’s study area.¹⁴

By their plain language, the rules that purportedly justify the proposed information collection apply only to rate-of-return ILECs.¹⁵ Even the Bureau acknowledges as much.¹⁶ Exchange area boundary data of price cap ILECs are not needed to enforce rules directed to rate-of-return ILECs, and the Bureau does not claim otherwise.

¹² *Study Area Boundary Order* ¶¶ 2-5.

¹³ *Id.* ¶ 3; *see also Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶¶ 210-226 (2011) (“*USF/ICC Transformation Order*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

¹⁴ *Study Area Boundary Order* ¶ 5; *USF/ICC Transformation Order* ¶¶ 281-284.

¹⁵ *See, e.g., USF/ICC Transformation Order* ¶ 210 (noting that the framework to limit the recovery of capital costs and operation expenses by rate-of-return carriers “will create structural incentives for rate-of-return companies to operate more efficiently and make prudent expenditures”); *see id.* ¶ 281 (“we do not intend to continue to provide current levels of high-cost support to rate-of-return companies where there is overlap with one or more unsubsidized competitors”).

¹⁶ *Study Area Boundary Order* ¶ 3 (explaining the methodology used to “generate a capital expense limit and an operating expense limit for each rate-of-return carrier study area based on the characteristics of the study area”); *id.* ¶ 5 (noting the rule to phase out a rate-of-return carrier’s universal service support due to the overlap by unsubsidized competitors “throughout 100 percent of a rate-of-return carrier’s study area”).

Without a demonstrated need for price cap ILECs' exchange area boundary data, the proposed information collection would not have any practical utility as required by the PRA. In multiple decisions, OMB has disapproved of information collections because the agency failed to demonstrate the "practical utility" of the collection in question. For example, OMB previously disapproved of the Commission's information collection requirement that would have required wireline and wireless carriers to maintain emergency backup power for their communications networks. OMB concluded that the Commission failed to "demonstrate[], given the minimal staff assigned to analyze and process this information, that the collection ha[d] been developed by an office that ha[d] planned and allocated resources for the efficient and effective management and use of the information collected."¹⁷ Similarly, OMB disapproved of an Environmental Protection Agency ("EPA") information collection because the agency's "practical utility" showing was not commensurate with the burden of the collection.¹⁸

Here, the Bureau has similarly failed to demonstrate that it has any need for or that it will make any use of exchange area boundary data from price cap ILECs. As a result, the proposed information collection would not have practical utility in violation of the PRA.

III. THE BUREAU'S PRA ANALYSIS UNDERESTIMATES THE SUBSTANTIAL BURDENS OF THE PROPOSED INFORMATION COLLECTION.

The PRA is a critical part of the regulatory process, enabling federal agencies to appreciate fully and weigh carefully the burdens and benefits of information collections on

¹⁷ See *Notice of Office of Management and Budget Action*, ICR Reference Number 200802-3060-019, at 1 (November 28, 2008) (citing 44 U.S.C. § 3506(c)(3)(H)).

¹⁸ See *Notice of Office of Management and Budget Action*, ICR Reference No: 199805-2040-001, at 1 (Sept. 11, 1998).

industry and the public.¹⁹ The analysis is essential to ensuring that the central purpose of the PRA – to “*minimize the paperwork burden*” for reporting entities – has been met.²⁰ However, an agency does not and cannot fulfill its PRA responsibilities unless the agency accurately considers the burdens of its proposed rules.²¹

Here, the Commission’s PRA analysis fails to capture the substantial burdens imposed by the proposed information collection. Specifically, the Commission’s analysis erroneously assumes that accurate boundary data are readily available and severely underestimates the time and resources necessary to collect, analyze, update, verify, submit, and certify such data in esri shapefile format.

The proposed information collection requirements mandate that ILECs submit esri shapefiles of their study area and exchange area boundaries to a Commission-sponsored website.²² Each submitted shapefile must represent a single study area in each state that the ILEC serves, and the shapefile for each study area must depict each exchange within the study

¹⁹ The stated purposes of the PRA include: (1) minimizing the burden of federal paperwork on individuals, small businesses, state and local governments, and others; (2) ensuring the greatest public benefit from federal information; (3) coordinating federal information resources management policies; and (4) improving the quality and use of federal information. 44 U.S.C. § 3501(1).

²⁰ 44 U.S.C. § 3501(1) (emphasis added).

²¹ The term “burden” is 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.” 44 U.S.C. § 3502(2). The burden-hour estimate for an information collection is a function of: (1) the frequency of the information collection; (2) the estimated number of respondents; and (3) the amount of time that the agency estimates it takes each respondent to complete the collection.

²² *Study Area Boundary Order* ¶ 8.

area as a closed, non-overlapping polygon.²³ Further, each exchange-area polygon must constitute one record in the shapefile and must contain associated data with certain attributes used to identify the exchange, such as the exchange name and CLLI (Common Language Location Identifier) code.²⁴

While couched as an information collection at the study area level, the *Study Area Boundary Order* actually requires considerably more granular data – namely, the boundaries of every exchange area within the approximately 1,400 ILEC study areas in the United States.²⁵ With more than 20,000 exchange areas in the United States, the data subject to the proposed information collection are voluminous. However, the Bureau’s PRA analysis largely glosses over this important fact in assessing the burdens of the proposed information collection.

The *Study Area Boundary Order* is predicated on the assumption that ILECs either already have available or readily can create study area boundary data and exchange area boundary data in an esri shapefile format “at minimal additional cost.”²⁶ However, the Bureau cites to nothing in the record to support this assumption.

In fact, exchange area boundaries generally are not clearly defined or recorded with a degree of accuracy above best efforts as needed in an ILEC’s records. In densely populated areas, exchange areas are adjacent to each other, and the boundaries can run along a road or property line. In rural areas where exchange areas may be separated by a mountain range or a

²³ *Id.*

²⁴ *Id.*

²⁵ According to the Universal Service Administrative Company (“USAC”), there are more than 2,000 high cost study areas in the United States, 70 percent of which are served by ILECs. See USAC 2010 Annual Report at 9.

²⁶ *Study Area Boundary Order* ¶ 9.

body of water, the boundary line could be drawn at the last customer, or placed on the top of the mountain or at a location equally spaced between the last customers for each of the respective exchange areas.

Because an exchange area only has relevance for purposes of ensuring that customers located within that exchange are charged the correct tariffed rate for local service, there generally has been no need for an ILEC to create or maintain records detailing the precise boundaries of each of its exchange areas. Because exchange area boundaries are considered accurate as long as they enclose all the customers served by a wire center in that particular exchange area, many ILECs maintain only paper records or rudimentary maps of their exchange area boundaries. It would undoubtedly take considerable time and resources for these ILECs to verify the accuracy of these records and convert these records into an esri shapefile format.²⁷

Nor does the Bureau cite to anything in the record to support its view that ILECs “that maintain spatial data on study area boundaries in another format should be able to convert such data to an esri shapefile format.”²⁸ As the record makes clear, even for those ILECs that have digital records of their exchange area boundaries, such records may not be “built in a way consistent with geospatial analysis.”²⁹ The time and resources necessary to convert such records in order to develop spatial data would be substantial, particularly if the ILEC has to engage geographic information system (“GIS”) “specialists and engineering consultants” as noted by the Bureau.³⁰

²⁷ *Id.* at 5-6.

²⁸ *Study Area Boundary Order* ¶ 12.

²⁹ CostQuest Ex Parte at 5.

³⁰ *Study Area Boundary Order* ¶ 12.

For ILECs that maintain spatial data on exchange area boundaries in formats other than esri shapefiles, the *Study Area Boundary Order* requires that these ILECs convert such data to an esri shapefile format.³¹ The resources required to do so must be taken into account, particularly given the Bureau's acknowledgment that "[c]ertain formats may be easier to convert to esri shapefiles than others."³²

In assessing the burdens associated with the proposed information collection, the Bureau estimates that it would take an ILEC an average of 26 hours and \$489 to comply.³³ It is unclear how the Bureau arrived at these figures. Equally unclear is whether the Bureau's estimates include all the categories of employees and third-party consultants that ILECs would need to engage in order to complete the proposed information collection and all the time required of each employee or consultant. Also unexplained are the Bureau's assumptions regarding the extent to which an ILEC can rely on in-house versus external resources in preparing and submitting exchange area boundary data in esri shapefile format.³⁴

Regardless of the actual assumptions underlying its estimates, the Bureau has substantially misjudged the burdens associated with its proposed information collection. In determining the burden associated with a particular information collection, the Bureau must consider the time, effort, and cost required to train personnel to respond to the collection; to

³¹ *Id.*

³² *Id.* n.26.

³³ *See PRA Notice at 75160.*

³⁴ USTelecom does not have a copy of any supporting statement that the Bureau may have prepared in developing its burden estimates, and no such statement is publicly available on OMB's website. It is doubtful that even an ILEC with existing in-house resources could produce the exchange boundary data at an average cost of \$18.81/hour (\$489 for 26 hours of work).

acquire, install, and develop systems and technology to collect, validate, and verify the requested information; to process and maintain the required information; and to provide the required information.³⁵ None of these tasks is reflected accurately in the Bureau's burden estimates.

For any ILEC that does not currently maintain study area or exchange area boundary data in esri shapefile format – which USTelecom believes is the vast majority of ILECs – significant time and resources would be required to design and implement a compliant information collection and reporting process. Specifically, ILECs would need to engage and train a wide range of personnel—including GIS experts, engineers, network managers, regulatory advisors, and other employees and consultants—who would be required to: (i) review existing exchange area boundary records, if any; (ii) investigate the accuracy of any existing exchange boundary records; (iii) update such records to reflect any changes in exchange area boundaries and include any missing boundary data; (iv) convert any existing exchange area boundary records into esri shapefiles or, for ILECs that do not have records that can be converted, develop esri shapefiles from scratch; (v) develop a verification process that will enable the ILEC to provide the requisite certification regarding the accuracy of its exchange area boundary data; (vi) upload the esri shapefiles onto the Commission's website; and (vii) establish an ongoing exchange area boundary monitoring process. These efforts would take an average ILEC considerably longer than 26 hours and cost considerably more than \$489.³⁶

³⁵ 5 C.F.R. § 1320.3(b)(1).

³⁶ The Bureau acknowledges that, for those ILECs “without internal GIS resources,” it would be necessary to retain “GIS specialists and engineering consultants ... to provide expertise and develop spatial data” in order to comply with the *Study Area Boundary Order*. *Id.* ¶ 12. It is illogical to assume – as the Bureau apparently does – that an ILEC could procure such specialists or consultants at an average cost of \$489.

The Bureau's burden estimates are unrealistic even for an ILEC that currently maintains its exchange area boundary data in esri shapefiles. First, ILECs that may have exchange area information in esri shapefiles have collected and maintained this information for their own business purposes, not to comply with any regulatory obligation.³⁷ Thus, substantial time and effort would be required for an ILEC to review and verify the accuracy of its existing boundary data. This would be extremely burdensome given the requirement that the data be accurate to +/- 40 feet, which is a far greater level of accuracy than is currently needed for any business purpose, and would require extensive field studies to achieve. This review and verification process is particularly critical given the Bureau's requirement that an "official of the firm, such as a corporate officer, managing partner, or sole proprietor" must provide an electronic signature certifying that he or she has examined the study area boundary shapefile and that "to the best of his or her knowledge, information, and belief, the data contained in the shapefile are accurate and correct."³⁸

Second, for larger ILECs that may have exchange area boundary data in esri shapefiles, they may have to review hundreds, if not thousands, of exchange area boundary shapefiles and underlying records in order to comply with the *Study Area Boundary Order*. It is improbable to believe that such a review could be completed in only 26 hours at a cost of only \$489, as the Commission's PRA analysis assumes.

³⁷ Even ILECs that currently use GIS will have different street landbase spatial references, depending on whether they use a commercial or internally developed landbase. As a result, the verification and reconciliation process of gaps, overlaps, and other discrepancies with other ILECs would be more difficult than the *Study Area Boundary Order* assumes.

³⁸ *Study Area Boundary Order* ¶ 19.

Third, the *Study Area Boundary Order* imposes ongoing information collection burdens on ILECs even after they have submitted their certified data to the Bureau. Specifically, ILECs are required to make “refinements” to their data at the direction of the Bureau and to “provide updated data when their study area boundaries change.”³⁹ In addition, every two years, an ILEC must “examine,” through the Commission’s web interface, “the boundary data previously submitted, and then either certify that they are correct or submit revised data.”⁴⁰ In order to comply with these ongoing regulatory responsibilities, all ILECs must create a process and devote the resources necessary to track, record, and report changes to its exchange area boundaries – an effort that alone would require considerably more than 26 hours and cost well in excess of \$489.

In short, the Commission’s burden estimates are not realistic. An accurate reflection of the time and resources necessary for ILECs to comply with the *Study Area Boundary Order* would confirm that the proposed information collection is extremely burdensome.

IV. THE BUREAU IGNORED THE PRA’S MANDATE TO MITIGATE THE BURDEN OF THE PROPOSED INFORMATION COLLECTION, PARTICULARLY ON SMALL ENTITIES.

The Bureau’s proposed information collection violates the PRA’s mandate to reduce the burdens of collection requirements, particularly on small entities. Consistent with the underlying purpose of the PRA to “*minimize the paperwork burden*” for reporting entities, the Bureau was required to consider reasonable, less burdensome alternatives.⁴¹ In addition, the Bureau was

³⁹ *Id.* ¶ 20, n.49 & ¶ 23; *see id.* ¶ 23 (requiring ILECs “to submit updated data by March 15 of each year, beginning the year following the initial data submissions, showing any changes made by December 31 of the previous year”)

⁴⁰ *Id.* ¶ 23.

⁴¹ 44 U.S.C. § 3501(1) (emphasis added); *see also* 5 C.F.R. § 1320.1.

required to reduce the paperwork burden to the extent practicable “with respect to small entities.”⁴² Here, the Bureau did not comply with either of these requirements.

First, the Bureau did not adequately “reduce, minimize and control [the] burdens” associated with the proposed information collection, as required by the PRA.⁴³ Rather than collecting boundary data from all ILECs, the Bureau could have minimized the regulatory burdens of the information collection by requiring such data only from those ILECs for which the data are reasonably necessary for the Commission to perform its regulatory functions. For example, to the extent ILEC study area boundary data are necessary to enforce the Commission’s HCLS benchmarking rule, the Bureau could have required only rate-of-return carriers that either have triggered or are likely to trigger the capital cost and operation expense limits for HCLS. When it originally adopted the methodology for implementing this rule in April 2012, the Bureau estimated that only approximately 100 study areas would be affected.⁴⁴ Requiring study area boundary data for approximately 100 study areas would be considerably less burdensome than

⁴² 44 U.S.C. § 3506(c)(3)(C).

⁴³ 5 C.F.R. § 1320.1.

⁴⁴ *Connect America Fund; High-Cost Universal Service Support*, Order, 27 FCC Rcd 4235, ¶ 5 (Wireline Comp. Bur. 2012) (“When fully implemented, we estimate that the roughly 100 study areas that are capped would see approximately \$65 million in support reductions ...”). Because of concerns regarding the accuracy of the Tele Atlas wire center boundaries used to roll up to the study area the geographic independent variables used in the Commission’s regression analysis, the Bureau created a streamlined, expedited waiver process for carriers affected by the benchmarks to correct any errors in their study area boundaries. *Id.* ¶ 27. To date, less than a dozen rate-of-return carriers have sought to avail themselves of this process. *See, e.g., Connect America Fund; High-Cost Universal Service Support*, WC Docket No. 10-90; WC Docket No. 05-337, Order, DA 12-1907 (rel. Nov. 28, 2012) (granting request for expedited waiver to correct the road information and the number of exchanges in the study area used in the regression analysis to establish HCLS benchmarks).

requiring such data for more than 1,400 ILEC study areas, as the *Study Area Boundary Order* does.

Likewise, if ILEC exchange area boundary data are necessary to enforce the unsubsidized competitive overlap rule, the Bureau could have required only rate-of-return carriers likely to be affected by the rule to provide the requisite boundary data. The Commission has access to the competitive data underlying the National Broadband Map, which the Bureau could use to identify potential geographic areas where unsubsidized competitors offer voice and broadband services throughout 100 percent of the rate-of-return carrier's study area. Once those areas have been identified, the Bureau could target an information collection to only those rate-of-return carriers serving the areas in question, which would be used to confirm whether the unsubsidized competitive overlap rule has been triggered.

Alternatively, rather than obtaining boundary data from ILECs, the Bureau could secure such data directly from one or more of the third-party vendors that sell study area or exchange area data. These vendors include GeoResults, Pitney-Bowes, among others.⁴⁵ Likewise, the Bureau could require that state public service commissions, which ultimately determine and control the boundaries of an ILEC's exchange areas, provide the requisite data. Obtaining boundary data from third-party vendors or state commissions would be more efficient and would eliminate the burden of collecting information from businesses consistent with the underlying purpose of the PRA.

The Bureau did not discharge its responsibility under the PRA to minimize the burdens of the proposed information collection by permitting state entities to submit "digitized service

⁴⁵ See, e.g., <http://www.georeresults.com>; <http://www.pb.com/software/communications>; navtmat.com; geo-tel.com.

territory boundary” data.⁴⁶ First, the Bureau made state participation in its information collection process entirely voluntary. Thus, for the vast majority of ILECs subject to the proposed information collection, reliance upon state-maintained study area boundary data may not even be a viable option.⁴⁷

Second, even when a state voluntarily submits study area boundary information, ILECs ultimately are “responsible for reviewing, verifying, and certifying that the study area boundary data are accurate and for ensuring that the ongoing obligations, such as updating of information, are satisfied.”⁴⁸ As a result, any benefit of voluntarily provided, state-submitted boundary information likely would be marginal, as an ILEC would still be required to devote substantial resources to determine whether the shapefiles are “correct” and whether it can provide the requisite certification.⁴⁹ If it “cannot certify that the data submitted by the state commission are correct,” the ILEC must “upload corrected data,” which further underscores the marginal benefit of the state-submission option.⁵⁰

OMB has rejected collections that “fail[] to take the least burdensome approach possible for the collection’s intended purpose.”⁵¹ By virtue of the Bureau’s failure to consider less

⁴⁶ *Study Area Boundary Order* ¶ 17.

⁴⁷ It also is not clear how many states actually maintain boundary data in the specific format requested by the Bureau. *Id.* (identifying five states that, according to the Bureau, “already have digitalized” ILEC exchange area boundaries and requiring any state entities “wishing to submit such data” to “notify the Commission in writing of their intention to do so ...”).

⁴⁸ *Id.* ¶ 18.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *See Notice of Office of Management and Budget Action*, ICR Reference No. 199607-1880-002, at 1 (Sept. 23, 1996) (OMB disapproved an information collection relating to Human

burdensome but viable information collection approaches, the *Study Area Boundary Order* violates the PRA and should not be approved by OMB.

In addition to failing to minimize the burden of the proposed information collection on all respondents, the Bureau failed to take any steps to reduce the burden of the proposed information collection on small business entities, as required by the PRA.⁵² That the Bureau failed to reduce the burdens of the proposed information collection requirements on small business entities is evident from the *Study Area Boundary Order* itself, which fails to make any distinctions based on an ILEC's size.

If anything, the burdens on small entities resulting from the *Study Area Boundary Order* would be proportionality greater than the already sizable burdens imposed on larger ILECs. Indeed, the Bureau failed to consider the significant disparities in the resources available to small ILECs, which are less likely to have in-house GIS resources and more likely to have to hire a GIS specialist or engineering consultant in order to comply with the *Study Area Boundaries Order*. This approach is fundamentally at odds with the requirements of the PRA.

(footnote cont'd.)

Subjects Research submitted by the Department of Education because it “fail[ed] to take the least burdensome approach possible for the collection’s intended purpose.”). In another example of the Commission’s failure to minimize the burden of a proposed information collection, OMB disapproved the FCC’s proposal to reduce from fifteen days to three days the time in which cable TV system operators would need to respond to requests from potential programmers for leased access information. OMB concluded that the FCC failed to demonstrate that it had “taken reasonable steps to minimize the burden on respondents who will be required to hire new staff in order to maintain the capacity to comply with the reduced deadline for leased access requests.” See *Notice of Office of Management and Budget Action*, ICR Reference Number 200804-3060-012, OMB Control No. 3060-0568, at 1-2 (July 9, 2008).

⁵² 44 U.S.C. § 3506(c)(3)(C) (authorizing an agency to reduce the burdens on small business entities by: (i) establishing differing compliance or reporting requirements or timetables for smaller and larger respondents; (ii) adopting clarified, consolidated, or simplified compliance and reporting requirements; or (iii) exempting smaller carriers from coverage of any parts of the information collection).

V. THE COMMISSION HAS NOT DEMONSTRATED THAT EMERGENCY PROCESSING IS WARRANTED.

The Commission requests “emergency OMB processing” of the Bureau’s proposed information collection. This request is unwarranted because the Commission has not made the demonstration necessary to justify emergency processing.

A proposed data collection will qualify for emergency processing only if the agency demonstrates that: “(i) Public harm is reasonably likely to result if normal clearance procedures are followed; (ii) An unanticipated event has occurred; or (iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.”⁵³ None of these factors is present here.

In the Federal Register notice seeking comment on the proposed information collection, the Commission provides *no* explanation for why emergency processing is needed.⁵⁴ The only publicly available explanation for the “emergency justification” appears on OMB’s website, which states as follows:

Commission staff will use the study area boundary data to implement certain reforms to the universal service support. For example, as part of implementing the benchmarking rule, staff will use the data as an essential input in a model that determines the level of high cost support for rate-of-return carriers. All the geographical variables used in this model that affect this level of support - including road miles, road crossing, density, depth of bedrock, soil difficulty, climate, percent tribal, park and urban land - are predicated on knowing the specific territory of each carrier.⁵⁵

⁵³ 44 U.S.C. § 3507(j); 5 C.F.R. § 1320.13(a)(2).

⁵⁴ *See PRA Notice.*

⁵⁵ *See* “View ICR – Agency Submission,” Office of Information and Regulatory Affairs, ICR Reference No: 201212-3060-006, http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201212-3060-006.

Nowhere in this “emergency justification” does the Commission allege that the use of normal PRA clearance procedures would harm the public, prevent or disrupt the collection of information, or cause the Commission to miss a statutory or court deadline. Nor does the Commission state that an unanticipated event has occurred that warrants expedited processing. Thus, the Commission has failed to make the required demonstration to warrant emergency processing by OMB.

VI. CONCLUSION

In adopting the information collection requirements detailed above, the Bureau did not adhere to its responsibilities under the PRA. Accordingly, OMB should not issue a control number for the proposed information collection.

Respectfully submitted,

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