

SUPPORTING STATEMENT

New Collection Titled: Legacy High-Cost Support Usage Flexibility Certification. The Federal Communications Commission (Commission) requests approval from the Office of Management and Budget (OMB) for a new, one-time information collection requirement necessary to implement recently-adopted requirements for competitive eligible telecommunications carriers (ETCs) receiving legacy high-cost support for mobile wireless services, as explained below.

A. Justification:

1. *Circumstances that make this collection necessary.* Under this new, one-time information collection, the Commission will collect a certification from any competitive ETC receiving legacy high-cost support for mobile wireless services that wishes to avail itself of the flexibility adopted in the *5G Fund Report and Order* concerning its 2021 and 2022 legacy high-cost support usage requirements.

On November 18, 2011, the Commission released the *USF/ICC Transformation Order* (FCC 11-161) in which it comprehensively reformed and modernized the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation. In the *USF/ICC Transformation Order*, the Commission, among other things, adopted a requirement that all ETCs offer broadband service in their supported area that meets certain basic performance requirements and report regularly on associated performance measures as a condition of receiving federal high-cost universal service support.

On October 27, 2020, the Commission adopted the *5G Fund Report and Order* (FCC 20-150) in which it, among other things, helped to complete the reform of the high-cost program begun in the *USF/ICC Transformation Order* by adopting additional public interest obligations and performance requirements for legacy high-cost support recipients, whose broadband-specific public interest obligations for mobile wireless services were not previously detailed. The public interest obligations adopted in the *5G Fund Report and Order* for each competitive ETC receiving legacy high-cost support for mobile wireless services require that such a carrier (1) use an increasing percentage of its legacy support toward the deployment, maintenance, and operation of voice and broadband networks that support 5G meeting the adopted performance requirements within its subsidized service area(s), and (2) meet specific 5G broadband service deployment coverage requirements and service deployment milestone deadlines that take into consideration the amount of legacy support the carrier receives. With respect to the requirement to use an increasing percentage of its legacy support toward the deployment, maintenance, and operation of voice and broadband networks that support 5G, the rules adopted in the *5G Fund Report and Order* specify that each legacy support recipient must use at least one-third of the legacy support it receives in 2021, at least two-thirds of the legacy support it receives in 2022, and all of the legacy support in 2023 and beyond for these purposes.

To address a concern that budgets and deployment plans for 2021 are largely complete, which could make it difficult for some competitive ETCs to achieve the 2021 support usage requirement, the Commission adopted a rule that affords such competitive ETCs the flexibility to use less than one-third of their legacy support in 2021 and make up for any shortfall in 2021 by proportionally increasing the requirement in 2022 (above the two-thirds of its support the competitive ETC is required to spend on 5G in that year). See 47 CFR § 54.322(c)(4). In order to take advantage of this flexibility, a competitive ETC receiving

legacy support for mobile wireless services must submit a completed “Legacy High-Cost Support Usage Flexibility Certification” form in which it provides:

- Information regarding the service area(s) for which the competitive ETC and any affiliated mobile competitive ETC(s) receive legacy support and the annual amount of support they receive in each area;
- The total amount of legacy high-cost support that the competitive ETC and/or its affiliates will spend on the deployment, maintenance, and operation of mobile networks that provide 5G service in calendar year 2021 across the identified service areas; and
- Various certifications, including a certification that the competitive ETC(s) identified on the form will make up for any shortfall in the amount of legacy support required to be spent on 5G in calendar year 2021 by proportionally increasing the amount of legacy support spent on 5G in calendar year 2022 above the level required for 2022.

Only those competitive ETCs receiving legacy high-cost support for mobile wireless services that wish to avail themselves of the flexibility concerning their 2021 and 2022 legacy high-cost support usage requirements will be required to submit a completed “Legacy High-Cost Support Usage Flexibility Certification” in response to this information collection.

The Commission seeks OMB approval for this new, one-time information collection to permit it to collect this certification from a competitive ETC receiving legacy high-cost support for mobile wireless services that wishes to avail itself of the flexibility adopted by the Commission concerning its 2021 and 2022 legacy high-cost support usage requirements.

Statutory authority for this information collection is contained in 47 U.S.C. 154, 254 and 303(r).

This information does not affect individuals or households; thus, there are no impacts under the Privacy Act.

2. *Use of Information.* Under this new, one-time information collection, the Commission will collect a certification from competitive ETCs that wish to avail themselves of the flexibility concerning their 2021 and 2022 legacy high-cost support usage requirements. The certification will be used by the Commission to identify how much a competitive ETC that chooses to avail itself of the flexibility concerning its 2021 and 2022 legacy high-cost support usage requirements will spend on 5G in 2021 and the spending shortfall it must make up in 2022, and to confirm the competitive ETC’s commitment to make up its 2021 spending shortfall in 2022 in accordance with its certification and the Commission’s rules.

3. *Technological collection techniques.* Competitive ETCs that submit information under this new, one-time information collection will submit their “Legacy High-Cost Support Usage Flexibility Certification” forms electronically. This collection mechanism is being used to reduce the technological burden on the public and the Commission.

4. *Efforts to identify duplication.* There will be no duplicative information collected. This information collection is a new, one-time certification that will be submitted by a competitive ETC receiving legacy high-cost support for mobile wireless services that wishes to avail itself of the flexibility adopted by the Commission concerning its 2021 and 2022 legacy high-cost support usage requirements. Thus, the information being collected under this collection is not already available.

5. *Impact on small entities.* In conformance with the Paperwork Reduction Act of 1995, the Commission has made an effort to minimize the burden on all respondents regardless of size by limiting the information collected under this collection to that which is necessary to identify how much a competitive ETC that chooses to avail itself of the flexibility concerning its 2021 and 2022 legacy high-cost support usage requirements will spend on 5G in 2021 and the spending shortfall it must make up in 2022, and to confirm the competitive ETC's commitment to make up its 2021 spending shortfall in 2022 in accordance with its certification and the Commission's rules. Moreover, the requirement to submit information under this collection is limited to only those competitive ETCs that wish to avail themselves of the flexibility concerning their 2021 and 2022 legacy high-cost support usage requirements. In addition, the Commission has developed a "Legacy High-Cost Support Usage Flexibility Certification" form for a competitive ETC to use in making its certification, which will be submitted electronically, and will allow a competitive ETC that receives legacy support for multiple service areas or is affiliated with other competitive ETCs that receive legacy support (for example, where such competitive ETCs share a common holding company) to submit a single certification—thereby further minimizing the burden on all respondents, including small entities, related to this new, one-time information collection.

6. *Consequences if information is not collected.* Without the information and certifications provided under this information collection, the Commission will not be able to identify how much a competitive ETC receiving legacy support for mobile wireless services that chooses to avail itself of the flexibility concerning its 2021 and 2022 legacy high-cost support usage requirements will spend on 5G in 2021 and, in turn, the spending shortfall it must make up in 2022, and will not be able to confirm the competitive ETC's commitment to make up its 2021 spending shortfall in 2022 in accordance with its certification and the Commission's rules—which could hinder the Commission's efforts to bring accountability and ensure deployment of 5G in legacy high-cost support recipients' subsidized service areas and result in potential harm to the universal service program and the public.

7. *Special circumstances.* The new collection does not have any of the characteristics that would require separate justification under 5 CFR § 1320.5(d)(2).

8. *Federal Register notice; efforts to consult with persons outside the Commission.* Pursuant to 5 CFR § 1320.8, the Commission published a 60-day notice in the Federal Register on February 26, 2021 (86 FR 11765) regarding the extension of this information collection. No comments were received in response to this notice.

9. *Payments or gifts to respondents.* The Commission will not provide any payment or gifts to respondents.

10. *Assurance of confidentiality.* The information collected under this collection will be made publicly available. However, to the extent that a respondent seeks to have certain information collected in response to this information collection withheld from public inspection, the respondent may request confidential treatment pursuant to 47 CFR § 0.459 of the Commission's rules.

11. *Questions of a sensitive nature.* The information collection requirements do not ask questions of a sensitive nature.

12. *Estimates of the hour burden of the information collection to respondents.* The following represents the hour burden for the proposed new collection of information:

- a. *Number of estimated annual respondents:* Up to 110 respondents. Only those competitive ETCs receiving legacy high-cost support for mobile wireless services that wish to avail themselves of

the flexibility concerning their 2021 and 2022 legacy high-cost support usage requirements will be required to respond to this one-time information collection.

- b. Total number of responses: Up to 110 responses.
- c. Frequency of response: One-time. A respondent will submit information once in response to this information collection.
- d. Total estimated annual burden hours: 192.5, rounded to 193 hours.

1.75 hours per respondent for up to 110 respondents filing on an annual basis. The total estimated annual hour burden is calculated as follows:

Up to 110 responses x 1 response per respondent x 1.75 hours per response = **192.5 total estimated annual burden hours, rounded to 193 hours.**

- e. Total estimate of annualized “in-house” cost to respondents for the hour burden: **\$10,762.13.**
- f. Explanation of calculation: The Commission estimates that it will take each respondent a total of 1.75 hours to respond to this information collection, with .5 hours of that time needed to obtain the information required to complete the “Legacy High-Cost Support Usage Flexibility Certification” form and 1.25 hour needed to complete, review, sign, and submit the form. The Commission estimates that half of the estimated 110 respondents (i.e., 55 respondents) will rely exclusively on in-house staff to respond to this information collection (with the total 1.75 hours of estimated response time per response attributable solely to in-house staff), and that the other half will use a combination of in-house staff and outside counsel to do so (with .75 hours of the total estimated 1.75 hours per response time attributable to in-house staff, and 1 hour of the total estimated 1.75 hours per response time attributable to outside counsel, as explained below and in Item 13).

Where a respondent relies exclusively on in-house staff to respond to this information collection, the total 1.75 hours of estimated response time per response will be attributable solely to in-house staff. Assuming a rate equivalent to the hourly rate of a GS-15, Step 5 government staff member (\$78.27/hour), the estimated annual in-house cost to respond to this information collection where a respondent relies exclusively on in-house staff to respond to this information collection will be:

55 respondents x .5 hours of time to obtain required information x 1.25 hours to review, sign, and submit form using only in-house staff x \$78.27/hour = **\$7,533.49.**

Where a respondent uses a combination of in-house staff and outside counsel to respond to this information collection, .75 hours of the total estimated 1.75 hours per response time will be attributable to in-house staff, and 1 hour of the total estimated 1.75 hours per response time will be attributable to outside counsel (as more fully explained below and in Item 13). Assuming a rate equivalent to the hourly rate of a GS-15, Step 5 government staff member (\$78.27/hour), where a respondent uses a combination of in-house staff and outside counsel to respond to this information collection, the estimated annual in-house cost to respond to this information collection for the portion of time attributable to the use of in-house staff will be:

55 respondents x .5 hours of in-house staff time to obtain information required to complete form x .25 hours of in-house staff to review and sign completed form x \$78.27/hour = **\$3,228.64.**

Total In-House Cost: \$7,533.49 + \$3,228.64 = \$10,762.13.

13. *Estimates of the cost burden of the collection to respondents.* As the Commission estimates that it will take each respondent a total of 1.75 hours to respond to this information collection, with .5 hours of that time needed to obtain the information required to complete the “Legacy High-Cost Support Usage Flexibility Certification” form and 1.25 hour needed to complete, review, sign, and submit the form. As noted in Item 12.f., The Commission estimates that half of the estimated 110 respondents (i.e., 55 respondents) will rely exclusively on in-house staff to respond to this information collection, and that the other half will use a combination of in-house staff and outside counsel to do so. Where a respondent uses a combination of in-house staff and outside counsel to respond to this information collection, the Commission estimates that it will take outside counsel approximately 1 hour to complete, review, obtain the signature of an officer or other authorized representative, and submit the “Legacy High-Cost Support Usage Flexibility Certification” form. In that case, .75 hours of the total estimated 1.75 hours per response time will be attributable to in-house staff (as explained in Item 12.f), and 1 hour of the total estimated 1.75 hours per response time will be attributable to outside counsel (as explained below and in Item 12.f). Assuming a rate of \$300 an hour for outside counsel, the external cost to respondents where a respondent uses outside counsel approximately to complete, review, obtain the signature of an officer or other authorized representative, and submit the “Legacy High-Cost Support Usage Flexibility Certification” form will be:

55 respondents x 1 hour of outside counsel time to complete, review, obtain the signature of an officer or other authorized representative, and submit the “Legacy High-Cost Support Usage Flexibility Certification” form x \$300/hour = **\$16,500.**

Total Annual Cost: \$16,500.

14. *Estimates of the annual cost burden to the Commission.* The Commission estimates that it will take one staff attorney (GS-13, Step 5, at \$56.31/hour) approximately .5 hours to review each response.

Total Estimated Annual Cost to the Federal Government: 110 responses x .5 hours per response x \$56.31 (Attorney, GS-13/Step 5) = **\$3,097.05.**

15. *Program changes or adjustment.* This is a new information collection resulting in a program change increase of 110 annual respondents, 110 annual responses, 192.5 annual burden hours, rounded to 193 hours and \$16,500.

16. *Collections of information whose results will be published.* The information collection will not be published for statistical use.

17. *Display of expiration date for OMB approval of information collection.* The Commission seeks an exemption from the requirement to display the OMB expiration date for this information collection. The Commission publishes a list of all OMB-approved information collections and their corresponding expiration dates in 47 C.F.R. 0.408 of the Commission’s rules, 47 C.F.R. § 0.408, and will publish the OMB control number and OMB expiration date for this collection in the list contained in section 0.408 of its rules.

18. *Exception to certification statement for Paperwork Reduction Act submissions.* There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods:

The Commission does not anticipate that this new collection of information will employ statistical methods, and the use of such methods would not reduce the burden or improve accuracy of results.