

**FACT SHEET\***

**Eliminating *Ex Ante* Pricing Regulation and Tariffing of Telephone Access Charges**

Notice of Proposed Rulemaking – WC Docket No. 20-71

**Background:** The communications marketplace today is dramatically different from the one that existed twenty-five years ago. As a result of the Telecommunications Act of 1996, local telephone markets are open to competition. And consumers and businesses continue to rapidly migrate away from traditional telephone service provided by local telephone companies (known as incumbent local exchange carriers) to a multitude of voice service options offered by providers of interconnected VoIP service, mobile and fixed wireless services, and over-the-top voice applications. In light of the sweeping changes in the competitive landscape for voice services, many states have begun to deregulate the intrastate portion of local telephone service provided by incumbent local exchange carriers. And yet, the FCC continues to regulate the various end-user charges associated with interstate access service offered by incumbent local exchange carriers—“Telephone Access Charges” for short. In addition to remaining subject to federal price regulation and complicated federal tariffing requirements, these Telephone Access Charges are difficult to understand, and the opaque way they are sometimes described on telephone bills reduces consumers’ ability to compare the cost of different voice service offerings.

Consistent with the FCC’s commitment to eliminate outdated and unnecessary regulations and to encourage efficient competition, this *Notice of Proposed Rulemaking (Notice)* would propose to deregulate and detariff Telephone Access Charges. The *Notice* would also propose to prohibit carriers from using separate, obscurely worded line items to bill for Telephone Access Charges. Eliminating these line-item charges should make it easier for consumers to understand their telephone bills, compare prices among voice service providers, and help ensure that a carrier’s advertised price is closer to the total price that appears on its customers’ bills.

**What the *Notice* Would Do:**

- Propose to eliminate *ex ante* pricing regulation of Telephone Access Charges (specifically, the Subscriber Line Charge, Access Recovery Charge, Presubscribed Interexchange Carrier Charge, Line Port Charge, and Special Access Surcharge).
- Propose mandatory detariffing of Telephone Access Charges.
- Propose modifications to the Commission’s truth-in-billing rules to explicitly prohibit all carriers from assessing any separate Telephone Access Charges on customers’ bills after those charges are deregulated and detariffed.
- Propose ways to provide certainty in calculating contributions to the Universal Service Fund and other federal programs as well as high-cost universal service support to ensure stability in such funding and support following pricing deregulation and detariffing of Telephone Access Charges.

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\* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket No. 20-71, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Eliminating Ex Ante Pricing Regulation and ) WC Docket No. 20-71
Tariffing of Telephone Access Charges )

NOTICE OF PROPOSED RULEMAKING\*

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\* This document has been circulated for tentative consideration by the Commission at its March 2020 open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

APPENDIX B

APPENDIX C

## I. INTRODUCTION

1. Twenty-five years ago, consumers made most of their telephone calls from their home phones, their work phones or public payphones—and, in almost all cases, the local telephone company provided the local telephone service. Most of those companies (known as incumbent local exchange carriers) faced little to no competition as a result of state-granted monopolies. It therefore made sense for the Commission to impose pricing regulation and tariffing obligations on the portion of local telephone service used to originate and terminate interstate long-distance calls and for states to impose similar obligations on the intrastate portion of such service. Doing so protected consumers from the monopoly power of the incumbent local exchange carrier and ensured that rates were just and reasonable as required by the Communications Act.

2. Today, the communications marketplace is dramatically different. As a result of the Telecommunications Act of 1996, local telephone markets are open to competition. And consumers and businesses continue to rapidly migrate away from traditional telephone service provided by incumbent local exchange carriers to a multitude of voice service options offered by providers of interconnected VoIP service, mobile and fixed wireless services, and over-the-top voice applications. In light of the sweeping changes in the competitive landscape for voice services, many states have begun to deregulate the intrastate portion of local telephone service provided by incumbent local exchange carriers.

3. And yet, the Commission continues to regulate the various end-user charges associated with interstate access service offered by incumbent local exchange carriers—“Telephone Access Charges” for short. In addition to remaining subject to federal price regulation and complicated federal tariffing requirements, these Telephone Access Charges are difficult to understand, and the opaque way they are sometimes described on telephone bills reduces consumers’ ability to compare the cost of different voice service offerings.

4. Significant marketplace and regulatory changes over the past two-plus decades call into question whether *ex ante* price regulation and tariffing of Telephone Access Charges remain in the public interest. Consistent with our commitment to eliminate outdated and unnecessary regulations and to encourage efficient competition, this *Notice* proposes to deregulate and detariff these charges, which represent the last handful of interstate end-user charges that remain subject to regulation. In the interest of enabling consumers to easily compare voice service offerings by different providers, we also propose to prohibit all carriers from separately listing Telephone Access Charges on customers’ bills. Doing so should help ensure that a voice service provider’s advertised price is closer to the total price that appears on its customers’ bills.

## II. BACKGROUND

### A. Currently Tariffed Telephone Access Charges

5. Section 203 of the Communications Act of 1934, as amended (the Act), requires that common carriers file tariffs or “schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier . . . and showing the classifications, practices, and regulations affecting such charges.”<sup>1</sup> Commission rules currently include five tariffed Telephone Access Charges: the Subscriber

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<sup>1</sup> 47 U.S.C. § 203(a).

Line Charge, the Access Recovery Charge, the Presubscribed Interexchange Carrier Charge, the Line Port Charge, and the Special Access Surcharge.<sup>2</sup>

6. *The Subscriber Line Charge.*—The Subscriber Line Charge was the product of the Commission’s decision in 1983 to establish a formal system of tariffed charges governing intercarrier compensation.<sup>3</sup> That system originally required long-distance companies (known as interexchange carriers) to pay local exchange carriers for originating and terminating long-distance calls.<sup>4</sup> Those intercarrier charges did not, however, recover the entire cost of the local loop—the connection between an end user and its local exchange carrier.<sup>5</sup> Instead, the Commission created the Subscriber Line Charge as the mechanism through which local exchange carriers recover a portion of the costs of their local loops through a flat per-line fee assessed on end users.<sup>6</sup> The Commission adopted a flat per-line fee because the local exchange carrier’s cost of providing the local loop is not traffic-sensitive.<sup>7</sup> In other words, the costs of providing the local loop do not vary with the amount of traffic carried over the loop.<sup>8</sup> The Commission found that requiring carriers to recover non-traffic sensitive costs through flat fees would ensure that rates were “just and reasonable” as required by the Act.<sup>9</sup> Recovering the entire cost of the loop from end users, however, raised the concern that customers in high-cost areas would see a sudden increase in rates.<sup>10</sup> The Commission therefore capped Subscriber Line Charges and required carriers to recover the remaining common line costs through a per-minute Carrier Common Line charge assessed on interexchange carriers.<sup>11</sup> For price cap local exchange carriers, there are three categories of caps on the Subscriber Line Charge: a primary residential or single-line business cap, a non-primary residential cap, and a multi-line

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<sup>2</sup> See 47 CFR §§ 51.915(e), 51.917(e), 69.115, 69.152, 69.153, 69.157. Although the term “access charges” typically refers to intercarrier charges, it includes some end-user charges. The scope of this *Notice* is limited to end-user access charges.

<sup>3</sup> See *MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, 93 F.C.C.2d 241 (1983) (*1983 Access Charge Order*), *recon.*, *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 F.C.C.2d 682 (1983) (*First Reconsideration of 1983 Access Charge Order*), *recon.*, *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 F.C.C.2d 834 (1984).

<sup>4</sup> *1983 Access Charge Order*, 93 F.C.C.2d at 245-254, paras. 9-35.

<sup>5</sup> See, e.g., *AT&T Corp., MCI Telecommunications Corp. et al. v. Bell Atlantic - Pennsylvania*, File No. E-95-006 et al., Memorandum Opinion and Order, 14 FCC Rcd 556, 559, para. 4 (1998) (“A common line, sometimes called a ‘local loop,’ connects an end user’s home or business to a [local exchange carrier’s] central office. A characteristic feature of a common line is that it enables the end user to complete local as well as interstate and foreign calls.”) (footnotes omitted), *recon. denied*, 15 FCC Rcd 7467 (2000); Newton’s *Telecom Dictionary* 477 (19th ed. 2003) (defining “loop” as “the pair of wires that winds its way from the central office to the telephone set or system at the customer’s office, home or factory, i.e., ‘premises’ in telephones”).

<sup>6</sup> The Commission emphasized that its long-term goal was for local exchange carriers to recover a large share of their non-traffic sensitive common line costs on a flat-rated basis from end users instead of from carriers. *1983 Access Charge Order*, 93 F.C.C.2d at 264-65, para. 72.

<sup>7</sup> See, e.g., *id.* at 273, para. 105; *Access Charge Reform et al.*, CC Docket Nos. 96-262 et al., First Report and Order, 12 FCC Rcd 15982, 16007, para. 67 (1997) (*Access Charge Reform Order*).

<sup>8</sup> *Access Charge Reform Order*, 12 FCC Rcd at 15992, para. 23.

<sup>9</sup> *1983 Access Charge Order*, 93 F.C.C.2d at 259, para. 53.

<sup>10</sup> *Access Charge Reform Order*, 12 FCC Rcd at 16007, para. 68.

<sup>11</sup> See generally FCC, *MTS and WATS Market Structure*, and Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board, Decision and Order, 50 Fed. Reg. 939 (Jan. 8, 1985) (CC Docket Nos. 78-72 et al.; FCC 84-637). See *Access Charge Reform Order*, 12 FCC Rcd at 16007, para. 68. The Commission required that these access charges be calculated based on the average embedded cost of providing such services. See generally *1983 Access Charge Order*, 93 F.C.C.2d at 242-45, paras. 1-8.

business cap.<sup>12</sup> For rate-of-return local exchange carriers, there are two such categories: a residential or single-line business cap and a multi-line business cap.<sup>13</sup>

7. In 1996, the Commission began reform of interstate access charges to align the access rate structure more closely with the manner in which costs are incurred. At the same time, the Commission developed a federal high-cost universal service support mechanism to make explicit subsidies that had been implicitly included in interstate access service charges.<sup>14</sup> As part of that order and subsequent reforms, the Commission increased the Subscriber Line Charge caps for price cap carriers as follows:

- \$6.50 for primary residential and single-line business lines;<sup>15</sup>
- \$7.00 for non-primary residential lines;<sup>16</sup> and
- \$9.20 per line for multi-line business lines.<sup>17</sup>

The Commission then amended the interstate access charge system for rate-of-return carriers, increasing the Subscriber Line Charge caps to the levels established for price cap carriers.<sup>18</sup>

8. The Commission does not regulate the end-user charges of competitive local exchange carriers because it has found that competitive local exchange carriers generally lack market power in the provision of telecommunications service.<sup>19</sup> Thus, competitive local exchange carriers are free to build into their end-user rates for voice service any charge, including an amount equivalent to the incumbent local exchange carriers' Subscriber Line Charge, subject only to the general requirement that their rates be just and reasonable.<sup>20</sup>

9. *The Access Recovery Charge.*—The Commission created the Access Recovery Charge in 2011 as part of new rules requiring local exchange carriers to reduce, over a period of years, many of their switched access charges assessed on interexchange carriers, with the ultimate goal of transitioning intercarrier compensation to a bill-and-keep regime.<sup>21</sup> The Commission adopted a transitional recovery

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<sup>12</sup> 47 CFR § 69.152.

<sup>13</sup> 47 CFR § 69.104.

<sup>14</sup> See *Access Charge Reform Order*, 12 FCC Rcd at 16007-33, paras. 67-120.

<sup>15</sup> See *Access Charge Reform et al.*, CC Docket No. 96-262 et al., Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 12974-5, 12991-93, 13004-07, paras. 30, 76-79, 105-112 (2000) (*CALLS Order*); 47 CFR § 69.152(d)(1).

<sup>16</sup> *CALLS Order*, 15 FCC Rcd at 12988-89, paras. 70-72; 47 CFR § 69.152(e)(1).

<sup>17</sup> *CALLS Order*, 15 FCC Rcd at 12990-91, para. 75; 47 CFR § 69.152(k)(1).

<sup>18</sup> *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al.*, CC Docket No. 00-256 et al., Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, 19621, para. 15 (2001) (*MAG Order*).

<sup>19</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17965-66, para. 864 (2011) (*USF/ICC Transformation Order*), *aff'd*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2050, and 135 S. Ct. 2072 (2015).

<sup>20</sup> *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, 9128, para. 39 (2004); *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9955, para. 81 (2001) (*2001 CLEC Access Charge Reform Order*); 47 U.S.C. § 201(b).

<sup>21</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17676, 17873, paras. 34, 652-53. Under a bill-and-keep approach, carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary. *Id.* at 17676, para. 34.

mechanism to mitigate the impact of reduced intercarrier compensation revenues on incumbent local exchange carriers and to facilitate continued investment in broadband-capable infrastructure.<sup>22</sup> The Commission defined a portion of the revenues that incumbent local exchange carriers lost due to reduced access charges as “Eligible Recovery” and allowed eligible carriers to use a combination of a new limited end-user charge—known as the Access Recovery Charge—and universal service support (known as CAF Intercarrier Compensation or CAF ICC) to recover their Eligible Recovery.<sup>23</sup>

10. Incumbent local exchange carriers may assess an Access Recovery Charge on customers in the form of a monthly fixed charge.<sup>24</sup> To ensure that any increases to the Access Recovery Charge would not adversely impact service affordability, the Commission limited annual increases of the Access Recovery Charge to \$0.50 per month for residential and single-line businesses and \$1.00 per month for multiline businesses.<sup>25</sup> In addition, residential and single-line business Access Recovery Charges cannot exceed \$2.50 per line per month for price cap carriers and \$3.00 per line per month for rate-of-return carriers.<sup>26</sup> Access Recovery Charges for multi-line businesses are capped at \$5.00 per line per month for price cap carriers and \$6.00 per line per month for rate-of-return carriers.<sup>27</sup> In addition, the multi-line business Access Recovery Charge plus the Subscriber Line Charge may not exceed \$12.20 per line per month.<sup>28</sup>

11. The Commission adopted these caps to fairly balance recovery across all end users, to protect customers from carriers imposing excessive Access Recovery Charges, and to ensure that the total rates that multi-line businesses pay for Subscriber Line Charge and Access Recovery Charge line items remain just and reasonable.<sup>29</sup> The Access Recovery Charge is tariffed separately from the Subscriber Line Charge but may be combined with the Subscriber Line Charge on bills to customers.<sup>30</sup>

12. Carriers that choose not to impose the maximum Access Recovery Charge on their end users must still impute the full Access Recovery Charge revenue they are permitted to collect for purposes of calculating CAF ICC support.<sup>31</sup> In addition, rate-of-return carriers offering consumer broadband-only lines must impute an Access Recovery Charge amount equal to the amount that would have been assessed on a voice or voice-data line in calculating CAF ICC support.<sup>32</sup>

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<sup>22</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17677, 17962-63, paras. 36, 858.

<sup>23</sup> *Id.* at 17957, para. 850. In determining how the transitional recovery should be funded, the Commission concluded that “it is appropriate to first look to customers paying lower rates for some limited, reasonable recovery, and adopt[ed] a number of safeguards to ensure that rates remain affordable and that consumers are not required to contribute an inequitable share of lost intercarrier revenues.” *Id.* at 17988, para. 906.

<sup>24</sup> *Id.* at 17988, para. 908; 47 CFR §§ 51.915(e), 51.917(e).

<sup>25</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17958-61, para. 852; 47 CFR §§ 51.915(e), 51.917(e).

<sup>26</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17958-61, para. 852; 47 CFR §§ 51.915(e)(5)(i), 51.917(e)(6)(i).

<sup>27</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17958-61, para. 852; 47 CFR §§ 51.915(e)(5)(ii), 51.917(e)(6)(ii).

<sup>28</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17958-61, para. 852; 47 CFR §§ 51.915(e)(5)(iv), 51.917(e)(6)(iv).

<sup>29</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17957, 17958-61, paras. 849, 852; 47 CFR §§ 51.915(e), 51.917(e). The Commission has made clear that Access Recovery Charges may not be assessed on Lifeline customers. *USF/ICC Transformation Order*, 26 FCC Rcd at 17958-59, para. 852.

<sup>30</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17958, para. 852.

<sup>31</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17990, para. 910.

<sup>32</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3161-62, para. 203 (2016) (*Rate-of-Return Reform Order*) (requiring this imputation to avoid significantly shifting the balance struck between end-

(continued....)

13. In the *USF/ICC Transformation Order*, the Commission established a sunset date for price cap carriers' CAF ICC Support. Specifically, as of July 1, 2019, a price cap carrier unable to recover its entire Eligible Recovery through Access Recovery Charges was no longer permitted to recover the remainder of its eligible support through CAF ICC support.<sup>33</sup> Price cap carriers can continue to calculate their Eligible Recovery, pursuant to our rules, and to assess Access Recovery Charges on their end users to recover as much of their Eligible Recovery as they can, subject to the caps on the Access Recovery Charge. There is no sunset date for rate-of-return carriers' CAF ICC support.<sup>34</sup>

14. *The Presubscribed Interexchange Carrier Charge.*—Price cap carriers may assess a monthly flat-rate charge on the presubscribed interexchange carrier—the long-distance carrier to which the calls are routed by default—of a multi-line business subscriber.<sup>35</sup> Created in 1997, the charge recovers a portion of the common line costs not recovered by the Subscriber Line Charge.<sup>36</sup> The Presubscribed Interexchange Carrier Charge is capped and has largely been phased out. When a multi-line business customer does not presubscribe to a long-distance carrier, the Commission's rules allow the price cap carrier to assess the Presubscribed Interexchange Carrier Charge on the end-user customer directly.<sup>37</sup>

15. *The Line Port Charge.*—A local switch consists of (1) an analog or digital switching system, and (2) line and trunk cards.<sup>38</sup> Line ports connect subscriber lines to the switch in the local exchange carrier's central office.<sup>39</sup> The costs associated with line ports include the line card, protector, and main distribution frame.<sup>40</sup> The Line Port Charge is a monthly end-user charge that recovers costs associated with digital lines, such as integrated services digital network (ISDN) line ports, to the extent those port costs exceed the costs for a line port used for basic, analog service.<sup>41</sup> The Line Port Charge was established for price cap carriers in 1997 and for rate-of-return carriers in 2001.<sup>42</sup>

16. *The Special Access Surcharge.*—Established in 1983, the \$25 per month Special Access Surcharge is assessed on trunks that could “leak” traffic into the public switched network in order to address the problem of a “leaky private branch exchange (PBX).”<sup>43</sup> The “leaky PBX” problem can arise where large end users that employ multiple PBXs in multiple locations lease private lines to connect their various PBXs. Although these lines were intended to permit employees of large business end users to communicate between locations without incurring access charges, some large end users permitted long-distance calls to leak from the PBX into the local public network, where they were terminated without

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user Access Recovery Charges and high cost universal service support in the event of a migration of end users from their current voice/broadband offerings to supported broadband-only lines).

<sup>33</sup> 47 CFR § 51.915(f)(5).

<sup>34</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17996, para. 920.

<sup>35</sup> See 47 CFR § 69.153.

<sup>36</sup> See *Access Charge Reform Order*, 12 FCC Rcd at 16019, paras. 91-92.

<sup>37</sup> See 47 CFR § 69.153; *Access Charge Reform Order*, 12 FCC Rcd at 16019, paras. 91-92.

<sup>38</sup> *Access Charge Reform Order*, 12 FCC Rcd at 16034, para. 123.

<sup>39</sup> *Id.* at 16035, para. 125.

<sup>40</sup> *Id.*

<sup>41</sup> 47 CFR §§ 69.130, 69.157.

<sup>42</sup> See *Access Charge Reform Order*, 12 FCC Rcd at 16035, para. 125; *MAG Order*, 16 FCC Rcd at 19654, para. 90.

<sup>43</sup> *First Reconsideration of 1983 Access Charge Order*, 97 F.C.C.2d at 720-21, 743, paras. 88, 151; see also, 47 CFR §§ 69.5(c), 69.115. Despite its name, the Special Access Surcharge is unrelated to Business Data Services, which were formerly known as Special Access Services.

incurring access charges. The assessed amount currently constitutes only a *de minimis* portion of revenues for most carriers.<sup>44</sup>

## B. Universal Service Rules Related to Telephone Access Charges

17. *The Reasonable Comparability Benchmark.*—Section 254(b) of the Act provides that “[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>45</sup> Consistent with this principle, the Commission requires certain carriers receiving high cost universal service support, known as Eligible Telecommunications Carriers,<sup>46</sup> to “offer voice telephony as a standalone service throughout their designated service area . . . at rates that are reasonably comparable to urban rates” as a “condition of receiving support.”<sup>47</sup> Rates for voice services are “reasonably comparable” to urban rates when they are within two standard deviations of the “national average urban rate for voice service.”<sup>48</sup> The Wireline Competition Bureau publishes an updated reasonable comparability benchmark annually.<sup>49</sup>

18. *Telephone Access Charges Used to Calculate Universal Service Fund (USF) Support.*—Revenues from some Telephone Access Charges are used in the computation of USF support for rate-of-return carriers. Specifically, the Subscriber Line Charge, Line Port Charge, and Special Access Surcharge revenues are subtracted from a carrier’s common line revenue requirement to determine the amount of Connect America Fund Broadband Loop Support (CAF BLS) a carrier is entitled to receive.<sup>50</sup> The Access Recovery Charge is subtracted from the Eligible Recovery to determine the amount of CAFICC support a rate-of-return carrier is entitled to receive.

19. CAF BLS support is the successor to Interstate Common Line Support, which was created by the Commission in 2001 to allow rate-of-return carriers to recover from the USF any shortfall between their allowed Subscriber Line Charge and their allowed common line revenue requirement.<sup>51</sup> If a rate-of-return carrier charged a Subscriber Line Charge that was less than the full amount it was permitted

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<sup>44</sup> Few carriers continue to collect the Special Access Surcharge, and those that do recover little revenue. For example, the National Exchange Carrier Association projects that less than a dozen of its members will collect a total of \$3,900 from charging the Special Access Surcharge in tariff year 2019-2020. *See, e.g.*, National Exchange Carrier Association, Tariff Review Plan, Transmittal No. 1579, Vol. 4, Exh. 2 (June 17, 2019), [https://apps.fcc.gov/etfs/public/view\\_185634\\_pdf.action?id=185634](https://apps.fcc.gov/etfs/public/view_185634_pdf.action?id=185634).

<sup>45</sup> 47 U.S.C. § 254(b)(3).

<sup>46</sup> 47 U.S.C. § 214(e); 47 CFR § 54.201.

<sup>47</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17693, paras. 80-81. To address situations in which a price cap carrier has been designated an eligible telecommunications carrier but may no longer receive high-cost support (such as in a low-cost urban area or an area served by one or more competitors), the Commission has forbore from applying this requirement to such carriers in such areas. *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 15644, 15663-71, paras. 50-70 (2014) (*Connect America Order*).

<sup>48</sup> 47 CFR § 54.313(a)(2). A carrier must meet the reasonable comparability benchmark absent justification for not doing so. *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., Report and Order, 32 FCC Rcd 3459, 3529-31, paras. 155-59 (2017) (*Price Cap BDS Order*). For example, a carrier in an extremely remote area may only access a very expensive backhaul that interconnects its networks—the carrier’s costs are thus high, requiring a higher price for its retail services.

<sup>49</sup> *E.g.*, *Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2020 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 11189 (WCB OEA 2019).

<sup>50</sup> 47 CFR § 54.901.

<sup>51</sup> *MAG Order*, 16 FCC Rcd at 19642, 19617, 19667-73, paras. 3, 61, 128-41.

to charge, the carrier had to impute the maximum allowed Subscriber Line Charge in calculating its Interstate Common Line Support.<sup>52</sup> In 2016, the Commission revised its Interstate Common Line Support rules to include support for consumer broadband-only loops and renamed it CAF BLS, but the relationship between the Subscriber Line Charge, common line expenses, and the support mechanism remains the same.<sup>53</sup>

20. In 2011, the Commission adopted a Residential Rate Ceiling of \$30 per month (i.e., the total rate for basic local telephone phone service, including any additional charges, that a customer actually pays each month) to ensure that local telephone service remains affordable and set at reasonable levels.<sup>54</sup> Our rules currently prohibit an incumbent local exchange carrier from assessing an Access Recovery Charge on residential customers that would cause the carrier's total charges to exceed the Residential Rate Ceiling.<sup>55</sup> A rate-of-return carrier can, however, recover through CAF ICC, the amount of Eligible Recovery that it is not permitted to recover through its Access Recovery Charges due to the Residential Rate Ceiling.

21. *Role of Telephone Access Charges in USF Contributions.*—Section 254(d) of the Act specifies that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the . . . mechanisms established by the Commission to preserve and advance universal service,” and that “[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”<sup>56</sup> Pursuant to that provision, the Commission requires all “[e]ntities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee,”<sup>57</sup> to contribute to the federal USF based on their interstate and international end-user telecommunications revenues.<sup>58</sup>

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<sup>52</sup> *MAG Order*, 16 FCC Rcd at 19673-74, para. 142.

<sup>53</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3117, 3121 paras. 80, 88.

<sup>54</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17992, para. 916.

<sup>55</sup> The Residential Rate Ceiling is the total of the Rate Ceiling Component Charges which consist of the Subscriber Line Charge, the Access Recovery Charge, the flat rate for residential local service, mandatory extended area service charges, state subscriber line charges (if applicable), state universal service fund charges, state 911 charges, and state Telecommunications Relay Service charges. *USF/ICC Transformation Order*, 26 FCC Rcd at 17958, 17991-92, paras. 852, 914; 47 CFR § 51.915(b)(11)-(12).

<sup>56</sup> 47 U.S.C. § 254(d).

<sup>57</sup> 47 CFR § 54.706. The Commission exempts from this requirement contributors whose contributions would be *de minimis*. See, e.g., 47 CFR § 54.708 (“If a contributor’s contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution . . .”); 47 CFR § 54.706(d) (“The following entities will not be required to contribute to universal service: non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.”). The Commission requires interconnected Voice over Internet Protocol (VoIP) service providers to contribute as a means of ensuring a level playing field among direct competitors. *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7541, para. 44 (2006) (extending contribution obligations to interconnected VoIP service providers). Although the Commission did not address the regulatory classification of interconnected VoIP services under the Act, the Commission concluded that interconnected VoIP service providers are “providers of interstate telecommunications” for purposes of universal service contributions. *Id.* at 7537, para. 35 (citing 47 U.S.C. § 254(d)).

<sup>58</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9201, 9205-9207 paras. 836, 842-44 (1997) (*Universal Service First Report and Order*).

22. Contributions to the Fund are based upon a percentage of contributors' interstate and international end-user telecommunications revenues.<sup>59</sup> This percentage is called the contribution factor.<sup>60</sup> The Commission calculates the quarterly contribution factor based on the ratio of total projected quarterly costs of the universal service support mechanisms to contributors' total projected collected end-user interstate and international telecommunications revenues, net of projected contributions.<sup>61</sup> Telephone Access Charges are assessable revenue for federal USF contribution purposes.<sup>62</sup>

23. As discussed, the Commission does not regulate how competitive local exchange carriers recover their costs of providing interstate access service from their end-user customers. To the extent that a competitive local exchange carrier chooses to assess a separate interstate end-user access charge on its customers, it is required to report such revenues for USF contribution purposes in a manner that is consistent with its supporting books of account and records.<sup>63</sup>

24. For providers of voice services that are not able to easily determine the jurisdictional nature of their traffic, the Commission created different USF contribution safe harbors for different types of providers. Wireless providers, for example, are considered in compliance with our USF contributions requirements if they treat 37.1% of their telecommunications revenue as assessable for purposes of determining their federal USF contributions.<sup>64</sup> Interconnected VoIP service providers are considered to be in compliance with our USF contributions requirements if they treat 64.9% of their total revenue as assessable for purposes of determining their federal USF contributions.<sup>65</sup>

### C. The Commission's Truth-In-Billing Rules

25. The Commission has long sought to make telephone bills more understandable for consumers.<sup>66</sup> Indeed, we currently have two open rulemaking proceedings in which we are considering, among other things, whether government-mandated charges should be separate from other charges on customers' telephone bills, and whether to apply our truth-in-billing rules to interconnected VoIP services.<sup>67</sup>

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<sup>59</sup> *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review; Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.*, Order, 20 FCC Rcd 1012, 1013, para. 4 (2004).

<sup>60</sup> *Id.*

<sup>61</sup> See 47 CFR § 54.709(a)(2).

<sup>62</sup> See generally *Universal Service First Report and Order*, 12 FCC Rcd at 8797, 9206-07, paras. 40, 844. See *Wireline Competition Bureau Releases the 2019 Telecommunications Reporting Worksheets and Accompanying Instructions*, WC Docket No. 06-122, Public Notice, 34 FCC Rcd 426, Attach. B, 2019 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), at 24-26 (WCB 2019) (2019 Form 499-A Instructions), <https://docs.fcc.gov/public/attachments/DA-19-84A3.pdf>; see also 47 CFR § 54.706.

<sup>63</sup> 2019 Form 499-A Instructions at 26.

<sup>64</sup> *Contribution Methodology et al.*, WC Docket No. 06-122 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7532, para. 25 (2006).

<sup>65</sup> *Id.* at 7545, para. 53.

<sup>66</sup> E.g., *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7525, para. 54 (1999) (*First Truth-in-Billing Order*), *recon. granted in part*, Order on Reconsideration, 15 FCC Rcd 6023 (2000), Errata, 15 FCC Rcd 16544 (CCB 2000).

<sup>67</sup> See *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Truth-in-Billing Rules to Ensure Protections for All Consumers of Voice Services*, CC Docket No. 98-170, WC Docket No. 04-36, Public Notice, 34 FCC Rcd 12202 (CGB 2019); *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4863, para. 1 (2004) (*IP-Enabled Services Notice*); *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 (2005) (*Truth-in-Billing Second Further Notice*), *vacated in part sub nom. Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 457 F.3d 1238 (11th Cir. 2006).

26. In order to assist consumers in understanding their phone bills, we have posted on our website consumer education material explaining the various charges consumers are likely to find on such bills.<sup>68</sup> As described in our consumer education materials, a typical phone bill includes a “base” charge for local service; line items for local, state, and federal taxes; additional charges to pay for 911 services, federal USF, and Local Number Portability Administration; the Subscriber Line Charge; and various other charges.<sup>69</sup>

27. The Commission has held that the prohibition on carriers engaging in unjust and unreasonable practices in section 201(b) of the Act<sup>70</sup> prohibits carriers from including misleading information on telephone bills, but does not require all carriers to use the same descriptions for the various types of charges found on telephone bills.<sup>71</sup> Recognizing that there are “many ways to convey important information to consumers in a clear and accurate manner” the Commission has declined to prescribe specific descriptions for charges typically found on telephone bills.<sup>72</sup> As a result, carriers use different descriptions for these charges.

28. For example, different carriers’ bills describe the Subscriber Line Charges as “FCC-Approved Customer Line Charge,” “FCC Subscriber Line Charge,” “Customer Subscriber Line Charge,” “Easy Access Dialing Fee,” and “Federal Line Fee.”<sup>73</sup> What is more, although the Commission has directed carriers to list the Subscriber Line Charge as a line-item charge on customers’ telephone bills, it also specified in 2011 that the Access Recovery Charge may be combined in a single line item with the Subscriber Line Charge on the bill.<sup>74</sup> As a result, some phone bills may have a single line item combining the two charges and other phone bills may break them out separately.

#### **D. The Commission’s Detariffing Authority**

29. The Telecommunications Act of 1996 was adopted to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers.”<sup>75</sup> In implementing this legislation, the Commission noted the pro-competitive, deregulatory goals of the Act and its directive to remove “statutory and regulatory impediments to competition.”<sup>76</sup>

30. Consistent with these objectives, the 1996 Act granted the Commission authority to forbear from statutory provisions and regulations that are no longer “current and necessary in light of changes in the industry.”<sup>77</sup> More specifically, under section 10 of the Act, the Commission is required to

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<sup>68</sup> FCC, Understanding Your Telephone Bill (Aug. 15, 2019), [https://www.fcc.gov/sites/default/files/understanding\\_your\\_telephone\\_bill.pdf](https://www.fcc.gov/sites/default/files/understanding_your_telephone_bill.pdf).

<sup>69</sup> See *id.* at 3-4; see also *Truth-in-Billing Second Further Notice*, 20 FCC Rcd at 6472, para. 46.

<sup>70</sup> 47 U.S.C. § 201(b).

<sup>71</sup> *First Truth-in-Billing Order*, 14 FCC Rcd at 7560, para. 10.

<sup>72</sup> *First Truth-in-Billing Order*, 14 FCC Rcd at 7499, para. 10.

<sup>73</sup> CenturyLink, *Subscriber Line Charge*, <https://www.centurylink.com/home/help/account/billing/taxes-fees-and-surcharges-on-your-bill/subscriber-line-charge-explained.html> (last visited Mar. 4, 2020); see also Pub. Util. Comm’n of Tex., *Telephone Options*, <https://www.puc.texas.gov/consumer/phone/Taxes.aspx> (last visited Mar. 4, 2020) (listing descriptions of Subscriber Line Charges used by a variety of carriers).

<sup>74</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17958, para. 852.

<sup>75</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq.*).

<sup>76</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 et al.*, First Report and Order, 11 FCC Rcd 15499, 15505, para. 3 (1996). The Commission explained that the reduction in burdensome and inefficient regulation combined with its reform efforts would unleash marketplace forces fueling economic growth. *Id.* at 15508, para. 9.

<sup>77</sup> 141 Cong. Rec. S7893 (June 7, 1995) (remarks of Sen. Pressler).

forbear from any statutory provision or regulation if it determines that: (1) enforcement of the provision or regulation is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the provision or regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>78</sup>

31. Over the last two decades, the Commission has repeatedly relied on its section 10 authority to forbear from applying section 203's tariffing requirements when competitive developments made such requirements unnecessary and even counterproductive. Shortly after Congress enacted section 10, the Commission forbore from section 203 tariffing requirements for domestic long-distance services provided by non-dominant carriers.<sup>79</sup> The Commission found that market forces would generally ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory.<sup>80</sup> The Commission also found that tariff filings by non-dominant interexchange carriers for long distance services were not necessary to protect consumers. Instead, the Commission found that market forces, the section 208 complaint process, and the Commission's ability to reimpose tariff requirements, if necessary, were sufficient to protect consumers.<sup>81</sup> The Commission further found that detariffing of non-dominant domestic long distance services was in the public interest because it would further the pro-competitive, deregulatory objectives of the 1996 Act by fostering increased competition in the market for interstate, domestic, interexchange telecommunications services.<sup>82</sup>

32. Beginning in 2007, the Commission granted forbearance from dominant carrier regulation, including tariffing and price regulation, to a number of price cap incumbent local exchange carriers for their newer packet-based broadband services.<sup>83</sup> In the case of AT&T, for example, the Commission found that a number of entities provided, or were ready to provide, broadband services in competition with AT&T's broadband services.<sup>84</sup> Given the level of competition, the Commission concluded that dominant carrier tariffing and pricing regulation was not necessary to ensure that AT&T's rates and practices for those services remained just, reasonable, and not unjustly or unreasonably

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<sup>78</sup> 47 U.S.C. § 160(a).

<sup>79</sup> *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, (1996).

<sup>80</sup> *Id.* at 20742-47, paras. 21-28.

<sup>81</sup> *Id.* at 20750-53, paras. 36-43.

<sup>82</sup> *Id.* at 20760-68, paras. 52-68.

<sup>83</sup> See, e.g., *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*; *Petition of BellSouth Corp. for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, 22 FCC Rcd 18705, 18707, para. 3 (*AT&T Forbearance Order*); *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements et al.*, WC Docket No. 06-147, Memorandum Opinion and Order, 22 FCC Rcd 19478 (2007); *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, 23 FCC Rcd 12260 (2008); *Petition of ACS of Anchorage, Inc., Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007).

<sup>84</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18718, para. 22.

discriminatory.<sup>85</sup> The Commission found that, under these circumstances, the benefits of tariffing requirements to ensuring just, reasonable, and nondiscriminatory charges and practices, were negligible.<sup>86</sup> The Commission explained that continuing to apply dominant carrier tariff regulation was not in the public interest because it would create market inefficiencies, inhibit carriers from responding quickly to rivals' new offerings, and impose other unnecessary costs.<sup>87</sup>

33. More recently, in the 2017 *Price Cap BDS Order*, the Commission found, among other things, that competition was sufficiently pervasive to justify granting all price cap carriers forbearance from tariffing of their packet-based business data services and time division multiplexing (TDM)-based business data services above a DS3 bandwidth level.<sup>88</sup> The Commission also adopted a competitive market test to determine where there was sufficient competitive pressure on lower speed (DS3 and below) TDM-based end user channel termination services to justify forbearance from tariffing requirements for those services.<sup>89</sup> The Commission found that application of section 203's tariffing requirements was not necessary because competition and remaining statutory and regulatory requirements were sufficient to ensure "just and reasonable rates, terms, and conditions" that are not "unjustly or unreasonably discriminatory."<sup>90</sup> The Commission further found that by ensuring regulatory parity and promoting competition and broadband deployment, detariffing these services met the requirements of section 10(a)(3).<sup>91</sup> On partial remand of the *Price Cap BDS Order*,<sup>92</sup> the Commission similarly found that competition for lower speed TDM transport business data services in price cap areas was sufficiently widespread to justify granting price cap carriers forbearance from tariffing these services.<sup>93</sup>

34. In 2018, the Commission relied on its section 10 forbearance authority to detariff certain business data services provided by rate-of-return carriers receiving fixed or model-based universal service support.<sup>94</sup> In the *Rate-of-Return BDS Order*, the Commission adopted a voluntary path by which rate-of-return carriers that receive fixed or model-based universal service support could elect to transition their business data service offerings to incentive regulation.<sup>95</sup> As part of this framework, the Commission

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<sup>85</sup> *Id.* at 18724, para. 31.

<sup>86</sup> *Id.*, para. 30.

<sup>87</sup> *Id.* at 18725, para. 33.

<sup>88</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3529-31, paras. 155-59.

<sup>89</sup> 47 CFR §§ 69.803(a), 69.807(a); *see Price Cap BDS Order*, 32 FCC Rcd at 3502-27, paras. 94-144.

<sup>90</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3531-33, paras. 160-65.

<sup>91</sup> *Id.* at 3533, para. 159.

<sup>92</sup> *See Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F.3d 991, 1004-06 (8th Cir. 2018) (largely affirming the *Price Cap BDS Order*, but finding that the Commission did not provide adequate notice with respect to the narrow issue of eliminating *ex ante* pricing regulation of lower speed TDM transport business data services offered by price cap carriers); *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, WC Docket Nos. 17-144 et al., Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10453-58, paras. 147-62 (2018) (*Rate-of-Return BDS Order*) (proposing and seeking comment on eliminating *ex ante* pricing regulation of price cap carriers' TDM transport business data services).

<sup>93</sup> *Business Data Services in an Internet Protocol Environment et al.*, WC Docket Nos. 16-143 et al., Report and Order on Remand and Memorandum Opinion and Order, 34 FCC Rcd 5767, 5775, 5787-89, paras. 15-16, 42-46 (2019).

<sup>94</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10405, para. 3.

<sup>95</sup> *Id.* Carriers eligible to make this election include carriers receiving Alternative Connect America Fund (ACAM) support, rate-of-return carriers affiliated with price cap carriers receiving fixed universal service support, Alaska Plan carriers, and rate-of-return carriers that accept future offers of ACAM support or otherwise transition away from legacy support. *Id.* at 10410-11, paras. 19-20; 47 CFR § 61.50(b).

granted electing carriers forbearance from section 203 tariffing requirements for packet-based and higher capacity (above DS3) TDM-based business data services.<sup>96</sup> The Commission also detariffed electing carriers' lower capacity (DS3 and below) TDM-based business data services in rate-of-return study areas deemed competitive.<sup>97</sup> The Commission found that forbearance from tariffing these services "will promote competition, reduce compliance costs, increase investment and innovation, and facilitate the technology transitions."<sup>98</sup> Therefore, application of section 203 was not necessary, and forbearance was in the public interest consistent with sections 10(a) and 10(b).<sup>99</sup>

35. Thus, both the statute and longstanding Commission precedent make clear that we can and should forbear from the tariffing requirements of section 203 when there is sufficient competition for a service such that tariffing is not necessary to protect a carrier's customers nor to promote the public interest.<sup>100</sup>

### III. DISCUSSION

36. In this *Notice*, we propose to eliminate *ex ante* pricing regulation of all Telephone Access Charges.<sup>101</sup> In addition, we propose to require incumbent local exchange carriers and competitive local exchange carriers to detariff all such charges. We propose a nationwide approach based on our review of data demonstrating widespread availability of competitive alternatives for voice services and on other factors that appear to make such regulation and tariffing unnecessary and contrary to the public interest. We seek comment on this proposal and invite commenters to offer alternative proposals.<sup>102</sup> We also seek comment on the data we use and on our analysis of those data and invite commenters to offer additional data and their own analyses.

37. Consistent with the goal of simplifying carriers' advertised rates and customers' bills, we also propose to prohibit carriers from billing customers for Telephone Access Charges through separate line items on their bills. Given that some Telephone Access Charges are used to calculate contributions to the USF and other federal programs, as well as high-cost support, we also propose ways to provide certainty in calculating such contributions and support to ensure stability in funding following pricing deregulation and detariffing of Telephone Access Charges. Finally, we seek comment on our legal authority to adopt these rule changes and on the costs and benefits of our proposals.

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<sup>96</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10409-10, para. 16.

<sup>97</sup> *Id.* at 10409-10, para. 16.

<sup>98</sup> *Id.* at 10447, para. 124.

<sup>99</sup> *Id.*

<sup>100</sup> *See, e.g., AT&T Forbearance Order*, 22 FCC Rcd at 18726, para. 35.

<sup>101</sup> While, as a matter of convenience, we sometimes refer in this *Notice* to the proposed elimination of *ex ante* pricing regulation as the "deregulation" of Telephone Access Charges, we do not propose to fully deregulate such charges. For example, local exchange carriers remain subject to the Commission's regulatory authority under sections 201, 202, and 208 of the Act. 47 U.S.C. §§ 201, 202, 208. These statutory provisions allow the Commission to determine whether rates, terms, and conditions are just, reasonable, and not unjustly or unreasonably discriminatory in the context of a section 208 complaint proceeding.

<sup>102</sup> While we believe those identified charges—the Subscriber Line Charge (also called the End User Common Line charge), Access Recovery Charge, Presubscribed Interexchange Carrier Charge, Line Port Charge, and Special Access Surcharge—are the appropriate focus of our proposals here, we seek comment on whether there are any other interstate end-user charges for which we should adopt the reforms being considered as part of this proceeding.

**A. The Declining Need for *Ex Ante* Pricing Regulation and Tariffing of Telephone Access Charges**

38. The primary objective of *ex ante* pricing regulation and tariffing is to ensure that prices are just and reasonable as required by the Act.<sup>103</sup> While such *ex ante* regulation and tariffing may have been necessary when the incumbent local exchange carriers were dominant suppliers, that no longer appears to be the case. Today, competition for voice services is widespread and we expect it to be more effective than regulation in ensuring that incumbent local exchange carriers' rates for voice services are just and reasonable. We are also concerned that the costs of regulating and tariffing Telephone Access Charges are likely to exceed the benefits, because they impose costs on carriers and hinder carriers' ability to quickly adapt to changing market conditions.

39. We propose to find that widespread competition among voice services makes *ex ante* pricing regulation and tariffing of Telephone Access Charges unnecessary to ensure just and reasonable rates or to otherwise protect customers.<sup>104</sup> We seek comment on our proposal. As the Commission has explained in prior deregulatory decisions, “competition is the most effective means of ensuring that . . . charges, practices, classifications, and regulations . . . are just and reasonable, and not unreasonably discriminatory.”<sup>105</sup> When markets become competitive, pricing regulations are not only unnecessary, they are counterproductive.<sup>106</sup>

40. Over the last several decades, local exchange carriers have been quickly losing subscribers while mobile and interconnected VoIP providers have continued gaining subscribers.<sup>107</sup> Our annual Voice Telephone Services Reports show, for example, that from December 2008 to December 2018, the share of total voice subscribers served by incumbent local exchange carriers decreased from 27.9% to only 7.4%.<sup>108</sup> During this same period, the share of total voice subscriptions for interconnected

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<sup>103</sup> *First Reconsideration of 1983 Access Charge Order*, 97 F.C.C.2d at 688, para. 10; *1983 Access Charge Order*, 93 F.C.C.2d at 259, para. 53 (“We believe that the procedures for computing access charges that we are prescribing in this phase of this proceeding are ‘just and reasonable’ or ‘just, fair and reasonable’ for purposes of Section 205(a).”); *American Telephone & Telegraph Company, Long Lines Department Revisions of Tariff FCC No. 260 Private Line Services, Series 5000 (TELPAC)*, Memorandum Opinion and Order, Docket No. 18128, 61 F.C.C.2d 587, 664, para. 226 (1976) (“In accepting the concept of historical causation, we must assure ourselves that the practices used in the actual cost allocation procedure allow fulfillment of our mandate under the Act to ensure just, reasonable and nondiscriminatory rates.”).

<sup>104</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18724, para. 30. The Act does not “prescribe a particular mode of competitive analysis for our public interest standard,” but instead gives us “wide latitude” in conducting our forbearance analysis. *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Memorandum Opinion and Order, 34 FCC Rcd 6503, 6530-31, paras. 57-59 (2019) (*UNE Analog Loop/Resale Forbearance Order*), *pet. for rev. filed*, *COMPTEL v. FCC*, No. 19-1162 (D.C. Cir. Aug. 12, 2019); *see Earthlink, Inc. v. FCC*, 462 F.3d 1, 8 (D.C. Cir. 2006).

<sup>105</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622, 8673, para. 97 (2010) (citing *Petition of US WEST Communications, Inc., for Declaratory Ruling Regarding the Provision of National Directory Assistance et al.*, CC Docket No. 97-172 et al., Memorandum Opinion and Order, 14 FCC Rcd 16252, 16270, para. 31 (1999)).

<sup>106</sup> *See Price Cap BDS Order*, 32 FCC Rcd at 3517-19, paras. 125-29 (explaining how the net costs of regulation can undermine the benefits of competition).

<sup>107</sup> FCC, Voice Telephone Services Report: Status as of December 31, 2018, fig. 1 (OEA Mar. 2020) (2018 Voice Services Report), <https://www.fcc.gov/file/18121/download>.

<sup>108</sup> *See* FCC, Local Telephone Competition: Status as of December 31, 2008, fig. 3, tbl. 17 (WCB June 2010) (2008 Local Competition Report), <https://docs.fcc.gov/public/attachments/DOC-299052A1.pdf>; 2018 Voice Services

(continued....)

VoIP service providers unaffiliated with an incumbent local exchange carrier more than doubled, from 4.9% to 11.7%.<sup>109</sup> Moreover, in the same period, mobile voice subscriptions increased from 61.7% to 75.9%,<sup>110</sup> and as of the end of 2018, 57.1% of households purchased only wireless voice service.<sup>111</sup> Our data also demonstrate that competitive voice service offerings are available nationwide. More than 99.9% of populated census blocks<sup>112</sup> have one or more facilities-based providers of mobile voice services unaffiliated with an incumbent local exchange carrier deployed in the block.<sup>113</sup> Further, 80.6% of populated census blocks have one or more unaffiliated facilities-based providers of fixed broadband at speeds of 10/1 Mbps or greater deployed in the block.<sup>114</sup> Those fixed broadband technologies include xDSL, fiber, terrestrial fixed wireless, and cable modem, and allow providers to offer voice services and allow customers to use over-the-top VoIP service providers. We believe that the presence of competition in voice services imposes material pricing pressure on incumbent local exchange carriers, rendering *ex ante* pricing regulation and tariffing of Telephone Access Charges unnecessary to ensure just and reasonable rates. We seek comment on these data, and on our analysis. We also invite commenters to offer other data sources we should use to examine the extent of competition for voice services.

41. Our proposal to eliminate *ex ante* pricing regulation and tariffing of Telephone Access Charges is supported by the fact that the prices charged by incumbent local exchange carriers in many of the areas that are least likely to have robust competition are subject to other regulatory constraints. Generally, competition in voice services is least likely to exist in rural areas and other high-cost areas. These areas are usually served by carriers that receive federal high-cost USF support. To receive such support, a carrier must be designated as an Eligible Telecommunications Carrier either by a state or by the

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Report, tbl. 1. By “total voice services,” we mean the total number of subscriptions for mobile voice service, both incumbent and competitive local exchange services, and interconnected VoIP service.

<sup>109</sup> See 2008 Local Competition Report, fig. 3, tbl. 17; 2018 Voice Services Report, tbl. 1.

<sup>110</sup> See 2008 Local Competition Report, fig. 3, tbl. 17; 2018 Voice Services Report, tbl. 1.

<sup>111</sup> National Center for Health Statistics, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July–December 2018 (June 2019), <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201906.pdf>.

<sup>112</sup> We define a “populated census block” as any non-water census block with at least one occupied or unoccupied housing unit according to our 2018 “Staff Block Estimates.” FCC, *Staff Block Estimates* (Jan. 23, 2020), <https://www.fcc.gov/reports-research/data/staff-block-estimates>. We previously relied on the Staff Block Estimates in analyzing voice and broadband deployment. *E.g.*, *Connect America Fund*, WC Docket No. 10-90, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11984, para. 1 n.1 (2018).

<sup>113</sup> For purposes of this analysis, we count wireless voice and fixed broadband service providers affiliated with incumbent local exchange carriers as “unaffiliated,” but only outside of the incumbent local exchange carriers’ respective study areas. The December 31, 2018 Form 477 data used in this analysis is publicly available on the Commission website. See FCC, *Mobile Deployment Form 477 Data*, <https://www.fcc.gov/mobile-deployment-form-477-data> (last visited Mar. 8, 2020); FCC, *Fixed Broadband Deployment Data from FCC Form 477* (Feb. 21, 2020), <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477>. Study area data and data regarding the affiliations of incumbent local exchange carriers and wireless voice providers are available on the Commission website and in Appendix C. See FCC, *Study Area Boundary Data* (Apr. 26, 2018), <https://www.fcc.gov/economics-analytics/industry-analysis-division/study-area-boundary-data>; FCC, *Form 477 Filers by State*, <https://www.fcc.gov/general/fcc-form-477-additional-data> (last visited Mar. 8, 2020); Appendix C.

<sup>114</sup> We rely on data regarding fixed broadband instead of fixed voice or interconnected VoIP because data regarding fixed broadband is reported at the more granular census-block level. Further, for purposes of this analysis, we limit our consideration of fixed broadband to unaffiliated providers offering service with speeds of at least 10/1 Mbps, which ensures that the broadband deployment measured here represents the availability of next-generation voice services such as interconnected VoIP service. *Connect America Order*, 29 FCC Rcd at 15650-51, para. 17.

Commission.<sup>115</sup> To ensure that customers in all areas of the nation have access to affordable voice service, consistent with the principles set forth by Congress, the Commission requires that Eligible Telecommunications Carriers offer supported services—including voice telephony services—at rates that are reasonably comparable to urban rates throughout their designated service areas, unless they can offer a reasonable justification for charging higher rates.<sup>116</sup>

42. This requirement constrains the prices that carriers can charge for voice services in high-cost areas of the country. Currently, the Commission’s Office of Economics and Analytics conducts an annual Urban Rate Survey to determine what constitutes a reasonable comparability benchmark for residential voice services.<sup>117</sup> A voice rate is deemed to be compliant with our rules if it falls within two standard deviations of the national average of the Urban Rate Survey.<sup>118</sup> Therefore, Eligible Telecommunications Carriers are presumed to be in compliance with our rules if they charge no more than the reasonable comparability benchmark. This benchmark helps constrain incumbent local exchange carriers’ pricing, even in high-cost areas where robust competition is least likely to occur.

43. We recognize that a small percentage of consumers do not have competitive options, but our preliminary analysis is that such consumers live in high-cost areas that are currently served by an Eligible Telecommunications Carrier subject to the reasonable comparability benchmark. What is more, we expect that the overwhelming number of census blocks with competitive options will help constrain prices in the very few census blocks that do not have competitive options through unaffiliated mobile voice or broadband services. As the United States Court of Appeals for the District of Columbia Circuit has observed, “[c]onsumers in areas with fewer than two providers may also reap the benefits of competition; a provider in this area ‘will tend to treat customers that do not have a competitive choice as if they do’ because competitive pressures elsewhere ‘often have spillover effects across a given corporation.’”<sup>119</sup> We seek comment on this preliminary analysis and these expectations.

44. Furthermore, we expect that the benefits to the vast majority of customers from our removal of *ex ante* pricing regulation and detariffing of Telephone Access Charges outweigh the potential risk that a small number of consumers without competitive options for voice services may pay higher rates if we deregulate and detariff Telephone Access Charges. In reaching its forbearance decisions, the Commission has long recognized that unnecessary tariffing requirements may impede carriers’ flexibility to react to competition and may harm customers in some circumstances.<sup>120</sup> For example, tariffing

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<sup>115</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17691, para. 73; 47 U.S.C. §§ 214(e), 254(e); 47 CFR § 54.201.

<sup>116</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17693, para. 81 (requiring carriers to meet the reasonable comparability benchmark); 47 CFR § 54.313(a)(2) (defining the reasonable comparability benchmark as rural prices for voice telephony within two standard deviations of the national urban mean); *USF/ICC Transformation Order*, 26 FCC Rcd at 17693, para. 79 (defining “supported service” as “voice telephony”); *Connect America Order*, 29 FCC Rcd at 15700-01, paras. 155-57 (permitting Eligible Telecommunications Carriers to provide an explanation for failing to meet the reasonable comparability benchmark). We have also granted forbearance from requiring price cap Eligible Telecommunications Carriers to provide voice telephony subject to the reasonable comparability benchmark under certain conditions. *Connect America Order*, 29 FCC Rcd at 15668-71, paras. 50-70.

<sup>117</sup> See FCC, Urban Rate Survey Data & Resources, <https://drupal7admin.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources> (last visited Nov. 22, 2019). See generally *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 4242, 4242-43, paras. 1-4 (WCB WTB 2013) (adopting a form for the Urban Rate Survey).

<sup>118</sup> See 47 CFR § 54.313(a)(2); *USF/ICC Transformation Order*, 26 FCC Rcd at 17694, para. 84.

<sup>119</sup> *Mozilla Corp. v. FCC*, 940 F.3d 1, 57 (D.C. Cir. 2019) (quoting *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 380, para. 120 n.445 (2018) (*Restoring Internet Freedom Order*)).

<sup>120</sup> *2000 Biennial Regulatory Review; Policy and Rules Concerning the International, Interexchange Marketplace*, IB Docket No. 00-202, Report and Order, 16 FCC Rcd 10647, 10650-51, para. 4 (2001) (*International Detariffing Order*).

requirements can inhibit carriers' ability to offer innovative integrated services designed to meet changing market conditions.<sup>121</sup> In addition, a customer may be adversely affected when a carrier unilaterally changes a rate by filing a tariff revision (so long as the revision is not found to be unjust, unreasonable, or unlawful under the Act) because, pursuant to the "filed rate doctrine," a filed tariff rate, term, or condition controls over a rate, term, or condition set in a non-tariffed carrier-customer contract.<sup>122</sup> Detariffing, on the other hand, can help customers obtain service arrangements that are specifically tailored to their individual needs.<sup>123</sup> Furthermore, detariffing will allow consumers to avail themselves of the protections provided by state consumer protection and contract laws—protections not available to consumers under the filed-rate doctrine.<sup>124</sup>

45. Indeed, the Commission has found that the high costs of regulation likely outweigh the benefits, even in less-than-fully-competitive markets, particularly where regulatory costs are imposed on only one class of competitors.<sup>125</sup> In light of the evidence of widespread competition for voice services, we invite comment on whether, and to what extent, the costs of continued regulation of Telephone Access Charges imposed on incumbent local exchange carriers outweigh the benefits of such regulation. We invite commenters to quantify both the costs and the benefits of our proposal and of any alternative approaches to the removal of *ex ante* pricing regulation and detariffing of Telephone Access Charges.

46. Finally, the growing number of states that have adopted rate flexibility for the intrastate portion of local telephone services supports the conclusion that in many states deregulating and detariffing Telephone Access Charges will not affect the overall rate customers pay for telephone service. That's because carriers that have pricing flexibility for the intrastate portion of their local voice services can adjust the intrastate portion of their local rates to price their local voice services at market rates notwithstanding existing limits on the interstate portion of those charges. As a result, federal deregulation and detariffing of Telephone Access Charges should not result in any material change in the total rates customers pay for voice service in these states. Thus, we propose to find that *ex ante* pricing regulation and tariffing of Telephone Access Charges in such states imposes costs, but likely does not yield any benefits. We seek comment on our theory of the impact of states' adoption of pricing flexibility for retail rates.

47. We invite commenters to provide us with information about the status and impact of state telephone rate deregulation generally. According to one report, as of 2016, at least 41 states had "significantly reduced or eliminated oversight of wireline telecommunications" through legislation or public utility commission action.<sup>126</sup> In several states, state utility commissions no longer have authority to

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<sup>121</sup> See *UNE Analog Loop/Resale Forbearance Order*, 34 FCC Rcd at 6527, para. 50 ("[U]ndue regulatory burdens can stand in the way of competition and innovation.").

<sup>122</sup> *International Detariffing Order*, 16 FCC Rcd at 10659-60, para. 22.

<sup>123</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18725, para. 33.

<sup>124</sup> *International Detariffing Order*, 16 FCC Rcd at 10650-51, para. 4.

<sup>125</sup> See *Price Cap BDS Order*, 32 FCC Rcd at 3517-19, paras. 125-29 (finding that there were "substantial costs of regulating the supply of BDS and these likely outweigh any costs due to the residual exercise of market power that may occur in the absence of regulation"); *UNE Analog Loop/Resale Forbearance Order*, 34 FCC Rcd at 6510-11, paras. 14-16 (discussing harm from distorting competition in the voice market when a regulatory mandate imposes unnecessary costs on one class of competitors).

<sup>126</sup> Sherry Lichtenberg, Ph.D., National Regulatory Research Institute, *The Year in Review 2016: Moving Past Reduced Regulation* at iii (2016), <https://pubs.naruc.org/pub/FA869A8F-988C-F56C-5378-99F47EDE2EDE>; see Jeffrey A. Eisenach & Kevin W. Caves, American Enterprise Institute, *What Happens When Local Phone Service Is Deregulated?* (2012), [http://www.aei.org/wp-content/uploads/2012/09/-eisenach-cato-phone-deregulation-paper\\_09341082848.pdf](http://www.aei.org/wp-content/uploads/2012/09/-eisenach-cato-phone-deregulation-paper_09341082848.pdf).

regulate telecommunications services and their prices.<sup>127</sup> California, for example, eliminated pricing regulation for all local exchange services that do not receive state high-cost support,<sup>128</sup> while Tennessee permits incumbent carriers to elect to operate free from the jurisdiction of the state public utility commission, with certain exceptions.<sup>129</sup>

48. Further, a growing number of states have adopted retail rate flexibility for the intrastate portion of local voice services justified, at least in part, by the presence of competitive options. For example, the California Public Utilities Commission found that incumbent local exchange carriers “lack the market power to sustain prices above the levels that a competitive market would produce” because of wireless, cable, and VoIP service entrants into the marketplace.<sup>130</sup> Still other states such as Washington and Minnesota have deregulated rates on a service-area or exchange-area basis for services subject to “effective competition”<sup>131</sup> or for exchanges satisfying competitive market criteria.<sup>132</sup>

49. In sum, while states are trending toward pricing flexibility for the intrastate portion of local telephone rates, there appears to be considerable variation among states and among areas within states. We seek comment on that variation and its impact on our proposal, if any. Parties are invited to provide more updated data on intrastate rate regulation and rate flexibility for the intrastate portion of local telephone rates. We seek comment on whether the varied nature of state regulation of local telephone rates supports or detracts from our proposal to eliminate *ex ante* pricing regulation and tariffing of Telephone Access Charges nationally.

50. We also seek comment on whether there are any factors that would either support or call into question our proposal to eliminate *ex ante* pricing regulation and mandatorily detariff Telephone Access Charges across the country.

51. *Competitive Local Exchange Carriers.*—Some competitive local exchange carriers have chosen to tariff some Telephone Access Charges. By definition, such carriers are subject to competition

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<sup>127</sup> See, e.g., Ala. Code § 37-2A-8 (2019); Fla. Stat. Ann. § 364.011 (West 2019); Ind. Code Ann. §§ 8-1-2.6-1.2, 8-1-2.6-1.4 (West 2019).

<sup>128</sup> Cal. Pub. Util. Comm’n, *Order Instituting Rulemaking on the Commission’s Own Motion to Assess and Revise the Regulation of Telecommunications Utilities*, Decision 06-08-030; Rulemaking 05-04-005, 2006 Cal. PUC LEXIS 367, at \*174, \*408 (filed Aug. 24, 2006) (*Cal. PUC Order*).

<sup>129</sup> Tenn. Code Ann. § 65-5-109(1)(1) (2019).

<sup>130</sup> *Cal. PUC Order*, 2006 Cal. PUC LEXIS 367, at \*174; see also, e.g., N.J. Bd. of Pub. Util., *Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services as Competitive – Phase II*, Docket No. TX11090570, Order Adopting Stipulation on Reclassification of Services as Competitive, at 28-31 (June 5, 2015), [https://www.nj.gov/rpa/docs/B\\_BPU\\_Order\\_Docket\\_No\\_TX11090570.pdf](https://www.nj.gov/rpa/docs/B_BPU_Order_Docket_No_TX11090570.pdf); Pennsylvania Public Utility Commission, Opinion and Order, Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of all Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services, Cases P-2014-2446303 and P-2014-24463604, Opinion and Order (Mar. 4, 2015), <http://www.puc.pa.gov/pcdocs/1348740.docx>.

<sup>131</sup> Wash. Rev. Code Ann. § 80.36.320 (West 2019). Washington has deemed some incumbent local exchange carriers’ provision of local voice services to be subject to effective competition. E.g., *Petition of Qwest Corporation for Competitive Classification of Basic Business Exchange Telecommunications Services*, Docket No. UT-030614, Order No. 17 (Wash. State Utils. & Transp. Comm’n Dec. 22, 2003); *Competitive Classification on the Commission’s Own Motion of Citizens Telecommunications Company*, Docket No. UT-991017, Final Order (Wash. State Utils. & Transp. Comm’n Sept. 23, 1999).

<sup>132</sup> Minn. Stat. Ann. § 237.025 (West 2019). As a result of one petition for pricing deregulation, in 2017, the Minnesota Public Utilities Commission found that all but five of CenturyLink’s local exchange service areas met competitive criteria that would permit the company to operate free from state price controls. *Petition of CenturyLink QC to Be Regulated Pursuant to Minn. Stat. § 237.025: Competitive Market Regulation et al.*, Docket No. P-421/AM-16-496 et al., Order Granting Petition in Part, 2017 WL 2263769 (Minn. P.U.C. May 22, 2017).

and already have pricing flexibility.<sup>133</sup> In the interest of parity, we propose to require competitive local exchange carriers to detariff, on a nationwide basis, all Telephone Access Charges. Competitive local exchange carriers face competition from wireless providers and other competitive wireline providers and must also compete with incumbent local exchange carriers.<sup>134</sup> We see no justification for allowing competitive local exchange carriers to tariff Telephone Access Charges if incumbent local exchange carriers are prohibited from doing so. We seek comment on our proposal to require mandatory detariffing of competitive local exchange carriers' Telephone Access Charges.

52. *Detariffing Other Federal Charges.*—In addition to Telephone Access Charges, there are other charges related to federal programs that many carriers currently include in their interstate tariffs, e.g., pass-throughs for contributions to the USF.<sup>135</sup> We seek comment on mandatorily detariffing these charges. Such charges are subject to regulatory requirements and our Truth-in-Billing rules will continue to govern if and how these charges can be passed through to end users. Accordingly, we expect that detariffing these charges will bring the benefits of reduced regulatory requirements while creating little risk of abuse. We seek comment on this expectation and any other issues that we should consider in deciding whether to detariff all interstate retail charges. We invite commenters to identify these charges and to comment on the costs and benefits of mandatorily detariffing them.

## **B. Alternative Approaches**

53. We invite commenters to offer alternative approaches to determining where and under what circumstances we should eliminate *ex ante* pricing regulation and require detariffing of Telephone Access Charges. For example, should we take a more case-by-case approach and find that rate regulation is unnecessary only in locations where at least one of the following conditions is met: (1) in an incumbent local exchange carrier's study area, where there is at least one unaffiliated voice provider available in 75% of the populated census blocks; (2) in areas where the Eligible Telecommunications Carrier is subject to the reasonable comparability benchmark; or (3) in states where intrastate rates have been deregulated?

54. Under this alternative, we would remove *ex ante* pricing regulation and require detariffing of Telephone Access Charges in study areas where there is at least one unaffiliated provider of voice services in 75% of the inhabited census blocks.<sup>136</sup> In the *Price Cap BDS Order*, the Commission found that one competitor within a census block is sufficient to help constrain prices of business data services offered by an incumbent local exchange carrier.<sup>137</sup> Do commenters believe that one voice

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<sup>133</sup> See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 1765-66, para. 864 (explaining that competitive carriers are not subject to the same sort of rate regulation as incumbent local exchange carriers "because the competitive carriers have generally been found to lack market power").

<sup>134</sup> *2001 CLEC Access Charge Reform Order*, 16 FCC Rcd at 9938, para. 38.

<sup>135</sup> See 47 CFR § 69.4(d).

<sup>136</sup> Because existing data regarding unaffiliated fixed broadband or unaffiliated mobile voice services are available at the census block level, we propose measuring competition based on the deployment of those services. Those services reasonably approximate the deployment of unaffiliated voice services. A list of census blocks in each study area is available at <https://www.fcc.gov/economics-analytics/industry-analysis-division/study-area-boundary-data>. For purposes of this analysis, census blocks that are covered by two study areas were assigned to the study area of the carrier that serves the majority of the area of the block.

<sup>137</sup> See *Price Cap BDS Order*, 32 FCC Rcd at 3514-15, para. 120. We recognize that the business data services in the *Price Cap BDS Order* are distinct from the voice services in this *Notice*, but the Commission has consistently found the presence of a single competitor sufficient to exert competitive pressure on incumbents across services. See *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Report and Order on Remand and Memorandum Opinion and Order, 34 FCC Rcd 5767, 5793, para. 57 (2019) (DS1 and DS3 loops); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Report and Order,

(continued....)

competitor in 75% of the inhabited census blocks of a study area is sufficient to help constrain prices for voice services offered by an incumbent local exchange carrier? In the alternative, would competition in a lower percentage of inhabited census blocks in a study area be sufficient to help constrain prices for local voice services? We invite commenters to offer alternatives, explain the bases for the alternatives they offer, and identify supporting data.

55. Under this alternative, we would remove *ex ante* pricing regulation and require detariffing of Telephone Access Charges at the study-area level because doing so on a census-block basis is not administratively feasible. As the Commission has explained, “census blocks or census tracts are too numerous to effectively administer” and “could lead to a patchwork of different regulations that vary from census block-to-census block.”<sup>138</sup> Study areas, however, “are more administratively feasible because there are a limited number” and the Commission and industry have substantial experience administering rules on a study area basis.<sup>139</sup> Price deregulation and detariffing on the study-area level is likewise sufficiently granular to protect customers across the study area because it is reasonable to assume that incumbent local exchange carriers charge uniform prices across study areas. Further, customers in rural areas of study areas will benefit from both competition in urban areas, as competitive pressures “often have spillover effects across a given corporation,”<sup>140</sup> and from our prohibitions against unjust and discriminatory rates.<sup>141</sup> We seek comment on these parameters, data, and assumptions, including whether we should evaluate competition using a competitive market test, as the Commission has previously done.

56. Under this alternative, we would also eliminate *ex ante* pricing regulation and require detariffing of Telephone Access Charges in areas where there is a designated Eligible Telecommunications Carrier subject to the reasonable comparability requirement.<sup>142</sup> Do commenters agree that the reasonable comparability requirement sufficiently constrains retail rates for voice services by ensuring that Eligible Telecommunications Carriers do not charge rates that significantly exceed the rates that apply in competitive urban markets? If so, does it follow that *ex ante* pricing regulation and tariffing are not necessary in areas where there is an Eligible Telecommunications Carrier subject to the reasonable comparability requirement? Commenters asserting that pricing regulations and interstate tariffs are nonetheless necessary to constrain Eligible Telecommunications Carriers’ Telephone Access Charges should explain why the reasonable comparability requirement is not sufficient to ensure that Eligible Telecommunications Carriers’ rates are just and reasonable. Should we instead deregulate and detariff Telephone Access Charges based on a combination of competition and reasonable comparability requirements in an area? For example, should we do so if competition does not hit the 75% threshold discussed above, but the reasonable comparability requirement holds in areas without competition?

57. If we eliminate *ex ante* pricing regulation and require detariffing of Telephone Access Charges based on a carrier’s obligation to comply with the reasonable comparability requirement, would a new benchmark for business customers be necessary to constrain retail rates charged to business customers? There is currently no benchmarking process for retail rates charged to business customers. We recognize that business customers may purchase very different voice services depending on a variety of factors and that many businesses purchase voice services pursuant to negotiated contracts. We seek

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33 FCC Rcd 5660, 5675, para. 34 (2018) (finding that competition between as few as two facilities-based providers is sufficient to ensure adequate service quality in granting discontinuances).

<sup>138</sup> *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, WC Docket No. 17-144 et al., Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10435, paras. 88-89 (2018).

<sup>139</sup> *Id.* at 10435, paras. 87-89.

<sup>140</sup> *Restoring Internet Freedom Order*, 33 FCC Rcd at 385, para. 127.

<sup>141</sup> *E.g.*, 47 U.S.C § 202(a).

<sup>142</sup> 47 CFR § 54.313(a)(2).

comment on whether a comparability benchmark for business customers is necessary given their ability to negotiate contract rates, especially when voice services are often bundled with other services. Does the current benchmark for residential customers constrain prices for business customers? Could a benchmarking process be developed for retail business rates? If a benchmarking process for retail business rates could be developed, would such development be unduly complex and burdensome given the differences among voice services purchased by business customers?

58. Under this alternative, we would also eliminate *ex ante* pricing regulation and require detariffing of Telephone Access Charges for incumbent local exchange carriers in study areas where states have deregulated the rates charged for the intrastate portion of local voice services. We would do so given that a carrier's current ability to adjust its end-user rates due to state deregulation means that federal deregulation and detariffing of Telephone Access Charges will not result in increased prices for voice services. Should we generate and maintain a list of areas where there is state retail rate pricing flexibility? Should we have carriers self-certify whether the intrastate portion of local voice services are no longer subject to state price controls and use those certifications as the basis for a list? If we do elect to maintain a list of states that have deregulated the rates charged for the intrastate portion of local voice services, should we update that list periodically—every three years, for example—to ensure that it accurately reflects state regulation of retail rates. How would we make the list available to the public? Should we direct the Wireline Competition Bureau to issue a Public Notice updating the list every few years? If a state were to re-implement rate regulation of the intrastate portion of local voice services, what effect should that have on our price deregulation and detariffing of Telephone Access Charges?

59. We invite comment on this alternative approach and the costs and benefits of such an approach. Assuming that competition and the reasonable comparability requirements impose sufficient pricing constraints on carriers subject to them, and that federal price regulation does not have any practical effect in areas where states offer pricing flexibility, are there any other reasons to impose federal tariffing and pricing regulations with respect to Telephone Access Charges? We invite commenters to identify any such reasons and the relative benefits and costs of leaving *ex ante* pricing regulation and tariffing in place as compared to our alternative proposal to deregulate and detariff the Telephone Access Charges.

60. We also seek comment on other alternative proposals, along with the data and assumptions supporting any alternative. Commenters supporting an alternative approach should also address the costs and benefits of such an approach.

### **C. Measures to Simplify Consumers' Telephone Bills**

61. Consistent with our ongoing efforts to simplify consumers' telephone bills, we also propose to modify our truth-in-billing rules to explicitly prohibit carriers from assessing any separate Telephone Access Charges, such as Subscriber Line Charges and Access Recovery Charges, on customers' bills after those charges are deregulated and detariffed.<sup>143</sup> We seek comment on this proposal. We also invite suggestions for how to minimize any customer confusion regarding telephone bills during the transition to price deregulation and detariffing of Telephone Access Charges.

62. We remain concerned that telephone bills are too complicated and difficult to read and understand. For example, the terms used by carriers to describe Subscriber Line Charges, such as "FCC-Approved Customer Line Charge," "FCC Subscriber Line Charge," and "Federal Line Fee," are

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<sup>143</sup> 47 CFR §§ 64.2400-.2401. The truth-in-billing rules require that charges contained on telephone bills be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. 47 CFR § 64.2401(b).

meaningless to most consumers.<sup>144</sup> They may also lead consumers to mistakenly believe that the government mandates the amount of Subscriber Line Charges or other Telephone Access Charges.

63. Prohibiting carriers from using separate, obscurely worded line items to bill for the interstate portion of local telephone services should make it easier for customers to understand their bills and to compare rates between different providers. As a result, greater transparency can improve the effectiveness of competition. Studies of pricing transparency in other industries have shown that increased price transparency reduces prices paid by consumers. For example, the advent of the Internet, which enabled consumers to make better price comparisons, appears to have reduced the prices for life insurance policies by about 8% to 15%.<sup>145</sup> Evidence that price transparency can benefit consumers has been found in markets for many other products as well, including prescription drugs, eye exams and eyeglasses, gasoline, automobiles and securities.<sup>146</sup> We would expect that bringing advertised rates for voice services closer to what consumers actually pay would yield similar price reductions. Moreover, Telephone Access Charges are vestiges of legacy telephone networks when most local exchange carriers were subject to comprehensive cost-based regulatory regimes and operated in a substantially different telecommunications marketplace. We do not think that these charges should have a place on consumers' phone bills once those charges are deregulated and detariffed. We invite comment on that reasoning.

64. Assuming that our proposal results in greater price transparency, how could we estimate the benefits that such increased transparency would bring? Should we expect price declines similar to those observed in other industries when consumers were better able to compare prices? If not, is there other evidence or are there other approaches we should consider to evaluate the benefits of greater transparency provided by our proposal? Are there factors that our proposal fails to address that should be addressed in our final rules? Are there are other changes that should be made to our truth-in-billing rules to effectuate the changes proposed here?<sup>147</sup>

65. We recognize that some states may authorize carriers to collect charges for the intrastate portion of local voice services from their customers using billing descriptions similar to the Telephone Access Charges. Are there state requirements that would prohibit carriers from completely eliminating separate line-item charges from their bills? If so, how should we address those requirements to carry out our policy of minimizing consumer confusion? Are there other issues related to the billing of intrastate charges of which we should be aware? For example, how are such charges listed on customers' bills? Are there states that authorize or require carriers to assess separate intrastate end-user charges? If so, we ask that commenters provide specific examples. To the extent such state laws or regulations exist, should we require carriers to make it clear that the listed charges are not federally authorized? Do carriers combine Telephone Access Charges and intrastate end-user charges into a single line item? If so, how do

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<sup>144</sup> CenturyLink, *Subscriber Line Charge*, <https://www.centurylink.com/home/help/account/billing/taxes-fees-and-surcharges-on-your-bill/subscriber-line-charge-explained.html> (last visited Feb. 4, 2020).

<sup>145</sup> Jeffrey R. Brown & Austan Goolsbee, *Does the Internet Make Markets More Competitive? Evidence from the Life Insurance Industry*, 110 J. Pol. Econ. 481, 481-507 (2002), <https://www.jstor.org/stable/10.1086/339714>.

<sup>146</sup> Congressional Research Service, *Does Price Transparency Improve Market Efficiency? Implications of Empirical Evidence in Other Markets for the Health Sector at 29-39* (updated Apr. 29, 2008), <https://crsreports.congress.gov/product/pdf/RL/RL34101>.

<sup>147</sup> 47 CFR §§ 64.2400-.2401. Given that the Commission has two open rulemaking proceedings to consider, among other things, whether government-mandated charges should be separate from other charges on customers' telephone bills, and whether to apply truth-in-billing rules to interconnected VoIP services, we will not be addressing those issues in this proceeding. See *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Truth-in-Billing Rules to Ensure Protections for All Consumers of Voice Services*, CC Docket No. 98-170, WC Docket No. 04-36, Public Notice, 34 FCC Rcd 12202 (CGB2019); *IP-Enabled Services Notice*, 19 FCC Rcd at 4863, para. 1; *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 (2005), *vacated in part sub nom. Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 457 F.3d 1238 (11th Cir. 2006).

they identify and describe that charge on the bill? We also seek comment on any consumer education initiatives the Commission or providers should undertake to help consumers understand any billing changes that may result from our proposed changes.

#### **D. Addressing Related Universal Service Fund and Other Federal Program Issues**

66. We propose ways to address issues related to the Universal Service Fund's and other federal programs' historic reliance on Telephone Access Charges in certain circumstances. Addressing these issues at the outset will ensure that the rural carriers that rely on such federal funds will have the certainty they need to continue investing in the deployment of next-generation networks and services in rural America.

##### **1. High-Cost Support**

67. *Connect America Fund Broadband Loop Support.* We propose several modifications to our rules for calculating CAF BLS to address the detariffing of Telephone Access Charges—modifications that we do not expect will materially change the amount of funds made available for carriers relying on this mechanism to continue to serve their service areas.

68. We first propose to require that legacy rate-of-return carriers that use costs to determine CAF BLS support use \$6.50 for residential and single-line business lines and \$9.20 for multi-line business lines (the maximum Subscriber Line Charge amounts) to calculate their CAF BLS going forward.<sup>148</sup> By using these fixed amounts rather than a tariffed rate, we ensure that carriers will continue to be able to calculate CAF BLS. We expect that this approach will have minimal effect on the CAF BLS legacy rate-of-return carriers receive since most, if not all, of those carriers are currently charging the maximum Subscriber Line Charges allowed under our rules. Are there any legacy rate-of-return carriers that would be adversely affected by our proposal? If so, should we require each of those carriers to identify the highest end-user charge that it could have assessed on the day preceding the day that it detariffs its Telephone Access Charges and use that amount to calculate its CAF BLS going forward?

69. We also seek comment on how to account for other Telephone Access Charges affecting the calculation of CAF BLS that will be detariffed. We propose to delete any requirement to offset Special Access Surcharges from CAF BLS. As a result, a carrier receiving CAF BLS will not have to reflect any revenues for this charge in determining revenues for purposes of calculating CAF BLS. Given the minimal amount of Special Access Surcharge revenues being collected, we expect making this change will have a negligible impact on CAF BLS. Additionally, we propose to require carriers to use the rates they are charging for line ports as of the effective date of an order adopting these reforms. This recognizes that carriers assess individual Line Port Charges differently. We seek comment on these proposals. Alternatively, should we develop a uniform rate for each type of line port that is currently tariffed and, if so, how should such a rate be determined? Would a weighted average of the currently tariffed monthly rates in the National Exchange Carrier Association tariff be a reasonable approach? Or should we eliminate the requirement to take into account Line Port Charges when calculating CAF BLS? Or instead should we impute the aggregate Line Port Charges of each carrier on the effective date of an order adopting these reforms to said carrier for purposes of calculating CAF BLS?

70. We expect that these proposed approaches would limit any adverse effects on the CAF BLS program and also minimize the administrative and other burdens on legacy rate-of-return carriers, most of which are small entities. We invite parties to comment on this expectation. Are there alternative approaches the Commission should consider to account for these revenues when calculating their CAF BLS after these charges have been detariffed? Are there any other Telephone Access Charges that would affect CAF BLS calculations? We also ask parties to comment on whether there should be any particular

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<sup>148</sup> While we propose using current end-user rates to minimize the effects on universal service in this context, this proposal does not preclude the Commission from revisiting adjustments to CAF BLS in the future to reflect increased Subscriber Line Charge calculations.

relationship between how end-user rates are treated in connection with determining CAF BLS and on how they are treated in determining the revenues that may be assessed for universal service contribution purposes.

71. We invite parties to suggest other approaches that would minimize the effects of our proposals on CAF BLS. Parties should identify and quantify the costs and benefits that would result from any alternative proposals. We invite parties to address the extent to which (if at all) we should change the rules governing participation in the National Exchange Carrier Association tariffing and pooling processes to reflect the detariffing of Telephone Access Charges. Finally, if we adopt our proposal to detariff and deregulate the pricing of Telephone Access Charges, in order to effectuate that proposal, are there any changes that we should adopt to other Commission rules, including our rules relating to the functions of the National Exchange Carrier Association or the USF administration responsibilities handled by the Universal Service Administrative Company?

72. *Connect America Fund Inter-carrier Compensation.* We next seek comment on how to ensure that detariffing of the Access Recovery Charge does not unreasonably affect the amount of funds that rate-of-return carriers are eligible to receive from CAF ICC. The CAF ICC support that a rate-of-return carrier receives is reduced by the Access Recovery Charge that the carrier is permitted to charge and by an imputed amount based on the Access Recovery Charge that the carrier could have charged on voice or voice-data lines if such charges could be assessed on Consumer Broadband Only Loop lines. Thus, eliminating the Access Recovery Charge affects the calculation of CAF ICC support.

73. We propose to require rate-of-return carriers to calculate CAF ICC using the maximum Access Recovery Charge that could have been assessed on the day preceding the detariffing of that charge. This approach is administratively simple and would eliminate any uncertainty about how to account for the Access Recovery Charge in calculating CAF ICC. We invite parties to comment on this approach, noting in particular the potential effects of this approach. Alternatively, should we eliminate the ongoing imputation of Access Recovery Charges for such carriers and instead reduce their Eligible Recovery each year by the aggregate Access Recovery Charge revenue they were actually receiving on the effective date of any order adopting reforms? This would eliminate the need to true up Access Recovery Charge revenues along with providing some administrative efficiencies.

74. We invite parties to suggest other approaches for addressing potential effects of detariffing Access Recovery Charges on CAF ICC. Parties should identify potential issues and quantify the costs and benefits that would result from any alternative proposals.

## **2. Contributions to the Universal Service Fund and Other Federal Programs**

75. Every telecommunications carrier that provides interstate telecommunications services has an obligation to contribute, on an equitable and nondiscriminatory basis, to the federal Universal Service Fund,<sup>149</sup> as well as several other programs. Although the Commission has not codified any rules for how contributors should allocate revenues between the interstate and intrastate jurisdictions for contributions purposes, many incumbent local exchange carriers (and some competitive local exchange carriers) have relied on the tariffing of Telephone Access Charges at the federal level as their means of determining their interstate and international revenues for contributions purposes. These revenues are reported on FCC Form 499-A and are used for purposes of determining their contributions to the USF, the Interstate Telecommunications Relay Service Fund, Local Number Portability Administration, and North American Numbering Plan Administration. To help ensure continued stability of the USF and other federal programs, we seek comment on two alternative proposals for allocating interstate and intrastate revenues for voice services in light of our proposed elimination of *ex ante* pricing regulation and detariffing of Telephone Access Charges.

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<sup>149</sup> 47 U.S.C. § 254(d).

76. *First*, we seek comment on adopting an interstate safe harbor of 25% for local voice services provided by local exchange carriers, with the option for such carriers to file individualized traffic studies to establish a different allocation. As used here, “local voice services revenue” includes revenues from local exchange service and revenues related to detariffed Telephone Access Charges. Local voice services revenue does not include revenues associated with bundled toll services.<sup>150</sup> We propose a 25% safe harbor because these revenues largely reflect common line recovery and 25% of common line costs have historically been allocated to the interstate jurisdiction.<sup>151</sup>

77. Such an approach would be consistent with the existing approach for other voice service providers and types of services. Specifically, our current rules provide a safe harbor for assessing contributions for mobile wireless service providers and interconnected VoIP providers. The Commission has set an interstate safe harbor of 37.1% for wireless operators and 64.9% for interconnected VoIP providers.<sup>152</sup> In adopting the 37.1% safe harbor, the Commission reasoned that this would ensure that mobile wireless service providers’ obligations are on par with carriers offering similar services that must report actual interstate end-user telecommunications revenue.<sup>153</sup> For interconnected VoIP services, the Commission established 64.9% as the safe harbor, which was the percentage of interstate revenues reported to the Commission by wireline toll providers.<sup>154</sup>

78. As with other contributions safe harbors, we propose to allow a local exchange carrier to use traffic studies to determine its contributions base, rather than avail itself of the proposed safe harbor. Pursuant to the criteria contained in Form 499-A, traffic studies, among other things: (1) “may use statistical sampling to estimate the proportion of minutes that are interstate and international”; (2) must account for all interstate or international charges as “100 percent interstate or international”; (3) must be designed to use sampling techniques to produce a margin of error of no more than 1% with a confidence level of 95%; and (4) should explain the methods and estimation methods employed and why the study results in an unbiased estimate.<sup>155</sup> If a local exchange carrier elects to use a traffic study to determine its interstate and international revenues for universal service contribution purposes, it would be required to submit the traffic studies for review.<sup>156</sup> Our current rules require affiliated entities to make a single election, for all of the affiliates each quarter, as to whether to use a traffic study or to use the safe harbor adopted for that category of services.<sup>157</sup> We propose applying the same study area and election requirement to local exchange carriers.

79. We invite parties to comment on this proposal and, in particular, on the costs and benefits of the proposal. Is 25% a reasonable percentage of local voice services revenue to use as a safe harbor for

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<sup>150</sup> Bundled interstate and international toll services are separately reported on line 404.2 on Form 499-A. *See* 2019 Form 499-A Instructions at 24. The carrier must contribute on those revenues separately.

<sup>151</sup> 47 CFR § 36.2(b)(3)(iv); *see also Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 33 FCC Rcd 12743, 12753, para. 27 (2018) (extending the jurisdictional separations freeze for up to six years to “provide sufficient time for the Joint Board to focus on short-term and long-term steps toward comprehensive reform”).

<sup>152</sup> *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7531-32, 7545, paras. 23, 53 (2006).

<sup>153</sup> *Id.* at 7531-32, paras. 23-27.

<sup>154</sup> *Id.* at 7545, para. 53.

<sup>155</sup> 2019 Form 499-A Instructions at 42. Telecommunications carriers and certain other providers of telecommunications (including interconnected VoIP service providers) report each year on the FCC Form 499-A the revenues they receive from providing service for purposes of determining their contributions to the USF and other federal programs. *See* 47 CFR §§ 52.17(b), 52.32(b), 54.708, 54.711, 64.604(b)(5)(iii)(B).

<sup>156</sup> 2019 Form 499-A Instructions at 13, tbl. 3.

<sup>157</sup> *Id.* at 40.

assessing federal USF contributions? Could the introduction of this safe harbor and/or our proposal to allow carriers to submit a traffic study materially change the amount of contributions obtained from local voice services? If so, are there other alternatives that will better estimate the contributions base? Will our proposed approach ensure that all carriers make an equitable USF contribution? Are there other factors that we should consider in establishing a safe harbor? We invite parties experienced with the use of other safe harbors to provide information that will help inform our decision-making with respect to a proposed safe harbor as a proxy for the contributions carriers currently make based on their actual Telephone Access Charges. We invite parties to address whether the use of a traffic study to estimate interstate and international revenues will result in a contributions base that will provide comparable support to that provided by the safe harbor and is equitable among contributors. Are there alternative approaches that would produce better estimates? Are there other methods for determining the percentage of interstate and international traffic that should be used?

80. *Second*, the Commission sought comment in 2012 on adopting bright-line rules for the allocation of interstate and intrastate revenues for broad categories of services.<sup>158</sup> In light of the other proposals we make today, we now seek comment on taking that proposed approach for *all* voice services—those offered by local exchange carriers as well as those offered by other voice service operators like interconnected VoIP providers and mobile operators. The Commission’s analysis in 2012 showed that the allocation of interstate and intrastate revenues remained consistent over time (between 20% and 30% of total revenues for non-toll services were interstate and international and around 70% for toll services).<sup>159</sup> We invite comment on whether that allocation has continued to remain consistent. We also seek comment on all aspects of adopting bright-line rules for the allocation of interstate and intrastate revenue for all voice services, such as whether we would need to set different fixed allocators for different categories of voice services (and whether that would create any competitive distortions in the marketplace or increase compliance burdens),<sup>160</sup> what that allocator should be (the Commission specifically sought comment on a 20% interstate allocator,<sup>161</sup> but we now seek comment on whether it should be higher such as 25%, 30%, or even 50%), how much weight to give the traffic studies filed by some reporting entities (considering the apparent differences in methodology the Commission observed in 2012),<sup>162</sup> and whether we would need to create some form of opt-out based on actual revenue receipts (for example, for a local voice service not connected to the interstate public switched telephone network).<sup>163</sup> Would such an approach reduce the administrative costs of compliance, ease oversight, reduce gamesmanship, and ensure a steady stream of contributions are available for the USF going forward?

81. Our goal is to help ensure that carriers properly attribute revenues to the interstate jurisdiction and prevent carriers from avoiding contributions altogether by allocating all their revenues to the intrastate jurisdiction. This sort of gamesmanship could destabilize the contribution base used to fund universal service and other programs. We invite comment on the extent to which each proposal would ensure that local exchange carriers would continue to contribute on an equitable and non-discriminatory basis.

82. Are there alternative approaches we could take to ensure that local exchange carriers that currently assess Telephone Access Charges continue to comply with their obligations to contribute to the federal USF? Parties proposing other alternatives for determining assessable revenues should present

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<sup>158</sup> *Universal Service Contribution Methodology - A National Broadband Plan for Our Future*, WC Docket No. 06-122, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, 5409-12, paras. 132-39 (2012).

<sup>159</sup> *Id.* at 5410, Chart 5.

<sup>160</sup> *Id.* at 5411-12, paras. 136-39.

<sup>161</sup> *Id.* at 5409, para. 132.

<sup>162</sup> *Id.* at 5412, para 141.

<sup>163</sup> *Id.* at 5411, para 138.

data to support their proposals. They should explain how their proposed alternative would minimize the effects on the contributions base and reduce administrative burdens compared to the safe harbor approach we propose here. Parties should also identify any changes that are necessary to Form 499-A or 499-Q and the associated instructions to reflect changes made in response to this *Notice*.

### **E. Transition Period**

83. To allow affected carriers sufficient time to amend their tariffs and billing systems, we propose a transition that would permit carriers to detariff Telephone Access Charges with a July 1 effective date, consistent with the effective date of the annual access charge tariff filing following the effective date of the Order in this proceeding, and would require carriers to detariff these charges no later than the second annual tariff filing date following the effective date of such order.<sup>164</sup> Carriers would be required to remove Telephone Access Charges from relevant portions of their interstate tariffs on one of these two annual access tariff filing dates, at the option of the carrier. Carriers would not be permitted to detariff these charges on dates other than the annual tariff filing dates specified by Commission. These dates will facilitate the transition process for incumbent local exchange carriers who use computerized programs to determine their Eligible Recovery and, for rate-of-return carriers, their CAF ICC. Finally, it will avoid placing large administrative costs on the National Exchange Carrier Association if member carriers were to elect to detariff at varying times during the year. Once the transition ends, no affected carrier would be permitted to include these charges in its interstate tariffs.

84. We seek comment on whether the proposed transition period provides carriers adequate time to amend their tariffs. We also seek comment on how to minimize consumer confusion during that transition. Should we consider a different transition period for different classes of carriers, because our proposed actions may affect different classes of carriers differently? For instance, should we apply the proposed transition to incumbent local exchange carriers, because we currently regulate their Telephone Access Charges, but prescribe a shorter transition for competitive local exchange carriers, which have unregulated end-user charges? Would small carriers require more time for the transition? Would the changes proposed here affect existing contractual arrangements and, if so, would the proposed transition allow carriers adequate time to meet or amend those contractual arrangements? Should we consider a different transition for carriers depending on how they may be affected by changes to universal service calculations? We seek comment on the specific costs associated with the transition, and how they could be reduced, especially for small carriers.

85. Finally, we seek comment on whether the proposed transition provides enough time to address changes to customer billing. Because we propose to prohibit affected carriers from separately listing any Telephone Access Charges on customer bills, carriers would need to make conforming changes to their billing systems and to customers' bills. We seek comment on whether the proposed transition period would provide carriers adequate time to modify their billing systems and customer bills, and to provide any necessary notices to their customers.

### **F. Legal Authority**

86. *Section 201(b) Authority.* We intend to rely on section 201(b) of the Act to eliminate *ex ante* price regulation of Telephone Access Charges where such regulation is no longer necessary. Section 201(b) of the Act specifies that “[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”<sup>165</sup> It also allows the

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<sup>164</sup> “Annual” access service tariff filings are required by section 69.3 of the Commission’s rules. Many carriers file such access service tariffs each year to be effective July 1. Other carriers file every other year with an effective date of July 1. *See* 47 CFR § 69.3. Specifically, carriers filing an access tariff pursuant to section 61.38 of the Commission’s rules file for a biennial period in even numbered years and carriers filing an access tariff pursuant to 61.39 of the Commission’s rules file for a biennial period in odd numbered years. *See id.* § 69.3(f)(1), (f)(2).

<sup>165</sup> 47 U.S.C. § 201(b).

Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.”<sup>166</sup> This authority necessarily includes the authority to opt not to regulate—or to deregulate—carriers’ interstate rates if such regulation is no longer necessary and thus, deregulation is in the public interest.<sup>167</sup> Even if we eliminate our current pricing regulations, any violations of the reasonableness and nondiscrimination requirements of sections 201 and 202 of the Act could be addressed through the complaint process under section 208 of the Act.<sup>168</sup> We seek comment on these conclusions.

87. We also intend to use our authority under section 201(b) of the Act to prohibit carriers from including separate line items for any Telephone Access Charges, such as Subscriber Line Charges and Access Recovery Charges, on customers’ bills. We seek comment on the nature and scope of our authority to adopt these proposals. The Commission has traditionally relied on its section 201(b) authority to adopt its truth-in-billing rules.<sup>169</sup> Are there other statutory provisions that would support our proposal to prohibit the assessment of these separate Telephone Access Charges? Are there any potential legal impediments that we need to address?<sup>170</sup>

88. *Forbearance Authority.* We intend to rely on our authority under section 10 of the Act to forbear from section 203 of the Act, and any associated regulations, to the extent necessary to detariff Telephone Access Charges on a mandatory basis. We also intend to use our forbearance authority as an alternate basis for eliminating *ex ante* price regulation where it is no longer necessary or in the public interest. Under section 10 of the Act, the Commission can forbear, on its own motion, from applying any regulation or provision of the Act in any or some of a carrier’s (or class of carriers’) geographic markets if the Commission determines that the following three forbearance criteria are met:<sup>171</sup> “(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.”<sup>172</sup> The Commission has previously relied on its forbearance authority to detariff and deregulate interstate services.<sup>173</sup> We seek

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<sup>166</sup> 47 U.S.C. § 201(b).

<sup>167</sup> Cf. *Policies and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Second Report and Order, 91 F.C.C.2d 59, 71, para. 24 (1982) (stating that Congress did not mean for the tariffing requirement in section 203 to be the only means of achieving the goal of reasonable rates, and consequently eliminating the tariffing requirements for competitive entities).

<sup>168</sup> 47 U.S.C. §§ 201-202, 208.

<sup>169</sup> See *First Truth-in-Billing Order*, 14 FCC Rcd at 7503, para. 21.

<sup>170</sup> We note that, in the *First Truth-in-Billing Order*, the Commission determined that commercial speech that is misleading is not entitled to the protections of the First Amendment and may be prohibited. *First Truth-in-Billing Order*, 14 FCC Rcd at 7530, para. 60.

<sup>171</sup> The Commission’s forbearance authority extends to “a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services.” 47 U.S.C. § 160.

<sup>172</sup> 47 U.S.C. § 160(a); see *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14901, para. 90 (2005), *aff’d sub nom. Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007) (granting forbearance on the Commission’s own motion).

<sup>173</sup> 47 U.S.C. § 203(a); e.g., 47 CFR § 51.917 (Access Recovery Charge); *id.* § 69.4(a) (“The end user charges . . . filed with this Commission shall include charges for the End User Common Line element [(also known as the Subscriber Line Charge)].”); see, e.g., *Petition of ACS of Anchorage, Inc., Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband*

(continued....)

comment on whether the forbearance criteria are met with respect to both mandatory detariffing and price deregulation of Telephone Access Charges in each of the circumstances and conditions described herein.

89. *Statutory Authority to Support Universal Service and Other Federal Programs.* We intend to use our authority under section 254 of the Act to make any changes necessary to ensure that we minimize any adverse impact of our proposed reforms on universal service contributions and support. Section 254(d) requires telecommunications carriers that provide interstate telecommunications services to “contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”<sup>174</sup> Section 254(d) also provides our authority to require other providers of interstate telecommunications “to contribute to the preservation and advancement of universal service if the public interest so requires.”<sup>175</sup> Section 254(e) specifies that only Eligible Telecommunications Carriers designated under section 214(e) of the Act shall be eligible to receive universal service support, and that “such support should be explicit and sufficient to achieve the purposes” of section 254 of the Act.<sup>176</sup> Together, these statutory provisions provide the Commission authority to revise our rules consistent with these requirements and adopt the proposals relating to universal service. We invite comment on this use of our section 254 authority.

90. Similarly, we intend to use our authority under sections 225, 251 and 715 of the Act to make any changes necessary to ensure that we minimize any adverse impact of our proposed reforms on the TRS Fund, Local Number Portability Administration, and North America Numbering Plan Administration. Sections 225 and 715 provide the Commission authority to prescribe contributions to TRS from “all subscribers for every telecommunications service” and from interconnected and non-interconnected VoIP service providers.<sup>177</sup> Section 251(e)(2) provides that the “cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”<sup>178</sup> We seek comment on our authority under sections 225, 251 and 715 of the Act to minimize any adverse impacts of our proposed reforms on these programs.

#### IV. PROCEDURAL MATTERS

91. *Paperwork Reduction Act Analysis.* This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in

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*Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304, 16307, para. 4 (2007) (granting forbearance from tariffing and pricing rules for interstate switched access services provided by dominant carriers); *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., Report and Order on Remand and Memorandum Opinion and Order, 34 FCC Rcd 5767, 5775, para. 15 (2019) (forbearing from tariffing requirements for Business Data Services TDM transport services in price cap areas); *2000 Biennial Regulatory Review et al.*, IB Docket No. 00-202, Report and Order, 16 FCC Rcd 10647, 10684, para. 83 (2001) (forbearing from tariffing requirements for international interexchange services provided by non-dominant carriers); *Access Charge Reform et al.*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9956, para. 82 (2001) (forbearing from tariffing requirements for competitive local exchange carrier interstate switched access services that are above the benchmark); *see also Detariffing of Billing and Collection Services*, CC Docket No. 85-88, Report and Order, 102 F.C.C.2d 1150, 1151, para. 1 (1986) (detariffing billing and collection and removing those services from the access charge rules).

<sup>174</sup> 47 U.S.C. § 254(d).

<sup>175</sup> 47 U.S.C. § 254(d).

<sup>176</sup> 47 U.S.C. § 254(e).

<sup>177</sup> 47 U.S.C. §§ 225, 616.

<sup>178</sup> 47 U.S.C. § 251(e)(2).

this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

92. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act,<sup>179</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Notice of Proposed Rulemaking*. The Initial Regulatory Flexibility Analysis is set forth in Appendix B. Written public comments are requested on the Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines for comments on the *Notice*, and they should have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Notice*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.<sup>180</sup>

93. *Ex Parte Presentations- Permit-But-Disclose.* The proceeding that this *Notice of Proposed Rulemaking* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>181</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).

94. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

95. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System. *See* FCC, *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (May 1, 1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Electronic Comment Filing System: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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<sup>179</sup> 5 U.S.C. § 603.

<sup>180</sup> 5 U.S.C. § 603(a).

<sup>181</sup> 47 CFR §§ 1.1200 *et seq.*

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

96. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the *Notice of Proposed Rulemaking* in order to facilitate our internal review process.

97. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

## V. ORDERING CLAUSES

98. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 10, 201-203, 214, 225, 251, 254, 303(r), and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, 201-203, 214, 225, 251, 254, 303(r), 616, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR §§ 1.1, 1.412, this *Notice of Proposed Rulemaking* IS ADOPTED, effective thirty (30) days after publication of a summary thereof in the Federal Register.

99. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on this *Notice of Proposed Rulemaking* on or before 30 days after publication of a summary of this *Notice of Proposed Rulemaking* in the Federal Register and reply comments on or before 45 days after publication of a summary of this *Notice of Proposed Rulemaking* in the Federal Register.

100. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Proposed Rules

The Federal Communications Commission seeks comment on proposals to amend 47 CFR parts 51, 54, 61, and 69 as follows:

**PART 51 – INTERCONNECTION**

1. The authority citation for part 51 continues to read as follows:  
Authority: 47 U.S.C. 151-155, 201-205, 207-209, 218, 225-227, 251-252, 271, 332 unless otherwise noted.
2. Amend § 51.915 by revising paragraph (e)(1) and adding paragraph (e)(6) to read as follows:

**§ 51.915 Recovery mechanism for Price Cap Carriers.**

\* \* \* \* \*

- (e)
- (1) Subject to paragraph (e)(6) of this section and to the caps described in paragraph (e)(5) of this section, a charge that is expressed in dollars and cents per line per month may be assessed upon end users that may be assessed an end user common line charge pursuant to § 69.152 of this chapter, to the extent necessary to allow the Price Cap Carrier to recover some or all of its Eligible Recovery determined pursuant to paragraph (d) of this section. A Price Cap Carrier may elect to forgo charging some or all of the Access Recovery Charge.
  - (2) \* \* \*
  - (6) Price Cap Carrier otherwise entitled to assess an Access Recovery Charge may not do so if it is subject to detariffing pursuant to § 61.27 of this chapter.

\* \* \* \* \*

3. Amend § 51.917 by revising paragraph (e)(1), adding new paragraph (e)(7), revising paragraphs (f)(2), (f)(4) and (f)(5), and adding a new paragraph (f)(6) to read as follows:

**§ 51.917 Revenue recovery for Rate-of-Return Carriers.**

\* \* \* \* \*

*(e) Access Recovery Charge.*

- (1) Subject to paragraph (e)(7) of this section and to the caps described in paragraph (e)(6) of this section, a charge that is expressed in dollars and cents per line per month may be assessed upon end users that may be assessed a subscriber line charge pursuant to § 69.104 of this chapter, to the extent necessary to allow the rate-of-return carrier to recover some or all of its Eligible Recovery determined pursuant to paragraph (d) of this section. A rate-of-return carrier may elect to forgo charging some or all of the Access Recovery Charge.
- (2) \* \* \*
- (7) A rate-of-return carrier otherwise entitled to assess an Access Recovery Charge may not do so if it is subject to detariffing pursuant to § 61.27 of this chapter.

*(f) Rate-of-return carrier eligibility for CAF ICC Recovery.*

(1) \* \* \*

- (2) Subject to paragraph (f)(6) of this section, beginning July 1, 2012, a rate-of-return carrier may recover any Eligible Recovery allowed by paragraph (d) of this section that it could not have recovered through charges assessed pursuant to paragraph (e) of this section from CAF ICC Support pursuant to § 54.304. For this purpose, the rate-of-return carrier must impute the maximum charges it could have assessed under paragraph (e) of this section.

- (3) \* \* \*
- (4) Subject to paragraph (f)(6) of this section, and except as provided in paragraph (f)(5) of this section, a rate-of-return carrier must impute an amount equal to the Access Recovery Charge for each Consumer Broadband-Only Loop line that receives support pursuant to § 54.901 of this chapter, with the imputation applied before CAF-ICC recovery is determined. The per line per month imputation amount shall be equal to the Access Recovery Charge amount prescribed by paragraph (e) of this section, consistent with the residential or single-line business or multi-line business status of the retail customer.
- (5) Subject to paragraph (f)(6) of this section, and notwithstanding paragraph (f)(4) of this section, commencing July 1, 2018 and ending June 30, 2023, the maximum total dollar amount a carrier must impute on supported Consumer Broadband-Only Loops is limited as follows:  
\* \* \*
- (6) A rate-of-return carrier subject to detariffing pursuant to § 61.27 of this chapter must reduce its Eligible Recovery by:
- (i) An amount equal to the maximum Access Recovery Charge- that could have been assessed pursuant to paragraph (e) of this section on the day preceding the detariffing multiplied by the projected subscriber lines for the period associated with the Eligible Recovery calculation, and
  - (ii) An amount equal to the maximum per line per month Access Recovery Charges calculated under paragraph (f)(4) of this section that would have been imputed on Consumer Broadband-Only Loop lines that receive support pursuant to § 54.901 of this chapter on the day preceding the detariffing multiplied by the projected demand for the period associated with the Eligible Recovery calculation, subject to the total imputation limit under paragraph (f)(5) of this section.

#### **PART 54 – Universal Service**

4. The authority citation for part 54 continues to read as follows:  
Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302, unless otherwise noted.
5. Amend § 54.901 by revising paragraph (a) and adding paragraph (h) to read as follows:

#### **§ 54.901 Calculation of Connect America Fund Broadband Loop Support.**

- (a) Subject to the requirements of paragraph (h) of this section, Connect America Fund Broadband Loop Support (CAF BLS) available to a rate-of-return carrier shall equal the Interstate Common Line Revenue Requirement per Study Area, plus the Consumer Broadband-Only Revenue Requirement per Study Area as calculated in accordance with part 69 of this chapter, minus:  
\* \* \*  
\* \* \* \* \*
- (h) In calculating support pursuant to paragraph (a), if a rate-of-return carrier is subject to detariffing pursuant to § 61.27 of this chapter, the values for paragraphs (a)(1) and (a)(4) shall be as follows:
- (1) The study area revenues obtained from end user common line charges shall be set at \$6.50 per line per month for residential and single-line business lines and \$9.20 per line per month for multi-line business lines;
  - (2) any line port costs in excess of basic analog service described in § 69.130 of this chapter being assessed on [[the effective date of the order]].

**PART 61 – TARIFFS**

6. The authority citation for part 61 continues to read as follows:  
Authority: 47 U.S.C. 151, 154(i), 154(j), 201-205, 403, unless otherwise noted.
7. Add § 61.27 to read as follows:

**§ 61.27 Detariffing of interstate end user access charges.**

- (a) An incumbent local exchange carrier as defined in § 51.5 of this chapter must detariff the charges listed in paragraph (b) on July 1, [[insert year]] or July 1, [[insert year]]
- (b) The charges to be detariffed are:
  - (1) Access Recovery Charges as described in §§ 51.915(e) and 51.917(e) of this chapter;
  - (2) End-User Common Line charges as described in §§ 69.104 and 69.152 of this chapter;
  - (3) Line port costs in excess of basic analog service as described in §§ 69.130 and 69.157 of this chapter;
  - (4) Special Access Surcharge as described in § 69.115 of this chapter; and
  - (5) Presubscribed interexchange carrier charge assessed on end users as described in § 69.153 of this chapter.
- (c) A competitive local exchange carrier must detariff any interstate charge listed in paragraph (b), or its equivalent, on July 1, [[insert year]] or July [[insert year]]
- (d) A rate-of-return local exchange carrier participating in a National Exchange Carrier Association's interstate access tariff must remove its charges listed in paragraph (b) from the tariff on the date the detariffing takes place. As of that date, the National Exchange Carrier Association may no longer pool any costs or revenues associated with detariffed offerings.
- (e) Charges listed in paragraph (b) of this section shall not be subject to *ex ante* pricing regulation once detariffed.

**PART 69 – ACCESS CHARGES**

8. The authority citation for part 69 continues to read as follows:  
Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.
9. Amend § 69.4 by revising paragraph (a) to read as follows:

**§ 69.4 Charges to be filed.**

- (a) Except as provided in § 61.27 of this chapter, the end user charges for access service filed with this Commission shall include charges for the End User Common Line element, and for line port costs in excess of basic, analog service.

\* \* \* \* \*

10. Amend § 69.5 by revising paragraphs (a) and (c) to read as follows:

**§ 69.5 Persons to be assessed.**

- (a) Except as provided in § 61.27 of this chapter, end user charges shall be computed and assessed upon public end users, and upon providers of public telephones, as defined in this subpart, and as provided in subpart B of this part.
- (b) \* \* \*
- (c) Except as provided in § 61.27 of this chapter, special access surcharges shall be assessed upon users of exchange facilities that interconnect these facilities with means of interstate or foreign telecommunications to the extent that carrier's carrier charges are not assessed upon such interconnected usage. As an interim measure pending the development of techniques accurately

to measure such interconnected use and to assess such charges on a reasonable and non-discriminatory basis, telephone companies shall assess special access surcharges upon the closed ends of private line services and WATS services pursuant to the provisions of § 69.115 of this part.

\* \* \* \* \*

## APPENDIX B

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (Notice)*. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. Despite dramatic changes in the competitive landscape for voice services in the past twenty-five years, the Commission continues to regulate the Telephone Access Charges<sup>4</sup> imposed by incumbent local exchange carriers. The *Notice* suggests that continued regulation and tariffing of Telephone Access Charges is no longer necessary or in the public interest. Consistent with the Commission's commitment to eliminate outdated and unnecessary regulations and to encourage efficient competition, we propose to deregulate and detariff these charges nationwide, or in the alternative, in certain areas where specific criteria indicate that rate regulation is unnecessary. We also seek comment on mandatorily detariffing other charges related to federal programs that many carriers currently include in their interstate tariffs.

3. In the interest of enabling consumers to easily compare voice service offerings by different providers, we also propose to modify our truth-in-billing rules to explicitly prohibit carriers from assessing any separate Telephone Access Charges, such as Subscriber Line Charges and Access Recovery Charges, on customers' bills when those charges are deregulated and detariffed. Prohibiting carriers from using separate, obscurely worded line items to bill for the interstate portion of local telephone services should make it easier for customers to understand their bills and to compare rates between different providers. Doing so should help ensure that a provider's advertised price is closer to the total price that appears on its customers' bills.

4. We propose several modifications to our rules for calculating Connect America Fund Broadband Loop Support (CAF BLS) and CAF Intercarrier Compensation (CAF ICC) to address the detariffing of Telephone Access Charges—modifications that we do not expect will materially change the amount of funds made available for carriers relying on this mechanism to continue to serve their service areas. Given that some Telephone Access Charges are used to calculate contributions to the Universal Service Fund (USF) and other federal programs, as well as high-cost support, we also propose ways to provide certainty in calculating such contributions and support to ensure stability in funding following pricing deregulation and detariffing of Telephone Access Charges. Addressing these issues at the outset will ensure that the rural carriers that rely on such federal funds will have the certainty they need to

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> Commission rules currently include five tariffed end-user charges associated with interstate access telephony: the Subscriber Line Charge, Access Recovery Charge, Presubscribed Interexchange Carrier Charge, Line Port Charge, and Special Access Surcharge (collectively, the Telephone Access Charges). See 47 CFR §§ 51.915(e), 51.917(e), 69.115, 69.152, 69.153, 69.157.

continue investing in the deployment of next-generation networks and services in rural America. The *Notice* seeks comment on these proposals.

**B. Legal Basis**

5. The legal basis for any action that may be taken pursuant to the *Notice* is contained in sections 1, 4(i), 10, 201-203, 214, 225, 251, 254, 303(r), and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, 201-203, 214, 225, 251, 254, 303(r), 616, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR §§ 1.1 and 1.412.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>5</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>6</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.<sup>7</sup>

8. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>8</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>9</sup> Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>10</sup>

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<sup>5</sup> See 5 U.S.C. § 601(3)-(6).

<sup>6</sup> See SBA, Office of Advocacy, "What's New With Small Business," <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept 2019).

<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. § 601(4).

<sup>9</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations—Form 990-N (e-Postcard), "Who must file,"

<https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>10</sup> See Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-ao-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO

(continued....)

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>11</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>12</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>13</sup> Of this number there were 36,931 general purpose governments (county<sup>14</sup>, municipal and town or township<sup>15</sup>) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts<sup>16</sup> with enrollment populations of less than 50,000.<sup>17</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>18</sup>

10. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network

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BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>11</sup> 5 U.S.C. § 601(5).

<sup>12</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>13</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

<sup>14</sup> See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>15</sup> See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>16</sup> See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

<sup>17</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>18</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>19</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>20</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>21</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>22</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

11. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>23</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>24</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year.<sup>25</sup> Of that total, 3,083 operated with fewer than 1,000 employees.<sup>26</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

12. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>27</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>28</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.<sup>29</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>30</sup> Consequently, the Commission estimates that most providers of

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<sup>19</sup> See U.S. Census Bureau, *2017 NAICS Definition, NAICS Code 517311 “Wired Telecommunications Carriers,”*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>20</sup> See 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

<sup>21</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012*. [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110).

<sup>22</sup> *Id.* The largest category provided by the census data is “1000 employees or more” and a more precise estimate for firms with fewer than 1,500 employees is not provided.

<sup>23</sup> See U.S. Census Bureau, *2017 NAICS Definition, NAICS Code 517311 “Wired Telecommunications Carriers,”*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>24</sup> See 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

<sup>25</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* NAICS Code 517110. [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110).

<sup>26</sup> *Id.* The largest category provided by the census data is “1000 employees or more” and a more precise estimate for firms with fewer than 1,500 employees is not provided.

<sup>27</sup> See, U.S. Census Bureau, *2017 NAICS Definition, NAICS Code 517311 “Wired Telecommunications Carriers,”* <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>28</sup> See 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

<sup>29</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012*, NAICS Code 517110. [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110).

<sup>30</sup> *Id.* The largest category provided by the census data is “1000 employees or more” and a more precise estimate for firms with fewer than 1,500 employees is not provided.

incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.<sup>31</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>32</sup> Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

13. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>33</sup> U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>34</sup> Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>35</sup> The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>36</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.<sup>37</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>38</sup> According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>39</sup> Of this total,

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<sup>31</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>32</sup> *Id.*

<sup>33</sup> 13 CFR § 121.201 (NAICS Code 517311).

<sup>34</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodTtype=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodTtype=table).

<sup>35</sup> See, U.S. Census Bureau, *2017 NAICS Definition, NAICS Code 517311 "Wired Telecommunications Carriers,"* <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>36</sup> See 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

<sup>37</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517110).

<sup>38</sup> *Id.* The largest category provided by the census data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

<sup>39</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*). [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

an estimated 317 have 1,500 or fewer employees.<sup>40</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

15. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>41</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>42</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities.

16. *Internet Service Providers (Broadband).* Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>43</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>44</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>45</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>46</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

17. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.<sup>47</sup> Industry data indicate

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<sup>40</sup> *Id.*

<sup>41</sup> U.S. Census Bureau, *2012 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012> (last visited June 20, 2017).

<sup>42</sup> 13 CFR § 121.201 (NAICS code 517911).

<sup>43</sup> See 13 CFR § 120.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See U.S. Census Bureau, *2017 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>44</sup> See 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

<sup>45</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110).

<sup>46</sup> *Id.*

<sup>47</sup> 47 CFR § 76.901(e).

that there are currently 4,600 active cable systems in the United States.<sup>48</sup> Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard.<sup>49</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>50</sup> Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.<sup>51</sup> Thus, under this standard as well, we estimate that most cable systems are small entities.

18. *All Other Telecommunications.* The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>52</sup> This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.<sup>53</sup> Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>54</sup> The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of \$35 million or less.<sup>55</sup> For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.<sup>56</sup> Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49, 999,999.<sup>57</sup> Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by our action can be considered small.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

19. We propose to detariff and deregulate all Telephone Access Charges nationwide, or in the alternative, in areas where specific criteria indicate that rate regulation is unnecessary.<sup>58</sup> The affected carriers will need to file amendments to their tariffs with the Commission in order to detariff their Telephone Access Charges within the proposed transition period. We also seek comment on mandatory detariffing of other charges related to federal programs that many carriers currently include in their interstate tariffs. Because we also propose to prohibit carriers from including Telephone Access Charges as separate line items on customer bills, affected carriers will need to make changes to existing billing

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<sup>48</sup> August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>49</sup> Data obtained from SNL Kagan data base on April 19, 2017.

<sup>50</sup> 47 CFR § 76.901(c).

<sup>51</sup> August 5, 2015 report from the Media Bureau based on its research in COALS. See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>52</sup> See U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code "517919 All Other Telecommunications", <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> See 13 CFR § 121.201, NAICS code 517919.

<sup>56</sup> U.S. Census Bureau, 2012 *Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517919, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4//naics~517919](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517919).

<sup>57</sup> *Id.*

<sup>58</sup> Notice, Part III.A-B.

formats and may need to educate their customers.<sup>59</sup> Carriers will likely modify their in-house recordkeeping to reflect the changes. We propose a transition to facilitate the detariffing of Telephone Access Charges to address potential administrative burdens.<sup>60</sup>

20. We seek to ensure certainty in calculating contributions to the USF, the interstate Telecommunications Relay Service Fund, Local Number Portability Administration, and the North American Numbering Plan Administration.<sup>61</sup> We propose to adopt a safe harbor for incumbent and competitive local exchange carriers to use as a proxy for the contributions carriers currently make based on their actual Telephone Access Charges. We propose to treat 25% of a carrier's local voice services revenue as assessable revenue subject to contribution obligations. Alternatively, a carrier that does not want to rely on the safe harbor would have the option of providing a traffic study demonstrating the actual percentage of its local voice traffic that is interstate and international in nature and using that percentage to determine its contributions base. We also seek comment on adopting bright-line rules for the allocation of interstate and intrastate revenues for *all* voice services—those offered by local exchange carriers, as well as those offered by other voice service operators. We seek comment on alternative approaches and on whether the proposed approach will ensure that all carriers make equitable contributions. The rules could potentially affect recordkeeping and reporting requirements.

21. We also propose to amend our rules to provide certainty in the amount of CAF BLS and CAF ICC support rate-of-return carriers receive following the deregulation and detariffing of Telephone Access Charges.<sup>62</sup> We seek comment on proposals to establish fixed levels for future inputs to the CAF BLS and CAF ICC calculations, as well as seeking alternatives to the proposals. The rules could affect recordkeeping and reporting requirements.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered**

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.<sup>63</sup> We expect to consider all of these factors when we receive substantive comment from the public and potentially affected entities.

23. The *Notice* seeks comment on a proposal to deregulate and mandatorily detariff Telephone Access Charges nationwide, or in the alternative, in certain areas where specific criteria indicate that rate regulation is unnecessary.<sup>64</sup> We invite comment on whether, and to what extent, the costs of continued regulation of Telephone Access Charges imposed on incumbent local exchange carriers outweigh the benefits of such regulation. We invite commenters to quantify both the costs and the benefits of our proposal and of any alternative approaches to detariffing and deregulating the pricing

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<sup>59</sup> *Notice*, Part III.C.

<sup>60</sup> *Notice*, Part III.E.

<sup>61</sup> *Notice*, Part III.D.1.

<sup>62</sup> *Notice*, Part III.D.2.

<sup>63</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>64</sup> *Notice*, Part III.A-B.

of Telephone Access Charges.<sup>65</sup> We also seek comment on detariffing charges related to contributions to the federal USF that many carriers currently include in their interstate tariffs and seek comment on the costs and benefits of mandatorily detariffing these charges.

24. The *Notice* also seeks comment on a proposal to prohibit all carriers from separately listing Telephone Access Charges on customers' bills.<sup>66</sup> We seek comment on how much time carriers would need to modify their existing billing systems to comply with our proposed rule changes and how we could minimize burdens, particularly for smaller carriers. As an initial proposal, we propose a transition that would permit carriers two opportunities, one year apart, to detariff Telephone Access Charges at the same time as the annual access tariff filing, thereby eliminating the need for any additional tariff filings.<sup>67</sup> We expect that these options will allow even the small entities adequate time to amend their tariffs and meet most, if not all, existing contractual arrangements.

25. The *Notice* also proposes to amend our rules to provide certainty in the amount of CAF BLS and CAF ICC support rate-of-return carriers receive following the deregulation and detariffing of Telephone Access Charges.<sup>68</sup> We seek comment on proposals to establish fixed levels for future inputs to the CAF BLS and CAF ICC calculations, as well as seeking alternatives to the proposals.

26. To provide certainty in calculating USF contributions and support to ensure stability in funding following the deregulation and detariffing of Telephone Access Charges, we propose to adopt a safe harbor for incumbent and competitive local exchange carriers to use to determine their assessable revenue from the interstate access portion of local service for purposes of determining their contribution obligations, but to permit carriers to submit traffic studies if they do not want to rely on the safe harbor.<sup>69</sup> The *Notice* seeks comment on this proposal and a few different alternative approaches. We also seek comment on adopting bright-line rules for the allocation of interstate and intrastate revenues for *all* voice services and seek comment on all aspects of adopting bright-line rules for the allocation of interstate and intrastate revenue for all voice services.

27. We expect to consider the economic impact on small entities, as identified in comments filed in response to the *Notice* and this IRFA, in reaching our final conclusions and promulgating rules in this proceeding. The proposals and questions laid out in the *Notice* were designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

28. None

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<sup>65</sup> The Commission's detariffing and deregulation of Telephone Access Charges is not a prohibition on such charges. To the extent that any affected carrier wants to continue assessing any Telephone Access Charges on its end users, the carrier is free to do so, except that it can no longer tariff such charges with the Commission or include these charges as separate line items on consumer bills.

<sup>66</sup> *Notice*, Part III.C.

<sup>67</sup> *Notice*, Part III.E.

<sup>68</sup> *Notice*, Part III.D.

<sup>69</sup> *Notice*, Part III.D.

## APPENDIX C

## Affiliated Holding Companies of Wireless Voice Providers

This Appendix provides the holding companies or affiliates of wireless voice providers for purposes of determining affiliations between wireless voice providers, fixed broadband providers, and incumbent local exchange carriers. Business or “DBA” names are provided as listed in the Form 477 data for mobile voice deployment; holding company or affiliate names and numbers are provided as listed in the Form 477 data for fixed broadband and for local exchange carriers. See FCC, *Mobile Deployment Form 477 Data* (Sept. 10, 2018), <https://www.fcc.gov/mobile-deployment-form-477-data>; FCC, *Fixed Broadband Deployment Data from FCC Form 477* (Feb. 21, 2020), <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477>; FCC, *Form 477 Filers by State* (Oct. 23, 2019), <https://www.fcc.gov/general/form-477-filers-state-0>. The Appendix is available in Excel format on the Commission’s website at [[URL to be determined]].

Field Name	Description		
DBA	“Doing Business As” name (from mobile provider filings)		
HocoFinal	Affiliate or holding company name (assigned by FCC)		
HocoNum	Affiliate or holding company number (assigned by FCC)		
DBA	HocoFinal	HocoNum	
Apalachian_Wireless	East Kentucky Network, LLC	130434	
ASTAC	Arctic Slope Telephone Association Cooperative, Inc.	130067	
ASTCA_Wireless	American Samoa Telecommunications Authority	350009	
AT_T_Mobility	AT&T Inc.	130077	
Blue_Wireless	Buffalo Lake Erie Wireless Systems Co. LLC	130174	
Bluegrass_Cellular_Inc	East Kentucky Network, LLC	130434	
Bluegrass_Wireless_LLCC	East Kentucky Network, LLC	130434	
Bluesky_communications	American Samoa Telecom, LLC	170012	
Breakaway_Wireless	Manti Telephone Company	130778	
Bristol_Bay_Cellular	AT&T Inc.	130077	
Cable__Cellular_ Communications__LLC	Mid-Rivers Telephone Cooperative, Inc.	130826	
Carolina_West_Wireless	North Carolina RSA 3 Cellular Telephone Company	130926	
Cellcom	Northeast Communications of Wisconsin, Inc.	130937	
Cellular_Network_Partnership	Pioneer Telephone Cooperative (OK)	131045	
CellularOne_of_NE_Arizona	Smith Bagley, Inc.	131208	
Chariton_Valley	Chariton Valley Telephone Corporation	130234	
Chat_Mobility	Iowa RSA 2 Limited Partnership	140046	
Choice_Wireless	ATN International, Inc.	130081	
Choice_Wireless__LC	Choice Wireless, LC	240001	
City_of_Brookings_ Telephone_Fund	SoftBank Corp.	131244	
Claro	América Móvil	170001	
Copper_Valley_Wireless__Inc_	Copper Valley Telephone Cooperative	130349	
Cordova_Wireless_ Communications__Inc_	Cordova Telephone Cooperative, Inc.	130352	

Cross_Canadian_Cellular_Partnership	Cross Telephone Company LLC	130366
Cross_Telephone_Wireless	Cross Telephone Company LLC	130366
Cross_Valliant_Cellular	Cross Telephone Company LLC	130366
Cross_Wireless	Cross Telephone Company LLC	130366
CSpire_Wireless	Telapex, Inc.	131302
CTC_Wireless	Cambridge Telephone Company, Inc.	130193
Custer_Telephone_Cooperative_Inc	Custer Telephone Cooperative Inc.	130378
Docomo_Pacific	NTT DoCoMo, Inc.	130999
Eagle_Telephone_System_Incorporated_dba_Snake_River_PCS	Eagle Telephone Systems, Inc.	130431
Evolve_Broadband	Worldcall Interconnect Inc.	290122
FTC_Communications_LL_C	Farmers Telephone Cooperative, Inc. (SC)	130490
GCI_Communication_Corp	GCI Holdings LLC	130534
GTA_Telegram	AP TeleGuam Holdings, Inc.	131309
iConnect	Choice Holdings, LLC	200013
Illinois_Valley_Cellular_RSA_2_I_Partnership_d_b_a_Illinois_Valley_Cellular	Illinois Valley Cellular	130639
Illinois_Valley_Cellular_RSA_2_II_Partnership_d_b_a_Illinois_Valley_Cellular	Illinois Valley Cellular	130639
Indigo_Wireless	Americell PA3 Limited Partnership	240047
Inland_Cellular_LL_C	Western Elite Incorporated Services	130651
iwireless	Deutsche Telekom AG	130403
James_Valley_Telecommunications	James Valley Cooperative Telephone Company	130673
Leaco	Leaco Rural Telephone Cooperative, Inc.	130728
Limitless_Mobile_LL_C_Debtor_In_Possession	Limitless Mobile Holdings, LLC	300085
Mid_Rivers	Mid-Rivers Telephone Cooperative, Inc.	130826
MobileNation	SI Wireless, LLC	370101
MTPCS_LL_C_on_behalf_of_its_affiliates_Texas_10_LL_C_and_Central_Louisiana_Cellular_LL_Central_Louisiana_Cellular_LL_C	MTPCS Holdings, LLC	180001
NE_Colorado_Cellular_Inc	NE Colorado Cellular, Inc.	130886
Nemont_Communications_Inc	Nemont Telephone Cooperative, Inc.	130890
Nex_Tech	Rural Telephone Service/Golden Belt	131141
NNTC_WIRELESS_LL_C	Nucla-Naturita Telephone Company	130962
NorthwestCell	Northwest Missouri Cellular	130952
OPEN_MOBILE	SoftBank Corp.	131244
OTZ	OTZ Telephone Cooperative, Inc.	190281
Panhandle_Telecommunication	Panhandle Telephone Cooperative, Inc.	131007

_Systems		
Phoenix_Communications_	Oklahoma Western Telephone Company	130973
Systems		
Pine_Belt_Cellular__Inc_	Pine Belt Communications Co. Inc.	131038
Pine_Cellular_Phones_Inc	Pine Telephone Company	131039
PTI_Pacifica_Inc	PTI Pacifica Inc.	220001
Silver_Star_Telephone_	Horizon Communications, Inc.	131190
Company_Inc		
Southern_Linc	Southern Company	131227
Sprint	SoftBank Corp.	131244
STRATA_Networks	UBTA-UBET Communications	131387
T_Mobile	Deutsche Telekom AG	130403
Tampnet_Inc_	Tampnet Inc.	380126
TelAlaska_Cellular_Inc	American Broadband Communications et al.	131226
Thumb_Cellular	Agri-Valley Communications, Inc.	130018
Triangle_Mobile	Triangle Telephone Cooperative Assn., Inc.	131367
Union_Wireless	Union Holding Corp.	360114
United_States_Cellular_	Telephone and Data Systems, Inc.	131310
Corporation		
United_Wireless	United Telephone Association, Inc.	131395
VerizonWireless	Verizon Communications Inc.	131425
Viya_Wireless	ATN International, Inc.	130081
VTEL_WIRELESS__INC_	Vermont National Telephone Company, Inc.	131426
West_Central_Wireless	Central Texas Telephone Cooperative, Inc.	130227
Windy_City_Cellular_LLCC	Adak Eagle Enterprises, LLC	130011
ASTAC_Wireless	Arctic Slope Telephone Association Cooperative, Inc.	130067
PRWIRELESS	PRWireless Holdco, LLC	160139
Standing_Rock_	Standing Rock Telecommunications, Inc.	300188
Telecommunications__Inc_		