Wireline Competition Bureau
Federal Communications Commission
Biennial Regulatory Review 2002
WC Docket No. 02-313
GC Docket No. 02-390

Staff Report
December 31, 2002

I. OVERVIEW

1. This Staff Report summarizes the findings of an extensive review by the Wireline Competition Bureau (WCB or the Bureau) of the Federal Communications Commission's rules pertaining to wireline telecommunications. The staff reviewed the rules under WCB's purview to determine whether to recommend that the Commission modify or eliminate any of them. Accompanying this report is a rule part analysis that identifies and explains the purpose of each applicable rule or rule part, discusses any competitive or other impacts on the rule, summarizes and addresses comments filed, and where appropriate, recommends modification or repeal of the rule or rule part.

2. This report and analyses are part of the Commission's biennial regulatory review process, as required by section 11 of the Communications Act of 1934, as amended (the Act).[1] This report continues and builds upon the findings and recommendations made in the 2000 Biennial Regulatory Review.[2] The information herein represents staff findings and recommendations, and thus does not reflect formal Commission opinions or binding determinations.

II. SCOPE OF REVIEW

3. WCB develops and recommends policy, goals, objectives, programs and plans for the Commission on matters concerning wireline telecommunications. The Bureau's overall objectives include ensuring choice, opportunity, and fairness in the development of services and markets; developing deregulatory initiatives; promoting economically efficient investment in infrastructure; promoting development and widespread availability of services; and fostering economic growth. In carrying out its responsibilities, the Bureau administers the following rule parts:[3]

Part 32 – Uniform System of Accounts for Telecommunications Companies
Part 36 – Jurisdictional Separations Procedures
Part 42 – Preservation of Records of Communication Common Carriers
Part 43 – Reports of Communication Common Carriers and Certain Affiliates
Part 51 – Interconnection
Part 52 – Numbering
Part 53 – Special Provisions Concerning Bell Operating Companies
Part 54 – Universal Service
Part 59 – Infrastructure Sharing
Part 61 – Tariffs
Part 63 – Extension of Lines, New Lines and Discontinuance, Reduction, Outage

[1] 47 U.S.C. § 161.

[2] *See 2000 Biennial Regulatory Review*, Report, 16 FCC Rcd 1207 (2001)(2000 Report). Staff Report available at http://www.fcc.gov/Reports/biennial2000report.doc .

[3] These rule parts also contain regulations administered by the Consumer and Governmental Affairs Bureau (Parts 64 and 68) and the International Bureau (Parts 43, 63 and 64).

and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status
Part 64 – Miscellaneous Rules Relating to Common Carriers
Part 65 – Interstate Rate of Return Prescription Procedures and Methodologies
Part 68 – Connection of Terminal Equipment to the Telephone Network
Part 69 – Access Charges

4. *Analytical Framework*. The Commission sought public comment on what rules should be modified or repealed as part of this biennial regulatory review.[4] The Bureau's staff then undertook to review all of its rules implicated by section 11 of the Act, and to consider whether repeal or modification of any rule might be appropriate as the result of meaningful economic competition between telecommunications service providers. The staff used an analysis which considered the underlying purpose of each existing rule, whether the purpose of the rule remains relevant, and whether that purpose might be accomplished more effectively by some other means. The staff also considered the advantages and disadvantages of the existing rules and what impact, if any, competitive developments have had on each rule. Finally, the staff prepared this report which summarizes the review conducted by the Bureau, describes ongoing efforts, and makes recommendations on whether rule changes are warranted.

III. SUMMARY OF 2002 BIENNIAL REGULATORY REVIEW

A. State of Competition

5. In preparation for this biennial regulatory review, the Bureau assessed the state of competition in general, and in particular markets affected by our rules. The Bureau tracks competition trends to enable the Commission to make informed regulatory decisions. This is particularly germane to the biennial review process, which requires a determination of whether a regulation is no longer necessary in the public interest as a result of meaningful competition.[5]

6. Competitive developments in local exchange markets through the end of 1999 were summarized in the 2000 Updated Staff Report.[6] At that time, competitors served about four percent of end-user switched access lines, and claimed over 6 percent of local service revenues for the year 1999.[7] Two years later, at the end of 2001,

[4] *See, e.g., The Commission Seeks Public Comment in 2002 Biennial Review of Telecommunications Regulations Within the Purview of the Wireline Competition Bureau*, WC Docket No. 02-313, Public Notice (rel. Sep. 26, 2002).

[5] *See* 47 U.S.C. § 161.

[6] *See Biennial Regulatory Review 2000*, Updated Staff Report at paras. 28-30 (rel. Jan. 17, 2001)(2000 Updated Staff Report).

[7] 2000 Updated Staff Report at para. 29 (citing Telecommunications @ the Millennium at 17 (rel. Feb. 8, 2000)).

competitors served 10 percent of end-user switched access lines.[8] The competitor share of local service revenues had also increased to about 10 percent for the year 2001.[9] Although unbundled network elements (UNEs) became a more important entry mode than resale between the end of 1999 and 2001, and the use of UNEs with switching, including UNE-P, increased faster than the use of stand-alone UNE loops, competitors continued to use all entry modes envisioned by the 1996 Act to serve end-user customers.[10] During this two-year period, subscribership to mobile wireless telephone services increased by over 50 percent (compared to an increase in end-user switched access lines of about one percent). Thus, it appears, similar to the trend noted in the 2000 Updated Staff Report, that more people are using wireless telephones as substitutes for their wireline services, primarily due to price decreases and service quality increases. In addition, the number of local exchange service connections provided by cable TV companies rose to over two million (*i.e.*, about one percent of total switched access lines in service to end-user customers).[11]

7. As another indication of how local competition is progressing, Bell Operating Companies (BOCs) continue to file section 271 applications for authority to provide interLATA service within their regions. Before a BOC can offer such service in a state within its region, it must demonstrate, among other things, that local markets are open to competition. Since 1999, the Commission has approved applications for 35 states, and one application covering 2 states and the District of Columbia is pending.

8. The long distance market has been competitive for some time. As a result, domestic and international long distance prices, as approximated by average revenue per minute, have fallen by 37 percent since 1993.[12]

9. Finally, we note that recent trends have included several telecommunications carriers, including major companies like WorldCom and Global Crossing, filing for bankruptcy. It appears that between 300,000 and 500,000 people in the United States telecommunications sector have lost their jobs in the last two years,[13] and approximately

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[8] Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31,* 2001 (July 2002) at Tbl. 1.

[9] Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone* Service (May 2002) at Tbl. 9.7.

[10] Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2001* (July 2002) at Tbl. 3.

[11] *Id.* at Tbl. 11, Tbl. 5.

[12] Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service* (May 2002) at Tbl. 14.3.

[13] *See* "Study Says Telcom Endured Record Layoffs in 2001," Communications Today (Jan. 7, 2002), available at http://www.findarticles.com (visited Nov. 20, 2002); J. Moad, "Pace of Tech Layoffs Eases – Except in Telecom" (July 8, 2002), available at http//www.eweek.com/article2/0,,36203,00.asp?kc=EWLK10209KTX1H0100440 (visited Nov. 20, 2002)(citing compilations of layoff announcements by outplacement services company Challenger, Gray

two trillion dollars in market value has been lost.[14] This does not necessarily indicate that telecommunications markets are failing; to the contrary, statistics show that in most instances consumers continue to have choices for their telecommunications service needs. This trend does, however, highlight the need for continued regulatory monitoring and action, which in some cases may include deregulation, to ensure that consumers retain quality service and choices. It is against this background that we undertake our third biennial regulatory review of rules administered by WCB.

B. Recent and Ongoing Activities

10. In the normal course of business, WCB reviews its regulations and policies to ensure that they remain appropriate and consistent with the public interest and the current state of competition and other industry developments. In the period following the last biennial review, the Commission initiated or continued a number of proceedings designed to streamline wireline telecommunications regulation. The Bureau continues to focus its efforts on opening the local exchange and long distance markets to competition, including the timely review of applications by BOCs seeking to provide long distance service in their regions, review of telecommunications company mergers, and review of the funding mechanism for universal service. And, as described below, considerable resources continue to be devoted to consideration of regulatory reforms that should occur as competition in the provision of telecommunications services develops. The following describes some of the market-opening and deregulatory initiatives the Bureau has undertaken or continued since the last Biennial Regulatory Review.

1. Broadband and Competition Policy

11. The Commission has initiated several proceedings that address issues raised by changes in the marketplace for broadband and related services. Three of these proceedings focus on the regulatory treatment under Title II of broadband services and the facilities over which they are provided.[15] With these proceedings, the Commission has undertaken a broad review of its competition policies in light of its experience since

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& Christmas). *See also* L. Uchitelle, New York Times, "Shedding Jobs, Telecom Sector Drags on the Economy," The Milwaukee Journal Sentinel (June 29, 2002)(citing Bureau of Labor Statistics data indicating that the telecommunications sector lost 167,000 jobs during the year following March 2001).

[14] *See, e.g.,* A. Hoffman, "On Hold: What's Next for Telecom Jobs," available at http://www.technology.monster.com/articles/telconext/ (visited Nov. 20, 2002).

[15] *See Review of the Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001) (*Dominant/Non-Dominant Proceeding*)*; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Notice of Proposed Rulemaking, 16 FCC Rcd 22781 (2001) (*Triennial Review Proceeding)*; *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, Universal Service Obligations for Broadband Providers*, CC Docket Nos. 02-23, 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) (*Broadband Proceeding*).

first implementing the market-opening provisions of the Act, as well as marketplace developments such as the growth of broadband.

12. In the *Triennial Review* proceeding, the Commission is pursuing the first triennial review of its policies on unbundled network elements (UNEs), seeking to ensure that the regulatory framework remains current and faithful to the pro-competitive, market-opening provisions of the 1996 Act in light of experience, advances in technology, and other developments in telecommunications markets. In evaluating the unbundling rules, the Commission focuses on the facilities used to provide broadband services and explores the role that wireless and cable companies have begun to play and will continue to play both in the market for broadband services and the market for telephony services generally. In the *Broadband* proceeding, the Commission is seeking to classify broadband Internet access service when entities use the wireline telephone network to provide the service. One of the Commission's core principles in this proceeding is that broadband services should exist in a regulatory environment that promotes investment and innovation, and thus encourages widespread availability of all services. In the *Dominant/Non-Dominant* proceeding, the Commission is considering whether incumbent LECs that are dominant in the provision of local exchange and exchange access services should also be considered dominant when they provide broadband services, given current market conditions.[16] It specifically seeks comment on how the Commission can best balance the goals of encouraging broadband investment and deployment, fostering competition in the provision of broadband services, promoting innovation, and eliminating unnecessary regulation.[17]

2. Universal Service Reform

13. The Commission has also continued its efforts to reform several aspects of the universal service program. The Commission has initiated several proceedings to examine how to promote universal service in unserved and underserved areas. First, the Commission has modified its rules for providing high-cost universal service support for rural telephone companies, creating, among other things, a "safety valve" mechanism that provides support for additional investment made in exchanges acquired from another unaffiliated carrier.[18] Second, the Commission has removed implicit support

[16] Certain of the Commission's tariffing, cost support and accounting rules apply only to carriers classified as dominant. *See, e.g.*, 47 C.F.R. Parts 61 and 64.

[17] In a related proceeding, the Commission on December 31, 2002 granted in part a petition filed by SBC seeking forbearance from the application of tariffing requirements to its provision of advanced services through an affiliate throughout the SBC region. *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications* Services, CC Docket No. 01-337, Memorandum Opinion and Order, FCC 02-340 (rel. Dec. 31, 2002). The Commission otherwise denied SBC's petition, expressly without prejudging the issues under consideration in the *Dominant/Non-Dominant Proceeding*. *See supra* note 15.

[18] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244 (2001).

from the interstate access rate structure for rate-of-return carriers and replaced it with a new explicit universal service mechanism, Interstate Common Line Support (ICLS).[19] Third, the Commission has initiated a proceeding to examine issues remanded by the Tenth Circuit relating to the non-rural high-cost mechanism.[20] Fourth, the Commission has initiated a proceeding to address issues relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier (ETC) is providing service.[21] Fifth, the Commission received a Recommended Decision from the Federal-State Joint Board on Universal Service regarding the definition of core services supported by the universal service high-cost and low-income support mechanisms.[22]

14. The Commission is also considering how to streamline the Schools and Libraries and Rural Healthcare universal service programs.[23] Additionally, the Commission recently made interim revisions to the methodology for assessing and recovering contributions to the federal universal service fund.[24] Among other things, the Order addresses competitive neutrality by having carriers project the amount of revenues they anticipate collecting, rather than reporting historical revenues. The Commission

[19] *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate-of-Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-106, Report and Order, 16 FCC Rcd 19613 (2001) (*MAG Order and Further NPRM*).

[20] *Qwest Corp. v. FCC*, 258 F3d 1191 (10th Cir. 2001). In response to the 10th Circuit remand of the high-cost benchmark methodology, the Commission issued a Notice of Proposed Rulemaking, referring the issues to the Federal-State Joint Board on Universal Service (Universal Service Joint Board), which issued a Recommended Decision. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 17 FCC Rcd 20716 (2002).

[21] *See Federal-State Joint Board on Universal Service,* CC Docket 96-45, Order, 17 FCC Rcd 22642 (2002).

[22] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Recommended Decision, 17 FCC Rcd 14095 (2002).

[23] *See Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Report and Order, 17 FCC Rcd 1151 (2002); *Rural Health Care Support Mechanism*, CC Docket No. 02-60, Notice of Proposed Rulemaking, 17 FCC Rcd 7806 (2002).

[24] *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (rel. Dec. 13, 2002).

also seeks additional comment on proposals to assess universal service contributions based on the number of connections a carrier provides, rather than on revenues earned, to ensure the long-term stability, fairness, and efficiency of the universal service contribution system in a dynamic telecommunications marketplace.[25]

3. Accounting and ARMIS Requirements

15. In 2000, the Commission began a comprehensive review of its Part 32 accounting and related rules and its ARMIS reporting requirements. As described in the 2000 Updated Staff Report, the review was conducted in three phases: Phase 1, completed in March 2000, focused on immediate streamlining measures; Phase 2 would examine more broad and extensive deregulatory measures; and Phase 3 would consider issues raised by the long-term transition to accounting and reporting deregulation.[26] The Commission sought in this comprehensive review to examine the continuing need for various accounting and reporting requirements, and to determine whether they impose unnecessary burdens on incumbent LECs as local competition continues to develop.

16. The Commission has completed a rulemaking in Phase 2 of the accounting and ARMIS reporting proceeding.[27] In the *Phase 2 Report and Order*, the Commission effected several major accounting and reporting reforms, including the elimination or modification of Part 32 accounts and subaccounts, and modification of ARMIS reporting requirements. Changes to the joint cost rules, affiliate transaction rules, and ARMIS took effect in 2002, while changes to the Uniform System of Accounts (USOA) were scheduled to take effect on January 1, 2003. On November 8, 2002, however, the Commission suspended implementation of four of the accounting and recordkeeping rule modifications adopted by the Commission in Phase 2 to enable the recently-established Federal-State Joint Conference on Accounting Issues to review the rules before carriers are required to implement them.[28] On December 12, 2002, the Joint Conference established a comment cycle to address issues related to the USOA and

[25] *Id.* at 3-6.

[26] 2000 Staff Updated Staff Report at para. 35.

[27] *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, and Local Competition and Broadband Reporting*, CC Docket Nos. 00-199, 97-212, 99-301, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19911 (2001) (*Phase 2 Report and Order)*, Order on Reconsideration, 17 FCC Rcd 4766 (2002).

[28] The Commission deferred implementation of the following accounting and reporting requirement rule changes for 6 months: (1) the consolidation of Accounts 6621 through 6623 into Account 6620, with subaccounts for wholesale and retail; (2) the consolidation of Account 5230, Directory revenue, into Account 5200, Miscellaneous revenue; (3) the consolidation of the depreciation and amortization expense accounts (Accounts 6561 thorough 6565) into Account 6562, Depreciation and amortization expenses; and (4) the revised "Loop Sheath Kilometers" data collection in Table II of ARMIS Report 43-07. *Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-269, Order, 17 FCC Rcd 21233(2002).

reporting requirements.[29]

17. The Commission also referred to the Joint Conference most of the accounting issues raised in Phase 3 of the accounting and ARMIS reporting proceeding, which is still pending.[30] In the *Phase 3 Further Notice*, the Commission seeks comment on additional proposals related to accounting and ARMIS reporting requirements for incumbent LECs.[31] Specifically, the Commission seeks comment on: 1) the appropriate circumstances for elimination of accounting and reporting requirements for ILECs; 2) whether certain ARMIS information would more appropriately be collected through other means such as ad hoc data requests or the Local Competition and Broadband Data Gathering Program; and 3) conforming amendments to the separations rules, necessitated by modifications to the Uniform System of Accounts.[32]

4. Other Deregulatory Initiatives

18. *National Exchange Carriers Association* (NECA).[33] In this proceeding initiated as a result of the 2000 Biennial Regulatory Review, the Commission is re-examining its rules relating to the governance and functioning of NECA, in light of today's marketplace.[34] Specifically, the Commission proposes to eliminate the annual election requirements for NECA's Board of Directors, and seeks comment on whether other measures, such as staggered terms and term limits, are necessary. The

[29] *Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-369, Public Notice, DA 02-3499 (rel. Dec. 12, 2002).

[30] *See Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-269, Order, 17 FCC Rcd 17025, 17027 (2002) (Joint Conference's analysis may include "an evaluation of current regulatory accounting rules, consideration of the scope of these rules, and an examination of any additions to or eliminations of accounting requirements").

[31] *See 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers*, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, 80-286, 16 FCC Rcd 19911 (2001) (*Phase 3 Further Notice*).

[32] In a related proceeding reviewing the service quality and customer service reporting requirements under Part 43 of the Commission's rules, the Commission proposes to streamline and reform the existing service quality monitoring program by eliminating reporting of many categories of information. *2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, CC Docket No. 00-229, Notice of Proposed Rulemaking, 15 FCC Rcd 22113 (2000). By proposing to reduce the reporting requirements from more than 30 categories down to 6, the Commission seeks to better provide consumers and state and federal regulators with the information they need to make informed decisions.

[33] NECA was established primarily to prepare access charge tariffs on behalf of all telephone companies that do not file separate tariffs, and to operate pooling mechanisms to collect and distribute revenues among its members.

[34] *2000 Biennial Regulatory Review – Requirements Governing the NECA Board of Directors Under Section 69.602 of the Commission's Rules and Requirements for the Computation of Average Schedule Payments under Section 69.606 of the Commission's Rules*, CC Docket No. 01-174, Notice of Proposed Rulemaking, 16 FCC Rcd 16027 (2001).

Commission also seeks comment on whether to streamline the average schedule formula process. Stated goals include eliminating rules that may no longer be necessary in the public interest, reducing unnecessary regulatory burdens on the industry, including small entities, and updating rules and processes with measures that are more appropriate in today's marketplace.

19. *Separate Affiliate Requirements*. In the *Separate Affiliate Proceeding*,[35] the Commission is conducting a broad-based reexamination of Part 64, subpart T of its rules, which establishes safeguards for the provision of certain interexchange services by incumbent independent local exchange carriers. The *Notice* invites interested parties to comment on whether the benefits of the separate affiliate requirements for facilities-based providers continue to outweigh the costs, and whether there are alternative safeguards that are as effective but impose fewer regulatory costs.

20. *Intercarrier Compensation*. In this proceeding, the Commission is reexamining all currently regulated forms of intercarrier compensation, seeking to test the concept of a unified regime for the flows of payments among telecommunications carriers that result from the interconnection of telecommunications networks under current systems of regulation. Specifically, it is seeking comment on the feasibility of a bill-and-keep approach for such a unified regime, and seeks alternative comment on modifications to existing intercarrier compensation regimes, with the goal of moving forward from the transitional intercarrier compensation regimes to a more permanent regime that consummates the pro-competitive vision of the Telecommunications Act of 1996.[36]

21. *BOC 272 Sunset Provisions*. In this proceeding, the Commission has opened an inquiry regarding the sunset of the statutory requirements under section 272 imposed on BOCs when they provide in-region, interLATA services.[37] On December 23, 2002, the Commission released an order in which it determined that section 272(f)(1) provides for a state-by-state sunset of the separate affiliate and certain other requirements that apply to BOC provision of in-region, interLATA telecommunications services.[38] The Commission also released a public notice stating that the section 272 requirements sunset by operation of law for Verizon in New York State effective December 23,

[35] *2000 Biennial Regulatory Review of Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, Notice of Proposed Rulemaking, 16 FCC Rcd 17270 (2001) (*Separate Affiliate Proceeding*).

[36] *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

[37] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Notice of Proposed Rulemaking, 17 FCC Rcd 9916 (2002).

[38] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Memorandum Opinion and Order, FCC 02-336 (rel. Dec. 23, 2002).

2002.[39]

22. *CPNI*. In response to a decision by the U.S. Court of Appeals for the Tenth Circuit vacating the Commission's mandatory "opt in" requirement for obtaining customer approval to use or disclose customer proprietary network information (CPNI), the Commission recently adopted more flexible rules for obtaining customer approval under section 222(c)(1) of the Act.[40] Carriers may elect to obtain customer consent either through "opt out" or "opt in" means for all use of CPNI by the carriers themselves or for disclosure to their affiliates, third-part agents, and joint venture partners for the provision of communications related services.

23. *Section 214 Streamlining*. In March 2002, the Commission adopted streamlined procedures for transfers of control of domestic carriers under section 214 of the Act.[41] The *Streamlining Order* eliminates unnecessary regulatory burdens on carriers while increasing the predictability and transparency of the Commission's public interest review when carriers acquire domestic transmission facilities through corporate and asset acquisitions. The Commission established a 30-day streamlined review process that presumptively applies to applications meeting specified criteria. The vast majority of domestic carriers'applications are now eligible for streamlined treatment. The Commission also eased filing burdens by allowing carriers to file a single document with the Commission that combines both domestic and international section 214 applications. In addition, the Commission eliminated filing requirements for all pro forma transactions involving domestic carriers, except the small subset involving certain transfers in bankruptcy proceedings, which require a simple post-transaction notification.

24. *PIC Change Charges*. In this proceeding, the Commission is reexamining the existing safe harbor for incumbent LEC PIC-change charges ($5), in light of its conclusion that significant industry and market changes have occurred since it was first implemented in 1984.[42] The Commission had earlier sought comment on a petition for rulemaking based in large part on evidence submitted in a formal complaint proceeding indicating that ILEC costs related to PIC changes have declined substantially since the

[39] *See Section 272 Sunsets for Verizon in New York State by Operation of Law on December 23, 2002 Pursuant to Section 272(f)(1)*, Public Notice, FCC 02-335 (rel. Dec. 23, 2002).

[40] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended,* CC Docket No. 96-149, 2*000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 00-257, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002).

[41] *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, 17 FCC Rcd 5517 (2002) (*Streamlining Order*).

[42] *Presubscribed Interexchange Carrier Changes*, CC Docket No. 02-53, RM-10131, Order and Notice of Proposed Rulemaking, 17 FCC Rcd 5568 (2002).

$5 safe harbor was implemented.

25. *Toll-Free Administration*. In March 2002, the Bureau held a forum on toll-free administration to seek input from the public on the current toll-free administration system and whether it should be restructured. The Bureau proposed at that time that the Commission further examine these issues by initiating a rulemaking to reexamine the toll-free administration system and the Commission's toll-free rules.[43] Taking into consideration experience with the current system and rules, advances in technology and other telecommunications market developments, the Commission seeks to both streamline and strengthen toll-free number administration.

26. *Separations*. In this proceeding, the Commission adopted a five-year interim freeze of the Part 36 jurisdictional separations rules, pending comprehensive reform of the separations process.[44] The interim freeze was based upon a July 2000 *Recommended Decision* of the Federal-State Joint Board on Separations (Separations Joint Board). Under the interim freeze, the Part 36 categories and jurisdictional allocation factors of price cap incumbent LECs are frozen, while rate-of-return carriers have the option to freeze only their jurisdictional allocation factors. The interim freeze will be in effect from July 1, 2001 through June 30, 2006, or until comprehensive reform is completed, whichever comes first. On December 18, 2001, the state members of the Separations Joint Board filed a "Glide Path" policy paper outlining the options for comprehensive separations reform.

C. Comments

27. WCB received comments on the 2002 Biennial Regulatory Review from 11 parties, and reply comments from 14 parties.[45] WCB received comments on most of the rule parts administered by the Bureau,[46] suggesting a variety of actions including modification, elimination, and addition of regulations. Regarding those comments suggesting that the Commission impose new obligations, Bureau staff generally recommends that the Commission decline to do so in this context because the Biennial Regulatory Review's statutory purpose is to review and modify or eliminate regulations that no longer serve a necessary purpose as the result of meaningful economic competition between telecommunications service providers. Thus, adding new

[43] *See Forum on Toll-Free Number Administration*, Transcript at 4 (Mar. 4, 2002).

[44] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001).

[45] *See* Appendix I for a list of commenting parties. The staff also considered relevant comments in a petition for rulemaking filed by the Cellular Telecommunications and Internet Association (CTIA) on July 25, 2002 and incorporated into the Wireless Telecommunications Bureau's biennial review docket (WT Docket No. 02-310), in comments filed by Relay Nevada in the Consumer and Governmental Affairs Bureau's biennial review docket (CG Docket No. 02-311), and in a consumer complaint filed by Thomas M. Lepley, Sr. on October 4, 2002, although they were not filed as comments in WCB Docket No. 02-313.

[46] No comments were received on Parts 63 and 68, or on Part 64, subparts D, M, N, U, V and Z.

obligations is outside the scope of this proceeding.[47]

28. We received several comments on the biennial review process and standard of review. CTIA and Verizon contend that a rule should be retained only if it is necessary, and not merely consistent with the public interest. AT&T believes that a regulation that is conducive or useful to the public interest is necessary in the public interest, and the Wyoming Commission states that the Commission should not focus on a broader reading of the public interest standard than is in the language of the Act. Several commenters state that the Commission must not only review its regulations, but also take action to eliminate those it finds to be unnecessary in the public interest in the biennial review year.[48] Other commenters oppose this notion,[49] and we note that the Commission squarely rejected this interpretation of its biennial review obligations in the 2000 Report.[50] Covad suggests that the biennial review process should not be used to address issues being considered in other dockets, while BellSouth contends that the biennial review standard should be applied to regulations under consideration in other dockets.

29. Several commenters addressed the Commission's reporting and accounting requirements found in Parts 32, 42, 43 and 65. USTA supports a substantial reduction in accounting requirements under Part 32, and elimination of Parts 42 and 43 as outdated and unnecessary.[51] Several commenters oppose the elimination of Part 42, or propose changes to Parts 42 and 43, rather than elimination.[52] USTA also supports elimination of the reporting requirement for price cap carriers in Part 65 except when a lower formula adjustment is filed, and modification of other sections of the rule. Verizon states that Part 32 should be eliminated, and proposes that all carriers be allowed to follow generally accepted accounting principles.[53] The comments also address the Commission's ongoing accounting and ARMIS reporting proceeding, with some commenters believing the Commission is required to continue its work on Phase 3 of the review, while others assert that the Commission should first give the Federal-State Joint Conference on Accounting an opportunity first to review and make recommendations on

[47] *See 2002 Biennial Regulatory Review*, GC Docket No. 02-390, Report, FCC 02-342, para. 11 (2002 Report) (stating that "proposing new rules is outside the scope of the biennial review").

[48] NECA Comments at 2-3; USTA Comments at 2-3 (also proposing that any rule identified for elimination automatically sunset within 90 days without Commission action, and a requirement that a rulemaking proceeding be initiated within 90 days after a rule has been identified for modification); Verizon Comments at 8-9.

[49] *See* AT&T Comments at 10.

[50] 2000 Report, 16 FCC Rcd at 1210, 1212. *See also* 2002 Report at para. 8.

[51] USTA Comments at 8-9 (also stating that most of the Part 43 reports have outlived their usefulness).

[52] *See* AT&T Reply at 12-25; Washington Commission Reply at 2-6; Texas Coalition Reply at 1-2; TeleTruth Reply at 1; Time Warner Reply at 1-4.

[53] Verizon Comments at 5-9.

the issues.[54]

30. Commenters propose elimination of regulations in several other rule parts.[55] Other general comments include requests that the Commission consider the effect of its regulations on small and rural carriers and customers,[56] general comments alleging overregulation of BOCs, including unfair UNE-P rates,[57] and opinions on the proper classification and treatment of broadband.[58] WCB also received comments from WinStar regarding the Commission's Form 477, which is used to collect data on local competition and broadband deployment. Among other things, Winstar suggests that the Commission should use the biennial review process to fundamentally modify the Form 477 as it relates to broadband reporting to better reflect actual deployment.[59]

D. Bureau Recommendations

31. After careful consideration of the comments received and analysis of the rule parts under WCB's purview, the staff makes several recommendations to the Commission. We find that many of the rule parts and subparts continue to be necessary in the public interest, and thus recommend that no changes be made to them at this time. For other rules that are the subject of ongoing rulemaking proceedings or are under consideration by the Federal-State Joint Conference on Accounting or by a Federal-State Joint Board, we in some cases find that the rules in their current form may no longer be necessary in the public interest as a result of competition, and recommend that any Commission action should occur after resolution or recommendations in those contexts. In some instances, where the staff finds that changes to or elimination of certain rules may be warranted, we recommend that a proceeding be initiated to address our

[54] The Commission recently convened the Federal-State Joint Conference on Accounting and charged it with reviewing the Commission's accounting and reporting requirements "to determine their adequacy and effectiveness in the current market and make recommendations for improvements." *Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-269, Order, 17 FCC Rcd 17025 (2002).

[55] They include Part 51 (notice requirements for network changes); Part 52 (the local number portability requirement for CMRS carriers); Part 53 (separate affiliate requirements that prevent BOCs from offering consumers seamless end-to-end service); Part 54 (requirement that service providers reimburse USAC for payments or commitments made to ineligible entities for payment made for eligible services used in an ineligible manner); Part 61 (the price cap all-or-nothing rule; the 3-part test for waiver study areas); Part 63 (the requirement that carriers holding section 214 authorizations file international service reports or a section 43.61 report); Part 64, Subpart G (prohibition on bundling of enhanced services by BOCs); Part 64, Subpart T (requirement that independent LECs provide interexchange services through a separate affiliate); and Part 69 (the NECA annual board election requirement).

[56] SouthEast Comments at 1; TeleTruth Comments at 1.

[57] Lepley Complaint, *supra* note 45, at 1.

[58] Verizon Comments at 11-12; Harry Bowan Comments at 1; Winstar Comments at 4-6.

[59] *See generally* Winstar Comments.

findings.[60]

32. *Rules that are necessary in the public interest*. Because the Commission recently clarified and streamlined its Part 63 rules, the staff recommends that the Commission take no action to modify or eliminate them at this time, as discussed in Appendix II. Similarly, the staff recommends the retention without change of several other rule parts as necessary in the public interest.[61]

33. *Rules subject to ongoing action*. As previously noted, the Commission continues its accounting and ARMIS reporting requirements proceeding, and has recently established the Federal-State Joint Conference on Accounting Issues to review and make recommendations on the Commission's accounting and reporting rules. Although the staff finds that the accounting and reporting rules in Part 32 (Uniform System of Accounts), Part 43 (Reports of Communications Common Carriers and Certain Affiliates), and Part 64 Subpart I (Allocation of Cost) remain necessary in the public interest, the staff recognizes that the Joint Conference may recommend modification or elimination of some of these rules. The staff therefore recommends that the Commission await recommendations from the Joint Conference before taking any action on these rules. Similarly, the staff makes the same finding for most of the rules in Part 36, and recommends that any changes to Part 36 be coordinated with the Federal-State Joint Board on Separations.[62] Finally, the staff finds that several rules in their current form that are subject to ongoing proceedings, as described in Appendix II, are no longer necessary in the public interest as a result of meaningful economic competition, and recommends that the Commission consider modifications to those rules in the ongoing proceedings.[63]

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[60] We note that the staff also recommended elimination of several outdated rule sections in the 2000 Updated Staff Report, and we renew those recommendations to the extent they have not already been eliminated.

[61] Part 53 (Special Provisions Concerning Bell Operating Companies); Part 59 (Infrastructure Sharing); Part 64, Subpart D (Procedures for Handling Priority Services In Emergencies), Subpart F (Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities), Subpart N (Expanded Interconnection), Subpart U (Customer Proprietary Network Information), Subpart V (Telecommunications Carrier Systems Security and Integrity Pursuant to the Communications Assistance for Law Enforcement Act (CALEA), Subpart X (Subscriber List Information), Subpart Z (Prohibition on Exclusive Telecommunications Contracts); Part 65 (Interstate Rate of Return Prescription Procedures and Methodologies); and Part 68 (Connection of Customer Premises Equipment to the Telephone Network).

[62] The staff also finds that certain provisions in Part 54 remain necessary in the public interest, but recommends that the Commission await recommendations from the Universal Service Joint Board or complete open rulemaking proceedings to consider possible changes to these rules. *See* Appendix II.

[63] Part 51: *Triennial Review Proceeding, supra* note 15; *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, Notice of Inquiry, 17 FCC Rcd 4015 (2002); Part 61: *MAG Further NPRM, supra* note 19; *United States Telephone Association Petition for Rulemaking – 2000 Biennial Regulatory* Review, RM-9707, Public Notice No. 95767 (rel. Oct. 14, 1999); Part 64 Subpart G: *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband*

34. *Initiate a biennial review proceeding*. Although the staff concludes that the Part 42 rules are necessary in the public interest at this time, it also believes that there may be some reasonable alternatives to certain provisions in Part 42 to ensure that accurate carrier records are maintained. Therefore, the staff recommends that the Commission initiate a proceeding to determine whether these rules should be modified or eliminated. The staff further concludes that the network disclosure rules in Part 51 remain necessary in the public interest. However, these rules may have become unnecessarily complicated in their current form. The staff therefore recommends that the Commission initiate a proceeding to streamline or modify sections 51.325 through 51.335. The staff also recommends that the Commission initiate a proceeding to consider whether the requirements in section 64.1330, under which states must review whether they have provided for public interest payphones consistent with Commission guidelines, should be extended.

35. *Eliminate regulations.* The staff recommends elimination and repeal of several rule sections that have become outdated, including some recommended for repeal in the 2000 Biennial Regulatory Review.[64] Specifically, the staff recommends repeal of the Lifeline provisions in Part 36, subpart G, because they are no longer in effect and have been replaced by the Lifeline rules in Part 54. The staff also recommends eliminating certain rules in Part 36, subpart F that refer to specific time periods that have lapsed.[65] The staff further recommends revisions to certain rule sections in Part 54 to update certain provisions and dates,[66] for removal of provisions for which funding periods have expired,[67] and for elimination of sections 52.15(d)-(e) and 52.23(c)-(e)(elapsed implementation dates).[68]

36. *Other recommendations*. CTIA, in a petition for rulemaking filed in another docket, proposes to eliminate section 1.815 of the Commission's rules, which requires common carriers to file annual employment reports (FCC Form 395) with the

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Providers, CC Docket No. 02-23, *Computer II Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services: 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards*, CC Docket Nos. 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002); Part 64 Subpart T: *Separate Affiliate Proceeding, supra* note 35; Part 69: *MAG Further NPRM, supra* note 19; *2000 Biennial Regulatory Review – Requirements Governing the NECA Board of Directors Under Section 69.602 of the Commission's Rules and Requirements for the Computation of Average Schedule Payments Under Section 69.606 of the Commission's Rules*, CC Docket No. 01-174, Notice of Proposed Rulemaking, 16 FCC Rcd 16027 (2001).

[64] *See* 2000 Updated Staff Report at para. 53. The specific sections are: 47 U.S.C. §§ 36.701, 51.211, 51.515(b)-(c), 53.101, 53.201(a)-(b), 54.701(b)-(e), 64.1320, 64.1903(c), 69.116, 69.117, 69.126, 69.127, and 69.612.

[65] *See, e.g.,* 47 C.F.R. §§ 36.601(a)-(b).

[66] 47 C.F.R. §§ 54.201-207, 54.303(b)(4), 54.5, 54.623, 54.901(b)(2), and references to 47 C.F.R. §§ 54.903(a), 54.903(c), 54.903(d), 54.903(e).

[67] 47 C.F.R. §§ 54.507(a)(1)-(2), 54.604(a)(2).

[68] 47 C.F.R. §§ 52.15(d)-(e), 52.23(c)-(e).

Commission.[69] Because this data collection is administered by WCB's Industry Analysis and Technology Division, WCB reviewed the rule as part of this biennial review process. CTIA argues that these reports serve no Commission regulatory purpose and duplicate other reports that carriers file with state and federal regulators. As a result, CTIA states that section 1.815 imposes a "needless burden of paperwork" on carriers.[70] The staff recommends that the Commission initiate a biennial review proceeding to determine whether there is a need for continued monitoring of the employment practices of common carriers, and whether this rule in general remains necessary in the public interest.

37. The staff also recommends that certain other rule parts be targeted for modification or updating to conform with regulatory changes. For example, the staff recommends that the rules governing selection of the numbering administrator be modified to reflect the use of Federal Acquisition Regulation (FAR) provisions in current and future contract procurements.[71]

38. Regarding the comments filed by Winstar recommending that the Commission use the biennial review process to fundamentally modify the Form 477 broadband reporting requirements, the staff finds that the information collected on Form 477 is essential to the Commission's ability to develop, evaluate and revise policy on developing local services competition and broadband deployment. Because Winstar's comments do not identify specific rules for modification or elimination, however, the staff recommends that the Commission address Winstar's proposals concerning Form 477 in the context of ongoing proceedings, as appropriate.[72]

39. Finally, the staff recommends that the Commission initiate a procedural rulemaking to eliminate the rules identified herein that by their own operation have expired or been superceded, and to update those rules containing outdated references (to the Common Carrier Bureau (the former name for WCB), for example).

[69] 47 C.F.R. § 1.815. Companies that employ more than 16 persons must use Form 395 to report employment statistics (such as race and gender), and the existence of any pending EEO-related complaints.

[70] CTIA Petition, *supra* note 45, at 6. We note that the Rural Cellular Association also supports elimination of section 1.815 in comments filed in the Wireless Telecommunications Bureau's biennial review docket (WT Docket No. 02-310). *See* Rural Cellular Association Comments at 2.

[71] 47 C.F.R. §§ 52.11, 52.12, 52.20.

[72] *See Local Competition and Broadband Reporting*, CC Docket No. 99-301, Second Notice of Proposed Rulemaking, 16 FCC Rcd 2070 (2001); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No.98-146, Third Notice of Inquiry, 16 FCC Rcd 15515 (2001)(addressing the Commission's use of the 200 kbps benchmark to determine what gets reported on Form 477).

IV. CONCLUSION

40. This Staff Report describes the Bureau's thorough review of the Commission's regulations pertaining to wireline telecommunications that are implicated by section 11. The staff herein recommends steps for the Commission to take in carrying out the mandate in section 11 to review its regulations in every even-numbered year. The Bureau recommends that the Commission initiate proceedings to modify or eliminate those rules that it finds to be no longer necessary in the public interest.

APPENDIX I: LIST OF COMMENTING PARTIES IN WC DOCKET NO 02-313 FOR THE DECEMBER 2002 STAFF REPORT

Comments:

Harry Bowan
CenturyTel, Inc. (CenturyTel)
National Exchange Carrier Association, Inc. (NECA)
National Telecommunications Cooperative Association (NTCA)
Adelle Simpson – Part 32
Adelle Simpson – Part 43
Adelle Simpson – Part 51
Adelle Simpson – Part 52
Adelle Simpson – Part 59
Adelle Simpson – Part 64
SouthEast Telephone Company (SouthEast)
United States Telecom Association (USTA)
Verizon
Western Alliance
Winstar Communication, LLC (Winstar)
Wyoming Public Service Commission (Wyoming Commission)

Reply Comments:

AT&T Corp. (AT&T)
BellSouth Corporation (BellSouth)
Competitive Universal Service Coalition
Covad Communications Company (Covad)
NTCA
Organization for the Promotion and Advancement of Small Telecommunications Companies
(OPASTCO)
SBC
Sprint Corporation (Sprint)
TeleTruth (late filed on Nov. 5, 2002)
Texas Coalition of Cities for Utility Issues (late filed on Nov. 6, 2002)(Texas Coalition)
Time Warner Telecom (Time Warner)
USTA
Verizon
Washington Utilities and Transportation Commission (Washington Commission)

APPENDIX II: RULE PART ANALYSIS

PART 32 – UNIFORM SYSTEM OF ACCOUNTS

Description

Section 220 of the Communications Act of 1934, as amended, requires the Commission to prescribe a uniform system of accounts for telephone companies.[73] Part 32 of the Commission's rules implements the requirements of section 220 and contains the Uniform System of Accounts (USOA) for incumbent local exchange carriers.[74] The USOA is an historical financial accounting system that discloses the results of operational and financial events in a manner that enables both the companies' management and policy-making agencies to assess these results.

The USOA performs four general functions. First, the USOA sets forth a standardized chart of accounts and thereby directs companies how to record certain transactions in their books of account. Second, the USOA establishes rules for a carrier's affiliate transactions. Third, the USOA specifies accounting treatment for depreciation expenses. Finally, the USOA requires carriers to maintain property records of all telecommunications plants in service.

The USOA operates as a nonstructural safeguard to prevent an incumbent LEC from exercising its market power.[75] Specifically, through standardized accounting procedures, the USOA helps to ensure that ratepayers of regulated services do not bear the costs and risks associated with an incumbent LEC's competitive operations. The USOA deters cost misallocations by providing the initial information needed to identify cross-subsidization, and thus protects regulated services from bearing the cost of an incumbent LEC's competitive operations. Because the USOA incorporates Generally Accepted Accounting Principles (GAAP), Part 32 reduces the carriers' cost of complying with the Commission's rules.

Part 32 is organized into seven lettered sub-parts:

A – Preface
B – General Instructions
C – Instructions for Balance Sheet Accounts
D – Instructions for Revenue Accounts
E – Instructions for Expense Accounts
F – Instructions for Other Income Accounts
G – Glossary

[73] 47 U.S.C. § 220.

[74] 47 C.F.R. Part 32.

[75] *See Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996,* CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996).

Purpose

Working in tandem with the Part 43 reporting requirements,[76] the USOA is a low-cost means of gathering information about the financial performance of large incumbent LECs.[77] Policy-makers, ratepayers, and others can then use an incumbent LEC's accounting information to make more informed decisions. The information is also used to support a viable and sufficient system of universal service support. Finally, disclosure of financial information enables ratepayers to pursue complaints regarding unjust and unreasonable rates, and therefore lowers the Commission's costs of enforcing the Act.

Nevertheless, the USOA may increase an incumbent LEC's cost of performing internal accounting services because it establishes recordkeeping requirements and accounting procedures (*e.g.*, depreciation studies) that may not be necessary in a competitive environment.

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over two million connections.

Recent Efforts

The Commission, in 2000, undertook a broad review of its accounting regulations in three phases. In Phase 1 of the accounting and ARMIS reporting procedures review, the Commission addressed accounting and reporting reform issues that could be implemented without delay. In the *Phase 1 Report and Order*, which the Commission released in March 2000, the Commission substantially reduced the level of accounting detail required in certain reports, eliminated pre-notification requirements, relaxed the cost allocation manual audit requirements, and streamlined a number of ARMIS reporting requirements.[78] The Commission adopted further streamlining of accounting and reporting requirements in Phase 2, and issued a further notice of proposed rulemaking in

[76] *See* 47 C.F.R. Part 43.

[77] The reporting threshold is modified annually to adjust for inflation. The current reporting threshold is $119 million, so that only carriers with $119 million or more in annual operating revenues report their Part 32 results in the Automated Reporting Management Information System (ARMIS) program.

[78] *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent LECs: Phase 1*, CC Docket No. 99-253, Report and Order, 15 FCC Rcd 8690 (2000).

Phase 3.[79]

Recently, the Commission established a Federal-State Joint Conference on Accounting Issues "to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough."[80] The Commission also is considering pending petitions for reconsideration of Phase 2 of its accounting and ARMIS reporting procedures review.

Comments

USTA states that it supports "substantial reduction" in the Commission's accounting requirements.[81] Verizon notes that the Commission has not issued an order in response to its further notice in Phase 3 of the comprehensive accounting review.[82] Verizon further states that even though the Commission recently initiated a Federal-State Joint Conference on Accounting Issues, compliance with Section 11 of the Act requires that the Commission proceed with its review in Phase 3 to "certify that [the regulations under consideration in Phase 3] are 'necessary in the public interest.'"[83]

Verizon contends that the Commission should eliminate its Part 32 accounting rules and permit all carriers to merely follow GAAP. Verizon asserts that price cap regulation and pricing flexibility eliminate the relationship between cost and prices.[84] Verizon, addressing concerns related to recent accounting problems in and out of telecommunications, asserts that Part 32 provides no more protection than GAAP against such misconduct.[85]

Conversely, the Wyoming Public Service Commission (Wyoming Commission) states

[79] *Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting,* Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd 19911 (2001).

[80] *Federal-State Joint Conference on Accounting Issues*, Order, 17 FCC Rcd 17025 (2002) (*Federal-State Joint Conference Order)*.

[81] USTA Comments at 7; *but see* Covad Reply at 2 (asserting that neither Verizon nor USTA present evidence that economic competition calls for the elimination of "the laundry list of rules set forth by both parties").

[82] Verizon Comments at 15.

[83] *Id.* at 16. *See also* USTA Comments at 7.

[84] Verizon Reply at 5-6.

[85] *Id.* at 7-8*; but see* TeleTruth Comments at 1, noting that the Part 32 accounting rules form the basis of pending complaints in New York, New Jersey, and Massachusetts and before the IRS and the SEC.

that any proposals to modify current accounting and reporting requirements should not be acted upon by the Commission until referred to the Federal-State Joint Conference on Accounting Issues for comment and recommendation.[86] In support thereof, the Wyoming Commission cites the Commission's statement of purpose of the Joint Conference: "to further the development of improved regulatory accounting and reporting requirements and [to] ensure that data filed by carriers are adequate, truthful, and thorough."[87] AT&T agrees with the Wyoming Commission, stating that the goal of the Joint Conference is to "help restore public confidence in the telecommunications industry by improving regulatory accounting and related reporting requirements."[88] The Wyoming Commission further asserts that the FCC should stay the implementation of changes adopted in Phase 2 pending review by the Joint Conference.[89]

The Wyoming Commission argues that it is most rational to have data filed at the federal level rather than at the individual state level. The Wyoming Commission argues that because the majority of states have adopted the USOA for telecommunications companies, if the Commission modifies the USOA substantially, the states would need to maintain separate accounting requirements, resulting in a tremendous increase in the states' administrative burden. The Wyoming Commission further argues that if the accounting is different in each jurisdiction, there is no national standard and a state might not be able to assure itself and its citizens that a company is financially sound and not extracting monopoly profits. Lack of uniformity also denies investors assurance that a company is not "gaming" its earnings in a particular state or before a regulatory body.[90]

Lastly, the Wyoming Commission asserts that, while there are pockets of vigorous local service competition, it is not yet widespread throughout the nation. Accordingly, federal and state regulators must be vigilant in fulfilling oversight obligations concerning essential local services as markets continue to transition from monopoly to a fully competitive market. The Wyoming Commission argues that elimination of tools necessary for oversight before the transition is complete could sound the death knell for competition before it has an opportunity to develop.[91]

Adelle Simpson argues that the USOA should be amended to ensure that common

[86] Wyoming Commission Comments at 4; *but see* USTA Reply at 4, stating that a moratorium on accounting reforms would place a burden on incumbent LECs and put them at a competitive disadvantage.

[87] Wyoming Commission Comments at 4*; see also* Texas Coalition Comments at 1-2.

[88] AT&T Reply at 13-14, *citing Federal-State Joint Conference Order*, 17 FCC Rcd at 17027-28.

[89] Wyoming Commission Comments at 5; *see also* Washington Commission Reply at 5.

[90] Wyoming Commission Comments at 3-4; *see also* Washington Commission Reply at 4. *But see* Verizon Reply at 7–9, (asserting that compliance with GAAP would provide sufficient information to satisfy state concerns).

[91] Wyoming Commission Comments at 5-6; *see also* Washington Commission Reply at 2-3.

carriers are not permitted "to continue to manipulate their financial results . . . ." Ms. Simpson alleges systematic deviations from GAAP and fraudulent accounting with respect to accounting for good will, bad debt, billing 900 services on behalf of service providers, and the provision of international transit.[92]

Recommendation

Because the Part 32 rules contain safeguards to prevent incumbent LECs from exercising their market power in an anticompetitive manner, WCB staff finds that Part 32 remains necessary in the public interest, and therefore should not be eliminated or modified as a result of meaningful competition at this time. The staff recognizes, however, that issues concerning these rules are being considered by the Federal-State Joint Conference on Accounting Issues, and that the Joint Conference may recommend modification or elimination of certain provisions in Part 32. The staff therefore recommends that the Commission await the recommendations of the Joint Conference before taking any action on these rules. Phase 1 of the accounting and ARMIS reporting procedures review was implemented quickly and included a broad range of non-controversial changes. Phase 2 adopted additional modifications resulting in significant net reductions in the number of accounts and reporting requirements. The Phase 2 accounting changes do not become effective until January 2003, and the Commission recently issued an order suspending implementation of four rule modifications adopted in Phase 2.[93] The Commission intended Phase 3 as a forum to consider long-range direction for Part 32 and related rules. The proceeding was designed to anticipate possible changes in the competitive environment and to develop appropriate structure to meet those potential environments. Subsequently, the Commission convened the Joint Conference to provide a forum for an ongoing dialogue between the Commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough.

[92] Adelle Simpson Part 32 Comments.

[93] *See Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-269, Order, 17 FCC Rcd 23243(2002).

PART 36 - JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

Description

The Part 36 jurisdictional separations rules contain procedures and standards for dividing telephone company investment, expenses, taxes, and reserves between the state and the federal jurisdictions. The division of costs between the state and federal jurisdictions is necessary for the calculation of state and federal earned rates of return. In addition to allocating costs between the federal and state jurisdictions, Part 36 also serves a universal service function. Specifically, Part 36 permits carriers that serve high-cost areas to allocate additional local loop costs to the interstate jurisdiction and to recover those costs through the high-cost universal service support mechanism, thus making intrastate telephone service in high-cost areas more affordable. Part 36 also contains the Commission's previous rules for the provision of Lifeline Connection Assistance, which have since been replaced by more recent rules under Part 54.

Part 36 is organized into seven lettered subparts:

A – General
B – Telecommunications Property
C – Operating Revenues and Certain Income Accounts
D – Operating Expenses and Taxes
E – Reserves and Deferrals
F – Universal Service Fund
G – Lifeline Connection Assistance Expense Allocation

Purpose

Part 36 is intended to recognize the dual system of telecommunications regulation, with interstate communications regulated at the federal level.

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over two million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by 37 percent since 1993.

Recent Efforts

On May 22, 2001, the Commission adopted a five-year interim freeze of the Part 36 jurisdictional separations rules, pending comprehensive reform of the separations process.[94] The interim freeze was based upon a July 2000 *Recommended Decision* of the Federal-State Joint Board on Separations (Separations Joint Board). Under the interim freeze, the Part 36 categories and jurisdictional allocation factors of price cap incumbent LECs are frozen, while rate-of-return carriers have the option to freeze only their jurisdictional allocation factors. The interim freeze will be in effect from July 1, 2001 through June 30, 2006, or until comprehensive reform is completed, whichever comes first. On December 18, 2001, the state members of the Separations Joint Board filed a "Glide Path" policy paper outlining the options for comprehensive separations reform.

On May 23, 2001, the Commission released an order modifying, among other things, the Part 36, Subpart F rules with regard to high-cost support for rural carriers, and announced its intention to conduct a comprehensive review of the high-cost support mechanisms for rural and non-rural carriers as a whole to ensure that both mechanisms function efficiently and in a coordinated fashion.[95] On February 15, 2002, the Commission determined that, in light of the need to expeditiously address certain issues remanded to it by the Tenth Circuit Court of Appeals, it was appropriate to delay briefly the initiation of the comprehensive examination of how rural and non-rural high cost support mechanisms function together.[96]

Comments

Some commenters recommend that all biennial review efforts impacting the separations rules be coordinated with the Joint Board.[97] Verizon, however, states that such action is inconsistent with the Commission's obligation to review and eliminate, by the end of each year, any regulations that are no longer "necessary in the public interest."[98]

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[94] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, CC Docket No. 80-286, 16 FCC Rcd 11382 (2001).

[95] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244 (2001)(*Rural Task Force Order*).

[96] *Federal-State Joint Board on Universal Service,* Notice of Proposed Rulemaking and Order, CC Docket No. 96-45, 17 FCC Rcd 2999 (2002).

[97] Wyoming Commission Comments at 5; Washington Commission Reply at 7.

[98] Verizon Reply at 4. The Commission has previously rejected this position. *See 2000 Biennial Regulatory Review*, Report, 18 FCC Rcd 1207, 1210 (2001).

NECA argues that the formula development and approval process for average schedule companies is unnecessarily complex and time-consuming, and that this process should be simplified and streamlined as part of the Commission's biennial review efforts. [99]

NTCA believes that the Commission should modify the Part 36 definition of "study area" to simplify the process of acquiring exchanges from other carriers.[100]

Recommendation

In the 2000 Biennial Regulatory Review, the staff recommended deletion of the subpart G Lifeline provisions in Part 36, because they are no longer in effect and have been replaced by rules in Part 54.[101] WCB staff recommends that the Commission undertake that task as part of an upcoming rulemaking proceeding. The staff also recommends the elimination of rules in Part 36, subpart F that refer to specific time periods that have since passed.[102]

The remaining rules in Part 36 enable the Commission to regulate interstate communications at the federal level consistent with the dual federal-state system of telecommunications regulation in the Act. The staff therefore finds that the Part 36 rules are necessary in the public interest, and therefore should not be eliminated or modified as a result of meaningful economic competition at this time. Because certain issues involving the Part 36 rules have been referred to the Federal-State Joint Board on Separations, however, the staff recognizes that the Joint Board may recommend modification or elimination of certain provisions in Part 36. The staff therefore recommends that the Commission await the recommendation of the Joint Board before taking any action on these rules.

The process for distributing high-cost support to average schedule companies pursuant to Commission-approved formulas currently is under consideration in a pending rulemaking proceeding.[103] The staff finds that these rules are necessary in the public interest, and therefore should not be eliminated or modified as a result of meaningful economic competition at this time. The staff recommends, however, that the Commission consider any modifications to these rules in the context of the ongoing rulemaking proceeding. The staff further finds that the rules regarding the definition of "study area" are necessary

[99] NECA Comments at 12-14.

[100] NTCA Comments at 2-4.

[101] *See* 47 C.F.R. § 54.400 *et seq.*

[102] *See, e.g.,* 47 C.F.R. § 36.601(a), (b).

[103] *See 2000 Biennial Review-Requirements Governing the NECA Board of Directors under Section 69.602 of the Commission's Rules and Requirement for the Computation of Average Schedule Company Payments under Section 69.606 of the Commission's Rules*, CC Docket No. 01-174, Notice of Proposed Rulemaking, 16 FCC Rcd 16027 (2001).

in the public interest, and therefore should not be eliminated or modified as a result of meaningful economic competition. The staff recommends, however, that the Commission consider any modification of these rules in the context of the comprehensive review that the Commission intends to initiate regarding the appropriate high cost support mechanism for rural and non-rural carriers.[104]

[104] *See Rural Task Force Order*, 16 FCC Rcd at 11310.

PART 42 – PRESERVATION OF RECORDS OF COMMON CARRIERS

Description

Part 42 implements sections 219 and 220 of the Communications Act of 1934, as amended, which authorize the Commission to require communications common carriers to keep records and file reports. Part 42 sets forth rules governing the preservation of records of communications common carriers, including all accounts, records, memoranda, documents, papers and correspondence prepared by or on behalf of such carriers. It also requires non-dominant interexchange carriers to make available information concerning the rates, terms, and conditions for their services.

Purpose

Part 42 was established to facilitate enforcement of the Communications Act by ensuring the availability of carrier records needed by the Commission to meet its regulatory obligations. Part 42 is also intended to aid enforcement of criminal statutes by requiring the retention of telephone toll records. In addition, Part 42 serves the public interest by giving consumers access to information about the rates, terms, and conditions for domestic, interstate, interexchange services.

By relying primarily on general instructions to guide the preservation of records, Part 42 gives regulated common carriers significant flexibility to choose how to preserve records. This approach allows carriers to choose storage media, reducing their record storage and retrieval costs. Part 42 also gives carriers flexibility in determining proper retention periods, although it specifies the retention period for toll records in order to assist law enforcement activities.

Notwithstanding these benefits, Part 42 may increase carriers' recordkeeping costs to some extent. And requiring interexchange carriers to post information concerning their rates for domestic, interstate, interexchange services may increase the risk of tacit price collusion.

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 2 million connections.

The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by 37 percent since 1993.

Recent Efforts

Prior to the 2000 Biennial Regulatory Review, the Commission reinstated the public disclosure requirement for domestic, interstate, interexchange services in connection with the de-tariffing of those services by adopting new section 42.10 and amended section 42.11 of the Commission's rules.[105] Thereafter, and as part of the 2000 Biennial Regulatory Review, the Commission imposed similar public disclosure requirements in connection with the de-tariffing of international services, adding these disclosure requirements to Sections 42.10 and 42.11.[106]

Comments

As it did in the last biennial regulatory review and without any additional discussion, USTA argues that Part 42 is outdated and unnecessary and should be eliminated.[107] USTA proposes that incumbent LECs should be permitted to determine the most efficient way to conduct recordkeeping. USTA also proposes that the public disclosure requirements currently set forth in Sections 42.10 and 42.11 be maintained, but moved to Part 61 with other tariff requirements. AT&T and the Washington Utilities and Transportation Commission oppose USTA's proposals. Additionally, the Wyoming Public Service Commission and the Texas Coalition of Cities for Utilities Issues filed comments that appear to oppose any reduction of carrier record-keeping and reporting obligations, but that did not identify Part 42 rules specifically. All of these commenters argue – or appear to argue – that Part 42 recordkeeping requirements are particularly necessary given the dominant status of incumbent LECs and the need for such information by the Commission, other regulators and the public.[108]

Recommendation

As explained in detail above, the Part 42 rules help ensure that the Commission and the public have access to valuable carrier information that is maintained adequately, is comparable for all submitting carriers, and is readily available for inspection. The Part 42 rules are of particular value because they provide a specific means for preserving carriers' records. Moreover, Part 42 affords carriers significant flexibility per actual

[105] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace,* CC Docket No. 96-61, Second Order on Reconsideration and Erratum*,* 14 FCC Rcd 6004 (1999). The U.S. Court of Appeals for the D.C. Circuit has upheld the Commission's decision to mandate the de-tariffing of domestic interstate long distance service. *See MCI WorldCom, Inc. v FCC*, 209 F.3d 132 (D.C. Cir. 2000).

[106] *See 2000 Biennial Regulatory Review, Policy and Rules Concerning the International Interexchange Marketplace*, IB Docket No. 00-202, Report and Order, 16 FCC Rcd 10647 (2001).

[107] *See* USTA Comments at 8 (specifically referencing USTA's 2000 Biennial Regulatory Review Comments and a related petition).

[108] *See* AT&T Reply at 22-23; Washington Commission Reply at 1-7; Wyoming Commission Comments at 1-6; Texas Coalition Reply at 1-2. *See also* TeleTruth Reply (generally characterizing USTA's comments as a proposal of "record shredding").

record retention. WCB staff therefore finds Part 42 to be necessary in the public interest at this time. Nevertheless, it is unclear whether there are reasonable and less costly alternatives that would ensure that accurate carrier records are kept and maintained. The staff therefore recommends that the Commission initiate a proceeding to explore whether the Part 42 rules should be modified or eliminated. USTA expressly states that rule sections 42.10 and 42.11 should be maintained. The Commission recently addressed sections 42.10 and 42.11 in a rulemaking, finding that adoption of these public disclosure and information maintenance requirements would benefit consumers and further the public interest by enabling consumers to determine the most appropriate rate plans to meet their individual calling needs.[109] The staff agrees that consumers should have available to them information about carriers' rates, terms and conditions, and therefore finds these rules to be necessary in the public interest. The staff accordingly does not recommend that they be substantially revisited in the proposed new proceeding.

[109] *See 2000 Biennial Regulatory Review, Policy and Rules Concerning the International Interexchange Marketplace*, 16 FCC Rcd at 10668-72.

PART 43 – REPORTS OF COMMUNICATIONS COMMON CARRIERS AND CERTAIN AFFILIATES

Description

Section 211 of the Communications Act of 1934, as amended, requires carriers to file with the Commission copies of all contracts, agreements, or arrangements with other carriers that relate to any traffic affected by the Act.[110] Section 219 authorizes the Commission to require all carriers that are subject to the Act to file annual reports with the Commission.[111] Section 220 allows the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers.[112]

Part 43 of the Commission's rules implements these sections by establishing rules that perform three major functions. First, Part 43 prescribes general requirements and filing procedures for several reports that various carriers must file. These include the annual Automated Reporting Management Information System (ARMIS) reports on financial and operating data that are filed by common carriers with operating revenues exceeding an indexed revenue threshold, reports on proposed depreciation changes, reports on international telecommunications traffic, and international circuit status reports. Second, Part 43 requires that certain carriers file with the Commission copies of specified contracts, agreements and arrangements with other carriers. Third, Part 43 sets forth the Commission's International Settlements Policy, which is designed to ensure that U.S. telecommunications carriers pay nondiscriminatory rates for termination of international traffic in foreign countries.[113]

Purpose

The reports required by Part 43 assist the Commission in monitoring the industry to ensure that carriers comply with the Commission's rules, and in tracking market and other industry developments, which improves the Commission's ability to identify developing regulatory issues and analyze the effects of alternative policy choices. The reports of proposed changes in depreciation rates allow the Commission to monitor the depreciation rates for dominant carriers' capital assets.[114] The contract-filing requirement helps the Commission to identify potential instances of anti-competitive conduct, and to enforce its International Settlements Policy.

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[110] 47 U.S.C. § 211. Section 211 also permits the Commission to require the filing of any other contracts.

[111] 47 U.S.C. § 219.

[112] 47 U.S.C. § 220.

[113] *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements,* CC Docket No. 90-337, Report and Order on Reconsideration, 14 FCC Rcd 7963, 7974 (1999).

[114] Only those carriers with annual operating expenses that equal or exceed the indexed revenue threshold defined in section 32.9000 and that have been found by the Commission to be dominant carriers with respect to communications services are required to filed depreciation change reports.

Analysis

Status of Competition

Competition in local service markets has continued to increase since the completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over two million connections.

Recent Efforts

The Commission established a Federal-State Joint Conference on Accounting Issues "to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough."[115] The Commission also is considering pending petitions for reconsideration in Phase 2 of its accounting and ARMIS reporting procedures review and a rulemaking is pending in Phase 3 of that proceeding.[116]

Comments

Verizon notes that the Commission has not issued an order in response to its further notice in Phase 3 of the accounting and ARMIS reporting procedures review.[117] Verizon further notes that the Commission recently initiated a Federal-State Joint Conference on Accounting Issues "to provide a forum for an ongoing dialogue between the Commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough."[118] Verizon asserts that compliance with Section 11 of the Act requires that the Commission proceed with its review in Phase 3 to "certify that [the regulations under consideration in Phase 3] are 'necessary in the public interest.'"[119] USTA contends that the Commission should consider eliminating

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[115] *Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-369, Order, 17 FCC Rcd 17025 (2002).

[116] *Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting,* Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd 19913 (2001).

[117] Verizon Comments at 15.

[118] *Id.* at 15, c*iting Federal-State Joint Conference on Accounting Issues,* WC Docket No. 02-269, Order, 17 FCC Rcd 17025 (2002).

[119] Verizon Comments at 16. *See also* USTA Reply at 7.

Part 43 because "most" reports have "outlived their usefulness."[120]

Conversely, Time Warner asserts that the Commission should consider whether the reporting requirements can be made more comprehensive and accurate.[121] Time Warner, for example, cites the use of ARMIS Report 43-01 to determine incumbent LEC rates of return for interstate special access.[122] Time Warner further asserts that ARMIS Report 43-05 is the only source providing information on incumbent LEC special access service quality.[123] AT&T argues that ARMIS data are central to the implementation of virtually every one of the Commission's initiatives to implement the 1996 Act.[124] For example, AT&T states that, in making TELRIC pricing determinations, states use models similar to the one the Commission uses to determine universal service support, both of which rely on ARMIS data.[125]

In its reply comments, the Washington Utilities and Transportation Commission (Washington Commission) asserts that state commissions rely on data reported at the federal level and that ARMIS fulfills a legitimate state need for data to be collected and maintained at the federal level.[126] The Washington Commission argues that it uses total company data to compare interstate and intrastate earnings, and to determine market share and the status of competition in Washington.[127] In addition, the Washington Commission contends that ARMIS is essential to its analysis of overhead charges allocated to individual rates, to its assessment of universal service proposals, to its review of wholesale and discount prices, and to its ability to monitor quality of service.[128]

Recommendation

The Part 43 rules enable the Commission to effectively monitor carriers to ensure that they comply with the Commission's rules, and facilitate the tracking of market and other industry developments. WCB therefore finds that Part 43 remains necessary in the public interest, and therefore should not be eliminated or modified as a result of meaningful

[120] USTA Comments at 9; USTA Reply at 8.

[121] Time Warner Reply at 2.

[122] *Id.* at 2-3.

[123] *Id.* at 3.

[124] AT&T Reply at 15.

[125] *Id.* at 16, *citing 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3*, CC Docket No. 00-199, Notice of Proposed Rulemaking, 15 FCC Rcd 20568 (2000).

[126] Washington Commission Reply at 3.

[127] *Id.* at 4.

[128] *Id.* at 4-5.

competition. The staff recognizes, however, that issues concerning these rules are being considered by the Federal-State Joint Conference on Accounting Issues, and that the Joint Conference may recommend modification or elimination of certain provisions in Part 43. The staff therefore recommends that the Commission await the recommendations of the Joint Conference before completing any action on these rules. Phase 1 of the accounting and ARMIS reporting procedures review was implemented quickly and included a broad range of non-controversial changes. Phase 2 adopted additional modifications resulting in significant net reductions in the number of accounts and reporting requirements. The Phase 2 accounting changes do not become effective until January 2003, and the Commission recently issued an order deferring implementation of four rule modifications adopted in Phase 2 for 6 months.[129] The Commission intended Phase 3 as a forum to consider long-range direction for Part 32 and related rules. The proceeding was designed to anticipate possible changes in the competitive environment and to develop appropriate structure to meet those potential environments. Subsequently, the Commission convened the Joint Conference to provide a forum for an ongoing dialogue between the Commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough.

[129] *See Federal-State Joint Conference on Accounting Issues*, Order, WC Docket No. 02-269, 17 FCC 23243 (2002).

PART 51 - INTERCONNECTION

Description

Part 51 implements sections 251 and 252 of the Communications Act of 1934, as amended.[130] Most significantly, these provisions require that the incumbent local exchange carriers open their networks to competition, and thus, these provisions are critical to fostering local exchange and exchange access competition as envisioned by Congress. Section 251 establishes distinct sets of pro-competitive requirements for telecommunications carriers, local exchange carriers, and incumbent local exchange carriers. Section 251 provides that all telecommunications carriers have a duty to interconnect with other telecommunications carriers. Under section 251, local exchange carriers are subject to additional requirements concerning number portability, dialing parity, right-of-way access, and reciprocal compensation. In addition to these obligations, incumbent local exchange carriers are subject to further requirements concerning negotiation of agreements, interconnection, access to unbundled network elements, resale, collocation, and network change notifications. Section 252 establishes procedures for negotiating, arbitrating, and approving interconnection agreements. Section 252(d) also provides for pricing standards, including pricing of services offered for resale.

Part 51 is organized into nine lettered sub-parts:

A - General Information
B - Telecommunications Carriers
C - Obligations of All Local Exchange Carriers
D - Additional Obligations of Incumbent Local Exchange Carriers
E - Exemptions, Suspensions, and Modifications of Requirements of Section 251 of the Act
F - Pricing of Elements
G - Resale
H - Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic
I - Procedures for Implementation of Section 252 of the Act

Purpose

Part 51 is intended to foster competition in the local exchange and exchange access markets by requiring that incumbent local exchange carriers open their networks to competition, and by establishing pricing standards applicable to the facilities and services that the incumbent local exchange carriers provide to their competitors. Consistent with sections 251 and 252 of the Act, Part 51 also contains certain pro-competitive requirements that apply to all telecommunications carriers and competitive local exchange carriers.

[130] 47 U.S.C. §§ 251, 252.

Analysis

Status of Competition

Competition in local service markets has continued to increase since the completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over two million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by 37 percent since 1993.

Recent Efforts

Since the publication of the 2000 Biennial Regulatory Review Report, the Commission has initiated broad reviews of its rules implementing section 251. In 1999, the Commission stated that it would review its policies concerning the provision of unbundled network elements (UNEs) to competitors by incumbent LECs pursuant to section 251(c)(3) and (d)(2) of the Act on a triennial basis.[131] On December 20, 2001, the Commission released a notice of proposed rulemaking initiating the *Triennial Review Proceeding*.[132] In reviewing its UNE requirements, the Commission seeks to ensure that its regulatory framework remains current and faithful to the pro-competitive, market-opening provisions of the 1996 Act in light of our experience over the last two years, advances in technology, and other developments in the markets for telecommunications services. At the same time, the Commission seeks to fashion a more targeted approach to unbundling that identifies more precisely the impairment facing requesting carriers.[133] Accordingly, the *Triennial Review Proceeding* constitutes a comprehensive review of the Commission's standards and rules implementing section 251(c)(3) and (d)(2) of the Communications Act.[134]

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[131] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3766 & n.269 (1999).

[132] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Notice of Proposed Rulemaking, 16 FCC Rcd 22781 (2001) (*Triennial Review Proceeding)*.

[133] *Id.* at 22783.

[134] This review is coincident with the review the Commission would otherwise have been required to undertake in light of recent court decisions. The United States Supreme Court recently affirmed that the Act does not preclude the Commission from requiring incumbent LECs to combine elements of their networks at the request of competitive LECs who cannot combine them, when they lease the elements to the competitive LECs. *Verizon Communications, Inc. v. FCC,* 122 S. Ct. 1646 (2002). Additionally, the D.C. Circuit recently overturned the Commission's *UNE Remand* and *Line Sharing* orders, *U.S. Telecom*

The Commission initiated two other proceedings entailing reviews of the Commission's Part 51 rules. On November 8, 2001, the Commission initiated a rulemaking to consider whether it should adopt national performance measurements and standards for evaluating the provisions of UNEs by incumbent LECs.[135] Additionally, the Commission is examining the continued importance of the equal access and nondiscrimination obligations in the *Equal Access Notice of Inquiry.*[136]

Comments

Commenters argue that the interconnection rules should be amended in a manner that would ensure that incumbent LECs provide facilities such as ports to competitive carriers so that they may interconnect.[137] One commenter also urges the Commission to redefine "common carrier" to include all enterprises that send telecommunications traffic across state lines.[138] Other commenters on this issue contend that Part 51 should not impose requirements on incumbent LECs to provide collocation, certain UNEs, and UNE-P.[139] Moreover, USTA recommends that incumbent LECs be permitted to elect whether Part 51 is applied to the incumbent LECs' provisioning of advanced services.[140] BellSouth argues that the Commission's network disclosure rules, including the standard notice and the short-term notice requirements, should be eliminated. BellSouth contends that carriers typically use BellSouth's interconnection Internet site instead of the Commission's public notice system, because the Internet is a much faster and effective

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Ass'n. v. FCC, 290 F.3d 415, 429-430 (D.C. Cir. 2002), and the Commission is addressing the courts' concerns on remand in the context of the *Triennial Review Proceeding*. The D.C. Circuit subsequently denied petitions for rehearing filed by the Commission and others. *See Order*, Nos. 00-1012 and 00-1015 (D.C. Circuit, filed Sept. 4, 2002). The Commission is reviewing the impact of these decisions collectively in the *Triennial Review Proceeding*.

[135] *Performance Measurements and Standards for Unbundled Network Elements and Interconnection*, CC Docket No. 01-318, Notice of Proposed Rulemaking, 16 FCC Rcd 20641 (2001). Subsequently, the Commission released a related rulemaking on November 16, 2001 that seeks comment on whether the Commission should adopt national performance measurements and standards for the provision of special access services by incumbent LECs. *Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321, Notice of Proposed Rulemaking, 16 FCC Rcd 20896 (2001).

[136] *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, Notice of Inquiry, 17 FCC Rcd 4015 (2002). The Commission is conducting this inquiry with the following goals: "to facilitate an environment that will be conducive to competition, deregulation and innovation"; "to establish a modern equal access and nondiscrimination regulatory regime that will benefit consumers"; and "to harmonize the requirements of similarly-situated carriers as much as possible." *Id.* at 4015-16.

[137] *See, e.g.,* Adelle Simpson Part 51 Comments at 2.

[138] *Id.*

[139] Lepley Complaint at 1; SBC Reply at 3; USTA Comments at 10-11.

[140] USTA Comments at 10-11.

mode of communication than the Commission's notification of network changes. BellSouth submits that these rules are costly for incumbent LECs, as they are time consuming and burdensome on the Commission staff.

Recommendation

WCB staff concludes that incumbent LEC disclosure of network changes is an essential element of a competitive framework. Disclosure of network changes facilitates network compatibility between incumbent LECs and other carriers, and thus serves the Act's procompetitive goals. Thus, sections 51.325-51.335 of the Commission's rules remain necessary in the public interest. However, these rules in their current form may have become unnecessarily complicated. Specifically, the Commission's network disclosure rules may require incumbent LECs to engage in costly procedures that fail to efficiently provide competitors with notice of network changes and do not take full advantage of web-based technologies. Accordingly the staff recommends that a proceeding be instituted to streamline or modify sections 51.325-51.335.

With respect to the remaining rules in Part 51, the staff finds that they are necessary in the public interest because they are central to Congress' goal of creating competition in all telecommunications markets. The staff believes, however, that the competitive environment has evolved such that modification to these rules should be considered to ensure that they remain useful to the development of competition. Therefore, the staff recommends that the Commission consider modification of these provisions in the pending open proceedings. As explained above, the Commission has already begun two comprehensive reviews of the Part 51 rules: the *Triennial Review Proceeding,* to consider the circumstances under which incumbent LECs must make parts of their networks available to requesting carriers on an unbundled basis pursuant to sections 251(c)(3) and 251(d)(2) of the Act; and the *Equal Access Notice of Inquiry,* to consider rules under the Act's equal access and non-discrimination requirements.

PART 52 - NUMBERING

Description

Part 52 implements the requirements of section 251(e) of the Communications Act of 1934, as amended. Section 251(e) gives the Commission exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that pertain to the United States. It requires the Commission to create or designate one or more impartial entities to administer telecommunications numbering and to make those numbers available on an equitable basis. Section 251(e) further charges the Commission with establishing cost recovery mechanisms for numbering administration arrangements and number portability.

Part 52 contains rules governing the administration of the NANP. These rules foster the efficient use of telephone numbers, minimize the potential for anti-competitive behavior, and establish cost contribution and cost recovery mechanisms for numbering administration and number portability. Part 52 also contains rules that are designed to ensure that users of telecommunications services can retain, at the same location, their existing telephone numbers when they switch from one local exchange telecommunications carrier to another.

Part 52 is organized into four lettered sub-parts:

A – Scope and Authority
B – Administration
C – Number Portability
D – Toll Free Numbers

Purpose

The purpose of the rules in Part 52 is to establish requirements to govern the administration and efficient use of telephone numbers within the United States for the provision of telecommunications services. The Part 52 rules benefit the public by fostering the efficient use of telephone numbers and minimizing the potential for anti-competitive behavior. Carriers are required to fund the costs of administering the NANP.

Analysis

Status of Competition

Competition in local service markets has continued to increase since the completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over two million connections. The long distance market has been open to competition for some time, and domestic and

international long distance prices have fallen by 37 percent since 1993.

Recent Efforts

Numbering Resource Optimization. In December 2000, the Commission established, among other things, a utilization threshold for carriers to meet before asking for more numbering resources, and set forth a comprehensive audit program to verify compliance with the numbering rules.[141] In December 2001, the Commission established a federal cost recovery mechanism for thousands-block number pooling.[142] The Commission also established as a penalty the withholding of numbering resources from carriers for audit-related violations.

In December 2001 and April 2002, the Commission established the implementation schedule for national thousands-block number pooling.[143] The Commission released a further notice of proposed rulemaking in March 2002, seeking comment on proposed changes to the local number portability (LNP) and pooling rules.[144]

In July 2002, the Commission adopted an order denying, in part, Verizon Wireless's petition for forbearance from the Commission's wireless LNP rules.[145] Finding that wireless LNP is necessary to preserve consumer choice and enhance competition among CMRS carriers and between the wireless and wireline industries, the Commission determined that an extension of the LNP implementation deadline for a period of one year, until November 24, 2003, was warranted to resolve all outstanding LNP implementation issues, including training personnel and other non-technical tasks, and public safety coordination. The Commission also found that the extension would reduce burdens associated with the simultaneous implementation of thousands-block number pooling and LNP.

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[141] *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and in CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 16 FCC Rcd 306 (2000).

[142] *Numbering Resource Optimization,* Third Report and Order and Second Order on Reconsideration in CC Docket No. 99-200, 17 FCC Rcd 252, 306 (2001) (*Numbering Resource Optimization Third Report and Order*).

[143] Thousands-block number pooling allows carriers to receive numbering resources in blocks of 1,000 numbers rather than blocks of 10,000 numbers. *See The Common Carrier Bureau Announces the First Quarter Schedule for National Thousands-Block Number Pooling*, CC Docket No. 99-200, Public Notice, 17 FCC Rcd 103 (2001); *Numbering Resource Optimization*, CC Docket No. 99-200, Order, 17 FCC Rcd 7347 (2002).

[144] *Numbering Resource Optimization*, Third Order on Reconsideration in CC Docket No.99-200, Third Further Notice of Proposed Rulemaking in CC Docket 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket 95-116, 17 FCC Rcd 4784 (2002).

[145] *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation,* WT Docket No. 01-184*, Telephone Number Portability,* CC Docket No. 95-116, Memorandum Opinion and Order, 17 FCC Rcd 14972 (2002) (*Verizon Wireless LNP Forbearance Order*).

Area Code Relief. The Commission lifted the ban on technology-and service-specific area code overlays, collectively specialized overlays.[146] State commissions may seek authority to implement specialized overlays, on a case-by-case basis, based on certain specified criteria.[147] To date, Connecticut and California have filed petitions to implement specialized overlays that are pending before the Commission.[148]

Toll-Free Numbers. On March 4, 2002, the Bureau held a Forum on Toll-Free Number Administration, which included several industry participants. Industry participants addressed questions concerning: (1) the problems with the current toll-free number administration system; (2) the restructuring of the toll-free administration system; and (3) the feasibility of a market-based system for toll-free numbers. The Bureau has recommended that the Commission initiate a rulemaking proceeding to further explore these issues.

Comments

Several commenters recommend that the Commission modify the local number portability cost recovery rules to permit non-LNP capable incumbent LECs to recover their ongoing LNP-related costs through separations and access charge procedures.[149] USTA also recommends that non-LNP incumbent LECs that have ongoing LNP-related costs but cannot recover them through separations and access charge procedures should be able to recover their costs through end user charges.[150] OPASTCO recommends that the Commission revise its rules to permit cost recovery for all non-LNP capable carriers, not just those that participate in an Extended Area Service calling plan.[151] In addition, CTIA recommends that the Commission eliminate the LNP requirement for CMRS carriers.[152] AT&T, however, recommends that the Commission reject the proposals to

[146] *Numbering Resource Optimization Third Report and Order*, 16 FCC Rcd at 282-94.

[147] *Id*. at 288-94.

[148] *See Common Carrier Bureau Seeks Comment on the Petition of the Connecticut Department of Public Utility Control for Delegated Authority to Implement Transitional Service-Specific and Technology-Specific Overlays,* Public Notice, 17 FCC Rcd 2168 (2002); *Wireline Competition Bureau Seeks Comment on the Supplemental Information to the Supplemental Petition of the Connecticut Department of Public Utility Control for Authority to Conduct a Transitional Service Technology-Specific Overlay*, Public Notice, CC Docket 99-200, 17 FCC Rcd 10513 (2002); *Wireline Competition Bureau Seeks Comment on the Petition of the California Public Utilities Commission for Authority to Implement Technology-Specific Overlays*, Public Notice, CC Docket 99-200, DA 02-2845 (rel. Oct 24, 2002).

[149] NECA Comments at 14-16; NTCA Comments at 5, 12; USTA Comments at 5, 12-13; USTA Reply at 5; OPASTCO Reply at 2-3.

[150] USTA Reply at 5.

[151] OPATSCO Reply at 2-3.

[152] CTIA Petition at 25.

change its LNP rules.[153]

One commenter states that in light of changes in the telecommunications industry, the Commission should ensure that telephone numbers are being correctly allocated and administered.[154]

CTIA proposes a rulemaking to revisit the Commission's assignment of the 211 and 511 abbreviated dialing codes.[155] The Commission assigned these abbreviated dialing codes to provide access to information and referral agencies (e.g. the United Way) and transportation information using three digits rather than seven or ten digits. CTIA suggests that the Commission expand the use of these abbreviated dialing codes for competitive offerings.[156]

Recommendation

WCB staff recommends that the Commission initiate a proceeding to eliminate any outdated rule sections in Part 52, such as references to implementation dates that have passed.[157] The staff further recommends that the Commission update the rules to reflect the selection of the numbering administrators pursuant to Federal Acquisition Regulations (FAR) based contracts.[158] Except as noted above, the staff finds that the rules in Part 52 remain necessary in the public interest, and therefore recommends that they be retained. These rules enable the Commission to ensure the impartial administration and efficient use of numbering resources within the United States for the provision of telecommunications service. In addition, the Part 52 rules benefit the public by ensuring that carriers have available the numbering resources they need to provide their services to the public.

The staff disagrees with CTIA's suggestion to eliminate the LNP requirement for CMRS carriers. As described above, the Commission recently completed a thorough review of this issue in response to the Verizon Wireless petition for forbearance, finding that the LNP requirement for CMRS carriers remains necessary because of competitive and consumer benefits.[159] Accordingly, for the reasons set forth in that order, the staff concludes that the LNP requirement for CMRS carriers remains necessary in the public interest and recommends that repeal or modification is not warranted. The cost recovery

[153] AT&T Reply at 36-37.

[154] Adelle Simpson Part 52 Comments.

[155] CTIA Petition for Rulemaking at 24.

[156] *Id*. at 25.

[157] These provisions include 47 C.F.R. §§ 52.15(d)-(e), 52.23(c)-(e).

[158] These provisions include 47 C.F.R. §§ 52.11, 52.12, 52.20.

[159] *See Verizon Wireless LNP Forbearance Order*, *supra* note 145, 17 FCC Rcd 14972 (2002).

rules for non-LNP capable carriers were addressed in a recent order in which the Commission restated the importance of competitive neutrality to the continued deployment of the long-term number portability service, thereby affirming that LNP costs should not be recovered through access charges.[160] The Commission also allowed non-LNP capable LECs located within extended area service (EAS) calling plan areas served by LNP-capable switches to recover certain LNP costs through end-user charges, concluding that customers of these carriers receive the direct benefits of LNP.[161] For the reasons articulated therein, the staff concludes that the rules for recovery of LNP costs remain necessary in the public interest and recommend that repeal or modification is not warranted. Because no new information was provided regarding LNP for CMRS carriers or cost recovery for non-LNP-capable carriers and nothing has changed since the release of these items, WCB staff believes the Commission should not initiate new proceedings on these issues at this time.

The staff also finds that the Commission's existing rules addressing the allocation and administration of numbering resources, including audit procedures, remain necessary in the public interest. These rules ensure that carriers receive numbering resources only when they need them to provide telecommunications service, thereby preserving the availability of numbers in the NANP.

Finally, WCB staff finds that the current assignment of the 211 and 511 abbreviated dialing codes to provide access to information and referral services and to transportation information, respectively, remains necessary in the public interest. Agencies such as the United Way, as well as the US Department of Transportation and state transportation agencies have taken steps to implement important programs that will benefit the public utilizing these access codes, and they should be given sufficient time to fully implement these programs in accordance with the Commission's delegation of authority to do so. We note that the Commission has indicated that it will reassess its assignment of 211 and 511 in five years, and consider designating the codes for other uses if they are not being used on a widespread basis for their assigned purposes.[162] The staff therefore recommends that the Commission take no steps at this time to modify the assignment of 211 and 511, and that it address any 211 and 511 implementation issues in an upcoming proceeding that will also address several petitions for reconsideration/clarification.

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[160] *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, 2602-04 (2002).

[161] *Id*. at 2603-05.

[162] *Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide, Request by the Alliance of Information and Referral Systems, United Way of America, United Way 211 (Atlanta, Georgia), United Way of Connecticut, Florida Alliance of Information and Referral Services, Inc., and Texas I&R Network for Assignment of 211 Dialing Code, The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, Third Report and Order and Order on Reconsideration, 15 FCC Rcd 16753, 16763,16766-67 (2000).

PART 53 - SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

Description

Part 53 generally implements the structural safeguards mandated in section 272 and certain requirements in section 271 of the Communications Act of 1934, as amended. Section 272 establishes safeguards applicable to Bell Operating Company (BOC) equipment manufacturing, provision of in-region interLATA telecommunications service, and provision of interLATA information services (other than electronic publishing and alarm monitoring). The Commission's Part 53 rules implement these requirements. In particular, the Part 53 rules provide that the BOCs must use a separate affiliate for certain activities, and set forth structural separation, transactional, nondiscrimination and auditing requirements. The Part 53 rules also contain provisions adopted pursuant to section 271 concerning joint marketing of local exchange and long distance services.

Part 53 is organized into six lettered subparts (three of which are reserved for future use):

A - General Information
B – Bell Operating Company Entry into InterLATA Services
C – Separate Affiliate; Safeguards
D – Manufacturing by Bell Operating Companies [reserved]
E – Electronic Publishing by Bell Operating Companies [reserved]
F – Alarm Monitoring Services [reserved]

Purpose

These separate subsidiary and auditing requirements are designed to prevent the BOCs from using their dominance in the market for local exchange and exchange access services to compete unfairly in the related markets. Although Part 53 may marginally reduce the efficiency of BOCs, the rules provide additional assurance that competitors have a meaningful opportunity to compete for customers in the local telephone market.

Analysis

Status of Competition

Competition in local service markets has continued to increase since the completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over two million connections. While competing carriers continue to use all entry modes envisioned by the 1996 Act to serve end-user customers, competitive LECs report that unbundled network elements have become a more important mode of entry. Competition for business customers in

metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by 37 percent since 1993.

Recent Efforts

The Commission recently initiated a rulemaking proceeding regarding the sunset of the statutory requirements under section 272 imposed on BOCs when they provide in-region interLATA services.[163] On December 23, 2002, the Commission released an order in which it determined that section 272(f)(1) provides for a state-by-state sunset of the separate affiliate and certain other requirements that apply to BOC provision of in-region, interLATA telecommunications services.[164] The Commission also released a public notice stating that the section 272 requirements sunset by operation of law for Verizon in New York State effective December 23, 2002.[165]

Comments

USTA argues that the Commission should allow a BOC's section 272 separate affiliate obligations to terminate automatically after three years from the time the BOC obtains section 271 authority. USTA argues that this would "allow BOCs to use their resources efficiently and to compete with competitors effectively."[166] Verizon contends that these rules were meant to be transitional and of limited duration, and that these rules impose significant unwarranted costs on BOCs.[167] USTA argues that these rules are not required by statute, and that they competitively disadvantage the BOCs and hamper the deployment of next generation networks. USTA contends that the rules also deny consumers seamless, end-to-end service. USTA asserts that the rules are redundant because existing law provides sufficient safeguards against discrimination and cross-subsidization.[168] AT&T argues that the decision as to when the section 272 rules should sunset should be determined in the Commission's section 272 proceeding, where it has already established a complete record. AT&T states that rather than sunsetting, the rules should be extended another three years because additional safeguards are required to

[163] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements,* WC Docket No. 02-112, Notice of Proposed Rulemaking, 17 FCC Rcd 9916 (2002) (*Separate Affiliate Proceeding*). The existing requirements addressed by this proceeding are contained primarily in sections 53.1-53.213 of the Commission's rules. *See also* Part 64, Subpart T.

[164] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Memorandum Opinion and Order, FCC 02-336 (rel. Dec. 23, 2002).

[165] *See Section 272 Sunsets for Verizon in New York State by Operation of Law on December 23, 2002 Pursuant to Section 272(f)(1)*, Public Notice, FCC 02-335 (rel. Dec. 23, 2002).

[166] USTA Reply at 6.

[167] Verizon Comments at 12-13.

[168] USTA Comments at 14.

promote the robust competition Congress envisioned.[169] AT&T states that this is true because BOCs provide other services in a discriminatory manner and engage in cost misallocation.[170] Commenters contend that the Commission should forbear from, or eliminate, sections 53.203(a)(2) - (a)(3), which prohibit the sharing of operating, installation, and maintenance (OI& M) functions between a BOC and its section 272 affiliate.[171] AT&T contends that OI&M restrictions remain necessary and that neither Verizon nor USTA have proven that circumstances have changed to provide a reasonable basis to repeal these rules, nor have BOCs proven that the restrictions handicap their ability to compete.[172]

Recommendation

WCB staff concludes that the Part 53 rules concerning the content of the separate affiliate requirements under section 272 of the Act are necessary in the public interest, and therefore recommends that the Commission retain Part 53 at this time.[173] Many of these requirements are mandated by statute and, in any event, are necessary to prevent the BOCs from using their market power in the local exchange and exchange access markets to behave anticompetitively in the related markets. Thus, the Part 53 rules implement important structural safeguards that help create and sustain competition. The staff rejects USTA's contentions that the rules are redundant and are not necessary based on the fact that much of Part 53 is statutorily mandated, including the basic requirement for the use of separate subsidiaries for certain activities and most of the structural separation and auditing requirements. Issues concerning applicable BOC safeguards after the separate affiliate requirements sunset pursuant to section 272(f)(1) are not addressed by our current rules, and are the subject of a pending rulemaking proceeding.[174] Thus, these issues are beyond the scope of our review under section 11.

[169] AT&T Reply at 17-22.

[170] *Id.* at 18-19.

[171] USTA Comments at 14; Verizon Comments at 13-14.

[172] AT&T Reply at 21-22.

[173] The staff notes that in 2000, the Commission deleted section 53.101 of the rules concerning joint marketing after that provision expired.

[174] *See Separate Affiliate Proceeding, supra* note 163, 17 FCC Rcd 9916 (2002).

PART 54 – UNIVERSAL SERVICE

Description

Sections 214(e) and 254 of the Communications Act of 1934, as amended, direct the Commission to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service.[175] Part 54 implements these provisions of the Act. Part 54 is designed to promote universal service by establishing explicit universal service mechanisms to ensure that all consumers, including consumers living in rural, insular, and high-cost areas as well as low-income consumers, have access to affordable telecommunications services. It is also designed to ensure that schools, libraries, rural health care providers, and the members of the public that they serve, have access to affordable telecommunications and information services.

Part 54 is designed to accomplish these goals in a competitively neutral manner by collecting support from every telecommunications carrier that provides interstate telecommunications service, and by making support available on a technologically neutral basis to any eligible service provider. This is intended to encourage the provision of service by wireless and other emerging technologies that have not been eligible to receive universal service support in the past, but may prove to be efficient alternatives to traditional wireline service in high-cost and rural areas. The reporting requirements necessary for the collection, calculation, and disbursement of universal service support may place administrative burdens on certain carriers, however. Additionally, some rural carriers have asserted that the Commission's portability rules provide excessive support to competitive carriers and encourage inefficient entry into rural markets. Finally, Part 54 benefits the public by making telecommunications and information services available to qualifying schools, libraries, and rural health care providers at reduced rates. However, the current procedures for review of the Universal Service Administrative Company's (USAC) funding decisions concerning schools, libraries, and rural health care providers may place unnecessary administrative burdens on the Commission.

Part 54 is organized into eleven lettered sub-parts:

A – General Information
B – Services Designated for Support
C – Carriers Eligible for Universal Service Support
D – Universal Service Support for High Cost Areas
E – Universal Service Support for Low-Income Consumers
F – Universal Service Support for Schools and Libraries
G – Universal Service Support for Health Care Providers
H – Administration
I – Review of Decisions Issued by the Administrator
J – Interstate Access Universal Service Support Mechanism
K – Interstate Common Line Support Mechanism for Rate-of-Return Carriers

[175] *See* 47 U.S.C. §§ 214(e), 254.

Purpose

Part 54 establishes explicit universal service mechanisms to ensure that all consumers have access to affordable telecommunications services. Part 54 also benefits the public by making telecommunications and information services available to qualifying schools, libraries, and rural health care providers at reduced rates. The reporting requirements necessary for the collection, calculation, and disbursement of universal service support, however, may place administrative burdens on certain carriers.

Analysis

Status of Competition

Competition in local service markets has continued to increase since the completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over two million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by 37 percent since 1993.

Recent Efforts

The Commission referred to the Federal State Joint Board on Universal Service (Joint Board) issues regarding the review of the Lifeline and Link-Up programs for low-income consumers. On October 12, 2001, the Joint Board released a public notice seeking comment on these issues and is currently considering the comments and drafting a Recommended Decision.[176]

In 2001, the Commission released orders modifying the rules regarding high-cost support for rural carriers and adopting a new explicit support mechanism, Interstate Common Line Support (ICLS). On May 23, 2001, the Commission released the *Rural Task Force Order*, which modified its rules for providing high-cost universal service support for rural telephone companies as proposed by the Rural Task Force.[177] This plan will remain in place for a five-year period beginning July 1, 2001. Among other actions, the Commission modified section 54.305 of its rules to create a "safety valve" mechanism that provides support for additional investment made in exchanges acquired from another

[176] *Federal-State Joint Board on Universal Service Seeks Comment on Review of Lifeline and Link-Up Service for All Low-Income Consumers*, CC-Docket 96-45, Public Notice, 16 FCC Rcd 18407 (2001).

[177] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244 (2001), *recon. pending*.

unaffiliated carrier. On November 8, 2001, the Commission released the *MAG Order and Further Notice of Proposed Rulemaking*, which removed implicit support from the interstate access rate structure for rate-of-return carriers and replaced it with ICLS.[178]

On July 10, 2002, after a Commission referral, the Joint Board released a Recommended Decision reviewing the definition of core services supported by the universal service high-cost and low-income support mechanisms.[179] In addition, the Tenth and Fifth Circuit Courts of Appeal remanded two high-cost proceedings to the Commission.[180] On November 8, 2002, the Commission initiated a proceeding to address issues relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier (ETC) is providing service, as well as issues regarding universal service support for second lines.[181]

On January 25, 2002, the Commission issued a Notice of Proposed Rulemaking to review certain processes in the schools and libraries mechanism.[182] The First Report and Order was released on June 13, 2002.[183] On April 19, 2002, the Commission released a Notice of Proposed Rulemaking to assess whether the rules and policies governing the rural health care universal service support mechanism require modification.[184]

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[178] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate-of-Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-106, Report and Order, 16 FCC Rcd 19613 (2001), *recon. pending*.

[179] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Recommended Decision, 17 FCC Rcd 14095 (2002).

[180] In response to the Tenth Circuit remand of the high-cost benchmark methodology, the Commission issued a Notice of Proposed Rulemaking and referred the issues to the Joint Board, and the Joint Board issued a Recommended Decision. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 17 FCC Rcd 20716 (2002). In response to the Fifth Circuit remand of the Interstate Access Support mechanism, the Commission sought further comment in a public notice. *See Common Carrier Bureau Seeks Comment on Remand of $650 Million Support Amount Under Interstate Access Support Mechanism for Price Cap Carriers*, CC Docket Nos. 96-262, 94-1, 99-249, and 96-45, Public Notice, 16 FCC Rcd 21307 (Com. Car. Bur. 2001).

[181] *See Federal-State Joint Board on Universal Service,* CC Docket 96-45, Order, 17 FCC Rcd 22642 (2002).

[182] *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 1914 (2002).

[183] *See Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Report and Order, 17 FCC Rcd 1151 (2002).

[184] *See Rural Health Care Support Mechanism*, CC Docket No. 02-60, Notice of Proposed Rulemaking, 17 FCC Rcd 7806 (2002).

On December 13, 2002, the Commission created an interim methodology for assessing and recovering contributions to the federal universal service fund.[185] To improve competitive neutrality in the contribution process, carriers will project the amount of revenues they anticipate collecting, rather than reporting historical revenues. In addition, carriers may not recover contribution costs through a line item that includes a mark-up above the relevant contribution factor. The Commission also seeks additional comment on proposals to assess universal service contributions based on the number of connections a carrier provides, rather than on revenues earned.

Comments

In its comments, NTCA proposes that equal access be added to the Commission's definition of supported services that must be provided by eligible telecommunications carriers.[186] Several carriers oppose this recommendation, stating that it is beyond the scope of the biennial review and that it would not be in the public interest.[187] USTA recommends that the Commission not alter the rules concerning the services that are included in the definition of universal service.[188] NTCA also proposes that the Commission eliminate section 54.305(a), which provides that a carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal support for the acquired exchanges at the same per-line support levels for which the exchanges were eligible prior to the transfer of the exchange.[189] USTA supports the elimination of section 54.305(a).[190] NECA, USTA, NTCA, Western Alliance and OPASTCO filed comments recommending that the Commission address certain concerns regarding the administration of the ICLS mechanism.[191]

USTA filed comments recommending that, under the schools and libraries program,

[185] *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (rel. Dec. 13, 2002).

[186] NTCA Comments at 5-6.

[187] AT&T Reply at 26-27; Competitive Universal Service Coalition Reply at 1-7; Sprint Rely at 1-4.

[188] USTA Comments at 15.

[189] NTCA Comments at 10-12.

[190] USTA Reply at 6-7.

[191] NECA Comments at 3-10; USTA Comments at 16-17; NTCA Comments at 6-8; Western Alliance Comments at 2-7; OPASTCO Reply at 4-5.

service providers should not be required to reimburse USAC for payments "made to ineligible entities … for eligible services used in an ineligible manner."[192]

NTCA filed comments suggesting that the Commission could encourage more health care providers to use the rural health care universal support mechanism if applicants were able to reasonably calculate the level of support that they will receive, and if the Commission modifies the definition of "urban."[193] AT&T, however, states that the Commission should not be entertaining changes to the universal service fund that would trigger increased funding requirements at a time when there is tremendous instability of the fund.[194]

SBC proposes that the Commission reform the high-cost support mechanism by establishing an affordability benchmark and funding all areas where forward-looking costs exceed the affordability benchmark.[195]

Recommendation

In the 2000 Biennial Regulatory Review, the staff recommended deletion of sections 54.701(b)-(e), which address the now-completed merger of the Schools & Libraries Corporation and the Rural Health Care Corporation into USAC. WCB staff again finds that these rules are not necessary in the public interest for the reasons set forth in the Commission's previous review, and thus recommends that the Commission eliminate these sections in the context of ongoing rulemaking proceedings. The staff also recommends that the following provisions be updated: 47 C.F.R. §§ 54.5, 54.201-207, 54.303(b)(4), 54.5, 54.623, 54.901(b)(2), and references to 47 C.F.R. §§ 54.903(a), 54.903(c), 54.903(d), 54.903(e); and that the following provisions for which funding periods have expired be removed: 47 C.F.R. §§ 54.507(a)(1)-(2), 54.604(a)(2).

The rules in Part 54 regarding the rural health care and the schools and libraries programs establish universal service mechanisms that ensure that consumers have access to affordable telecommunications services. The staff therefore finds that these rules are necessary in the public interest, and therefore should not be modified or eliminated as a result of meaningful economic competition at this time. The staff recommends, however, that the Commission complete the open rulemaking proceedings to consider any modifications to these rules. The staff further recommends that comments filed by NTCA and USTA regarding the rural health care and the schools and libraries mechanisms be addressed in the relevant ongoing rulemaking proceedings. Section 54.305(a) provides for continuing universal service support for customers of sold or transferred exchanges. The staff therefore finds that section 54.305(a) is necessary in the

[192] USTA Comments at 15.

[193] NTCA Comments at 9-10.

[194] AT&T Reply at 27-28.

[195] SBC Comments at 8.

public interest, and therefore should not be eliminated or modified as a result of meaningful economic competition at this time, despite NCTA's proposal to eliminate the rule. The staff recognizes, however, that issues addressed by this rule have been referred to the Universal Service Joint Board, and that the Joint Board may recommend modification or elimination of the rule. Therefore, the staff recommends the Commission await the recommendation of the Joint Board before taking any action on this rule.[196] The rules regarding high-cost support and contributions to universal service provide for universal service mechanisms to ensure that all consumers have access to affordable telecommunications services. The staff therefore finds that these rules are necessary in the public interest, and therefore should not be modified or eliminated as a result of meaningful economic competition at this time. The staff recommends, however, that the Commission complete the open high-cost rulemaking proceeding to consider possible changes to those rules. The staff also recommends that SBC's comments regarding high-cost support be addressed in the ongoing rulemaking proceeding. Further, because the Commission has recently revised its rules regarding contributions to universal service on an interim basis and initiated a rulemaking to seek additional comment on proposals to assess universal service contributions based on the number of carrier connections, we recommend that the Commission consider any further changes to these rules in the context of that rulemaking proceeding.

Except as otherwise noted, WCB staff finds the rules in Part 54 to be necessary in the public interest, and therefore recommends that they be retained. These rules implement sections 214 and 254 of the Act by promoting universal service for all consumers, and ensuring that the schools, libraries and rural health care providers, and the members of the public that they serve, have access to affordable telecommunications and information services.

[196] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642 (2002).

PART 59 – INFRASTRUCTURE SHARING

Description

Part 59 implements section 259 of the Communications Act of 1934, as amended, by specifying the general duty of incumbent LECs to provide to certain qualifying LECs (*i.e.*, carriers that fulfill universal service obligations) access to public switched network infrastructure, technology, information, and telecommunications facilities and functions used to provide telecommunications services, or access to information services, and by setting forth general terms and conditions for such sharing. Section 259 allows infrastructure sharing only between non-competing LECs and imposes specific restrictions on the use of such infrastructure by a requesting carrier who otherwise qualifies under the specific requirements imposed by the section. The requesting carrier may use section 259-provided infrastructure only

> for the purpose of enabling such qualifying carrier to provide telecommunications services, or to provide access to information services, in the service area in which such qualifying carrier has requested and obtained designation as an eligible telecommunications carrier under section 214(e).[197]

Given these statutory restrictions and requirements, the Commission has determined that section 259 infrastructure sharing "is a 'limited and discrete' provision designed to promote universal service in areas that in many cases, at least initially, will be without competitive service providers, but without restricting the development of competition."[198]

Purpose

Section 259 provides qualifying carriers with a flexible means of obtaining needed infrastructure from incumbents, and of doing so in ways that take advantage of the economies of scope and scale enjoyed by incumbents. Section 259 particularly benefits smaller local service providers by making available infrastructure that can enhance their ability to provide advanced telecommunications and information services to customers in furtherance of the universal service goals set forth in the Act. Reflecting the obligations explicitly mandated in section 259, infrastructure sharing may impose some costs on incumbent LECs, but these costs are minimized by the nature of the Part 59 rules.

The Part 59 rules closely track the language of section 259, and lay out general guidelines that define the obligations imposed by section 259. The Part 59 rules are negotiation-driven and minimalist in nature; they essentially invite governmental intervention only when negotiations break down. Thus, parties to section 259 arrangements work out the details of infrastructure sharing without particular federal requirements specifying, for

[197] 47 U.S.C. § 259.

[198] *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-237, 12 FCC Rcd 5470, 5475 (1997) (*Infrastructure Sharing Order*).

example, what infrastructure is provided or how it should be priced. This minimalist approach allows parties to negotiate infrastructure sharing agreements that best meet their needs. This kind of regulatory approach works because, by statutory definition, a local service carrier that requests infrastructure sharing from an incumbent LEC does not compete with that incumbent in the incumbent's service area. As a result, the incumbent lacks incentives to deny a section 259 request or to impose unreasonable terms.

Analysis

Status of Competition

Competition in local service markets has continued to increase since the completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over two million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by 37 percent since 1993.

Recent Efforts

There has been no Commission action addressing infrastructure sharing obligations since the previous biennial review and the Commission's April 2000 *Order on Reconsideration* affirming its negotiation-based approach to implementing section 259.[199]

Comments

Commenter Adelle Simpson urges the Commission to amend Part 59 "to establish a common shared access data base of consumers who have their accounts closed and bad debt written off" in order to provide such data to interexchange and other carriers who are allegedly taken advantage of by deadbeat customers.[200] Ms. Simpson's comments do not suggest specific modifications to Part 59, or otherwise indicate how such a data base should be created and maintained, or who should bear any attendant cost burdens. No other commenter addressed the Part 59 rules or Ms. Simpson's proposal.

Recommendation

Since adopting implementing rules for section 259 in 1997, the Commission has not received evidence that the existing Part 59 rules impose unnecessary costs or otherwise impede infrastructure sharing. WCB staff therefore does not recommend that the

[199] *Implementation of Infrastructure Sharing Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-237, Order on Reconsideration, 15 FCC Rcd 13911 (2000). This order also addressed a number of issues concerning the use of section 259 to facilitate resale, access to intellectual property rights, and pricing of section 259 arrangements.

[200] *See* Adelle Simpson Part 59 Comments.

Commission amend Part 59 to require that a bad debt data base be developed and maintained for the benefit of interexchange and other carriers. In adopting section 259, Congress intended to advance universal service goals by enhancing the ability of carriers who qualify to receive universal service support to obtain useful infrastructure in order to deliver new services to consumers. The staff believes that the proposal from Ms. Simpson to recast the Commission's Part 59 rules for the benefit of other carriers who, by statutory definition, are not parties to section 259 sharing arrangements, does not comport with that congressional intent. Nothing in the statutory language or its history indicates that Congress intended that section 259 should be used to engineer this result.

Moreover, requiring that any particular element of "public switched network infrastructure, technology, information, and telecommunications facilities and functions" be included in sharing is inconsistent with the existing market-based framework of the Part 59 rules. When adopting those rules, the Commission specifically refused to define what infrastructure elements are contemplated by section 259 because it concluded that this would tend to limit the ability of bargaining LECs to flexibly determine infrastructure needs, as well as their ability to negotiate appropriate prices.[201] Ms. Simpson's proposal would impose a specific regulatory mandate. Staff believes that this would impose additional regulatory burdens and associated costs on participating carriers and their customers. The Commission's biennial regulatory review proceedings are designed to reduce, not increase, regulation and attendant costs.[202]

WCB staff accordingly concludes that the Part 59 rules remain necessary in the public interest and recommends that repeal or modification is not warranted at this time.

[201] *See Infrastructure Sharing Order*, 15 FCC Rcd at 5495-96.

[202] *See 2000 Biennial Regulatory Review*, Report, 16 FCC Rcd 1207, 1213 (2000) (in context of biennial review, new regulations not generally adopted unless they are less burdensome than existing rules and are necessary to protect the public interest).

PART 61 – TARIFFS

Description

Sections 203 and 204 of the Communications Act of 1934, as amended, establish tariff filing requirements applicable to common carriers.[203] Sections 201 and 202 require rates, terms and conditions to be "just and reasonable,"[204] and prohibit "unjust or unreasonable discrimination."[205] Part 61 implements these sections of the Act by establishing rules that perform two major functions. First, the Part 61 rules establish requirements governing the filing, form, content, public notice periods, and support materials accompanying tariffs. Second, Part 61 sets forth the pricing rules and related requirements that apply to incumbent local exchange carriers (LECs) that are subject to price cap regulation.

Purpose

The Part 61 tariffing rules benefit the public by providing information on the rates, terms, and conditions for telecommunications services. In addition, the requirements for support materials facilitate review of the lawfulness of the tariffs. The requirements for support materials thus reduce the cost of enforcing Commission pricing rules, and permit interested parties to challenge tariff provisions.

The price cap rules contained in Part 61 protect customers by capping the rates charged by LECs and limiting the potential for LECs to exercise market power in an anticompetitive manner. They also foster carrier efficiency, streamline the tariff process, and allow the carriers some degree of pricing flexibility.

Part 61 is organized into ten lettered sub-parts:

A – General
B – Rules for Electronic Filing
C – General Rules for Nondominant Carriers
D – General Tariff Rules for International Dominant Carriers
E – General Rules for Dominant Carriers
F – Specific Rules for Tariff Publications of Dominant and Nondominant Carriers
G – Concurrences
H – Applications for Special Permission
I – Adoption of Tariffs and Other Documents of Predecessor Carriers
J – Suspensions

[203] 47 U.S.C. §§ 203-04.

[204] 47 U.S.C. § 201.

[205] 47 U.S.C. § 202.

Analysis

Status of Competition

Competition in local service markets has continued to increase since the completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by 37 percent since 1993.

Recent Efforts

As part of the 2000 Biennial Regulatory Review, the Commission conducted a comprehensive review of Part 61, and eliminated a number of rules that were no longer necessary.[206] Also, as part of the *MAG Further NPRM*, the Commission has proposed adoption of an alternative regulation plan, and seeks comments on sections 61.41(b) and 61.41(c)(2), which together comprise the "all-or-nothing" rule.[207] The Commission also has detariffed domestic interexchange toll service,[208] and is considering doing the same for competitive LEC services.[209]

Comments

USTA, CenturyTel and NTCA recommend that the Commission eliminate the price-cap "all-or-nothing rule" that is formed by operation of rules 61.41(b) and (c)(2).[210] Both USTA and CenturyTel argue that the concerns that prompted the implementation of the "all-or-nothing" rule no longer exist and that there are many other regulatory safeguards to prevent any abuses by carriers that become affiliated either through mergers or

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[206] 1*998 Biennial Regulatory Review – Part 61 of the Commission's Rules and Related Tariff Requirements*, CC Docket Nos. 98-131, 96-187, Report and Order and Further Order on Reconsideration, 14 FCC Rcd 12293 (1999).

[207] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, and 98-166, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613 (2001)(*MAG Order* and *MAG Further NPRM*).

[208] *Commission Asks Parties to Update and Refresh Record on Mandatory Detariffing of CLEC Interstate Access Services*, CC Docket Nos. 96-262 and 97-146, Public Notice, 15 FCC Rcd 10181 (2002).

[209] *Access Charge Reform,* CC Docket Nos. 96-262, 94-1, 98-63 and 98-157, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14234 (1999).

[210] USTA Comments at 18; NTCA Comments at 3; Century Tel Comments at 2-3, 5.

acquisitions.[211] NTCA notes that the Commission routinely grants requests to waive the "all-or-nothing" rule.[212]

USTA also recommends that the Commission restructure Part 61 to include only tariff requirements, and suggests moving the price cap rules to a new subpart, and moving rate-of-return regulations to Part 69.[213] In addition, USTA urges the Commission to permit all incumbent LECs to file contract-based tariffs.[214] Finally, USTA urges the Commission to streamline the notice period to file corrections to tariffs from three days to one, eliminate the requirement that tariffs be in effect for 30 days before any changes can be made, and extend the special permission period from 60 to 90 days.[215]

AT&T urges the Commission to tighten the regulation of special access charges, and opposes the repeal of the "all-or-nothing" rule or any of the remaining regulatory safeguards.[216] AT&T argues that incumbent LECs have continued incentives to engage in price-inflating and cost-shifting between incentive regulation affiliates and rate-of-return affiliates.[217] AT&T opposes the USTA proposal to permit all incumbent LECs to file contract-based tariffs. AT&T argues that such pricing flexibility would be grossly premature in view of recent changes allowing greater pricing flexibility such as allowing rate-of-return carriers to geographically deaverage their SLC rates, deaverage transport and special access rates in a study area, and offer volume and term discounts. AT&T contends that additional pricing flexibility would be anti-competitive because rate-of-return carriers are dominant carriers with the market power to prevent competitive entry in rate-of-return LEC territories.[218] AT&T also opposes USTA's proposal to restructure Part 61, and urges the Commission to dismiss this proposal because USTA presents no argument or evidence to support its proposal.[219]

NTCA seeks changes to the per-subscriber 2 list information rates for small and rural telephone companies. NTCA argues that the current $0.04 per subscriber listing rate fails to recover the incremental cost for small carriers or to provide for any contribution to

[211] USTA Comments at 18; CenturyTel Comments at 2-3, 5.

[212] NTCA Comments at 3.

[213] USTA Comments at 18.

[214] *Id.*

[215] USTA Comments at 18-19

[216] AT&T Reply at 28.

[217] *Id.* at 29.

[218] *Id.* at 31.

[219] *Id.* at 32.

overheads and common costs. NTCA urges modification of section 1.711 of the Commission's rules to include a $0.42 rate as a presumptively reasonable rate.[220]

AT&T responds that this ten-fold increase is unnecessary because a carrier can charge a higher rate if it provides the cost data or any other relevant information to justify the higher rate.[221] AT&T also urges the Commission to reject NTCA's proposal for a higher rate because it is based on a survey of small and rural telephone companies, and calls for a reassessment of rates that exceeds the scope of the biennial review process.

Recommendation

The Commission is undertaking a comprehensive review of the Part 61 rules for rate-of-return LECs in the *MAG Further NPRM* to determine whether certain rules in their current form are still necessary in the public interest as a result of competition. This ongoing proceeding is considering whether to modify the Commission's rules on a number of issues, including the "all-or-nothing" rule and the prohibition on contract-based pricing for rate-of-return carriers. Consistent with the issues raised in the *MAG Further NPRM*, WCB staff finds that these rules may no longer be necessary in the public interest as result of meaningful economic competition, and therefore recommends that the Commission consider whether they should be modified or eliminated in the ongoing proceeding.

The staff recommends further examination of USTA's recommended changes to the notice requirements in sections 61.58 and 61.59, its proposal to reorganize Parts 61 and 69, and its proposal to create a new rule part for price cap rules. In the *1998 Biennial Regulatory Review Order*,[222] the Commission expressed concerns that permitting tariffs to be submitted in shorter periods than currently permitted could result in excessive rate churn. The Commission specifically retained the 30-day minimum effective period for tariffs filed by dominant carriers to provide stability of rates and to protect both large and small consumers from excessive rate churn. The staff finds that these rules may no longer be necessary in the public interest as a result of meaningful economic competition, and therefore recommends that the Commission, in the context of an ongoing rulemaking proceeding, consider possible changes to the one-day notice provision under section 61.58, the 30-day effective-period requirement under section 61.59, and the restructuring of Parts 61 and 69.[223] The Commission may wish to refresh the record with more current information in examining whether competitive and market pressures have grown sufficiently to dispel concerns about rate churn.

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[220] NTCA Comments at 8.

[221] AT&T Reply at 37.

[222] *1998 Biennial Regulatory Revie*w, *Part 61 of the Commission's Rules and Related Tariffing Requirements*, CC Docket Nos. 98-131 and 96-187, Report and Order and First Order on Reconsideration,14 FCC Rcd 12293 (1999).

[223] *United States Telephone Association Petition for Rulemaking - 2000 Biennial Regulatory Review*, RM-9707, Public Notice No. 95767 (rel. Oct. 14, 1999).

Although NTCA makes recommendations regarding Part 1 of the rules, we address their arguments here because any change to what is a "presumptively valid" per-subscriber-listing rate would have to be made by changing Part 61. The staff agrees with AT&T's reasoning that NTCA's request is essentially a request for a ratemaking proceeding and not appropriate to this biennial review process.[224] As AT&T observes, the "presumptively valid rate" reflects the costs of the average carrier, and a carrier is permitted to justify a higher rate.

The staff also finds that the rules regarding the de-tariffing of the international services of non-dominant interexchange carriers, including Commercial Mobile Radio Service providers and U.S. carriers classified as dominant solely due to foreign affiliations, are no longer necessary in the public interest as a result of competition, and recommends that the Commission initiate proceedings to address them (as recommended in the 2000 Staff Report).

Except as specified above, WCB staff finds that the rules in Part 61 are necessary in the public interest and recommends that they be retained at this time. These rules benefit the public by providing information on the rates, terms, and conditions for certain telecommunications services, and facilitate Commission review of the lawfulness of tariffs.

[224] AT&T Reply at 37-38.

PART 63 - EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

Description

Section 214 of the Communications Act of 1934, as amended, provides that no carrier shall undertake the construction of a new line or extension of any line, or shall acquire or operate any line, or extension thereof, without first having obtained a certificate from the Commission that the present or future public convenience and necessity require the construction and/or operation of such extended line. Section 214 also provides that no carrier shall discontinue, reduce or impair service to a community without first having obtained a certificate from the Commission that neither the present nor future public convenience and necessity will be adversely affected by such action.[225] Part 63 of the Commission's rules sets forth specific information that must be included in a section 214 application for transfer of control or discontinuance by domestic common carriers. Market entry by construction of new lines or extension of lines is subject to the blanket authority contained in section 63.01.[226]

Purpose

The purpose of the Part 63 rules for review of transfers of control of domestic telecommunications carriers is to determine whether a proposed transaction is in the public interest, taking into account any impact on competition. Commission authorization for discontinuance of services protects consumers from unanticipated loss of service. In 2000, and again in 2002, the Commission substantially deregulated and streamlined the procedures for obtaining domestic section 214 authorizations.

Part 63 is organized into five subsections:

Extensions and Supplements
General Provisions Relating to All Applications Under Section 214
Discontinuance, Reduction, Outage and Impairment
Contents of Applications; Examples
Request for Designation as a Recognized Private Operating Agency

[225] 47 U.S.C. § 214(a).

[226] 47 C.F.R. § 63.01.

Analysis

Status of Competition

While competing carriers continue to use all entry modes envisioned by the 1996 Act to serve end-user customers, competitive LECs report that unbundled network elements have become a more important mode of entry. Competition for business customers in metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas. We expect that the Commission's recently implemented streamlining rules will further facilitate entry by competing carriers.

Recent Efforts

In March 2002, the Commission issued an order clarifying and streamlining its rules governing requests for authorization to transfer control of domestic interstate transmission lines through an acquisition of corporate control or assets.[227] Although section 63.01 currently grants blanket authority to domestic interstate communications carriers to provide domestic interstate services and to construct, acquire, or operate domestic transmission lines,[228] the blanket authority does not apply to acquisitions of lines. The *Streamlining Order* sought to reduce unnecessary regulatory burdens on carriers while increasing the predictability and transparency of the Commission's review. First, the Commission established a 30-day streamlined review process that presumptively applies to domestic 214 transfer applications meeting specified criteria, and, on a case-by-case basis, to other domestic section 214 applications. Second, the Commission eased filing burdens by adopting rules that enable carriers to file a single document with the Commission that combines both domestic and international section 214 applications. Third, the Commission defined *pro forma* transactions in the domestic section 214 context in a manner that is consistent with how we define such transactions in other types of Commission authorizations such as international section 214 authorizations and wireless licenses. Furthermore, the Commission eliminated application filing requirements for all *pro forma* transactions, and now requires simple post-transaction notifications to the Commission only for certain transfers in bankruptcy proceedings.

Comments

No party filed comments addressing Part 63.

Recommendation

WCB staff concludes that the recently-revised rules in Part 63 are necessary in the public

[227] *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, 17 FCC Rcd 5517 (2002) (*Streamlining Order*).

[228] 47 C.F.R. § 63.01.

interest and recommends that the Commission take no action with respect to Part 63 at this time. Based upon staff experience since the implementation of the 2002 streamlining measures, these rules expedite the review process, minimize transaction costs, promote competitive entry and create regulatory transparency, while at the same time ensuring that transfers of domestic carrier lines, and discontinuance of service on those lines is in the public interest.

PART 64, SUBPART D/APPENDIX A – PROCEDURES FOR HANDLING PRIORITY SERVICES IN EMERGENCIES

Description

Subpart D requires that common carriers maintain, provision, and (if disrupted) restore facilities and services in accordance with the policies and procedures set forth in Part 64, Appendix A of the Commission's rules. Appendix A establishes policies and procedures and assigns responsibilities for the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. These requirements are promulgated pursuant to sections 1, and 201 through 205 of the Communications Act as amended.[229]

Purpose

Subpart D is intended to ensure that critical communications services are available during times of national emergency. Subpart D promotes public safety and national security by establishing clear procedures and criteria for ensuring that critical communications services are available in times of national emergency. Complying with these requirements may impose administrative costs on carriers.

Analysis

Status of Competition

Not relevant.

Recent Efforts

In an Executive Order released immediately following the terrorist attacks of September 11, 2001, the President of the United States reiterated the mission and national interest rationale for the Executive Order that preceded the Commission's original adoption of Part 64, subpart D and Appendix A.[230] The new Executive Order noted that "[c]hanges in technology are causing the convergence of much telephony, data relay, and Internet communications networks into an interconnected network of networks." The Executive Order directed the National Coordinating Center to "support use of telephony, converged information, voice networks, and next generation networks" for national emergency preparedness.[231] Pursuant to its participation as a member of the National Communications System, the Commission is actively evaluating its role in emergency

[229] 47 U.S.C. §§ 151, 201-05.

[230] Executive Order No. 12472, 49 Fed. Reg. 13471 (1984). The National Communications System Committee of Principals was recently renamed the Board for National Security and Emergency Preparedness Communications. *See* Executive Order No. 13231, 66 Fed. Reg. 53063 (2001).

[231] Executive Order No. 13231, 66 Fed. Reg. 53063 at section 11.

preparedness planning, including the requirements set forth in Part 64, subpart D and Appendix A.

Comments

No party filed comments addressing Part 64, subpart D or Appendix A.

Recommendation

Following the events of September 11, 2001, it is vitally important that adequate procedures exist to ensure that critical communications services are maintained during times of national emergency. We also note that, because these rules are not affected by competition, we cannot find that they are no longer necessary in the public interest as a result of meaningful economic competition. WCB staff accordingly finds that Part 64, subpart D and Appendix A remain necessary in the public interest and recommends that repeal or modification is not warranted at this time.

PART 64, SUBPART F – TELECOMMUNICATIONS RELAY SERVICES AND RELATED CUSTOMER PREMISES EQUIPMENT FOR PERSONS WITH DISABILITIES

Description

WCB's analysis of subpart F is limited to issues relating to the administration of the telecommunications relay services (TRS) Fund. For a discussion of TRS Policy issues please see the Consumer and Governmental Affairs Bureau's 2002 Biennial Regulatory Review Staff Report.

Title IV of the Americans with Disabilities Act of 1990 (ADA), codified as section 225 of the Communications Act of 1934, as amended, requires the Commission to ensure that TRS are available, "to the extent possible and in the most efficient manner," to individuals with hearing or speech disabilities in the United States.[232] Section 225 defines TRS as telephone transmission services that make it possible for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner functionally equivalent to that available to persons who do not have such a disability. Because technology is changing rapidly, the Part 64, subpart F regulations require frequent modification to ensure functional equivalence to voice telephone service.

Part 64, subpart F was adopted to implement section 225 of the Act. Subpart F is intended to facilitate communication by persons with a hearing or speech disability by ensuring that interstate and intrastate TRS are available throughout the country, and by ensuring uniform minimum functional, operational, and technical standards for relay programs. The Commission's TRS rules ensure that individuals with hearing or speech disabilities receive the same quality of service when they make relay calls, regardless of where their calls originate or terminate. The rules also establish a cost recovery and carrier contribution mechanism (TRS Fund) for the provision of interstate TRS and require states to establish cost recovery mechanisms for the provision of intrastate TRS.

The rules give states a significant role in ensuring the availability of TRS by treating carriers as compliant with their statutory obligations if they operate in a state that has a relay program certified as compliant by the Commission pursuant to Part 64, subpart F.

Purpose

Subpart F is intended to facilitate communication by a person with a hearing or speech disability by ensuring that interstate TRS is available throughout the country, and by ensuring uniform minimum quality standards for such relay services. These regulations require frequent modification to ensure functional equivalence to voice telephone service because of rapid technological change.

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[232] Pub. Law No. 101-336, § 401, 104 Stat. 327, 366-69 (1990) (adding section 225 to the Communications Act of 1934, as amended, 47 U.S.C. § 225).

Analysis

Status of Competition

At present, there is competition in the interstate TRS market. The majority of intrastate TRS, however, is provided by state TRS programs certified as meeting the Commission's mandatory minimum standards. Therefore, the individual states decide whether to have multiple TRS providers at the intrastate level as part of their state program, or whether to limit competition for intrastate TRS to the request for proposal and vendor selection process.

Recent Efforts

Pursuant to Commission orders, the TRS Fund has recently begun to reimburse TRS providers for the costs of providing both intrastate and interstate video relay services (VRS). In December 2001, the Commission, among other things, directed the TRS Fund administrator to ensure that providers are able to recover their reasonable costs related to providing VRS. The Commission established an interim VRS cost recovery rate using the average per minute compensation methodology used for traditional TRS, and sought further comment in a FNPRM on what VRS cost recovery mechanism should be established on a permanent basis.[233]

In April 2002, the Commission released an Order in which it concluded that TRS providers are entitled to recover the costs of relay services provided through the Internet (IP Relay) from the TRS Fund.[234] The Commission also sought comment in a FNPRM on whether the recovery of costs from the interstate TRS Fund for IP Relay should be a temporary or a permanent measure, and whether the Commission should devise a methodology for allocating IP Relay calls as intrastate or interstate. On October 9, 2002, the Interstate TRS Fund Advisory Council filed with the Commission recommended guidelines for reimbursement for IP Relay calls.

Comments

Relay Nevada recommends that NECA fund a national 711/TRS outreach program.[235] Relay Nevada also recommends that the Commission require wireless companies to share

[233] *Telecommunications Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines, Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, CC Docket No. 98-67, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 22948 (2001).

[234] *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc*., CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (2002).

[235] Relay Nevada Comments at 1 (filed in CG Docket No 02-311).

in the per-line surcharges that fund TRS.[236]

Recommendation

WCB staff finds that the Part 64, subpart F rules relating to the administration of the TRS fund are necessary in the public interest and recommends no changes to the rules at this time. These rules are necessary to facilitate communication by persons with speech or hearing disabilities by ensuring nationwide availability and uniform minimum quality of interstate TRS. The staff recommends that the Commission continue efforts to ensure that improved TRS services such as VRS and IP Relay are funded in the most efficient manner by addressing these issues in the appropriate ongoing proceedings. Because the biennial review's statutory purpose is to review and modify or eliminate regulations that no longer serve a necessary purpose as the result of meaningful economic competition between telecommunications service providers, the staff recommends against initiating a biennial review proceeding to address issues such as the funding of outreach programs for 711 and TRS, and the contributions of wireless companies to the TRS Fund.[237]

[236] *Id*.

[237] *See 2000 Biennial Regulatory Review*, Report, 16 FCC Rcd 1207, 1213 (2001)(stating the Commission's intent not to impose new obligations on parties as part of the biennial review process).

PART 64, SUBPART G - FURNISHING OF ENHANCED SERVICES AND CUSTOMER PREMISES EQUIPMENT BY BELL OPERATING COMPANIES; TELEPHONE OPERATOR SERVICES

Description

Subpart G addresses two issues: (1) the provision of enhanced services and customer premises equipment (CPE) by Bell Operating Companies (BOCs); and (2) the provision of operator services. These rules were adopted pursuant to the Commission's authority under sections 4, 201-205, 403, and 404 of the Act, as amended.[238]

The BOCs may provide enhanced services and CPE pursuant to nonstructural safeguards established in the *Computer III*[239] (enhanced services) and *Furnishing of CPE*[240] proceedings, or through a separate subsidiary as provided in section 64.702 of the Commission's rules. If a BOC provides enhanced services or CPE through a separate subsidiary, the separate subsidiary must: (1) obtain all transmission facilities necessary for the provision of enhanced services pursuant to tariff; (2) operate independently, with its own books of accounts, separate officers, personnel, and computer facilities; (3) deal with any affiliated manufacturing entity on an arm's length basis; and (4) compensate the BOC for any research or development performed for the subsidiary. Section 64.702 requires that transactions between the subsidiary and the parent or any other affiliate be put in writing, and bars BOCs from engaging in marketing or sales on behalf of a CPE or enhanced services subsidiary. The BOC must also obtain Commission approval of the capitalization plans for any such separate subsidiary. In addition, section 64.702 bars all common carriers from providing CPE in conjunction with common carrier communications services.

The remainder of subpart G addresses the provision of telephone operator services, and certain activities by call aggregators.[241] These rules require that operator service providers identify themselves at the beginning of each call and provide consumers with information concerning their rates. The rules also prohibit call blocking and require that customers be able to obtain access to the operator services provider of their choice.

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[238] 47 U.S.C. §§ 154, 201-205, 403, 404.

[239] *Amendment of Section 64.702 of the Commission's Rules and Regulations* (*Computer III*), Report and Order, Phase I, 104 FCC 2d 958 (1986) (subsequent citations omitted).

[240] *Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies*, 2 FCC Rcd 143 (1987)(*CPE Order*), *aff'd sub nom. Illinois Bell Telephone Co. v. FCC,* 883 F.2d 104 (D.C. Cir. 1989).

[241] Operator services refer to "any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call," subject to certain exceptions. 47 C.F.R. § 64.708(i). An aggregator is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls, using a provider of operator services." 47 C.F.R. § 64.708(b).

Additionally, subpart G contains restrictions on charges related to the provision of operator services, minimum standards for routing and handling of emergency telephone calls, and rules governing the filing of international tariffs and the provision of operator services for prison inmates. The Commission has forborne from applying some of these restrictions to CMRS carriers and aggregators.[242]

Purpose

The subpart G rules for enhanced services and CPE are designed to permit the competitive offering of these products and services by the BOCs without anticompetitive discrimination or improper cost shifting. The subpart G rules for operator services protect consumers by ensuring that they have information about the rates charged by operator service providers, and that they can reach the operator services provider of their choice. The rules also promote public safety by prescribing minimum standards for operator services provider and call aggregator handling of emergency telephone calls.

Analysis

Status of Competition

The markets for both enhanced services and CPE are competitive. The operator services market continues to increase in competition, although consumers may not benefit fully from this competition due to lack of consumer awareness about the choices available to them, especially when using payphones.

Recent Efforts

In March 2001, the Commission eliminated the bundling restriction adopted in the Commission's *Computer II* proceeding that limited the ability of common carriers to offer consumers bundled packages of telecommunications services and customer premises equipment at a discounted price, finding that the development of competition supplanted the need for the bundling restriction.[243] The Commission also clarified that under Commission rules, all facilities-based carriers may offer bundled packages of enhanced services and basic telecommunications at a single price, subject to existing safeguards.

In 2002, the Commission initiated proceedings to broadly examine the appropriate legal

[242] *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services,* WC Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857 (1988).

[243] *See Policy and Rules Concerning the Interstate and Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended, 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418 (2001).

and policy framework under the Communications Act for broadband access to the Internet provided over domestic wireline facilities.[244]

Comments

Verizon and SBC argue that broadband facilities and services should fall under Title I, but if the Commission determines that broadband services fall under Title II of the Telecommunications Act, then the Commission should cease to require local telephone companies to file tariffs for their own broadband services, and should forbear from requiring rates to be set based on cost-plus regulation or as measured against traditional telephone benchmarks.[245] Verizon further contends that the Commission should permit providers to "experiment with innovating pricing schemes." Finally, Verizon argues that the Commission should decline to apply the *Computer Inquiries* unbundling and other obligations, and that the Commission should decline to impose collocation and unbundling requirements for broadband facilities.[246] USTA argues that the Commission should eliminate the prohibition on bundling of enhanced services by independent incumbent LECs, as it has done for CPE, because the prohibition is not necessary to foster competition.[247] Other commenters disagree.[248] Covad contends that neither Verizon nor USTA demonstrate that the rule is no longer in the public interest as a result of meaningful competition, and that without such a showing the rules cannot be eliminated.[249] Time Warner argues that these issues have been raised in other proceedings and thus, there is no need to address them in this review.[250]

Recommendation

Consistent with the issues raised in the *Computer Inquiry Further Notice* and other related pending proceedings, WCB staff finds that the rules in Part 64, subpart G may no longer be necessary in the public interest as a result of meaningful economic competition among providers of enhanced services and CPE. We therefore recommend that the Commission consider modifying them as proposed in the ongoing proceedings. In light of the complexity involved in analyzing issues such as the classification of broadband services, the impact of product bundling on competition, and rate regulation, the staff

[244] *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, Universal Service Obligations for Broadband Providers*, CC Docket Nos. 02-23, 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002).

[245] SBC Comments at 5-6; Verizon Comments at 11-12.

[246] Verizon Comments at 11-12.

[247] USTA Comments at 23. NTCA supports USTA's proposal. *See* NTCA Reply at 1-2.

[248] AT&T Reply at 35; Covad Reply at 3; Time Warner Reply at 1.

[249] Covad Reply at 3.

[250] Time Warner Reply at 1.

believes that these issues should be addressed in separate proceedings that have the benefit of a more complete and probative record. Moreover, the staff notes that the Commission's modification of these rules in 2001 in the *CPE Proceeding* resulted in the repeal of regulatory requirements that no longer made sense in light of current technological, market, and legal conditions, while enabling consumers to take advantage of innovative and attractive packages of services and equipment, and fostering increased competition in the markets for CPE, enhanced services, and telecommunications services.

PART 64, SUBPART H - EXTENSION OF UNSECURED CREDIT FOR INTERSTATE AND FOREIGN COMMUNICATIONS SERVICES TO CANDIDATES FOR FEDERAL OFFICE

Description

Subpart H implements section 401 of the Federal Election Campaign Act of 1971, which requires the Commission to promulgate rules governing the extension of unsecured credit for foreign or interstate communications services to candidates for federal office. These rules require certain carriers to file periodic reports with the Commission detailing the terms of any unsecured credit extended by the carrier to, or on behalf of, a candidate for federal office. In addition, subpart H requires carriers to extend unsecured credit on substantially equal terms to all candidates and other persons on behalf of any candidate for the same office.

Purpose

The purpose of subpart H is to assist the Commission in monitoring unsecured credit arrangements between carriers and candidates for federal office, pursuant to the Federal Election Campaign Act. It also ensures that such agreements are extended on substantially equal terms to all candidates for the same office.

Analysis

Status of Competition

Not relevant.

Recent Efforts

There have been no significant efforts in recent years regarding subpart H.

Comments

USTA argues that the Commission should eliminate Part 64, subpart H because contract law, and current state and federal law provide sufficient oversight, rendering subpart H's provisions unnecessary.[251]

Recommendation

WCB staff finds that these rules are not within the scope of section 11 review since they were not promulgated pursuant to the Communications Act.

[251] USTA Comments at 24.

PART 64, SUBPART I – ALLOCATION OF COSTS

Description

Section 254(k) of the Communications Act of 1934, as amended, requires the Commission, with respect to interstate services, to establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included within the definition of universal service bear no more than a reasonable allocation of joint and common costs of facilities used to provide these services.[252] The requirements in Part 64, subpart I of the Commission's rules are based on the Commission's authority under section 201 and 220 of the Act.[253] Subpart I prescribes procedures for the allocation of carriers' costs between regulated and nonregulated activities. Subpart I requires that all incumbent LECs subject to separation of regulated and nonregulated costs[254] use the attributable cost method of cost allocation, and lists a number of cost allocation principles that such carriers must follow. Subpart I provides that these carriers are also subject to the affiliate transaction rules, and requires that all incumbent LECs with annual operating revenues at or above a specified indexed level (currently $119 million), except midsized incumbent LECs, file cost allocation manuals (CAMs) with the Commission. Finally, subpart I provides that all carriers required to file CAMs must also have an independent auditor audit their compliance with the Commission's cost allocation requirements.

Purpose

The rules in subpart I protect consumers by preventing cross-subsidization between regulated and nonregulated activities provided by carriers subject to the cost allocation requirements. These rules ensure that carriers compete fairly in nonregulated markets and that regulated ratepayers do not bear the risks and burdens of the carriers competitive (nonregulated) ventures. The cost allocation and affiliate transaction rules impose administrative costs on carriers subject to these requirements.

Analysis

Status of Competition

Competition in local service markets has continued to increase since the completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over two million connections.

[252] 47 U.S.C. § 254(k).

[253] 47 U.S.C. §§ 201, 220.

[254] Average schedule companies do not perform cost studies and do not perform cost allocations pursuant to Part 64, subpart I.

Recent Efforts

Subpart I has been amended within the past few years to eliminate pre-filing requirements for CAM cost apportionment and time reporting changes, and to reduce the CAM filing and auditing requirements for mid-sized incumbent LECs.[255] Further changes are pending in Phases 2 and 3 of the accounting and ARMIS reporting procedures review and are under consideration by the Federal-State Joint Conference on Accounting Issues.

Comments

Verizon asserts that the Commission should declare that broadband services fall under Title I. In the alternative, Verizon states that if the Commission determines that broadband services fall in whole or in part under Title II, local telephone companies should not be required to file tariffs for their broadband services. Specifically, Verizon argues that the Commission should forbear from requiring rates to be set based on cost-plus regulation or as measured against traditional telephone benchmarks, allowing providers to experiment with different and innovative pricing schemes.[256]

USTA urges the Commission to streamline the CAM filing and audit requirements, arguing that the administrative burdens of multiple CAM filings for large incumbent LECs are high and should be eliminated.[257] USTA also asserts that the Commission improperly included the implementation of section 254(k) of the Act into subpart I, because Part 64 is applicable only to incumbent LECs and section 254(k) is applicable to all telecommunications service providers.[258]

Recommendation

Subpart I provides the basic policy objectives and general outline for carriers to follow in designing their own cost allocation methodologies, which are subject to minimal Commission scrutiny. In fact, compliance oversight is largely delegated to the carriers' independent auditors. Similar to the Part 36 rules, the Part 64 cost allocation rules help to define those financial criteria that are subject to federal and state regulatory oversight.

In the past, the vast majority of incumbent LEC costs and revenues have been regulated. Accordingly, the Part 64 cost allocation rules have been of relatively small significance. As competition and deregulatory actions are realized, however, the separation of costs

[255] *See Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1*, CC Docket No. 99-253, Report and Order, 15 FCC Rcd 8690 (2000).

[256] Verizon Comments at 11.

[257] USTA Comments at 25.

[258] *Id.* at 25-26.

associated with nonregulated activities from regulated costs becomes more significant and meaningful in determining the reasonableness of regulated rates, and in determining the adequacy of attendant price reductions.[259]

WCB staff believes that because the Part 64 cost allocation rules permit the carriers to design their methods for allocating costs within broad guidelines, arguments that the rules are onerous or otherwise burdensome are specious. Accordingly, the staff does not recommend that the Commission initiate a biennial review proceeding to examine these requirements at this time.

With regard to the filing of tariffs for broadband services should the Commission declare that they fall under Title II, the staff recommends that the Commission defer addressing this issue pending the outcome of the *Broadband Proceeding*.

USTA is correct that section 254(k) of the Act, by its terms, applies to all telecommunications carriers. It does not follow from this observation, however, that implementation of section 254(k) is improperly included in subpart I. The inclusion of the language in Part 64 ensures that the largest incumbent LECs must obtain independent certification of compliance from their auditors.

Both Part 64 and section 254(k) prevent and prohibit respectively subsidization of competitive services. Section 254(k) also directs the Commission to apply "necessary cost allocation rules," *inter alia*, to ensure that "services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." Therefore, the staff finds that the implementation of section 254(k) is properly included in the Part 64 cost allocation rules.

With respect to USTA's objection to "multiple" CAM filings, the staff believes that it would be more burdensome and less accurate to permit a greater degree of structural aggregation for CAMs. Part 64 requires that "[e]ach local exchange carriers with annual operating revenues that equal or exceed the indexed revenue threshold . . ." file a CAM. The CAM includes information specific to each LEC, including a list of affiliates for affiliate transactions, and requires LEC audits. Different LECs, even under common ownership, have different affiliate structures, cost pool designs, and audit procedures.

Because the Part 64, subpart I rules ensure the separate treatment of regulated and nonregulated carrier activities, WCB staff finds that they remain necessary in the public interest, and therefore should not be eliminated or modified as a result of meaningful economic competition at this time. The staff recognizes, however, that some of these rules are currently under review by the Federal-State Joint Conference on Accounting Issues, and that the Joint Conference may recommend modification or elimination of certain provisions. The staff therefore recommends that the Commission await the recommendation of the Joint Conference before taking any action on these rules.

[259] *See* 47 C.F.R. § 61.45(d)(1)(v), listing as exogenous "the reallocation of investment from regulated to nonregulated activities pursuant to § 64.901."

PART 64, SUBPART M - PROVISION OF PAYPHONE SERVICE

Description

Subpart M implements section 276 of the Communications Act of 1934, as amended, concerning the provision of payphone service. These rules govern compensation to payphone providers by carriers that receive calls from payphones; require states to review and remove any state regulation that limits market entry and exit by payphone providers; and establish regulations to ensure that individuals with disabilities can use payphones. This subpart provides for contracts between providers and sets a default compensation rate if the parties cannot reach an agreement. These rules also require carriers to establish arrangements and track the data necessary for the calculation, verification, billing and collection of payphone compensation.

Purpose

Subpart M helps to ensure that payphone providers receive fair compensation for completed intrastate and interstate calls made from their payphones, encourages competition among payphone service providers (PSPs), and promotes the deployment of payphone services.

Analysis

Status of Competition

Incumbent local exchange carriers have the major United States presence in the provision of payphone service. Incumbent local exchange payphone providers control over 60 percent of the payphone market.[260]

Recent Efforts

In April 2001, the Commission modified its rules regarding per-call compensation for payphone calls to better ensure that PSPs are fairly compensated for all completed, coinless calls made from payphones. This order addressed the difficulty that PSPs face in obtaining compensation for coinless calls placed from payphones that involve a switch-based telecommunications reseller in the call path.[261] Given the difficulty of determining which entity is responsible for compensating the PSP for such calls (*i.e.*, the switch-based reseller or the interexchange carrier that routes calls to the switch-based reseller), the Commission modified its rules to require the first underlying facilities-based interexchange carrier to whom the local exchange carrier directly delivers such calls to compensate the PSP for the completed coinless calls. The Commission's modified rules

[260] *Trends in Telephone Service* at Table 8.5 (stating that as of March 31, 2001, 36.5% of the payphones in the United States were non-LEC owned).

[261] *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Second Order on Reconsideration, 16 FCC Rcd 8098 (2001).

also provide that the first facilities-based interexchange carrier can seek compensation from the appropriate party.

Comments

No party filed comments addressing Part 64, subpart M.

Recommendation

WCB staff finds that these rules remain necessary in the public interest because they facilitate competition in the provision of payphone service and ensure that PSPs, which provide a necessary public service by making available payphones for public use, receive fair compensation for calls made from their payphones. We therefore recommend that these rules be retained. Although the requirements in section 64.1330 regarding state review of payphone entry and exit regulations and public interest payphones have expired, the staff recommends that the Commission initiate a proceeding to determine whether they should be extended.[262] The staff further recommends that a proceeding be initiated to update the rules in this subpart as necessary (e.g., by replacing each reference to "Common Carrier Bureau" with "Wireline Competition Bureau").

[262] We note that the staff in the *2000 Biennial Regulatory Review Report* recommended that section 64.1330 be deleted because it expired on September 20, 1998 by its own terms.

PART 64, SUBPART N – EXPANDED INTERCONNECTION

Description

Subpart N was adopted pursuant to the Commission's authority under sections, 1, 4, and 201 through 205 of the Communications Act, as amended.[263] Subpart N provides that Class A local exchange carriers, which do not participate in the National Exchange Carrier Association tariff, must provide expanded interconnection.[264] Subpart N requires incumbent LECs to allow interconnection with their networks through physical or virtual collocation for the provision of interstate special access and switched transport services. Any interested party may take expanded interconnection.

Purpose

Subpart N is designed to increase competition in the provision of interstate services by removing barriers to the competitive provision of special access and switched transport services. Specifically, subpart N makes collocation and interconnection available to any interested party (*e.g.*, large businesses and universities), while interconnection and collocation under section 251 of the Communications Act and Part 51 of the Commission's rules are limited to telecommunications carriers. Subpart N may impose some costs on incumbent LECs, which are passed on to the requesting parties.

Analysis

Status of Competition

Competition in local service markets has continued to increase since the completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over two million connections.

Recent Efforts

There have been no significant efforts in recent years.

Comments

No party filed comments addressing subpart N.

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[263] 47 U.S.C. §§ 151, 154, 201-205.

[264] Bell South, SBC, Qwest and Verizon are subject to this requirement.

Recommendation

Because the Part 64, subpart N rules serve to ensure that special access and switched transport services are competitively provided, WCB staff finds that these rules remain necessary in the public interest, and therefore recommends no change to subpart N at this time.

PART 64, SUBPART T - SEPARATE AFFILIATE REQUIREMENTS FOR INCUMBENT INDEPENDENT LOCAL EXCHANGE CARRIERS THAT PROVIDE IN-REGION INTERSTATE DOMESTIC INTEREXCHANGE SERVICES OR IN-REGION INTERNATIONAL INTEREXCHANGE SERVICES

Description

Subpart T establishes separate subsidiary requirements applicable to the provision of in-region, interstate domestic, interexchange services and in-region international interexchange services by incumbent independent local exchange carriers. Subpart T generally requires that the separate affiliate: (1) maintain separate books of account, although these books of account need not comply with Part 32 requirements; (2) not own transmission or switching facilities jointly with its affiliated exchange company, although the separate affiliate may share personnel or other assets or resources with an affiliated exchange company; (3) take, pursuant to tariff, any services for which its affiliated exchange carrier is required to file a tariff (although the separate affiliate may also take unbundled network elements and services for resale pursuant to the terms of pre-existent negotiated agreements approved under section 252 of the Act); and (4) be a separate legal entity from the affiliated exchange company, although the separate affiliate may share personnel, office space and marketing with the affiliate exchange companies.

Purpose

Subpart T is designed to prevent incumbent independent local exchange carriers from engaging in anticompetitive activity in the provision of in-region long distance services.

Analysis

Status of Competition

While competing carriers continue to use all entry modes envisioned by the 1996 Act to serve end-user customers, competitive LECs report that unbundled network elements have become a more important mode of entry. Competition for business customers in metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Recent Efforts

In September, 2001, the Commission initiated a proceeding to reexamine Part 64, subpart T of the Commission's rules.[265] In particular, the Commission invited comment on

[265] *2000 Biennial Regulatory Review of Separate Affiliate Requirement of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001) (*Separate Affiliate NPRM*).

whether the benefits of the separate affiliate requirement for facilities-based incumbent independent LEC providers of in-region, interexchange service continue to outweigh the costs, and whether there are alternative safeguards that are as effective but pose fewer regulatory costs.[266]

Comments

USTA argues for the elimination of this rule because, according to USTA, the Commission based its decision to impose this requirement only on the potential that improper behavior might occur, while there is no evidence before the Commission of any anticompetitive actions by independent incumbent LECs offering long distance services within their territories. USTA also contends that this rule harms the smallest of the independent incumbent LECs.[267]

Recommendation

WCB staff finds that the rules in Part 64, subpart T, in their current form, may no longer be necessary in the public interest as a result of meaningful economic competition between providers of interexchange service. Accordingly, the staff recommends that the Commission consider modifying these rules in the pending *Separate Affiliate* rulemaking proceeding. Based on the Commission's experience in implementing the 1996 Act, the staff concludes that there is sufficient reason to believe that incumbent LECs may engage in discriminatory behavior without sufficient safeguards. Thus, the staff recommends that the Commission reject USTA's argument that the Commission should unilaterally eliminate these rules. Nevertheless, as discussed in the pending *Separate Affiliate* proceeding, there may be alternative safeguards that are sufficiently effective while imposing fewer regulatory costs. The staff therefore recommends that the Commission consider whether these rules should be modified in the context of that ongoing proceeding.

[266] *Separate Affiliate NPRM*, 16 FCC Rcd at 22745.

[267] USTA Comments at 27.

PART 64, SUBPART U - CUSTOMER PROPRIETARY NETWORK INFORMATION

Description

Section 222 of the Communications Act, as amended, restricts carrier use of customer proprietary network information (CPNI), which, among other things, identifies to whom, where, and when a customer places a call, and identifies the types of service offerings to which the customer subscribes and the extent to which the service is used.[268] Except as required by law or with customer approval, section 222(c)(1) of the Act stipulates that a carrier can only "use, disclose or permit access to CPNI in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories."

Purpose

The Commission adopted CPNI rules in order to implement the provisions of section 222 to protect consumer privacy, and to foster competition.

Analysis

Status of Competition

While competing carriers continue to use all entry modes envisioned by the 1996 Act to serve end-user customers, competitive LECs report that unbundled network elements have become a more important mode of entry. Competition for business customers in metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is fully competitive, although there is greater competition for high volume customers than for low volume customers.

Recent Efforts

In 1998, the Commission adopted CPNI rules which addressed the "customer approval" requirement in section 222(c)(1), but the order adopting those rules was overturned on First Amendment grounds.[269] On August 28, 2001, the Commission adopted the *Clarification Order* describing the status of its CPNI rules, in light of the Tenth Circuit

[268] 47 U.S.C. § 222.

[269] *US West v. FCC,* 182 F.3d 1224 (10th Cir. 1999), *cert. denied,* 120 S.Ct. 2215 (June 5, 2000) (No. 99-1427).

order, and issued an accompanying further notice.[270] The Commission determined in the *CPNI Clarification Order* that the Tenth Circuit invalidated only the rule requiring "opt-in" customer approval under section 222(c)(1), not the entire order. In the *CPNI Further NPRM*, the Commission sought comment on its interpretation of the scope of the Tenth Circuit's order, and on what type of approval (opt-in or opt-out) would best serve the government's goals while respecting constitutional limits.[271]

On July 25, 2002, the Commission released the *CPNI Third Report and Order*, which addressed the "customer approval" requirement in section 222(c)(1).[272] The *CPNI Third Report and Order* requires: (1) a customer's knowledge and consent in the form of notice and "opt-out" approval for use of CPNI by carriers or disclosure to their affiliated entities providing communications-related services, as well as third-party agents and joint venture partners providing communications-related services; and (2) customer "opt-in" consent to disclosure of CPNI to unrelated third parties or to carrier affiliates that do not provide communications-related services. The *CPNI Third Report and Order* also affirmed the Commission's finding that the Tenth Circuit only vacated those rules related to the previous opt-in approach.[273] Accompanying that order was the *Third Further NPRM*, which sought to refresh the record regarding foreign storage of and access to domestic CPNI, and CPNI safeguards and enforcement mechanisms.[274]

Comments

No party filed comments addressing Part 64, subpart U.

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[270] *Implementation of the Telecommunications Act of 1996: Telecommunications Carrier's Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, As Amended,* Clarification Order and Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 16506 (2001) (*CPNI Clarification Order and Further NPRM*).

[271] *Id*.

[272] *Implementation of the Telecommunications Act of 1996: Telecommunications Carrier's Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, As Amended, 2000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket Nos. 96-115, 96-149 and 02-257, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002) (*CPNI Third Report and Order and Third Further NPRM*).

[273] *Id*. The Order also adopted customer notification requirements specifying the form, content and frequency with which customers may be notified, as well as the waiting period for opt-out notifications and the methods by which customers can exercise their rights regarding CPNI under opt-in or opt-out classifications. *CPNI Third Report and Order*, 17 FCC Rcd at 14899-911.

[274] These issues were originally raised in the *CPNI Order*, 13 FCC Rcd at 8203-8204. Due to the high number of recent bankruptcies and transfers of control that have taken place since the adoption of the *CPNI Order*, and FBI requests that the Commission strengthen its record keeping requirements, the Commission sought comment on these issues to establish a complete and updated record. *CPNI Third Further NPRM*, 17 FCC Rcd at 14923-24.

Recommendation

Consistent with the Commission's recent examination of the rules in Part 64, subpart U in the *CPNI Third Report and Order*, WCB staff finds that the current rules are necessary in the public interest and recommends no modifications to Rule 64, subpart U at this time.

PART 64, SUBPART V – TELECOMMUNICATIONS CARRIER SYSTEMS SECURITY AND INTEGRITY PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

Description

Section 105 of CALEA requires that telecommunications carriers establish safeguards to ensure that interception of communications or access to call-identifying information can be activated only in accordance with a court order or other lawful authorization, and with the affirmative intervention of an officer or employee of the carrier.[275] Section 229(a) of the Communications Act directs the Commission to "prescribe such rules as are necessary to implement the requirements of [CALEA],"[276] and section 229(b) specifically requires the Commission to promulgate "rules to implement section 105 of [CALEA].[277] Part 64, subpart V of the Commission's rules instructs carriers to comply with these statutory requirements by requiring them to adopt policies and procedures for the supervision and control of their employees and officers, and by requiring carriers to maintain secure records of each interception of communications or access to call-identifying information. Additionally, subpart V requires carriers to submit to the Commission for review a statement describing procedures implementing CALEA requirements.[278]

Purpose

Subpart V implements section 105 of CALEA and helps protect privacy rights by ensuring that any interception is in accordance with required legal authorization. Commission rules contained in subpart V promote the statutory goals and requirements of CALEA by ensuring that affected carriers comply with CALEA-mandated communications security and integrity requirements. Compliance with these requirements increases carrier costs, however.

Analysis

Status of Competition

Not relevant.

[275] 47 U.S.C. § 1004.

[276] 47 U.S.C. § 229(a).

[277] 47 U.S.C. § 229(b).

[278] 47 U.S.C. § 229(c); 47 C.F.R. § 64.2105.

Recent Efforts

Subpart V, adopted in September 1999, was modified last year in the Commission's *Order on Reconsideration* in CC Docket No. 97-213.[279] In that *Order on Reconsideration*, the Commission clarified the arrangements carriers must make to ensure that law enforcement agencies can contact them when necessary, and what interception activity triggers the record keeping requirement under the statute.[280]

Comments

No party filed comments addressing Part 64, subpart V.

Recommendation

The utility of electronic surveillance as a crime fighting tool for law enforcement agencies, as well as the events of and following September 11, 2001, have led to a 25% increase in the annual number of electronic intercepts during the latest annual reporting period ending December 31, 2001.[281] We also note that, because these rules are not affected by competition, we cannot find that they are no longer necessary in the public interest as a result of meaningful economic competition. WCB staff accordingly finds that Part 64, subpart V remains necessary in the public interest and recommends that repeal or modification is not warranted at this time.

[279] *Communications Assistance for Law Enforcement Act, Second Order on Reconsideration,* CC Docket No. 97-213, 16 FCC Rcd 8959 (2001).

[280] *Id.*

[281] Report of the Director of the Administrative Office of the United States Courts on Applications for Orders Authorizing or Approving the Interception of Wire, Oral or Electronic Communications (May 2002), available at http://www.uscourts.gov/wiretap01/2001wttxt/pdf .

PART 64, SUBPART X - SUBSCRIBER LIST INFORMATION

Description

Section 222(e) of the Communications Act requires carriers providing telephone exchange service to provide subscriber list information to requesting directory publishers "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions."[282] Subpart X implements this statutory provision, addressing third-party rights to subscriber list information, which includes listed subscribers' names, addresses and telephone numbers, as well as headings under which businesses are listed in yellow pages directories.

Purpose

Subpart X is intended to implement section 222(e) of the Act and encourage the development of competition in directory publishing by ensuring that competing directory publishers can obtain subscriber list information from local exchange carriers.

Analysis

Status of Competition

Incumbent LEC publishing operations are the major part of the market for directory publishing. Competition among other providers is increasing, however, due in large part to section 222 and the Commission's implementation of rules in subpart X.

Recent Efforts

In January 2001, the Commission resolved outstanding issues relating to directory publishing. Specifically, the Commission concluded that section 222(e)'s non-discrimination language concerning directory publishing "in any format"[283] applies to telephone directories on the Internet, but does not apply to orally provided directory listing information. Moreover, the Commission found that publishers of telephone directories on the Internet should be permitted to use the data for the purpose for which it was purchased and should not be restricted in the manner in which they display, or allow customers to access, the data. [284]

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[282] 47 U.S.C. § 222(e).

[283] Section 222(e) states, "[A] telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories *in any format.*" 47 U.S.C. § 222(e) (emphasis added).

[284] *See Provision of Directory Listing Information Under the Telecommunications Act of 1934*, CC Docket No. 99-273, First Report and Order, 16 FCC Rcd 2736 (2001).

In that same proceeding, the Commission also declined to adopt a rate methodology for subscriber line information under section 222(e) of the Act, rather deferring such a decision to state commissions. In reaching this conclusion, the Commission determined that the pricing structure for directory assistance and access to associated databases should remain distinct from that of subscriber list information.[285]

Comments

No party filed comments addressing Part 64, subpart X.

Recommendation

WCB staff finds that these rules remain necessary in the public interest because they facilitate competition in directory publishing by ensuring that competing directory publishers can obtain subscriber list information from LECs. We therefore recommend that repeal or modification of Part 64, subpart X is not warranted at this time.

[285] *Id*.

PART 64, SUBPART Z - PROHIBITION ON EXCLUSIVE TELECOMMUNICATIONS CONTRACTS

Description

Congress amended section 224 of the Communications Act, as amended,[286] to grant telecommunications service providers, in addition to cable service providers, access to conduits or rights-of-way in order to fulfill the market-opening goals of the 1996 Act. Part 64, subpart Z implements this section by: (1) prohibiting carriers from entering contracts that restrict or effectively restrict owners and managers of commercial multiple tenant environments (MTEs) from permitting access by competing carriers; (2) clarifying the Commission rules governing control of in-building wiring, and facilitating exercise of building owner options regarding that wiring; (3) establishing that the access mandated by Congress in section 224 of the Communications Act includes access to conduits or rights-of-way that are owned or controlled by a utility within MTEs; and (4) providing that parties with a direct or indirect ownership or leasehold interest in property, including MTEs, should have the ability to place in areas within their exclusive use or control antennas one meter or less in diameter used to receive or transmit any fixed wireless service, and prohibiting most restrictions on their ability to do so.[287]

Purpose

Part 64, subpart Z is intended to significantly advance competition and customer choice, reduce the likelihood that incumbent LECs can obstruct their competitors' access to MTEs, and address certain anticompetitive actions by premises owners and other third parties. A substantial portion of both residential and business customers nationwide are located in MTEs. Thus, the absence of widespread competition in such environments would insulate incumbent LECs from competitive pressures and deny facilities-based competitive carriers the ability to offer their services in a sizable portion of local markets. Furthermore, this would jeopardize the full achievement of the benefits of competition by forcing consumers living in MTEs to pay supra-competitive rates for local telecommunications services, and deny them the benefits of advanced and innovative services.

[286] 47 U.S.C. § 224.

[287] *Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, 16 FCC Rcd 7064 (2000).

Analysis

Status of Competition

Both incumbent LECs and building owners are important to the provision of local telecommunications services in MTEs. Both wireless and wireline competitive LECs have made progress in obtaining access to MTEs, especially in commercial markets. Although competitive LECs are rapidly building customer base and gaining market share in commercial markets, at the end of 2001, competitors served 10 percent of end-user switched access lines.[288] Moreover, most of competitive LECs' revenues derive from special access and local private line services rather than from switched services to end users.

Recent Efforts

There have been no significant changes to subpart Z since its adoption.[289]

Comments

No party filed comments addressing Part 64, subpart Z.

Recommendation

WCB staff finds that the current rules are necessary in the public interest because they facilitate competition and customer choice by prohibiting anticompetitive actions in multiple tenant environments. We therefore recommend that repeal or modification of Part 64, subpart Z is not warranted at this time.

[288] Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service* (May 2000) at Tbl. 1.

[289] The Commission adopted subpart Z in October 2000, but the rule did not appear in the Code of Federal Regulations until 2001, after the release of the 2000 Biennial Regulatory Review Report.

PART 65 – INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

Description

Section 201 of the Communications Act, as amended, requires that rates for common carrier communications services be just and reasonable.[290] Part 65 sets forth the procedures and methodologies used by the Commission to prescribe an authorized interstate rate of return for the exchange access services of incumbent local exchange carriers (LECs) subject to rate-of-return regulation. Price cap incumbent LECs also use the Commission prescribed rate of return for certain purposes. The Part 65 rules describe the methodologies to be used in calculating the cost of equity, the cost of debt, the weighted average cost of capital (both equity and debt), the interstate rate base, and the carriers' interstate rate of return. These rules also require the filing of certain rate-of-return reports.

Part 65 is organized into seven lettered subparts:

A – General
B – Procedures
C – Exchange Carriers
D – Interexchange Carriers
E – Rate-of-Return Reports
F – Maximum Allowable Rates of Return
G – Rate Base

Purpose

The Part 65 rules are designed to protect consumers from excessive rates by prescribing an authorized interstate rate of return used to set local exchange access rates for incumbent LECs subject to rate-of-return regulation. The authorized interstate rate of return is also used by incumbent LECs for certain purposes, for example, calculating payments to and disbursements from the universal service fund and in the low end adjustment formula. Information on earnings (from which profitability can generally be determined) is also necessary for Commission oversight and provides valuable information in the policy making process.

[290] 47 U.S.C. § 201(b).

Analysis

Status of Competition

Competition in local service markets has continued to increase since the completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over two million connections.

Recent Efforts

There have been no significant efforts since the 2000 Biennial Regulatory Review.

Comments

USTA asserts that reporting requirements should be eliminated for price cap carriers except when a lower formula adjustment is filed. USTA further states that services that are excluded from price cap regulation should not be subject to the prescribed rate of return. In addition, USTA claims that the Commission should modify section 65.700 to calculate the maximum allowable rate of return on all access elements in the aggregate instead of for each access category, and should modify section 65.702 to measure earnings on an overall interstate basis instead of separately for each category.[291]

NECA states that Class B carriers have the option of using a standard allowance method for calculating the cash working capital (CWC) element of the interstate rate base.[292] NECA contends that the full lead-lag method for calculating CWC creates a heavy administrative burden for carriers. The alternative, standard allowance method provided in the Commission's rules for Class B carriers to calculate CWC, according to NECA, is also complex and difficult for most of these carriers. NECA states that the current standard allowance of 15 days is out of date and should be revised because it does not reflect the current business operations of small, rural carriers. NECA asserts that these companies are typically required to pay bills more promptly than large carriers and that their books typically reflect less cash on hand for shorter periods of time. Accordingly, NECA asserts, revenue receipt lags have a more pronounced effect on small carriers. NECA proposed revising the standard allowance period from 15 days to 30 or 45 days.[293]

AT&T opposes NECA's proposed change of the standard allowance period, arguing that the Commission has consistently found lead-lag time in excess of 15 days to be

[291] USTA Comments at 28.

[292] NECA Comments at 18, *citing* 47 C.F.R. § 65.820(d).

[293] *Id.* at 18-19.

unjustified.[294] AT&T further asserts that NECA has provided no new information that would support a longer lag time.[295]

Recommendation

WCB staff finds these rules to be necessary in the public interest and therefore recommends no changes at this time. The Part 65 rules are necessary to protect consumers from excessive rates and to enable incumbent LECs to calculate payments to and disbursements from the Universal Service Fund and the low end adjustment formula. Information provided to the Commission under these rules is necessary for Commission oversight and input in the policy makeup process. The rules adopted in the CALLS Order for price cap LECs expire July 1, 2005.[296] USTA's proposed modifications would prevent the Commission from having available information crucial to deciding the appropriate rate regulation after that date. Similarly, USTA's proposal to eliminate reporting requirements for price cap carriers except when a lower formula adjustment is filed would significantly hamper the Commission's ability to assess the financial status of companies and the effectiveness of its rules and policies.

NECA seeks a revision in the standard allowance period for CWC calculations. The staff concurs with AT&T and finds that NECA has provided no information in this biennial review proceeding to justify the codification of a lead-lag time that exceeds 15 days. The staff notes that Part 65 requires the Bureau Chief to establish the standard allowance period annually.[297] Although we do not recommend modification of the rule in its current form at this time, we note that parties may present their arguments in support of establishing a longer period through the procedures provided in the rules.

[294] AT&T Reply at 33, *citing 1997 Annual Access Tariff Filings,* Memorandum Opinion and Order, CC Docket No. 97-149 (1997).

[295] *Id.* at 33.

[296] *Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, Sixth Report and Order, *Low-Volume Long-Distance Users*, CC Docket No. 99-249, Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order and Errata, 15 FCC Rcd 12962 (2000), *petition for review filed sub nom. U S West v. FCC*, No. 00-1279 (D.C. Cir. filed June 27, 2000).

[297] 47 C.F.R. § 65.820(d).

PART 68 – CONNECTION OF CUSTOMER PREMISES EQUIPMENT TO THE TELEPHONE NETWORK

Description

Part 68 was established in 1974 as the result of the ruling in *Hush-A-Phone v. United States* that Bell Operating Companies could not bar direct connection of customer premises equipment (CPE) to the public switched telephone network (PSTN), provided the CPE would not cause harm to the PSTN.[298] Part 68 requires that CPE be tested to show that it will not harm the PSTN or carrier personnel, and then be listed with the Administrative Council for Terminal Attachments (ACTA), a private industry group that maintains a master database of all CPE approved for connection to the PSTN. Carriers are obligated to permit the free connection of approved CPE to the PSTN, but they can require disconnection of CPE that is not approved or that causes harm to the PSTN. Part 68 provides for the identification, review and publication of technical criteria used in testing CPE for Part 68 compliance. Part 68 also establishes the right of customers to use competitively provided inside wiring.

In addition, Part 68 implements a statutory requirement for telephone equipment compatibility with hearing aids,[299] and contains consumer protection provisions mandated by statute: a requirement that all fax transmissions include source labeling,[300] and a requirement that limits the duration of line seizure by automatic telephone dialing systems.[301]

Part 68 is organized into seven lettered subparts:

A – General
B – Conditions on Use of Terminal Equipment
C – Terminal Equipment Approval Procedures
D – Conditions for Terminal Equipment Approval
E – Complaint Procedures
F – Reserved
G – Administrative Council for Terminal Attachments

Purpose

The Part 68 rules are designed to foster competition in the provision of CPE and inside wiring by permitting the connection of competitively provided CPE and inside wiring to the PSTN. Part 68 is also intended to ensure that the connection of CPE and inside wiring does not harm the PSTN or injure carrier personnel. In addition, Part 68 is

[298] *Hush-A-Phone v. United States*, 238 F.2d 266 (D.C. Cir. 1956).

[299] Hearing Aid Compatibility Act of 1988, 47 U.S.C. § 610.

[300] 47 U.S.C. § 227(d)(2).

[301] 47 U.S.C. § 227(d)(3).

designed to ensure the compatibility of hearing aids and telephone receivers so that persons with hearing aids will be able to use virtually all telephones.

Part 68 provides a number of advantages for consumers and the industry. Part 68 benefits consumers by fostering competition in the provision of CPE and inside wiring. The competition engendered by Part 68 has greatly increased innovation in CPE and reduced prices. Part 68 also benefits consumers and the industry by preventing harm to the PSTN and carrier personnel. Under current Part 68 rules, both the technical criteria development process and the CPE approval process have been privatized. Hence, the benefits described here are realized with minimal involvement of Commission staff, except when parties appeal. In addition, Part 68 benefits people with hearing disabilities and those who communicate with them by requiring that telephone receivers be compatible with hearing aids.

The Part 68 rules have undergone significant streamlining in the past two years, as described below. The industry is still adapting to major changes resulting from privatization.

Analysis

Status of Competition

The markets for CPE and for the installation of inside wiring in single family residences are fully competitive.

Recent Efforts

On November 9, 2000, the Commission adopted a *Report and Order* that completely eliminated significant portions of then-existing Part 68 rules,[302] and privatized the technical criteria development and terminal equipment approval processes.[303]

In the *Report and Order,* the Commission concluded that there was still a need for technical criteria to protect the PSTN and carrier personnel from proscribed harms. However, the Commission also concluded that any standards development organization (SDO), accredited by the American National Standards Institute (ANSI) and incorporating balanced representation from the CPE manufacturing industry and the telecommunications carrier industry, can establish technical criteria for CPE. The Commission also created the ACTA, and established its responsibilities to publicize draft criteria for industry review and to publish final criteria after the review period has closed. Criteria published by ACTA are considered presumptively valid, subject to the Commission's *de novo* review on appeal.

[302] Specifically, the Commission eliminated the detailed regulations that (1) specified the technical criteria CPE must meet in order to be approved for connection to the PSTN and (2) required registration of CPE with the Commission.

[303] *In the Matter of 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations,* CC Docket No. 99-216, Report and Order, 15 FCC Rcd 24944 (2000) (*Report and Order*).

The Commission also examined its own role in approving CPE for connection to the PSTN. In the *Report and Order*, the Commission concluded that although an organized system of CPE approval procedures requiring appropriate documentation is still necessary, it was no longer in the public interest to continue Commission registration of CPE.[304] Per the *Report and Order*, the Commission ceased performing all registration functions other than consideration of appeals. Instead, the Commission allowed suppliers to obtain CPE approval to connect to the PSTN through either of two methods. Suppliers could obtain approval from private accredited testing bodies known as Telecommunications Certification Bodies (TCBs). Alternatively, suppliers could declare their compliance with applicable technical criteria using a Supplier's Declaration of Conformity (SDoC). The Commission made ACTA responsible for establishing and maintaining a publicly accessible database of approved CPE, and for developing labeling standards for CPE. All approved CPE must be listed in ACTA's database.

The Commission successfully transferred its own database of registered CPE to ACTA in July 2001. The Commission no longer maintains a database of equipment approved for attachment to the PSTN.

In March 2002, the Commission adopted an *Order on Reconsideration*[305] reaffirming its support for the Supplier Declaration of Conformity (SDoC) method of CPE approval and clarifying several other issues arising from the *Report and Order*. The Commission has also adopted an *Order* that eliminated specific Part 68 formal complaint rules.[306] Complaints against carriers for violations of Part 68 must now be addressed pursuant to general rules regarding formal complaints against common carriers.

Comments

No party filed comments addressing Part 68.

Recommendation

The Part 68 rules are necessary in the provision of CPE and inside wiring and to ensure that connection of CPE to inside wiring does not harm the PSTN or injure carrier personnel. In addition, these rules ensure the compatibility of hearing aids and telephone receivers so that persons with hearing disability will be able to use virtually all telephones. Revisions to Part 68 rules since the 2000 Biennial Regulatory Review have resulted in major changes in the responsibilities of both private industry and the Commission. The industry as a whole is still adapting to these changes, and WCB staff

[304] In the registration process, the Commission reviewed applications, verified conformance of CPE to Part 68 technical criteria and granted certification, thus approving CPE for connection to the PSTN.

[305] *2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations,* CC Docket Nos. 99-216 and 98-163, Order on Reconsideration in CC Docket No. 99-216 and Order Terminating Proceeding in CC Docket No. 98-163*,* 17 FCC Rcd 6856 (2002)*.*

[306] *Amendment of Parts 0 and 68 of the Commission's Rules To Reflect the Commission's Recent Reorganization*, Order*,* 17 FCC Rcd 6870 (2002)*.*

continues to work with industry representatives to resolve issues as they are identified. Nothing has occurred in the intervening two years that leads the staff to recommend repeal or modification of these rules in this biennial regulatory review proceeding. WCB staff accordingly finds that the Part 68 rules remain necessary in the public interest and recommends that repeal or modification is not warranted at this time.

PART 69 – ACCESS CHARGES

Description

Sections 201 and 202 of the Communications Act of 1934, as amended, require that rates, terms and conditions for telecommunications services be just and reasonable,[307] and prohibit unjust or unreasonable discrimination.[308] Part 69 implements these sections of the Act by establishing rules that perform the following major functions. First, the Part 69 rules establish the rate structure for access charges to be paid by interexchange carriers to local exchange carriers (LECs) for the origination and termination of long distance calls, as well as the access charges to be paid directly by end users.[309] These rate structure rules establish the access charge rate elements as well as the nature of the charges, such as whether they are assessed on a per- minute or a flat-rate basis. Second, the Part 69 rules govern how rate-of-return LECs calculate their access charge rates. Third, the Part 69 rules, in conjunction with the Part 61 price cap rules, establish the degree of pricing flexibility available to price-cap LECs. Finally, Part 69 provides for the establishment of the National Exchange Carrier Association (NECA), which files tariffs on behalf of many of the smaller, rate-of-return LECs.

Purpose

The Part 69 rules protect customers from the exercise of market power by incumbent LECs. The requirement for a minimum set of access charge rate elements and the pricing rules for both rate-of return and price cap LECs greatly reduce the Commission resources required to ensure carrier compliance with sections 201 and 202 of the Act, and greatly facilitate analysis of access charges by other interested parties. The creation of NECA facilitates the filing of access charge tariffs by smaller rate-of-return LECs and reduces the administrative costs involved.

Part 69 is organized into eight lettered subparts:

A – General
B – Computation of Charges
C – Computation of Charges for Price Cap Local Exchange Carriers
D – Apportionment of Net Investment
E – Apportionment of Expenses
F – Segregation of Common Line Element Revenue Requirement
G – Exchange Carrier Association
H – Pricing Flexibility Analysis

[307] 47 U.S.C. § 201.

[308] 47 U.S.C. § 202.

[309] Local exchange carriers subject to price cap regulation must offer a basic set of access rate elements, but are free to offer additional access services.

Analysis

State of Competition

Competition in local service markets has continued to increase since the completion of the 2000 Biennial Regulatory Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over two million connections.

Recent Efforts

In its *MAG Order*, the Commission adopted access charge reforms for rate-of-return carriers. In the accompanying *MAG Further NPRM*, the Commission initiated a comprehensive review of the Part 69 rules for rate-of-return LECs.[310] This rulemaking specifically addresses the appropriate degree and timing of pricing flexibility, including contract pricing, for rate-of-return carriers and explores the development of an alternative regulatory structure for rate-of-return carriers who elect it.[311] In a 2000 Biennial Review proceeding, the Commission also initiated a proceeding to streamline Average Schedule Formula processes and examine the necessity of an annual election for the NECA Board of Directors. [312]

The Commission has undertaken a comprehensive review and rulemaking proceeding that is examining intercarrier compensation issues.[313] In a separate proceeding, the Commission is considering the type of cost data, if any, that carriers should be required to provide for PIC change charges and bill-and-keep recovery.[314]

Recently, the Commission issued a public notice seeking specific comments on NECA's

[310] *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange* Carriers, CC Docket Nos. 00-256, 96-95, 98-77, and 98-166, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613 (2001)(MAG *Order* and *MAG Further NPRM*).

[311] *Id*. at 19711-17.

[312] *See 2000 Biennial Review, Requirements Governing the NECA Board of Directors Under Section 69.602 of the Commission's Rules and Requirements for the Computation of Average Schedule Company Payments under Section 69.606 of the Commission's Rules*, CC Docket No. 01-174, Notice of Proposed Rulemaking, 16 FCC Rcd 16027 (2001).

[313] *Implementation of The Local Competition Provisions in The Telecommunications Act of 1996*, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001).

[314] *Presubscribed Interexchange Carrier Charges,* CC Docket 02-53, Notice of Proposed Rulemaking, 17 FCC Rcd 5568 (2002).

Petition for Rulemaking to adjust the application of end user common line charges (EUCLs) on certain T-1 exchange access services to permit assessment of no more than five EUCLs.[315]

Comments

USTA recommends restructuring Parts 61 and 69 so that only carrier tariff requirements would be in Part 61, rules associated with rate of return regulation would be moved to Part 69, and rules associated with price cap regulations would be placed under a new part of the rules. USTA argues that all incumbent LECs should be permitted to file contract-based tariffs.[316]

Western Alliance,[317] NECA and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), urge the Commission to revise or clarify section 69.601(c) to minimize the number of certifications required from local exchange carriers for submission and collection of the same interstate common line support (ICLS) data already submitted to NECA pursuant to section 54.903(a) of the rules on behalf of pooling companies.[318] Western Alliance and OPASTCO note that while in the *MAG Order* the Commission rejected the idea of relying upon NECA to submit ICLS data to USAC due to different filing dates associated with the two requirements, the discrepancy in data reporting cycles no longer exists and should no longer present a bar.[319]

NECA urges the Commission to change section 69.602 of the rules to eliminate the annual election requirement for NECA's Board of Directors.[320] NECA argues that the annual election requirement is unduly burdensome on its directors, and member companies.[321] It also requests streamlining of the Average Schedule Formula processes to avoid the multiple filings now required for review by both the Telecommunications Accounting Policy Division and the Pricing Policy Division of the Wireline Competition Bureau, and to simplify or adjust the overall formula levels based on representative cost company changes.[322] NECA also seeks modifications of the rules prescribing

[315] *Public Notice*, DA 02-3062, RM No. 10603 (rel. Nov. 8, 2002).

[316] USTA Comments at 18.

[317] The Western Alliance is a consortium of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. *See* Western Alliance Comments at 1.

[318] Western Alliance Comments at 1 and 6; NECA Comments at 7-10; OPASTCO Comments at 4-5.

[319] NECA Comments at 5; OPASTCO Comments at 4.

[320] NECA Comments at 11.

[321] *Id.*

[322] *Id.* at 13.

Subscriber Line Charges for T-1 based exchange access service.[323]

In its reply comments, AT&T objects to many of the above proposals. AT&T argues that neither USTA nor any of the proponents of deregulation of these safeguards have met the statutory standard requiring them to demonstrate that the existing regulations are "no longer necessary in the public interest as the result of meaningful economic competition."[324] AT&T urges the Commission to not only retain but extend for three more years regulations intended to safeguard the public interest and promote competition. AT&T contends that LECs retain the market power, and have the incentives and ability to abuse this power at the expense of the consumers and competition.[325]

Recommendation

The Commission is undertaking a comprehensive review of the Part 69 rules for rate-of-return LECs in the *MAG Further NPRM* to determine whether certain rules in their current form are still necessary in the public interest. This ongoing proceeding is considering modifying the Commission's rules on a number of issues, including the prohibition on contract pricing for rate-of-return carriers. Issues relating to data requirements to support ICLS calculations are raised in petitions for reconsideration of the *MAG Order*. Consistent with the issues raised in the *MAG Further NPRM* and related petitions for consideration, WCB staff finds that these rules in their current form may no longer be necessary in the public interest as a result of meaningful economic competition, and therefore recommends that the Commission consider modifying or eliminating the rules in ongoing proceedings.

In light of the Commission's ongoing proceeding to examine the issues of streamlining the average schedule formula and changes to the requirement for an annual election for the NECA Board of Directors,[326] the staff finds that these rules in their current form may no longer be necessary in the public interest as a result of meaningful economic competition, and recommends that the Commission consider whether to modify or eliminate them in its pending proceedings.

Further, the staff finds that the rules regarding limits on the EUCL charges applicable to T-1 exchange access services in their current form may not be necessary in the public interest as a result of meaningful economic competition, and recommends that the Commission consider modifying these rules in the rulemaking proceeding initiated in response to NECA's Petition for Rulemaking.

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[323] *Id.* at 16.

[324] AT&T Reply at 3.

[325] *Id.* at 3, 17-19, 28-29.

[326] *2000 Biennial Regulatory Review – Requirements Governing the NECA Board of Directors Under Section 69.602 of the Commission's Rules and Requirements for the Computation of Average Schedule Payments Under Section 69.606 of the Commission's Rules*, CC Docket No. 01-174, Notice of Proposed Rulemaking, 16 FCC Rcd 16027 (2001).

WCB staff further recommends that the Commission initiate rulemaking proceedings pursuant to USTA's Petition for Rulemaking under RM-9707, and further consider whether the public interest would be served by restructuring Parts 61 and 69, as USTA recommends.

Finally, WCB staff finds, as the staff previously found in the 2000 Biennial Regulatory Review, that sections 69.116, 69.117, 69.126, 69.127, and 69.612 are no longer necessary in the public interest, and therefore recommends that proceedings be initiated to eliminate them.[327]

Except as noted above, WCB staff finds that the remaining rules in Part 69 are necessary in the public interest because they ensure that carriers' rates, terms and conditions for providing telecommunications services are just and reasonable, and thus recommends that they be retained at this time.

[327] *See* 2000 Updated Staff Report at para. 53.