

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

In the Matter of
Biennial Regulatory Review of Regulations
Administered by the Wireline Competition Bureau
WC Docket No. 02-313

REPORT AND ORDER

Adopted: June 20, 2006

Released: August 21, 2006

By the Commission:

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I. INTRODUCTION AND BACKGROUND

1. Section 11 of the Communications Act of 1934, as amended (Act), requires the Commission: (1) to review biennially its regulations that apply to the operations and activities of any provider of telecommunications service; and (2) to determine whether these regulations are "no longer necessary in

the public interest as the result of meaningful economic competition between providers of such service.”<sup>1</sup> Section 11 further instructs the Commission to repeal or modify any regulation it determines to be no longer necessary in the public interest.<sup>2</sup>

2. In January 2004, we released an NPRM<sup>3</sup> seeking comment on certain rules reviewed in the 2002 Staff Report<sup>4</sup> prepared by the Wireline Competition Bureau. Eight parties filed comments and six filed replies. These parties are listed in Appendix A to this Order.

3. In most cases, the parties did not comment on the rule revisions we proposed in the NPRM. We adopt those revisions as they were proposed. We discuss in detail below the cases in which one or more parties did comment. In addition, some commenters proposed additional rule revisions, and we also discuss those proposals below. All the rule revisions we adopt herein are set forth in Appendix B to this Order.

## II. DISCUSSION

### A. Part 1 – Practice and Procedure

4. *Subpart E – Complaints, Applications, Tariffs, and Reports Involving Common Carriers.* Section 1.815 of the Commission’s rules requires common carrier licensees or permittees with sixteen (16) or more full-time employees to file an annual employment report with the Commission (FCC Form 395).<sup>5</sup> The Commission sought comment on whether the information collected from FCC Form 395 is necessary to identify or address issues relating to unlawful discrimination by common carriers, given the availability of similar information from other sources.<sup>6</sup> The Commission also asked whether the information collected from FCC Form 395 is useful to the Advisory Committee on Diversity for Communications in the Digital Age.

5. The National Organization for Women, Minority Media and Telecommunications Council, and 32 other civil rights and minority organizations (*Joint Commenters*) filed joint comments supporting retention of our requirement that common carriers file FCC Form 395 on an annual basis.<sup>7</sup> No other parties filed comments on these issues. The Joint Commenters assert that FCC Form 395 provides

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<sup>1</sup> 47 U.S.C. § 161(a).

<sup>2</sup> 47 U.S.C. § 161(b).

<sup>3</sup> *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, Notice of Proposed Rulemaking, WC Docket No. 02-313, 19 FCC Red 764 (2004) (*WCB Biennial NPRM*).

<sup>4</sup> *Wireline Competition Bureau, Federal Communications Commission, Biennial Regulatory Review 2002*, WC Docket No. 02-313, GC Docket No. 02-390, Staff Report, DA 03-804 (2002).

<sup>5</sup> 47 C.F.R. § 1.815. This report provides statistical information on the racial, ethnic, and gender makeup of a carrier’s work force in nine specific job categories and was adopted to enable the Commission to monitor industry trends in minority and female employment and to raise appropriate questions regarding these patterns. *Rulemaking to Require Communications Common Carriers to Show Nondiscrimination in Their Employment Practices*, Docket No. 18742, Report and Order, 24 F.C.C.2d 725, 727-28, para. 6 (1970).

<sup>6</sup> *WCB Biennial NPRM*, 19 FCC Red at 766, para. 6.

<sup>7</sup> Joint Commenters at 1-2.

information that is essential to the Commission in meeting its public interest responsibilities, and that this information is also needed by the Advisory Committee on Diversity for Communications in the Digital Age to fulfill its mandate to increase opportunities for employment by minorities and women in the communications sector.<sup>8</sup> We agree with those comments and therefore conclude that the requirement that common carriers file FCC Form 395 on an annual basis remains necessary in the public interest and that repeal or modification is not warranted.

## **B. Part 36 – Jurisdictional Separations Procedures**

6. *Subpart A – General.* Section 36.2(b)(3)(ii) of the Commission’s rules sets forth the method for apportioning telecommunications plant used jointly for state and interstate operations.<sup>9</sup> The Commission proposed modifying paragraph (ii) of section 36.2(b)(3) to indicate that “holding time” minutes is the basis for measuring the use of both local and toll switching plant and to correct the erroneous removal of the provision for local switching investment from this section.<sup>10</sup> The Commission also proposed modifying section 36.2(b)(3)(iv) to reflect the change from the “subscriber plant factor” to the “25 percent Gross Allocator for exchange plant” to conform with our current rules and policies.<sup>11</sup>

7. No parties oppose our proposed changes. For the reasons we discussed in the *WCB Biennial NPRM* and listed above, we find that these changes are necessary to clarify, correct, and update these sections. We therefore modify sections 36.2(b)(3)(ii) and 36.2(b)(3)(iv) as set forth in Appendix B.

8. AT&T also requests that the Commission clarify the glossary definition of the term “holding time” to include the phrase “Holding time includes minutes of use originating plus terminating at the local dial office.”<sup>12</sup> We decline adoption of AT&T’s suggested change to the Commission’s definition of “holding time” because no evidence of confusion exists in the record regarding the definition of “holding time.” The Part 36 holding time measurement is defined as the time during which an item of plant is in actual use, and we understand that the industry, relying on the Part 36 Glossary, already correctly applies this definition. Thus, a further clarification is not necessary.

9. *Subpart B – Telecommunications Property.* Section 36.125(f) of the Commission’s rules provides the framework for apportioning certain Category 3 investments to interstate jurisdiction.<sup>13</sup> The Commission proposed changes to the rule to modify how the weighting factor should be applied in apportioning certain investment for study areas with fewer than 50,000 access lines.<sup>14</sup> In addition,

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<sup>8</sup> *Id.* at 15-16.

<sup>9</sup> 47 C.F.R. § 36.2(b)(3)(ii).

<sup>10</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 767, para. 8.

<sup>11</sup> *Id.*

<sup>12</sup> AT&T Rely Comments at 13-14.

<sup>13</sup> 47 C.F.R. § 36.125(f).

<sup>14</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 767-68, para. 9.

because sections 36.154(d) through (f) are no longer in effect, the Commission proposed the repeal of sections 36.154(d) through (f), and references to these sections in 36.154(c).<sup>15</sup>

10. No parties oppose our proposed changes. We therefore modify sections 36.125(f) and 36.154(c) and delete sections 36.154(d)-(f) as set forth in Appendix B.

11. AT&T also requests that the Commission remove the calculation of the COE Category 3 local switching support additive from Section 36.125(f), saying that it is not necessary for determining the local switching revenue requirement.<sup>16</sup> If adopted, AT&T's suggestion would appear to remove local switching support (LSS) from the formula contained in section 36.125(f), which could result in material changes to the manner in which the high cost universal service support mechanism is administered. Moreover, LSS is needed to prevent double recovery of support by the local exchange carrier. We conclude that the LSS factor remains necessary in the public interest and retain this rule.

12. *Subpart F – Universal Service Fund.* The Commission proposed to repeal sections 36.631(a) and (b) and 36.641 because these rules have expired on their own terms and are no longer applicable.<sup>17</sup> Section 36.631(a) sunset on December 31, 1997, section 36.631(b) sunset on December 31, 1987, and the transitional provisions provided in section 36.641 expired beginning no later than January 1, 1998.

13. No parties oppose our proposed changes. We therefore adopt language deleting sections 36.631(a) and (b) and 36.641 as set forth in Appendix B.

14. The Commission also proposed modification of section 36.631(d) to specify that this provision only applies to non-rural telephone companies serving study areas reporting more than 200,000 working loops.<sup>18</sup> We clarify the rule by adopting this modification. Although the first sentences of sections 36.631(c) and (d) appear to have expired on their own terms, these sections are needed for the “hold harmless” mechanism, which is scheduled to be phased out and we therefore retain them.<sup>19</sup>

15. *Miscellaneous Provisions.* The Commission proposed elimination of the last sentences of sections 36.142(a) and 36.377(a)(7) because they reference payphone services that are no longer

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<sup>15</sup> *Id.* at 768, n.23, para. 10.

<sup>16</sup> AT&T Reply Comments at 11-13.

<sup>17</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 768, para. 10.

<sup>18</sup> *Id.*

<sup>19</sup> *Federal-State Joint Board on Universal Service*, Thirteenth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC 24422 (2000) (*Thirteenth Report and Order*). The Commission determined that interim hold-harmless support, excluding long term support (LTS), would be phased down beginning January 1, 2001, through annual \$1.00 reductions in each carrier's average monthly, per-line support until that support is eliminated. *See id.* at 24426, 24428, paras. 9, 12. The Commission consolidated LTS into Interstate Common Line Support (ICLS) and eliminated LTS as a distinct mechanism, effective July 1, 2004. *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 04-31, paras. 61-67 (rel. February 26, 2004).

regulated.<sup>20</sup> No parties commented on our proposed changes. The last sentence of section 36.142(a) addresses coinless pay telephone equipment which has been deregulated, and the last sentence of section 36.377(a)(7) addresses expenses related to coin collection and administration. We therefore delete the last sentence of section 36.142(a) and the last sentence of section 36.377(a)(7), as set forth in Appendix B.

16. In addition, the Commission proposed elimination of all references to Teletypewriter Exchange Service (TWX).<sup>21</sup> Since the ARMIS database was established in 1988 and references to TWX were removed from the ARMIS 43-04 report in 1999, use of TWX has sunset. We therefore remove all references to TWX in Part 36 as set forth in Appendix B.

17. In their comments, United States Telephone Association (USTA) proposed correcting two instances of transposed wording in section 36.377(a)(5) of the rules. Specifically, in subparagraph (v), “interstate” should read “State,” and in subparagraph (vi), “State” should read “Interstate.” We agree that the corrections suggested by USTA to the wording in section 36.377(a)(5) of the Commission’s rules are appropriate.<sup>22</sup> We adopt rules reflecting the change in subparagraph (v) from “interstate” to “State,” and in subparagraph (vi) from “State” to “Interstate.” In addition, the Commission, on its own motion, changes “Interstate” to “State” in subparagraph (i).

### **C. Part 42 – Preservation of Records of Communications Carriers**

18. Sections 42.1 through 42.9 of the Commission’s rules set forth rules governing the preservation of records of communications common carriers, including all accounts, records, memoranda, documents, papers and correspondence prepared by or on behalf of such carriers. The Commission sought proposals on less costly and more efficient ways to collect, preserve, and maintain carrier records and reports, and asked parties to address the likely effect of any proposed rule change on the ability of the Commission, consumers, and other parties (such as those responsible for law enforcement) to access this important information.<sup>23</sup>

19. USTA filed comments recommending the elimination of sections 42.1 through 42.9 asserting that these regulations are outdated and unnecessary.<sup>24</sup> USTA, however, did not offer any support for its assertions, nor did USTA make proposals regarding less costly and more efficient ways to collect, preserve and maintain carrier records and reports. Neither USTA’s brief comment nor its incorporation of arguments from previous Biennial Review dockets,<sup>25</sup> convince us that elimination or modification of Part

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<sup>20</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 768, para. 12.

<sup>21</sup> *Id.* at 768, para. 11.

<sup>22</sup> USTA Comments at 3-4.

<sup>23</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 769, para. 15.

<sup>24</sup> USTA Biennial Review 2002 Comments at 8.

<sup>25</sup> In its Petition for Rulemaking regarding the 2000 Biennial Regulatory Review, filed on August 11, 1999, and incorporated by reference herein, USTA restated previous arguments why the provisions of Part 42 are unnecessary, including claims that companies already preserve for their own legal and financial purposes any records needed to be kept for Commission purposes, and since companies are responsible for producing the records when needed, it should be left up to the individual companies to determine the best manner in which to keep the records. *See United* (continued....)

42 is warranted at this time. Accordingly, we conclude that current Part 42 record retention requirements assist the Commission to carry out its regulatory responsibilities and therefore continue to be necessary in the public interest at this time.

#### D. Part 51 – Interconnection

20. *Subpart C – Obligations of All Local Exchange Carriers.* Section 51.211 provides the toll dialing parity implementation schedule for local exchange carriers (LECs) and Bell Operating Companies (BOCs).<sup>26</sup> In the *WCB Biennial NPRM*, the Commission noted that this subpart contains a number of expired deadlines by which LECs and BOCs were required to implement toll dialing parity and/or notify the Commission of their failure to do so, none of which appear to have any remaining relevance. The Commission proposed to repeal those sections containing expired deadlines, including: (1) sections 51.211(a)-(e); (2) section 51.211(f), if subsections (a)-(e) were to be repealed; and (3) sections 51.213(c) and (d).<sup>27</sup>

21. No parties oppose our proposal to eliminate these sections. We therefore eliminate sections 51.211(a)-(f) and 51.213(c) and (d), as set forth in Appendix B.

22. *Subpart D – Additional Obligations of Incumbent Local Exchange Carriers.* Sections 51.325 through 51.335 comprise the Commission's network change disclosure rules.<sup>28</sup> The Commission proposed to delete section 51.329(c)(3) of the rules, which requires that paper and diskette copies of the incumbent LEC's public notice or certification be sent to the Chief of the Bureau.<sup>29</sup>

23. No parties oppose our proposal to eliminate this section. We therefore eliminate section 51.329(c)(3), as set forth in Appendix B.

24. The Commission also sought comment on whether to modify section 51.329(c)(1) of the rules, which enumerates the specific titles that incumbent LECs must use when providing public notice, or certification of public notice, of network changes, by adding specific titles to identify notices of replacement of copper loops or copper subloops with fiber-to-the-home (FTTH) loops.<sup>30</sup> As noted in the *WCB Biennial NPRM*, the Commission had amended these rules in the *Triennial Review Order* as part of its FTTH unbundling analysis, relying on the Commission's role in the public notice disclosure process as a critical means of notifying competitors of incumbent LECs' plans to replace copper loops or copper subloops with fiber.<sup>31</sup> Since that time, the D.C. Circuit issued an opinion affirming in part and vacating

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*States Telephone Association Petition for Rulemaking – 2000 Biennial Regulatory Review*, CC Docket No. 00-175, RM 9707, Petition for Rulemaking of the United States Telephone Association (Aug. 11, 1999).

<sup>26</sup> 47 C.F.R. § 51.211.

<sup>27</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 770, paras. 17 and 18.

<sup>28</sup> 47 C.F.R. §§ 51.325-335.

<sup>29</sup> See *WCB Biennial NPRM*, 19 FCC Rcd at 770-71, para. 19; 47 C.F.R. § 51.329(c)(3).

<sup>30</sup> See *WCB Biennial NPRM*, 19 FCC Rcd at 771, para. 20; 47 C.F.R. § 51.329(c)(1).

<sup>31</sup> *Review of Section 251 Unbundling Obligations of Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on (continued....)

and remanding in part the *Triennial Review Order*,<sup>32</sup> and the Commission subsequently released a 12-month plan to provide certainty while it sought comment on how best to respond to the *USTA II* decision in developing new, final unbundling rules.<sup>33</sup> On December 15, 2004, the Commission adopted an Order on Remand, clarifying the impairment standard adopted in the *Triennial Review Order* and modifying its application in several respects.<sup>34</sup> The *Order on Remand* also adopts transition plans for competitive LECs currently using dedicated interoffice transport, high-capacity loops, and mass-market local switching elements under the prior rules.<sup>35</sup> In light of this ongoing review of the *Triennial Review Order* in the wake of *USTA II* and the relationship between the *NPRM*'s proposed modifications to the network disclosure rules and the *Triennial Review Order*'s FTTH unbundling analysis, we decline to address the proposed modifications to section 51.329(c)(1) in this order.

25. *Subpart F – Pricing of Elements.* Section 51.515 of the Commission's rules provides that neither interstate access charges nor comparable intrastate access charges shall be assessed by an incumbent LEC on purchasers of unbundled elements.<sup>36</sup> Subparts (b) and (c) of that section, however, permit incumbent LECs to assess certain interstate and intrastate access charges for a limited period of time, but in no event after June 30, 1997.<sup>37</sup> Because these sections are no longer applicable because their effective dates have expired, the Commission proposed to repeal sections 51.515(b) and (c).<sup>38</sup>

26. No parties oppose our proposal to eliminate these sections. We therefore eliminate sections 51.515(b) and (c), as set forth in Appendix B.

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Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17141, 17146-48, paras. 271, 281-84 (*Triennial Review Order*).

<sup>32</sup> *United States Telecom Ass'n. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004). The court decision, among other things, vacated the Commission's delegation of authority to state commissions and the nationwide impairment findings for dedicated transport and mass market local circuit switching, while it upheld the Commission's determinations on mass market broadband loops and the role of section 271 access obligations. The mandate of the D.C. Circuit became effective on June 16, 2004. The Commission and the U.S. Department of Justice determined not to seek Supreme Court review of the *USTA II* decision, although several competitive carriers, state commissions, and others filed petitions for *certiorari* with the Supreme Court on June 30, 2004. The Supreme Court denied *certiorari* on October 12, 2004.

<sup>33</sup> *See Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, 19 FCC Rcd 16783 (2004).

<sup>34</sup> *See Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533 (2005).

<sup>35</sup> *Id.*

<sup>36</sup> 47 C.F.R. § 51.515(a).

<sup>37</sup> 47 C.F.R. § 51.515(b)-(c).

<sup>38</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 771-72, para. 21.

**E. Part 52 – Numbering**

27. *Subpart A – Scope and Authority.* Section 52.5 of our rules lists the United States territories participating in the North American Numbering Plan (NANP). Because American Samoa now participates in the NANP, the Commission proposed to modify section 52.5 to include American Samoa.<sup>39</sup>

28. No parties oppose our proposal to update section 52.5 with this modification. We therefore modify section 52.5 as set forth in Appendix B. In addition, we update section 52.17(b) by changing the reference to “Common Carrier Bureau” to “Wireline Competition Bureau” as set forth in Appendix B.

29. *Subpart B – Administration.* Sections 52.11, 52.13, and 52.15 involve the administration of telecommunications numbers for the provision of telecommunications services.<sup>40</sup> In particular, section 52.11 provides the duties of the North American Numbering Council; section 52.13 governs the duties of the North American Numbering Plan Administrator; and section 52.15 describes central office code administration. The Commission proposed the repeal of sections 52.11(d), 52.15(b)(3), 52.15(c) through (e) and modification of sections 52.13(b) and (b)(3) and 52.13(c)(4).<sup>41</sup> Because the North American Numbering Council is no longer responsible for recommending an entity to serve as the North American Numbering Plan Administrator, the Commission proposed repeal of section 52.11(d).<sup>42</sup> The Commission also proposed modifying the introductory paragraph of section 52.13(b) and section 52.13(b)(3) to reflect the role of the Commission in setting numbering policy.<sup>43</sup> In addition, the Commission proposed repeal of section 52.15(c) because these functions are no longer performed by telecommunications carriers. The Commission similarly proposed modifying sections 52.13(c)(4) and 52.15(b)(3) because the Central Office Code Utilization Survey (COCUS) has been replaced by the Numbering Resource Utilization Forecast.<sup>44</sup> Lastly, the Commission proposed repeal of a portion of section 52.15(d) and section 52.15(e), in its entirety, because the initial transfer of numbering administration functions from Bellcore and certain carriers to the first NANPA occurred in 1999, resulting in the sunset of a portion of section 52.15(d) and section 52.15(e), in its entirety.

30. No parties oppose our proposed changes, which are necessary to update and conform these rule sections with current policy and practice. We therefore modify sections 52.13(b) and (b)(3), 52.13(c)(4), and 52.15(b)(3) and (d), and delete sections 52.11(d), 52.15(c) and (e) as set forth in Appendix B.

31. *Subpart C – Portability.* Sections 52.23 and 52.31 provide for deadlines for deployment of LNP and sections 52.27 and 52.29 provide regulations for transitional measures.<sup>45</sup> The Commission proposed modifying sections 52.23 and 52.31 to reflect the passage of these deadlines and proposed to modify

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<sup>39</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 772, para. 23.

<sup>40</sup> 47 C.F.R. §§ 52.3, 52.11, 52.13, 52.15.

<sup>41</sup> *2002 WCB Biennial NPRM*, 19 FCC Rcd 772-74, paras. 24-26.

<sup>42</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 773, para. 25

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*; see also *WCB Biennial NPRM*, 19 FCC Rcd at 773, n. 62.

<sup>45</sup> 47 C.F.R. §§ 52.23, 52.27, 52.29, 52.31.



sections 52.27 and 52.29 to reflect the fact that long-term database methods for number portability have been implemented.<sup>46</sup>

32. The Rural Telecommunications Group, Inc. (RTG) proposed that the Commission retain sections 52.23(e) and (f) and 52.31(d) and (e) because many small and rural carriers, even those serving portions of the largest MSAs, have not yet received a bona fide request to deploy LNP.<sup>47</sup> With respect to sections 52.23(e) and (f) and 52.31(d) and (e), we agree with RTG that these sections should be retained for that reason.<sup>48</sup> Because some carriers may not have yet received a request to provide number portability and therefore, not participated in porting, we find it necessary in the public interest to retain sections 52.23(e) and 52.31(d). Similarly with respect to sections 52.23(f) and 52.31(e), we find it necessary in the public interest for the Chief of the Wireline Competition Bureau and the Chief of the Wireless Telecommunications Bureau to retain their authority to monitor deployment and direct actions necessary to ensure successful deployment of LNP on an ongoing basis.<sup>49</sup> We also find it necessary in the public interest to retain section 52.23(b) because the portability deployment requirements remain applicable as carriers continue to deploy number portability.

33. No parties opposed the other changes proposed by the Commission. We find that sections 52.27 and 52.29 are no longer necessary in the public interest because long-term database methods for number portability have been developed. In addition, section 52.31(c) is no longer necessary because the timeframe identified in the rule has expired. We therefore delete sections 52.27, 52.29 and 52.31(c), as set forth in Appendix B.

34. In addition, RTG proposed the adoption of new rules regarding LNP implementation for wireless carriers beyond the top 100 MSAs,<sup>50</sup> and USTA proposed adoption of a cost recovery mechanism for carrier-specific ongoing LNP-related costs borne by non-LNP capable carriers.<sup>51</sup> We note that recommendations to adopt additional rules in this area are beyond the scope of the Biennial Review.<sup>52</sup> Such matters are more appropriately addressed by the Commission in future rulemaking actions.

#### **F. Part 53 – Special Provisions Concerning Bell Operating Companies**

35. *Subpart B – Bell Operating Companies Entry Into InterLATA Service.* Section 53.101 provides that BOCs serving more than 5 percent of the national presubscribed access lines may not jointly market

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<sup>46</sup> *WCB Biennial NPRM*, 19 FCC Rcd 774, para. 27; *see also id.* at n.66.

<sup>47</sup> RTG Comments at 2-3

<sup>48</sup> RTG Comments at 2-4.

<sup>49</sup> *See Telephone Number Portability, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, 18 FCC Rcd 23697 (2003) (*Intermodal Porting Order and FNPRM*); *see also Telephone Number Portability, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, FCC 04-217 (rel. Sept. 16, 2004).

<sup>50</sup> RTG Comments at 4-5.

<sup>51</sup> USTA Comments (Oct. 18, 2002) at 12-13; USTA Reply Comments (Nov. 4, 2002) at 5.

<sup>52</sup> *See 2002 Biennial Regulatory Report*, Report, GC Docket 02-390, 18 FCC Rcd 4726, 4729-30, para. 11 (2002 *Biennial Report*).

their local and interLATA services until the earlier of the BOCs' authorization to provide in-region, interLATA services or February 8, 1999.<sup>53</sup> The Commission proposed to eliminate section 53.101, as the expiration date of the prohibition against joint marketing for all BOCs has passed, and the section appeared to have expired by its own terms.<sup>54</sup>

36. No parties oppose our proposal to eliminate this section. We therefore eliminate section 53.101, as set forth in Appendix B.

#### **G. Part 54 – Universal Service**

37. *Subpart C – Carriers Eligible for Universal Service Support.* Section 54.201(a)(2) provides a means for state commissions to receive a waiver from the Commission to grant a designation of eligible telecommunications carrier (ETC) status to a carrier that filed for such a designation prior to January 1, 1998.<sup>55</sup> The Commission sought comment on whether this provision continues to be necessary and proposed to delete it if it is no longer necessary.<sup>56</sup>

38. No state commission or other entity submitted comments related to this matter. No evidence exists to suggest that any state commission faces any circumstance in which it would require the waiver provided in section 54.201(b). We therefore eliminate section 54.201(a)(2), as set forth in Appendix B.

39. *Subpart D – Universal Service Support for High Cost Areas.* Section 54.303 provides eligibility guidelines for receipt of long term support.<sup>57</sup> The Commission noted that sections 54.303(b)(1) through (3) appear to have expired by their own terms, but proposed retaining these provisions because they may assist carriers in calculating long term support.<sup>58</sup>

40. No parties submitted comments related to this matter. We conclude that sections 54.303(b)(1) through (3) continue to be necessary to calculate long term support for years subsequent to those years identified in the rules. We therefore retain sections 54.303(b)(1)-(3) because they remain necessary in the public interest.

41. Section 54.313 provides certification deadlines associated with long term support for non-rural carriers.<sup>59</sup> The Commission proposed to delete sections 54.313(d)(1) and (2) because these provisions appear to have expired by their own terms.<sup>60</sup>

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<sup>53</sup> 47 C.F.R. § 53.101.

<sup>54</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 775, para. 30.

<sup>55</sup> 47 C.F.R. § 54.201(a)(2).

<sup>56</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 775, para. 32.

<sup>57</sup> 47 C.F.R. § 54.303.

<sup>58</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 775-76, para. 33.

<sup>59</sup> 47 C.F.R. § 54.313.

<sup>60</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 775-76, para. 33.

42. No parties submitted comments related to these expired provisions. We therefore eliminate sections 54.313(d)(1) and (2), as set forth in Appendix B.

43. Section 54.305 provides governance for the sale or transfer of exchanges and the high cost universal service support available for the carrier acquiring the exchange(s) and ensures continuing universal service support for customers of sold or transferred exchanges. USTA filed comments proposing elimination of section 54.305 and argued that the acquiring carrier should not be limited to the amount of high cost support received by the previous carrier.<sup>61</sup> On June 28, 2004, the Commission asked the Federal-State Joint Board on Universal Service to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers, including section 54.305, and to determine the appropriate rural mechanism to succeed the five-year plan adopted in the Rural Task Force Order.<sup>62</sup> The Commission awaits the Joint Board's recommendation. We, therefore, decline to delete or modify section 54.305 as suggested by USTA at this time.

44. *Subpart F – Universal Service Support for Schools and Libraries.* Sections 54.507(b)(1)-(2) define “funding year” for the first year of the schools and library program and “funding year” for the years following the first year of the schools and libraries program.<sup>63</sup> In addition, section 54.507 describes funding for eligible, recurring and nonrecurring services and associated filing requirements.<sup>64</sup> The Commission proposed that portions of section 54.507(b), which appear to have expired by their own terms, be deleted.

45. No parties submitted comments related to these provisions. We therefore modify section 54.507(b) and eliminate subparagraphs (1) and (2) as set forth in Appendix B. We retain the first sentence of paragraph (b) because it remains necessary as it provides the current definition of “funding year” for the schools and libraries mechanism.

46. In its comments, USTA renewed proposals it had made in response to the *2002 Biennial NPRM* that service providers under the schools and libraries program should not be required to reimburse the Universal Service Administrative Corporation (USAC) for payments or commitments made to ineligible entities for eligible services used in an ineligible manner.<sup>65</sup> We decline to address USTA's proposal in this context. The issues noted by USTA were raised and addressed in the *Schools Fourth Order*. In the *Schools Fourth Order*, the Commission concluded that recovery actions should be directed to the party or parties that committed the rule or statutory violation in question, including service providers and program beneficiaries.<sup>66</sup>

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<sup>61</sup> USTA Comments at 11.

<sup>62</sup> See *Referral Order*, FCC 04-125, para. 13; see also *Federal-State Joint Board on Universal Service*, Public Notice, CC Docket 96-45, FCC 04J-2 (rel. Aug. 16, 2004).

<sup>63</sup> 47 C.F.R. § 54.507(b).

<sup>64</sup> 47 C.F.R. § 54.507(b)(1)-(2).

<sup>65</sup> USTA (Oct. 18, 2002) Comments at 15.

<sup>66</sup> *Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support Mechanism*, Order on Reconsideration and Fourth Report and Order, CC Docket No. 96-45, CC Docket No. 97-21, CC Docket 02-6, FCC 04-181, para. 10 (rel. July 30, 2004) (*Schools Fourth Report*).

47. *Subpart G – Universal Service Support for Health Care Providers.* The Commission proposed the elimination of several sections that appear to have expired by their own terms - sections 54.604(a)(2) and (d), and sections 54.623(c)(2) through (3). The Commission also proposed modification of section 54.623(b) and (c)(4).<sup>67</sup>

48. No parties submitted comments related to these sections. We therefore eliminate sections 54.604(a)(2) and (d) and 54.623(c)(2) through (3) as expired. Additionally, we modify section 54.623(b) to eliminate an outdated reference to the already-passed initiation of the rural health care mechanism, and to retain the language identifying the span of a funding year for purposes of a cap on the rural health care providers support mechanism. We also modify section 54.623(c)(4) to clarify that all applications filed by rural health care providers within the filing window, as determined by the Administrator, will be treated as simultaneously received.

49. *Miscellaneous Provisions.* Section 54.903 requires rate-of-return carriers to provide certain data to USAC to demonstrate the carrier's eligibility to receive Interstate Common Line Support (ICLS).<sup>68</sup> USTA filed comments renewing its 2002 request that the Commission clarify that that six data elements -- (1) projected common line revenue requirement; (2) projected SLC revenues; (3) projected revenue from its transitional CCL charge; (4) projected special access surcharges; (5) projected line port costs in excess of basic analog service; and (6) projected LTS -- are sufficient to satisfy rate-of-return carriers' obligations pursuant to section 54.903.<sup>69</sup> USTA also proposed that the National Exchange Carrier Association (NECA) be required to file all data collection items for its pool participants because NECA already collects this information from its pool participants.<sup>70</sup> Finally, USTA proposed extending the deadline for submission of actual ICLS data for true-up purposes from July 31 to December 31 to allow carriers more time to complete the cost studies necessary to generate the required data.<sup>71</sup> We decline to address USTA's proposal in this context. The issues noted by USTA were raised and addressed in a subsequent rulemaking proceeding. Specifically, in the *MAG Order on Reconsideration*, the Commission determined, among other things, that NECA will be permitted to file data for each member of the common line pool for the purposes of the initial ICLS filing.<sup>72</sup> In the *MAG Order on Reconsideration*, the

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<sup>67</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 776, para. 35.

<sup>68</sup> 47 C.F.R. § 54.903.

<sup>69</sup> USTA Comments (Oct. 18, 2002) at 16-17. *Cf.* MCI Reply Comments at 4-5 (noting that it opposed many arguments made by USTA and stating that USTA requests a broad array of modifications to wireline regulations that are already under consideration in other proceedings or were addressed in proceedings that were recently concluded.).

<sup>70</sup> *Id.* at 16-17.

<sup>71</sup> *Id.* at 17.

<sup>72</sup> *Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service*, First Order on Reconsideration in CC Docket 00-256 and Twenty-Fourth Order on Reconsideration in CC Docket 96-45, CC Docket 00-256, CC Docket 96-45, 17 FCC Rcd 5635, 5639 para. 11 (2002) (*MAG Order on Reconsideration*). Moreover, in the *Third MAG Order on Reconsideration*, the Commission reiterated that under the rules of the MAG Order, a rate of return carrier may elect NECA, as its agent, to submit ICLS data to USAC on its behalf and determined that the filing date will be December 31 instead of July 31. *See Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service*, (continued....)

Commission also identified the data elements necessary to comply with section 54.903 for the initial ICLS filing.<sup>73</sup> As for all other years, the Commission stated that Commission staff and USAC will work with affected rate-of-return carriers and other interested parties to develop the appropriate filing requirements for future data submissions consistent with the Commission's rules.<sup>74</sup> The Commission also concluded that the actions taken in the *MAG Order on Reconsideration* would ensure timely implementation of the ICLS mechanism.<sup>75</sup>

#### **H. Part 63 – Extension of Lines, New Lines, and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status**

50. *General Provisions Relating to All Applicants Under Section 214.* Section 63.61 provides that any carrier subject to the provisions of section 214, except a non-dominant carrier as defined in our rules,<sup>76</sup> that seeks to discontinue, reduce, or impair service, must file for and receive authority from the Commission in order to take such action.<sup>77</sup> Section 63.71 requires that any domestic carrier (including non-dominant carriers) must file for and receive authority from the Commission before discontinuing, reducing, or impairing service.<sup>78</sup> The Commission adopted section 63.71 more recently than section 63.61, and clearly intended its requirements to apply to non-dominant domestic carriers; however, section 63.61 was mistakenly left unchanged when section 63.71 was adopted. Thus, the Commission proposed to modify section 63.61 to clear up any confusion about non-dominant domestic carriers' obligation to abide by section 63.71, and to correct the erroneous cross-reference to section 61.3(u) in section 63.61, as the term "non-dominant carrier" is defined in section 61.3(y).<sup>79</sup> The Commission further proposed to revise sections 63.61 and 63.71 to make clear that the procedures for the discontinuance, reduction or impairment of international services are governed by section 63.19 of our rules.<sup>80</sup>

51. No parties oppose our proposed changes. We therefore adopt language modifying sections 63.61 and 63.71, as set forth in Appendix B.

52. Sections 63.71(a)(5)(i) and (ii) provide boiler plate language for carriers to advise affected customers of a proposed discontinuance, reduction, or impairment of service, and their right to file comments with the Commission within 15 days (30 days for dominant carrier customers) after receipt of

(Continued from previous page) \_\_\_\_\_

Third Order on Reconsideration in CC Docket 00-256 and CC Docket 96-45, 18 FCC Rcd 10284, 10286-87, 10291 paras. 5, 10 (2003) (*MAG Third Order on Reconsideration*).

<sup>73</sup> *MAG Order on Reconsideration*, 17 FCC Rcd 5641, para. 16.

<sup>74</sup> *Id.* at 5638, para. 9.

<sup>75</sup> *Id.* at 5638, para. 8.

<sup>76</sup> *See* 47 C.F.R. § 61.3(q) and (y).

<sup>77</sup> 47 C.F.R. § 63.61.

<sup>78</sup> *See* 47 C.F.R. § 63.71. International carriers are also subject to discontinuance rules. 47 C.F.R. § 63.19.

<sup>79</sup> 47 C.F.R. § 63.3(u), (y).

<sup>80</sup> *See* 47 C.F.R. § 63.19.

said notice.<sup>81</sup> As a practical matter, however, customers have longer than this period, because they receive actual notice of the proposed discontinuance before the date of public notice.<sup>82</sup> The Commission proposed to modify these paragraphs to more accurately reflect actual notice periods and procedures.<sup>83</sup>

53. No parties oppose our proposed changes. We therefore adopt language modifying sections 63.71(a)(5)(i) and (ii), as set forth in Appendix B.

### **I. Part 64 – Miscellaneous Rules Relating to Common Carriers**

54. *Subpart M – Provision of Payphone Service.* Section 64.1330(c) requires each state to review its rules and policies to determine whether it has provided for public interest payphones consistent with applicable Commission guidelines, evaluate whether it needs to take measures to ensure that such payphones will continue to exist in light of the Commission’s implementation of section 276 of the Act, and administer and fund such programs so that such payphones are supported fairly and equitably.<sup>84</sup> Because the September 20, 1998 deadline in this provision has passed and appears to no longer be applicable, the Commission sought comment on whether this provision should be repealed. The Commission also sought comment on whether the requirement for state review of regulations regarding public interest payphones remains necessary and thus whether the Commission should modify or update, rather than eliminate, this provision. Finally, the Commission sought comment on whether elimination of this requirement would adversely affect competition or the public interest.

55. No party filed comments regarding section 64.1330(c). In determining whether section 64.1330(c) is still relevant, we note that, in concluding that there is a need to ensure the maintenance of payphones that serve the public policy interests of health, safety, and welfare, the Commission observed that states are typically in a superior position to evaluate the need for payphones which serve the public interest.<sup>85</sup> The Commission did not, however, delegate its entire responsibility under section 276(b)(2) of the Act to “ensure that such public interest payphones are supported fairly and equitably.” It stated that if interested parties believe that a state is not supporting public interest payphones fairly and equitably, such parties may file a petition with the Commission asserting that the state is not providing for payphones in accordance with section 276(b)(2) and the guidelines adopted by the Commission.<sup>86</sup> This is consistent

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<sup>81</sup> 47 C.F.R. § 63.71(a)(5)(i)-(ii).

<sup>82</sup> We note that if another carrier acquires all or part of an exiting carrier’s subscriber base through a sale or transfer, and the acquiring carrier does not obtain each subscriber’s authorization and verification in accordance with 47 C.F.R. § 64.1120(c), the acquiring carrier must, at least 30 days before the planned transfer, file with the Commission’s office of the Secretary a letter notification that complies with the requirements of section 47 C.F.R. § 64.1120 (e), and includes a copy of the advance written notice sent to affected subscribers. The subscriber notice must contain all of the information specified in section 64.1120(e), and must be provided to the affected subscribers at least 30 days in advance of the planned transfer. *See* 47 C.F.R. §§ 64.1120(c), (e).

<sup>83</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 777, para. 38.

<sup>84</sup> 47 C.F.R. § 64.1330(c).

<sup>85</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, First Report and Order, 11 FCC Rcd 20541, 20678 (1996) (hereinafter *First Report and Order*).

<sup>86</sup> *Id.* at 20683.

with the continuing obligation of each state to review its rules and policies to determine whether it is providing for public interest payphones consistent with applicable Commission guidelines and section 276. It is also consistent with each state's continuing oversight responsibilities for payphones under sections 64.1330(a) and (c). Although the deadline in section 64.1330(c) regarding the Commission's directive to the states to conduct an initial review regarding public interest telephones has passed, we therefore conclude that section 64.1330(c) should be retained. The revised section 69.1330(c), which eliminates the September 30, 1998 deadline, is set forth in Appendix B.

56. *Subpart T – Separate Affiliate Requirements.* Section 64.1903(c) contains a deadline for compliance with the requirements of this section that expired more than six years ago.<sup>87</sup> The Commission proposed to delete this provision as no longer necessary, and to modify section 64.1903(a) so that its reference to paragraph (c) is removed.<sup>88</sup>

57. No parties oppose our proposed changes to these expired provisions. We therefore eliminate section 64.1903(c), and adopt language modifying section 64.1903(a), as set forth in Appendix B.

#### **J. Part 69 – Access Charges**

58. The Commission proposed deleting sections 69.116 (Universal Service Fund), 69.117 (Lifeline Assistance), 69.126 (Nonrecurring Charges), 69.127 (Transitional Equal Charge Rule), and 69.612 (Long Term and Transitional Support), noting that either the effective dates for these sections have passed or the sections are no longer relevant to the carriers to which they had applied.<sup>89</sup>

59. No commenter opposes our proposal to eliminate these sections. We therefore eliminate sections 69.116, 69.117, 69.126, 69.127, and 69.612, as set forth in Appendix B.

### **III. PROCEDURAL MATTERS**

#### **A. Paperwork Reduction Act Analysis**

60. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and does not contain new and/or modified information collections subject to Office of Management and Budget review.

#### **B. Final Regulatory Flexibility Certification**

61. 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 rules adopted herein.<sup>90</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>91</sup> In addition, the term "small business" has the same meaning as

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<sup>87</sup> 47 C.F.R. § 64.1903(c).

<sup>88</sup> See *WCB Biennial NPRM*, 19 FCC Rcd at 778, para. 41; 47 C.F.R. § 64.1903(c) and (a).

<sup>89</sup> *WCB Biennial NPRM*, 19 FCC Rcd at 779, paras. 43-46.

<sup>90</sup> 5 U.S.C. § 604(a)(3).

<sup>91</sup> 5 U.S.C. § 601(6).

the term “small business concern” under the Small Business Act.<sup>92</sup> 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 Small Business Administration (SBA).<sup>93</sup>

62. In particular, the rule changes, discussed below, do not impose a significant economic impact. Rather, the Commission repeals or modifies regulations which are “no longer necessary in the public interest,” are obsolete or outdated, have expired of their own terms, or that correct drafting or typographical errors.<sup>94</sup> These rule changes thus impose no additional burdens. Rather, they reduce regulatory compliance burdens by eliminating the requirements and uncertainties described below.

- *Part 36 Jurisdictional Separations*: The Commission clarifies certain rules for incumbent local exchange carriers (incumbent LECs), specifically the apportionment formula for telecommunication switching and subscriber plant and the application of certain adjustments to the Universal Service support calculation formula. The Commission also eliminates obsolete references to payphone and teletypewriter exchange services which are no longer subject to specified regulations, and corrected typographical errors.<sup>95</sup>
- *Part 51 Interconnection*: The Commission eliminates the requirement that incumbent LECs send paper and diskette copies of notice or certification of specified network changes to the Chief of the Wireline Competition Bureau.<sup>96</sup>

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<sup>92</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>93</sup> 15 U.S.C. § 632.

<sup>94</sup> 47 U.S.C. § 161(a) and (b). The *WCB Biennial NPRM* sought, in accordance with 47 U.S.C. § 161, public comment on whether certain rules applicable to operations and activities of telecommunication service providers should be repealed or modified because they were no longer in the public interest, were outdated, had expired of their own terms, or as the result of competition might no longer be necessary in their current form. *WCB Biennial NPRM*, 19 FCC Rcd at 764-65, para. 2 An Initial Regulatory Analysis (IRFA) was incorporated into the *WCB Biennial NPRM* and requested comments specifically seeking information on proposals to reduce the administrative burden and cost of compliance for small telecommunications service providers and from contributors that were “small business concerns” under the Small Business Act. The Commission proposed no new rules, but rather, only modifications or deletions which it anticipated would eliminate economic burdens for small entities. *WCB Biennial NPRM*, 19 FCC Rcd at 780-84, paras. 49-63. The Commission received no comments suggesting that any of the proposals would result in any significant economic burden upon a substantial number of small entities or small business concerns.

<sup>95</sup> See *supra*. paras. 6-7 (47 C.F.R. §§ 36.2 (b)(3)(ii), 36.2(b)(3)(iv)); para. 9 (47 C.F.R. § 36.125); para. 14 (47 C.F.R. § 36.631(d)); para. 15 (47 C.F.R. §§ 36.142(a), 36.377(a)(7)); para. 16 (47 C.F.R. §§ 36.126(e)(3), 36.152(a), 36.375(b)(2), 36.377(a)(1), (2) and (3), 36.156(b), 36.212(c), 36.214(a), 36.375(b)(2), 36.377(a)(1),(2) and 3); para. 17 (47 C.F.R. § 36.377(a)(5)).

<sup>96</sup> See *supra*. para. 22-3 (47 C.F.R. § 51.329(c)(3)).



- *Part 52 Numbering*: The Commission modifies the list of United States territories in the North American Numbering Plan (NANP) to reflect the current participating territories; repeals superceded regulations pertaining to the North American Numbering Plan administration, central office code administration, and to transitional measures and mechanisms applicable to LECs and CMRS providers for number portability. The Commission also corrects an obsolete reference to the former Common Carrier Bureau.<sup>97</sup>
- *Part 54 Universal Service*: The Commission repeals an outdated waiver mechanism which has applied to state commissions. The Commission also clarifies the treatment of applications by rural health care providers for Rural Health Care support.<sup>98</sup>
- *Part 63 Extension of Lines, New Lines, and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status*: The Commission corrects an earlier drafting error in the rule applicable to wireline telecommunications carriers seeking to discontinue, reduce or impair interstate or foreign telephone or telegraph service. The Commission clarifies regulatory cross-references and corrects descriptions of triggering events for public comment periods.<sup>99</sup>
- The Commission also repeals expired terms in Parts 36, 51, 53, 54, 64 and 69 which related to local exchange carriers, interexchange carriers, schools and libraries, and state commissions.<sup>100</sup>

63. Therefore, we certify that the requirements of the Report and Order will not have a significant economic impact on a substantial number of small entities.

64. The Commission will send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>101</sup> A summary of this Report and Order and this Final Regulatory Flexibility Certification will also be published in the Federal Register<sup>102</sup> and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

<sup>97</sup> See *supra*. paras. 27-28 (47 C.F.R. § 52.5); para. 28 (47 C.F.R. § 52.17(b)); paras. 29-30 (47 C.F.R. §§ 52.11(d), 52.13(b) and (b)(3), 52.13(c)(4), 52.15(b)(3), (c), (d) and (e)); and para. 31 (47 C.F.R. § 52.27, 52.29).

<sup>98</sup> See *supra*. para. 37 (47 C.F.R. § 54.201(a)(2)); paras. 47-48 (47 C.F.R. § 54.623(c)).

<sup>99</sup> See *supra*. paras. 50-51 (47 C.F.R. §§ 63.61 and 63.71); paras. 52-52 (47 C.F.R. § 63.71(a)(5)).

<sup>100</sup> See *supra*. paras. 9-10 (47 C.F.R. § 36.154(c),(e) and (f)); paras. 12-13 (47 C.F.R. §§ 36.631(a) and (b), 36.641); paras. 20-21 (47 C.F.R. §§ 51.211, 51.213 (c) and (d)); paras. 22-23 (47 C.F.R. § 51.515(b) and (c)); paras. 29-30 (47 C.F.R. §§ 52.15(d) and (e)); para. 31 (§ 52.31(c)); para. 35 (47 C.F.R. § 53.101); paras. 41-42 (47 C.F.R. § 54.313(d)(1) and (2)); paras. 44-45 (§ 54.507(b)); paras 47-48 (47 C.F.R. §§ 54.604(a)(2) and (d), 54.623(b), and (c)(2)-(3)); paras. 54-55 (47 C.F.R. § 64.1330(c)); paras. 56-57 (47 C.F.R. § 64.1903(c)); paras. 58-59 (47 C.F.R. §§ 69.116, 69.117, 69.126, 69.127, 69.612).

<sup>101</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>102</sup> See 5 U.S.C. § 604(b).

**IV. ORDERING CLAUSES**

65. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 3, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, and 403, this Report and Order IS ADOPTED.

66. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201-205, 303(r), and 403 of the Communications Act of 1934, as amended, 47 C.F.R. §§ 154(i), 154(j), 201-205, 303(r), 403, and section 553 of Title 5, United States Code, that revisions to Parts 36, 51, 52, 54, 63, 64, and 69 of the Commission's rules, 47 C.F.R. Parts 36, 51, 52, 54, 63, 64, and 69 ARE ADOPTED as set forth in Appendix B.

67. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

68. IT IS FURTHER ORDERED, that the provisions of this Report and Order will be effective 30 days after a summary of this Order is published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****PARTIES FILING PLEADINGS****I. Comments**

Association for Local Telecommunications Services (ALTS)

Covad Communications Company (Covad)

MCI, Inc. (MCI)

The National Organization For Women, Minority Media and Telecommunications Council, *et al.* (Joint Commenters)

Rural Telecommunications Group, Inc. (RTG)

TDS Metrocom, Inc. (TDS Metrocom)

United States Telecom Association (USTA)

Verizon Telephone Companies (Verizon)

**II. Replies (filed 5/3/04)**

AT&T Corp. (AT&T)

BellSouth Corp. (BellSouth)

Covad

MCI

USTA

Verizon

## APPENDIX B

## AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

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

1. Section 36.2 is revised by amending paragraph (b) as follows:

**Section 36.2 Fundamental principles underlying procedures.**

\* \* \* \* \*

(b) \* \* \* \* \*

(3) \* \* \*

(ii) Holding-time-minutes is the basis for measuring the use of **local and** toll switching plant.

\* \* \*

(iv) ~~A subscriber plant factor is the basis of apportioning the cost of message telecommunications subscriber plant and local switching plant between State and interstate operations. The subscriber plant factor is developed and used according to the procedures set forth in §§36.154(c) through 36.154(f). Message telecommunications subscriber plant shall be apportioned on the basis of a Gross Allocator which assigns 25 percent to the interstate jurisdiction and 75 percent to the state jurisdiction.~~

\* \* \* \* \*

2. Section 36.125 is revised by amending paragraph (f) as follows:

**Section 36.125 Local switching equipment-Category 3.**

\* \* \* \* \*

(f) ~~Beginning January 1, 1993 and ending December 31, 1997, for study areas with fewer than 50,000 access lines, Category 3 investment is apportioned to the interstate jurisdiction by the application of an interstate allocation factor that is the lesser of either .85 or the product of the interstate DEM factor specified in paragraph (a)(5) of this section multiplied by a weighting factor as determined by the table below. Beginning January 1, 1998, for study areas with fewer than 50,000 access lines, Category 3 investment is apportioned to the interstate jurisdiction by the application of an interstate allocation factor that is the lesser of either .85 or the sum of (1) the interstate DEM factor specified in paragraph (a)(5) of this section, and (2) the difference between the 1996 weighted interstate DEM factor and the 1996 interstate DEM factor multiplied by a weighting factor as determined by the table below. The Category 3 investment that is not assigned to the interstate jurisdiction pursuant to this paragraph is assigned to the state jurisdiction.~~

\* \* \* \* \*

3. Section 36.126 is revised by amending paragraph (e) as follows:

**Section 36.126 Circuit equipment-Category 4.**

\* \* \* \* \*

(e) \* \* \*

(2) Interexchange Circuit Equipment Used for Wideband Service-Category 4.22-This category includes the circuit . . . cable and wire facilities described in § 36.156.

(3) All Other Interexchange Circuit Equipment-Category 4.23- This category includes . . . . Jointly used message circuits, i.e., message switching plant circuits carrying messages from the state and interstate operations; ~~circuits used exclusively for TWX service;~~ circuits ~~uses~~ used for state private line service; . . .

(i) An average interexchange circuit equipment cost . . . classes of circuits: Private Line, State Private Line, Message, ~~and TWX.~~ . . .

(ii) Delete entire paragraph and reserve.

(iii) The cost of special circuit equipment is segregated among ~~TWX service,~~ telegraph grade private line services and other private line services based on an analysis of the use of the equipment and in accordance with § 36.126(b)(4). ~~The cost of TWX special circuit equipment is apportioned on the same basis as that used for intertoll TWX circuits.~~ The special circuit equipment cost assigned to telegraph grade and other private line services is directly assigned to the appropriate operations.

\* \* \* \* \*

4. Section 36.142 is revised by amending paragraph (a) as follows:

**Section 36.142 Categories and apportionment procedures.**

(a) *Other Information Origination/Termination Equipment-Category 1.* This category includes . . . subcategory 1.3 Exchange Line C&WF. ~~If amounts of coinless pay telephone equipment are substantial, the cost of such equipment should be separately identified and allocated on the basis of relative toll minutes of use for interexchange carriers and minutes of use for exchange carriers.~~

\* \* \* \* \*

5. Section 36.152 is revised by amending paragraph (a) as follows:

**Section 36.152 Categories of Cable and Wire Facilities (C&WF).**

(a) \* \* \*

(1) Exchange Line C&WF *Excluding Wideband*-Category 1-This category includes C&W facilities between local central offices and subscriber premises used for message telephone, ~~TWX subscriber lines~~, private line, . . . .

(2) *Wideband and Exchange Trunk* C&WF-Category 2-This category includes all wideband, . . . tandem trunks principally carrying exchange traffic, the exchange trunk portion of ~~TWX~~ and WATS access lines, the exchange portion . . . .

\* \* \* \* \*

6. Section 36.154 is revised by deleting paragraphs (d), (e), and (f) and amending paragraph (c) as follows:

**Section 36.154 Exchange Line Cable and Wire Facilities (C&WF)-Category 1-apportionment procedures.**

\* \* \* \* \*

(c) ~~Except as provided in § 36.154 (d) through (f),~~ Effective January 1, 1986, 25 percent of the costs assigned to subcategory 1.3 shall be allocated to the interstate jurisdiction.

(d) Delete entire paragraph and reserve.

(e) Delete entire paragraph and reserve.

(f) Delete entire paragraph and reserve.

\* \* \* \* \*

7. Section 36.156 is revised by amending paragraph (b) as follows:

**Section 36.156 Interexchange Cable and Wire Facilities (C&WF)-Category 3-apportionment procedures.**

\* \* \* \* \*

(b) The cost of C&WF applicable to . . . as applied to toll message circuits, ~~TWX circuits~~, etc.

\* \* \* \* \*

8. Section 36.212 is revised by amending paragraph (c) as follows:

**Section 36.212 Basic local services revenue-Account 5000.**

\* \* \* \* \*

(c) Wideband Message Service ~~and TWX~~ revenues from monthly and miscellaneous charges, service connections, move and change charges, are apportioned between state and interstate operations on the basis of the relative number of ~~TWX~~ minutes-of-use in the study area. Effective July 1, 2001, through June 30, 2006, all study areas shall apportion Wideband Message Service ~~and TWX~~ revenues among the jurisdictions using the relative number of ~~TWX~~ minutes of use for the twelve-month period ending December 31, 2000.

9. Section 36.214 is revised by amending paragraph (a) as follows:

**Section 36.214 Long distance message revenue-Account 5100.**

(a) Wideband message service ~~and TWX~~ revenues from monthly and miscellaneous charges, service connections, move and change charges, are apportioned between state and interstate operations on the basis of the relative number of minutes-of-use in the study area. Effective July 1, 2001 through June 30, 2006, all study areas shall apportion Wideband Message Service ~~and TWX~~ revenues among the jurisdictions using the relative number of — minutes of use for the twelve-month period ending December 31, 2000.

\* \* \* \* \*

10. Section 36.375 is revised by amending paragraph (b) as follows:

**Section 36.375 Published directory listing.**

\* \* \* \* \*

(b) \* \* \*

(2) Delete entire paragraph.

11. Section 36.377 is revised by amending as follows:

**Section 36.377 Category 1- Local business office expense.**

(a) \* \* \*

(1) End-user service order processing includes . . . other interstate message toll including WATS; ~~and TWX.~~

\* \* \*

(viii) Delete entire paragraph and reserve

\* \* \* \* \*

(2) End User payment and collection include . . . local, including directory advertising; ~~and TWX.~~

\* \* \*

(vi) Delete entire paragraph and reserve.

(vii) Effective July 1, 2001, through June 30, 2006, study areas . . . . ~~Effective July 1, 2001 through June 30, 2006, all study areas shall apportion TWX payment and collection expense, as specified in §36.377(2)(vi) among the jurisdictions using relative billed TWX revenues for the twelve-month period ending December 31, 2000.~~ All other subcategories of End User payment and collection expense, as specified in §§ 36.377(a)(2)(i) through 36.377(a)(2)(~~vi~~)(v), shall be directly assigned.

\* \* \*

(3) End user billing . . . interstate subscriber line charge; ~~TWX~~; and other.

\* \* \*

(v) Delete entire paragraph and reserve.

\* \* \*

(vii) Effective July 1, 2001 through June 30, 2006 . . . ending December 31, 2000. ~~Effective July 1, 2001 through June 30, 2006, all study areas shall apportion TWX billing inquiry expense, as specified in § 36.377(a)(3)(v) among the jurisdictions using relative billed TWX revenues for the twelve-month period ending December 31, 2000. All other subcategories . . . .~~

(5) \* \* \*

(i) State special access and private line payment and collection expense is directly assigned to the ~~interstate~~ **State** jurisdiction.

\* \* \*

(v) State billing and collection payment and collection expense is directly assigned to the ~~interstate~~ **State** jurisdiction.

(vi) Interstate billing and collection payment and collection expense is directly assigned to the ~~State~~ interstate jurisdiction.

(7) Delete entire paragraph and reserve.

12. Section 36.631 is revised by deleting paragraphs (a) and (b) and amending paragraphs (c) and (d) as follows:

**Section 36.631 Expense adjustment.**

(a) Delete entire paragraph and reserve.

(b) Delete entire paragraph and reserve.

\* \* \* \*

(d) Beginning January 1, 1998, for study areas reporting more than 200,000 working loops. . . . After January 1, 2000, the expense adjustment (additional interstate expense allocation) **for non-rural telephone companies serving study areas reporting more than 200,000 working loops pursuant to §36.611(h)** shall be calculated pursuant to ....

\* \* \* \*

13. Section 36.641 is deleted.



## 14. Appendix to Part 36–Glossary

Delete the following terms and their definitions:

TWX

TWX Connection

TWX Connection-Minute-Kilometers

TWX Switching Plant Trunks

**PART 51 – INTERCONNECTION**

1. Section 51.211 is deleted.

2. Section 51.213 is revised as follows:

**Section 51.213 Toll dialing parity implementation plans.**

\*\*\*\*

(c) Delete entire paragraph.

(d) Delete entire paragraph.

3. Section 51.329 is revised as follows:

**Section 51.329 Notice of network changes: Methods for providing notice.**

\*\*\*\*

(c) \*\*\*\*

\*\*\*\*

(3) Delete entire paragraph.

4. Section 51.515 is revised as follows:

**Section 51.515 Application of Access Charges**

\*\*\*\*

(a) Delete entire paragraph and reserve.

(b) Delete entire paragraph and reserve.

**PART 52 - NUMBERING**

2. Section 52.5 is revised by amending paragraph (c) as follows:

**Section 52.5 Definitions**

\* \* \* \* \*

(c) *North American Numbering Plan* (NANP). The “North American Numbering Plan” is the basic numbering scheme for the telecommunications networks located in **American Samoa**, Anguilla, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, Sts. Vincent, Turks & Caicos Islands, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands).

\* \* \* \* \*

3. Section 52.11 is revised by deleting paragraph (d).

\* \* \* \* \*

(d) Delete entire paragraph and reserve.

\* \* \* \* \*

4. Section 52.13 is revised by amending paragraphs (b) and (c) as follows:

\* \* \* \* \*

(b) The NANPA shall administer the numbering resources identified in paragraph (d) of this section. It shall assign and administer NANP resources in an efficient, effective, fair, unbiased, and non-discriminatory manner consistent with industry-developed guidelines and Commission regulations. It shall support the ~~industry's~~ **Commission's** efforts to accommodate current and future numbering needs. \* \* \*

(3) Complying with guidelines of the North American Industry Numbering Committee (INC) or its successor, related industry documentation, Commission regulations and orders, and the guidelines of other appropriate policy-making authorities, ~~all of which may be modified by other industry fora or other appropriate authority;~~ \* \* \*

\* \* \* \* \*

(c) \* \* \* \* \*

(4) Manage projects such as Numbering Plan Area (NPA) relief (area code relief) planning, ~~and the Central Office Code Utilization Survey (COCUS)~~ **Numbering Resource Utilization and Forecast (NRUF) data collection, and NPA and NANP exhaust projection;**

5. Section 52.15 is revised by amending paragraphs (b) and (d) and deleting (c) and (e) as follows:

\* \* \* \* \*

(b) \* \* \* \* \*

(3) ~~Contributing to the CO Code Use Survey (COCUS), an annual survey that describes the present and projected use of CO codes for each NPA in the NANP~~ **Conducting the Numbering Resource Utilization and Forecast (NRUF) data collection;** \* \* \*

\* \* \* \* \*

(c) Delete entire paragraph and reserve.

(d) *Central Office (CO) Code Administration functional requirements.* The NANPA shall manage the United States CO code numbering resource, including CO code request processing, NPA code relief and jeopardy planning, and industry notification functions. The NANPA shall perform its CO Code administration functions in accordance with the published industry numbering resource administration guidelines and Commission orders and regulations of 47 CFR chapter I. ~~Subject to the approval of the Commission, the NANPA shall develop a transition plan to transfer current CO code assignment from the current administrators to itself and shall submit this plan to the Commission within 90 days of the effective date of the Commission order announcing the selection of the NANPA. The NANPA shall complete the transfer of CO code assignment functions from the existing administrators to itself no more than 18 months after the NANPA has assumed all of said administrators' current NANPA function.~~

(e) Delete entire paragraph and reserve.

\* \* \* \* \*

6. Section 52.27 is deleted.
7. Section 52.29 is deleted.
8. Section 52.31 is revised by deleting paragraph (c) as follows:

\*\*\*\*

(c) Delete entire paragraph and reserve.

#### **PART 53 – SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES**

1. Section 53.101 is deleted.

**Part 54 – UNIVERSAL SERVICE**

1. Section 54.201 is revised by deleting paragraph (a)(2) as follows:

(a) \* \* \* \* \*

(2) Delete entire paragraph and reserve.

2. Section 54.313 is revised by deleting subparagraphs (1) and (2) of paragraph (d) as follows:

\* \* \* \* \*

(d) \* \* \*

(1) Delete entire paragraph and reserve.

(2) Delete entire paragraph and reserve.

\* \* \* \* \*

3. Section 54.507 is revised by deleting subparagraphs (1) and (2) of paragraph (b) and modifying paragraph (b) as follows:

\* \* \* \* \*

(b) A funding year for purposes of the schools and libraries cap shall be the period July 1 through June 30. ~~For the initiation of the mechanism only, the eighteen month period from January 1, 1998 to June 30, 1999 shall be considered a funding year. For the 1998-99 funding year:~~

(1) Delete entire paragraph.

(2) Delete entire paragraph.

\* \* \* \* \*

4. Section 54.604 is revised by amending paragraph (a) as follows:

(a) \* \* \*

(1) A contract signed on or before July 10, 1997 is exempt from the competitive bid requirement for the life of the contract; ~~or.~~

(2) Delete entire paragraph.

\* \* \*

(d) Delete entire paragraph.

\* \* \* \* \*

5. Section 54.623 is revised by amending paragraphs (b) and (c) as follows:

\* \* \* \* \*

(b) Funding year. A funding year for purposes of the health care providers cap shall be the period July 1 through June 30. ~~For the initiation mechanism only, the eighteen month period from January 1, 1998 to June 30, 1999 shall be considered a funding year. Eligible health care providers filing applications within the initial 75 day filing window shall receive funding for requested services through June 30, 1999.~~

(c) \* \* \*

(2) Delete entire paragraph and reserve.

(3) Delete entire paragraph and reserve.

(4) ~~The Administrator may implement such additional filing periods as it deems necessary.~~ The Administrator shall implement a filing period that treats all rural health care providers filing within the period as if their applications were simultaneously received.

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

1. Section 63.61 is revised as follows:

**Section 63.61 Applicability.**

Any carrier subject to the provisions of section 214 of the Communications Act of 1934, as amended, ~~except any non-dominant carrier as this term is defined in § 61.3(u) of this chapter,~~ proposing to discontinue, reduce or impair interstate or foreign telephone or telegraph service . . . pending final action on the application for discontinuance of service. **Procedures for discontinuance, reduction or impairment of service by dominant and non-dominant, domestic carriers are in § 63.71 of this chapter. Procedures for discontinuance, reduction or impairment of international services are in § 63.19 of this chapter.**

2. Section 63.71 is revised as follows:

**Section 63.71 Procedures for discontinuance, reduction or impairment of service for domestic carriers.**

\*\*\*\*

(a) \*\*\*\*

(i) If the carrier is non-dominant with respect to the service being discontinued, reduced or impaired, the notice shall state:

The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that . . . . If you wish to object, you should file your comments ~~within 15 days after receipt of this notification~~ **as soon as possible, but no**

**later than 15 days after the Commission releases public notice of the proposed discontinuance.** Address them to the Federal Communications Commission, **Wireline Competition Bureau, Competition Policy Division**, Washington, DC 20054, ~~referencing the §~~ **and include in your comments a reference to the Section 63.71** Application of (carrier's name). ....

(ii) If the carrier is dominant with respect to the service being discontinued, reduced or impaired, the notice shall state:

The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that . . . . If you wish to object, you should file your comments ~~within 30 days after receipt of this notification~~ **as soon as possible, but no later than 30 days after the Commission releases public notice of the proposed discontinuance.** Address them to the Federal Communications Commission, **Wireline Competition Bureau, Competition Policy Division**, Washington, DC 20054, ~~referencing the §~~ **and include in your comments a reference to the Section 63.71** Application of (carrier's name). ....

\*\*\*\*

**(d) Procedures for discontinuance, reduction or impairment of international services are in § 63.19 of this chapter.**

## **PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. Section 64.1330(c) is revised as follows:

### **Section 64.1330 State review of payphone entry and exit regulations and public interest payphones.**

\*\*\*\*

(c) Each state must review its rules and policies to determine whether it has provided for public interest payphones consistent with applicable Commission guidelines, evaluate whether it needs to take measures to ensure that such payphones will continue to exist in light of the Commission's implementation of Section 276 of the Communications Act, and administer and fund such programs so that such payphones are supported fairly and equitably. ~~This review must be completed by September 20, 1998.~~

2. Section 64.1903 is revised as follows:

### **Section 64.1903 Obligations of all incumbent independent local exchange carriers.**

(a) ~~Except as provided in paragraph (c) of this section, an~~ **An** incumbent independent LEC . . .

\*\*\*\*

(c) Delete entire paragraph.

**PART 69 – ACCESS CHARGES**

1. Section 69.116 is deleted.
2. Section 69.117 is deleted.
3. Section 69.126 is deleted.
4. Section 69.127 is deleted.
5. Section 69.612 is deleted.