Federal Communications Commission
2006 Biennial Regulatory Review
WC Docket No. 06-157

Wireline Competition Bureau
Staff Report
February 14, 2007

I. OVERVIEW

1. This Staff Report has been prepared pursuant to the Federal Communications Commission's biennial regulatory review process, as required by section 11 of the Communications Act of 1934, as amended (the Act).[1] Section 11 requires the Commission, in every even-numbered year, to conduct a review of its rules promulgated under the Act that apply to any provider of telecommunications service[2] and, for each such rule, to determine whether it is "no longer necessary in the public interest as the result of meaningful competition among providers of such service."[3] By Public Notice dated August 10, 2006, the Commission invited comments on what rules should be modified or repealed as part of the 2006 Biennial Review.[4]

2. In this Staff Report, the Wireline Competition Bureau (WCB or the Bureau) staff details its extensive review, analysis, and recommendations concerning the rules under the Bureau's purview that fall within the scope of section 11. Building upon the findings and recommendations set out in previous biennial reviews, the staff herein identifies and explains the purpose of each applicable rule, discusses competitive and other issues associated with the rule, summarizes and addresses relevant filed comments and, where appropriate, recommends modification or repeal of the rule or rule part. This Staff Report sets out staff findings and recommendations and does not reflect formal Commission opinions or binding Commission 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:[5]

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

[1] 47 U.S.C. § 161.

[2] *Id.*

[3] *Id.*

[4] *The Commission Seeks Public Comment in the 2006 Biennial Review of Telecommunications Regulations*, CG Docket No. 06-152, EB Docket No. 06-153, IB Docket No. 06-154, ET Docket No. 06-155, WT Docket No. 06-156, and WC Docket No. 06-157, Public Notice, 21 FCC Rcd 9422 (rel. Aug. 10, 2006) (Public Notice).

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

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

4. In furtherance of the Commission's 2006 Biennial Review effort, the Bureau staff reviewed all of the foregoing rules that fall within the scope of section 11 of the Act, as well as all relevant comments filed in response to the Public Notice. Based on this review, the Bureau considered whether the rule was no longer necessary in the public interest as a result of meaningful economic competition, including whether repeal or modification of any rules might be appropriate as the result of prevailing competitive conditions. The staff considered each rule's underlying purpose, whether the purpose has continuing relevance and whether it could be accomplished more effectively through other means. The staff considered the advantages and disadvantages of the existing rules as well as the effects, if any, of competitive developments since the period covered in the previous Biennial Review.

III. RECENT AND ONGOING ACTIVITIES

5. 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 devote considerable resources to the consideration of regulatory reforms as competition in the provision of telecommunications and information services progresses. 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

6. In the *Wireline Broadband Internet Access Services Order*,[6] the Commission concluded that, like cable modem service, wireline broadband Internet access services are information services having a telecommunications transmission component, and that an offering of wireline broadband Internet access service does not include a separate "telecommunications service" offering. Hence, facilities-based wireline broadband Internet access service providers will no longer be required to offer the broadband transmission component as a stand-alone telecommunications service under Title II. Also in this Order, the Commission relieved the Bell Operating Companies of all other *Computer Inquiry* requirements applicable to wireline

[6] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers*; *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*; *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*; *Consumer Protection in the Broadband Era,* CC Docket Nos. 95-20, 98-10, 01-337, 02-33, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14915, paras. 32-111 (2005) (*Wireline Broadband Internet Access Services Order)*, *petitions for review pending, Time Warner Telecom v. FCC,* No. 05-4769 (and consolidated cases) (3rd Cir. filed Oct. 26, 2005).

broadband Internet access services. The Bureau anticipates that these actions will spur investment in and deployment of innovative broadband capabilities.

7. In the *Verizon Fast Packet Order*, the Commission granted certain regulatory relief for Verizon's provision of advanced services that rely on packet technology.[7] In particular, the Commission granted a limited waiver to Verizon, enabling it to offer packet-based advanced services via contract tariffs (Phase I pricing flexibility) for packet-based advanced services in the same metropolitan statistical areas where it already has qualified for Phase I or II pricing flexibility for other special access services.[8] The Commission further granted Verizon the opportunity to apply for Phase II pricing flexibility for these services in the same areas by satisfying the competitive showings set forth in the pricing flexibility rules.

8. On September 16, 2005, the Commission partially granted a petition for forbearance filed by Qwest seeking relief from statutory and regulatory obligations that apply to it as the incumbent local telephone company in the Omaha-Council Bluffs, NE-IA Metropolitan Statistical Area (Omaha MSA).[9] In its petition, filed on June 21, 2004, Qwest sought relief from certain dominant carrier regulations, as well as the requirements of section 251(c) and sections 271(c)(2)(B)(i-vi) and (xiv).[10] Qwest also requested that the Commission forbear from regulating it as the incumbent local exchange carrier (LEC) in the Omaha MSA.[11] To the extent the Commission granted Qwest's petition, it relied on the particular market characteristics of the Omaha MSA, including the substantial infrastructure investment made by Cox Communications, Inc. in its competitive network. With regard to section 251(c)(3) unbundling obligations for transmission facilities, the Commission granted Qwest relief in targeted wire center service areas where intermodal deployment is extensive. For mass market telephone services, the Commission granted Qwest relief from dominant carrier regulations that applied to it in the entire Omaha MSA.

2. Universal Service

9. On June 14, 2005, the Commission initiated a broad inquiry into the management and administration of the Universal Service Fund (USF), as well as the Commission's oversight of the USF and

[7] *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services; Petition for Forbearance Under 47 U.S.C. Section 160 (c) from Pricing Flexibility Rules for Fast Packet Services*, WC Docket No. 04-246, Memorandum Opinion and Order, 20 FCC Rcd 16840 (2005) (*Fast Packet Order*).

[8] Phase I pricing flexibility allows price cap LECs to customize offerings through individual contract tariffs, including the ability to lower rates, in order to respond to competition. It requires price cap LECs to continue to offer special access services at generally available rates that are subject to price caps. *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-157, CCB/CPD File No. 98-63, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14258, para. 69, & 14288, para. 122 (1999) (*Pricing Flexibility Order*), *aff'd WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001). Phase II pricing flexibility allows price cap LECs to offer the qualifying services free from the Commission's part 69 rate structure and part 61 price cap rules, provided the LECs continue to make the services generally available through tariffs. *Pricing Flexibility Order*, 14 FCC Rcd at 14301, para. 153. Accordingly, price cap LECs are free to both raise and lower their rates for qualifying services when they obtain Phase II relief.

[9] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, FCC 05-170 (rel. Dec. 2, 2005) (*Qwest Omaha MSA Order*).

[10] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223 (filed June 21, 2004).

[11] *Id*.

the Universal Service Administrative Company (USAC).[12] In particular, the Commission sought comment on ways to improve the management, administration, and oversight of the USF, including simplifying the process for applying for USF support, speeding the disbursement process, simplifying the billing and collection process, addressing issues relating to USAC, and exploring performance measures suitable for assessing and managing the USF programs. The Commission also sought comment on ways to further deter waste, fraud, and abuse through audits of USF beneficiaries or other measures, and on various methods for recovering improperly disbursed funds. The rulemaking is intended to enhance program integrity and deter waste, fraud and abuse for the benefit of beneficiaries and contributors.

10. The Commission also continued its more particularized efforts to reform several aspects of the universal service program. In 2005, the Commission modified and clarified its rules pertaining to the High Cost Support Mechanism to ensure that the support methodology encourages investment in and upgrades of the infrastructure of small, rural exchanges. The Commission amended section 54.305, a rule governing the safety valve mechanism, so that calculation of the support that a rural carrier receives includes recognition of investments in newly acquired exchanges.[13] This change was intended to effectuate the Commission's intent when it adopted the safety valve mechanism of encouraging substantial investments in rural exchanges. The Commission also clarified that section 36.605 of the Commissions rules enables carriers to qualify for safety net additive support in more than one year and for every year for which they qualify.[14]

11. In August 2005, WCB clarified certain aspects of the Commission's rules in light of the decision of the United States Court of Appeals for the Fifth Circuit affirming in part, remanding in part, and reversing in part the Commission's 1997 Universal Service Order.[15] Specifically, WCB made clear that Commission rules permit Commercial Mobile Radio Services (CMRS) providers to recover their universal service contributions through rates charged for all of their services.[16] This order explained that all carriers, including CMRS providers, have significant flexibility in the manner in which they may recover universal service contribution costs.[17]

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[12] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) ("*NPRM*").

[13] *Federal-State Joint Board on Universal Service, National Telephone Cooperative Association Petition for Reconsideration,* CC Docket No. 96-45, Order and Order on Reconsideration, 20 FCC Rcd 768 (2005).

[14] *Federal-State Joint Board on Universal Service, Darien Telephone Company, Inc., Logan Telephone Cooperative, Inc. and Roanoke & Botetourt Telephone Company, Requests for Review of Decisions of the Universal Service Administrative Company,* CC Docket No. 96-45, Order, FCC 06-112 (rel. August 7, 2006) (*Safety Net Additive Order*).

[15] *Federal-State Joint Board on Universal Service Petition for Reconsideration and Clarification of the Fifth Circuit Remand Order of BellSouth Corp*., Order, CC Docket Nos. 96-45 and 96-262, 20 FCC Rcd 13779 (2005) (*Fifth Circuit Remand Order*); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("*TOPUC*"); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, 12 FCC Rcd 8776 (1997), and Erratum, 13 FCC Rcd 24493 (1997), *aff'd in part, rev'd in part, remanded in part sub nom, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied*, 530 U.S. 1210, *cert. dismissed*, 531 U.S. 975 (2000).

[16] *See Fifth Circuit Remand Order*.

[17] *See id*.

3. Other Deregulatory Initiatives

12. In response to the 2005 hurricane season, the Bureau granted Special Temporary Authority (STA) and waivers from the structural separation requirements of section 272 and the Commission's network disclosure rules in order to allow carriers to engage in disaster recovery. Specifically, in response to Hurricane Katrina, the Bureau granted BellSouth an STA for a 120-day period to enable it to use its corporate network in its entire region without complying with section 272 and the Commission's rules implementing section 272.[18] The Bureau also provided relief from compliance with section 272 to the extent that such compliance was a condition precedent to BellSouth's authority to carry in-region, interLATA traffic within its region under section 271.[19] In response to Hurricane Rita, the Bureau granted SBC similar relief, limited to 45 days, from section 272 and the Commission's rules governing compliance with section 272.[20] With respect to the Commission's network disclosure rules, the Bureau granted BellSouth a 180-day waiver of the prior notice and waiting period requirements of sections 51.325-51.335 in order to allow BellSouth to make necessary network changes in response to Hurricane Katrina.[21] In addition, the Bureau extended certain routine filing deadlines for carriers in the affected areas, allowing carriers time to focus on such immediate needs as restoring service to customers.[22]

13. Since then, the Bureau has been working with industry to ensure that carriers have the necessary flexibility to plan for and respond quickly to hurricanes and other disaster situations that may arise in the future. In March and April 2006, the Bureau received petitions from AT&T, BellSouth, Verizon, and Qwest seeking STA and waiver of the Commission's structural separation requirements and network disclosure rules to support integrated disaster planning and response. On April 20, 2006, the Bureau granted AT&T's petition, providing for a limited STA and waiver of the rules.[23] An order granting comparable relief to Verizon, BellSouth, and Qwest was adopted and released on June 9, 2006.[24]

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[18] *Joint Application by BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Florida and Tennessee,* Order, WC Docket No. 02-307, Order, 20 FCC Rcd 14657,14659 para. 4 (WCB 2005) (*BellSouth STA Order*).

[19] *BellSouth STA Order* 20 FCC Rcd at 14659, para. 4.

[20] *See Application by SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Order, 20 FCC Rcd 14832, 14835 para. 4 (WCB 2005) (*SBC STA Order*).

[21] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Order, 20 FCC Rcd 14713 (WCB 2005) (*Network Disclosure Waiver Order*).

[22] *See, e.g.*, *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up; Federal-State Joint Board on Universal Service*, CC Docket Nos. 02-6, 96-45, WC Docket Nos. 02-60, 03-109, Order, DA 05-2484 (rel. Sept. 21, 2005) (permitting State commissions, carriers, and program beneficiaries in the affected areas of Louisiana, Mississippi, and Alabama to postpone filing certain USF forms, payments and data for a period of up to 150 days); *Commission Extends Form 477 Filing Deadline For Entities Operating In Alabama, Louisiana and Mississippi*, WC Docket No. 04-141 Public Notice, 20 FCC Rcd 14495 (2005) (extending Form 477 filing deadline by 60 days).

[23] *Petition of AT&T Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response*, WC Docket No. 06-63, Order, 21 FCC Rcd 4306 (WCB 2006).

[24] *Petitions of BellSouth Corporation, Verizon, and Qwest Communications International Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response*, WC Docket No. 06-63, Order, 21 FCC Rcd 6518 (WCB 2006).

14. In various proceedings, the Commission made it easier for filers, including small entities, to comply with the Commission's filing requirements. For Form 477, the Commission allowed filers to file certification statements by email and facsimile and eliminated the requirement that filers provide redacted versions of their filings.[25] The Commission also eased filing requirements for Form 43-02, the Uniform System of Accounts (USOA) Report, Table C-5, by requiring carriers to file annual SEC 10K reports with the Commission electronically, rather than by paper copy.[26] Finally, in Form 499A, the Commission made it easier for state and local governmental entities to identify themselves as tax exempt, whereas previously these small governmental entities were required to send a letter to the Commission certifying their IRS tax-exempt status.[27]

IV. SUMMARY OF BIENNIAL REGULATORY REVIEW

15. This Staff Report is the product of the Bureau's thorough review of the Commission's regulations pertaining to wireline telecommunications that are implicated by section 11. The Bureau has continued to pursue efforts to streamline its rules in keeping with prevailing competitive conditions. The WCB staff's recommendations in this Report are the latest step in this process and are intended to assist the Commission in carrying out its mandate under section 11 that it identify and modify or eliminate unnecessary or outdated rules, while preserving those regulations that continue to be necessary in the public interest. The Bureau recommends that the Commission initiate proceedings to modify or eliminate rules as set forth herein.

16. Based on its careful consideration of the comments received and the staff's 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 or other proceedings, or are under consideration by the Federal-State Joint Conference on Accounting (Joint Conference) 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, or may be necessary in the public interest but merit further consideration. In such cases, we recommend that any Commission action should occur after the resolution or recommendations in those contexts. In some cases, we recommend that the Commission initiate a proceeding to address our findings.

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[25] *Local Telephone Competition and Broadband Deployment*, WC Docket No. 04-141, Report and Order, FCC Rcd 22340, 22353, para. 25. Filers instead may now request confidential treatment of their data by using a drop-down box located on Form 477's first page. *See* Form 477 available at http://www.fcc.gov/Forms/Form477/477.xls.

[26] *In re Revision of ARMIS Annual Summary Report (FCC Report 43-01), ARMIS USOA Report (FCC Report 43-02), ARMIS Joint Cost Report (FCC Report 43-03), ARMIS Access Report (FCC Report 43-04), ARMIS Service Quality Report (FCC Report 43-05), ARMIS Customer Satisfaction Report (FCC Report 43-06), ARMIS Infrastructure Report (FCC Report 43-07), ARMIS Operating Data Report (FCC Report 43-08), ARMIS Forecast of Investment Usage Report (FCC Report 495A), and ARMIS Actual Usage of Investment Report (FCC Report 495B) for Certain Class A and Tier 1 Telephone Companies*, CC Docket No.86-182, Order, 20 FCC Rcd 1048, 1050, para. 5 (2004).

[27] *See* current Form 477 Instructions at 11, available at http://www.fcc.gov/Forms/Form477/477instr.pdf. *See also* Form 477 Frequently Asked Questions (FAQs) at #25, available at http://www.fcc.gov/broadband/broadband_data_faq.html. State and local governmental entities may now identify their IRS status on line 604 of the revised form. *See* Form 499A available at http://www.fcc.gov/Forms/Form499-A/499a0706.pdf.

17. *Rules that are necessary in the public interest*. As explained more fully in attached Appendix I, WCB staff recommends that the Commission take no action to modify or eliminate rules in Parts 1, Subpart E, 52, 59, 63, 65, and 68. The staff recommends that there be no modification or elimination of the rules in Parts 42 or 64, except to the extent discussed in Appendix I.

18. *Rules subject to ongoing action*. The Joint Conference and the Commission already are examining specific aspects of Part 43 of the Rules raised by commenters.[28] The Joint Conference and the Commission will continue to examine those issues in response to the Notice of Proposed Rulemaking regarding the Joint Conference's recommendation. In addition, WCB Staff recommends that the Commission consider modification or elimination of other sections in existing proceedings.[29]

19. *Initiate a rulemaking proceeding*. WCB staff recommends that the Commission initiate a rulemaking proceeding to consider whether the public interest would be served by modifications to rule sections 42.4, and 51.333, and the repeal of Part 64, Subpart A.

20. *Eliminate regulations.* WCB staff recommends that the Commission eliminate rule sections 1.5000-1.5007.

[28] *Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd 19911, 19984-89, paras. 205-217 (2001).

[29] As discussed in Appendix I below, WCB Staff recommends that the Commission consider in the context of existing rulemaking proceedings changes to Part 32, 36, 51, 53, 54, 61, Part 64, Subparts G, I and T, and Part 69. The staff believes that these rules may still be in the public interest, but merit further consideration.

APPENDIX I: RULE PART ANALYSIS

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

Description

Sections 1.771 to 1.774 of Part 1 set out essential information about tariff filings and petitions for pricing flexibility.[30] Detailed tariff filing requirements are provided in Part 61 of the Commission's rules. Sections 1.785 to 1.795 of Part 1 apply to financial and accounting reports and requests filed by carriers and affiliates.[31]

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).[32] 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.[33]

Additionally, since 1994, common carrier licensees or permittees have been able to use FCC Form 395 to report incidents of employment-related discrimination complaints. An annual employment-related discrimination report must be filed by *all* common carrier licensees or permittees regardless of the number of employees, pursuant to sections 22.321(c), 23.55(d), 101.4 and 101.311 of the Commission's rules. Pursuant to these requirements, any complaint filed against any subject company 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.

Purpose

Sections 1.771 to 1.774 and 1.785 to 1.795 are procedural rules that facilitate the Commission's and staff's review of carriers' tariff filings, pricing flexibility filings, and financial and accounting reports. Section 1.815 enables the Commission to monitor the employment practices of larger common carrier licensees and permittees for evidence of discriminatory behavior that would be incompatible with the carrier's operation in the public interest.

Analysis

Status of Competition

Not applicable.

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[30] 47 C.F.R. §§ 1.771-1.774.

[31] 47 C.F.R. §§ 1.785-1.795.

[32] 47 C.F.R. § 1.815.

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

Recent Efforts

In the 2002 Biennial Review NPRM, the Commission sought comment on whether the information collected from FCC Form 395 is necessary to identify or address issues relating to unlawful discrimination by common carriers, given the availability of similar information from other sources.[34] After reviewing the comments submitted in response to the *2002 WCB Biennial NPRM,* the Commission concluded, in the *2002 Biennial Review R&O*, that the requirement that common carriers file FCC Form 395 on an annual basis remains necessary in the public interest and that repeal or modification of this rule was not warranted.[35]

Comments

No party filed comments addressing Part 1, Subpart E.

Recommendations

WCB staff finds that the requirements in sections 1.771 to 1.774 and the financial and accounting reports and requests under sections 1.785 to 1.795 provide essential information that the Commission and staff rely on in the administration of their responsibilities. Accordingly, pursuant to our Section 11 biennial review, we do not find that these rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Therefore, WCB staff recommends maintaining sections 1.771 to 1.774 and 1.785 to 1.795 of Part 1 of the Commission's rules.

As the Commission stated in the *2002 Biennial Review R&O*, information submitted pursuant to the FCC Form 395 continues to be useful for monitoring workplace diversity on a company-specific as well as on an industry-wide basis. Also, this requirement continues to be useful for providing the Advisory Committee on Diversity for Communications in the Digital Age access to information that could materially contribute to its mission, which is to make recommendations to the Commission regarding policies and practices that will further enhance the ability of minorities and women to participate in telecommunications and related industries. Accordingly, the WCB staff does not find that this requirement is "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service," and we recommend 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.

[34] *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, Notice of Proposed Rulemaking, WC Docket No. 02-313, 19 FCC Rcd 764, 766, para. 6 (2004) (*2002 WCB Biennial NPRM*).

[35] *See Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, Report & Order, FCC 06-86 (rel. Aug. 21, 2006), at paras. 4-5 (*2002 Biennial Review R&O*), *corrected by* Erratum (WCB rel. Sept. 19, 2006).

PART 1, SUBPART T – EXEMPT TELECOMMUNICATIONS COMPANIES

Description

In September 1996, the Commission adopted sections 1.5000-1.5007 of the rules to implement Section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA 1935).[36] Section 34 of the PUHCA 1935 vested the Commission with jurisdiction to determine whether a company warrants exempt telecommunications company status based on specific statutory criteria. Sections 1.5000-1.5007 of our rules establish the procedures for applying for and grant of exempt telecommunications company status, as well as notification and comment and reply procedures for such applications.

On August 8, 2005, the President signed the Energy Policy Act of 2005 (EPAct 2005) into law, repealing the PUHCA 1935 and enacting the Public Utility Holding Company Act of 2005 (PUHCA 2005) in its place.[37] Congress further directed the Federal Energy Regulatory Commission (FERC) to issue final regulations and submit further recommendations to Congress four months after the date of enactment.[38] The EPAct 2005 makes no mention of exempt telecommunications companies, nor any relevant mention of telecommunications as they relate to exempt telecommunications company status, and the PUHCA 2005, which replaces PUHCA 1935, does not address exempt telecommunications companies at all.

Purpose

Section 103 of the Telecommunications Act of 1996 (1996 Act) added Section 34(a)(1) to the PUHCA 1935. Prior to the 1996 Act, the provisions of PUHCA 1935 deterred entry into the telecommunications industry by registered public utility holding companies. The new section 34(a)(1) allowed public utility holding companies to enter the telecom industry without prior Securities and Exchange Commission (SEC) approval by acquiring or maintaining an interest in an exempt telecommunications company.

Analysis

Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial

[36] *See Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as added by Section 103 of the Telecommunications Act of 1996*, GC Docket No. 96-101, Report and Order, 11 FCC Rcd 11377 (1996); *see also* 47 C.F.R. §§ 1.5000-1.5007.

[37] *See Energy Policy Act of 2005*, Pub. L. No. 109-58, 119 Stat. 594.

[38] *I.e.*, by December 2005. FERC has released several items to seek comment on, and issue and review regulations in response to PUHCA 2005. *See Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Docket No. RM05-32-000, Notice of Proposed Rulemaking, 112 FERC P 61300, 2005 WL 2250793 (Sept. 16, 2005); *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Docket No. RM05-32-000, Order No. 667, 113 FERC P, 61248, 2005 WL 3450593 (Dec. 8, 2005); *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Docket No. RM05-32-001, Order No. 667-A, Order on Rehearing, 115 FERC P 61096, 2006 WL 1068266 (April 24, 2006); *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Docket No. RM05-32-002, Order No. 667-B, Order on Rehearing, 116 FERC P 61073, 2006 WL 2038707 (July 20, 2006).

Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

The Bureau received a filing updating the status of a current exempt telecommunications company in July 2006, which also notified the Bureau of the repeal of the PUHCA 1935.[39]

Comments

No party filed comments addressing Part 1, Subpart T.

Recommendations

WCB staff believes that sections 1.5000-1.5007 of the rules are no longer necessary in the public interest, although for reasons outside of the scope of section 11: they were adopted to implement a section of the PUHCA 1935, which Congress repealed in 2005. The superseding act, PUHCA 2005, does not revive the section of the PUHCA 1935 that our rules implement. Staff therefore recommends that sections 1.5000-1.5007 of the rules be eliminated.

[39] Letter from F.J. Buri, Corporate Secretary, Alliant Energy Corporation, to Marlene H. Dortch, Secretary, FCC, re: LNT Communications LLC – Notice to Cease Status as ETC Under Section 34(a)(1) of PUHCA 1935, per 47 C.F.R. § 1.5006(c) (dated July 18, 2006).

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.[40] Part 32 of the Commission's rules implements the requirements of section 220 and contains the Uniform System of Accounts (USOA) for incumbent LECs.[41] 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 regulatory 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.

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

Purpose

The USOA operates as a nonstructural safeguard to prevent an incumbent LEC from exercising its market power.[42] 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 cost-shifting and cross-subsidization. Because the USOA incorporates Generally Accepted Accounting Principles (GAAP), Part 32 reduces the carriers' cost of complying with the Commission's rules.

Analysis

Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act.

[40] 47 U.S.C. § 220.

[41] 47 C.F.R. Part 32.

[42] *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).

Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 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.[43] The Commission adopted some of the recommendations that resulted in rule revisions but sought to retain certain rules, including the affiliate transactions rules, which allow both the states and the Commission to carry out their statutory oversight responsibilities. On February 15, 2005, the Commission extended the Joint Conference until March 1, 2007, providing additional time for its examination of accounting and reporting issues. In addition, the Commission is also presently examining a number of Part 32 rules in other proceedings.[44]

Comments

USTelecom urges the Commission to revise section 32.26 by establishing a materiality threshold consistent with GAAP. USTelecom contends this "would enable ILECs and their auditors to more efficiently prepare and audit ILEC accounts, and would result in a more useful product for the Commission and its staff."[45] USTelecom also advocates the elimination of section 32.27, governing valuations of services and assets transferred between regulated and non-regulated affiliates.[46] USTelecom asserts that: (1) customers expect bundles of services that require inputs from affiliates; (2) affiliate transaction rules involve cost allocations that may negatively affect their ability to price these services in a competitive market; and (3) competition has removed any cost-shifting and cross-subsidy concerns.[47] AT&T and Verizon also assert that the Part 32 affiliate transactions rules are outdated regulatory requirements that should be eliminated.[48]

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[43] *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, 19 FCC Rcd 11732 (2004) (*Joint Conference on Accounting Order*).

[44] *See, e.g.*, *BellSouth Telecommunications, Inc. Petition for Forbearance From the Commission's Cost Assignment Rules*, WC Docket No. 05-342, Public Notice, 20 FCC Rcd 19873 (2005) (*BellSouth Cost Allocation Forbearance Proceeding*); *Petition of BellSouth Corporation, AT&T Inc., and Qwest Corporation Requesting Modification of RAO Letter12,* WC Docket No. 05-352, Public Notice, 21 FCC Rcd 72 (2006) (*RAO Letter 12 Modification Proceeding*).

[45] USTelecom Comments at 11-12; USTelecom Reply at 3 (also referencing 47 C.F.R. §§ 64.903-64.904 to the extent they relate to the affiliate transaction rule).

[46] USTelecom Reply at 3. USTelecom also argues that section 32.9000 (glossary of terms) should be modified to the extent it is affected by its proposed rule changes. USTelecom Reply at 3.

[47] USTelecom Comments at 10 ("For example, even where there is a clear market price for a service that is transferred from one affiliate to another, that price cannot automatically be used for regulated affiliate transfer (continued….)

Recommendations

WCB staff notes that the Commission is already considering revisions to section 32.26 in a proceeding in which BellSouth, AT&T, and Qwest seek modification of Responsible Accounting Officer (RAO) Letter 12 to eliminate the $1 million materiality threshold applicable to Joint Cost audits and ARMIS filings.[49] Based on comments filed in this Biennial Review proceeding, the staff believes that this rule as implemented through RAO Letter 12 may not be necessary in the public interest as a result of competition and recommends that the Commission consider revising the rule in the pending proceeding. The staff also recommends that the Biennial Review comments regarding this rule be incorporated into the Commission's pending proceeding.

With respect to the Part 32 affiliate transaction rules, the staff notes that these rules are the subject of several pending proceedings, including several forbearance proceedings.[50] Based on its review of the rules and the comments in this Biennial Review proceeding, staff believes that the Part 32 affiliate transaction rules require further review to determine whether they are necessary in the public interest in their current form. Staff recommends that in the context of the records in the pending *BOC Post Sec. 272 "Sunset" Petition* proceedings the Commission consider whether, in connection with the affiliate transaction rules, these rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in the pending proceedings.

(Continued from previous page)
pricing. Rather, transfers of services from a non-regulated affiliate to a regulated affiliate must be priced at the higher of cost or market value, and transfers in the other direction be priced at the lower of cost or fair market value.") (citing 47 C.F.R. § 32.27(b), (c) and asserting that net book cost is used for assets and the tariffed rate or fully distributed cost for services)).

[48] AT&T Reply at 8-9; Verizon Reply at 8.

[49] *RAO Letter 12 Modification Proceeding,* 21 FCC Rcd 72.

[50] *See, e.g.*, *RAO Letter 12 Modification Proceeding* 21 FCC Rcd 72; *BellSouth Cost Allocation Forbearance Proceeding* 20 FCC Rcd 19873. *See also BellSouth Corporation's Petition for Waiver*, WC Docket No. 05-277, Public Notice, 20 FCC Rcd 15277 (2005) (*BellSouth Post Sec. 272 "Sunset" Waiver Proceeding*); *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Public Notice, 21 FCC Rcd 6862 (2006) (*AT&T Post Sec. 272 "Sunset" Forbearance Proceeding*); *Petition of the Verizon Local and Long Distance Telephone Companies for Interim Waiver with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services; Petition of the Verizon Local and Long Distance Telephone Companies for Forbearance under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-56, Public Notice, 21 FCC Rcd 2924 (2006) (*Verizon Post Sec. 272 "Sunset" Interim Waiver or Forbearance Proceeding*) (*see also* Memorandum of Points and Authorities in Support of Verizon's Petitions for Interim Waiver or Forbearance); *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply after Section 272 Sunset Pursuant to 47 U.S.C. § 160*, WC Docket No. 05-333, Public Notice, 20 FCC Rcd 19389 (2005) (*Qwest Post Sec. 272 "Sunset" Forbearance Proceeding*) (collectively "*BOC Post Sec. 272 Sunset Petition Proceedings"*) (to the extent these carriers seek relief from Part 32 rules).

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, reserves, operating revenues, and other income 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[51]

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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

[51] Part 36, Subpart F of the Commission's rules details the calculation of high-cost loop support for rural local exchange carriers (LECs) and the data required to receive such support. *See* 47 C.F.R. Part 36, Subpart F. Part 54 of the Commission's rules establish a comprehensive framework for the implementation of Sections 214(4)(e) and 254 of the Act, which, among other things, direct the Commission to establish specific, predictable and sufficient mechanisms to preserve and advance universal service. *See* 47 U.S.C. §§ 214(e) and 254; 47 C.F.R. Part 54. *See also* pp. 38-43, *infra* (discussing Part 54 of the Commission's rules in detail).

Recent Efforts

Jurisdictional Separations. On May 15, 2006, the Commission adopted an Order extending, on an interim basis, the existing freeze of Part 36 category relationships and jurisdictional cost allocation factors, which allowed the Commission to provide stability for carriers that must comply with the Commission's separations rules while the Commission considers issues related to comprehensive, permanent reform of the jurisdictional separations process.[52] The Commission also adopted a Further Notice of Proposed Rulemaking seeking comment on issues related to reform of the jurisdictional separations process, including several proposals submitted to the Commission since its adoption of the *2001 Separations Freeze Order*.[53]

High Cost. On June 28, 2004, the Commission adopted the *Rural Referral Order*, which asked the Federal-State Joint Board on Universal Service (Universal Service Joint Board) to review what changes, if any, should be made to high-cost support for rural carriers at the end of the *Rural Task Force* plan.[54] Pursuant to the *Rural Referral Order*, the Universal Service Joint Board has issued three Public Notices seeking comment on high-cost support for rural carriers. In the first Public Notice, issued in August 2004, the Universal Service Joint Board sought comment on a range of related issues, including the definition of a rural carrier, whether rural carriers should receive support based on embedded costs or forward-looking cost estimates, whether carriers should be required to consolidate multiple study areas for the purpose of calculating universal service support, and whether the Commission should modify section 54.305 of its rules, which provides that carriers acquiring exchanges receive support for those exchanges based on the exchanges' pre-transfer level of support.[55] In August 2005, the Universal Service Joint Board issued a Public Notice seeking comment on several proposals developed by state Universal Service Joint Board Members and staff, including one based on NARUC's proposal in the Intercarrier Compensation proceeding that would delegate significant authority to the states to determine how federal universal service should be distributed.[56] In August 2006, the Universal Service Joint Board sought comment on the merits of reverse auctions to determine high-cost support levels.[57]

Also, on May 16, 2006, the Commission extended the high-cost universal service support rules adopted in the *Rural Task Force Order* on an interim basis until the Commission concludes its rural review proceeding and adopts changes, if any, to those rules as a result of that proceeding.[58]

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[52] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Order and Further Notice of Proposed Rulemaking, CC Docket No. 80-286, 21 FCC Rcd 5516 (2006) (*Separations Freeze Extension Order and FNPRM*).

[53] *See id*.

[54] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538 (2004) (*Rural Referral Order*). *See also* pp. 38-43, *infra* (discussing the Commission's Part 54 universal service rules).

[55] *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16083 (2004)(*RTF Plan Extension Order*).

[56] *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 14267 (2005).

[57] *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 9292 (2006).

(continued….)

Comments

No party filed comments addressing Part 36, subpart F.[59]

Recommendation

The staff notes that issues related to Part 36 are under review in the *Separations Freeze FNPRM* and believes that possible changes to Part 36 rules are within the scope of the review contemplated by that Notice. Because rules in Part 36 enable the Commission to regulate interstate communications consistent with the dual federal-state system in the Act, WCB staff concludes that Part 36 remains necessary in the public interest, in some form, but merits further consideration for possible amendment. Staff recommends that the Commission consider, in the context of the record in the *Separations Freeze FNPRM* proceeding, whether the Part 36 rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in the pending *Separations Freeze FNPRM* proceeding.

(Continued from previous page)

[58] *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514 (2006).

[59] Although the Navajo Nation Telecommunications Regulatory Commission (NNTRC) identified Part 36 in its comments, the issues referred to are more appropriately addressed in connection with Part 54. *See* NNTRC at 2, 4.

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. 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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

As part of the 2002 Biennial Regulatory Review, the Commission initiated a Notice of Proposed Rulemaking (NPRM) seeking comment on whether there are reasonable and less costly alternatives to the

current Part 42 rules that would ensure that accurate carrier records are kept and maintained.[60] In 2006, the Commission released a Report and Order in response to the NPRM, finding that the elimination or modification of Part 42 was not warranted at that time.[61]

Comments

USTelecom suggests revising the Part 42 recordkeeping rules to take into account modern electronic document management techniques. In particular, USTelecom argues that the Commission should eliminate the requirement mandating the location where carriers must keep their records in Rules 42.4 and 42.10, and revise the rules to permit carriers to satisfy disclosure obligations solely via Internet posting.[62]

With specific regard to section 42.10, USTelecom contends that "[t]he text of the rule suggests that non-dominant IXCs . . . keep a physical, hard copy of information concerning rates, terms, and conditions, *in addition* to any information the carrier may make available on an Internet Web site."[63] USTelecom contends that "[s]uch a requirement is redundant and, therefore, unnecessary."[64] Further, USTelecom asserts that "[t]he Web has become a primary medium through which service providers communicate with customers, and all carriers today have Web sites pursuant to which they provide service information to consumers on a much more convenient basis than traveling to an IXC . . . ."[65] Verizon, meanwhile, asks the Commission to eliminate the requirement that non-dominant carriers update their websites within 24 hours after the effective date of a change in the rates, terms, or conditions of a service that results from negotiated agreements with large business and government customers.[66] Verizon contends that "[l]arge business and government customers . . . do not obtain rates and terms they like by shopping carriers' posted rates and terms; instead they demand and receive individually negotiated deals that meet their individual needs, largely through formal bidding processes."[67] Verizon contends that "the requirement to post rates, terms, and conditions for these customers does not serve a useful purpose, [and] there are no benefits that outweigh the costs imposed by the regulations."[68]

Recommendation

[60] *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).

[61] The Commission concluded that current Part 42 record retention requirements assist the Commission to carry out its regulatory responsibilities and therefore continue to be necessary in the public interest at this time. *See 2002 Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, Report and Order, FCC 06-86, para. 18-21 (2006).

[62] *See* USTelecom Comments at 15-16.

[63] *Id.* at 16 (emphasis in original).

[64] *Id.*

[65] *Id.*

[66] Verizon Comments at 36.

[67] *Id.*

[68] *Id.*

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 therefore does not find, with the exception of section 42.4 discussed below, that these rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore recommends that the Part 42 rules should not be eliminated or modified at this time.

In adopting the public disclosure requirements of section 42.10, the Commission sought to balance the burden on non-dominant carriers of providing service and rate information with the ability of consumers to have ready access to this information in a detariffed and competitive environment. In the *Second Order on Reconsideration*, the Commission stated that a public disclosure requirement is necessary in a competitive market to make certain that non-dominant IXCs provide complete information about the rates, terms, and conditions of their interstate, domestic, interexchange services to enable customers to bring to the Commission's attention violations of the Communications Act and to choose the calling plans that best meet their needs.[69] In 1996, the Commission required non-dominant IXCs to disclose to the public information about all of their interstate, domestic, interexchange services in an easy to understand format, in a timely manner, and in at least one location during regular business hours.[70] In order to minimize the burden on IXCs, the Commission did not require carriers to make rate and service information available in any particular format or at any particular location. The Commission did, however, encourage the carriers to consider ways to make this information more widely available to the public, including posting information on-line, mailing relevant information to consumers, or responding to inquiries over the telephone.[71] In 1999, the Commission required carriers that had Internet websites to post rate and service information at their websites in a timely and easily accessible manner.[72] In 2000, the Common Carrier Bureau required Internet websites and public disclosure sites to be updated no later than 24 hours after the effective date of a change in the rates, terms, or conditions of a detariffed service.[73] In clarifying that the disclosure and web-posting requirements apply to individually negotiated contract services as well as to mass-market offerings, the Bureau reiterated the objective of publicly disclosing information regarding *all*

[69] *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004, 6009, para. 9 (*Second Order on Reconsideration*) (citing *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20745-46, para. 25 (1996) (*Second Report and Order*)).

[70] *Second Report and Order*, 11 FCC Rcd at 20776-77, paras. 84, 86; *see also Second Order on Reconsideration*, 14 FCC Rcd at 6009-10, para. 9. The Commission eliminated the public disclosure requirement through the *Order on Reconsideration* but reestablished it in the *Second Order on Reconsideration. Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Order on Reconsideration, 12 FCC Rcd 15014, 15047-54, paras. 59-73 (1997) (*Order on Reconsideration*); *Second Order on Reconsideration*, 14 FCC Rcd at 6007, 6015, paras. 4, 18.

[71] *Second Order on Reconsideration*, 14 FCC Rcd at 6010, para. 9 (citing *Second Report and Order,* 11 FCC Rcd at 20773-78, paras. 78-87).

[72] *Second Order on Reconsideration*, 14 FCC Rcd at 6015-16, para. 18. Carriers that did not have Internet websites were exempted from this requirement to avoid imposing undue burdens on them. *Id*.

[73] *Policy and Rules Concerning the Interstate, Interexchange Marketplace,* CC Docket No. 96-61, Order, 15 FCC Rcd 22321, 22322, 22328, paras. 1, 17 (Com.Carr.Bur. 2000) (*2000 Bureau Order*).

services.[74] In addition, WCB staff notes that the Commission found in the *2000 Biennial Review Report* that the 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.[75] USTelecom argues for carrier disclosure solely through the Internet, asserting that all carriers today have websites. USTelecom does not provide evidence of this or, perhaps more significantly, that all consumers have readily available Internet access. We find USTelecom's unsupported arguments unpersuasive.

Further, we disagree with Verizon's contention that there is no benefit to large business and government customers when Verizon posts updated rates of detariffed services and contracts on the web. The Commission has specifically declined to exempt individually negotiated contracts from its public disclosure requirements, explaining that information about services and rates should be made available to consumers in the business and residential mass market. For example, in clarifying that the disclosure and web-posting requirements apply to individually negotiated contract services as well as to mass-market offerings, the Bureau reiterated the objective of publicly disclosing information regarding *all* services.[76] In conclusion, WCB staff finds that section 42.10 and its related requirements are necessary in the public interest and that repeal or modification is not warranted at this time.

With respect to section 42.4, however, WCB staff believes that USTelecom's concerns have some merit. Given that the focus of section 42.4 is ensuring Commission access to the master index of a carrier's records, we recommend that the Commission initiate a proceeding to consider revising section 42.4 to eliminate the requirement that carriers maintain that index at their operating company headquarters, so long as the master index remains accessible to the Commission for review upon request.

[74] *Id.* at 22321, 22328-29, paras. 1, 20 (citing *Second Order on Reconsideration*, 14 FCC Rcd at 6013-15, para. 16 n.60; *Second Report and Order*, 11 FCC Rcd at 20776-77, paras. 84-86).

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

[76] *2000 Bureau Order*, 15 FCC Rcd *at* 22321, 22328-29, paras. 1, 20 (citing *Second Order on Reconsideration*, 14 FCC Rcd at 6013-15, para. 16 n.60; *Second Report and Order*, 11 FCC Rcd at 20776-77, paras. 84-86).

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.[77] Section 219 authorizes the Commission to require all carriers that are subject to the Act to file annual reports with the Commission.[78] Section 220 allows the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers.[79]

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.[80]

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.[81] 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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act.

[77] 47 U.S.C. § 211. Section 211 also permits the Commission to require the filing of any other contracts.

[78] 47 U.S.C. § 219.

[79] 47 U.S.C. § 220.

[80] *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).

[81] 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 file depreciation change reports.

Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent 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."[82] 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.[83] On June 24, 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*.[84] The Commission also is considering a pending review of its accounting and ARMIS reporting procedures in Phase 3.[85] The Commission extended the Joint Conference until March 1, 2007 to review accounting and reporting issues that remain outstanding.[86]

Comments

USTelecom proposes eliminating the Part 43 reporting requirement associated with the rate of return filing requirements in Rule 65.600(d)(1) and (d)(2).[87] USTelecom also proposes eliminating additional Part 43 reporting requirements that it claims no longer serve legitimate regulatory objectives. Specifically, USTelecom argues that data measured in the ARMIS 43-05, Service Quality Report, should be collected by the states, not the Commission, and that the Commission should rely on formal complaints filed with the Commission and state commissions to measure customer satisfaction, instead of the ARMIS 43-06 Report.[88] USTelecom also argues that the Commission should eliminate the duplicative ARMIS 43-07 and

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

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

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

[85] *Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd 19911, 19984-89, paras. 205-217 (2001).

[86] *Federal-State Joint Conference on Account Issues*, WC Docket No. 02-269, Order, 20 FCC Rcd 3942 (2005).

[87] *See* USTelecom Comments at 12.

[88] *See* USTelecom Comments at 13.

43-08 reporting requirements, or simplify them by removing the collection of data that duplicates the data required under Form 477.[89] Finally, USTelecom proposes eliminating Rule 43.21(d)(1) and (2) requirements because the information contained in the ARMIS 495A and 495B reports required under these sections is generally redundant to the ARMIS 43-03 report. Finally, it contends that the reports required by Rules 43.21(f) and 43.21(k) are no longer necessary.[90]

AT&T agrees with USTelecom that the ARMIS 43-05 Service Quality Report, ARMIS 43-07 Infrastructure Report, and 43-08 Operational Report are outdated regulatory requirements and should be eliminated.[91] Verizon also supports USTelecom's assessment of the reporting requirements.[92]

Recommendation

WCB staff finds that Part 43 in its current form may no longer be necessary in the public interest as a result of competition between telecommunications service providers, but merits further consideration. The staff notes 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 of Part 43. The staff therefore recommends that the Commission await the recommendations of the Joint Conference before completing any action on these rules. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues currently under consideration by the Joint Conference.

[89] *See* USTelecom Comments at 13.

[90] *See* USTelecom Comments at 14.

[91] *See* AT&T Reply at 8-9.

[92] *See* Verizon Reply at 6.

PART 51 – INTERCONNECTION

Description

Part 51 implements sections 251 and 252 of the Communications Act of 1934, as amended.[93] 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.[94] 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 other requirements that apply to LECs.

[93] 47 U.S.C. §§ 251, 252.

[94] 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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

On September 16, 2005, the Commission partially granted a petition for forbearance filed by Qwest seeking relief from statutory and regulatory obligations that apply to it as the incumbent local telephone company in the Omaha-Council Bluffs, NE-IA Metropolitan Statistical Area (Omaha MSA).[95] With regard to section 251(c)(3) unbundling obligations for transmission facilities, the Commission granted Qwest relief in targeted wire center service areas where intermodal deployment is extensive. [96] On January 30, 2007, the Commission released an order granting similar relief to ACS of Anchorage, Inc.[97]

Comments

Carry-Over Equal Access Obligations Under § 251(g) of the Act

Several commenters ask the Commission to eliminate carry-over equal access obligations preserved by section 251(g) of the Act, particularly any requirements that LECs read lists of interexchange carriers to their customers.[98] For example, Verizon notes that the Commission opened an inquiry into the continued need for these restrictions more than four years ago and claims the case for elimination is even stronger now.[99] Verizon asserts that these obligations originated in the AT&T Consent Decree and were preserved by section 251(g) to ensure that the BOCs did not continue to favor AT&T after the break-up, and it notes that Congress expressly directed that the restrictions should continue only until superseded by the

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[95] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005).

[96] *Id*. at paras. 57-83.

[97] *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion & Order, FCC 06-188, 2007 WL 256302 (rel. Jan. 30, 2007).

[98] *See, e.g.,* Verizon Comments at 23; AT&T Reply at 2, 5 (citing Verizon's Comments); USTelecom Reply at 4.

[99] Verizon Comments at 23 (citing *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) (*Equal Access Notice of Inquiry*)).

Commission, calling them "interim restrictions and obligations."[100] Verizon contends that these regulations were designed for a world of separate local exchange and long distance providers, and no longer make sense today, as they complicate the design and deployment of networks based on new technologies. Moreover, Verizon asserts that these requirements impose inefficiencies on BOCs not faced by other competitors, and that stand-alone long distance service is becoming a fringe market.[101] Commenters argue that these regulations are no longer necessary in the public interest, and there is no justification for continuing to impose them.[102] COMPTEL opposes elimination of these equal access obligations, referencing its opposition to AT&T's Petition for Forbearance in WC Docket No. 06-120 as support.[103]

Network Change Disclosure Rules

BellSouth contends that the Commission should repeal or modify its Part 51 network change disclosure rules such that, when a carrier opts to provide public notice of such changes through the carrier's publicly-available Internet site, no subsequent carrier filings with the Commission or Bureau-initiated Public Notices (PNs) regarding network changes are needed.[104] BellSouth does not seek to modify the requirement that an incumbent LEC provide public notice at the time it decides to make or procure a new/changed network interface (section 51.331(b)); nor does it seek to eliminate the requirement, under the Commission's short-term notification procedures (sec. 51.333), that incumbent LECs serve every carrier affected by the proposed network change with a copy of the public notice. However, it argues that, if a carrier opts for the Internet notification method under section 51.329(a)(2), Bureau notifications and carrier filings under section 51.333(a) are unnecessary, costly, inefficient and redundant, and the Bureau should find that such additional filings are no longer necessary in the public interest and presumptively should be repealed, pursuant to *Cellco Partnership v. FCC.*[105]

BellSouth states that an incumbent LEC's ability to make a network change within six months is contingent on the Bureau's issuance of a PN under section 51.333(b) of the rules. BellSouth goes on to state, however, that incumbent LECs have no control over the timing of the Bureau's PN release; in BellSouth's experience, it generally takes four to five weeks for the Bureau to release the PN.[106] BellSouth argues that this uncertainty over timing inhibits efficient network planning. Furthermore, BellSouth states that all of its interconnecting carriers use the BellSouth interconnection website, and those carriers receive first notice of planned network changes from that website, rather than from public notices or filings through the Commission.[107] According to BellSouth, the Bureau's administration of duplicative filings and subsequent release of its own PN consume scarce agency resources, provide little or no value, and delay carrier

[100] Verizon Comments at 23-24 (citing H.R. Rep. No. 104-458, at 123 (1996)).

[101] Verizon Comments at 25-26 (citing *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18483-484, para. 92 (2005) (*Verizon/MCI Merger Order*).

[102] Verizon Comments at 25; AT&T Reply at 5; USTelecom Reply at 4.

[103] COMPTEL Reply at 4.

[104] *See* BellSouth Comments at 2-5.

[105] BellSouth Comments at 5-7 and n. 17; *Cellco Partnership v. FCC*, 357 F3d 88 (D.C. Cir. 2004) (*Cellco v. FCC*).

[106] BellSouth Comments at 2.

[107] BellSouth Comments at 5.

implementation.[108] It argues that elimination of the duplicative measures would leave other safeguards in place: the incumbent LEC would still be required to serve every affected carrier with a copy of the incumbent LEC's PN; and affected carriers would retain the right to file objections within ten days.[109]

BellSouth concedes that the Commission has expressed reluctance to conclude that Internet posting is a sufficient method of disclosure,[110] but it notes that the Commission has also acknowledged that network change disclosures may be unnecessarily complicated.[111] BellSouth notes, however, that it has posted and filed nearly 750 network change notices since January 12, 2004, all of which have been unopposed. According to BellSouth, this lack of opposition indicates that Internet public disclosure is sufficient.[112] Finally, BellSouth notes that incumbent LEC costs for these network change notices are exacerbated by the carriers' inability, under current rules, to file notice of network change documents electronically, despite the Commission's wide-ranging encouragement of electronic filings.[113] If the Commission opts to retain its current filing requirements instead of adopting these proposed modifications, BellSouth requests that the Bureau allow carriers to file electronically with the Commission by establishing a docket reserved for ongoing carrier network change modifications.[114]

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[108] BellSouth Comments at 6. USTelecom supports BellSouth's request that the Commission "eliminate duplicative and unduly burdensome paper filing of network change disclosures under Part 51." *See* USTelecom Reply at 3-4.

[109] BellSouth Comments at 6-7 and n.17.

[110] BellSouth Comments at 5, 6 (citing *Biennial Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, Notice of Proposed Rulemaking, 19 FCC Rcd 764, 770-771, paras. 19-20 (2004)(*2004 Biennial Review NPRM*) and *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, 17141, 17146-48, paras. 271, 281-84 (*Triennial Review Order*).

[111] BellSouth Comments at 6 (citing *Wireline Competition Bureau, Federal Communications Commission Biennial Regulatory Review 2002*, WC Docket No. 02-313, GC Docket No. 02-390, Staff Report, DA 03-804, at 38 (Dec. 31, 2002) ("*2002 WCB Staff Report"*); the 2002 Biennial Review Staff Reports are available at http://www.fcc.gov/biennial/).

[112] BellSouth Comments at 6.

[113] *See, e.g., Electronic Filing of Documents in Rulemaking Procedures,* GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998); *Electronic Tariff Filing System (ETFS),* DA 98-914, Order, 13 FCC Rcd 12335 (1998) (implementing mandatory electronic tariff filing); *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services; Amendment of the Amateur Service Rules to Authorize Visiting Foreign Amateur Operators to Operate Stations in the United States,* WT Docket Nos. 98-20 & 96-188; RM-8677, Report and Order, 13 FCC Rcd 21027 (1998) (implementing rule changes to allow full implementation of the Universal Licensing System and revising application forms to allow for electronic filing); *Wireless Telecommunications Bureau Announces Plans for Electronic Filing of FCC Form 602,* DA 02-1644 , Public Notice, 17 FCC Rcd 13476 (2002) (requiring electronic filing of Form 602 as of December 10, 2002); *Cingular, Nextel, and Verizon File Petitions For Reconsideration Of Commission Orders on Wireless E911Phase II Waiver Requests*, CC Docket No. 94-102, Public Notice, 16 FCC Rcd 20438, 20439 (2001) ("The Commission encourages all interested parties to employ the Commission's electronic filing system.").

[114] BellSouth Comments at 8, n.19. Under BellSouth's proposal, if the Commission repeals its own public notice procedure, every time an incumbent LEC uses its publicly accessible Internet site to post short term notices (continued….)

Opposing BellSouth's proposed rule change, COMPTEL argues that retention of the current rules is in the public interest. COMPTEL states that section 51.333(a) includes a carrier certification process that ensures that the appropriate notification was served on all affected parties. The section 51.333(b) notice requirement provides affected parties with a timetable and mechanism, as well as notice of their right to file an objection to such network changes.[115] It further states that BellSouth offers no competitive rationale for the modification of the rules proposed by BellSouth, as contemplated under Section 11. COMPTEL acknowledges that the timeframe for Bureau-issued PNs may be an issue which BellSouth should raise with the Commission, but it argues that timing concerns alone do not justify repealing the rule at issue.[116]

Total Element Long Run Incremental Cost (TELRIC) Rules

Verizon and USTelecom urge the Commission to eliminate or modify the rules related to Total Element Long Run Incremental Cost (TELRIC) pricing for Unbundled Network Elements (UNEs), sections 51.501-51.511.[117] Both parties argue that the rules were adopted in 1996 and do not reflect the state of competition since then.[118] Verizon and USTelecom assert that TELRIC is based on a hypothetical network instead of a real-world network, resulting in artificially low prices for leasing UNEs.[119] Verizon contends that this undermines incentives for all facilities-based competitors to invest in and deploy new technology and also handicaps facilities-based wireline carriers in intermodal competition.[120] Verizon argues that the TELRIC pricing rules should be reformed so that incumbent LECs may be compensated "for their actual forward-looking costs" in the provision of UNEs.[121] USTelecom also contends that prices for leasing network capacity from incumbent LECs should be based on market factors and negotiations among companies.[122] COMPTEL responds that the biennial review process is not the proper forum for reforming a cost methodology such as TELRIC.[123] Furthermore, it argues that the Commission already has an open proceeding to consider the TELRIC issue, and "[t]here is no reason to consider it in multiple proceedings."[124]

(Continued from previous page)
of network changes, it would continue to serve all affected carriers with notice of the network change, likely through instantaneous email notification. *Id*. at 6-7 and n.17.

[115] COMPTEL Reply at 4.

[116] COMPTEL Reply at 4.

[117] Verizon Comments at 37-40; USTelecom Reply at 5-6; 47 C.F.R. §§ 51.501 – 51.511.

[118] Verizon Comments at 37-40; USTelecom Reply at 5-6.

[119] Verizon Comments at 38; USTelecom Reply at 5-6.

[120] Verizon Comments at 38, 40.

[121] *Id.* at 39.

[122] USTelecom Reply at 5.

[123] COMPTEL Reply at 3.

[124] *Id.* (citing *The 2002 Biennial Regulatory Review,* GC Docket No. 02-390, Report, 18 FCC Rcd 4726, 4729, para. 10 (adopted Dec. 31, 2002) ("[I]f a rule applies to the operations or activities of telecommunication service providers and was promulgated under the Communications Act, it is within the scope of our Section 11 review. This is true regardless of whether it is also the subject of a pending rulemaking proceeding. Even in that case, the Commission would still need to make the statutorily required *determination* about the continued need for the particular rule. This does not mean, however, that the Commission must commence multiple proceedings. As a (continued….)

Recommendation

As set forth below, Staff finds that some of the Part 51 rules, in their current form, may no longer be necessary in the public interest as the result of meaningful economic competition between providers of telecommunications service.

WCB staff notes that the Commission has initiated the *Equal Access Notice of Inquiry* proceeding regarding the issue of carry-over equal access obligations preserved by section 251(g) and believes that the proposed rule changes are within the scope of the review contemplated by that notice.[125] Based on the comments filed in this Biennial Review proceeding, the staff believes that the rules in their current form may not be necessary in the public interest as the result of competition between providers of telecommunications service and recommends that the Commission consider revising the rules in its pending proceeding. The staff also recommends that the Biennial Review comments of Verizon and COMPTEL addressing these rules be incorporated into the Commission's pending proceeding. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in pending proceedings.

Regarding network change disclosure rules, WCB staff observes that disclosure of network changes facilitates network compatibility between incumbent LECs and other carriers and thus serves the Act's pro-competitive goals. As BellSouth itself concedes, the Commission has previously expressed reluctance to conclude that Internet posting is a sufficient method of disclosure for network changes. Given the Commission's acknowledgement that network change disclosures may be unnecessarily complicated, however, and based on its review of the rule and the comments in this proceeding, staff believes that although the rule generally may still be necessary in the public interest, the modifications to the rule proposed by BellSouth merit further consideration. WCB staff therefore recommends that the Commission initiate a rulemaking to consider BellSouth's proposed modifications of section 51.333.

With respect to the TELRIC pricing rules, the Commission has concluded that these rules in their current form may no longer be "necessary in the public interest" and accordingly has instituted a rulemaking proceeding to modify them. The staff notes that the Commission has issued a Notice of Proposed Rulemaking to examine and review UNE pricing and resale pricing rules and believes that commenters' proposed rule changes are within the scope of the review contemplated by that Notice.[126] The staff recommends that the Biennial Review comments regarding these rules be incorporated into the Commission's pending proceeding. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in pending proceedings.

(Continued from previous page)
practical matter, where the Commission concludes that a rule in its current form is no longer necessary in the public interest, the pending rulemaking, depending on its scope, could serve as the appropriate vehicle to consider modification or repeal of that rule under Section 11(b).").

[125] *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) (*Equal Access Notice of Inquiry*). 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." The comment period for the *Equal Access Notice of Inquiry* closed on June 10, 2002. *Id.* at 4015-16.

[126] *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, Notice of Proposed Rulemaking, 18 FCC Rcd 18945 (2003).

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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

On October 7, 2003, the Commission released the *Telephone Number Portability Memorandum Opinion and Order*, which concluded, 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.[127] 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.[128] 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.[129] The Further Notice also sought comment on whether the Commission should require carriers to reduce the time interval for intermodal porting.[130] 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.[131] The Commission also sought comment on implementation issues in the event that a shorter time interval for intermodal porting is adopted.

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.[132] 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.[133] In addition, on April 13, 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.[134] On May 14, 2004, the Commission sought

[127] *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order, 18 FCC Rcd 29071 (2003) (*Wireless Porting Order*), *affirmed, Central Tex. Tel. Coop., Inc. v. FCC*, 402 F.3d 205 (D.C. Cir. 2005). 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).

[128] *Telephone Number Portability*, CC Docket No. 95-116 Memorandum Opinion and Order and Further Notice of Proposed Rulemaking,18 FCC Rcd 23697 (2003) (*Intermodal Porting Order and FNPRM*), *affirmed in part and remanded in part*, *U.S. Telecom Ass'n v. FCC*, 400 F.3d 29 (D.C. Cir. 2005).

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

[130] *Id*. at 23717.

[131] *Telephone Number Portability*, Second Further Notice of Proposed Rulemaking, CC Docket 95-116, 19 FCC Rcd 18515 (2004).

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

[133] *Id*.

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

comment on abbreviated dialing arrangements that can be used with "One Call" notification systems in compliance with the Pipeline Safety Improvement Act of 2002.[135]

The Commission's October 7, 2003 and November 10, 2003 decisions were appealed to the US Court of Appeals for the D.C. Circuit. On March 11, 2005, the D.C. Circuit affirmed the Commission's October 7, 2003 decision involving wireless-to-wireless portability. In a separate opinion, the Court found that the Commission's November 10, 2003 order issued a "legislative" rule that changed a prior rule without the required notice and comment under the Administrative Procedure Act. The Court remanded the case and required the Commission to prepare a Regulatory Flexibility Analysis (RFA) to consider the impact on small local exchange carriers, and it stayed application of intermodal porting with respect to small carriers until the RFA has been completed. On April 22, 2005, the Commission released a public notice seeking comment on an Initial Regulatory Flexibility Analysis (IRFA) in order to comply with the Court's decision.[136]

In the wake of Hurricane Katrina, which struck the Gulf Coast of the United States in August 2005, the Commission granted a temporary waiver of the Commission's numbering rules to allow carriers serving customers in the areas affected by the hurricane in those three states, and the numbering administrators that support them, to port the telephone numbers geographically outside of the rate centers during the period of service disruption.[137]

On August 31, 2006, the Bureau permanently assigned 1-800-RED-CROSS and 1-888-RED-CROSS to the Red Cross. The Bureau found that the permanent assignment of these toll-free numbers would serve the overwhelming public interest in assisting the disaster recovery efforts of the Red Cross related to hurricanes and other natural disasters.[138]

On January 22, 2007, the Bureau granted, in part, the request of the Substance Abuse and Mental Health Services Administration (SAMHSA) to reassign five toll-free numbers utilized as suicide prevention hotlines to SAMHSA, for a period of one year.[139] In doing so, the Bureau concluded that temporarily reassigning the suicide prevention hotlines to SAMHSA was critical to address the instability in the maintenance of these numbers, which had threatened to cause them to become inoperational, leaving the approximately 30,000 callers a month without this avenue of assistance.

Comments

NNTRC states that tribal reservations should be designated local calling areas under Part 52 of our rules, so that calls within reservation boundaries do not result in toll charges.[140]

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

[136] *FCC Seeks Comment on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding*, CC Docket No. 95-116, Public Notice, 20 FCC Rcd 8616 (2005).

[137] *Telephone Number Portability, Numbering Resource Optimization*, CC Docket Nos. 95-116 and 99-200, Order, FCC Rcd 15077 (2005) (*Katrina Porting Waiver Order*).

[138] *Toll-free Service Access Codes*, CC Docket No. 95-155, Order, 21 FCC Rcd 9925 (2006).

[139] *Toll-free Service Access Codes*, CC Docket No. 95-155, Order, DA 07-130 (WCB rel. Jan. 22, 2007).

[140] NNTRC Comments at 3.

Recommendation

WCB staff finds that NNTRC's comments seek to add regulations and obligations to the Commission's rules, rather than repealing or modifying regulations found no longer to be in the public interest. Staff therefore recommends that the Commission reject NNTRC's requests as beyond the scope of our Section 11 review.

Furthermore, 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 does not find that these rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore recommends that repeal or modification of these rules is not warranted at this time.

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 Part 53 rules provide that the BOCs must use separate affiliates 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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 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 53.

Recommendation

Based on its review of the rule, staff believes that the Part 53 rules may still be necessary in the public interest but merit further consideration. Staff notes that petitions for forbearance from these rules are currently pending before the Commission.[141] Staff recommends that in the context of the records in those proceedings the Commission consider whether the Part 53 rules are necessary in the public interest and if not, to repeal or modify any rule so that it is in the public interest. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in the pending proceedings.

[141] *AT&T Post Sec. 272 "Sunset" Forbearance Proceeding,* 21 FCC Rcd 6862; *Qwest Post Sec. 272 "Sunset" Forbearance Proceeding,* 20 FCC Rcd 19389; *Verizon Post Sec. 272 "Sunset" Forbearance Proceeding,* 21 FCC Rcd 2924; *see generally* discussion of Part 64, Subpart G, *infra*.

PART 54 – UNIVERSAL SERVICE

Description

Sections 214(e) and 254 of the Communications Act of 1934, as amended, among other things, direct the Commission to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service.[142] 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.[143] 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 providers of interstate and international telecommunications and by making support available on a technologically neutral basis to any eligible service provider. 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

[142] *See* 47 U.S.C. §§ 214(e), 254.

[143] In addition to the comprehensive discussion of the Commission's universal service rules in Part 54, Part 36, Subpart F of the Commission's rules details the calculation of high-cost loop support for rural LECs and the data required to receive such support. *See* 47 C.F.R. Subpart F. *See also* pp. 16-18, *supra* (discussing Part 36 of the Commission's rules in detail).

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

Hurricane Katrina: On October 14, 2005, the Commission released an Order to enable $211 million in universal service funds to be used to respond to Hurricane Katrina.[144] This support came from the Low Income Support Program to help those eligible for individual housing relief under FEMA rules obtain a wireless handset and at least 300 minutes of free calling, as well as by providing cost assistance in reconnecting such individuals to the network as the area is rebuilt. The support also came through the Rural Health Care Program by allowing rural and non-rural health care providers, including American Red Cross shelters, to apply for support of up to 50 percent of advanced telecommunications and information services costs. The E-rate program was used to provide support to schools and libraries – all of the schools and libraries in the area qualified for the highest level of priority for funding and schools serving evacuees were allowed to modify their funding requests. Finally, carriers were permitted to use the High Cost Program to support the rebuilding of hurricane-damaged facilities.

CMRS Cost Recovery: In August 2005, WCB clarified certain aspects of the Commission's rules in light of the United States Court of Appeals for the Fifth Circuit's (Fifth Circuit) decision affirming in part, remanding in part, and reversing in part the Commission's *1997 Universal Service Order*.[145] Specifically, WCB indicated that Commission rules permit Commercial Mobile Radio Services (CMRS) providers to recover their universal service contributions through rates charged for all of their services. The Commission has made clear that carriers have significant flexibility in the manner in which they may

[144] *Federal-State Joint Board on Universal Service Schools and Libraries Universal Support Mechanism Rural Health Care Support Mechanism; Lifeline and Link-up*), CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883 (2005) (*KatrinaI*). On March 1, 2006, the Commission extended until September 30, 2006, the filing window for schools and libraries directly affected by Hurricane Katrina to apply for 2006 funding for eligible services under the E-rate program. *See Federal-State Joint Board on Universal Service Schools and Libraries Universal Support Mechanism Rural Health Care Support Mechanism; Lifeline and Link-up*, (*KatrinaII*), CC Docket Nos. 96-45 and 02-6, Order, WC Docket Nos. 02-60 and 03-109, 21 FCC Rcd 2803 (2006) (*Katrina Extension Order*). The Commission also waived for affected schools in funding year 2006 the "two-in-five" rule, which bars applicants from receiving funds for internal connections for more than two out of every five funding years. *See id.* In addition, the Commission extended for three months the wireless handset and free minute portion of the federal Katrina Low-Income Support Program, which was set to expire on March 1. *See id.*

[145] *Federal-State Joint Board on Universal Service Petition for Reconsideration and Clarification of the Fifth Circuit Remand Order of BellSouth Corp.*, CC Docket Nos. 96-45 and 96-262, Order, 20 FCC Rcd 13779 (2005) (Fifth Circuit Remand Order); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("*TOPUC*"); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), *aff'd in part, rev'd in part, remanded in part sub nom*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied*, 530 U.S. 1210, *cert. dismissed*, 531 U.S. 975 (2000).

recover universal service contribution costs. Carriers are not required to recover their universal service costs from subscribers at all. If they choose to do so, carriers may recover these costs through their standard service charges or through a separate line-item.[146] CMRS providers may include a universal service line item on a subscriber's bill that does not reflect that particular subscriber's interstate usage. For example, a CMRS provider may determine a subscriber's interstate usage for purposes of a recovery line item using either a company-wide traffic study, if the company has conducted one, or the safe harbor.[147]

Comprehensive Review. On June 14, 2005, the Commission initiated a broad inquiry into the management and administration of the universal service fund (USF), as well as the Commission's oversight of the USF and the Universal Service Administrative Company (USAC).[148] In particular, the Commission sought comment on ways to improve the management, administration, and oversight of the USF, including simplifying the process for applying for USF support, speeding the disbursement process, simplifying the billing and collection process, addressing issues relating to USAC, and exploring performance measures suitable for assessing and managing the USF programs. The Commission also sought comment on ways to further deter waste, fraud, and abuse through audits of USF beneficiaries or other measures, and on various methods for recovering improperly disbursed funds.

High Cost. As noted in the discussion of Part 36, in 2004, the Commission adopted the *Rural Referral Order*, reviewing possible changes to high-cost support for rural carriers.[149] The Universal Service Joint Board has issued three Public Notices seeking comment on high-cost support for rural carriers.[150] On May 16, 2006, the Commission extended the high-cost universal service support rules adopted in the *Rural Task Force Order* on an interim basis until the Commission concludes its rural review proceeding and adopts changes, if any, to those rules as a result of that proceeding.[151]

In August 2006, the Universal Service Joint Board sought comment on the use of reverse auctions (competitive bidding) to determine high cost universal service funding to eligible telecommunications carriers (ETCs) pursuant to section 254 of the Act.[152] The Universal Service Joint Board asked interested parties to comment on whether and how competitive bidding could be used to further the goals of the Act and the Commission's universal service policies. The Universal Service Joint Board also invited commenters to supplement the record with respect to any additional issues that have been raised previously in this proceeding.

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[146] *See Fifth Circuit Remand Order* at 13781, para. 6.

[147] *See id*.

[148] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*Comprehensive Review NPRM*).

[149] *See Rural Referral Order,* 19 FCC Rcd 11538 *(2004).*

[150] *See* pp. 16-18, *supra.*

[151] *See RTF Plan Extension Order,* 21 FCC Rcd 5514 (2006).

[152] *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, Public Notice, CC Docket No. 96-45, FCC 06J-1 (rel. Aug. 11, 2006).

In 2005, the Commission addressed the minimum requirements for a telecommunications carrier to be designated as an "eligible telecommunications carrier" or "ETC," and thus be eligible to receive federal universal service support.[153] Specifically, consistent with the recommendations of the Universal Service Joint Board, the Commission required that the applicant: (1) provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality, or capacity in every wire center for which it seeks designation and expects to receive universal service support; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy consumer protection and service quality standards; (4) offer local usage plans comparable to those offered by the incumbent local exchange carrier (LEC) in the areas for which it seeks designation; and (5) acknowledge that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.[154]

In addition, as recommended by the Universal Service Joint Board, the Commission encouraged states that exercise jurisdiction over ETC designations, pursuant to section 214(e)(2) of the Act, to adopt the additional requirements when deciding whether a common carrier should be designated as an ETC.[155] The Commission also required that ETCs designated by the Commission submit additional information regarding their networks and use of universal service funds in their annual filings to ensure that ETCs continue to comply with the conditions of their designation.

In 2005, the Commission adopted and released a Notice of Proposed Rulemaking (*Non-Rural High Cost Support Notice*) seeking comment on the universal service support mechanism for non-rural carriers.[156] In the *Non-Rural High Cost Support Notice*, the Commission sought comment on how reasonably to define the terms "sufficient" and "reasonably comparable" in light of the court's holding in *Qwest II*. The Commission also sought comment on a proposal by Puerto Rico Telephone Company, Inc. (PRTC) that the Commission adopt a non-rural insular mechanism based on their embedded costs, on an interim basis, pending the Commission's comprehensive review of its high cost program. The Commission tentatively concluded that it should establish such a mechanism.

Schools and Libraries. On May 19, 2006, the Commission released *The Bishop Perry Middle School Order*, which granted 196 appeals of decisions by the Universal Service Administrative Company (USAC) related to applicants that made clerical or ministerial errors in the schools and libraries universal service support mechanism application process.[157] *Bishop Perry Middle School* directed USAC to modify its application review procedures to provide applicants with a limited opportunity to cure certain procedural violations pertaining to minimum processing standards and to develop targeted outreach procedures

[153] *Federal-State Joint Board on Universal Service*, Report and Order, *ETC Designation Framework*, Order, CC Docket No. 96-45, 20 FCC Rcd 6371 (2005) (Adding 47 CFR §§ 54.202, 54.209; and amending 47 CFR § 54.307 [section (d) added], 47 CFR § 54.313 [subsection (d)(3)(vi) added], 47 CFR § 54.314 [subsection (d)(6)(vi) added], and 47 CFR § 54.809 [subsection (c) revised]). While we mention the ETC Designation Order in the High Cost section of this document, ETC designation also is necessary to receive low income support.

[154] 20 FCC Rcd at 6372, para. 2.

[155] *Id*. at para. 1.

[156] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Service Support*, WC Docket No. 05-337, Notice of Proposed Rulemaking, 20 FCC Rcd 19731 (2005) (*Non-Rural High Cost Support*).

[157] *Request of Review of the Decision of the Universal Service Administration by Bishop Perry Middle School New Orleans, LA, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006).

designed to better inform applicants of approaching filing deadlines. Also on May 19, 2006, the Commission released *The Academy of Careers and Technologies Order,* which granted 30 appeals of applicants accused of violating program rules due to improper third-party participation in the applicants' competitive bidding processes.[158] *Academy of Careers and Technologies* directed USAC to conduct further investigation and analysis prior to denying funding for suspected competitive bidding violations of the type addressed in the order, and it provided applicants with an opportunity to demonstrate that they did not violate the Commission's competitive bidding rules.

Rural Health Care. On September 29, 2006, the Commission initiated a pilot program designed to explore how the rural health care (RHC) funding mechanism may be used to enhance public and non-profit health care providers' access to advanced telecommunications and information services.[159] Specifically, the pilot program will provide funding for up to 85 percent of the costs to construct state- or region-wide broadband networks and to connect these networks to Internet2, a nationwide dedicated broadband network, as well as the costs of advanced telecommunications and information services that will ride over these networks.[160] These networks will be designed to bring the benefits of innovative telehealth and, in particular, telemedicine services to those areas of the country where the need for those benefits is most acute, as well as enhance the health care community's ability to provide a rapid and coordinated response in the event of a national crisis. On February 6, 2007, the Commission issued an Order on Reconsideration addressing the pilot program, in which it expanded the pilot program to include National LambdaRail (NLR) as an eligible nationwide backbone provider, and allowed applicants either to pre-select Internet2 or NLR for backbone services or seek competitive bids from Internet2 or NLR.[161] To ensure the success of the pilot program, the Commission also indicated its expectation that Internet2 and NLR will interconnect or peer.

Comments

NNTRC made several suggestions for modifying Part 54. Generally, NNTRC proposes changes to Part 54 that would create a separate universal service fund for tribal areas. For example, NNTRC proposes that the Commission "should undertake appropriate studies to look at basing Universal Service Fund fees on tribal land areas, and not just state lands," and that money from the USF be placed in escrow accounts for "on-reservation" services. NNTRC argues that rules regarding ETC designation should be explicitly amended to require tribal designation of ETCs prior to Commission treatment of a telecommunications provider as an ETC.[162] NNTRC also argues that Indian tribes should be released from state policies regarding E-Rate funding for libraries. Instead, NNTRC proposes that the Office of Intergovernmental Affairs and the Bureau assist tribes with developing their own library requirements and rules. NNTRC further suggests that the rules should be modified to allow the use of tribal procurement policies and tribal contract forms when E-Rate funds are used to purchase telecommunications services on tribal lands and that E-Rate money should be permitted for broadband infrastructure build out. With respect to "on-

[158] *Request of Review of the Decision of the Universal Service Administration by Academy of Careers and Technologies San Antonio, TX et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5348 (2006).

[159] *Rural Health Care Support Mechanism*, Order, WC Docket No. 02-06, 21 FCC Rcd 11111 (2006) (*Rural Health Care Support Mechanism Order*).

[160] *See id*.

[161] *Rural Health Care Support Mechanism*, Order on Reconsideration, WC Docket No. 02-60, FCC 07-6 (rel. Feb. 6, 2007)(*Rural Health Care Support Mechanism Order on Reconsideration*).

[162] *See* NNTRC Comments.

reservation projects," NNTRC proposes that the USF reimbursement scheme should be raised from the current 75 percent state/25 percent federal level to 100 percent federal reimbursement coverage. NNTRC also states that "federal subsidies should require [telecommunications carriers] with on-reservation projects to submit a reinvestment plan for building additional infrastructure (in addition to point-of-presence facilities) on tribal lands within a certain timeframe, in order to better allow future expansion of services, by the same carrier or others who come in, to other reservation areas that are still not being served."[163] Finally, NNTRC suggests that the Commission eliminate or prohibit construction and installation charges for land line telephones on the reservation.[164]

Recommendation

The rules 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. Based on its review of the rules and the comments in this Biennial Review proceeding, WCB staff believes that the Part 54 rules may still be necessary in the public interest in their current form, but merit further review. The staff notes that issues related to Part 54 are under consideration in pending proceedings.[165] Staff recommends that the Commission consider, in the context of these proceedings, whether the Part 54 rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in pending proceedings.

WCB staff finds that NNTRC's comments seek to add regulations and obligations to the Commission's rules, rather than repealing or modifying regulations found no longer to be in the public interest. Staff therefore recommends that the Commission reject NNTRC's requests as beyond the scope of our section 11 review.

[163] NNTRC Comments at 3.

[164] *See id*.

[165] *2006 Contribution Methodology Order*, 21 FCC Rcd 7518 (2006); *Comprehensive Review NPRM*; *High-Cost Universal Service Support Order*, 21 FCC Rcd 5514 (2006); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Service Support*, WC Docket No. 05-337, Notice of Proposed Rulemaking, 20 FCC Rcd 19731 (2005); and *Rural Health Care Support Mechanism Order*; *Rural Health Care Support Mechanism Order on Reconsideration*.

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 an incumbent LEC and a qualifying carrier that provides services outside the incumbent LEC's local service territory. 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).[166]

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."[167]

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.

[166] 47 U.S.C. § 259.

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

Analysis

Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 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 found any evidence that the existing Part 59 rules impose unnecessary costs or otherwise impede infrastructure sharing. Therefore, WCB staff does not find that the Part 59 rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore recommends 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.[168] Sections 201 and 202 require rates, terms and conditions to be "just and reasonable,"[169] and prohibit "unjust or unreasonable discrimination."[170] 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 for both dominant and nondominant carriers. 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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million

[168] 47 U.S.C. §§ 203-04.

[169] 47 U.S.C. § 201.

[170] 47 U.S.C. § 202.

lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

The Commission is presently examining Part 61 rules in other proceedings, including the *Intercarrier Compensation Proceeding* and the *Special Access Proceeding*.[171]

Comments

Verizon notes that the Commission's rules require dominant carriers to file tariffs, and to provide detailed cost support, traffic and revenue projections, and two sets of work papers.[172] Verizon contends, however, that today's competitive marketplace will ensure that carriers are satisfactorily meeting customer demands without those requirements.[173] Specifically, Verizon asserts that sections 61.41 to 61.49 of the Commission's rules, if read strictly, would subject its "in-region, interLATA services to price cap regulation, if it decides to offer long distance or all-distance services on a more integrated and efficient basis post-272 sunset."[174] Verizon contends that, since long-distance services were detariffed, there has been exceptional competitive growth and the Commission should allow the competitive market to work by "eliminat[ing] the possibility that mandatory tariffing requirements will be imposed on BOCs' long distance and all-distance service if offered through the LEC."[175] Verizon asserts that, if the Commission does not make clear that price cap regulations do not apply to BOC long distance or all-distance service offered on a more integrated basis post-272 sunset, long distance prices may increase and, in turn, harm consumers.

AT&T agrees with Verizon.[176] USTelecom also endorses Verizon's comments and agrees that the Commission should eliminate mandatory tariff filing obligations that apply only to incumbent LECs or, in the alternative, permit all carriers to file base-line tariffs or price lists.[177] COMPTEL responds that Verizon's request is contrary to the public interest and points to comments it filed in a proceeding initiated

[171] *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) (*Intercarrier Compensation Proceeding*); *see also Comment Sought on Missoula Intercarrier Compensation Reform Plan*, CC Docket No. 01-92, Public Notice, 21 FCC Rcd 8524, (2006) (*Missoula Plan PN*); *see also Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (*Special Access Proceeding*).

[172] *See* Verizon Comments at 27 (citing 47 C.F.R. § 61.38).

[173] *See id*. at 27.

[174] *Id*. at 29.

[175] *Id*. at 28.

[176] AT&T Reply at 2-4.

[177] USTelecom Reply at 1, 5.

by AT&T seeking forbearance from certain dominant carrier requirements.[178] In that proceeding, COMPTEL contended that, if the Commission were to grant AT&T's petition, competition would be harmed and consumers would lose their ability to choose a long distance provider separate from their LEC.[179]

Recommendations

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.

WCB staff recommends that the Commission reject Verizon's and AT&T's recommendation that the Commission should eliminate mandatory tariff filings as a general matter. Based on its review of the rules and the comments in this Biennial Review proceeding, staff believes that these rules may still be necessary in the public interest but merit further consideration. Staff notes that petitions for forbearance from application of these rules to in-region, interLATA services are currently pending before the Commission,[180] and that these rules are at issue in the *Intercarrier Compensation Proceeding* and the *Special Access Proceeding*.[181] Staff recommends that, in the context of the records in those proceedings, the Commission consider whether the Part 61 rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in the pending proceedings.

[178] COMPTEL Reply at 4 (citing its comments in opposition to the *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services,* WC Docket No. 06-120, Public Notice, 21 FCC Rcd 6862 (2006) (COMPTEL AT&T Forbearance Opposition)).

[179] *See* COMPTEL AT&T Forbearance Opposition at 2.

[180] *AT&T Post Sec. 272 "Sunset" Forbearance Proceeding* 21 FCC Rcd 6862; *Qwest Post Sec. 272 "Sunset" Forbearance Proceeding,* 20 FCC Rcd 19389; *Verizon Post Sec. 272 "Sunset" Forbearance Proceeding,* 21 FCC Rcd 2924 (to the extent these carriers seek relief from Part 61 rules).

[181] *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) (*Intercarrier Compensation Proceeding*); *see also Comment Sought on Missoula Intercarrier Compensation Reform Plan*, CC Docket No. 01-92, Public Notice (rel. July 25, 2006) (*Missoula Plan PN*); *see also Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (*Special Access Proceeding*).

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.[182] 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.[183]

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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and

[182] 47 U.S.C. § 214(a).

[183] 47 C.F.R. § 63.01.

domestic and international long distance prices have fallen by almost 60 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. Staff accordingly does not find that this rule is "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore recommends that repeal or modification is not warranted at this time.

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.[184]

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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

In the *2004 Staff Report*, the Bureau found that Part 64, Subpart A rules are duplicative of the requirements of other federal agencies, *i.e.,* the Internal Revenue Service and the Securities and Exchange Commission,[185] and thus may no longer be necessary in the public interest for reasons other than the development of competition.

Comments

No party filed comments addressing Part 64, Subpart A.

[184] 47 U.S.C. §§ 151, 154, 201-205, and 220.

[185] *2004 Wireline Competition Bureau Biennial Regulatory Review*, WC Docket No. 04-179, Staff Report, 20 FCC Rcd 263, 311 (2005) (*2004 Staff Report*).

Recommendation

As in the *2004 Staff Report*, the WCB staff continues to recommend that the Commission initiate a rulemaking to consider the repeal of Subpart A, as these rules may no longer be necessary in the public interest for reasons other than the development of competition.

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

Description

The Part 64, Subpart D rules require that common carriers maintain, provide, 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.[186]

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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 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.

The Bureau was actively involved in providing relief to consumers, carriers, and relief organizations in the areas affected by Hurricanes Katrina, Rita, and Wilma in order to permit rapid restoration of telephone service, relief to telecommunications consumers, and an analysis of restoration progress, including where to focus relief efforts. The Bureau continues to provide assistance as the region recovers. For example, in 2005, the Commission released an Order to enable $211 million in universal service funds to be used to respond to the disaster.[187] Among other things, this support was used to provide wireless handsets and free

[186] 47 U.S.C. §§ 151, 201-05.

[187] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 20 FCC Rcd 16883 (2005).

calling minutes for those eligible for individual housing relief under FEMA rules, support for rural and non-rural health care providers for up to 50 percent of advanced telecommunications and information services costs, and support for the rebuilding of hurricane-damaged facilities. Prior to both Hurricanes Rita and Wilma, the Bureau assisted in outreach efforts to carriers and Public Safety Answering Points (PSAPs) and 911 Emergency Service officials to establish contact and assess existing levels of preparedness. The Bureau also worked with the industry to help restore service to consumers. It assisted in a coordinated outreach effort designed to identify where relief was most critically needed and to ascertain progress in the restoration of service. In addition, the Bureau extended certain routine filing deadlines for carriers in the affected areas, allowing carriers time to focus on such immediate needs as restoring service to customers.

More recently, the Bureau has been working with industry to ensure it will have the necessary flexibility to plan for and respond quickly to similar situations that may arise in the future. In March and April 2006, the Bureau received petitions from AT&T, BellSouth, Verizon, and Qwest seeking Special Temporary Authority (STA) and waiver of the Commission's structural separation requirements and network disclosure rules to support integrated disaster planning and response. On April 20, 2006, the Bureau granted AT&T's petition, providing for a limited STA and waiver of the rules.[188] An Order granting comparable relief to Verizon, BellSouth, and Qwest was adopted and released on June 9, 2006.[189] In addition, Evslin Consulting and pulver.com filed a petition for rulemaking requesting that the Commission initiate a proceeding to ease the effect of long-term telephone outages in the event of natural disasters or other public crises. The pleading cycle for this petition closed on May 12, 2006.[190]

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 the rules are no longer necessary in the public interest as a result of meaningful economic competition. Competitive developments have not affected the need for these rules because they are public safety rules whose purposes are unaffected by competition. Moreover, following the events of September 11, 2001, and in the aftermath of Hurricanes Katrina, Rita and Wilma, 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 such [telecommunications] service." Staff therefore recommends that repeal or modification is not warranted at this time.

[188] *Petition of AT&T Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response*, WC Docket No. 06-63, Order, 21 FCC Rcd 4306 (WCB 2006).

[189] *Petitions of BellSouth Corporation, Verizon, and Qwest Communications International Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response*, WC Docket No. 06-63, Order, 21 FCC Rcd 6518 (WCB 2006).

[190] *Pleading Cycle Established for Petition for Rulemaking to Preserve Post-Disaster Communications*, RM-11327, Public Notice, 21 FCC Rcd 3639 (WCB Apr. 7, 2006).

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

Description

Part 64, 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.[191]

The BOCs may provide enhanced services and CPE pursuant to nonstructural safeguards established in the *Computer III*[192] (enhanced services) and *Furnishing of CPE*[193] 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 it 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.[194] 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 they 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 inmates. The Commission has forborne from applying some of these restrictions to CMRS carriers and aggregators.[195]

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[191] 47 U.S.C. §§ 154, 201-205, 403, 404.

[192] *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).

[193] *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) 47 C.F.R. § 64.702.

[194] 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).

[195] *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).

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 the handling of emergency telephone calls by operator services providers and call-aggregators.

Analysis

Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

On September 23, 2005, the Commission released the *Wireline Broadband Internet Access Services Order*, which eliminated *Computer Inquiry* requirements and Title II obligations applicable to wireline broadband Internet access services offered by facilities-based providers on a non-common carrier basis.[196] Accompanying the Order is the *Broadband Consumer Protection NPRM*, which seeks comment on any non-economic regulatory requirements necessary to ensure that consumer protection needs are met by all providers of broadband Internet access service, regardless of the underlying technology. Time Warner Telecom, Earthlink, COMPTEL, and ACN Communications Services sought review of the *Wireline Broadband Internet Access Services Order* in the U.S. Courts of Appeals for the D.C. and Third Circuits. On January 30, 2006, the D.C. Circuit granted the Commission's motion to transfer the cases to the Third Circuit, which consolidated the cases on February 7, 2006. The consolidated appeals are pending.

The Commission released a Memorandum Opinion and Order on November 7, 2006, classifying Broadband over Power Line (BPL)-enabled Internet access service as an information service under the

[196] *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Computer III Further Remand Proceedings, Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises, Consumer Protection in the Broadband Era*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Internet Access Services Order).*

Communications Act.[197] The Commission further held that the transmission component underlying BPL-enabled Internet access service is "telecommunications," and that the offering of this telecommunications transmission component as part of a functionally integrated, finished BPL-enabled Internet access service offering is not a "telecommunications service." This approach is consistent with the framework that the Commission established for cable modem service and wireline broadband Internet access service, and furthers the goal of developing a consistent regulatory framework across broadband platforms by regulating like services in a similar manner.

Comments

Verizon contends that the Commission should eliminate its *Computer III* requirements, including the Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA) rules. According to Verizon, the CEI and ONA rules are anachronistic: the implicit assumption underlying CEI and ONA requirements that the LEC wireline platform would remain the only network available to enhanced service providers is unfounded today.[198] BOCs now have business reasons to sell services and facilities to unaffiliated enhanced service providers in order to keep customers on their networks; subjecting only the BOCs to these costly regulations stifles innovation and investment.[199] AT&T endorses Verizon's comments and proposal to eliminate CEI and ONA requirements.[200]

Similarly, USTelecom argues that BOCs should no longer be required to file ONA reports and post CEI plans on company websites.[201] According to USTelecom, the ONA and CEI requirements force BOCs to reveal sensitive strategic information that their competitors are not also required to disclose.[202] USTelecom further states that the reports are massive documents, and their compilation imposes substantial administrative burdens on BOCs and the Commission, but they contain only information that is no longer useful, such as details about deployments of services which are either obscure or now ubiquitous.[203] According to USTelecom, the semi-annual ONA reports contain no unique information that is not publicly available elsewhere, and are rarely, if ever, used. In addition, quarterly ONA nondiscrimination reports describing delivery of service for each ONA service of the reporting BOC require extensive record tracking from affiliated enhanced service providers and are likewise not useful.[204] These reporting requirements now inhibit choice and increase prices, USTelecom claims.[205] Furthermore, if these requirements were repealed,

[197] *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, FCC 06-165 (rel. Nov. 7, 2006).

[198] *See* Verizon Comments at 32.

[199] *See* Verizon Comments at 33.

[200] See AT&T Reply at 2 and 6-8.

[201] *See* USTelecom Comments at 17.

[202] USTelecom Comments at 17.

[203] USTelecom Comments at 18.

[204] USTelecom Comments at 19. USTelecom also states that Verizon, AT&T, and Qwest have advised the Commission of the lack of ONA service activity and the superfluity of the ONA reporting and posting requirements, in the *Computer III Further Remand Proceedings* and the *1998 Biennial Regulatory Review. Id.*

[205] USTelecom Reply at 4.

USTelecom argues, customers would still have a remedy under section 202(a) for any improper discriminatory activities.[206]

Recommendation

Based on its review of the rules and the comments in this Biennial Review proceeding, staff believes that the rules may still be necessary in the public interest but merit further consideration. Staff notes that petitions for forbearance from these rules, as well as other proceedings addressing these rules, are currently pending before the Commission.[207] Staff recommends that in the context of the records in those proceedings the Commission consider whether these rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in the pending proceedings.

[206] USTelecom Comments at 17.

[207] *See, e.g.*, *Verizon Post Sec. 272 "Sunset" Forbearance Proceeding,* 21 FCC Rcd 2924 (to the extent these carriers seek relief from Part 64 rules); *Broadband Consumer Protection NPRM*, 20 FCC Rcd 14853, 14929-935.

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.[208] 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.[209] Subpart I prescribes procedures for the allocation of carriers' costs between regulated and non-regulated activities. Subpart I requires that all incumbent LECs subject to separation of regulated and non-regulated costs[210] 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 cost-shifting and cross-subsidization between regulated and non-regulated activities provided by carriers subject to the cost allocation requirements. These rules ensure that carriers compete fairly in non-regulated markets and that regulated ratepayers do not bear the risks and burdens of the carriers' competitive, or non-regulated, ventures. 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. The cost allocation and affiliate transaction rules impose administrative costs on carriers subject to these requirements.

Analysis

Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over

[208] 47 U.S.C. § 254(k).

[209] 47 U.S.C. §§ 201, 220.

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

this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

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.[211] As part of that order, the Commission decided to retain section 32.27 affiliate transaction rules, which are related to rules in sections 64.903 - 64.904. In addition, the Commission is also presently examining these and other Part 64 rules in other proceedings.[212]

Comments

USTelecom and Verizon propose that the Commission eliminate the cost allocation manual and independent audit requirements in sections 64.903 - 64.904 to the extent they relate to the affiliate transaction rule.[213] We have addressed those issues above in our discussion of Part 32.[214]

Recommendation

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 magnitude of nonregulated costs is likely to grow, and the separation of costs associated with non-regulated activities from regulated costs is likely to become more significant.[215]

Based on its review of the rules and the comments in this Biennial Review proceeding, staff believes that the rules may still be necessary in the public interest but merit further consideration. Staff notes that petitions for forbearance from these rules are currently pending before the Commission and staff recommends that, in the context of the records in those proceedings, the Commission consider whether these rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public

[211] *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, 19 FCC Rcd 11732 (2004).

[212] *See, e.g.*, *BellSouth Cost Allocation Forbearance Proceeding*; 20 FCC Rcd 19873, *RAO Letter 12 Modification Proceeding*, 21 FCC Rcd 72. *See also AT&T Post Sec. 272 "Sunset" Forbearance Proceeding,* 21 FCC Rcd 6862; *Qwest Post Sec. 272 "Sunset" Forbearance Proceeding,* 20 FCC Rcd 19389; *Verizon Post Sec. 272 "Sunset" Forbearance Proceeding,* 21 FCC Rcd 2924 (to the extent these carriers seek relief from Part 64 rules).

[213] USTelecom Reply at 3; Verizon Reply at 8.

[214] *See supra* at pp. 13-15.

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

interest.[216] Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in the pending proceedings.

[216] *See BellSouth Cost Allocation Forbearance Proceeding*, 20 FCC Rcd 19873. *See also AT&T Post Sec. 272 "Sunset" Forbearance Proceeding,* 21 FCC Rcd 6862; *Qwest Post Sec. 272 "Sunset" Forbearance Proceeding,* 20 FCC Rcd 19389; *Verizon Post Sec. 272 "Sunset" Forbearance Proceeding,* 21 FCC Rcd 2924 (to the extent these carriers seek relief from Part 64 rules).

PART 64, SUBPART M – PROVISION OF PAYPHONE SERVICE

Description

Part 64, 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

The latest data published by the Commission indicates that payphones owned by local exchange carriers constituted more than 60 percent of the payphone market, with the remaining approximately 39 percent of payphones owned by independent payphone providers.[217]

Recent Efforts

The Commission released a further notice of proposed rulemaking on March 14, 2005 to consider modification of the default rate of per-payphone compensation that applies when carriers are unable to pay per-call compensation to payphone service providers.[218] This action followed the Commission's modification, in a report and order released August 12, 2004, of the default rate of per-call compensation for "dial-around" calls set forth in section 64.1300(c) of the Commission's rules.[219] The Commission also issued an Order on Reconsideration clarifying and modifying the Payphone Compensation Rules on October 22, 2004.[220]

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[217] Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service*: *Tables Compiled as of April 2005*, at Table 7.5.

[218] *Request to Update Default Compensation Rate for Dial-Around Calls From Payphones*, WC Docket No. 03-225, Further Notice of Proposed Rulemaking, 20 FCC Rcd 5833 (2005).

[219] *Request to Update Default Compensation Rate for Dial-Around Calls From Payphones*, WC Docket No. 03-225, Report and Order, 19 FCC Rcd 15636 (2004).

[220] *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Order on Reconsideration, 19 FCC Rcd 21457 (2004).

Comments

No party filed comments addressing Part 64, subpart M.

Recommendation

WCB staff does not find that the rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff finds that these rules 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.

PART 64, SUBPART N – EXPANDED INTERCONNECTION

Description

Part 64, Subpart N was adopted pursuant to the Commission's authority under sections 1, 4, and 201 through 205 of the Communications Act, as amended.[221] Subpart N provides that Class A LECs, which do not participate in the National Exchange Carrier Association tariff, must provide expanded interconnection.[222] 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 the interconnection and collocation rights specified in section 251(a) and (c) of the Communications Act and Part 51 of the Commission's rules are limited to telecommunications carriers or a subset thereof. Subpart N likely imposes some costs on incumbent LECs, which are passed on to the requesting parties.

Analysis

Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 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 N.

Recommendation

[221] 47 U.S.C. §§ 151, 154, 201-205.

[222] AT&T, BellSouth, Qwest and Verizon are subject to this requirement.

Because the Part 64, subpart N rules serve to ensure that special access and switched transport services are competitively provided, WCB staff does not find that the rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore recommends that repeal or modification is not warranted at this time.

Part 64, SUBPART Q – IMPLEMENTATION OF SECTION 273(D)(5) OF THE COMMUNICATIONS ACT: DISPUTE RESOLUTION REGARDING EQUIPMENT STANDARDS

Description

Part 64, 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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 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 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 does not find that the subpart Q rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore recommends that repeal or modification is not warranted at this time.

PART 64, SUBPART R - GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION REQUIREMENTS

Description

Section 64.1801 was adopted to enable the Commission to meet its duty, under section 254(g) of the Act, to adopt rules requiring providers of interexchange telecommunications services to charge subscribers geographically averaged and integrated rates. In section 254(g), Congress codified the Commission's pre-existing geographic rate averaging and rate integration policies. Providers of interexchange telecommunications services are required to charge rates in rural and high-cost areas that are no higher than the rates they charge in urban areas. This is known as the geographic rate averaging rule. Providers of interexchange telecommunications services are also required to charge rates in each state that are no higher than in any other state. This is known as the rate integration rule.

Purpose

The Commission has explained that geographic rate averaging benefits customers in rural areas by ensuring that they share in lower prices resulting from nationwide interexchange competition. Further, the policy of integrating "offshore points" such as Hawaii and Alaska into the mainland's interstate interexchange rate structure makes the benefits of growing competition available throughout the nation.

Analysis

Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

There has been no Commission action addressing these rules since the previous biennial review.[223]

Comments

[223] WCB staff notes that Core Communications, Inc. (Core) filed a petition for forbearance on April 27, 2006. In its petition, Core requests, among other relief, forbearance from the application of statutory and regulatory obligations for rate averaging and rate integration. *See Pleading Cycle Established for Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, WC Docket No. 06-100, 21 FCC Rcd 5075 (Wireline Comp. Bur. 2006). Comments were filed on June 5, 2006 and reply comments on June 26, 2006. This proceeding is still pending.

No party filed comments addressing Part 64 subpart R.

Recommendation

WCB staff does not find that the rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff finds that these rules ensure that rural areas and "offshore points" such as Hawaii and Alaska benefit from lower prices resulting from competition. WCB staff therefore recommends that section 64.1801 be retained.

PART 64, SUBPART S – NONDOMINANT INTEREXCHANGE CARRIER CERTIFICATIONS REGARDING GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION REQUIREMENTS

Description

Part 64, subpart S facilitates Commission oversight and enforcement of section 254(g) of the Communications Act of 1934, as amended, which requires providers of interexchange telecommunications services to charge subscribers geographically averaged and integrated rates. Section 64.1900 requires each nondominant provider of interexchange telecommunications service that provides detariffed interstate, domestic, interexchange services to file an annual certification with the Commission that it is in compliance with the geographic rate averaging and rate integration requirements of section 254(g) of the Act.

Purpose

This rule was adopted to enable the Commission to meet is statutory duty of ensuring that rates for these services comply with section 254(g) and to investigate and resolve related complaints.

Analysis

Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 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 S.

Recommendations

WCB staff does not find that the geographic rate averaging and rate integration requirements in Part 64 subpart S are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." The annual geographic rate averaging and rate integration certification obligations emphasize the importance placed on the rate averaging and rate integration requirements of the 1996 Act and put carriers on notice that they may be subject to civil and criminal penalties for noncompliance. WCB staff therefore recommends that section 64.1900 be retained.

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

Part 64, 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; (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-existing 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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

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

Comments

Verizon contends that the Commission should eliminate the separation requirements that apply to independent LEC long distance and all-distance services. It asserts that regulations that apply to the provision of independent incumbent LECs but not to other competitors complicate the design and planning for advanced all-distance services.[224] In particular, Verizon points to sections 64.1903(a)(1),(2) and (b) of

[224] Verizon Comments at 30.

the rules: these rules still require incumbent LECs that provide in-region, interstate, interexchange or international services on a facilities basis to provide such services through a separate affiliate, which must keep separate books of account and is prohibited from jointly owning transmission or switching facilities with the LEC.[225] Similarly, while an independent LEC may offer interexchange services on a resale basis though a separate corporate division, Verizon notes that it may not own interexchange switching or transmission facilities.[226] Verizon notes that, since Section 272 of the Act has sunset, Verizon could integrate its local and long distance operations and offer both through its incumbent LECs in former Bell Atlantic jurisdictions, but the Commission's independent LEC separation requirements prevent independent LECs from determining the most efficient structure for their long distance operations and ultimately inhibit carriers from providing new services.[227] In support of its proposal to eliminate these rules, Verizon asserts that, where the Commission has eliminated unnecessary regulation, output has increased and prices fallen, citing as an example the elimination of structural separation requirements for the provision of customer premises equipment and enhanced services, which Verizon maintains has increased competition and consumer choice.[228]

Both USTelecom and AT&T support Verizon's comments and proposal to eliminate the separation requirements that apply exclusively to independent LEC provision of long distance and all-distance services.[229] COMPTEL, however, asserts that Verizon's request for elimination is not in the public interest, referencing as support its opposition to AT&T's Forbearance Petition in WC Docket No. 06-120.[230] GCI also objects to removal of any structural separation requirements that would apply to rate-of-return carriers and their long distance affiliates.

Recommendation

Based on its review of the rules and the comments in this Biennial Review proceeding, staff believes that these rules may still be necessary in the public interest but merit further consideration. Staff notes that petitions for forbearance and other proceedings addressing these rules are currently pending before the Commission.[231] Staff recommends that in the context of the records in those proceedings the Commission consider whether these rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest, and that the Biennial Review comments of Verizon, USTelecom, AT&T and COMPTEL addressing these rules be incorporated into the records of those proceedings. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in the pending proceedings.

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[225] *See* Verizon Comments at 31; 47 C.F.R. §§ 64.1903(a)(1),(2) and (b).

[226] Verizon Comments at 31.

[227] Verizon Comments at 31.

[228] Verizon Comments at 31-32.

[229] *See* USTelecom Reply at 4; AT&T Reply at 2 and 4-5.

[230] *See* COMPTEL Reply at 4 and attachment; *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Service,* WC Docket No. 06-120 (filed June 2, 2006).

[231] *BellSouth Cost Allocation Forbearance Proceeding,* 20 FCC Rcd 19873. *See also AT&T Post Sec. 272 "Sunset" Forbearance Proceeding,* 21 FCC Rcd 6862; *Qwest Post Sec. 272 "Sunset" Forbearance Proceeding,* 20 FCC Rcd 19389; *Verizon Post Sec. 272 "Sunset" Forbearance Proceeding,* 21 FCC Rcd 2924 (to the extent these carriers seek relief from Part 64 rules); *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.[232] 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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

On February 14, 2006, the Commission released the *EPIC CPNI NPRM* seeking comment on what additional steps, if any, the Commission should take to further protect the privacy of customer proprietary network information (CPNI).[233] This *NPRM* directly responds to a petition for rulemaking filed by the Electronic Privacy Information Center (EPIC), alleging that numerous web sites are obtaining and selling telephone customers' call detail records illegally. In the *EPIC CPNI NPRM*, the Commission sought comment on the nature and scope of the problem identified by EPIC, including "pretexting," which is the practice of pretending to be a particular customer in order to obtain access to that customer's call detail or other private telephone records. The NPRM also sought comment on carriers' existing practices to protect

[232] 47 U.S.C. § 222.

[233] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information*, Notice of Proposed Rulemaking, CC Docket No. 96-115, 21 FCC Rcd 1782 (2006) (*EPIC CPNI NPRM*).

the privacy of CPNI, the sufficiency of the Commission's existing rules that protect CPNI, the feasibility and advisability of EPIC's proposed CPNI security measures, as well as other approaches to address this problem.

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*,[234] WCB staff does not find that these rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." We also note that the Commission is currently considering whether to expand the rules in its *EPIC CPNI NPRM*.[235]

[234] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd. 14860 (2002).

[235] *EPIC CPNI NPRM*, 21 FCC Rcd 1782 (2006).

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.[236] Section 229(a) of the Communications Act directs the Commission to "prescribe such rules as are necessary to implement the requirements of [CALEA],"[237] and section 229(b) specifically requires the Commission to promulgate "rules to implement section 105 of [CALEA].[238] 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.[239]

Purpose

Subpart V implements section 105 of CALEA and helps protect privacy rights by ensuring that any interception is carried out 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.

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.

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[236] 47 U.S.C. § 1004.

[237] 47 U.S.C. § 229(a).

[238] 47 U.S.C. § 229(b).

[239] 47 U.S.C. § 229(c); 47 C.F.R. § 64.2105.

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."[240] Part 64, 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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 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*,[241] which adopted rules to implement section 222(e) of the Act.[242] 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 publishers

[240] 47 U.S.C. § 222(e).

[241] *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*).

[242] 47 U.S.C. § 222(e).

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.[243]

The Commission's *Subscriber List Information/Directory Assistance First Report and Order* (*SLI/DA First Report and Order*) concluded that local exchange carriers (LECs) must provide competing directory assistance (DA) providers that qualify under section 251(b)(3) of the Communications Act with nondiscriminatory access to the LECs' local DA databases, and must do so at nondiscriminatory and reasonable rates.[244] Under the *SLI/DA First Report and Order*, the Commission found that, to the extent DA providers qualify under section 251(b)(3) of the Act, a LEC's failure to provide access may also violate section 201(b). The Commission further concluded that LECs are not required to grant competing DA providers nondiscriminatory access to non-local DA databases. It declined, however, to limit the manner in which DA providers use the information beyond certain limitations announced in the *Local Competition Second Report and Order*, including DA providers being held to the same standard as the providing LEC in terms of the types of information they can legally release, and all DA providers being bound by state limitations. Finally, the Commission concluded that the language concerning directory publishing "in any format" in section 222(e) applies to telephone directories on the Internet; however, the Commission found that section 222(e) does not apply to orally provided directory listing information.

On April 29, 2005, the Commission adopted an *Order on Reconsideration* (*SLI/DA Order on Reconsideration*)[245] resolving a joint petition for reconsideration of the *SLI/DA First Report and Order* filed by BellSouth and SBC. In their joint petition for reconsideration, BellSouth and SBC specifically requested that the Commission reconsider and/or clarify its conclusions in the *SLI/DA First Report and Order* to make clear that LECs may place contractual restrictions on competing DA providers' use of DA information, including limits on resale and prohibitions on use for purposes such as sales solicitation, telemarketing, and directory publishing. The *SLI/DA Order on Reconsideration* denied this request and reaffirmed that the imposition of such contractual restrictions by a providing LEC is inconsistent with the nondiscriminatory access requirements of section 251(b)(3). The *Order* clarifies, however, that competing DA providers may not use data obtained pursuant to section 251(b)(3) of the Act for purposes not permitted by the Act, the Commission's rules, or state regulations, and that the use of similar data for directory publishing is governed separately under section 222(e) of the Act. The *Order* further denies BellSouth and SBC's joint request that the Commission reconsider its conclusion that LECs are required to provide nondiscriminatory access to their entire local DA database, including local DA data acquired from third parties.

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[243] *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, 19 FCC Rcd 18439 (2004).

[244] *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, CC Docket No. 99-273, First Report and Order, 16 FCC Rcd 2736 (2001) (*SLI/DA First Report and Order*).

[245] *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 Communications Act of 1934, as Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Order on Reconsideration, 20 FCC Rcd 9334 (2005) (*SLI/DA Order on Reconsideration*).

On September 16, 2005, InfoNXX filed a petition for clarification or, in the alternative, reconsideration of the *SLI/DA Order on Reconsideration*.[246] InfoNXX requests that the Commission clarify or reconsider its rules to find that access to nonpublished numbers can only be restricted where the LEC DA operators have access to the numbers solely for the purpose of providing emergency contact services, and where emergency services are also made available to competitive DA providers.

Comments

No party filed comments addressing Part 64, subpart X.

Recommendation

WCB staff does not find that these rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service" because they facilitate competition in directory publishing by ensuring that competing directory publishers can obtain subscriber list information from LECs. Therefore, staff recommends that repeal or modification of Part 64, subpart X is not warranted at this time.

[246] *See* Petition for Clarification or, in the Alternative, Reconsideration of InfoNXX, Inc., CC Docket No. 99-273 (filed Sept. 16, 2005).

PART 64, SUBPART Z – PROHIBITION ON EXCLUSIVE TELECOMMUNICATIONS CONTRACTS

Description

Congress amended section 224 of the Communications Act, as amended,[247] 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.[248]

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 denying them the benefits of advanced and innovative services.

Analysis

Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and

[247] 47 U.S.C. § 224.

[248] *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).

domestic and international long distance prices have fallen by almost 60 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 Z.

Recommendation

WCB staff does not find that these rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service" 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.[249] 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, including, 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

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and

[249] 47 U.S.C. § 201(b).

domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

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

Comments

USTelecom comments that the Commission should eliminate the rate-of-return report filing requirements in sections 65.600(d)(1) and (d)(2) for price cap carriers because the rate-of-return calculation is no longer used for business purposes and no longer serves a legitimate regulatory purpose.[250] USTelecom believes competition is thriving and rate regulation is no longer useful.[251] USTelecom comments that carriers that are subject to alternative regulation should not be required to calculate the "cash working capital allowance" required by section 65.820(d) because it serves no useful business purpose and completing the calculation is a "detailed, time consuming, and resource-intensive" process.[252] In addition, USTelecom asserts that, with every change to "interstate operating expenses, depreciation, or amortization," carriers may have to refile their annual ARMIS reports to reflect these changes, which is an undesirable outcome.[253]

Recommendations

WCB staff does not find that the Part 65 rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff 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. Information filed pursuant to Part 65 is also relevant to the Commission's analysis in pending proceedings.[254]

[250] *See* USTelecom Comments at 12.

[251] *See* USTelecom Reply at 3.

[252] *Id*.

[253] *Id*.

[254] *See, e.g., Intercarrier Compensation Proceeding*, 20 FCC Rcd 4685.

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.[255] 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,[256] and it contains consumer protection provisions mandated by statute: a requirement that all facsimile transmissions include source labeling,[257] and a requirement that limits the duration of line seizure by automatic telephone dialing systems.[258]

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 benefits to consumers and the industry. Part 68 benefits consumers by fostering competition in the provision of CPE and inside wiring. The competition engendered by Part 68 has greatly increased innovation in CPE and reduced prices. Part 68 also benefits consumers and the

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

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

[257] 47 U.S.C. § 227(d)(2).

[258] 47 U.S.C. § 227(d)(3).

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 in cases where parties file oppositions to proposed technical criteria directly with the Commission under section 68.614. 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.

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 disabilities will be able to use virtually all telephones. Competitive developments thus have not affected the need for these rules because they remain important for reasons of public safety and accessibility. Therefore, WCB staff does not find that the Part 68 rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore 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,[259] and they prohibit unjust or unreasonable discrimination.[260] 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 IXCs to LECs for the origination and termination of long distance calls, as well as the access charges to be paid directly by end users.[261] 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 greatly 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

Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act.

[259] 47 U.S.C. § 201.

[260] 47 U.S.C. § 202.

[261] LECs subject to price cap regulation must offer a basic set of access rate elements but are free to offer additional access services.

Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

Recent Efforts

In an effort to reform and unify intercarrier compensation charges, the Commission, in 2005, released a further notice of proposed rulemaking in the *Intercarrier Compensation Proceeding*.[262] In 2006, the Commission received a proposed intercarrier compensation plan – the Missoula Plan – filed by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation.[263] The Missoula Plan is the product of a 3-year process of industry negotiations led by NARUC.[264] Supporters of the plan include AT&T, BellSouth Corp., Cingular Wireless, Global Crossing, Level 3 Communications, and 336 members of the Rural Alliance, among others.[265] According to its supporters, the Missoula Plan "unifies intercarrier charges for the majority of lines, and moves all intercarrier rates charged for all traffic closer together."[266] Its supporters maintain that adoption of the Missoula Plan would represent a major step forward in intercarrier compensation reform.[267] The Missoula Plan was filed in the docket of the ongoing *Intercarrier Compensation Proceeding* and the Commission sought comment on the Plan.[268] The supporters of the Missoula Plan also filed two supplements amending the original plan dealing with the issues of "phantom traffic,"[269] and creating a mechanism to compensate states that have been early

[262] *Intercarrier Compensation Proceeding*, 20 FCC Rcd 4685.

[263] Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force, CC Docket No. 01-92, at 2 (filed July 24, 2006) (attaching the Missoula Plan). Although the Missoula Plan was filed by the NARUC Task Force, members of the task force and NARUC have not taken positions on the Missoula Plan. *See id*. at 2.

[264] *Id*. at 1-2.

[265] *Id.* at 2. *See also id*., Attach. (providing a complete list of supporters).

[266] *Id*., Attach. (Executive Summary) at 1.

[267] *Id*., Attach. (Executive Summary) at 2.

[268] *Missoula Plan PN*, 21 FCC Rcd 8524 (establishing the due dates for comments and reply comments). The due date for comments was extended to October 25, 2006 and the due date for reply comments was extended to January 11, 2007 by two subsequent orders. *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Order, 21 FCC Rcd 9772 (rel. Aug. 29, 2006*); Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Order, DA 06-2339, (rel. Nov. 20, 2006).

[269] Letter from Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 6, 2006). Comments on the revised phantom traffic filing were filed on December 7, 2006 and reply comments on January 5, 2007. *Comment Sought on Missoula Plan Phantom Traffic Interim Process and Call Detail Records Proposal*, Public Notice, CC Docket No. 01-92, DA 06-2294 (Wireline Comp. Bur. Nov. 8, 2006); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Order, DA 06-2548 (Wireline Comp. Bur. Dec. 20, 2006).

adopters of access charge reforms.[270]

In 2005, the Commission released a notice of proposed rulemaking in the *Special Access Proceeding* to examine the special access regulatory regime that should follow the expiration of the CALLS plan.[271] The Commission is currently reviewing the record compiled in that proceeding. The Commission is also reviewing Part 69 rules in a BellSouth forbearance proceeding.[272]

Comments

Verizon comments generally that the Commission should eliminate regulations preventing companies from negotiating commercial agreements to provide switched access services.[273] Verizon believes that market-based solutions are preferable and promote new technologies and reliable service.[274] In its reply comments, COMPTEL asserts that Verizon did not specifically discuss competition in the switched access market and does not adequately support its request to eliminate portions of Part 69.[275] COMPTEL also asserts that it is unaware of any Commission rules that "prevent willing carriers from entering into voluntary commercial agreements for any telecommunications service."[276]

Recommendation

Part 69 rules help to ensure carriers' rates, terms and conditions for providing telecommunications services are just and reasonable. In response to Verizon's comments, WCB staff notes that there is currently a process in place for switched access pricing flexibility governed by section 69.713 of the Commission's rules.[277]

Based on its review of the rules and the comments in this Biennial Review proceeding, staff believes that these rules may still be necessary in the public interest but merit further consideration. Staff notes that a petition for forbearance from certain Part 69 rules is currently pending before the Commission, and these rules are also under consideration in the *Intercarrier Compensation Proceeding* and the *Special Access Proceeding*. Staff recommends that, in the context of the records in those proceedings, the Commission consider whether these rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest.[278] Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in the pending proceedings.

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[270] Letter from the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Feb. 5, 2007).

[271] *Special Access Proceeding*, 20 FCC Rcd 1994.

[272] *BellSouth Cost Allocation Forbearance Proceeding*, 20 FCC Rcd 19873.

[273] Verizon Comments at 34.

[274] *See id*. at 34-36.

[275] COMPTEL Reply at 2.

[276] *Id*. at 3.

[277] 47 C.F.R. § 69.713 (setting out the triggers for pricing flexibility for common line, traffic-sensitive, and tandem-switched transport services).

[278] *See generally BellSouth Cost Allocation Forbearance Proceeding*, 20 FCC Rcd 19873; *Intercarrier Compensation Proceeding*, 20 FCC Rcd 4685; *Special Access Proceeding*, 20 FCC Rcd 1994.