Wireline Competition Bureau
Federal Communications Commission
Biennial Regulatory Review 2004
WC Docket No. 04-179

Staff Report
January 5, 2005

I. OVERVIEW

1. This Staff Report summarizes the findings of an extensive review by the Wireline Competition Bureau (WCB or the Bureau) of the rules pertaining to wireline telecommunications of the Federal Communications Commission (Commission). 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 analysis 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 previous biennial regulatory reviews. 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 rules in the following parts:[2]

Part 1 – Practice and Procedure
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 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

[1] 47 U.S.C. § 161.

[2] These rule parts also contain regulations administered by other bureaus in the Commission.

4. *Analytical Framework.* The Commission sought public comment on what rules should be modified or repealed as part of this biennial regulatory review.[3] 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 2004 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.[4]

6. Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. Competitive local exchange carriers (CLECs) continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001.[5] Over 60% of CLEC lines were provisioned over unbundled network elements (UNEs) in December 2003 as compared to 47% in December 2001.[6] During this two-year period, subscribership to mobile wireless telephone services increased by over 25% (compared to a decrease in wireline end-user switched access lines of about five percent).[7] Wireless minutes also increased by approximately 75% from 2001 to 2003.[8] In addition, the number of local exchange service connections provided by cable TV companies rose to over three million

[3]*The Commission Seeks Public Comment in the 2004 Biennial Review of Telecommunications Regulations*, WC Docket No. 02-313, Public Notice, (rel. May 11, 2004).

[4]*See* 47 U.S.C. § 161.

[5]Industry Analysis and Technology Division, Wireline Competition Bureau*, Local Telephone Competition: Status as of December 31, 2003*, (June 2003) at Tbl. 1.

[6]*Id.* at Tbl. 3.

[7]*Id.* at Tbls. 1 and 13.

[8]Calculation based on information in Wireless Telecommunications Bureau, *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services* (September 2004) at Tbls. 1 and 9.

(*i.e.*, about two percent of total switched access lines in service to end-user customers).[9]

7. As another indication of the progress of local competition, Bell Operating Companies (BOCs) now possess authority under section 271 to provide interLATA service within every state in their in-region territories. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.[10]

8. Finally, we note that toll revenue for long distance carriers has declined over 20% in two years, from $99.3 billion in 2001 to $78.6 dollars in 2003.[11] It appears that approximately 200,000 people in the United States telecommunications sector have lost their jobs in the last two years.[12] 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 this biennial regulatory review of rules administered by WCB.

B. Recent and Ongoing Activities

9. 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 all telecommunications markets to competition, including 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

10. The Commission has undertaken a broad review of its competition policies in light of its experience since first implementing the market-opening provisions of the Act, as well as marketplace developments such as the growth of broadband.[13] In two proceedings, the Commission is focused on the

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[9]Industry Analysis and Technology Division, Wireline Competition Bureau*, Local Telephone Competition: Status as of December 31, 2003*, (June 2003) at Tbls. 1 and 5.

[10]Industry Analysis and Technology Division, Wireline Competition Bureau *Trends in Telephone Service*, (May 2004) at Tbl. 13.4.

[11]Industry Analysis and Technology Division, Wireline Competition Bureau *2003/2004 Statistics in Communications Common Carrier*, (October 2004) at Tbl. 1.4

[12] Industry Analysis and Technology Division, Wireline Competition Bureau *Trends in Telephone Service*, (May 2004) at Tbl. 5.1.

[13]The Commission has recognized that the terms “broadband” and “broadband services" are elusive concepts, as they have come to mean many different things to many different people. *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible* (continued….)

regulatory treatment under Title II of broadband services and the facilities over which they are provided.[14] 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 local exchange carriers (ILECs) 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.[15] 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.[16]

11. On August 21, 2003, the Commission released a Report and Order and Order on Remand (*Triennial Review Order*) that comprehensively re-examined the network element unbundling obligations of ILECs and created a new list of UNEs.[17] Appeals of the Triennial Review Order were consolidated in the D.C. Circuit, which issued an opinion in *United States Telecom Ass'n v. FCC* (*USTA II*) on March 2,

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Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Third Report, CC Docket 98-146, 17 FCC Rcd 2844, 2851-52, at para. 11 and n.23 (2002) (*Third Section 706 Report*); *accord 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*, Second Report, 15 FCC Rcd 20913, 20920, para. 11 (2000) (*Second Section 706 Report*). The Commission, therefore, has separately defined "advanced telecommunications capability and advanced services," for the purposes of section 706 Reports as having the capability to support both upstream and downstream speeds in excess of 200 Kbps in the last mile. *Third Section 706 Report*, 17 FCC Rcd at 2850-51, para. 9 (internal quotations omitted); *accord Second Section 706 Report*, 15 FCC Rcd at 20919-20, para. 10. The Commission has "denominate[d] as 'high-speed' those services with over 200 kbps capability in at least one direction." *Second Section 706 Report*, 15 FCC Rcd at 20920, *accord Third Section 706 Report*, 17 FCC Rcd at 2850-51, para. 9.

[14] *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*); *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*).

[15] 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.

[16] 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 13.

[17] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003), *corrected by* Errata, 18 FCC Rcd 19020 (2003) (*Triennial Review Order Errata*).

2004, affirming in part and vacating and remanding in part the *Triennial Review Order*.[18] The court decision, among other things, vacated the Commission's delegation of authority to state commissions and the nationwide impairment findings for dedicated transport and mass market local circuit switching, while it upheld the Commission's determinations on mass market broadband loops and the role of section 271 access obligations. On August 20, 2004, the Commission released an Order and NPRM detailing a 12-month plan to provide certainty to the industry while the Commission seeks comment on how best to respond to the *USTA II* decision in developing new final unbundling rules.[19] On December 15, 2004, the Commission adopted an Order on Remand that addressed the various issues the D.C. Circuit vacated and remanded by establishing impairment tests for high capacity loops and transport based on the number of business lines and fiber collocators in particular wire centers. The Order on Remand also concludes that competitive carriers are not impaired without access to mass market switching and provides a transition plan for elements that are no longer subject to unbundling.

2. Universal Service Reform

12. The Commission has also continued its efforts to reform several aspects of the universal service program. On June 8, 2004, the Commission sought comment on the Recommended Decision of the Federal-State Joint Board on Universal Service concerning the process for designating eligible telecommunications carriers (ETCs) and on the Commission's rules regarding high-cost support.[20] Among other things, the Joint Board recommended limiting high-cost support to a single connection that provides access to the network.[21]

13. The Commission is also considering how to streamline the Schools and Libraries universal service program. On April 30, 2003, the Commission released the *Schools Second Order and Further Notice*, which adopted measures designed to simplify and streamline the operation of the schools and libraries universal service mechanism and promote the Commission's goal of reducing the likelihood of fraud, waste, and abuse.[22] On December 23, 2003, the Commission released the *Schools Third Order and Second Further Notice*.[23] Among other things, the *Schools Third Order and Second Further Notice*

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[18]*United States Telecom Ass'n. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied*, *National Ass'n of Regulatory Utility Com'rs v. U.S. Telecom Ass'n*, --- S.Ct. ----, 2004 WL 2069543 (U.S.Dist.Col. Oct 12, 2004) (NO. 04-12); *AT&T Corp. v. U.S. Telecom Ass'n*, --- S.Ct. ----, 2004 WL 2071195 (U.S.Dist.Col. Oct 12, 2004) (NO. 04-15); *California v. U.S. Telecom Ass'n*., --- S.Ct. ----, 2004 WL 2152860 (U.S.Dist.Col. Oct 12, 2004) (NO. 04-18).

[19]*See Unbundled Access to Network Elements*, WC Docket No. 04-313, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179, 2004 WL 1900394 (rel. Aug. 20, 2004) (*Triennial Remand Interim Order and NPRM)*.

[20]*Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, 19 FCC Rcd 10800 (2004).

[21]*Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, 4279 (2004).

[22]*Schools and Libraries Universal Service Support Mechanism*, Second Report and Order, Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 9202 (2003) (*Schools Second Order and Further Notice*).

[23]*Schools and Libraries Universal Service Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 26912 (2003) (*Schools Third Order and Second Further Notice*).

adopted rules regarding the carryover of unused funds and precluded eligible entities from upgrading or replacing internal connections on a yearly basis. The *Schools Third Order and Second Further Notice* also sought comment on several issues, including whether the Commission should revise the determination of discount levels, as well as the competitive bidding process. In the *Schools Fourth Order*, the Commission determined that recovery of schools and libraries program funds disbursed in violation of the statute or a rule should be directed at whichever party or parties have committed the violation.[24] In the *Schools Fifth Order*, the Commission adopted several measures to protect against waste, fraud, and abuse, including setting a framework for recovery of funds that have been disbursed in violation of statutory provisions and Commission rules, as well as adopting rules to facilitate audits and investigations relating to use of E-rate funds. [25]

14. On November 17, 2003, the Commission released a Report and Order that modified the Commission's rules to improve the effectiveness of the rural health care support mechanism.[26] Among other changes, the *Rural Health Care Order* revised the rules to provide a 25 percent discount off the cost of monthly Internet access for eligible rural health care providers. In the accompanying Further Notice of Proposed Rulemaking, the Commission sought comment on the definition of "rural area" for the rural health care program.[27] The Commission also sought comment on whether additional modifications to the Commission's rules are appropriate to facilitate the provision of support to mobile rural health clinics for satellite services[28] and whether other measures were necessary to further streamline the administrative burdens associated with applying for support.[29] On December 17, 2004, the Commission released the *Second Rural Health Care Order*, which expanded the rural health care support program.[30] Specifically, the Commission redefined what constitutes a "rural area" to better target small towns and villages while still maintaining a focus on the areas with the most need. The Commission also increased discounts available to mobile rural health care provides for the purchase of mobile satellite telecommunications services, and streamlined the application process.

3. Numbering

15. On October 7, 2003, the Commission released the *Telephone Number Portability Memorandum Opinion and Order* that imposed requirements on wireless carriers to port numbers to other

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[24]*Id*.

[25]*Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, CC Docket. No. 02-6, FCC 04-190 (rel. Aug. 13, 2004) (*Fifth Schools and Libraries Order*).

[26]*See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546 (2003) (*Rural Health Care Order*).

[27]*See id.* at 24578, paras. 63-64.

[28]*Id.* at 24579-80, paras. 65-68.

[29]*Id*. at 24580-81, para. 69.

[30]*Rural Health Care Support Mechanism*, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket No. 02-60, FCC 04-289 (rel. Dec. 17, 2004) (*Second Rural Health Care Order*).

carriers.[31] On November 10, 2003, the Commission released the *Telephone Number Portability Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, which clarified issues relating to local number portability (LNP) between wireless and wireline carriers, also known as intermodal porting.[32] In the accompanying Further Notice, the Commission sought comment on facilitating wireline-to-wireless porting if the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer.[33] On September 16, 2004, the Commission released a Second Further Notice of Proposed Rulemaking seeking comment on the recommendation of the North American Numbering Council (NANC) for reducing the time interval for intermodal porting.[34]

4. Other Deregulatory Initiatives

16. *Accounting and ARMIS Requirements.* In June 2004, the Commission released an order that reflected a comprehensive review of the accounting and ARMIS reporting requirements and addressed recommendations made by the Federal-State Joint Conference on Accounting Issues (Joint Conference on Accounting).[35] Although the Commission did not adopt all the recommendations of the Joint Conference on Accounting, it carefully sought to retain those rules which allow both the states and the Commission to carry out their responsibilities for statutory oversight. In that order, the Commission noted the importance of these reporting requirements to ensure that the states and the Commission have regulatory accounting information that is adequate and to ensure that the information presented in regulatory accounts is both necessary and sufficient for regulatory purposes.

17. *Section 272 Separate Affiliates.* On March 17, 2004, the Commission released an order reexamining the rules implementing the "operate independently" requirement of section 272(b)(1) of the Act.[36] The *OI&M Order* concluded that the Commission's prohibition against sharing by Bell Operating

[31] *Telephone Number Portability*, Memorandum Opinion and Order, CC Docket No. 95-116, 18 FCC Rcd 29071 (2003) (*Wireless Porting Order*), *appeal docketed,* Central Texas Tel. Coop. Inc. v. FCC, No. 03-1405 (D.C. Cir. Nov. 11, 2003). Porting, also referred to as number portability or local number portability (LNP), allows consumers to retain their existing phone numbers when switching carriers. *See* 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(l); *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8368 (1996).

[32] *Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, 18 FCC Rcd 23697 (2003) (*Intermodal Porting Order and FNPRM*), *appeal docketed,* United States Telecom Ass'n v. FCC, No. 03-1414 (D.C. Cir. Nov. 20, 2003).

[33] *Id.* at 23714-15.

[34] *Telephone Number Portability*, Second Further Notice of Proposed Rulemaking, CC Docket 95-116, FCC 04-217 (rel. Sept. 16, 2004).

[35] *In the Matter of Federal-State Joint Conference on Accounting Issues, 2002 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting*; WC Docket No. 02-269, CC Docket Nos., 00-199, 80-286, 99-301, Report and Order, FCC 04-149 (rel. June 24, 2004).

[36] *See Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates*, WC Docket No. 03-228, Report and Order, 19 FCC Rcd 5102 (2004) (*OI&M Order*).

Companies (BOCs) and their section 272 affiliates of operating, installation, and maintenance (OI&M) functions is not a necessary component of the statutory requirement to "operate independently" and is an overbroad means of preventing cost misallocation or discrimination by BOCs against unaffiliated rivals.[37] It also concluded that the Commission should retain the prohibition against joint ownership by BOCs and their section 272 affiliates of switching and transmission facilities, or the land and buildings on which such facilities are located.[38]

18. *Tariffs.* The Commission adopted revisions to its access charge rules and tariff rules in a February 2004 decision.[39] It modified the all-or-nothing rule to permit rate-of-return carriers to return recently acquired price cap lines to rate-of-return regulation without first obtaining a waiver of the Commission's all-or-nothing rule. The Commission also granted rate-of-return carriers the authority to provide geographically deaveraged transport and special access rates, subject to certain limitations. The Commission also adopted a Second Further Notice of Proposed Rulemaking to consider further access charge and tariff reforms for rate-of-return carriers.[40]

C. Comments

19. WCB received comments on the 2004 Biennial Regulatory Review from 3 parties, and reply comments from 5 parties.[41] Regarding those comments that proposed the creation of new obligations to the Commission, Bureau staff generally recommends that the Commission decline to do so in this context because the statutory purpose of a biennial regulatory review 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 obligations is outside the scope of this proceeding.[42]

20. Several commenters addressed the Commission's reporting and accounting rules found in Parts 32, 42, 43 and 65. SBC, USTA, and Verizon urge the Commission to repeal, or significantly modify, many of its accounting and ARMIS reporting requirements.[43] USTA proposes the elimination of Parts 42 and 43 in favor of permitting ILECs to determine the most efficient way to conduct recordkeeping.[44] AT&T and the Kansas Commission oppose the elimination of such requirements.[45]

[37]Sections 53.203(a)(2)-(3) of the Commission's rules prohibit a BOC's section 272 affiliate from sharing OI&M functions with the BOC or another BOC affiliate. 47 C.F.R. § 53.203(a)(2)-(3)..

[38]47 C.F.R. § 53.203(a)(1).

[39]*Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interstate* Carriers, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004).

[40]*Id.*

[41]*See* Appendix I for a list of commenting parties.

[42]*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").

[43]SBC Reply at 2; USTA Comments at 5-6; Verizon Comments, Exhibit B.

[44]*See* USTA Comments at 5-6.

SBC also asserts that the Commission should eliminate Part 36 separation requirements.[46] The Kansas Commission supports retention of the Part 36 rules.[47]

21. The comments also included a request from AT&T that the Commission modify its rules regarding notice of network changes, which BellSouth opposed.[48] Other commenters urged elimination of comparably efficient interconnection and open network architecture rules for BOC broadband services,[49] and elimination of certain tariff requirements.[50]

D. Bureau Recommendations

22. 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 findings.[51]

23. *Rules that are necessary in the public interest*. WCB staff recommends that the Commission take no action to modify or eliminate rules in several of the Parts under review, except as discussed in Appendix II.[52] Except as noted in the recommendations, the staff also recommends that that the remaining rules in Parts 36, 54, 61 and 69 are necessary and in the public interest.

24. *Rules subject to ongoing action*. The Joint Conference and the Commission will continue to

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[45]AT&T Reply at 6, KCC Comments at 3.

[46]SBC Reply Comments at 3-4.

[47]KCC Comments at 2.

[48]*See, e.g.,* AT&T Comments at 2-3; BellSouth Reply at 1-6.

[49]USTA Reply at 7-9; SBC Reply at 6. As AT&T notes, this is an issue in a pending rulemaking proceeding at the Commission. *See Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, Universal Service Obligations for Broadband Providers, Computer III Further Remand Proceedings*, CC Docket Nos. 02-23, 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) (*Wireline Broadband NPRM*); AT&T Reply at 2-3.

[50]*See, e.g.,* Verizon Comments, Exhibit B at 11-12; USTA Reply Comments at 12.

[51]We note that the staff also recommended elimination of several outdated rule sections in the 2002 Updated Staff Report, and we renew those recommendations to the extent they have not already been eliminated.

[52]As discussed in Appendix II below, WCB staff recommends the retention of Part 1, Subpart E, Part 42, Part 43, 52, 53, 59, 63, 65, and 68 remain necessary in the public interest. The staff also recommends the retention of certain portions of other parts, including Part 64.

examine additional proposals and specific areas of Parts 32 and 43 for investigation or study presented by commenters in the Notice of Proposed Rulemaking regarding the Joint Conference's recommendation.[53] In addition, WCB Staff recommends that the Commission consider modification or elimination of other sections in existing proceedings.[54]

25. *Initiate a biennial review proceeding*. WCB staff recommends that the Commission initiate a rulemaking proceeding to consider whether the public interest would be served by restructuring Parts 61 and 69.[55]

26. *Eliminate regulations.* WCB staff recommends that the Commission eliminate certain sections in Part 36 and Part 54.[56] Staff also recommends the elimination of certain regulations in Part 64, Subpart A.

27. *Other recommendations*. Although WCB staff recommends retaining section 54.305(a), staff recognizes that issues addressed by this rule have been referred to the Federal-State Joint Board on Universal Service. WCB staff recommends, therefore, that the Commission await the recommendation of the Joint Board before addressing USTA's comments recommending elimination of section 54.305(a).

IV. CONCLUSION

28. 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.

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[53]*In the Matter of Federal-State Joint Conference on Accounting Issues, 2002 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting*; WC Docket No. 02-269, CC Docket Nos., 00-199, 80-286, 99-301, Report and Order, FCC 04-149 (rel. June 24, 2004).

[54]As discussed in Appendix II below, WCB Staff recommends that the Commission consider in the context of existing rulemaking proceedings changes to Part 51, and Part 64, Subparts G and T.

[55]WCB Staff notes that the Part 69 rules are currently under review in the Notice of Proposed Rulemaking released in June 2004. *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interstate* Carriers, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004)(*Report and Order*).

[56]Specifically WCB staff recommends the elimination of sections 36.601(c), 36.602, and portions of 36.603(a), 36.631(c) and (d), 36.641. Staff also recommends elimination of 54.311 and 54.509(c).

APPENDIX I: LIST OF COMMENTING PARTIES IN WC DOCKET NO 04-179

Comments:

AT&T Communications, Inc. (AT&T)
Kansas Corporation Commission (Kansas Commission)
Verizon Telephone Companies (Verizon)

Reply Comments:

AT&T Communications, Inc. (AT&T)
BellSouth Corporation (BellSouth)
SBC Communications, Inc. (SBC)
United States Telecom Association (USTA)
Verizon Telephone Companies (Verizon)

APPENDIX II: RULE PART ANALYSIS

PART 1, SUBPART E – COMPLAINTS, APPLICATIONS, TARIFFS, AND REPORTS INVOLVING COMMON CARRIERS

Description

Section 1.815 requires common carrier licensees or permittees with 16 or more full-time employees to file an annual employment report with the Commission (FCC Form 395).[57] This report provides statistical information on the racial, ethnic, and gender makeup of a carrier's work force in nine specific job categories. The rule was adopted to enable the Commission to monitor industry trends in minority and female employment and to raise appropriate questions regarding these patterns.[58]

Additionally, since 1994, licensees have been able to use FCC Form 395 to file annual reports of employment-related discrimination complaints.[59] An annual report must be filed by *all* licensees, regardless of the number of employees, pursuant to sections 21.307(d), 22.321(c), and 23.55(d) of the Commission's rules.[60] Pursuant to these requirements, any complaint filed against a carrier involving EEO violations of any federal, state, territorial, or local laws must be reported to this Commission. A check-off box on the FCC Form 395 can be utilized to satisfy this reporting requirement.

Analysis

Status of Competition

Not applicable.

Recent Efforts

There has been no Commission action addressing these rules since the previous biennial review.

Comments

No comments were filed on this part.

Recommendations

WCB staff finds that information submitted pursuant to the FCC Form 395 continues to be useful to this Commission for monitoring work place diversity on a company-specific as well as on an industry-wide

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[57] 47 C.F.R. § 1.815.

[58] *See Rulemaking to Require Communications Common Carriers to Show Nondiscrimination in Their Employment Practices*, Docket No. 18742, Report and Order, 24 F.C.C.2d 725, 727-28, para. 6 (1970).

[59] This requirement may be fulfilled by completing Section V of FCC Form 395. Filers that do not elect to use FCC Form 395 must file a separate report.

[60] 47 C.F.R. §§ 21.307(d), 22.321(c), 23.55(d).

basis. Also, having only recently established the Advisory Committee on Diversity for Communications in the Digital Age, the WCB staff thinks it unwise to delete this requirement and deny it access to information that could materially contribute to its mission. Accordingly, the WCB staff recommends retaining the existing FCC Form 395 reporting requirement at this time, because collection and public reporting of this information continues to be necessary in the public interest.

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.[61] 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.[62] 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 plant in service.

The USOA operates as a nonstructural safeguard to prevent an incumbent LEC from exercising its market power.[63] 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

Analysis

[61] 47 U.S.C. § 220.

[62] 47 C.F.R. Part 32.

[63] *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).

Status of Competition

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

In June 2004, the Commission released an order that reflected a comprehensive review of the accounting and ARMIS reporting requirements and addressed recommendations made by the Federal-State Joint Conference on Accounting Issues (*Joint Conference on Accounting*).[64] Although the Commission did not adopt all the recommendations of the *Joint Conference on Accounting*, it carefully sought to retain those rules which allow both the states and the Commission to carry out their responsibilities for statutory oversight. In that order, the Commission noted the importance of these reporting requirements to ensure that the states and the Commission have regulatory accounting information that is adequate and to ensure that the information presented in regulatory accounts is both necessary and sufficient for regulatory purposes.

Comments

USTA, Verizon, and SBC recommend that the Commission eliminate its continuing property rule.[65] Verizon and USTA urge the Commission to eliminate Class A accounts and move toward a unified, streamlined level of accounting. AT&T notes that the Commission has adopted certain changes to its accounting rules as a result of the Joint Conference and very recently found it necessary to reinstate several Class A accounts that the Commission had previously ordered eliminated.[66]

The Kansas Commission opposes elimination of any accounting and reporting regulations and argues that it is in the public interest to retain these regulations until markets are fully competitive.[67] The Kansas Commission asserts that elimination or reduction of these regulations will provide greater discretion in reporting or interpreting regulations, and that such additional discretion has led to recent accounting scandals.[68] The Kansas Commission also asserts that as markets become more competitive the

[64] *In the Matter of Federal-State Joint Conference on Accounting Issues, 2002 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting*; WC Docket No. 02-269, CC Docket Nos., 00-199, 80-286, 99-301, Report and Order, FCC 04-149 (rel. June 24, 2004).

[65] USTA Reply at 5; Verizon Comments, Exhibit B at 3; SBC Comments at 5.

[66] AT&T Reply at 5.

[67] Kansas Corporation Commission Comments at 3.

[68] *Id.*

Commission's USOA becomes more, not less, important and that eliminating the USOA may lead each state to develop its own accounting system, resulting in more, not less, regulatory expense for telecommunications carriers.[69]

Recommendations

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 recommends that repeal or modification is not warranted.

We also note that a number of issues raised by commenters in this proceeding were raised by parties commenting in the *Joint Conference on Accounting* proceeding.[70] In a recent order, the Commission stated that the Joint Conference and the Commission will continue to examine these issues.[71]

[69] *Id.*

[70] *In the Matter of Federal-State Joint Conference on Accounting Issues, 2002 Biennial Regulatory Review,* CC Docket Nos. 00-199, 80-286, 99-301, Report and Order, FCC 04-149 (rel. June 24, 2004), at para. 64.

[71] *Id.*

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 is organized into six 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

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 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

On January 16, 2004, the Commission released an Order modifying its Part 36 Rules to remove references

to certain Part 32 accounts that were eliminated in the Commission's 2000 Biennial Regulatory Review.[72] The Order also corrected certain typographical errors in Part 36 Rules.[73] These changes were purely ministerial in nature and have no effect on jurisdictional cost allocations.

Comments

The Kansas Commission supports retention of the Part 36 rules.[74] The Kansas Commission states that the current accounting and reporting requirements that allow state or federal regulators to monitor the state of competition, as well as the receipt and use of such funds, are essential and should not be modified or eliminated without input from state regulators.[75] In reply comments, SBC asserts that the Commission should eliminate Part 36 separation requirements and opposes the Kansas Commission's comments.[76] SBC states that the justification for the jurisdictional separations process is not valid since Class A incumbent LECs are no longer subject to rate of return regulation.[77] SBC further states that it is impossible to apply the existing separations methodologies to the new telecommunications architectures that exist today.[78]

Recommendation

WCB staff recommends the elimination of certain rules in Part 36, subpart F. The remaining rules in Part 36 enable the Commission to regulate interstate communications at the federal level consistent with the dual federal-state system in the Act. WCB staff notes that the separations procedures set forth in this Part are designed primarily for the allocation of property costs, revenues, expenses, taxes and reserves between state and interstate jurisdictions. The rules define the jurisdictional boundaries for federal and state regulators so as to insure that companies fully recover, but do not over-recover, their costs. In that regard, for rate-of-return companies, separated costs form the basis for interstate access charges with which the companies receive compensation for the use of their facilities to originate and terminate interstate telecommunications services. Although not dependent on Part 36 for access rates, the price cap companies have an annual ongoing obligation to perform separations studies in order to satisfy the Part 43 ARMIS and form 492 filing requirements. WCB staff therefore finds that, except as described below, the Part 36 rules remain necessary in the public interest and that repeal or modification of such rules is not warranted at this time.

Section 36.601(c) of the Commission's rules explains the calculation for expense adjustment and provides eligibility criteria for non-rural incumbents and eligible telecommunication carriers to receive support for

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[72] *Jurisdictional Separations Reform and Referral to the Federal- State Joint Board*, Report and Order, CC Docket No. 80-286, 19 FCC Rcd 853 (2004).

[73] *Id*.

[74] KCC Comments at 2.

[75] *Id*. at 3-4.

[76] SBC Reply Comments at 3-4.

[77] *Id*. at 3.

[78] *Id*.

loop-related costs.[79] The effective date for the expense adjustment rules provided in section 36.601(c) was June 30, 2001. Similarly, the eligibility component of section 36.601(c) was linked to the interim hold-harmless support eligibility criteria provided in section 54.311. Section 36.602 provided the calculation for determining non-rural carrier interim hold harmless support.[80] Because the last remaining element of hold-harmless support that has not been phased out was Long Term Support (LTS), and the Commission eliminated LTS effective July 1, 2004, no carrier currently receives hold harmless support. WCB staff therefore recommends elimination of sections 36.601(c) and 36.602.

Section 36.603 provides the calculation of rural incumbent local exchange carrier portion of nationwide loop costs expense adjustment.[81] Section 36.603(a) provides computations that expired on December 31, 2001 and on December 31, 2002. Because these rules are no longer in effect, staff recommends that the first three sentences of section 36.603(a) be deleted. WCB staff also recommends removal of the phrase "Beginning January 1, 1998" from sections 36.631(c) and (d) as such specification is no longer necessary. Finally, section 36.641 provides a transitional expense adjustment.[82] Because the subject transitional period was from 1988 through 1992, these rules are no longer in effect and the period after the transition (*i.e.*, beginning January 1, 1993) is governed by section 36.631, WCB staff recommends deletion of section 36.641.

[79] 47 C.F.R. § 36.601.

[80] 47 C.F.R. § 36.602.

[81] 47 C.F.R. § 36.603.

[82] 47 C.F.R. § 36.641.

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 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

As part of the 2002 Biennial Regulatory Review, the Commission initiated a proceeding seeking comment on whether there are reasonable and less costly alternatives than the current Part 42 rules that

would ensure that accurate carrier records are kept and maintained.[83]

Comments

USTA proposes the elimination of Part 42 as outdated and unnecessary.[84] USTA states that incumbent LECs should be permitted to determine the most efficient way to conduct recordkeeping. USTA, however, proposes keeping the public disclosure requirements currently set forth in sections 42.10 and 42.11 by moving these rules to Part 61.

Recommendation

Because the Part 42 rules are necessary to ensure that carriers adequately maintain information important to the ability of the Commission to meet its regulatory obligations and to provide the Commission and the public readily available access to comparable information for all submitting carriers, WCB staff finds that Part 42 remains necessary in the public interest, and therefore should not be eliminated or modified as a result of meaningful competition at this time. Moreover, WCB staff finds that the Part 42 rules afford incumbent LECs significant flexibility with regards to actual record retention.

Specifically, with regard to sections 42.10 and 42.11, WCB staff notes that the Commission has found that these public disclosure and information maintenance requirements benefit consumers and further the public interest by enabling consumers to determine the most appropriate rate plans to meet their individual calling needs.[85] Because WCB staff finds that the Part 42 rules should not be eliminated or modified at this time, WCB staff does not recommend moving sections 42.10 and 42.11 to Part 61 as proposed by USTA.

[83] *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, Notice of Proposed Rulemaking, 19 FCC Rcd 764, 769, para. 15 (2003).

[84] *See* USTA Comments at 5.

[85] *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.[86] Section 219 authorizes the Commission to require all carriers that are subject to the Act to file annual reports with the Commission.[87] Section 220 allows the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers.[88]

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.[89]

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.[90] The contract-filing requirement helps the Commission to identify potential instances of anti-competitive conduct, and to enforce its International Settlements Policy.

Analysis

Status of Competition

[86] 47 U.S.C. § 211. Section 211 also permits the Commission to require the filing of any other contracts.

[87] 47 U.S.C. § 219.

[88] 47 U.S.C. § 220.

[89] *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).

[90] 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.

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50% since 1993.

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."[91] On October 9, 2003, the Joint Conference filed its recommendations with regard to certain accounting and reporting requirements adopted in the *Phase II Report and Order* in CC Docket No. 00-199.[92] On June 22, 2004, the Commission released a *Report and Order*, in which it adopted certain recommendations and denied other recommendations set forth in the *Joint Conference Report*.[93] The Commission also is considering a pending review of its accounting and ARMIS reporting procedures in Phase 3.[94]

Comments

USTA asserts that the Commission should eliminate Part 43 because most reports have outlived their usefulness.[95] Verizon asserts that the Commission should repeal, or significantly modify, many of its accounting and ARMIS reporting requirements.[96] SBC supports Verizon's comments, and states that the Commission should streamline the accounting and ARMIS reporting requirements.[97] AT&T opposes elimination of the ARMIS reporting requirement, arguing that ARMIS data are central to the implementation of virtually every one of the Commission's initiatives to implement the 1996 Act.[98]

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[91] *Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-269, Order, 17 FCC Rcd 17025 (2002).

[92] Letter from Federal-State Joint Conference on Accounting Issues to Marlene H. Dortch, Secretary, FCC (October 9, 2003) (*Joint Conference Report*).

[93] *Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-269, Report and Order, 19 FCC Rcd 11732 (2004).

[94] *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).

[95] USTA Reply at 6.

[96] Verizon Comments, Exhibit B.

[97] SBC Reply at 2.

[98] AT&T Reply at 6.

Similarly, the Kansas Commission argues that elimination of the ARMIS requirements could seriously affect the ability of state commissions to execute their oversight functions over carriers.[99]

Recommendation

Because 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 staff finds that Part 43 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 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 Commission intended Phase 3 as a forum to consider long-range direction for Part 32 and related rules, including Part 43 reporting requirements. The proceeding was designed to anticipate possible changes in the competitive environment and to develop an appropriate structure to address those potential changes. 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.

[99] KCC Comments at 3.

PART 51 - INTERCONNECTION

Description

Part 51 implements sections 251 and 252 of the Communications Act of 1934, as amended.[100] Most significantly, these provisions require that incumbent LECs open their networks to competition, and thus, these provisions are critical to fostering local exchange and exchange access competition as envisioned by Congress.[101] Section 251 establishes distinct sets of pro-competitive requirements for telecommunications carriers, LECs, and incumbent LECs. Section 251 provides that all telecommunications carriers have a duty to interconnect with other telecommunications carriers. Under section 251, LECs are subject to additional requirements concerning number portability, dialing parity, right-of-way access, and reciprocal compensation. In addition to these obligations, incumbent LECs 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 LECs open their networks to competition, and by establishing pricing standards applicable to the facilities and services that incumbent LECs 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 LECs.

[100]47 U.S.C. §§ 251, 252.

[101]Section 251(h)(1) of the Act defines "incumbent local exchange carrier" as a LEC that, on February 8, 1996, provided telephone exchange service to a particular area and either (a) was deemed to be a member of the exchange carrier association, pursuant to 47 C.F.R. § 69.601(b) on February 8, 1996; or (b) is a person or entity that, after February 8, 1996, became a successor or assign of a member of the exchange carrier association, pursuant to 47 C.F.R. § 69.601(b). *See* 47 U.S.C. § 251(h)(1).

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. Competitive local exchange carriers (CLECs) continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

On August 21, 2003, the Commission released a Report and Order and Order on Remand (*Triennial Review Order*) that comprehensively re-examined the network element unbundling obligations of incumbent LECs and created a new list of UNEs.[102] The rules became effective on October 2, 2003, 30 days after publication in the Federal Register. Several parties – including incumbent LECs, competitive LECs, state commissions, and state commission consumer advocates – challenged various aspects of the *Triennial Review Order*. These appeals were consolidated in the D.C. Circuit, which issued an opinion in *United States Telecom Ass'n v. FCC* (*USTA II*) on March 2, 2004, affirming in part and vacating and remanding in part the *Triennial Review Order*.[103] The court decision, among other things, vacated the Commission's delegation of authority to state commissions and the nationwide impairment findings for dedicated transport and mass market local circuit switching, while it upheld the Commission's determinations on mass market broadband loops and the role of section 271 access obligations. The mandate of the D.C. Circuit became effective on June 16, 2004. The Commission and the U.S. Department of Justice determined not to seek Supreme Court review of the *USTA II* decision, although several competitive carriers, state commissions, and others filed petitions for certiorari with the Supreme Court on June 30, 2004,[104] which were subsequently denied on October 12, 2004.[105] On August 20, 2004, the Commission released an Order and NPRM detailing a 12-month plan to provide certainty to the industry while the Commission seeks comment on how best to respond to the *USTA II* decision in

[102]*Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003), *corrected by* Errata, 18 FCC Rcd 19020 (2003) (*Triennial Review Order Errata*).

[103]*United States Telecom Ass'n. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *pets. for cert. filed*, Nos. 04-12, 04-15, 04-18 (June 30, 2004).

[104]*Id.*

[105]*See National Ass'n of Regulatory Utility Com'rs v. U.S. Telecom Ass'n*, --- S.Ct. ----, 2004 WL 2069543 (U.S.Dist.Col. Oct 12, 2004) (NO. 04-12); *AT&T Corp. v. U.S. Telecom Ass'n*, --- S.Ct. ----, 2004 WL 2071195 (U.S.Dist.Col. Oct 12, 2004) (NO. 04-15); *California v. U.S. Telecom Ass'n.*, --- S.Ct. ----, 2004 WL 2152860 (U.S.Dist.Col. Oct 12, 2004) (NO. 04-18).

developing new final unbundling rules.[106] On December 15, 2004, the Commission adopted an Order on Remand that addressed the various issues the D.C. Circuit vacated and remanded by establishing impairment tests for high capacity loops and transport based on the number of business lines and fiber collocators in particular wire centers. The Order on Remand also concludes that competitive carriers are not impaired without access to mass market switching and provides a transition plan for elements that are no longer subject to unbundling.

The Commission is also examining the continued importance of the equal access and nondiscrimination obligations in the *Equal Access Notice of Inquiry* proceeding.[107] The comment period for the *Equal Access Notice of Inquiry* closed on June 10, 2002.

Comments

USTA supports the proposal made in the *2002 Biennial Review NPRM* to delete section 51.329(c)(3), which requires that one paper and one diskette copy of all incumbent LEC public notices of network changes be sent to the Chief of WCB, and contends that the Commission should modify the rules with respect to implementation of network changes for short interval notices to permit the clock to start as soon as an incumbent LEC posts such notices on its website.[108] AT&T urges the Commission to adopt its proposals from the *2002 Biennial Review NPRM* to modify section 51.329(c) such that it would require (1) incumbent LECs to specifically identify notices of replacement of copper loops and subloops, and (2) that incumbent LEC notices of all copper loop retirements be provided directly to potentially affected CLECs.[109] SBC supports the use of Internet posting as sufficient notice and the most efficient way to notify the industry about network changes, and rejects AT&T's proposal to add notification rules for copper retirement on procedural grounds, as SBC contends that the biennial review process is not the proper forum for proposals of new rules.[110]

USTA argues that the Commission should eliminate the requirement for BOC compliance with comparably efficient interconnection and open network architecture rules for broadband services because incumbent LECs are not dominant in the broadband market.[111] USTA and Verizon further contend that,

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[106]*See Unbundled Access to Network Elements*, WC Docket No. 04-313, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179, 2004 WL 1900394 (rel. Aug. 20, 2004).

[107]*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.

[108]USTA Reply at 8.

[109]AT&T Comments at 2-3.

[110]SBC Reply at 6.

[111]USTA Reply at 7. As AT&T notes, this is an issue in a pending rulemaking proceeding at the Commission. *See Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, Universal Service*
(continued….)

because intermodal competition for broadband services exists, incumbent LECs should not be subject to unbundling pursuant to section 271 of the Act for such services.[112] USTA also contends that network change notification requirements established in the *Triennial Review Order* require further modification. In particular, USTA argues the 90-day notice for replacement of the distribution portion of the copper loop with fiber is unnecessarily burdensome, and that such network changes should be allowed to occur within no more than 60 days, provided there is no opposition to the proposed change.[113] It further recommends that the notice for any planned retirement of copper loops to be replaced by fiber-to-the-home (FTTH) should be made at least 91 days prior to the planned retirement date only "*whenever practicable*," claiming that copper loop often must be retired unexpectedly, and the need to seek waivers from the 91-day rule in such circumstances places unnecessary burdens on both incumbent LECs and Commission staff.[114]

Recommendation

Disclosure of network changes facilitates network compatibility between ILECs and other carriers, and thus serves the Act's pro-competitive goals. WCB staff, therefore, finds that sections 51.325-51.335 of the Commission's rules remain necessary in the public interest.

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 of these rules should be considered to ensure that they remain useful to the development of competition. Accordingly, the Commission will soon release new Part 51 rules to implement the Commission's recently adopted Order on Remand in the *Triennial Review Proceeding,* which addressed 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. Moreover, there is a an additional review of Part 51 pending in the *Equal Access Notice of Inquiry* proceeding, which is considering the necessity of rules under the Act's equal access and nondiscrimination requirements.

(Continued from previous page)
Obligations for Broadband Providers, Computer III Further Remand Proceedings, CC Docket Nos. 02-23, 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) (*Wireline Broadband NPRM*); AT&T Reply at 2-3.

[112]USTA Reply at 8; Verizon Comments at 10-15. We note that, on October 27, 2004, the Commission granted all four BOCs forbearance from the requirements of section 271 with regard to the broadband elements that the Commission, on a national basis, relieved from unbundling in the *Triennial Review Order* and subsequent reconsideration orders. These elements are fiber-to-the-home loops, fiber-to-the-curb loops, the packetized functionality of hybrid loops and packet switching. *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c); SBC Communications Inc's Petition for Forbearance Under 47 U.S.C. § 160(c); Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c); BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c)*; CC Docket No. 01-338; WC Docket Nos. 03-235, 03-260, 04-48, Memorandum Opinion and Order, FCC 04-254 (rel. Oct. 27, 2004).

[113]USTA Reply at 9.

[114]*Id*. at 9-10.

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. 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. 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 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 completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

On October 7, 2003, the Commission released the *Telephone Number Portability Memorandum Opinion and Order* stating, among other things, that although carriers may agree to rules with their customers via contract, such rules may not restrict carriers' obligations to port numbers to other carriers upon receipt of a valid request to do so.[115] On November 10, 2003, the Commission released the *Telephone Number Portability Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, which clarified issues relating to local number portability (LNP) between wireless and wireline carriers, also known as intermodal porting.[116] In the accompanying Further Notice, the Commission sought comment on how to facilitate wireline-to-wireless porting if the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer.[117] The Further Notice also sought comment on whether the Commission should require carriers to reduce the time interval for intermodal porting.[118] On September 16, 2004, the Commission released the *Second Telephone Number Portability Further Notice of Proposed Rulemaking* seeking comment on the recommendation of the North American Numbering Council (NANC), our advisory committee on numbering issues, for reducing the time interval for intermodal porting.[119] The Commission also sought comment on implementation issues in the event that a shorter time interval for intermodal porting is adopted.

As of November 24, 2003, all wireless carriers in the top 100 MSAs that received requests for number portability by February 24, 2003, were required to provide wireless-to-wireless and wireless-to-wireline porting.[120] As of May 24, 2004, or within six months of receiving a "bona fide" request from another carrier to provision their switches for number portability, whichever is later, wireless carriers outside the 100 largest MSAs were required to be able to port their numbers.[121] Similarly, wireline carriers outside the 100 largest MSAs were required to be able to port their numbers to CMRS carriers by May 24, 2004 or within six months of receiving a bona fide request, whichever is later.[122] In addition, on April 13,

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[115]*Telephone Number Portability*, Memorandum Opinion and Order, CC Docket No. 95-116, 18 FCC Rcd 29071 (2003) (*Wireless Porting Order*), *appeal docketed,* Central Texas Tel. Coop. Inc. v. FCC, No. 03-1405 (D.C. Cir. Nov. 11, 2003). Porting, also referred to as number portability or local number portability (LNP), allows consumers to retain their existing phone numbers when switching carriers. *See* 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(l); *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8368 (1996).

[116]*Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, 18 FCC Rcd 23697 (2003) (*Intermodal Porting Order and FNPRM*), *appeal docketed,* United States Telecom Ass'n v. FCC, No. 03-1414 (D.C. Cir. Nov. 20, 2003).

[117]*Id.* at 23714-15.

[118]*Id*. at 23717.

[119]*Telephone Number Portability*, Second Further Notice of Proposed Rulemaking, CC Docket 95-116, FCC 04-217 (rel. Sept. 16, 2004).

[120]*Telephone Number Portability*, *Verizon Wireless's Petition for Partial Forbearance form the Commercial Mobile Radio Services Number Portability Obligation,* Memorandum Opinion and Order, CC Docket No. 95-116, 17 FCC Rcd 14972, 14985-86 (2002).

[121]*Intermodal Porting Order and FNPRM*, 18 FCC Rcd at 23708.

[122]*Id*.

2004, the Commission waived its rule that limits the time over which local exchange carriers may recover their carrier-specific costs for implementing LNP. The Commission granted a waiver of the five-year recovery rule and extended this waiver to all incumbent LECs that did not include the costs of implementing intermodal porting in their original cost-recovery for LNP.[123] On May 14, 2004, the Commission sought comment on abbreviated dialing arrangements that can be used with "One Call" notification systems in compliance with the Pipeline Safety Improvement Act of 2002.[124]

Comments

The Commission did not receive any comments regarding Part 52 of the Commission's rules.

Recommendation

Because the Part 52 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, WCB staff finds that the Part 52 rules are necessary in the public interest and that repeal or modification of these rules is not warranted at this time.

[123] *BellSouth Corporation Petition for Declaratory Ruling and/or Waiver*, Order, CC Docket No. 95-116, 19 FCC Rcd 6800, 6810 (2004).

[124] *Pipeline Safety Act; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Further Notice of Proposed Rulemaking, CC Docket No. 92-105, 19 FCC Rcd 9173 (2004).

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 related markets. Although Part 53 may marginally reduce some operational 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 completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

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.[125]

On March 17, 2004, the Commission released an order reexamining the rules implementing the "operate independently" requirement of section 272(b)(1) of the Act.[126] The *OI&M Order* concluded that the Commission's prohibition against sharing by BOCs and their section 272 affiliates of operating, installation, and maintenance (OI&M) functions is not a necessary component of the statutory requirement to "operate independently" and is an overbroad means of preventing cost misallocation or discrimination by BOCs against unaffiliated rivals.[127] It also concluded that the Commission should retain the prohibition against joint ownership by BOCs and their section 272 affiliates of switching and transmission facilities, or the land and buildings on which such facilities are located.[128]

Comments

USTA and Verizon argue that the Commission should allow a Bell Operating Company's (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."[129] Verizon contends that these rules were meant to be transitional and of limited duration, and that these rules impose significant unwarranted costs on

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[125] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Memorandum Opinion and Order, 17 FCC Rcd 9916 (2002) (*Separate Affiliate Proceeding*). The Commission has released public notices stating that the section 272 requirements sunset by operation of law for Verizon in New York, Massachusetts, Connecticut and Pennsylvania and for SBC in Texas, Kansas and Oklahoma. *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); *Section 272 Sunsets for Verizon Communications, Inc. in the State of Massachusetts by Operation of Law on April 16, 2004 Pursuant to Section 272(f)(1),* Public Notice, FCC 04-101 (rel. Apr. 16, 2004); *Section 272 Sunsets for Verizon in the State of Connecticut By Operation of Law On July 20, 2004 Pursuant to Section 272(f)(1)*, Public Notice, DA No. 04-2189 (rel. July 20, 2004); *Section 272 Sunsets for Verizon Communications, Inc. in the State of Pennsylvania by Operation of Law on September 19, 2004 Pursuant to Section 272(f)(1)*, Public Notice, DA No. 04-3006 (rel. Sept. 17, 2004); *Section 272 Sunsets for SBC in the State of Texas by Operation of Law on June 30, 2003 Pursuant to Section 272(f)(1)*, Public Notice, FCC 03-155 (rel. June 30, 2003); *Section 272 Sunsets for SBC in the States of Kansas and Oklahoma by Operation of Law on January 22, 2004 Pursuant to Section 272(f)(1)*, Public Notice, FCC 04-14 (rel. Jan. 22, 2004); *Section 272 Sunsets for SBC in the States of Arkansas and Missouri by Operation of Law on November 16, 2004 Pursuant to Section 272(f)(1)*, Public Notice, FCC 04-269 (rel. Nov. 17, 2004).

[126] *See Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates*, WC Docket No. 03-228, Report and Order, 19 FCC Rcd 5102 (2004) (*OI&M Order*).

[127] Sections 53.203(a)(2)-(3) of the Commission's rules prohibit a BOC's section 272 affiliate from sharing OI&M functions with the BOC or another BOC affiliate. 47 C.F.R. § 53.203(a)(2)-(3).

[128] 47 C.F.R. § 53.203(a)(1).

[129] USTA Reply at 10-11; Verizon Comments, Exhibit B, at 10.

BOCs.[130] 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 and Verizon also support the Commission's elimination of the prohibition against sharing by BOCs and their section 272 affiliates of OI&M functions, asserting that the rules were not required by statute and were unwarranted.[131]

Recommendation

WCB staff concludes that the Part 53 rules concerning the content of the separate affiliate requirements under section 272 of the Act remain necessary in the public interest, and recommend that repeal or modification is not warranted. 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 anti-competitively 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.[132] 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.[133] Thus, these issues are beyond the scope of our review under section 11.

[130]Verizon Comments, Exhibit B, at 10.

[131]USTA Reply at 10; Verizon Comments, Exhibit B, at 10.

[132]As discussed above, the Commission relieved the BOCs and their Section 272 affiliates of certain OI&M sharing restrictions earlier this year. *See OI&M Order, supra* n.126, 19 FCC Rcd 5102.

[133]*See Separate Affiliate Proceeding, supra* n.125, 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.[134] 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. 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.

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

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.

Analysis

Status of Competition

[134] *See* 47 U.S.C. §§ 214(e), 254.

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

High Cost. With regard to the high-cost mechanism for non-rural carriers, in October 2003, the Commission released an order adopting many recommendations of the Federal-State Joint Board on Universal Service.[135] In particular, the Commission adopted a modified national cost benchmark based on two standard deviations from the national average cost, adopted the Joint Board's recommendation to implement a rate review, and sought comment on specific issues related to the rate review. In an order released December 24, 2003, the Bureau updated line counts and other input data used in the Commission's cost model for purposes of calculating and targeting non-rural high-cost support beginning January 1, 2004.[136] At the same time, the Bureau released a public notice announcing estimated non-rural high-cost support amounts for 2004 under the modified non-rural mechanism adopted in the *Remand Order*. Approximately $283 million in non-rural support will be distributed to carriers in ten different states in 2004. On August 16, 2004, the Federal-State Joint Board on Universal Service sought comment on the Commission's referral which asked the Joint Board to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the five-year plan adopted in the *Rural Task Force Order*.[137] On June 8, 2004, the Commission sought comment on the Recommended Decision of the Federal-State Joint Board on Universal Service concerning the process for designating eligible telecommunications carriers (ETCs) and on the Commission's rules regarding high-cost support.[138] Among other things, the Joint Board

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[135]*Federal-State Joint Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, CC Docket No. 96-45, 18 FCC Rcd 22559 (2003) (*Remand Order*), *appeal pending sub nom. Qwest Communications International Inc. v. FCC & USA*, Tenth Cir. No. 03-9617; *SBC Communications Inc. v. FCC & USA*, Tenth Cir. No. 04-9518; and *Vermont Public Service Board v. FCC & USA,* Tenth Cir. No. 04-9519.

[136]*Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 18 FCC Rcd 26639 (Wireline Comp. Bur. 2003) (*2004 Line Counts Update Order*). Support amounts will continue to be adjusted each quarter based on the wire center line count data reported quarterly by non-rural carriers. *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 16 FCC Rcd 22418, 22421, para. 9 (Com. Car. Bur. 2001); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 23960, 23964, para. 11 (Com. Car. Bur. 2000).

[137]*See Federal-State Joint Board on Universal Service*, Order, CC Docket 96-45, FCC 04-125 (2004) (*Referral Order*); *see also Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, Public Notice, DA 04-2535 (rel. Aug. 16, 2004).

[138]*Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, 19 FCC Rcd 10800 (2004).

recommended limiting high-cost support to a single connection that provides access to the network.[139]

Lifeline and Link-up. On April 29, 2004, the Commission modified the Lifeline and Link-Up rules to add, among other things, new eligibility criteria including an income-based criterion of 135% of the Federal Poverty Guidelines, Temporary Assistance for Needy Families, and the National School Lunch free lunch program.[140] The Commission also sought comment on whether to include an income-based eligibility criterion of 150% of the Federal Poverty Guidelines.[141]

Schools and Libraries. On April 30, 2003, the Commission released the *Schools Second Order,* which adopted measures designed to simplify and streamline the operation of the schools and libraries universal service mechanism and promote the Commission's goal of reducing the likelihood of fraud, waste, and abuse.[142] The *Schools Second Order* also sought comment, among other things, on implementing the carryover of unused funds and the Commission's existing rules governing the filing of an applicant's technology plan. On December 23, 2003, the Commission released the *Schools Third Order and Second Further Notice*.[143] Among other things, the *Schools Third Order and Second Further Notice* adopted rules regarding the carryover of unused funds and precluded eligible entities from upgrading or replacing internal connections on a yearly basis. The *Schools Third Order and Second Further Notice* also sought comment on several issues, including whether the Commission should revise the determination of discount levels, the competitive bidding process, and the recovery of funds disbursed in violation of the law. On July 23, 2004, the Commission adopted the *Schools Fourth Order*, which addressed the question raised in the *Schools Third Order and Second Further Notice* regarding recovery of schools and libraries program funds disbursed in violation of the statute or a rule.[144] The Commission determined that recovery should be directed at whichever party or parties have committed the violation.[145] In the *Schools Fifth Order*, the Commission adopted several measures to protect against waste, fraud, and abuse, including setting a framework for recovery of funds that have been disbursed in violation of statutory provisions and Commission rules, as well as adopting rules to facilitate audits and investigations relating

[139] *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, 4279 (2004).

[140] *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket 03-109, 19 FCC Rcd 8302 (2004).

[141] *Id.*

[142] *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order, Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 9202 (2003) (*Schools Second Order*).

[143] *Schools and Libraries Universal Service Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 26912 (2003) (*Schools Third Order and Second Further Notice*).

[144] *Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support Mechanism*, Order on Reconsideration and Fourth Report and Order, CC Docket Nos. 96-45, 97-21 and 02-6, FCC 04-181 (rel. July 30, 2004) (*Schools Fourth Order*).

[145] *Id*.

to use of E-rate funds. [146]

Rural Health Care. On November 17, 2003, the Commission released a Report and Order that modified the Commission's rules to improve the effectiveness of the rural health care support mechanism.[147] Among other changes, the Report and Order: (1) clarified that dedicated emergency departments of rural for-profit hospitals that participate in Medicare are "public" health care providers and are eligible to receive prorated rural health care support; (2) clarified that non-profit entities that function as rural health care providers on a part-time basis are eligible for prorated rural health care support; (3) revised the rules to provide a 25 percent discount off the cost of monthly Internet access for eligible rural health care providers; (4) revised the rules to allow rural health care providers to compare the urban and rural rates for functionally similar services as viewed from the perspective of the end user; (5) revised the rules to allow rural health care providers to compare rural rates to urban rates in any city with a population of at least 50,000 in the state; (6) revised the definition of the Maximum Allowable Distance to equal the distance between the rural health care provider and the farthest point on the jurisdictional boundary of the largest city in that state; and (7) revised the rules to allow rural health care providers to receive discounts for satellite services even where alternative wireline services may be available, but capped such support at the amount providers would have received if they purchased functionally similar wireline alternatives.[148] These changes were implemented in Funding Year 2004 (July 1, 2004).

On December 17, 2004, the Commission released the *Second Rural Health Care Order*, which expanded the rural health care support program.[149] Specifically, the Commission redefined what constitutes a "rural area" to better target small towns and villages while still maintaining a focus on the areas with the most need. The Commission also increased discounts available to mobile rural health care provides for the purchase of mobile satellite telecommunications services, and streamlined the application process.

Comments

USTA recommends the elimination of 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.[150]

Recommendation

WCB staff recommends the elimination of certain rules in Part 54, subparts D and F. The remaining rules

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[146] *Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, CC Docket. No. 02-6, FCC 04-190 (rel. Aug. 13, 2004) (Fifth Schools and Libraries Order).

[147] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546 (2003) (Rural Health Care Order).

[148] *See Report and Order*, 18 FCC Rcd at 24552-76, paras. 11-60.

[149] *Rural Health Care Support Mechanism*, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket No. 02-60, FCC 04-289 (rel. Dec. 17, 2004) (*Second Rural Health Care Order*).

[150] USTA Reply Comments at 11.

in Part 54 enable the Commission to 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. WCB staff therefore finds that, except as described below, the Part 54 rules are necessary in the public interest and that repeal or modification of such rules is not warranted at this time.

Section 54.305(a) provides for continuing universal service support for customers of sold or transferred exchanges. WCB staff therefore finds that section 54.305(a) is necessary in the public interest, and therefore should not be eliminated or modified as a result of meaningful economic competition at this time. WCB staff recognizes, however, that issues addressed by this rule have been referred to the Federal-State Joint Board on Universal Service, and that the Joint Board may recommend modification or elimination of the rule. WCB staff recommends, therefore, the Commission await the recommendation of the Joint Board before addressing USTA's comments recommending elimination of this rule.[151]

Section 54.311 provides interim hold harmless support for non-rural carriers. Because the last remaining element of hold harmless support that has not been phased out was Long Term Support (LTS), and the Commission eliminated LTS effective July 1, 2004, no carrier will receive hold harmless support. WCB staff therefore recommends that this rule be deleted from the Code of Federal Regulations.

WCB staff recommends deletion of section 54.509(c) of the Commission's rules. Section 54.509(c) concerns the distribution of leftover funds from the Schools and Libraries support mechanism. Our treatment of these funds was updated in the *Third Schools Order*.[152] In that order, we adopted a procedure to carry forward unused funds and amended 54.507(a) accordingly.[153] WCB staff therefore recommends elimination of section 54.509(c).

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

[152] *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 03-323 (rel. Dec. 23, 2003) (Third Schools and Libraries Order).

[153] *Id*. at paras. 52-57.

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).[154]

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."[155]

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. These 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 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.

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[154] 47 U.S.C. § 259.

[155] *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*).

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

There has been no Commission action addressing these rules since the previous biennial review.

Comments

No party filed comments addressing Part 59.

Recommendation

The Part 59 rules 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. 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 finds therefore, that the Part 59 rules are necessary in the public interest and that repeal or modification is not warranted at this time.

PART 61 – TARIFFS

Description

Sections 203 and 204 of the Communications Act of 1934, as amended, establish tariff filing requirements applicable to common carriers.[156] Sections 201 and 202 require rates, terms and conditions to be "just and reasonable,"[157] and prohibit "unjust or unreasonable discrimination."[158] Part 61 of the Commission's rules 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 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

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs

[156] 47 U.S.C. §§ 203-04.

[157] 47 U.S.C. § 201.

[158] 47 U.S.C. § 202.

provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

The Commission adopted significant interstate access charge and tariff reforms for rate-of-return carriers in an October 2001 order.[159] The Commission concurrently adopted the *MAG FNPRM* to consider further access charge and tariff reforms for rate-of-return carriers. The Commission adopted revisions to its access charge rules and tariff rules in a February 2004 decision that responded to issues raised in the *MAG FNPRM*.[160] It modified the all-or-nothing rule to permit rate-of-return carriers to return recently acquired price cap lines to rate-of-return regulation without first obtaining a waiver of the Commission's all-or-nothing rule. A waiver will be required if the rate-of-return carrier seeks to return any of the acquired price cap lines to price cap regulation within five years. The Commission also granted rate-of-return carriers the authority to provide geographically deaveraged transport and special access rates, subject to certain limitations. The Commission also adopted a Second Further Notice of Proposed Rulemaking (*Second FNPRM*) to consider further access charge and tariff reforms for rate-of-return carriers.[161] The *Second FNPRM* sought comment on two specific proposals filed by rate-of-return carriers that would establish optional alternative regulation mechanisms for rate-of-return carriers. In conjunction with consideration of those proposals, the *Second FNPRM* also sought comment on modifications that would permit a rate-of-return carrier to adopt an alternative regulation plan for some study areas, while retaining rate-of-return regulation for other of its study areas.

Comments

Verizon recommends that section 61.59(b) be revised to allow carriers to withdraw an entire tariff filing on one day's notice, and without permission from the Commission, at any time before a filing goes into effect.[162] Verizon asserts that such a change would constitute a simple reversion to the status quo and

[159] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interstate Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) (*MAG FNPRM*).

[160] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interstate* Carriers, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004)(*Report and Order*).

[161] *Id.*

[162] Verizon Comments, Exhibit B at 11.

would relieve carriers of having to seek special permission each time such a withdrawal is made on less than thirty days' notice.[163] Verizon also recommends changes to various technical rules.[164]

USTA recommends that Part 61 contain only tariff requirements. USTA proposes that rules in Part 61 associated with price cap regulation be moved to a new Part of the rules to be created, and that rules pertaining to rate-of-return regulation be moved to Part 69.[165] In addition, USTA urges the Commission to permit all incumbent LECs to file contract-based tariffs.[166] 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.

Recommendation

The Part 61 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. Except as discussed below, WCB staff finds that the rules in Part 61 are necessary in the public interest and that repeal or modification of such rules is not warranted at this time.

In the *MAG FNPRM*, the Commission undertook a comprehensive review of the Part 61 rules for rate-of-return LECs to determine whether certain rules in their current form are still necessary in the public interest as a result of competition. In the February 2004 order that responded to issues raised in the *MAG FNRPM*, the Commission modified the all-or-nothing rule to permit a limited exception when a rate-of-return carrier acquires lines from a price cap carrier and elects to bring the acquired lines into rate-of return regulation. The rule, as amended, permits the acquiring carrier to convert the price cap lines back to rate-of-return regulation. USTA recommends that the all-or-nothing rule be eliminated. WCB staff notes that issues involving the all-or-nothing rule are under consideration by the Commission and recommends that the Commission defer further action on the rule until it has reviewed the record compiled in response to the *Second FNPRM*.

The 30 day-minimum effective period for tariffs filed by carriers provides stability of rates and protects both large and small consumers from excessive rate churn. For that reason, WCB Staff finds that section 61.59(b) is necessary in the public interest and that repeal or modification in the manner suggested by Verizon is not warranted at this time.

WCB staff finds that section 61.3(p) (three-day period to file corrections) is necessary in the public interest and that repeal or modification in the manner suggested by USTA is not warranted at this time. Section 61.3(p) of the Commission's rules defines corrections to include the remedy of errors in typing, spelling or punctuation. The three-day notice period is necessary to ensure that the tariff revisions presented do not go beyond the scope of the definition for corrections. WCB staff also finds that section 61.152(d) (60-day special permission period) is necessary in the public interest and that repeal or modification in the manner suggested by USTA is not warranted at this time. Section 61.152(d) was

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[163] *Id.*

[164] Verizon Comments, Exhibit B at 12.

[165] USTA Reply Comments at 12.

[166] *Id.*

deemed necessary because prior to the current 60 day period a carrier could obtain a waiver of a rule, based on its current circumstances, and use the grant as much as a year later. Timeliness is part of a carrier's justification for good cause for an application for special permission under section 61.152. WCB staff maintains that the 60-day period is reasonable. Any extension beyond that period of time raises questions as to the validity of the applicant's good cause showing.

WCB staff also finds that section 61.55, which precludes contract carriage for rate-of-return carriers is necessary in the public interest and that repeal or modification in the manner suggested by USTA is not warranted at this time. WCB staff finds that competition that could be considered a substitute for access services has not increased in rate-of-return carrier service areas such that WCB staff would recommend that the Commission reconsider its recent decision in February 2004 to continue to preclude contract carriage for rate-of-return carriers.[167] WCB staff accordingly finds that this rule remains necessary in the public interest and recommends that repeal or modification is not warranted.

WCB staff also finds that Parts 61 and 69 of the Commission's rules clearly and specifically set forth the requirements for tariffs and access charges and the class of carriers to which they apply. For this reason, WCB staff finds that the current structures of Parts 61 and 69 remain necessary in the public interest and that the restructuring suggested by USTA is not warranted at this time.

[167] *Report and Order*, 19 FCC Rcd at 4143.

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.[168] 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.[169]

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

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international

[168] 47 U.S.C. § 214(a).

[169] 47 C.F.R. § 63.01.

long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

There has been no Commission action addressing these rules since the previous biennial review.

Comments

No party filed comments addressing Part 63.

Recommendation

WCB staff concludes that 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. WCB staff accordingly finds that this rule remains necessary in the public interest and recommends that repeal or modification is not warranted.

PART 64, SUBPART A – TRAFFIC DAMAGE CLAIMS

Description

The Part 64, Subpart A rules require carriers engaged in radio-telegraph, wire-telegraph, or ocean-cable service to maintain separate files for each damage claim of a traffic nature filed with the carrier. Subpart A also prohibits such carriers from making payments as a result of any traffic damage claim in excess of the total amount collected for the message or messages from which the claim arose unless the claim is presented in writing and sets forth the reason for the claim. These rules are based on the Commission's authority pursuant to sections 1, 4, 201-205, and 220 of the Communications Act, as amended.[170]

Purpose

Subpart A requires that certain types of carriers maintain records concerning damage claims, and limits damage payments absent a written claim.

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001.

Recent Efforts

There has been no Commission action addressing these rules since the previous biennial review.

Comments

USTA recommends that this requirement be eliminated because Commission requirements are duplicative of Internal Revenue Service and Security and Exchange Commission requirements to maintain records of traffic damage claims.[171]

Recommendation

WCB finds the Part 64, Subpart A rules may no longer be necessary in the public interest for reasons other than the development of competition. These rules are duplicative of the requirements of other federal agencies, *i.e.,* the Internal Revenue Service and the Securities and Exchange Commission. Therefore, WCB staff recommends that the Commission initiate a rulemaking to consider the repeal of Subpart A.

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[170] 47 U.S.C. §§ 151, 154, 201-205 and 220.

[171] USTA Reply at 13.

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

Description

The Part 64, Subpart D rules require 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.[172]

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

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

Pursuant to its participation as a member of the National Communications System, the Commission continues to evaluate its role in emergency 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

Because these rules are not competition-related, we cannot find that these rules are no longer necessary in the public interest as a result of meaningful economic competition. Competitive developments have not

[172] 47 U.S.C. §§ 151, 201-05.

affected the need for this rule because it is a public safety rule whose purposes are unaffected by competition. 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. WCB staff accordingly does not find that Part 64, subpart D and Appendix A are no longer necessary in the public interest as the result of meaningful economic competition between providers of telecommunications service and recommends that repeal or modification is not warranted at this time.

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.[173]

The BOCs may provide enhanced services and CPE pursuant to nonstructural safeguards established in the *Computer III*[174] (enhanced services) and *Furnishing of CPE*[175] 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.

The remainder of subpart G addresses the provision of telephone operator services, and certain activities by call aggregators.[176] 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 aggregators from blocking access to "800" and "950" access numbers on aggregator telephones presubscribed to an operator service, and require that customers be able to obtain access to the operator services provider of their choice. 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

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[173] 47 U.S.C. §§ 154, 201-205, 403, 404.

[174] *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).

[175] *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).

[176] 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).

inmates. The Commission has forborne from applying some of these restrictions to CMRS carriers and aggregators.[177]

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

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

In 2002, the Commission initiated proceedings to broadly examine the appropriate legal and policy framework under the Communications Act for broadband access to the Internet provided over domestic wireline facilities.[178] In the NPRM, the Commission tentatively concluded that wireline broadband Internet access services – whether provided over a third party's facilities or self-provisioned facilities – are information services, with a telecommunications component, rather than a telecommunications service.[179]

Comments

USTA recommends that the Commission eliminate the prohibition on the bundling of enhanced services, as it is no longer necessary in a competitive environment. Additionally, all other telecommunications service providers are permitted to bundle enhanced services, while the incumbent LEC is not, which does

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[177] *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).

[178] *Wireline Broadband NPRM*, 17 FCC Rcd 3019.

[179] *Id.* at 3028-31.

not benefit incumbent LEC customers.[180] Verizon contends that competitive developments have rendered the maintenance of Title II retail requirements for broadband "no longer necessary in the public interest" and that the Commission should thus repeal or modify those requirements.[181] Verizon also argues that the Commission should repeal the application of the *Computer Inquiries* unbundling and other obligations to the broadband offerings of wireline telephone companies as no longer necessary in the public interest.[182] 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.[183]

Recommendation

As noted in the *2002 Staff Report* and 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. WCB Staff therefore continues to 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 believes that these issues should be addressed in separate proceedings that have the benefit of a more complete and probative record.

[180]USTA Reply at 14.

[181]Verizon Comments at 15-19.

[182]Verizon Comments 20-24

[183]USTA Reply at 14.

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 has been no Commission action addressing these rules since the previous biennial review.

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.[184]

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.

[184] USTA Reply at 15.

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.[185] 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.[186] 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[187] 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 Part 64, Subpart I rules 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, or 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 completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

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[185] 47 U.S.C. § 254(k).

[186] 47 U.S.C. §§ 201, 220.

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

In June 2004, the Commission released an order reflecting a comprehensive review of the accounting and ARMIS reporting requirements and addressing recommendations made by the Federal-State Joint Conference on Accounting Issues.[188]

Comments

USTA and Verizon recommend that the Commission streamline the allocation rules and eliminate the annual CAM reporting requirements for BOCs, as it did for mid-sized carriers.[189] AT&T asserts that the proposal to streamline the Part 64 process by eliminating the BOCs' CAM reporting obligations is baseless.[190] SBC asserts that the Commission's forecasting rule for central office equipment in section 64.901(b)(4) should be modified to allow incumbent LECs to use actual network utilization to allocate central office equipment and outside plant.[191]

Recommendation

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. WCB staff finds that the Part 64 cost allocation rules permit the carriers to design their methods for allocating costs within broad guidelines and that the rules are not onerous or otherwise burdensome.

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 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.[192]

WCB staff finds that section 64.901(b)(4) is necessary in the public interest and that repeal or modification in the manner suggested by SBC is not warranted at this time. This section was adopted to

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[188] *In the Matter of Federal-State Joint Conference on Accounting Issues, 2002 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting*; WC Docket No. 02-269, CC Docket Nos., 00-199, 80-286, 99-301, Report and Order, FCC 04-149 (rel. June 24, 2004).

[189] USTA Reply at 15; Verizon Comments, Exhibit B at 5-6.

[190] AT&T Reply at 7.

[191] SBC Reply at 5.

[192] *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."

avoid the overallocation of costs to regulated activities when a carrier adds jointly-used capacity, functions, or enhancements to meet a new and growing nonregulated service. If the allocation were based on current year data, an inappropriately higher amount of costs may be assigned to the regulated operations during the early years of the start-up nonregulated activity.

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 LECs have the major presence in the United States in the provision of payphone service. Incumbent local exchange payphone providers control over 60 percent of the payphone market.[193]

Recent Efforts

On October 3, 2003, the Commission released a Report and Order in CC Docket No. 96-128 (*Payphone Order*) in which the Commission adopted new rules concerning the compensation of payphone service providers (PSPs) pursuant to section 276 of the Act.[194] To provide carriers time to transition to the new rules and to meet OMB requirements, the Commission in the *Payphone Order* also re-adopted its previous rules adopted in the Second Order on Reconsideration on an interim basis until the new rules became effective.[195] The Commission received OMB approval on May 5, 2004, and the *Payphone Order* and the new rules became effective on July 1, 2004.[196] In addition, the Commission adopted a Report and

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[193] *Trends in Telephone Service* at Table 7.5 (stating that, as of March 31, 2003, 38% of the payphones in the United States were non-LEC owned).

[194] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 18 FCC Rcd 19975 (2003), clarified by *Clarification of Information Collection Requirements in the Payphone Compensation Rules*, CC Docket No. 96-128, Public Notice, DA 04-2001, 2004 WL 1469362 (rel. June 30, 2004).

[195] *Implementation of 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 (2002) (Second Order on Reconsideration); *remanded sub nom. Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Circ. 2003).

[196] *See* OMB Approval No. 3060-1046 (May 5, 2004).

Order on July 27, 2004, revising the default rate of payphone compensation for "dial-around" calls set forth in section 64.1300(c) of the rules.[197]

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.

[197] *See Request to Update Default Compensation Rate for Dial-Around Calls from Payphones*, WC Docket No. 03-225, Report & Order, FCC 04-182 (rel. Aug. 12, 2004). Dial-around calls are those where the caller makes a coinless call using a carrier other than the payphone's presubscribed long distance carrier.

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.[198] Subpart N provides that Class A LECs, which do not participate in the National Exchange Carrier Association tariff, must provide expanded interconnection.[199] 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 completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

There has been no Commission action addressing these rules since the previous biennial review.

Comments

No party filed comments addressing subpart N.

[198] 47 U.S.C. §§ 151, 154, 201-205.

[199] BellSouth, Qwest, SBC 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 Q – IMPLEMENTATION OF SECTION 273(D)(5) OF THE COMMUNICATIONS ACT: DISPUTE RESOLUTION REGARDING EQUIPMENT STANDARDS

Description

Subpart Q implements Section 273(d) of the Act, as amended, by establishing procedures to be followed by non-accredited standards organizations when setting industry-wide standards or generic requirements for telecommunications equipment or CPE. Section 273(d)(5) of the Act directs the Commission to prescribe a dispute resolution process when all parties involved in such standards setting cannot agree on a dispute resolution process. It provides for resolution of technical disputes by a three-member panel, whose recommendation can be overturned if three-fourths of the funding parties vote to do so.

Purpose

Subpart Q ensures the fair, prompt and economical resolution of disputes that arise in the context of private sector development of technical standards for telecommunications equipment and CPE.

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

There has been no Commission action addressing these rules since the previous biennial review.

Comments

No party filed comments addressing subpart Q.

Recommendation

The default dispute resolution process provides for the fair, prompt and economical resolution of disputes when the parties cannot agree on a mutually satisfactory process. WCB staff accordingly concludes that the subpart Q rules remain necessary in the public interest and recommends that repeal or modification is not warranted 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 LECs. 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 LECs from engaging in anticompetitive activity in the provision of in-region long distance services.

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

There has been no Commission action addressing these rules since the previous biennial review.

Comments

USTA recommends elimination of this requirement because, according to USTA, it is a burdensome and unnecessary requirement on small companies that must compete against unregulated companies such as AT&T and Sprint for the provision of services.[200]

[200] USTA Reply at 16.

Recommendation

As noted in the *2002 Staff Report*, 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, WCB staff continues to recommend that the Commission consider modifying these rules in the pending *Separate Affiliate* rulemaking proceeding.[201] Based on the Commission's experience in implementing the 1996 Act, the staff concludes that there is sufficient reason to believe that incumbent independent LECs may engage in discriminatory behavior without sufficient safeguards. Thus, the staff again 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 continues to recommend that the Commission consider whether these rules should be modified in the context of that ongoing proceeding.

[201] *Separate Affiliate Proceeding,* 17 FCC Rcd 9916 (2002).

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.[202] 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

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

There has been no Commission action addressing these rules since the previous biennial review.

Comments

No party filed comments addressing Part 64, subpart U.

Recommendation

Consistent with the Commission's 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.

[202] 47 U.S.C. § 222.

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.[203] Section 229(a) of the Communications Act directs the Commission to “prescribe such rules as are necessary to implement the requirements of [CALEA],”[204] and section 229(b) specifically requires the Commission to promulgate “rules to implement section 105 of [CALEA].[205] 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.[206]

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.

Recent Efforts

On August 9, 2004, the Commission adopted a Notice of Proposed Rulemaking, to launch a thorough examination of the appropriate legal and policy framework of CALEA, at the request of, and in response to, a joint petition filed by the Department of Justice, Federal Bureau of Investigation, and the Drug Enforcement Administration (collectively, “Law Enforcement”). In the Notice of Proposed Rulemaking, the Commission will examine issues relating to the scope of CALEA’s applicability to packet-mode

[203] 47 U.S.C. § 1004.

[204] 47 U.S.C. § 229(a).

[205] 47 U.S.C. § 229(b).

[206] 47 U.S.C. § 229(c); 47 C.F.R. § 64.2105.

services, such as broadband Internet access, and implementation and enforcement issues.[207] The Commission made a number of tentative conclusions in the *CALEA Notice,* including that CALEA applies to facilities-based providers of any type of broadband Internet access service, including wireline, cable modem, satellite, wireless and powerline, and to managed Voice over Internet Protocol (VoIP) services. These tentative conclusions are based on a Commission proposal that these services fall under CALEA as "a replacement for a substantial portion of the local telephone exchange service." In addition, the *CALEA Notice* tentatively concluded that it is unnecessary to identify future services and entities subject to CALEA. The Commission recognized Law Enforcement's need for certainty regarding the applicability of CALEA to new services and technologies, but anticipated that the Report and Order in this proceeding will provide substantial clarity sufficient to resolve Law Enforcement's and industry's uncertainty about future compliance obligations. The Commission also proposed mechanisms to ensure that telecommunications carriers comply with CALEA.

Comments

No party filed comments addressing Part 64, subpart V.

Recommendation

The Part 64, Subpart V rules are promulgated under CALEA. While CALEA is a communications-specific statute codified in Title 47, it does not fall within the Communications Act of 1934 as amended. As such the CALEA rules are outside the scope of the Commission's section 11 biennial review.

[207] *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, Notice of Proposed Rulemaking and Declaratory Ruling, FCC 04-187 (rel. Aug. 9. 2004) (*CALEA Notice*).

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."[208] 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 LECs.

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

On September 13, 2004, the Commission released a memorandum opinion and order on reconsideration addressing petitions for reconsideration of the *Subscriber List Information Order*,[209] which adopted rules to implement section 222(e) of the Act.[210] That Order: (1) denied requests to modify certain aspects of the complaint procedures, notification requirements, and unbundling requirements established in the *Subscriber List Information Order*; (2) eliminated a requirement that carriers provide requesting directory

[208] 47 U.S.C. § 222(e).

[209] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (*Subscriber List Information Order*).

[210] 47 U.S.C. § 222(e).

publishers with notice of changes in subscriber list information in circumstances where customers choose to cease having their numbers listed; and (3) modified the contract disclosure requirement to allow carriers to withhold from disclosure those portions of their contracts that are unrelated to the provision of subscriber list information and to subject such disclosures to confidentiality agreements.[211]

Comments

No party filed comments addressing Part 64, subpart X.

Recommendation

WCB staff finds that these rules, which were recently amended, 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.

[211] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Memorandum Opinion and Order on Reconsideration, FCC 04-206, (rel. Sept. 13, 2004).

PART 64, SUBPART Z - PROHIBITION ON EXCLUSIVE TELECOMMUNICATIONS CONTRACTS

Description

Congress amended section 224 of the Communications Act, as amended,[212] 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.[213]

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.

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international

[212]47 U.S.C. § 224.

[213]*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).

long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

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

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.

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.[214] 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 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 price-cap 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.

Analysis

Status of Competition

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international

[214] 47 U.S.C. § 201(b).

long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

There has been no Commission action addressing these rules since the previous biennial review.

Comments

USTA asserts that services that are excluded from price cap regulation should not be subject to the prescribed rate of return. USTA further states 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.[215]

Recommendation

WCB staff finds the rules in Part 65 are necessary in the public interest and therefore recommends no changes at this time. 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-making process. The rules adopted in the CALLS order for price cap LECs expire July 1, 2005.[216] USTA's proposed modifications would deprive the Commission of 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.

[215]USTA Comments at 16-17.

[216]*See In the Matter of Access Charge Reform,* CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd 12962 (*CALLS Order*), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *In the Matter of Access Charge Reform,* CC Docket No. 96-262, Order on Remand, 18 FCC Rcd 14976 (2003).

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.[217] 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,[218] and contains consumer protection provisions mandated by statute: a requirement that all fax transmissions include source labeling,[219] and a requirement that limits the duration of line seizure by automatic telephone dialing systems.[220]

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 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

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

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

[219] 47 U.S.C. § 227(d)(2).

[220] 47 U.S.C. § 227(d)(3).

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 recent years, as described below. The industry is still adapting to major changes resulting from privatization.

Analysis

Status of Competition

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

Recent Efforts

There has been no Commission action addressing these rules since the previous biennial review.

Comments

No party filed comments addressing Part 68.

Recommendation

The Part 68 rules are necessary 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. Thus competitive developments have not affected the need for this rule because they remain important for reasons of public safety and accessibility. Therefore, WCB staff 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,[221] and prohibit unjust or unreasonable discrimination.[222] 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 LECs for the origination and termination of long distance calls, as well as the access charges to be paid directly by end users.[223] 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

Analysis

State of Competition

[221] 47 U.S.C. § 201.

[222] 47 U.S.C. § 202.

[223] 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.

Competition in local service markets has continued to increase since completion of the 2002 Biennial Regulatory Review. CLECs continue to use all modes of entry contemplated by the 1996 Act. CLECs provided 29.6 million (or 16.3%) of the approximately 181 million nationwide switched access lines in service to end-user customers as of December 31, 2003. This represents a 50% increase in CLEC lines since year-end 2001. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service connections over cable have increased to over 3.2 million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by over 50 percent since 1993.

Recent Efforts

The Commission adopted significant interstate access charge reforms for rate-of-return carriers in an October 2001 order.[224] The Commission concurrently adopted a Further Notice of Proposed Rulemaking (FNPRM) to consider further access charge service reforms for rate-of-return carriers. The Commission adopted revisions to its access charge rules and tariff rules in a February 2004 decision that responded to issues raised in the *MAG FNPRM*.[225] It modified the all-or-nothing rule to permit rate-of-return carriers to return recently acquired price cap lines to rate-of-return regulation without first obtaining a waiver of the Commission's all-or-nothing rule. The Commission also granted rate-of-return carriers the authority to provide geographically deaveraged transport and special access rates, subject to certain limitations. The Commission concurrently adopted a Second Further Notice of Proposed Rulemaking (*Second FNPRM*) to consider further access charge and tariff reforms for rate-of-return carriers. The *Second FNPRM* sought comment on two specific proposals filed by rate-of-return carriers that would establish optional alternative regulation mechanisms for rate-of-return carriers. In conjunction with consideration of those proposals, the *Second FNPRM* also sought comment on modifications that would permit a rate-of-return carrier to adopt an alternative regulation plan for some study areas, while retaining rate-of-return regulation for other of its study areas.

On April 26, 2001, the Commission adopted a benchmark plan to bring tariffed access rates of competitive LECs down to the level of the rates charged by the incumbent LEC.[226] Rather than immediately mandating this change, the Commission's order provided for a three-year transition period. The new rules also clarified the obligations of interexchange carriers (IXCs) to exchange telecommunications traffic with CLECs. In May 2004, the Commission adopted an order that clarified application of the benchmark plan in several respects.[227] The Commission clarified that a competitive

[224] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interstate Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001).

[225] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interstate* Carriers, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004)(*Report and Order*).

[226] *Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001).

[227] *Access Charge Reform*, CC Docket No. 96-262, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108 (2004).

LEC is entitled to charge the full benchmark rate if it provides an IXC with access to the CLEC's own end-users. It found that the rate a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions. In addition, the Commission provided guidance on the meaning of the appropriate switching rate used in determining the competing incumbent LEC rate after the three-year transition period concluded on June 21, 2004.

The Commission has undertaken a comprehensive review and rulemaking proceeding that is examining intercarrier compensation issues.[228] 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.[229]

Comments

USTA recommends that Part 61 contain only tariff requirements and that rules in Part 61 pertaining to rate-of-return regulation be moved to Part 69.[230] USTA also maintains that section 69.4 should be deleted to eliminate detailed rate element codification and the public interest petition requirement for the establishment of new rate elements.[231] USTA asserts that this will facilitate innovation and accelerate the delivery of new service options to the customers of rate-of-return carriers.[232]

Recommendation

Part 69 rules help to ensure carriers' rates, terms and conditions for providing telecommunications services are just and reasonable. WCB staff finds that the Part 69 rules remain necessary in the public interest because they ensure that carriers' rates, and terms and conditions for providing telecommunications services are just and reasonable.

In response to USTA's recommendation that the Commission amend section 69.4 to eliminate the public interest petition requirement for the establishment of new services, WCB staff notes that the *Pricing Flexibility Order*[233] revised section 69.4 to eliminate the public interest showing required by section 69.4(g). WCB staff finds that section 69.4 is necessary in the public interest and that repeal or modification in the manner suggested by USTA is not warranted at this time. While WCB staff acknowledges that the competitive environment has evolved, it also recognizes that incumbent LECs still control some bottleneck facilities. Detailed information regarding the rate elements in section 69.4 facilitates the Commission's determination of the reasonableness of the charges for each access element.

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[228] *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).

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

[230] USTA Reply at 11.

[231] USTA Reply at 17.

[232] *Id*.

[233] *See Access Charge Reform,* CC Docket No. 96-262, Fifth Report and Order, 14 FCC Rcd 14221, 14235 (1999) (*Pricing Flexibility Order*), *aff'd*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001) (*WorldCom*).

WCB staff also finds that Parts 61 and 69 of the Commission's rules clearly and specifically set forth the requirements for tariffs and access charges and the class of carriers to which they apply. For this reason, WCB staff finds that the current structures of Parts 61 and 69 are necessary in the public interest and that repeal or modification in the manner suggested by USTA is not warranted at this time.