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

In the Matter of	)	
	)	
Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations	)	WC Docket No. 12-61
	)	
Review of Wireline Competition Bureau Data Practices	)	WC Docket No. 10-132
	)	
Petition of Cincinnati Bell Telephone Company LLC for Waiver from Application of the Equal Access Scripting Requirement	)	WC Docket No. 09-206
	)	
Petition of United States Telecom Association for Waiver from Application of the Equal Access Scripting Requirement	)	WC Docket No. 08-225
	)	
Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering	)	WC Docket No. 08-190
	)	
Petition of Verizon for Forbearance, 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements	)	WC Docket No. 07-273
	)	
Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Under 47 U.S.C. § 160(c); Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of ARMIS Reporting Requirements; and Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements	)	WC Docket No. 07-204
	)	
Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements	)	WC Docket No. 07-139
	)	
Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's Cost Assignment Rules	)	WC Docket No. 07-21
	)	
Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160 from	)	WC Docket No. 05-342

Enforcement of Certain of the Commission's Cost Assignment Rules	)	
Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers	)	CC Docket No. 02-39
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules	)	CC Docket No. 00-175
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements	)	CC Docket Nos. 95-20, 98-10

MEMORANDUM OPINION AND ORDER AND
REPORT AND ORDER AND
FURTHER NOTICE OF PROPOSED RULEMAKING AND
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: May 10, 2013 **Released: May 17, 2013**

Comment Date: [30 days after date of publication of the Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking in the Federal Register]

Reply Comment Date: [60 Days after date of publication of the Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking in the Federal Register]

By the Commission: Chairman Genachowski issuing a statement; Commissioner Pai approving in part, concurring in part and issuing a statement; Commissioner McDowell not participating.

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I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we address the outstanding portions of a petition for forbearance filed by the United States Telecom Association (USTelecom) pursuant to section 10 of the Communications Act of 1934, as amended (the Act).[1] The USTelecom Petition seeks forbearance from 17 different categories of rules, which USTelecom argues are "legacy telecommunications regulations" that are unnecessary and outdated.[2] On February 19, 2013, the Commission granted USTelecom's request with respect to Category 11 (Traffic Damage Claims), a portion of Category 13 (Extension of Unsecured Credit for Communications Services to Candidates for Federal Office), and Category 14 (Furnishing of Facilities to Foreign Governments for International Communications).[3]

2. With this Order, combined with the *USTelecom Short Order*, we grant forbearance from 126 of the approximately 141 rules and requirements covered by USTelecom's petition.[4] In so doing, we further our commitment to eliminate burdens on industry and promote innovation while ensuring our statutory objectives are met.[5] We grant forbearance to the full extent supported by the record. Where we cannot forbear from a requirement completely, we in several instances reduce burdens by granting partial or conditional forbearance. This allows us to modernize our rules by removing outmoded requirements, while preserving requirements that remain essential to our fundamental mission to ensure competition, consumer protection, universal service, and public safety. However, we emphasize that nothing in this Order is intended to preempt any state or local requirements adopted under state law. Nothing in this Order prevents states from enforcing existing state requirements and/or lawfully adopting new provisions similar or equivalent to any of those from which we forbear here based on authority they have under state law.

3. The Commission is committed to removing unnecessary requirements to reflect new technologies and changing market conditions. Nevertheless, decisions about eliminating or removing regulations must be based on record evidence regarding each requirement. In instances where

[1] Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, WC Docket No. 12-61 (filed Feb. 16, 2012) (USTelecom Petition). On February 7, 2013, pursuant to § 10(c) of the Act, the Wireline Competition Bureau (Bureau) extended until May 17, 2013, the date on which the USTelecom Petition shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standard for forbearance under § 10(a) of the Act. *See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Order, 28 FCC Rcd 1077 (Wireline Comp. Bur. 2013).

[2] USTelecom Petition at 1; *see also Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Telecommunications Regulations*, WC Docket No. 12-61, Public Notice, 27 FCC Rcd 2326 (Wireline Comp. Bur. 2012) (*USTelecom Forbearance PN*). In some instances, USTelecom seeks forbearance for all telecommunications carriers, and in other instances only for a subset of telecommunications carriers.

[3] *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Order, 28 FCC Rcd 2605 (2013) (*USTelecom Short Order*).

[4] These rules include those from which we granted forbearance in the *USTelecom Short Order* and rules we grant partial or conditional forbearance from in this Order. *Id.*; *see also* Appendix B.

[5] Since 2009, the Commission has eliminated 219 regulations and developed a plan for retrospective analysis of its rules. *Final Plan for Retrospective Analysis of Existing Rules*, at 3 (rel. May 18, 2012) (FCC Plan), *available at* http://http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-314166A1.pdf.

USTelecom has not substantiated its forbearance request, and the record or information otherwise available to the Commission does not support forbearance, we deny forbearance.

4. However, to reduce existing burdens and explore whether, on a more fulsome record, we could determine that certain regulations are no longer needed or could be modified to be less burdensome, we take additional actions. First, we adopt a Report and Order in WC Docket No. 10-132 (*Reporting Requirement Order*), relieving the Bell Operating Companies (BOCs) of legacy reporting obligations associated with the *Computer Inquiry* requirements.[6] Second, in the attached Further Notice of Proposed Rulemaking (FNPRM) in CC Docket Nos. 95-20 and 98-10, we examine whether to retain, modify, or eliminate the comparably efficient interconnection (CEI) and open network architecture (ONA) requirements as well as the "All Carrier Rule."[7] Finally, we grant USTelecom's petition for forbearance from the separate affiliate requirement, 47 C.F.R. § 64.1903, for independent incumbent local exchange carriers (LECs) that are subject to price cap regulation, and adopt a Second Further Notice of Proposed Rulemaking (NPRM) to consider whether we should modify or eliminate the separate affiliate requirement for independent incumbent LECs that are subject to rate-of-return regulation.

II. BACKGROUND

A. The USTelecom Petition

5. As noted above, we previously granted USTelecom's request with respect to three categories enumerated in the USTelecom Petition.[8] The remaining categories of rules from which USTelecom seeks forbearance, and which we address in this Order, are:

- Category 1: Equal Access Scripting Requirement;
- Category 2: Open Network Architecture and Comparably Efficient Interconnection Requirements, Enhanced Services Structural Separation Rule (47 C.F.R. § 64.702), and All-Carrier *Computer Inquiry* Rules;
- Category 3: Cost Assignment Rules;
- Category 4: Part 32 Uniform System of Accounts (47 U.S.C. § 220(a)(2), 47 C.F.R. §§ 32.1-32.9000);
- Category 5: Property Record Rules (47 C.F.R. §§ 32.2000(e), (f));
- Category 6: Part 42 Recordkeeping Requirements (47 C.F.R. §§ 42.4, 42.5, 42.7, 42.10(a));
- Category 7: Automated Reporting Management Information System (ARMIS) Report 43-01;
- Category 8: Annual Revenue and Total Communications Plant Reporting (47 C.F.R. § 43.21(c);
- Category 9: Rules Governing Notices of Network Changes (47 C.F.R. §§ 51.329(a)(2), 51.333(a)-(f), 52.333(b));
- Category 10: Service Discontinuance Approval Requirements (47 U.S.C. § 214, 47 C.F.R. §§ 63.30, 63.61, 63.62, 63.63, 63.71(a)(5), 63.71(c), 63.90(a)(8));
- Category 12: Structural Separation Requirements for Independent ILECs (47 C.F.R. § 64.1903);
- Category 13: Rules Governing Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office (47 C.F.R. §§ 64.801, 64.804(a)-(f));
- Category 15: "Cash Working Capital Allowance" Requirement (47 C.F.R. § 65.820(d));

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[6] USTelecom did not seek forbearance from these requirements. *See infra* n.59.

[7] *See* Section V, *infra*.

[8] *See USTelecom Short Order* (granting forbearance from application of 47 C.F.R. §§ 64.1, 64.301, and 64.801(g)).

- Category 16: Rules Governing Recording of Telephone Conversations with Telephone Companies (47 C.F.R. § 64.501); and
- Category 17: Prepaid Calling Card Reporting Requirements (47 C.F.R. § 64.5001).[9]

6. USTelecom generally claims that the rules from which it seeks forbearance are based on outdated assumptions about technologies and business models that do not reflect the current communications industry.[10] USTelecom asserts that these regulations no longer serve any regulatory purpose or provide the Commission with information necessary to perform its regulatory functions.[11] USTelecom further states that the regulations at issue impose undue costs and burdens and impose an unwarranted competitive disadvantage on incumbent local exchange carriers (ILECs) or a small subset of ILECs because other competitors, including cable operators, wireless carriers, and Voice over Internet Protocol (VoIP) providers are not subject to these rules.[12] USTelecom argues that these regulations adversely affect competition and are therefore detrimental to consumers, and that the elimination of the legacy telecommunications regulations at issue is necessary to realize the pro-competitive goals of the 1996 Act.[13]

B. Forbearance Standard

7. The Commission is required to forbear from any statutory provision or regulation if it determines that: (1) enforcement of the 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 regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.[14] In determining whether forbearance is consistent with the public interest, the Commission also must consider "whether forbearance from enforcing the provision or regulation will promote competitive market conditions."[15] Forbearance is warranted under section 10(a) only if all three elements of the forbearance criteria are satisfied.[16] In a forbearance proceeding, the petitioner has the burden of proof, including both the burden of production and the burden of persuasion.[17] Finally, as the D.C. Circuit has

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[9] *See USTelecom Forbearance PN.*

[10] USTelecom Petition at 2-3.

[11] *Id*. at 3.

[12] *Id*. at 5.

[13] *Id*.

[14] 47 U.S.C. § 160(a).

[15] 47 U.S.C. § 160(b) (providing that, in making the determination under § 10(a)(3), the Commission shall consider whether forbearance will promote competitive market conditions).

[16] *See Cellular Telecomms. & Internet Ass'n v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three prongs of § 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong).

[17] *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, 24 FCC Rcd 9543 (2009) (*Forbearance Procedures Order*). Thus, in addition to the burden of production of stating a *prima facie* case in the petition, "the petitioner's evidence and analysis must withstand the evidence and analysis propounded by those opposing the petition for forbearance" (*i.e.*, the burden of persuasion). *Id*. at 9556, para. 21.

held, section 10 "imposes no particular mode of market analysis or level of geographic rigor," but rather "allow[s] the forbearance analysis to vary depending on the circumstances."[18]

III. DISCUSSION

A. General Arguments

8. The Bureau sought comment on USTelecom's petition.[19] The majority of filers addressed only certain of the 17 categories of rules raised in USTelecom's petition. In addition, some commenters opposed USTelecom's petition generally, contending that USTelecom has not properly sought forbearance relief under section 10(c) because it is not a "telecommunications carrier," and because it seeks relief for a class of carriers without demonstrating that all members of the class are members of USTelecom.[20] We rejected these arguments in the *USTelecom Short Order* and found that the filing appropriately is considered a petition for forbearance under section 10(c).[21]

9. In the *USTelecom Short Order*, we also rejected arguments that USTelecom's petition was not "complete as filed" as required by our rules**,** and found that, on its face**,** the petition satisfied that forbearance procedural rule for the three categories of rules in that Order.[22] We reach the same conclusion for the remaining categories of rules from which USTelecom seeks forbearance addressed in this Order, and find that USTelecom provides the minimum information necessary to satisfy the "complete as filed" requirement in our forbearance procedural rules.[23]

10. We reject the general argument by a number of commenters that USTelecom overall has not met its evidentiary burden.[24] In particular, we disagree with commenters that we should deny or dismiss the petition for USTelecom's failure to meet its burden of proof as applied to its entire request. In evaluating whether a forbearance petitioner has met its burden of proof, we look at the totality of the

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[18] *EarthLink Inc. v. FCC*, 462 F.3d 1, 6 (D.C. Cir. 2006) (using the *Chevron* framework to review the Commission's forbearance analysis, under which the court "will uphold the FCC's interpretation as long as it is reasonable, even if 'there may be other reasonable, or even more reasonable views'" (*quoting AT&T Corp. v. FCC*, 220 F.3d 607, 621 (D.C. Cir. 2000)); *see also Petition of Qwest Phoenix for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Report and Order, 25 FCC Rcd 8622, 8632-33, at para. 21 (2010) (*Qwest Phoenix Forbearance Order*) (the Commission used a competitive analysis that defines the relevant product and geographic markets).

[19] *USTelecom Forbearance PN.*

[20] *See*, *e.g.,* COMPTEL Comments at 2-3; Broadview *et al*. Opposition at 2; Michigan PUC Reply at 2-3.

[21] *USTelecom Short Order*, 28 FCC Rcd at 2607-08, paras. 6-7.

[22] *Id*. at 2607 n.17. Full Service Network made a general argument asserting that the Petition lacks adequate information to provide a basis to analyze its impact on consumers, competition and the public interest, and is therefore not "complete as filed." *See, e.g*., Full Service Reply at 2; Ad Hoc Comments at 2-5. The Commission has defined "complete as filed" to mean that a petition explicitly states the scope of the relief requested, addresses each prong of the statute as it applies to the rules or provisions from which the petitioner seeks relief, identifies any other proceedings pending before the Commission where the petitioner speaks to the relevant issues and complies with format requirements. *Forbearance Procedures Order*, 24 FCC Rcd at 9553-54, paras.16-19.

[23] We reject the Ad Hoc Telecommunications Users Committee's request to dismiss or deny USTelecom's petition in its entirety. *See* Ad Hoc Comments and Request for Summary Dismissal. We address whether the forbearance criteria have been met, individually, for each of the categories of rules from which USTelecom requests forbearance.

[24] *See*, *e.g*., Pennsylvania PUC Reply at 13; Michigan PSC Comments at 3. The burden of proof is on the petitioner in forbearance proceedings.

record before us.[25] On that basis, and in light of our authority to make predictive judgments, we are able to grant forbearance from enforcement of many of the requirements addressed in USTelecom's petition. Although we reject requests to dismiss USTelecom's petition in its entirety for failing to satisfy its burden of proof, we find, as set forth herein, that USTelecom did not meet its burden in all instances. While the Commission must forbear from applying a regulation or statutory provision when the statutory forbearance criteria are met, in a petition for forbearance "it is for the petitioner to convince the Commission to make those determinations in the petitioner's favor."[26] For certain categories of rules**,** USTelecom does not address each rule individually. As explained below, this approach is persuasive where its arguments and evidence apply to the entire category of rules, but is not persuasive when forbearance may only be appropriate for individual rules within the category. In these instances**,** and where USTelecom has failed to support its argument with the necessary data and there is not a sufficient basis in the record to justify forbearance, we find that USTelecom has not met its burden of proof, and we conclude that forbearance is not warranted.

B. Rules Addressed in This Order

1. Equal Access Scripting Requirement

a. USTelecom's Request

11. USTelecom requests forbearance from application of the Equal Access Scripting Requirement (EA Scripting Requirement) to all ILECs that remain subject to the rule.[27] The EA Scripting Requirement mandates that the ILEC (1) inform customers calling to obtain new local exchange service that they may obtain stand-alone, presubscribed, long distance service from other carriers, and (2) upon request, read customers a list of carriers offering such long distance service. USTelecom argues that there is no justification to continue the EA Scripting Requirement.[28] GCI and California PUC opposed elimination of the rule in certain areas where the ILEC is the only provider of wireline local exchange telephone service.[29] There are several other proceedings that address equal access issues, including the EA scripting requirement, currently pending before the Commission.[30]

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[25] *Forbearance Procedures Order*, 24 FCC Rcd at 9557, para. 21.

[26] *Id.* at 9557, para. 22.

[27] USTelecom Petition at 21; *see also USTelecom Forbearance PN*, 27 FCC Rcd 2326. This requirement still applies to the independent ILECs, although in 2007, the Commission forbore from applying it to the Bell Operating Companies (BOCs) and waived the requirement for their independent ILEC affiliates. *See, e.g., Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket Nos. 02-112, 06-120, CC Docket No. 00-175, Report and Order, 22 FCC Rcd 16440, 16501-02, paras. 125-26 (2007) (*Section 272 Sunset Order*) (forbearing from the EA scripting requirement for Verizon, Qwest, and AT&T, and waiving the requirement for their non-BOC affiliates).

[28] USTelecom Petition at 23.

[29] *See generally* CPUC Comments at 2-7; GCI Comments at 1-3; *but see* ACS Reply at1-5.

[30] The Commission launched a broad *Inquiry* in 2002 to address all equal access and nondiscrimination requirements, including the EA scripting requirement. *Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, Notice of Inquiry, 17 FCC Rcd 4015 (2002) (*Equal Access NOI*). In 2008, USTelecom asked the Commission to waive the EA Scripting Requirement as applied to its small and midsized members. USTelecom Petition for Waiver, WC Docket No. 08-225, at 1, 4. Cincinnati Bell subsequently filed a petition asking the Commission for waiver of the EA Scripting Requirement. Cincinnati Bell Petition for Waiver, WC Docket No. 09-206 (filed Sept. 11, 2009); *see also Wireline Competition*

(continued....)

b. Background

12. The EA Scripting Requirement grew out of the 1982 AT&T Divestiture.[31] Divestiture opened up opportunities for new companies other than AT&T to offer long distance service that could compete more effectively with AT&T.[32] The federal district court handling the Divestiture required all of the BOCs to "inform . . . customers . . . of their options with respect to the various interexchange carriers."[33] The Commission subsequently addressed this issue[34] and stated that:

> LEC personnel taking the verbal order should provide new customers with the names and, if requested, the telephone numbers of the IXCs and should devise procedures to ensure that the names of IXCs are provided in random order.[35]

The Commission later applied this requirement to ILECs beyond the BOCs.[36] The Commission limited the scope of the EA Scripting Requirement in several subsequent decisions.[37]

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Bureau Seeks Comment on Petition of Cincinnati Bell Telephone Company LLC for Waiver from Application of the Equal Access Scripting Requirement, WC Docket No. 09-206, Public Notice, 24 FCC Rcd 13877 (Wireline Comp. Bur. 2009).

[31] Modification of Final Judgment, *U.S.* v. *Western Elec. Co*., 552 F. Supp. 131 (D.D.C. 1982) (requiring completion of AT&T's reorganization within 18 months of release of the order).

[32] Prior to the implementation of equal access, competitive long distance carriers could not provide mass market long distance service that was comparable in quality to that provided by AT&T. The implementation of equal access changed this and allowed customers to choose a carrier other than AT&T as their presubscribed long distance carrier.

[33] *U.S. v. Western Elec. Co*., 578 F. Supp. 668, 676 (D.D.C. 1983).

[34] *See Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Memorandum Opinion and Order, 101 FCC 2d 911, 912-13, paras. 3-5 (1985) (*Access and Divestiture Tariffs Order*). The Commission required that the LECs implement a balloting system that allowed their customers to choose among interexchange carriers. *See id*. at 928-30, App. B at paras. 4-8. The Commission stated, "[n]ew customers are to be handled by the Business Office according to the LEC's new customer presubscription procedures. These procedures should provide new customers with an opportunity to obtain a ballot and make an interexchange carrier selection." *See id*. at 931, App. B at para. 22.

[35] *Investigation of Access and Divestiture Related Tariffs: Allocation Plan Waivers and Tariffs*, CC Docket No. 83-1145, Memorandum Opinion and Order, 101 FCC 2d 935, 950, para. 40 (1985).

[36] The Commission stated that this plan applies to "Bell Operating Companies pursuant to the Modification of Final Judgment, GTE pursuant to its Consent Decree, Independent Companies pursuant to Commission Order, and all local exchange companies that provide equal access on a voluntary basis." *See Access and Divestiture Tariffs Order*, 101 FCC 2d at 928, App. B, para. 1. The EA Scripting Requirement is preserved by § 251(g) of the Act, which requires that carriers provide wireline services in compliance with pre-existing equal access and non-discrimination requirements until the requirements are explicitly superseded by subsequent Commission action. 47 U.S.C. § 251(g).

[37] In 1997, the Commission held that "a BOC, during an inbound telephone call, should be allowed to *recommend* its own long distance affiliate, as long as it contemporaneously states that other carriers also provide long distance service and offers to read a list of all available interexchange carriers in random order." *Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, Memorandum Opinion and Order, 13 FCC Rcd 539, 670-72, paras. 237, 239 (1997) (*BellSouth South Carolina Section 271 Order*) (emphasis added). Later, the Commission concluded that the EA Scripting Requirement applied only to calls from customers seeking "new service" and did not apply to calls from existing customers requesting an additional line. *See AT&T Corp v. New York Tel. Co.*, File No. EB-00-MD-011, Memorandum Opinion and Order, 15 FCC Rcd 19997, 19998, para. 5 (2000) (*Bell Atlantic Order*). The
(continued....)

13. In the *2007 EA Scripting Forbearance Order*, the Commission forbore from application of the EA Scripting Requirement to Verizon, Qwest, and AT&T, and waived the rule for their independent ILEC affiliates.[38] In reaching its decision, the Commission noted that the services customers use to make long distance calls have changed, and concluded that there was "significant evidence the stand-alone long distance market [was] becoming a fringe market."[39] The Commission recognized that "the stand-alone long distance competition that the EA Scripting Requirement was designed to protect has largely given way to competition between service bundles."[40] The Commission also noted that "[w]ireless telephone subscribers . . . regularly use their 'any distance' minutes for long distance calling."[41] In addition, the Commission found that "all residential customers also have the option of making long distance calls using transaction services, such as prepaid calling cards."[42] The Commission found that the EA Scripting Requirement could confuse customers because it identified only one competitive option – stand-alone, presubscribed long distance service.[43] Based on this and other analysis, the Commission concluded that the EA Scripting Requirement was no longer needed in the BOC service areas.[44] However, the Commission declined to extend forbearance to the independent ILECs out of concern that the market circumstances in their service areas may differ from those in the BOC service areas.[45]

c. Discussion

14. While the EA Scripting Requirement originally served an important purpose in making consumers aware of new competitive options and fostering the development of nascent competition in the provision of pre-subscribed stand-alone long distance service,[46] we find that it is no longer necessary. First, the market has changed dramatically in the more than 25 years since the requirement was established. When the Commission granted forbearance from the EA Scripting Requirement for the BOCs in 2007, it stated that stand-alone long distance service was becoming a fringe market, adding that stand-alone long distance competition had largely given way to competition between service bundles that included both local and long distance calling.[47] These trends appear to have continued in the intervening years. Thus, we can see minimal if any public interest benefit in requiring ILECs to inform customers

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Commission specified that "new service" referred only to situations in which "customers . . . either (1) receive service from Bell Atlantic for the first time, or (2) move to another location within Bell Atlantic's area." *Id*. at 20003, para. 15.

[38] *Section 272 Sunset Order*, 22 FCC Rcd at 16501-02, paras. 125-26.

[39] *Id*. at 16499, para. 121.

[40] *Id*.

[41] *Id*. at 16499-500, para. 121.

[42] *Id*. at 16500, para. 122.

[43] *Id*.

[44] *Id*. at 16501-02, paras. 125-26.

[45] *Id*. at 16501, para. 125.

[46] *See id.* at 16499, para. 120; CenturyLink *et al*. Comments, WC Docket No. 08-225, at 3-4 ("This new policy was designed to help allow a competitive long distance market to develop, by providing consumers information about alternatives to AT&T's dominant long distance service."); TWC Comments, WC Docket No. 08-225, at 2-3.

[47] *Section 272 Sunset Order*, 22 FCC Rcd at 16452-54, para 23, 16499, para. 121.

about options for stand-alone long distance service.[48] Second, consumers today can obtain information on options for satisfying their voice communications needs, including long distance calling needs, in ways that did not exist when the Commission imposed the EA Scripting Requirement. In particular, such information is available on the Internet. Third, the EA Scripting Requirement provides consumers with information about only one competitive alternative—stand-alone long distance service. It does not reflect options involving bundled offerings, nor does it remind consumers of the availability of over-the-top VoIP services, dial-around long distance services, and calling cards. By focusing on stand-alone long distance service options, the EA Scripting Requirement is likely to distort, rather than illuminate, competitive choices.

15. The arguments raised by GCI and the California PUC do not justify retention of the EA Scripting Requirement in areas where the ILEC is the only provider of wireline local exchange service.[49] We recognize that stand-alone long distance service may represent a more significant competitive alternative in these areas, but we do not conclude that this warrants retention of the requirement. Even where the ILEC is the only local exchange carrier, consumers can find information about service options, including information on stand-alone long distance service, in other ways, including on the Internet. And even in these areas, the EA Scripting Requirement does not notify consumers of other competitive calling options such as calling cards, dial-around service or over-the-top VoIP.

16. For the reasons discussed above, we conclude that continued application of the EA Scripting Requirement is not necessary to ensure that the charges, practices, and classifications, or regulations by, for, or in connection with independent ILECs' mass market long distance calling services are just and reasonable and are not unjustly or unreasonably discriminatory pursuant to section 10(a)(1) of the Act.[50] In today's telecommunications marketplace, the EA Scripting Requirement does little to foster competition, as it only addresses the availability of stand-alone long distance service, which has become a fringe market.[51] Thus, advising customers of the availability of stand-alone long distance service is unlikely to ensure that independent ILEC rates, terms and conditions for long distance service are just and reasonable and not unjustly or unreasonably discriminatory. For the same reasons, we conclude that retention of the EA Scripting Requirement is not "necessary for the protection of consumers" pursuant to Section 10(a)(2) of the Act.[52]

17. We also conclude, pursuant to section 10(a)(3) of the Act, that forbearance from enforcement of the EA Scripting Requirement "is consistent with the public interest"[53] because the costs

[48] The fact that customers typically purchase local and long distance services in a bundle does not address whether the ILEC is likely to have market power over the bundled offering.

[49] GCI does not posit that the EA Scripting Requirement should be retained in areas served by multiple LECs. GCI Opposition at 2 ("GCI agrees, however, that scripting is not required where the ILEC does not assert a 251(f)(1) rural exemption for the purposes of negotiation of an interconnection and traffic exchange agreement, permits collocation in conjunction with interconnection, and the ILEC has entered into interconnection agreements with a CLEC or unaffiliated CMRS provider.") (footnotes omitted).

[50] 47 U.S.C. § 160(a)(1).

[51] The Commission noted that this market was becoming a fringe market in 2007. *See Section 272 Sunset Order*, 22 FCC Rcd at 16501, para. 123. MCI and AT&T stopped providing presubscribed, stand-alone, long distance service in 2004. *See id*. at 16463, para. 44.

[52] 47 U.S.C. § 160(a)(2).

[53] 47 U.S.C. § 160(a)(3). 47 U.S.C. § 160(b) states that, when considering the public interest evaluation called for in 47 U.S.C. § 160(a)(3), the Commission "shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."

associated with this requirement exceed the benefits. For the reasons described above, we conclude that the EA Scripting Requirement provides *de minimis*, if any, benefits. At the same time, it imposes costs on independent ILECs. Their customer service representatives must spend time advising customers that they can obtain stand-alone long distance service and be prepared to read lists of carriers that can provide such service if customers request this. Given the lack of benefits generated by this requirement, we also conclude that its removal would foster competition by removing regulatory requirements and the resulting costs that affect only ILECs subject to the rule and not their competitors. We therefore forbear from the requirement for all ILECs that have not previously been granted forbearance.[54] In reaching this decision, we emphasize that customers will retain the right to select a presubscribed long distance carrier other than the ILEC or a provider affiliated with the ILEC,[55] and that the ILECs must ensure that their customer service representatives accurately answer any questions in this regard.

2. BOC ONA, CEI, Structural Separation and All-Carrier *Computer Inquiry* Rules

a. USTelecom's Request

18. USTelecom seeks forbearance for the BOCs from application of the "substantive CEI and ONA requirements and the structural separation requirements in section 64.702 of the Commission's rules."[56] It also requests forbearance from "applying to all covered carriers the legacy All-Carrier *Computer Inquiry* rule."[57] USTelecom asserts that we should forbear from enforcing these substantive

[54] In the interest of administrative simplicity, we include in this grant of forbearance the independent ILEC affiliates of the BOCs (also referred to as the non-BOC affiliates) that were granted waivers of this requirement as part of the Commission decision to forbear from application of this requirement to the Bell Operating Companies. *See Section 272 Sunset Order*, 22 FCC Rcd at 16502, para. 126.

[55] *Id*. at 16501, para. 124 ("Even without the EA Scripting Requirement, the BOCs' local customers will retain the right to obtain long distance service from a long distance carrier other than the BOC.").

[56] USTelecom Petition at 25 (citing *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20; *1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements*, CC Docket No. 98-10, Report and Order, 14 FCC Rcd 4289, 4308-09, para. 29 (1999) (*Computer III Further Remand Order*)). *See infra* n.63. The Commission has explained that the BOCs have previously obtained significant relief from *Computer III* requirements. *See*, *e.g.*, *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Memorandum Opinion and Order, 22 FCC Rcd 21293, 21318, para. 45 (2007) (*Verizon 6 MSA Forbearance Order*); *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Memorandum Opinion and Order, 23 FCC Rcd 11729, 11760, para. 44 (2008) (*Qwest 4 MSA Forbearance Order*) (citing *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, 14875-76, para. 41 (2005), *aff'd*, *Time Warner Telecom v. FCC*, No. 05-4769 (and consolidated cases) (3rd Cir. 2007); *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 Corporation for Forbearance 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, 18733-35, paras. 52-58 (2007) (granting forbearance from application of BOC-specific *Computer Inquiry* rules to the extent that AT&T offers information services in conjunction with its existing non-time division multiplexing (TDM)-based, packet-switched broadband services or its existing non-TDM-based, optical transmission services). USTelecom currently seeks relief from the remaining *Computer III* requirements that apply to narrowband service offerings. USTelecom Petition at 24-31.

[57] USTelecom Petition at 28 (citing *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC 2d 384, 474-75, para. 231 (1980) (*Computer II Final Decision*), *recon*., 84 FCC 2d 50

(continued....)

Computer Inquiry requirements because they have no utility in the current marketplace and are unnecessary to ensure just, reasonable, and non-discriminatory rates or to protect consumers.[58] USTelecom's petition requests the broadest possible, nationwide elimination of all non-structural and structural safeguards,[59] and we find that it has not satisfied the section 10 standard at this time. However, we find that it is appropriate to examine the rules as they are currently structured.

19. We grant the BOCs permanent relief in the *Reporting Requirement Order* from the legacy reporting obligations associated with the *Computer III* requirements, thereby eliminating the companies' costs and burdens associated with filing thousands of pages of yearly compliance reports that are no longer necessary. We find that the burdens associated with these monitoring and compliance requirements outweigh the benefits and that eliminating them furthers our goal of improving the way we collect, use, and disseminate data, including by altering or eliminating collections that are no longer useful or necessary to carry out our statutory responsibilities.[60] We also seek comment in the FNPRM on whether we should eliminate or substantially reduce remaining narrowband requirements.

b. Background

20. In the *Computer II* and *Computer III* proceedings, the Commission established safeguards for the provision of enhanced services by the BOCs. In *Computer II*, the Commission promulgated section 64.702 of its rules, which required AT&T (and, subsequently, the BOCs) to offer unregulated enhanced services through structurally separate subsidiaries.[61] The Commission also adopted the "All-Carrier Rule," which required other facilities-based common carriers to provide the basic transmission services underlying their enhanced services on a nondiscriminatory basis, pursuant to tariffs governed by Title II of the Act. These carriers must offer the underlying basic service at the same prices and on the

(Continued from previous page)
(1980), *further recon*., 88 FCC 2d 512 (1981), *affirmed sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983)).

[58] USTelecom Petition at 28-31. USTelecom notes that the Commission has proposed eliminating all narrowband reporting requirements for CEI and ONA services and states that it requests relief from the underlying substantive CEI and ONA obligations in its petition. *Id*. at 28 (citing *Review of Wireline Competition Bureau Data Practices, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, WC Docket No. 10-132, CC Docket Nos. 95-20, 98-10, 25 FCC Rcd 1579 (2011) (*CEI/ONA Notice*)). The Wireline Competition Bureau on its own motion waived the reporting requirements pending resolution of the Notice. *Review of Wireline Competition Bureau Data Practices, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, WC Docket No. 10-132, CC Docket Nos. 95-20, 98-10, 26 FCC Rcd 11280 (2011) (*CEI/ONA Reporting Waiver*).

[59] The petition asks for forbearance from the "substantive CEI and ONA requirements." USTelecom Petition at 25. USTelecom states, "[i]n proposing to eliminate the outdated and meaningless narrowband reporting obligations associated with the CEI and ONA requirements, the Commission recognized that these reports suffer from a 'lack of continuing relevance and utility.' The same is true for the substantive CEI and ONA requirements and the structural separation rule, to which only the BOCs and none of their competitors remain subject and which have no utility whatsoever in today's marketplace." *Id*. at 28 (citing *CEI/ONA Notice*, 26 FCC Rcd at 1579, para. 1; *2010 Biennial Review of Telecommunications Regulations*, WC Docket No. 10-272, Public Notice, 26 FCC Rcd 16943, 16945 (Wireline Comp. Bur. 2011)).

[60] *See Pleading Cycle Established for Comments on Review of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132, Public Notice, 25 FCC Rcd 8213 (Wireline Comp. Bur. 2010) (*WCB Data Innovation Initiative Public Notice*).

[61] *Computer II Final Decision*, 77 FCC 2d at 386-87, 417-35, 457-87, paras. 2-7, 86-132, 190-264.

same terms and conditions to all enhanced service providers (ESPs), including their own enhanced services operations.[62] Subsequently, the Commission implemented CEI and ONA requirements in the *Computer III* proceedings. CEI and ONA are non-structural safeguards that permit the BOCs to compete in the unregulated enhanced services market while preventing them from using local exchange market power to engage in improper cost allocation and unlawful discrimination against enhanced service competitors.[63] The BOCs' CEI and ONA plans offer nondiscriminatory interconnection to basic transmission services that competitors purchase to provide enhanced services, primarily to customers that use narrowband telephone technology.[64] Examples of narrowband enhanced services that use CEI and ONA include voicemail, store and forward services, data processing, alarm monitoring, and dial-up gateways to on-line databases.[65] BOCs must comply with CEI and ONA requirements in order to offer

[62] *Id*. at 474-75, para. 231. The Commission granted nondominant carriers permissive detariffing of interstate interexchange access services, and non-incumbent local exchange carriers need not offer the basic transmission services underlying their enhanced services pursuant to tariff. *See Hyperion Telecommunications, Inc. Petition Requesting Forbearance, Time Warner Communications Petition for Forbearance, Complete Detariffing for Competitive Access Providers and Competitive Exchange Carriers*, CCB/CPD Nos. 96-3, 96-7, CC Docket No. 97-146, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 8596 (1997).

[63] *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Computer III Phase I Order*), *recon*., 2 FCC Rcd 3035 (1987) (*Computer III Phase I Reconsideration Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Computer III Phase I Further Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Computer III Phase I Second Further Reconsideration Order*); *Phase I Order and Phase I Recon. Order vacated sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); CC Docket No. 85-229, Phase II, 2 FCC Rcd 3072 (1987) (*Computer III Phase II Order*), *recon*., 3 FCC Rcd 1150 (1988) (*Computer III Phase II Reconsideration Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration Order*); *Phase II Order vacated*, *California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceeding*, CC Docket No. 90-368, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied sub nom. California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, CC Docket No. 90-623, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order vacated in part and remanded sub nom. California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 514 U.S. 1050 (1995); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (*Computer III Further Remand Notice*), Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040 (1998) (*Computer III FNPRM*); *Computer III Further Remand Order*, 14 FCC Rcd 4289, *recon*., 14 FCC Rcd 21628 (1999) (*Computer III Further Remand Reconsideration Order*); *see also Further Comment Requested to Update and Refresh Record on Computer III Requirements*, CC Docket Nos. 95-20, 98-10, Public Notice, 16 FCC Rcd 5363 (2001) (collectively referred to as *Computer III*).

[64] The Commission defined basic services as the offering of "a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information." *Computer II Final Decision*, 77 FCC 2d at 415-16, para. 83, 420, para. 96. Enhanced services, in turn, were defined as services that "combine[] basic service with computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information, or provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information." *Id*. at 387, para. 5. In other words, an "enhanced service is any offering over the telecommunications network which is more than a basic transmission service." *Id.* at 420, para. 97.

[65] *Computer III FNPRM*, 13 FCC Rcd at 6042, para. 1 (examining the continued application of the CEI and ONA non-structural safeguards after the passage of the Telecommunications Act of 1996). In 1999, the Commission addressed certain CEI requirements but did not reach other issues raised in the FNPRM, which remains pending. *Computer III Further Remand Order*, 14 FCC Rcd at 4291-92 n.11 (listing examples of enhanced services); *Bell Operating Companies Joint Petition for Waiver of Computer II Rules*, Order, 10 FCC Rcd 13758, 13768-70, paras. 68-75 (1995) (*CEI Plan Order*) (discussing alarm monitoring services as enhanced services).

these enhanced services on an "integrated" basis (*i.e.,* through the regulated telephone company) instead of through a structurally separate affiliate, as required by section 64.702 of the Commission's rules.[66]

21. The BOCs' CEI plans detail how they provide unaffiliated enhanced services providers with interconnection to basic transmission services on the same terms and conditions that the BOCs use for their own enhanced services offerings.[67] The BOCs originally filed their CEI plans on paper and needed approval from the Commission before the plans could take effect. In 1999, the Commission streamlined the CEI process, permitting the companies to post their plans on the Internet and then notify the Bureau at the time of the postings with no pre-approval required.[68] The BOCs' ONA plans offer competitive enhanced services providers unbundled access to basic transmission services, regardless of whether the BOCs' affiliated enhanced services offerings use the same components.[69]

c. Discussion

22. Although we recognize that the market has changed dramatically since the Commission first imposed the *Computer Inquiry* requirements, USTelecom has not demonstrated that market conditions warrant the broad forbearance it requests. As we stated above, USTelecom is required to substantiate its request with record evidence, and it has not done so. We thus deny forbearance. However, we have identified a path toward potential relief from these legacy requirements. This path will modernize our regulations in a way that is consistent with the public interest and protects consumers who still rely on narrowband services, while also eliminating unnecessary burdens on carriers. The first step on the path is the permanent elimination of the BOCs' obligation to file reports regarding CEI and ONA.[70] The second step is a rulemaking to gather data that will help the Commission make a reasoned, fact-based decision about whether to retain, modify, or eliminate the CEI and ONA requirements and the All-Carrier Rule.[71] Although we conclude that USTelecom has not met its burden of proof with respect to its request for nationwide forbearance, we recognize that parties might be able to demonstrate that relief is warranted in specific locations, or for particular services, given the competitive circumstances.

23. The Commission historically has evaluated requests for forbearance by reviewing record evidence of actual and potential competition to determine if competition is sufficient to satisfy the section 10 criteria.[72] When addressing previous requests for forbearance from the *Computer Inquiry* requirements, the Commission explained that it adopted the structural and non-structural safeguards for BOC provision of enhanced services in order to prevent the BOCs from using "exclusionary market power" arising from their control over ubiquitous local telephone networks to impede competition in the enhanced services market.[73] The Commission stated that exercise of market power could lead to

[66] 47 C.F.R. § 64.702.

[67] *CEI/ONA Notice*, 26 FCC Rcd at 1580, para. 3 (listing nine CEI parameters); *Computer III Further Remand Order*, 14 FCC Rcd at 4291, para. 4; *Computer III Further Remand Reconsideration Order*, 14 FCC Rcd at 21629, para. 6; *see Computer III Phase I Order*, 104 FCC 2d at 1039-42, paras. 155-65.

[68] *Computer III Further Remand Order*, 14 FCC Rcd at 4297, paras. 11-12.

[69] *CEI/ONA Notice*, 26 FCC Rcd at 6050, para. 11; *Computer III Phase I Order*, 104 FCC 2d at 1064, para. 214; *Computer III FNPRM*, 13 FCC Rcd at 6050, para. 11.

[70] *See infra* Section IV.B.

[71] *See infra* Section V.

[72] *See, e.g.*, *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8645-8647, paras. 41-45.

[73] *See, e.g.*, *Verizon 6 MSA Forbearance Order*, 22 FCC Rcd at 21318, para. 45; *Qwest 4 MSA Forbearance Order*, 23 FCC Rcd at 11760, para. 44.

"charges, practices, classifications, or regulations . . . for[] or in connection with the [the BOCs' services] that are unjust, unreasonable, or unjustly or unreasonably discriminatory" and could harm consumers.[74] Here, USTelecom seeks the immediate and nationwide elimination of all narrowband *Computer Inquiry* requirements. It seeks this sweeping relief without providing any evidence of what alternative network inputs would be available for narrowband enhanced services, where they would be available, or on what terms they might be available from other competitive network platforms. We therefore cannot determine on this record that enforcement of the regulation is unnecessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory under section 10(a)(1).

24. USTelecom asserts generally that competitive conditions have changed, and narrowband CEI and ONA offerings have no utility in the current marketplace.[75] It argues that the incumbent LEC platform is no longer the only platform available to ESPs, and that the CEI and ONA safeguards are no longer required because competitors do not have to rely anywhere in the country on narrowband facilities from the BOCs or from incumbent LECs subject to the All-Carrier Rule.[76] USTelecom argues generally that cable providers and broadband network platforms could offer alternative sources of inputs for competitive ESPs.[77] However, USTelecom does not address the fact that many residential and business consumers still use narrowband telephone services that could include enhanced service features and functions.[78] We know that ESPs are purchasing access to the BOCs' legacy network to serve some of these consumers using ONA service inputs. ONA reports from as recently as 2011 contain data for reporting categories, such as business and Centrex-based services, for which it appears that the BOCs are provisioning tens of thousands of orders for unaffiliated ESPs.[79] Despite specific requests from Bureau staff, USTelecom has failed to offer any data to show that substitutes from other providers are available ubiquitously or on competitive terms. The Pennsylvania PUC points out that it is concerned about the impact of eliminating CEI and ONA on interconnection obligations and on other requirements for non-discriminatory access to the incumbent LECs' network facilities. It states that USTelecom has not made clear what ONA elements its members will provide and under what conditions.[80] USTelecom has failed

[74] *Qwest 4 MSA Forbearance Order*, 23 FCC Rcd at 11760-61, para. 44.

[75] USTelecom Petition at 25, 28-31.

[76] USTelecom Petition at 29-30; USTelecom Reply at 17-18; Letter from Glenn T. Reynolds, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-61, Att. at 11-12 (filed Aug. 29, 2012); Letter from Robert W. Quinn, Jr., AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-61, *et al*., Att. at 2 (filed Aug. 30, 2012) (stating that the Commission should facilitate the retirement of legacy TDM services and eliminate "regulatory underbrush/superstructure" such as "residual CEI/ONA" that accompanies those services).

[77] USTelecom Reply at 17-18.

[78] The Commission's most recent local telephone data states that there were 84,746,000 retail switched access lines provided by incumbent LECs as of December 31, 2011 (48,364,000 residential lines and 36,382,000 business lines). FEDERAL COMMUNICATIONS COMMISSION, WIRELINE COMPETITION BUREAU, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, *Local Telephone Competition: Status as of December 31, 2011*, at 5, Fig. 4. (Jan. 2013), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0114/DOC-318397A1.pdf.

[79] *See, e.g.*, Qwest Corporation ONA Nondiscrimination Report, CC Docket No. 88-2, Phase 1, CC Docket No. 96-128 (filed Aug. 1, 2011) (showing 62,135 business line orders provisioned for unaffiliated ESPs in its second quarter ONA installation detail report); Installation and Maintenance Nondiscrimination Reports for Southwestern Bell Telephone, L.P., Ameritech, Pacific Bell, Nevada Bell, and BellSouth Telecommunications, CC Docket No. 88-2, Phase I (filed July 29, 2011) (showing 220,944 business lines and 144,434 Centrex lines provisioned for unaffiliated ESPs in second quarter ONA parity report).

[80] Pennsylvania PUC Reply at 8-9.

to demonstrate that the flash cut elimination of *Computer Inquiry* safeguards would not cause consumers to lose service because ONA inputs are either no longer technically available or because they are no longer available at non-discriminatory rates, thereby impacting ancillary features on which consumers rely.

25. We seek to avoid stranding narrowband consumers who may rely on any type of enhanced service provided by competitors. The record contains evidence for specific enhanced services that could be impacted by an immediate elimination of ONA inputs. The record contains, in particular, evidence that the immediate elimination of ONA inputs would have a detrimental impact on alarm monitoring and voice mail services. The Alarm Industry Communications Committee (AICC) states that its members, many of which provide security services to government facilities, power plants, dams, and banking operations, rely on the availability of narrowband network elements to provide enhanced services, and they urge the Commission to maintain the substantive ONA and CEI requirements.[81] AICC asserts that it is still heavily dependent on narrowband voice grade services to provide life and safety alarm services for large scale commercial as well as residential customers.[82] It further states that narrowband ONA elements are not available on broadband platforms.[83] The Michigan PSC states that it is concerned about the effect in its state of eliminating CEI and ONA services for customers who require access to the telephone network for alarm and home security services and maintains that USTelecom has provided no technical analysis to demonstrate the consumer impact of eliminating the requirement.[84] Full Service Network LP (FSN) states that it relies heavily on ONA basic service offerings to provide voicemail, directory assistance, and operator services.[85] It asserts that, if the BOCs are no longer required to offer non-discriminatory access to ONA service elements, competitors will be impeded in their ability to offer resold local exchange service packaged with enhanced service features requested by customers.[86]

26. To the extent that there are cable and broadband entities that offer alternatives to allow competitive ESPs to bypass the legacy narrowband networks, USTelecom has not demonstrated where, or on what terms, such alternatives are available. Other than referencing some general alarm monitoring services advertised by cable companies and VoIP providers, USTelecom has not shown that competitive ESPs have viable alternatives to connect to end users.[87] The Commission has required carriers seeking

[81] AICC Comments in WC Docket No. 10-132, at 1, 4; AICC Committee Reply in WC Docket No. 10-132, at 2-3.

[82] AICC Comments at 2; Letter from Benjamin H. Dickens, Jr., Counsel for AICC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-61, at 3-5 (filed Apr. 3, 2013) (stating that the alarm industry depends on copper-based narrowband ONA services to provide line security, which is a functionality employed in high-security installations to detect a break or cut in a line between a protected premise and alarm monitoring station, and that alternative platforms, such as wireless transmission, complement rather than replace existing BOC services AICC requires); Letter from Benjamin H. Dickens, Jr. and Salvatore Taillefer, Jr., Counsel for AICC, and James C. Falvey, Counsel for Full Service Network LP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-61, at 1 (filed May 6, 2013) (AICC/FSN May 6 *Ex Parte* Letter)

[83] AICC Reply at 4.

[84] Michigan PSC Reply at 6-7.

[85] FSN Comments at 4-6.

[86] Letter from James C. Falvey, Counsel for FSN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-61 at 2-3 (filed Mar. 29, 2013) (stating that FSN uses ONA voicemail inputs for 70-75% of its resold lines in the Pittsburgh metro area and that, if FSN could not also offer operator services through the use of ONA inputs, it would immediately face a significant increase in its cost of resale services in Pennsylvania); AICC/FSN May 6 *Ex Parte* Letter at 1-2.

[87] USTelecom Petition at 29; USTelecom Reply at 17-18.

forbearance from wholesale obligations in other contexts, such as loop unbundling, to demonstrate that there is sufficient competition to ensure that, if we provide the requested relief, the carriers will be unable to raise prices, discriminate unreasonably, or harm consumers.[88] The Commission has found in some cases that competitors, including cable companies, may not provide wholesale connections to end users and that their networks, even if extensive in residential areas, may reach fewer office buildings or commercial facilities.[89] USTelecom has not provided any evidence regarding which ONA elements the BOCs would eliminate or to what extent the BOCs would offer the elements outside of the *Computer III* context or in transition or grandfathering arrangements, for example, through contractual offers. CenturyLink states that ONA inputs may be available as generally tariffed service offerings, unless a particular service has been deregulated at the state or federal level.[90] While tariffed offerings might offer an alternative, this vague claim does not offer customers transparent information about what services and functionalities the BOCs would immediately discontinue in their long-standing ONA plans. They also have not addressed what facilities-based carriers subject to the All-Carrier Rule would offer in terms of a transition plan, or the extent to which there are competitive narrowband options available in their service territories. We are therefore unable to find that enforcement of the *Computer Inquiry* regulations as they apply to narrowband competitive enhanced service offerings throughout the country is unnecessary to ensure that charges, practices, and classifications are just and reasonable and are not unjustly or unreasonably discriminatory. Because BOCs must comply with the *Computer III* CEI and ONA requirements in order to avoid providing enhanced service through a *Computer II* structurally separate affiliate under section 64.702 of the Commission's rules, the *Computer II* and *Computer III* regulatory regimes are interrelated (*i.e.*, a BOC choosing not to comply with *Computer III* would need to follow *Computer II*). We therefore deny USTelecom's request for relief from both the substantive CEI and ONA requirements and section 64.702 of the rules.

27. For these reasons, we cannot find, based on the record presented, that enforcement of the *Computer Inquiry* regulations is unnecessary for the protection of consumers, or that forbearance from application of the requirements is consistent with the public interest. USTelecom asserts that *Computer Inquiry* safeguards have no continued utility. But the BOCs themselves use their legacy facilities to provide their own enhanced services, suggesting that these enhanced services are still valuable.[91] While we cannot on the current record determine that the underlying inputs need not be provided to other ESPs pursuant to the rules, the FNPRM seeks information that will allow us to make that determination. A primary goal of CEI and ONA unbundling and the All-Carrier Rule is to ensure the efficient and transparent availability of inputs that the carriers use to provide their own retail enhanced services and what competitors may purchase. Such transparency serves the public interest by preventing unreasonable discrimination against competitors and increasing consumers' choice.

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[88] *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8658-62, paras. 70-74.

[89] *See id*. at 8658-61, paras. 69-73.

[90] Letter from Timothy M. Boucher, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-61 at 4-5, 7 (filed Apr. 12, 2013) (CenturyLink April 12 *Ex Parte* Letter).

[91] *See, e.g.*, April 15, 2011 Annual ONA Report of Qwest Corporation, Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, at 8-11 (filed Apr. 15, 2011) (showing that Qwest is using an extensive list of ONA basic service elements in the provisioning of its enhanced services, including service elements for audiotext, electronic messaging, enhanced facsimile, on-line database access, and voice messaging services); 2011 Verizon East Annual ONA Report, CC Docket No. 88-2, at Att. A-11 (filed Mar. 30, 2011) (listing many basic service elements Verizon uses in provisioning its own enhanced services in the former NYNEX region).

28. USTelecom and the BOCs argue that complying with the substantive CEI and ONA requirements imposes "cost and complexity" on their development of new narrowband services.[92] They argue that they have to undertake a resource-intensive "compliance review before any new service can be deployed."[93] CenturyLink asserts that costs of ONA compliance are difficult to determine, but that it estimates that it had between 55 and 60 employees who worked on CEI/ONA compliance activities in the last year.[94] As we stated above, USTelecom and the BOCs may be able to demonstrate that the targeted elimination of the requirements is warranted, which will reduce costs. The Commission has already taken significant steps to lower compliance costs. For example, for CEI, the Commission found, when it modified the CEI filing requirements to eliminate pre-approval requirements and allow Internet posting of the plans, that it had removed the "chief burdens" associated with CEI requirements.[95] In addition, our decision in the *Reporting Requirement Order* to eliminate CEI and ONA reporting requirements reflects our commitment to eliminating unnecessary regulatory costs.[96] Moreover, the attached FNPRM is a further effort to eliminate unnecessary regulatory burdens.

29. In summary, although we deny USTelecom's request for nationwide forbearance from the *Computer Inquiry* safeguards, we agree that there have been substantial changes to the enhanced services market. Today, competitors and consumers likely use different enhanced service offerings from different providers in different places, and it may no longer be necessary to require unbundled access to basic network services under the complex CEI/ONA regime.[97] We look forward to reviewing the record in our FNPRM in the *Computer III* docket to find ways to streamline or eliminate requirements where possible.

3. Cost Assignment Rules

a. USTelecom's Request

30. USTelecom requests forbearance from the Cost Assignment Rules for all price cap carriers substantially the same as that already granted to AT&T, Qwest, and Verizon in previous

[92] Verizon Comments at 3.

[93] USTelecom Reply at 19.

[94] CenturyLink April 12 *Ex Parte* Letter at 5. Despite staff requests for data, the record does not provide specific information on other carriers' costs of compliance.

[95] *Computer III Further Remand Order*, 14 FCC Rcd at 4297, para. 12.

[96] The BOCs are not currently required to comply with CEI and ONA narrowband annual, semi-annual, and quarterly reporting requirements because the Bureau has waived them pending resolution of the *CEI/ONA Notice* to eliminate them permanently. The BOCs, therefore, have not had compliance costs associated with those requirements since 2011. *See supra* n.58.

[97] The Commission has sought comment on a petition by AT&T urging, among other things, that the Commission consider conducting trials regarding the technology transition from TDM to IP and wireline to wireless. AT&T Petition to Launch a Proceeding Concerning TDM-to-IP Transition, GN Docket No. 12-353 (filed Nov. 7, 2012) (AT&T Petition); *Pleading Cycle Established on AT&T and NTCA Petitions*, GN Docket No. 12-353, Public Notice, 27 FCC Rcd 15766 (Wireline Comp. Bur. 2012). AT&T states that the Commission could use such a trial to determine if forbearance from CEI and ONA regulations is appropriate. AT&T Petition at 20. *See Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, GN Docket No. 13-5, Public Notice, DA 13-1016 (rel. May 10, 2013), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-13-1016A1.pdf.

forbearance orders.[98] USTelecom argues that the Commission's prior forbearance analysis "applies with equal force to any carrier subject to price cap regulation."[99]

b. Background

31. The Cost Assignment Rules generally require carriers to assign costs to build and maintain the network and revenues from services provided to specific categories. Categories include non-regulated or regulated service, the intrastate or interstate jurisdiction, and specific access services, such as local switching or common line.[100] The Cost Assignment Rules also govern the accounting treatment of transactions between a carrier and its affiliate, such as the sale or transfer of assets between regulated and nonregulated affiliates.[101] In addition, the rules include certain reporting requirements, which depend on the availability of data produced by the Cost Assignment Rules.[102]

32. As part of the accounting process, carriers first record their costs, including investments and expenses, into various accounts in accordance with the Uniform System of Accounts (USOA) prescribed by Part 32 of the Commission's rules.[103] Next, using the Cost Assignment Rules in Part 64, carriers directly assign, or allocate if direct assignment is not possible, the costs and revenues associated with their regulated and nonregulated activities.[104] After costs and revenues are divided between those that are regulated and nonregulated, interstate and intrastate costs and revenues are separated as provided in Part 36.[105] The federal and state regulatory jurisdictions apply their own ratemaking processes to the amounts assigned to each jurisdiction.[106] Finally, the access charge rules in Part 69 require carriers to

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[98] USTelecom Petition at 31-34. ("USTelecom uses the term 'Cost Assignment Rules' to refer collectively to the same statutory provisions and Commission rules from which AT&T requested and the Commission granted forbearance."). *Id*. at 32 n.65 and App. A (listing the rules and specifically citing Att. 1 of the underlying AT&T Forbearance Petition in the *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302, para. 1 n.2 (2008) (*AT&T Cost Assignment Forbearance Order*), *pet. for recon. pending*, *pet. for review pending*, *NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir. filed June 23, 2008) ("Attachment 1 of the AT&T Petition lists each rule from which Legacy AT&T seeks forbearance"). We therefore define the scope of USTelecom's requested relief in the same manner as that requested by AT&T in the *AT&T Cost Assignment Forbearance Order*. *See* Petition of AT&T, Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21 (filed Jan. 25, 2007) (AT&T Petition).

[99] USTelecom Reply at 20.

[100] *See* 47 C.F.R. Parts 36, 64, 69.

[101] *See* 47 C.F.R. § 32.27.

[102] These reports include the ARMIS 43-04, the Rate-of-Return Monitoring Report (FCC Form 492), the Reg/Non-Reg Forecast Report (FCC Form 495A) and the Reg/Non-Reg Actual Usage Report (FCC Form 495B). *See AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307-08, para. 12.

[103] *See* 47 C.F.R. Part 32.

[104] *See* 47 C.F.R. §§ 64.901-64.905.

[105] *See* 47 C.F.R. Part 36.

[106] *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, WC Docket Nos. 05-271, 04-242, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14925, para. 129 (2005) (*Wireline Broadband Order*), *aff'd*, *Time Warner Telecom v. FCC*, 507 F.3d 205 (3rd Cir. 2007).

separate regulated interstate costs into interexchange costs and access costs, and then apportion the latter among specific access categories or elements.[107]

33. The Commission adopted the Cost Assignment Rules to help ensure just and reasonable rates and to protect consumers by requiring ILECs to divide their costs and revenues in a specified manner. For example, as telecommunications technology advanced, the Commission adopted Part 64 because it was concerned with the opportunities for carriers with market power to subsidize the development of new technologies and services with increased rates for noncompetitive services.[108] As a result, Part 64 rules sought to ensure that carriers do not impermissibly "impos[e] on ratepayers for regulated interstate services the costs and risks of nonregulated ventures" and "that ratepayers would share in any savings achieved through the integrated provision of regulated and nonregulated activities."[109]

34. The Commission adopted the Cost Assignment Rules prior to 1991 when all ILECs were subject to rate-of-return regulation, so that it could set rates targeted to levels that allowed carriers to recover their costs and earn a specific return on their regulated investment. However, after that time, the Commission moved away from rate-of-return regulation for the larger ILECs.[110] In its place, it adopted price cap regulation, a form of incentive regulation that seeks to "harness the profit-making incentives common to all businesses to produce a set of outcomes that advance the public interest goals of just, reasonable, and nondiscriminatory rates, as well as a communications system that offers innovative, high quality services."[111] Since the adoption of price cap regulation, certain carriers have moved from rate-of-return regulation to price cap regulation.[112]

35. In 2008, the Commission granted AT&T conditional forbearance from the Cost Assignment Rules.[113] The Commission conditioned the forbearance on, among other things, requiring AT&T to retain Part 32 Uniform System of Accounts data and submit a compliance plan describing in detail how it would fulfill its statutory and regulatory requirements.[114] The Commission granted similar

[107] *See* 47 C.F.R. § 69.4(b) (including the following elements: common line, local switching, information, tandem-switched transport, direct-trunked transport, special access, line information database, entrance facilities, and recovery of contributions to universal service support mechanisms by ILECs).

[108] *See Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities*, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, 1300, para. 10 (*Joint Cost Order*), recon. 2 FCC Rcd 6283 (1987), further recon. 3 FCC Rcd 6701 (1988)), aff'd *sub nom*. *Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990).

[109] *Joint Cost Order*, 2 FCC Rcd at 1299, para. 1; *Wireline Broadband Order*, 20 FCC Rcd at 14925, para. 131.

[110] *Policy and Rules Concerning Rates for Dominant Carriers, CC* Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, para. 2 (1990) (*Price Cap Order*), *aff'd, National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

[111] *Id*.

[112] *See, e.g., Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294 (2008); *CenturyTel, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief,* WC Docket No. 08-191, Order, 24 FCC Rcd 4677 (2009); *Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*, WC Docket No. 08-18, Order, 23 FCC Rcd 7353 (2008); *Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief,* WC Docket No. 12-63, Order, 27 FCC Rcd 15753 (2012).

[113] *See generally AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd 7302.

[114] *See id.* at 7314, para. 21, 7319-20, para. 31.

conditional forbearance from the Cost Assignment Rules to Verizon and Qwest.[115] Subsequently, Qwest, Verizon, and AT&T obtained conditional forbearance from certain financial reporting requirements that relied on the Cost Assignment Rules.[116] Specifically, the forbearance from financial reporting requirements was conditioned on approval of a compliance plan and continued filing of certain pole attachment data publicly with the Commission.[117] The Bureau approved the compliance plans filed by all three carriers.[118]

c. Discussion

36. We grant forbearance from the Cost Assignment Rules for all price cap carriers, subject to four conditions set forth below.[119] The conditions are necessary to ensure that charges and practices are

[115] *Service Quality Customer Satisfaction, Infrastructure and Operating Data Gathering, Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements et. al.,* WC Docket Nos. 08-190, 07-139, 07-204, 07-273, 07-21, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (*ARMIS Forbearance Order*) *pet. for recon. pending, pet. for review pending*, *NASUCA v. FCC*, Case No. 08-1353 (D.C. Cir. filed Nov. 4, 2008). In this Order, the Commission granted Qwest and Verizon the same conditional forbearance from the Cost Assignment Rules it granted to AT&T. However, in addition, the Commission conditioned relief on requiring the carriers to describe in their compliance plans how they will maintain and provide accounting data in study areas where the carriers receive rural high-cost universal service support. *See id.* at 13663, para. 30. The Order also granted conditional forbearance from ARMIS Reports 43-05, 43-06, 43-07 and 43-08 for all carriers (not just Verizon and Qwest). *See id.* at 13652, para. 7.

[116] *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c),et al.,* Memorandum Opinion and Order, WC Docket Nos. 07-204, 07-273, 23 FCC Rcd 18483, 18484, para 1., 18487, para. 8 (2008) (*Qwest ARMIS Forbearance Order*). The reports, for which conditional forbearance was granted, are ARMIS Reports 43-01, 43-02, and 43-03 (collectively, the ARMIS Financial Reports). We discuss the importance of the pole attachment data in Section III.B.4 *infra*.

[117] *Id.* at 18490, para. 13.

[118] *Wireline Competition Bureau Approves Compliance Plans*, WC Docket Nos. 07-21, 07-204, 07-273, Public Notice, 23 FCC Rcd 18417 (2008). Two applications for review are pending. Application for Review of Action Taken Pursuant to Delegated Authority filed by the AdHoc Telecommunications Users Committee and COMPTEL, WC Docket Nos. 07-21, 07-204, 07-273 (filed Jan. 30, 2009); and Application for Review of the Wireline Competition Bureau Approval of the Compliance Plans of AT&T, Verizon and Qwest, filed by the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel, WC Docket No. 07-21 (filed Jan. 30, 2009).

[119] We grant forbearance here, subject to conditions, from the same statutory provision and Commission rules, (subject to the three exceptions listed below) which AT&T requested in its original forbearance petition and which we granted in the *AT&T Cost Assignment Forbearance Order*. *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7303, para. 1 n.2; *see also supra* n.98. This includes limited forbearance from section 220(a)(2) of the Act to the extent that this provision contemplates separate accounting of nonregulated costs. 47 U.S.C. § 220(a)(2). We also grant forbearance from various Commission rules or portions thereof including the following: section 32.23 (nonregulated activities); section 32.27 (transactions with affiliates); section 32.5280 (nonregulated operating revenue); Part 64 Subpart I, including the requirement to file Cost Allocation Manuals (CAMs) (allocation of costs); Part 36 (jurisdictional separations procedures); Part 69, Subparts D and E (cost apportionment). *See, e.g.*, 47 C.F.R. §§ 32.23, 32.27, 32.5280, Part 64 Subpart I, Part 36, Part 69 Subparts D and E. The AT&T Forbearance Petition underlying the *AT&T Cost Assignment Forbearance Order* lists each rule from which Legacy AT&T and Legacy BellSouth were granted forbearance. *See* Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21 (filed Jan. 25, 2007), Attach. 1. Though we grant forbearance for most of the same rules, sections 1.795 and 43.21(d) and (f) in AT&T's petition are only applicable to AT&T, Qwest, and Verizon. Therefore, there is no need to grant forbearance from those rules to the other price cap carriers in this proceeding because they are not affected by these rules. To the extent that there are any inconsistencies between this Order and the Appendix, the Order controls.

just, reasonable, and not unjustly or unreasonably discriminatory; to protect consumers; and to protect the public interest.[120] We agree with USTelecom that much of the reasoning in our earlier decisions to grant the BOCs forbearance from the Cost Assignment Rules applies equally to all price cap carriers.[121]

37. USTelecom contends that the rules are "inextricably tied" to rate-of-return regulation, and that once a carrier has transitioned to price cap regulation, the Cost Assignment Rules serve "no continuing purpose in assuring just and reasonable rates."[122] As discussed above, the Cost Assignment Rules were developed when the ILECs' interstate rates and many of their intrastate rates were set under rate-based, cost-of-service regulation.[123] The Commission has explained that, "because price cap regulation severs the direct link between regulated costs and prices, a carrier is not able automatically to recoup misallocated non-regulated costs by raising basic service rates," thus reducing incentives to shift non-regulated costs to regulated services.[124] To the extent incentives remain, we find that price cap regulation in combination with the protections provided by the implementation of conditions as reflected in carrier compliance plans will continue to protect consumers from unjust, unreasonable, and unjustly or unreasonably discriminatory charges, practices, classifications, and regulations post-forbearance.[125] We disagree with commenters that assert that the Cost Assignment Rules remain necessary in order for the Commission to complete its work with respect to special access and intercarrier compensation reforms.[126] We are convinced that a more targeted, less onerous set of conditions will be adequate to meet our ongoing needs in these and other proceedings.

38. We cannot rule out all "possible future need for cost data" even under price cap regulation.[127] And there are several instances in which we have a specific need for some data related to costs for price cap carriers in order to ensure just and reasonable rates, protect consumers and serve the public interest.[128] Given this continued need for some of the data currently available through our Cost Assignment Rules, we find that forbearance is appropriate only subject to the conditions set forth herein,

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[120] Because the price cap carriers that are granted forbearance relief in this Order include Frontier, Windstream, and the operating companies formerly owned by Embarq, the pending petition for reconsideration filed by these carriers seeking this relief is moot and hereby dismissed. *See Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, et al.,* WC Docket Nos. 08-190, 07-139, 07-204, 07-273, 07-21, Petition for Reconsideration of Embarq, Frontier, and Windstream (filed Oct. 6, 2008).

[121] USTelecom Petition at 33; *see generally AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7302.

[122] USTelecom Petition at 33.

[123] *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7311, para. 17.

[124] *See Wireline Broadband Order*, 20 FCC Rcd at 14925-26, para. 133. We note that the fact that price cap rates cannot be raised automatically does not mean that the relationship between costs and prices is entirely eliminated. While the direct link between costs and price cap carriers' access rates no longer exists, costs still have an impact on other rates price cap carriers charge. *See infra* Section III.B.4.c.(i) for examples of the continued relevance of cost to price cap carriers' rates; s*ee also Special Access Rates for Price Cap Local Exchange Carriers; AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 1999, at para. 12 (2005) (*2005 Special Access NPRM*) ("Although price cap regulation diminished the direct link between changes in allocated accounting costs and change in prices, it did not sever the connection between accounting costs and prices entirely.").

[125] *See infra* Section III.B.3.(i).

[126] Sprint Opposition at 3; *see also* Consumer Advocates Comments at 27.

[127] *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7312, para. 18.

[128] *See infra* Section III.B.4.c.(i).

which generally mirror those we required from the BOCs in 2008. As we explained in the 2008 *AT&T Cost Assignment Forbearance Order*, there is no reason to impose on price cap carriers cost assignment requirements that were "designed to parallel the level of detail in the cost-of-service calculations that LECs performed to develop their rates for interstate access services."[129]

39. The conditions we adopt today, along with continued price cap regulation, permit us to forbear from the Cost Assignment Rules under the three prongs of the statutory forbearance analysis. First, subject to the conditions described below, enforcement of the Cost Assignment Rules is not necessary to ensure just, reasonable and not unjustly or unreasonably discriminatory charges, practices, classifications, and regulations. Second, the rules are not needed for the protection of consumers; as conditioned, consumers will remain protected from unjust, unreasonable, and unjustly or unreasonably discriminatory rates, practices, classifications, and regulations. Third, this conditioned forbearance is consistent with the public interest. The Commission adopted the Cost Assignment Rules in part to help protect consumers from improper cross-subsidization of competitive services provided on an integrated basis with noncompetitive services by dominant providers with individual market power.[130] We find that we can achieve these same public interest benefits through conditional forbearance.

40. Likewise, we find that continued enforcement of the Cost Assignment Rules is not necessary to protect consumers with respect to support from the Universal Service Fund. Specifically, the Commission recently froze price cap carriers' universal service support with the intention of transitioning distribution of that support to mechanisms based on a combination of a forward-looking cost model and competitive bidding.[131] This reform removes, for most purposes, the need to provide evidence of historical cost to justify support levels.[132] As a result, we find that conditional forbearance is consistent with the public interest.

41. Finally, section 10(b) requires the Commission to consider, as part of its analysis of the public interest prong, whether forbearance will promote competitive market conditions. USTelecom and other commenters contend that forbearance will enhance competition.[133] While the record does not offer

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[129] *AT&T Cost Assignment Forbearance Order,* 23 FCC Rcd at 7311 para. 17.

[130] *See, e.g.*, *Wireline Broadband Order*, 20 FCC Rcd at 14925, para. 131 (explaining that the purpose of the cost allocation rules "was to ensure that telephone ratepayers would continue to receive reasonable protections against improper cross-subsidization in the event the BOCs provided enhanced service on an integrated basis, rather than through separate subsidiaries").

[131] *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform — Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC rcd 17663, 17725, para. 156 (2011) (*USF/ICC Transformation Order), pets. for review pending sub nom. In re: FCC*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

[132] Cost accounting data will continue to be necessary in some circumstances. The Commission's grant of forbearance from the Cost Assignment Rules for Verizon and Qwest was conditioned on their providing in their compliance plans the cost data and calculations necessary to continue to calculate the cost-based high cost support they received at that time. USTelecom's request here includes other price cap carriers that formerly received universal service support based on their embedded costs. We note, however, that in the *USF/ICC Transformation Order*, the Commission froze all price cap carriers' universal service support and plans to transition distribution of that support to mechanisms based on a model or competitive bidding. Given that these reforms eliminate the need for cost-based data and calculations to determine universal service support, we decline to impose this condition here and no longer require price cap carriers to include this specific commitment in their compliance plans.

[133] USTelecom Petition at 42; Verizon Comments at 10.

concrete evidence of how competition will be enhanced, we agree as a general matter that eliminating unnecessary regulation will generally reduce providers' costs and, in turn, benefit consumers through lower rates and/or more vibrant competitive offerings and promotes competition by providing a more level playing field because other providers of similar services are not subject to the rules. Moreover, as noted above, we find that, as conditioned, sufficient protections remain in place to prevent anti-competitive cross-subsidization.

(i) Conditions

42. We adopt four conditions to our forbearance from the Cost Assignment Rules. These generally mirror the conditions we imposed on the BOCs in 2008, with a few modifications to reflect changes in our universal service and intercarrier compensation rules since that time. Following the same procedures as we did previously, we establish a less burdensome framework and require a price cap carrier seeking to take advantage of this relief to explain in a compliance plan how it will comply with these conditions. This plan should also include a schedule of how the carrier will transition to the new framework. As USTelecom notes, compliance plan requirements such as these reduce "the burdens of maintaining this intricate system of regulatory accounting."[134]

43. First, we require price cap carriers to continue complying with the Part 32 Uniform System of Accounts rules, and to provide Part 32 data on request by the Commission for use in rulemakings, adjudications, or for other regulatory purposes.[135] As commenters note, Part 32 USOA data are the underlying raw data used in the Cost Assignment Rules, such as Part 36 separations and Part 64 allocation rules.[136] Requiring the retention and submission of the underlying raw data gives the Commission the tools to reconstruct the information necessary to gauge whether improper cost accounting has occurred, should it need to do so. This enables the Commission to ensure charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory. This condition is consistent with precedent, and we emphasize that it requires the submission of Part 32 USOA data, upon request by the Commission.

44. Second, we require independent price cap carriers seeking to take advantage of this relief to file access imputation plans similar to those previously filed by the BOCs if the independent price cap carriers plan to provide in-region long distance service without a section 64.1903 separate affiliate.[137] They must also ensure that any BOC properties they purchased or purchase in the future continue to satisfy the applicable section 272 access charge imputation requirements.[138] These price cap carriers need

[134] USTelecom May 3, 2012 *Ex Parte Letter* at 2.

[135] *See infra* Part III.B.4 (denying forbearance from the Part 32 Uniform System of Accounts rules but committing to open a proceeding to streamline those rules). This is the same conditional Cost Assignment Rules forbearance relief that was granted to AT&T, Qwest and Verizon. *See AT&T Cost Assignment Forbearance Order,* 23 FCC Rcd 7314 at para. 21; *see also ARMIS Forbearance Order*, 23 FCC Rcd at 13663, para. 28. We disagree with USTelecom's characterization that Part 32 accounting was not required by the *AT&T Cost Assignment Forbearance Order*. *See* USTelecom Petition at 36-37. USTelecom is attempting to draw a distinction without a difference. Forbearance was expressly premised on the continued availability of Part 32 accounting and the filing of compliance plans consistent with that condition. *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7314, para. 21 ("USOA account data will continue to be maintained and available to the Commission on request"). All three carriers filed compliance plans that detailed their commitment to continue to maintain Part 32 accounting. The Commission approved the plans on that basis.

[136] *See* Landis Comments at 3 (noting that Part 32 provides the underlying data required for performing separations).

[137] *See infra* Section III.B.11 (Structural Separation Requirements for Independent ILECs).

[138] We note that the BOCs are to continue complying with their existing imputation requirements under section 272(e)(3) and their compliance plans. 47 U.S.C. § 272(e)(3); *Wireline Competition Bureau Approves Compliance*

(continued....)

not file another imputation compliance plan for their BOC properties if one has already been approved by the Commission. This requirement is similar to the condition imposed on AT&T, Qwest, and Verizon when they were granted forbearance from the Cost Assignment Rules.[139] Section 272(e)(3) requires each BOC to charge its section 272 separate affiliates, or "impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service."[140] This condition prevents anticompetitive cross-subsidization and is consistent with precedent.[141]

45. Third, we require price cap carriers to certify, on an annual basis, that they have complied with section 254(k) of the Act, and will maintain and provide any requested cost accounting information necessary to prove such compliance in the event of an administrative action, investigation, or audit.[142] This condition is necessary to ensure compliance with the language of the Act that prohibits a telecommunications provider from "us[ing] services that are not competitive to subsidize services that are subject to competition."[143] This condition is consistent with precedent.[144]

46. Fourth, we condition this forbearance for each price cap carrier on Bureau approval of its compliance plan describing in detail how it will continue to fulfill its statutory and regulatory obligations, including sections 272(e)(3), 254(k), and the conditions outlined above. The relief granted in this section of this Order will not become effective with respect to a price cap carrier unless and until the Office of Management and Budget approves any information collections associated with these conditions in accordance with the Paperwork Reduction Act and the Bureau approves that price cap carrier's compliance plan.[145]

47. We delegate authority to the Chief of the Wireline Competition Bureau to prescribe the administrative requirements for the filing of the compliance plans and to approve the plans when the Bureau is satisfied that the plans fulfill the requirements set forth in this Order.[146] This delegation of

(Continued from previous page)
Plans, WC Docket Nos. 07-21, 07-204, 07-273, Public Notice, 23 FCC Rcd 18417 (2008). These requirements also apply to any non-BOC affiliate of a BOC that was granted a waiver of the separate affiliate requirement. *Section 272 Sunset Order*, 22 FCC Rcd at 16483-84, paras. 87-88. We note that if an independent price cap carrier elected not to be subject to forbearance relief from the Cost Assignment Rules and desired to provide in-region long distance service through a separate affiliate, it would be subject to those rules and not be required to file imputation plans.

[139] *See*, *e.g.*, *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7317-19, paras. 26-29, 31.

[140] 47 U.S.C. § 272(e)(3).

[141] *See AT&T Cost Assignment Forbearance Order,* 23 FCC Rcd at 7318-19, paras. 28-29; *ARMIS Forbearance Order,* 23 FCC Rcd at 13662, para 27, 13664, para. 32. Subsequent forbearance from the requirement to provide ARMIS financial reports was also expressly conditioned on the filing and approval of the compliance plans required by these two previous orders. *Qwest ARMIS Forbearance Order*, 23 FCC Rcd at 18489-90, para. 12.

[142] This is similar to the conditional forbearance granted to AT&T, Verizon and Qwest. *See*, *e.g.*, *AT&T Cost Assignment Forbearance Order,* 23 FCC Rcd at 7319, para. 30. These certification and record-retention obligations qualify as an "information collection" subject to the approval of the Office of Management and Budget under the terms of the Paperwork Reduction Act of 1995.

[143] 47 U.S.C. § 254(k).

[144] *See AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7319, para. 30.

[145] Obligations associated with the third and fourth conditions of this forbearance are "information collections" as defined by the Paperwork Reduction Act and must be approved by the Office of Management and Budget. Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163.

[146] The Bureau will release a public notice or notices announcing the approval of the plans as it approves them.

authority to the Bureau is consistent with delegations in previous analogous forbearance orders[147] and with our rules.[148]

(ii) Other Concerns

48. *Separations*. We also note that subsequent regulatory events may give us reason to modify this forbearance with respect to Part 36 separations rules. The on-going work by the Federal–State Joint Board on Separations has a broad referral from the Commission, and may recommend reforms to the jurisdictional separations process.[149] Section 10 of the Act does not permit us to defer forbearance decisions by reference to a different regulatory process, as some commenters have requested.[150] We highlight, however, that the scope of separations reform and its applicability to price cap or other carriers is a subject for the Joint Board to address in its recommended decision. In taking any subsequent action, such as in a rulemaking to implement the Joint Board's recommendations on separations reform, the Commission may reach different decisions.[151]

49. *State Need for Cost Assignment Rules*. We disagree with commenters contending that forbearance should be denied, or corresponding conditions should be adopted, solely on the basis of states' need for the Cost Assignment Rules.[152] As the Commission explained in the *AT&T Cost Assignment Forbearance Order*, "we do not in this Order preempt any state accounting requirements adopted under state authority."[153] Similarly here, we do not preempt states' ability to establish intrastate cost allocations for its own purposes, and our forbearance from the Cost Assignment Rules does not otherwise affect a state's ability to do so.[154] In the *AT&T Cost Assignment Forbearance Order*, the Commission stated that "[w]e believe that AT&T, working cooperatively with the state commissions in

[147] *See AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7319-20, para. 31; *ARMIS Forbearance Order*, 23 FCC Rcd at 13661, para. 24.

[148] The Chief of the Bureau has delegated authority to "[d]evelop and administer rules and policies relating to incumbent local exchange carrier accounting." 47 C.F.R. §§ 0.91(e), 0.291.

[149] *See*, *e.g.*, *Jurisdictional Separations and Referral to the Federal–State Joint Board*, CC Docket No. 80-286, Report and Order, 27 FCC Rcd 5593 (2012).

[150] *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7309, para. 13; CPUC Comments at 8; Larry S. Landis Comments at 3; Pennsylvania PUC Reply at 11.

[151] The Commission may reach certain decisions with respect to implementing the Joint Board's recommendations on separations reform, notwithstanding comments to the contrary in the record. *See* AT&T Reply at 24 n.57 ("But in any event, any jurisdictional separations reforms currently being considered would not apply to carriers, such as AT&T, that have secured forbearance from the Commission's jurisdictional separations rules."). As the D.C. Circuit has pointed out, the Commission remains free to revisit its forbearance decisions, including grants. *See Earthlink, Inc. v. FCC*, 462 F.3d 1, 12 (D.C. Cir. 2006).

[152] *See*, *e.g*., Consumer Advocates Comments at 23-26.

[153] *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7321, para. 33.

[154] *See AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7320-22, paras. 32-35. The Commission explained it does not have the authority under sections 2(a) and 10 of the Act to maintain federal regulatory requirements that meet the three-prong forbearance criteria for interstate services in order to maintain regulatory burdens that may produce information helpful to state commissions for intrastate regulatory purposes solely without a federal purpose. *Id*. at 7321, para. 32. At the same time, we expect that, similar to the precedent set with AT&T, price cap carriers will work with state commissions so that they will be able to obtain intrastate revenue data and all cost accounting information from the carriers needed for state regulatory purposes following forbearance from the Cost Assignment Rules. *See id*. at 7321-22, para. 34. Moreover, as noted above, forbearance does not prevent states from obtaining such data pursuant to state law.

its region, can develop methods of separating costs, satisfying any remaining need states have for jurisdictional separations information."[155] AT&T confirmed that this arrangement has worked since 2008.[156] We also recognize that some price cap carriers have operating companies that are regulated on a rate-of-return basis on the state level or for whom alternative regulation periodically requires cost-based accounting data.

50. We likewise disagree with commenters contending the Cost Assignment Rules are necessary to support a federal role in intrastate ratemaking, such as with respect to UNE and resale pricing under section 251, which we noted in the *AT&T Cost Assignment Forbearance Order*.[157] Thus, we reiterate our conclusion that denying forbearance from the Cost Assignment Rules based solely on state needs would be inappropriate. However, we remind price cap carriers that section 251 of the Act requires such carriers "to continue to provide to state commissions, on request, any accounting data that states need to implement our pricing methodologies."[158] We emphasize that forbearance adopted herein does not impact the states' ability to require carriers to submit such data.

51. *Other Relief Using Cost Assignment Data*. We note that there still may be instances in which a price cap carrier seeks relief from the Commission that requires supporting cost assignment data. In such instances, the burden is on the carrier to retain data sufficient to make the required showing to the Commission in support of such a carrier-initiated request. For example, a separations study would be required if carriers seek additional support under our Total Cost and Earnings Review (TCER) waiver process adopted in the *USF/ICC Transformation Order*.[159] Under the TCER process, ILECs may request a waiver and seek additional support beyond that already provided by the existing recovery mechanism. Thus, price cap carriers that request a TCER must retain the records needed to undergo a separations study consistent with the terms of the *USF/ICC Transformation Order*.[160]

(iii) Petitions for Reconsideration

52. We deny three petitions requesting that the Commission reconsider its decisions to grant forbearance from the Cost Assignment Rules to AT&T, Qwest, and Verizon.[161] We agree with

[155] *Id*. at 7316-17, para. 25.

[156] AT&T Reply at 23 ("Indeed, since that order, AT&T has fully cooperated with the handful of state commissions that have requested information and has been able to fulfill their regulatory needs.").

[157] *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7322, para. 35; *see*, *e.g*., Consumer Advocate Comments at 21-22.

[158] *Id*.

[159] *USF/ICC Transformation Order,* 26 FCC Rcd at 17996-18002, paras. 924-32.

[160] We note that USTelecom has not requested forbearance from the TCER waiver standard. With respect to the separations study, the *USF/ICC Transformation Order* noted: "Although this is a burdensome requirement, it is not unduly so given the importance of protecting consumers and the universal service fund." *Id*. at 18002, para. 932. We note that, as a condition of forbearance from the Cost Assignment Rules, AT&T, Qwest and Verizon filed compliance plans to satisfy the Commission's requirement to provide accounting and cost allocated data if the Commission determines such data are necessary for federal regulatory rules. *See, e.g.,* AT&T Compliance Plan at 11-13.

[161] Two of these petitions request that the Commission reconsider its decision in the *ARMIS Forbearance Order* granting forbearance from the Cost Assignment Rules to Qwest and Verizon. *See* AdHoc Telecommunications Users Committee Petition for Reconsideration, WC Docket Nos. 08-190, 07-139, 07-204, 07-273 and 07-21 (filed Oct. 6, 2008) (AdHoc Oct. 26 Petition); *see also* Sprint Nextel Corporation, COMPTEL, tw telecom inc., and One Communications Corp. Petition for Reconsideration, WC Docket Nos. 07-21, 07-204 and 07-273 (filed Oct. 6, 2008) (Joint Oct. 26 Petition). The third petition requests that the Commission reconsider its decision in the *AT&T*

(continued....)

commenters that petitioners have not presented any new or compelling arguments that persuade us to reconsider those decisions.[162] After reviewing the petitions, we find that petitioners raise issues that the Commission addressed in the 2008 *Cost Assignment Forbearance Orders* and also elaborates on elsewhere in this Order.

53. Although generally mirroring the conditions the Commission adopted in the *AT&T Cost Assignment Forbearance Order*, this Order provides additional explanations of the protections that are afforded by the Commission's conditional requirement that carriers retain their Part 32 Uniform System of Accounts, which applies to AT&T, Qwest, and Verizon as well as the other price cap carriers that are granted forbearance from the Cost Assignment Rules.[163] The Commission thus ensures its ability to obtain the underlying data necessary to reconstruct information to determine whether improper cost accounting has occurred or to make determinations about just and reasonable rates where the Commission finds competition is not constraining rates, should it need to do so in the absence of the Cost Assignment Rules.

54. In particular, the Commission has considered and responded to petitioners' claims that, contrary to the Commission's findings, the Cost Assignment Rules are necessary for several reasons, including guarding against possible exercise of market power;[164] complying with the *Section 272 Sunset Order*;[165] adjusting rates subject to price cap regulation, including special access;[166] evaluating exogenous cost relief and jurisdictional and intercarrier compensation reform;[167] aiding state regulatory functions;[168] enforcing section 208 complaints,[169] and ensuring compliance with section 254(k).[170]

(Continued from previous page)
Cost Assignment Forbearance Order granting forbearance from these same rules to AT&T. Sprint Nextel Corporation, COMPTEL, AdHoc Telecommunications Users Committee, and Time Warner Telecom Inc. Petition for Reconsideration, WC Docket Nos. 07-21 and 05-342 (filed May 27, 2008) (Joint May 27 Petition). All three petitions for reconsideration raise essentially the same or related issues.

[162] *See*, *e.g.*, Opposition of Verizon to Petition for Reconsideration, WC Docket Nos. 07-21, -05-342 (filed June 11, 2008).

[163] *See infra* Section III.B.4.

[164] *See*, *e.g.*, Joint May 27 Petition at 5; *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7314-17, paras. 21-26; *see also infra* Section III.B.4.

[165] *See*, *e.g.*, Joint May 27 Petition at 12-15; *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7317-19, paras. 26-29; *see also infra* Section III.B.4.

[166] *See*, *e.g.*, Joint May 27 Petition at 6-10; *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7312-13, paras. 18-19, and 7326-27, para. 45; *see also infra* Section III.B.4.

[167] Joint May 27 Petition at 11-12; *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7326-27, para. 45; *see also supra* para. 51.

[168] *See*, *e.g.*, Joint May 27 Petition at 12; *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7320-22, paras. 32-35; *see also infra* para 63.

[169] *See*, *e.g.*, Joint May 27 Petition at 22-24; *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7311-12, paras. 16-18, and 7315, para. 22; *see also infra* Section III.B.4. Petitioners express concerns that the Commission's decisions will adversely affect the public availability of information needed for parties to bring a section 208 complaint challenging a rate under section 201. Joint May 27 Petition at 23-24. We emphasize that our formal complaint and discovery rules are designed to ensure that parties acting in good faith are not denied the ability to file complaints. 47 C.F.R. §§ 1.720-1.736.

[170] *See*, *e.g.*, Joint May 27 Petition at 16-18; *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7319, para. 30; *see also infra* Section III.B.4.

55. In conditionally forbearing from the Cost Assignment Rules, the Commission carefully balanced its obligation to remove costly, overly broad, and outmoded requirements and burdens in response to changes in markets and regulatory needs, against preserving requirements or creating a less costly and administratively burdensome alternative that enables it to ensure just and reasonable rates, protect consumers, and act in the public interest. Contrary to petitioners' assertions, the conditions and safeguards, which were implemented in compliance plans subject to the Commission's approval, enable us to properly strike this balance and are responsive to petitioners' concerns.[171] In sum, we believe the modified regulatory framework created by the conditions imposed by the Commission sufficiently address the issues petitioners have raised. Accordingly, we affirm the Commission's decisions granting conditional forbearance from the Cost Assignment Rules to AT&T, Qwest, and Verizon.

4. Part 32 Uniform System of Accounts

a. USTelecom's Request

56. USTelecom requests forbearance from the Part 32 Uniform System of Accounts (USOA) for all price cap carriers.[172] USTelecom claims that "there is no clear use for or relevance to the Part 32 information being collected; [it] imposes requirements that in some cases duplicate and in other cases conflict with GAAP; and [it] distorts competition by being applicable only to one subset of service providers."[173] USTelecom also asserts that "Part 32 requirements serve no regulatory purpose."[174]

b. Background

57. The USOA was adopted pursuant to section 220 of the Act, which requires the Commission to "prescribe a uniform system of accounts for use by telephone companies."[175] It was originally adopted in 1935 as Parts 31 and 33 of the Commission's rules and was subsequently replaced with the current Part 32 USOA in 1986.[176] The current USOA is "a historical financial accounting system that reports the results of operational and financial events in a manner which enables both management and regulators to assess these results."[177] The USOA provides a consistent framework for recording and reporting a company's balance sheet, revenues, and expenses.

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[171] Contrary to petitioners' assertions, the Commission has fully explained, in the *AT&T Cost Assignment Forbearance Order* as well as elsewhere in this Order, why the compliance plans can be relied upon to replace the Cost Assignment Rules.

[172] USTelecom Petition at 34-43. Specifically, USTelecom requested forbearance for all price cap carriers from § 220(a)(2) of the Act, Part 32 subparts A-G of the Commission's rules, and the prior approval requirement of changes in statistical sampling processes. USTelecom Petition, App. A at A-8, A-9. Given our determination elsewhere in this Order to forbear conditionally from the Commission's Cost Assignment Rules for price cap carriers not previously granted forbearance, including sections 32.23 and 32.27 of our accounting rules (*see supra* Section III.B.3), we exempt these sections from our review of Part 32 here.

[173] *Id*. at 35.

[174] *Id*. at 37.

[175] 47 U.S.C. § 220(a)(2).

[176] *Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies (Parts 31, 33, 42, and 43 of the FCC's Rules*), CC Docket No. 78-196, Report and Order, 60 RR2d 1111 (1986).

[177] 47 C.F.R. § 32.1.

c. **Discussion**

58. As an initial matter, USTelecom argues that "the Commission 'shall forbear' from the continued application of rules that are 'not necessary for a current, federal need.'"[178] We note that in determining whether forbearance is warranted under section 10, we perform the analysis specified by the terms of that statutory provision. The Commission previously has considered whether there must be a current need to determine that a rule is "necessary" under the first two prongs of the three-part section 10 forbearance test.[179]

59. For the reasons discussed below, we find that USTelecom has not demonstrated that Part 32 is not necessary to ensure that charges and practices are just and reasonable, that Part 32 is not necessary for the protection of consumers, and that forbearance from Part 32 would be consistent with the public interest. Therefore, we find that forbearance from the Part 32 Uniform System of Accounts is not warranted under the section 10 criteria.

60. A uniform accounting system has historically been the linchpin of the Commission's ability to ensure reasonable rates for residential and business services and to perform a number of other statutory responsibilities. The Commission has previously stated that "protecting ratepayers from unjust and unreasonable interstate rates . . . is the purpose behind all of our accounting . . . rules."[180] The Part 32 USOA has been the necessary precondition for previous forbearance grants, including our conditional grants of forbearance from the Cost Assignment Rules for the BOCs in 2008.[181] Despite the considerable changes that have taken place in Commission regulations in recent years, our review of the record in this proceeding leads us to conclude that retaining a uniform accounting system remains important to the Commission's ability to conduct its oversight, investigatory, and regulatory responsibilities.[182]

(i) **Section 10(a)(1): Just and Reasonable Rates**

61. Under the first prong of our forbearance analysis, section 10(a)(1) requires the Commission to determine whether the Part 32 accounting rules are "necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with [price cap carriers] are just and reasonable and are not unjustly or unreasonably discriminatory."[183] USTelecom contends that "Part 32

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[178] USTelecom April 18, 2013 *Ex Parte* Letter at 2 ("[N]one of those purported justifications constitutes a 'current federal need' for the rules in question, which is the standard adopted by the Commission in applying the section 10 forbearance test.").

[179] *AT&T Cost Assignment Forbearance Order,* 23 FCC Rcd at 7313-14, para. 20 (concluding that a rule is not "necessary" under section 10(a)(1) where there is not a current need, and citing *Cellular Telecommunications & Internet Ass'n v. FCC*, 330 F.3d 502, 512 (2003), which was interpreting the term "necessary" in the context of section 10(a)(2)). As explained in this section, the Commission has "ongoing needs" for the regulations in question; we therefore disagree with USTelecom that there is no current need. *See generally* USTelecom April 18, 2013 *Ex Parte* Letter.

[180] *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities; Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and their Affiliates*, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, at 1303, para. 37 (1987), *petition for review denied*, *Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990).

[181] *See AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7314, para. 21; *ARMIS Forbearance Order*, 23 FCC Rcd at 13662, para. 27, n.82.

[182] *See* Consumer Advocates Comments at 21 ("Consistent and uniform reports are essential tools for diverse regulatory purposes.").

[183] 47 U.S.C. § 160(a)(1).

requirements are unnecessary to ensure that price cap carriers charge just, reasonable, and nondiscriminatory rates."[184] Other commenters, however, underscore the continued importance of Part 32 accounting rules.[185]

62. We recognize that, in certain respects, price cap regulation and our reform of universal service and intercarrier compensation have altered the manner in which accounting data may be used. USTelecom has not, however, offered evidence to show that those reforms have eliminated the need for Part 32 accounting data. We identify below, consistent with the first prong of our forbearance analysis, a variety of current circumstances for which the Commission relies on Part 32 accounting to ensure just and reasonable rates.[186] Given these uses and the benefits of Part 32 rules in general, including providing uniformity and continuity in the Commission's accounting data,[187] we find that USTelecom has not shown that the data are unnecessary or that there are less burdensome alternatives to accomplish these responsibilities.

63. *Pole Attachments*. The Commission regulates pole attachment rates under section 224 of the Act and depends on data developed from Part 32 accounts to calculate and verify the reasonableness of pole attachment rates.[188] These data are routinely relied on by parties both in private negotiation of pole attachment rates and in pole attachment complaint filings.[189] For example, the Commission's rules require a party filing a pole attachment rate complaint to include cost data "based on historical or original cost methodology" and "derived from ARMIS . . . or other reports filed with state or federal regulatory agencies."[190] The cost data for pole attachment rates come from various Part 32 accounts (*e.g*., gross pole investment, gross plant investment, accumulated depreciation—poles, maintenance expense—poles,

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[184] USTelecom Petition at 37 ("Part 32 has no bearing on the rates charged by price cap carriers."). Several commenters echo these assertions. AT&T Reply at 22 ("These rules were designed for a rate-of-return era that has long since passed."); CenturyLink Comments at 5 ("Many of the rules covered by the Petition are holdovers from the long-past days when rate-of-return regulation was the norm in the telecommunications industry, including Part 32."); ACS Comments at 5; Cincinnati Bell Comments at 9; USTelecom Reply at 21; Verizon Comments at 13 ("It is now apparent that Part 32 information is not needed by the Commission to conduct its routine business.").

[185] Sprint Opposition at 4 ("[I]t is critical that the Commission retain the ability to review the cost and other information currently recorded and reported by ILECs in order to fulfill its statutory obligation of ensuring that customers obtain service at just and reasonable rates."); CCIA Reply at 3-4; NCTA Comments at 3; NARUC April 22, 2013 *Ex Parte* Letter at 3-4 ("A number of State commissions and a State public utility commissioner have timely and actively opposed USTA's request for the elimination of the Part 32 USOA requirements for price cap ILECs.").

[186] USTelecom asserts that the Commission has not requested the data maintained in the 2008 compliance plans. *See*, *e.g*., USTelecom Petition at 37. As we detail in this section, however, the Commission has had a number of on-going uses for the Part 32 data the carriers committed to maintain.

[187] *See infra* para. 72.

[188] 47 U.S.C. § 224. Certain states have asserted jurisdiction over pole attachment rates pursuant to section 224(c). *See* 47 U.S.C. § 224(c). As noted in Section III.B.7 *infra*, price cap carriers are generally not required to submit to the Commission pole attachment data for those states. *See infra* para. 109; *see also Qwest ARMIS Forbearance Order*, 23 FCC Rcd at 18491, para. 14.

[189] Under the Commission's rules, pole attachment rates are set in the first instance through private negotiation using cost data reported by carriers. In the event that negotiations are unsuccessful, attaching parties may file a complaint with the Commission based on the same cost data. *See* 47 C.F.R. Part 1, Subpart J.

[190] 47 C.F.R. § 1.1404(g)(2).

etc.).[191] When the Commission granted forbearance to three price cap carriers from filing ARMIS Report 43-01, which contains cost data for rate calculations required by its pole attachment rules, it did so on the condition that those carriers continue to publicly file the relevant revenue and expense data.[192] Without ongoing access to the data derived from Part 32 accounts, neither the Commission nor interested parties could ascertain or verify that pole attachment rates based on the Commission's rate formula reflect actual costs, or that these calculations produce just and reasonable rates in accordance with our rules.[193]

64. Moreover, the Commission has used Part 32 data to modify the formula by which telecom rates for pole attachments are calculated. Specifically, in the *2010 Pole Attachment Order and NPRM*, which implemented recommendations of the National Broadband Plan, the Commission sought to modify the telecom rate for pole attachments. In so doing, the Commission sought comment on a specific rate proposal based on an analysis of incumbent LEC pole attachment rates that was calculated using publicly filed Part 32 account cost-related data.[194] The Commission ultimately adopted a modified form of its proposal as the new telecom rate for pole attachments the following year.[195]

65. USTelecom contends that the Commission's pole attachment rules do not require the use of Part 32.[196] However, we expressly conditioned forbearance from our ARMIS financial reporting requirements on "the continued annual public filing . . . of the pole attachment cost data currently filed as part of ARMIS Report 43-01."[197] In that proceeding, the Commission considered whether that "data in alternative forms filed with the Commission would be sufficient" but concluded that "[t]he record does not reveal other sources of such data that would meet that standard [set by our rules] and could be used today in the absence of the ARMIS data."[198] Similarly, in this proceeding, the record contains no

[191] In 2000 and 2001, the Commission established the Part 32 accounts used in calculating pole attachment rental rates for poles owned by local exchange carriers. *See Amendment of Commission's Rules and Policies Governing Pole Attachments*; *Implementation of Section 703(e) of the Telecommunications Act of 1996,* CS Docket Nos. 97-98, 97-151, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12122-27, paras. 32-42, 12155-59, paras. 108-15 (2001).

[192] *Qwest ARMIS Forbearance Order*, 23 FCC Rcd at 18490-91, para. 13. *See*, *e.g*., Letter from Linda Vandeloop, Director-Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-204 (filed Apr. 2, 2012).

[193] *See* NCTA Comment at 3-4. USTelecom concedes this need elsewhere in its petition by expressly conditioning its request for forbearance from ARMIS 43-01 reporting requirements "subject to the same conditions as adopted in the *Qwest Forbearance Order*." USTelecom Petition at 52. That Order conditioned forbearance on the "continued annual public filing, without any assertion of confidentiality, of the pole attachment cost data currently filed as part of ARMIS Report 43-01 in WC Docket No. 07-204." *Qwest ARMIS Forbearance Order*, 23 FCC Rcd at 18490-91, para. 13.

[194] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future,* WC Docket No. 07-245, GN Docket No. 09-51, 25 FCC Rcd 11864, 11923, para. 140 n.378 (2010) (*2010 Pole Attachment Order and NPRM*) (explaining the calculation and analysis in App. A).

[195] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future,* WC Docket No. 07-245, GN Docket No. 09-51, 26 FCC Rcd 5240, 5298-5305, paras. 135-52 and n.456 (2011) (*2011 Pole Attachment Order*) (referencing the Commission's rate calculations using Part 32 data from ARMIS that formed the basis of its telecom rate proposal).

[196] USTelecom April 18, 2013 *Ex Parte* Letter at 4-6.

[197] *Qwest ARMIS Forbearance Order*, 23 FCC Rcd at 18490-91, para. 13.

[198] *Id.*

reference to alternative sources of pole attachment data that would meet the standard set by our rules.[199] USTelecom's suggestion that price cap carriers could provide the same expense information using GAAP accounting would actually alter the rates price cap carriers charge for pole attachments since GAAP treatment of certain pole attachment expenses differs from that of Part 32.[200]

66. *Section 272(e)(3) Imputation*. Section 272(e)(3) of the Act requires a BOC that offers integrated interexchange service to "impute to itself . . . an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service."[201] In the *Section 272 Sunset Order*, the Commission permitted BOCs to offer interexchange and exchange access services on a vertically integrated basis, contingent on those carriers' compliance with cost allocation rules that would prevent improper cost shifting, and on their inclusion of section 272 imputation charges in the relevant Part 32 account.[202] Though the Commission subsequently relieved the BOCs from compliance with the Cost Assignment Rules, that forbearance was conditioned on the carriers' continued maintenance of Part 32 accounting and continued imputation as required by section 272(e)(3) using data from the relevant Part 32 accounts to ensure against the threat of cross subsidization identified in the statute.[203]

67. *Section 254(k) Compliance.* Section 254(k) of the Act prohibits a telecommunications provider from "us[ing] services that are not competitive to subsidize services that are subject to competition."[204] As discussed above, we condition our forbearance from the Cost Assignment Rules on a requirement for price cap carriers to certify, on an annual basis, that they have complied with section 254(k) of the Act, and will maintain and provide any requested cost accounting information necessary to prove such compliance in the event of an administrative action, investigation, or audit.[205] Absent continued retention of Part 32 data, the Commission would be unable to verify the accuracy of that data.

68. We note further that we have relied on the continuing application of the Part 32 accounting rules to justify reducing or eliminating other requirements in this Order and in prior

[199] The flexibility that our rules allow was intended to facilitate compliance with our rules by non-ILECs that are not subject to the requirements of Part 32. *See* 47 C.F.R. §§ 1.1404(g)(2), (h)(2).

[200] *See* USTelecom May 3, 2013 *Ex Parte* Letter at 4. USTelecom cites "(1) depreciable lives; (2) accounting for retirement of equipment and other facilities, including obsolescence, cost of removal and salvage; (3) capitalization limits and (4) the tax effects of these differences" as "areas that give rise to significant Part 32/GAAP differences." *Id.* We will explore more fully the suggestions USTelecom makes in its *ex parte* regarding possible modification of GAAP pole attachment data in the context of a future NPRM on Part 32. *See infra* para. 77.

[201] 47 U.S.C. § 272(e)(3).

[202] *Section 272 Sunset Order*, 22 FCC Rcd at 16486-87, para. 94, 16491-92, para. 104 (2007).

[203] *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7318-19, para. 29 ("AT&T 'will continue to journalize revenue to Account 5280' as required by section 32.5280(a) of the Commission's rules."). We decline USTelecom's proposal that we replace this familiar and commonly understood accounting requirement with a commitment to create an ill-defined "annual subaccount/identifier or other record" to account for these transactions. USTelecom April 18, 2013 *Ex Parte* Letter at 7. We extend this requirement to all price cap carriers as a condition of granting forbearance from the Cost Assignment Rules. *See supra* Section III.B.3.

[204] 47 U.S.C. § 254(k).

[205] *See supra* para. 45. This is similar to the conditional forbearance granted to AT&T, Verizon and Qwest. *See*, *e.g., AT&T Cost Assignment Forbearance Order,* 23 FCC Rcd at 7319, para. 30. This certification and record-retention obligation qualifies as an "information collection" subject to the approval of the Office of Management and Budget under the terms of the Paperwork Reduction Act of 1995.

forbearance orders.[206] If we were to forbear from the Part 32 rules, we would need to consider the impact of such forbearance on the protections such conditions were imposed to address in those decisions. For example, when the Commission granted forbearance from the Cost Assignment Rules and ARMIS reporting requirements, it made clear that it would not have granted that forbearance absent the existence of our Part 32 accounting rules and the data they generate.[207] Indeed, we rely on compliance plans filed by each carrier that obtained relief to explain the transition process it would undertake without the Cost Assignment Rules and ARMIS rules to "maintain its accounting procedures and data in a manner that will allow it to provide usable information on a timely basis if requested by the Commission" for regulatory purposes.[208] The Commission concluded that there may be a "federal need for this accounting information in the future to adjust our existing price cap regime or in our consideration of reforms moving forward."[209] Additionally, it asserted that the Commission "will have continuing responsibilities under the Act to ensure that rates are just and reasonable, and not unjustly or unreasonably discriminatory, and we need the tools, possibly including accounting data, to accomplish our statutory responsibilities."[210] Accordingly, the Commission "expressly condition[ed]" forbearance "on the provision by AT&T of accounting data on request by the Commission. . . . Thus, this USOA account data will continue to be maintained and available to the Commission on request."[211]

69. As discussed above, the Commission has various ongoing needs for Part 32 accounting data to ensure just, reasonable, and nondiscriminatory charges, practices, classifications, and regulations, which USTelecom has failed adequately to address.[212] We thus find that USTelecom has not met its burden of establishing that Part 32 accounting rules as a whole are not necessary to ensure that price cap carriers' rates are just and reasonable and are not unjustly or unreasonably discriminatory.

(ii) Section 10(a)(2): Protection of Consumers

70. Section 10(a)(2) of the Act also requires the Commission to determine whether the enforcement of its Part 32 accounting rules for price cap carriers is "not necessary for the protection of

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[206] *See supra* Section III.B.3; *infra* Section III.B.7; *supra* n.186.

[207] *See AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7325, para. 41 (discussing the Commission's significant reliance on Part 32 USOA as a condition for granting forbearance from the Cost Assignment Rules), and *id*. at 7326, para. 44 (referencing "the modification of our regulatory framework" in conjunction with "compliance with our remaining rules and conditions"); *see also Qwest ARMIS Forbearance Order*, 23 FCC Rcd at 18490-91, paras. 12, 15.

[208] *See AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7319-20, para. 31; *see also*, *e.g.*, Verizon Compliance Plan at 2-3.

[209] *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7313, para. 19. Even under price cap regulation, allegations of unjust, unreasonable, or unreasonably discriminatory rates can arise. In anticipation, the original *Price Cap Order* emphasized the Commission's section 208 enforcement responsibilities ("our investigation and complaint processes will remain important tools in ensuring just, reasonable, and non-discriminatory rates"). *Price Cap Order*, 5 FCC Rcd at 6836, para. 406. The requisite accounting data could be necessary to evaluate such allegations. Such assertions have been made, for example, with regard to certain special access rates. *See*, *e.g.*, *2005 Special Access NPRM*; *Special Access for Price Cap Local Exchange Carriers*; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM 10593, Report and Order, 27 FCC Rcd 10557 (2011) (*Pricing Flexibility Suspension Order*).

[210] *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7314, para. 21.

[211] *Id*.

[212] *See supra* paras 61-72.

consumers."[213] USTelecom asserts that price cap regulation provides sufficient protection for consumers in the absence of Part 32 accounting rules, stating that "as the Commission has found, any remaining concerns about such cross-subsidization are adequately addressed by price cap regulations."[214] We disagree. In the same order cited by USTelecom, the Commission found that price cap regulation alone is insufficient to protect consumers, noting that "[w]e can only reach our conclusion that the three-prong forbearance test is satisfied because we impose conditions that mitigate factors that would otherwise lead us to conclude that the Cost Assignment Rules remain necessary under section 10."[215] Those conditions included the continued maintenance of Part 32 accounting.[216]

71. USTelecom asserts that other accounting systems and safeguards, such as GAAP, the Sarbanes-Oxley Act (Sarbanes-Oxley), and the Foreign Corrupt Practices Act (FCPA) that price cap carriers would remain subject to would "adequately protect" consumers if the Commission forbears from the Part 32 accounting requirements.[217] Based on the record before us here, we disagree. First, while GAAP accounting, for example, provides important protections to *investors* and assists federal agencies like the Securities and Exchange Commission in executing its financial oversight responsibilities, it is not designed to protect *ratepayers*, particularly from unjust and unreasonable rates. GAAP accounting is based on the central premise that notice and transparency are sufficient to protect investors.[218] The Commission's statutory duties to protect consumers are broader,[219] and USTelecom does not demonstrate why other accounting systems such as those mandated by GAAP, Sarbanes-Oxley, or the FCPA are sufficient to meet those broader duties. Second, other accounting systems such as GAAP, Sarbanes-Oxley, or the FCPA do not provide the same level of disaggregation of costs and geographic specificity

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[213] 47 U.S.C. § 160(a)(2).

[214] USTelecom Reply at 22.

[215] *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7314, para. 21.

[216] The *AT&T Cost Assignment Forbearance Order* relied on the continued maintenance of Part 32 accounting as a premise for granting forbearance: "AT&T states . . . its revenue can be identified by jurisdiction through the Part 32 accounts. Thus, this USOA account data will continue to be maintained and available to the Commission on request." *Id*.

[217] USTelecom Petition at 40*; see also* Verizon Reply at 13. *But see* Michigan PSC Reply at 10-11 ("But, the Petitioners neglect to mention that they have had great success in the individual states, and other jurisdictions, in reducing their reporting and regulatory requirements by arguing that the USOA accounting information is all reported at the federal level.").

[218] "The objective of general purpose financial reporting is to provide financial information about the reporting entity that is useful to existing and potential investors, lenders, and other creditors. . . ." Statement of Financial Accounting Concepts No. 8, Conceptual Framework for Financial Reporting (Financial Accounting Standards Board, 2010) at 1 (OB2) (*FASB Conceptual Framework*). "Other parties, such as regulators . . . also may find general purpose financial reports useful. However, those reports are not primarily directed to these other groups." *Id*. at 3 (OB10).

[219] The purpose of the Act is to regulate "interstate and foreign commerce in communication by wire and radio so as to make available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio, and for the purpose of securing a more effective execution of this policy by centralizing authority . . . and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication." 47 U.S.C. § 151.

that Part 32 provides.[220] The USOA is uniquely tailored to provide the financial data regarding telephone companies necessary for the Commission to fulfill its statutory obligations and protect consumers by ensuring that the rates consumers pay for telecommunications services are just and reasonable.

72. Moreover, Part 32 ensures uniformity of accounting in a way that other accounting systems such as those required by GAAP, Sarbanes-Oxley, or the FCPA do not. For example, GAAP accounting requires conformity to a set of principles but does not require uniform treatment of plant-specific assets as required by Part 32 (*e.g.*, aerial, underground and buried cable, central office switching, etc.). Uniformity in regulatory accounting is essential to conduct consistent, industry-wide analysis and oversight. For example, without uniform accounting data, the process of developing a forward looking cost model could be more complicated.[221] Additionally, the Commission will need a uniform accounting system to the extent it is to revisit price cap carriers' special access rates based on the CALLS Plan, which expired in 2005 but continues to govern such rates.[222] In contrast, the Financial Accounting Standards Board (FASB) identifies "comparability" as one of the core principles of GAAP accounting but distances itself from uniformity ("Comparability is not uniformity.").[223] Continuing to require compliance with Part 32 accounting rules also ensures data continuity, which enables industry analysis based on historical trends. We conclude, therefore, that USTelecom has failed to establish that Part 32 accounting rules are not "necessary for the protection of consumers."[224]

(iii) Section 10(a)(3): Public Interest

73. Section 10(a)(3) of the Act requires us to determine whether forbearance from Part 32 requirements is consistent with the public interest.[225] We conclude that forbearance from Part 32 is not in the public interest.

74. USTelecom alleges that forbearance from Part 32 will eliminate unnecessary regulatory costs that burden only a few competitors and would therefore be in the public interest. It asserts that, "forbearance from Part 32 would allow price cap carriers to . . . avoid incurring unnecessary costs associated with accounting rules that serve no regulatory purpose and to which only a limited number of

[220] For example, we are not aware of any GAAP requirement to disaggregate the various types of cable plant (aerial, underground, buried, etc.) nor are we aware of any GAAP requirement to report data according to study area, the basis on which tariffs are typically filed.

[221] *See* Consumer Advocates Comments at 26.

[222] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (2000) (*CALLS Order*), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel et al. v. FCC*, 265 F.3d 313 (5th Cir. 2001), *cert. denied, National Ass'n of State Utility Consumer Advocates v. FCC*, 535 U.S. 986 (2002); *on remand, Access Charge Reform; Price Cap Performance Review for LECs; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249 and 96-45, Order on Remand, 18 FCC Rcd 14976 (2003) (*CALLS Order on Remand*).

[223] *FASB Conceptual Framework* at 19 (QC23).

[224] 47 U.S.C. § 160(a)(2). USTelecom proposed that if the Commission were to forbear from Part 32, individual price cap carriers that elected that forbearance would commit to (1) retain the ability to map their GAAP accounting data to Part 32 accounts for five years and (2) produce data from the two calendar years immediately preceding a request by the Commission. USTelecom May 3, 2013 *Ex Parte* Letter at 2-3. We find, as discussed in para. 77, that a better approach is to undertake a rulemaking to examine on a full record what changes to Part 32 will meet the Commission's long term needs.

[225] 47 U.S.C. § 160(a)(3).

competitors are subject, which would serve the public interest."[226] Several price cap commenters generally cite the costs they incur in complying with Part 32, but there is little quantitative evidence in the record to estimate with any accuracy the costs that are attributable to compliance with Part 32 beyond normal GAAP accounting.[227] For example, USTelecom asserts a high-level estimate of burden for one carrier without providing the additional information necessary to enable us to assess the relevance of that estimate for the industry as a whole.[228] We are thus unable to objectively assess the overall burdens of our Part 32 rules. Moreover, USTelecom has not demonstrated that the costs saved by forbearing from this rule would outweigh the important uses described above, or that the savings would have any effect on competition.

75. Section 10 also requires us to determine whether forbearance from Part 32 accounting requirements will "promote competitive market conditions," including whether forbearance "will enhance competition among providers of telecommunications services."[229] Some price cap carriers contend that these additional costs impair price cap carriers' competitiveness, noting they are the only carriers to bear this burden in a competitive marketplace. Cincinnati Bell, for example, states that "only a handful of companies remain subject to these unique regulations" and that forbearance would place price cap carriers "on a more equal footing with their competitors who are not subject to these rules."[230] Other commenters, however, contend that Part 32 is essential to preserving certain pro-competitive aspects of our rules. For example, Consumer Advocates states, "[e]ffective competition depends on rivals' ability to obtain access to essential wholesale facilities at economically efficient, cost-based rates."[231] We have identified above how the Commission relies on the Part 32 rules to ensure that cable providers and other non-ILEC telecommunications service providers have access to ILECs' poles—network facilities that are key to these providers' ability to provide competition—at reasonable, cost-based rates.[232] We do not have enough evidence in the record to address these purposes, or demonstrate that these pro-competitive protections can otherwise be achieved if we forbear from the requirements. We thus find, on balance, that the Part 32 rules enhance competition which, in turn, benefits the public.

76. Although we are conscious of our obligation to reduce administrative burdens when possible, such decisions must be based on record evidence, which is lacking here. Accordingly, we

[226] USTelecom Petition at 42.

[227] The attempts that were made to quantify costs were insufficient. For example, Cincinnati Bell estimates that over 13% of its annual accounting budget is spent on personnel and systems to "maintain several legacy accounting systems solely to comply with Part 32, cost allocation, and property records rules." Cincinnati Bell Comments at 10. This estimate does not provide a financial context for this assertion, such as how much of the operating budget this affects, nor does it compare this cost to the total interstate costs of the company. ACS states that its "cost of maintaining two sets of books, one for financial and another for regulatory purposes, is extraordinarily high—as much as $1 million per year," but does not identify what fraction of these costs are incurred to maintain its regulatory accounts. ACS Comments at 4. *See also* USTelecom Petition at 46 (offering only general assertions about alleged efficiencies of VoIP and wireless providers). Thus, we cannot determine what any cost saving might be, much less whether it would be substantial or significant, or what effect it might have on allowing a carrier to compete more effectively.

[228] USTelecom April 18, 2013 *Ex Parte* Letter at 13.

[229] 47 U.S.C. § 160(b).

[230] Cincinnati Bell Comments at 10.

[231] Consumer Advocates Comments at 22.

[232] *See supra* paras. 63-65.

conclude that the benefit of maintaining Part 32 accounting rules outweighs their cost, making forbearance of Part 32 rules inconsistent with the public interest.[233]

77. As we recognize above, in certain respects, price cap regulation and our reform of universal service and intercarrier compensation have altered the manner in which accounting data may be used.[234] While we conclude that those reforms have not eliminated the need for accounting data, we acknowledge that further streamlining of our rules is likely appropriate. Accordingly, we intend to initiate a Notice of Proposed Rulemaking within 90 days and thereby conduct a comprehensive review of the Part 32 Uniform System of Accounts, as it applies to price cap carriers, and to evaluate the continuing role these rules play in fulfilling our statutory and regulatory obligations. This proceeding will give the Commission flexibility to consider ways to minimize the compliance burdens of our regulations while ensuring our continued access to the relevant financial information necessary to fulfill our duties.[235]

5. Property Record Rules

a. USTelecom's Request

78. USTelecom seeks forbearance for price cap carriers from a specific set of rules within the Part 32 USOA containing basic and continuing property record requirements in sections 32.2000(e) and (f).[236] USTelecom asserts that these requirements cause excessively detailed and unnecessary record-keeping.[237] USTelecom's petition initially requests relief only for price cap carriers.[238] USTelecom clarified subsequently that its request includes rate-of-return carriers.[239] Finally, the petition's appendix

[233] Our forbearance in Section III.B.7 of this Order from requiring mid-sized ILECs to file ARMIS Report 43-01 is consistent with and in part premised on our denial of forbearance from Part 32 here. Forbearing from a discrete reporting requirement is an altogether different matter than forbearing from the requirement that carriers keep consistent, uniform accounting data. Moreover, in the *Qwest ARMIS Forbearance Order,* we expressly premised forbearance from filing ARMIS Reports 43-01, 43-02 and 43-03 on the continued availability of Part 32 and other accounting data. *Qwest ARMIS Forbearance Order*, 23 FCC Rcd at 18489-90, para. 12. ("Qwest, AT&T, and Verizon remain subject to the Part 32 USOA requirements. Thus, this USOA account data will continue to be maintained and available to the Commission on request. Moreover, the Commission also expressly conditioned the forbearance granted in the *AT&T Cost Assignment Forbearance Order* and the *ARMIS Forbearance Order* on the provision by Qwest, AT&T, and Verizon of accounting data on request by the Commission").

[234] *See infra* para. 62.

[235] We distinguish the review we announce here from the current 2012 Biennial Review. *See Commission Seeks Public Comment in 2012 Biennial Review of Telecommunications Regulations*, CG Docket No. 13-29, EB Docket No. 13-35, IB Docket No. 13-30, ET Docket No. 13-36, PS Docket No. 13-31, WT Docket No. 13-32, WC Docket No. 13-29, Public Notice, 28 FCC Rcd 1556 (2013). That review is mandated by section 11 of the Act, which establishes a narrower standard by which the Commission is to review its rules ("determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition between providers of such service"). 47 U.S.C. § 11(a)(2).

[236] USTelecom Petition at 43-47, App. A at A-9 (seeking forbearance from basic and continuing property record (CPR) requirements in § 32.2000(e) and (f)).

[237] *Id*. at 43-47.

[238] "Regardless of whether the Commission forbears from applying its Part 32 to price cap carriers, the Commission should forbear from application to price cap carriers of its property record requirements." *Id*. at 43.

[239] "Even for carriers that continue to operate under rate-of-return regulation, the Commission's property record rules are unnecessary." *Id*. at 44.

requests relief for all carriers.[240] Accordingly, we take the opportunity here to address the application of these rules to rate-of-return carriers as well as price cap carriers.[241]

b. Background

79. Under these requirements, carriers maintain property records that include: (1) a description of the property; (2) its specific location; (3) the identification of the work order under which the unit was installed; (4) the year of installation; and (5) any other information necessary to determine the original cost of the property.[242] The rules also prescribe standards for establishing and maintaining continuing property records.[243] The requirements provide that the property be described in sufficient detail that the property may be spot-checked for physical verification of its existence.[244]

c. Discussion

80. We grant forbearance to price cap carriers from applying the property record requirements in section 32.2000(e) and (f) of the Commission's rules subject to certain conditions. We deny forbearance for rate-of-return carriers but seek to refresh the record in the open rulemaking related to property records in order to allow appropriate rule changes to reduce the burdens of property records rules on rate-of-return carriers.[245]

81. *Price Cap Carriers.* Property records serve an important purpose for rate-of-return and price cap carriers. We find, however, that we can "eliminate regulations that are 'outmoded' and 'excessively burdensome'"[246] here where the regulatory purpose of property records for price cap carriers may be achieved in a less burdensome, more targeted manner, given the differences between price cap and rate-of-return regulation. Thus, we take affirmative steps to reduce the burden of property record requirements for price cap carriers by granting conditional forbearance. These conditions provide the necessary assurances that will enable the Commission to meet its statutory responsibilities and enable price cap carriers to satisfy the forbearance standard. Accordingly, we grant forbearance subject to the condition that price cap carriers demonstrate in compliance plans that, in the absence of sections 32.2000(e) and (f), they will track their substantial assets and investment in an accurate, auditable manner that enables them to verify account balances in their Uniform System of Accounts and make such property record information available to the Commission upon request for regulatory purposes.

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[240] *Id*. App. A at A-9.

[241] *Forbearance Procedures Order*, 24 FCC Rcd at 9553, para 16 ("In particular, the petition must state the following with specificity: . . . each carrier, or group of carriers, for which forbearance is sought. . . ."). In a subsequent filing, USTelecom noted that it requested forbearance from CPR rules "on behalf of all incumbent local exchange carriers." USTelecom April 18, 2013 *Ex Parte* Letter at 1.

[242] 47 C.F.R. § 32.2000(e); *Ameritech Corporation Telephone Operating Companies' Continuing Property Records Audit*, CC Docket No. 99-117, Notice of Inquiry, 14 FCC Rcd 7019, 7020, para. 2 (1999).

[243] 47 C.F.R. § 32.2000(f).

[244] *See* 47 C.F.R. § 32.2000(e), (f).

[245] *2000 Biennial Regulatory Review*, *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection, Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting,* CC Docket Nos. 00-199, 97-212, 80-286, 99-301, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd 19911, 19987, para. 212 (2001) (*Property Records FNPRM*)).

[246] USTelecom May 3, 2013 *Ex Parte* Letter at 1; *see also* USTelecom Petition at 35.

82. Property records allow companies to track and account for their assets, although the detail of these records may vary depending on the purpose for which they are required.[247] Our USOA rules provide specific requirements for recording investment in property plant and equipment and for the underlying support the Commission needs in property record.[248] The continuing property records requirements of sections 32.2000(e) and (f) assure the Commission that amounts reflected in its Part 32 accounting system are accurate and auditable, and provide the Commission with certainty and uniformity of how accounting information is maintained.[249]

83. USTelecom does not argue that there is no need at all for property records but requests that price cap carriers be relieved of the degree of record-keeping detail required by the present rule.[250] It asserts that, in the absence of these requirements, price cap carriers could provide the Commission with the record-keeping it needs under other accounting systems, such as GAAP, Sarbanes-Oxley, or the FCPA.[251] USTelecom does not, however, sufficiently identify what these requirements are. GAAP, for example, provides only general accounting principles and concepts, and USTelecom has not explained how carriers would maintain their records, what information they would contain, or what would otherwise replace the present rule if forbearance is granted.[252] Neither does USTelecom address how it will be able to verify Part 32 USOA accounts.

84. Although we disagree with USTelecom's generalized assertions that other accounting safeguards, including GAAP, are sufficient to provide property records that ensure just and reasonable rates or protect consumers, we nevertheless believe that the property record requirements in sections 32.2000(e) and (f) are overly broad for purposes of regulating price cap carriers and not necessary to ensure just and reasonable rates.[253]

85. As explained below, property records for rate-of-return carriers provide the data necessary to validate and determine the costs of providing interstate telecommunications service, which enables the Commission to set just and reasonable rates.[254] The rates of price cap carriers, however, are constrained by the Commission's price cap methodology that, in combination with other protections, protects against the ability of price cap carriers to raise rates inappropriately.[255] Because price cap carriers' rates are generally not directly tied to costs reflected in the rate base in the same manner as the

[247] GAAP, for example, provides general accounting principles and does not address specific accounting procedures and record-keeping. *See*, *e.g*., *supra* Section III.B.4.

[248] Companies are required to account for investment in property, plant, and equipment in the 2000 series of accounts in Part 32. The requirements for maintaining basic property records and CPR are contained in, respectively, 47 C.F.R. § 32.2000(e) and (f).

[249] *See*, *e.g*., 47 C.F.R. § 32.2000(e)(2).

[250] USTelecom Petition at 44 ("Under price cap regulation, there is no need for a carrier to document the costs that make up its plant asset base to the extreme detail mandated by the Commission's rules.").

[251] *Id*. at 17, 44; USTelecom April 18, 2013 *Ex Parte* Letter at 14-15.

[252] In addition, the FCPA requires internal controls that allow companies to validate their assets but does not address specific requirements as to how these are to be implemented.

[253] *See*, *e.g*., USTelecom Petition at 44.

[254] *See infra* para. 90.

[255] *See*, *e.g*., 47 C.F.R. §§ 61.41-61.47.

rates of rate-of-return carriers, we recognize that it is not necessary to document those costs that make up the plant asset base of price cap carriers in the same degree of detail in property records.[256]

86. We thus grant forbearance to price cap carriers from the property record requirements, subject to certain conditions. We find that forbearance from sections 32.2000(e) and (f) is warranted subject to the ability of price cap carriers to demonstrate in compliance plans, to be approved by the Bureau, how they will maintain the records necessary to track substantial assets and investment in an accurate, auditable manner that enables them to verify account balances in their Part 32 Uniform System of Accounts, make such property information available to the Commission upon request, and ensure maintenance of such data.[257] This provides carriers with an opportunity to demonstrate precisely how, for example, "GAAP-compliant financial accounting would be available to provide such records," and will enable carriers to propose in their compliance plans what property constitutes substantial assets and investment and what does not for purposes of keeping records, verifying the accuracy of their Part 32 accounts, and complying with GAAP.[258] In addition, to the extent carriers propose to rely on requirements in the FCPA, Sarbanes-Oxley, or other accounting requirements as they have asserted, carriers should identify in their plans what specific rules and requirements they propose to replace which specific requirements in section 32.2000(e) and (f).

87. The relief granted in this Order will not become effective with respect to a price cap carrier unless and until the Office of Management and Budget approves any information collections associated with these conditions in accordance with the Paperwork Reduction Act[259] and the Bureau approves that price cap carrier's compliance plan. We delegate authority to the Chief of the Wireline Competition Bureau to prescribe the administrative requirements for the filing of the compliance plans and to approve the plans when the Bureau is satisfied that the plans fulfill the requirements set forth in this Order.[260] This delegation of authority to the Bureau is consistent with delegations in previous analogous forbearance orders[261] and with our rules.[262] Accordingly, we find that price cap carriers satisfy the first prong of the forbearance test as long as they satisfy these conditions.

88. We also find that the property record rules for price cap carriers are not necessary to protect consumers as long as carriers comply with these conditions. These conditions form the basis of an alternative framework for property records that, in the absence of the rules, helps the Commission protect consumers from unjust and unreasonable rates and practices.

89. Additionally, we find that forbearance serves the public interest. We find the rules are overly broad for price cap carriers, and the burden of the rules outweighs the benefits. Similar to the

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[256] As we have explained above, price cap regulation reduces incentives to shift non-regulated costs to regulated services, and to the extent incentives remain, price cap regulation in combination with the protections provided by conditions in carrier compliance plans subject to the Commission's approval will continue to ensure just and reasonable rates. *See supra* Section III.B.3.c.

[257] We note that our grant of conditional forbearance from sections 32.2000(e), (f) does not affect obligations by carriers to comply with other rules related to property records.

[258] USTelecom April 18, 2013 *Ex Parte* at 14.

[259] Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163.

[260] The Bureau will release a public notice or notices announcing the approval of the plans as it approves them.

[261] *See AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7320, para. 31; *ARMIS Forbearance Order*, 23 FCC Rcd at 13661, para. 24.

[262] The Chief of the Bureau has delegated authority to "[d]evelop and administer rules and policies relating to incumbent local exchange carrier accounting." 47 C.F.R. §§ 0.91(e), 0.291.

Commission's forbearance from the Cost Assignment Rules, we are able here to craft a less burdensome and more focused approach to accomplish the regulatory goals of requirements that were developed under rate-of-return regulation and needed to be updated. For example, the new framework allowing the carriers to identify the records necessary to accurately audit substantial assets and investments should provide greater flexibility in record-keeping.[263] As we also have found, this new framework ensures just and reasonable rates and protects consumers. For these reasons, we conclude that conditional forbearance from applying sections 32.2000(e) and (f) to price cap carriers is in the public interest.

90. *Rate-of-Return Carriers.* We find that USTelecom's forbearance request for rate-of-return carriers fails to establish that the property record requirements in question are not necessary to ensure just and reasonable and nondiscriminatory rates. With regard to rate-of-return carriers, the property record requirements provide the data necessary to validate and determine the costs of providing interstate telecommunications service, which enables the Commission to set just and reasonable rates.[264] Under rate-of-return regulation, these records provide information used to determine the costs of telecommunications networks and facilities that are considered to be interstate and allowable in the rate base.[265] In other words, the prices rate-of-return carriers are allowed to charge are directly tied to their costs, and verifying the accuracy of a rate-of-return carrier's reported costs thus directly impacts the reasonableness of the rates charged by rate-of-return carriers. The record here does not explain why the property record requirements are no longer necessary to meet these needs.[266] Thus, these records, like the

[263] USTelecom April 18, 2013 *Ex Parte* Letter at 14-15.

[264] The USOA accounts reflect total plant in service. *See* 47 C.F.R. § 32.2000(j) (listing various types of total plant investment, such as land, buildings, switching equipment, and cable and wire facilities). Property records provide the underlying information that validates certain financial accounts recorded in the Part 32 USOA. *See* 47 C.F.R.§ 32.2000(e) and (f) (requiring certain information to be provided in property records, including identifying what the property is and its vintage, location, and original cost). Using Part 64 rules, the total plant investment is divided between how much is used to provide regulated (as opposed to non-regulated) service. *See* 47 C.F.R. Part 64. Then, using Part 36 rules, the regulated plant investment is divided into how much is used to provide interstate (as opposed to intrastate) service. *See* 47 C.F.R. Part 36. The interstate portion of the plant investment goes into the interstate rate base, upon which a rate-of-return carriers' revenue requirement and rates are determined. *See* 47 C.F.R. §§ 65.800, 65.820.

[265] For example, the property records may be analyzed to determine detailed cost allocations of facilities in a network—like cable and wire facilities (Account 2410)—that are used to provide regulated services. *See*, *e.g*., 47 C.F.R. § 36.151(b) ("For separations purposes, it is necessary to analyze the cable and wire facilities classified in subordinate records in order to determine their assignment."). These records are required under § 32.2000(e)(4) and include the property records that provide detailed information about the accounts underlying Telecommunications Plant in Service (Account 2001), such as Cable and Wire Facilities (Account 2410), that are used for setting interstate rates. Section 32.2000(j) lists facilities and equipment that comprise the plant in service category of property records, including cable and wire in the above example. 47 C.F.R. § 32.2000(j). In addition, the Part 36 rules cite to location information contained in the CPR, 47 C.F.R. § 32.2000(e)(1)(i), (e)(2), that is used to perform the separations process for certain investments. 47 C.F.R. § 36.1(b).

[266] In its petition, USTelecom asserts that property records required by GAAP should replace Part 32 CPR but fails to identify what these property records are. *See* USTelecom Petition at 46. In a subsequent *ex parte* filing, USTelecom also argues that Part 32 CPR "far exceeds the record keeping necessary to verify the existence of plant assets and support the asset balances presented in financial statements" and notes only a few examples to compare property records under GAAP to Part 32. USTelecom April 18, 2013 *Ex Parte* Letter at 14-15. We find that USTelecom's attempt to justify its request by listing a few examples is insufficient evidence upon which to grant the broad relief requested. Moreover, USTelecom does not cite to specific property record or GAAP rules, and Commission staff has been unable to identify property record requirements pursuant to GAAP. Given the technical nature of these rules, USTelecom's general assertions are insufficient to allow us to conduct the kind of analysis

(continued....)

other accounting data in the USOA, are important to enable the Commission to determine what costs a rate-of-return carrier may recover from its customers, and thereby what interstate rates it is allowed to charge.[267]

91. For these same reasons, we find that USTelecom has not shown that these requirements are not necessary to protect consumers of rate-of-return carriers nor that forbearing from section 32.2000(e) and (f) for rate-of-return carriers would be in the public interest.[268] On the latter point, USTelecom asserts that the property records rule is burdensome because "compliance requires an unnecessary investment of resources by only a few competitors among many, which distorts competition."[269] As is the case for USTelecom's request to forbear from the other Part 32 Uniform System of Account rules, there is insufficient evidence in the record by USTelecom or other parties to show or quantify what costs are directly attributable to maintaining property records, again despite staff requests for such data. Given this, we cannot properly evaluate whether any costs saved by eliminating this rule would outweigh the several important uses described above, or whether the savings would have any effect on competition.

92. USTelecom asserts that burdens associated with the cost of maintaining property records related to capitalizing low-cost assets are too high and believes carriers should be allowed greater flexibility such as that provided under GAAP.[270] Although USTelecom has not demonstrated that forbearance from application of the property record requirements meets the forbearance test, we agree that continuing to apply the property record rules of 32.2000(e) and (f) may be more burdensome than necessary.[271] Accordingly, we find that it is appropriate to examine further whether there are changes we can make to our property records rules that would reduce record-keeping burdens for rate-of-return carriers by focusing on substantial assets and investments while maintaining sufficiently detailed records for the Commission's needs. The Commission has an open rulemaking on these issues. Comments were last filed in 2002, and significant regulatory and marketplace changes have occurred since that time. So that we may move forward on a full record on this issue, we seek updated comments and replies on the issues concerning changes to the property records rules raised in the open rulemaking on property records.[272] Comments will be due 30 days after and replies will be due 45 days after publication of the accompanying Report and Order in the Federal Register.[273] To ensure appropriate notice of our request to refresh the record, the Bureau will release a Public Notice restating this request to refresh the record and announcing the comment and reply dates once they have been established.

(Continued from previous page)
required under section 10 to find the forbearance criteria are satisfied with regard to the entire set of property record rules for rate-of-return carriers.

[267] *See*, *e.g.*, 47 C.F.R. § 65.800.

[268] USTelecom Petition at 44-6.

[269] *Id*. at 46.

[270] USTelecom April 18, 2013 *Ex Parte* Letter at 16.

[271] Note that we make no finding here of what constitutes substantial assets and investment for rate-of-return carriers but instead look forward to reviewing comments on that topic through the rulemaking process.

[272] *Property Records FNPRM*, 16 FCC Rcd 19911.

[273] *See infra* Section IV.

6. Part 42 Recordkeeping Requirements

a. USTelecom's Request

93. USTelecom requests forbearance for all carriers from several rules that impose record-keeping obligations. Specifically, USTelecom seeks forbearance from sections 42.4, 42.5, 42.7 and 42.10(a) of the Commission's rules.[274] USTelecom argues that these rules "impose inefficient recordkeeping and storage requirements."[275] USTelecom states that, "[w]hile it is important to maintain accurate records and to make sufficient information available to the Commission and the public, the rules in question refer to the maintenance of physical records or copies in obsolete formats."[276]

b. Background

94. Section 42.4 requires each carrier to maintain at its operating company headquarters a master index of records.[277] The rule predates the routine use of computerized recordkeeping, and thus appears to require maintenance of physical documents at a specific location. Section 42.5 sets forth requirements about how a carrier may "use a retention medium of its choice to preserve records in lieu of original records."[278] The rule sets forth options for how carriers may reproduce records.[279] Section 42.7 specifies how long records listed in the master index must be retained and when records must be added to the index.[280] Section 42.10(a) requires nondominant interexchange carriers (IXCs) to make information about their current rates, terms, and conditions available in at least one location during business hours.[281] Section 42.10(b) (from which USTelecom does not seek forbearance) requires that this information be made available on the IXC's website, if it maintains one.[282]

c. Discussion

95. We grant the forbearance requested regarding part 42 of our rules, except that we condition forbearance from section 42.10(a) as set forth below. Section 42.4 requires each carrier to maintain a master index of the records it keeps. The rule does not require carriers to maintain specific records. We find no need to continue the maintenance of a master index, in hard copy or any other form.

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[274] USTelecom further clarifies that it is "seeking forbearance from any obligation to maintain the 'master index of records' required under these rules, whether in paper or electronic format." Letter from Bennett L. Ross, Counsel for USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-61, at 1 (filed Jan. 31, 2013). No party specifically opposed this request.

[275] USTelecom Petition at 47; *see also* CenturyLink Comments at 3-4; Sprint Comments at 7-8 (both supporting USTelecom's petition for forbearance from these Part 42 rules). No party makes a specific argument against forbearance from these rules.

[276] USTelecom Petition at 47.

[277] 47 C.F.R. § 42.4.

[278] 47 C.F.R. § 42.5(a).

[279] 47 C.F.R. § 42.5.

[280] Section 42.7 requires carriers to retain records identified in the master index for the period established therein. It also requires "records pertaining to complaint proceedings" and records "that a carrier is directed to retain as the result of a proceeding or inquiry by the Commission" to be included in the master index of records. 47 C.F.R. § 42.7.

[281] 47 C.F.R. § 42.10(a).

[282] 47 C.F.R. § 42.10(b).

In the event that the Commission wants to know what records a carrier has, or obtain copies of a particular record, it has various means of doing so.[283]

96. We further find that, because we are no longer requiring carriers to maintain a master index, there is no longer a need for a rule specifying how long records listed in the master index must be retained and when records must be added to the index. Therefore, we also forbear from section 42.7 (the basic retention rule).

97. Section 42.5 addresses how records may be reproduced. USTelecom argues that this rule is no longer relevant because most records are currently created in, rather than copied to, an electronic format, and requiring certifications for every electronic record would waste resources and provide no corresponding benefit.[284] We agree with USTelecom that advances in technology have made these requirements outmoded, and that the rule does not reflect current practices. We thus forbear from application of section 42.5. Again, we emphasize that forbearance from these storage requirements does not relieve carriers of obligations to retain records as required by other sections of our rules.

98. We conclude that forbearance from application of section 42.10(a) is warranted for IXCs that maintain an Internet website, subject to one condition. Specifically, we condition this grant on a requirement that IXCs maintain and make available on their websites the information about the rates, terms, and conditions of their services.[285] IXCs that do not maintain Internet websites are required to continue to make this information available at physical locations consistent with section 42.10(a). In granting this conditional forbearance, however, we remind IXCs that some consumers do not have access to the Internet. Therefore, those carriers should facilitate and accommodate consumer requests when a consumer does not have Internet access. It is important to ensure that consumers continue to have access to this information to enable them to select services that meet their needs and to ensure compliance with the Act.[286] This condition is consistent with USTelecom's stated rationale for forbearance that eliminating the physical location element of the rule is appropriate because the same information is available through easier-to-access online websites.[287] It is also consistent with Sprint's recommendation.[288]

99. The Commission adopted the public disclosure rule to ensure that nondominant IXCs provide complete information about their rates, terms, and conditions, so customers would have sufficient information to choose calling plans that best meet their needs and enable them to bring potential violations of the Act to the Commission's attention.[289] As CenturyLink points out, the requirement that

[283] *See* 47 U.S.C. §§ 154(i), 218-220. We are not modifying or forbearing from any underlying obligation to retain records. Rather, we are forbearing from the requirement to maintain an index of any records the carrier is required to keep or keeps in the ordinary course of business.

[284] USTelecom Petition at 50. CenturyLink supports forbearance from this rule. CenturyLink Comments at 4, n.4.

[285] As written, § 42.10(b) only requires that such information be posted *if* the nondominant IXC maintains a website; the rule does not require the IXC to maintain a website. 47 C.F.R. § 42.10(b).

[286] *See*, *e.g.*, *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 Order on Reconsideration and Erratum, 14 FCC Rcd 6004, 6009-10, at para. 9 (1999) (*IXC Second Order on Reconsideration*).

[287] USTelecom Petition at 51.

[288] Sprint Comments at 7-8 ("the Commission should require records that previously were kept in a physical location . . . to be posted online where they will be more easily accessible to the public").

[289] *IXC Second Order on Reconsideration*, 14 FCC Rcd at 6009-10, para. 9 (citing *Policy and Rules Concerning the Interstate, Interexchange Marketplace*; *Implementation of Section 254(g) of the Communications Act of 1934, as*

(continued....)

providers maintain rate information about services at their offices arose before advances in electronic recordkeeping and more widespread Internet adoption.[290] For example, in 1999, when the rule was adopted, the Commission reported that broadband service, which provides high-speed access to the Internet, was in the early stages of deployment to residential customers, with only a .4 percent residential penetration rate.[291] The nation has made significant progress since that time, expanding broadband Internet access to approximately 94 percent of the population, with the Commission, other government agencies, and private industry taking steps to promote broadband deployment to those who still lack access.[292] These trends lend support to USTelecom's contention that customers are likely to obtain relevant information about an IXC's rates, terms and conditions from the IXC's Internet website rather than traveling to an IXC's office location.[293] The conditional forbearance we adopt here provides the public with more convenient means by which to access the same information.

100. We find that forbearance from the recordkeeping requirements as described and conditioned above is warranted under section 10. First, requiring carriers to maintain a master index, retain records in obsolete formats, and requiring IXCs to provide information in hard copy at their offices does not reflect current storage or consumer practices. It is not necessary to ensure just and reasonable rates, terms, and conditions for telecommunications services, subject to the conditions above. For the same reasons, under the second prong of our forbearance analysis, we find that these rules are not necessary to protect consumers, subject to the conditions noted.[294] Under the third prong of our forbearance analysis, we find that forbearance (from sections 42.4, 42.5 and 42.7) and conditional forbearance (from section 42.10(a)) is also in the public interest. In the circumstances here, where a petitioner has demonstrated that a requirement has become outdated by technology, we find the potential costs of maintaining such requirements are inconsistent with competitive market conditions and outweigh any potential benefits. As CenturyLink noted, "[u]nnecessary reporting and record keeping requirements

(Continued from previous page)
amended, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20745-46, at para. 25 (1996) (*IXC Second Report and Order*)).

[290] CenturyLink Comments at 3; *see also* USTelecom Petition at 48.

[291] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398, 2446, at para. 91 (1999).

[292] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 11-121, Eighth Broadband Progress Report, 27 FCC Rcd 10342, 10370, para. 46 (2012) (*Eighth Broadband Progress Report*) (finding that about 6% of the population lacks access to fixed broadband service at threshold speeds). Businesses and consumers have also shown an increased reliance on the Internet as an important source of business and information since the rule was adopted in 1999. Between 2002 and 2011, e-commerce sales have more than tripled. *See*, *e.g.*, U.S. E-COMMERCE SALES GROWTH FROM 2002 TO 2011 (2013), *available at* www.statista.com (showing an increase in e-commerce sales from $72 billion to $256 billion). The Internet has surpassed newspapers as the primary source of information for most consumers, to the point where 91% of online searchers say they always or most of the time find the information they are seeking when they use search engines. *Id.*; *see also* PEW INTERNET AND AMERICAN LIFE PROJECT REPORT, WHERE PEOPLE GET INFORMATION ABOUT RESTAURANTS AND OTHER LOCAL BUSINESSES (2012), *available at* http://pewinternet.org/Reports/2011/Local-business-info/Overview.aspx (stating that people looking for information about local businesses rely on the Internet ahead of any other source); KRISTEN PURCELL, JOANNA BRENNER AND LEE RAINIER, PEW INTERNET AND AMERICAN LIFE PROJECT, SEARCH ENGINE USE 2012, 3 (2013), *available at* http://www.pewinternet.org/Reports/2012/Search-Engine-Use.aspx.

[293] USTelecom Petition at 51.

[294] 47 U.S.C. § 160(a).

add to the expense of providing telecommunications services . . . [and] consume resources that could otherwise be invested in the network."[295] The conditional forbearance we grant promotes the wide availability of information to consumers, which is beneficial to competitive markets.[296] We therefore forbear from sections 42.4, 42.5, and 42.7. We forbear from section 42.10(a), subject to the conditions described above.

7. ARMIS Report 43-01 ("Annual Summary Report")

a. USTelecom's Request

101. USTelecom requests forbearance from the filing requirement for ARMIS Report 43-01, the "Annual Summary Report."[297] USTelecom notes that smaller carriers are not required to file ARMIS reports, and forbearance has been granted to the BOCs, so only mid-size price cap carriers remain subject to this filing requirement.[298] USTelecom asserts that forbearance for these carriers is warranted.[299]

b. Background

102. ARMIS Report 43-01 contains a highly aggregated and comprehensive view of the carrier's financial data, as well as a summary of demand in minutes of use and billable access lines. Since the adoption of price cap regulation in 1990, many carriers, including Qwest, AT&T, and Verizon, have moved from rate-of-return regulation to price cap regulation, and the Commission has modified its regulation of price cap carriers over time to reflect changing circumstances. The Commission has found that when interstate rates are regulated under price caps, the ARMIS Financial Reports are unnecessary.[300] The Commission has granted requests from AT&T, Verizon, and Qwest to forbear from the requirement to file ARMIS Report 43-01.[301] The Commission found that this Report, as well as ARMIS Reports 43-02 and 43-03, is not "'necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier . . . are just and reasonable and are not unjustly or unreasonably discriminatory'" or to protect consumers.[302]

103. The Commission concluded that the Report imposed burdens on AT&T, Verizon, and Qwest, and the information collected no longer served any federal purpose, so forbearance was consistent

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[295] CenturyLink Comments at 4.

[296] *See, e.g., IXC Second Order on Reconsideration*, 14 FCC Rcd at 6013, para. 15.

[297] USTelecom Petition at 51-53.

[298] *Id*. at 52.

[299] *Id*.

[300] *See generally ARMIS Forbearance Order,* 23 FCC Rcd 13647. We address forbearance from related Cost Assignment Rules in section III.B.3 *supra*.

[301] *Qwest ARMIS Forbearance Order*, 23 FCC Rcd at 18484, para. 1.

[302] *Id*. at 18487-88, paras. 9-10 (quoting 47 U.S.C. § 160(a)(1)). We note that this grant of forbearance was conditioned on the filing of compliance plans to ensure the Commission will be able to obtain this information if necessary. *See supra* para. 68. We also note that the fact that price cap rates cannot be raised automatically does not mean that the relationship between costs and prices is entirely eliminated. While the direct link between costs and price cap carriers' access rates no longer exists, costs still have an impact on other rates price cap carriers charge. *See*, *e.g*., *supra* paras. 63-68 for examples of the continued relevance of cost to price cap carriers' rates; *see also 2005 Special Access NPRM*, 20 FCC Rcd at 1999, para. 12 ("Although price cap regulation diminished the direct link between changes in allocated accounting costs and change in prices, it did not sever the connection between accounting costs and prices entirely.").

with the public interest, subject to certain conditions.[303] The Commission conditioned this relief on approval of a compliance plan describing in detail how each carrier will continue to fulfill certain statutory and regulatory obligations, and on carriers continuing to file pole attachment data with the Commission.[304]

c. Discussion

104. We find that forbearance from this requirement is warranted under section 10, subject to the same conditions imposed on the BOCs. We agree with USTelecom's claims that the Commission's justifications for granting forbearance to the BOCs apply equally to all price cap carriers – namely, "ARMIS Report 43-01 is unnecessary in determining whether the carrier's rates are just, reasonable, and nondiscriminatory, . . . price cap regulation of that carrier's rates will remain in place to protect consumers, [and] there are sufficient sources of necessary data other than the ARMIS reports that provide accounting information that may be needed by the Commission."[305]

105. Sprint argues that the information in this Report may be required as part of the Commission's intercarrier compensation and special access inquiries.[306] The Consumer Advocates note that the Commission may need access to detailed accounting data to assess cost models to be used for distribution of Phase II broadband subsidies.[307] We find that these issues can be addressed through less burdensome measures, including data that carriers are required to retain with respect to our Part 32 rules.[308] If we do need these data, "the Act provides the Commission with ample authority [to require carriers] to produce any accounting data that the Commission needs for regulatory purposes, including rulemakings or adjudications, in the future."[309]

106. The Michigan PSC, the Pennsylvania PUC, and Consumer Advocates argue that the Commission should not grant forbearance because some states still rely on this information, and it should remain a resource for state and federal regulators.[310] While we find that forbearance is warranted under section 10 of the Act, nothing in this Order should be construed as preempting or otherwise limiting the independent authority of any state to collect this information.

107. For the same reasons that we granted forbearance to AT&T, Verizon, and Qwest, we find that forbearing from requiring all price cap carriers to file ARMIS Report 43-01 meets the requirements of Section 10.[311] Under the first two prongs of our forbearance analysis, the data is not needed to ensure

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[303] *Qwest ARMIS Forbearance Order* at 18492, para. 16.

[304] *Id*. at 18484, para. 1.

[305] USTelecom Petition at 53 (citations omitted). Cincinnati Bell and CenturyLink support USTelecom's request and agree that the information contained in Report 43-01 is unnecessary under price cap regulation. Cincinnati Bell Comments at 11; CenturyLink Comments at 7.

[306] Sprint Opposition at 5-6.

[307] Consumer Advocates Comments at 26.

[308] *See supra* Section III.B.4.

[309] *Qwest ARMIS Forbearance Order*, 23 FCC Rcd at 18489, para. 12 (footnote omitted).

[310] Michigan PSC Reply at 12-13; Pennsylvania PUC Reply Comments at 10-11; Consumer Advocates at 23-25.

[311] Our forbearance from ARMIS Report 43-01 encompasses forbearance from applying the codified rule imposing that filing requirement, 47 C.F.R. § 43.21(e)(2), to all price cap carriers. The Commission is not aware of any carrier that currently files ARMIS Report 43-01 that is still subject to rate-of-return regulation. However, if any such company exists, it would continue to be required to file this Report.

just and reasonable rates, terms, and conditions or to protect consumers. As we have previously concluded, price cap regulation, in combination with the protections provided by the compliance plan[312] and the continued maintenance of Part 32 accounting data,[313] is sufficient to "protect consumers from unjust, unreasonable, and unjustly or unreasonably discriminatory charges, practices, classifications and regulations."[314] Requiring carriers to compile and submit a report containing information that can be obtained through less burdensome means is not in the public interest.[315] Imposing these costs on some competitors but not others may undermine competition.

108. We agree with COMPTEL that we should condition the grant of forbearance on the same conditions as those imposed on the BOCs.[316] Those conditions include filing a data compliance plan with the Commission and continued public filing of certain pole attachment data. As we have done previously, we condition this forbearance on a carrier's receiving Commission approval of a compliance plan, as outlined in the *AT&T Cost Assignment Forbearance Order*,[317] and each carrier's continued annual public filing with the Commission of the pole attachment cost data currently submitted in ARMIS Report 43-01.

109. The Commission regulates pole attachments pursuant to section 224 of the Act, except for those states that certify to the Commission that they regulate pole attachments. Because pole attachment data contained in ARMIS Report 43-01 may be needed to address complaints regarding pole attachment rates[318] and the Commission is not aware of any other source for these data,[319] we condition our grant of forbearance for pole attachment data upon the continued annual public filing, without any assertions of confidentiality, of the pole attachment cost data currently filed as part of ARMIS Report 43-01 in WC Docket No. 07-204. For those states that have certified that they will regulate pole attachments themselves (and thus where the Commission no longer has jurisdiction), filing of pole attachment cost data with the Commission is no longer necessary on an ongoing basis. If states that adjudicate pole attachment complaints believe they need access to annual data for their own use, we expect that they may exercise their regulatory authority to require carriers to file data in those states. In order to give states affected by this Order time to implement their own regulations, if they so choose, our forbearance condition requires that any carriers affected by this Order file pole attachment data for all states in the next annual filing after approval of their compliance plan, but subsequent filings with the Commission need not include data for those states that have certified to regulation of pole attachments.

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312 *See supra* para. 47.

313 *Qwest ARMIS Forbearance Order*, 23 FCC Rcd at 18489, para. 12 ("Qwest, AT&T and Verizon remain subject to the Part 32 USOA requirements. Thus, this USOA account data will continue to be maintained and available to the Commission on request." (footnote omitted)).

314 *Id*. at 18488, para. 10 (footnote omitted). Sprint, Consumer Advocates, and New Networks argue that eliminating ARMIS Report 43-01 would have a negative effect on rates. Sprint Comments at 4; Consumer Advocates Comments at 26-27; New Networks Comments at 1-2. We disagree. Because price cap regulation, while not eliminating entirely the relationship between costs and prices, "severs the direct link between regulated costs and prices," and given that the Commission has otherwise assured itself of sufficient access to data to meet its obligations, ARMIS Report 43-01 no longer serves any purpose. *Qwest ARMIS Forbearance Order*, 23 FCC Rcd at 18488, para. 10 (quoting *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7305-06, para. 8).

315 CenturyLink notes that there are costs associated with preparing these reports. CenturyLink Comments at 3.

316 COMPTEL Comments at 22-23.

317 *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7319-20, para. 31.

318 *Qwest ARMIS Forbearance Order*, 23 FCC Rcd at 18490, para. 13.

319 *See supra* paras. 63-64.

8. Annual Revenue and Total Communications Plant Reporting

a. USTelecom's Request

110. USTelecom requests forbearance for all carriers from section 43.21(c) of the Commission's rules, which requires that common carriers with revenue exceeding a certain threshold provide the Bureau with a letter showing: (1) operating revenues; and (2) the value of the carrier's total communications plant.[320] USTelecom argues that these requirements are outdated for carriers subject to price cap regulations because information regarding a carrier's revenues and costs has no relevance to rates.[321] In addition, USTelecom claims that this information is already available to the Commission, such as through Form 499-A, which requires similar revenue information as Section 43.21(c).[322] Further, USTelecom states that information regarding the revenues and assets of publicly-traded telecommunications companies is available in those carriers' filings with the Securities and Exchange Commission (SEC).[323]

111. CenturyLink supports USTelecom's request for forbearance, arguing that the reports required by section 43.21(c) are outdated and "rarely read."[324] The Michigan PSC agrees that "aspects of the rule are outdated" but argues that USTelecom did not meet its burden of proof.[325] The Michigan PSC claims that the information required by section 43.21(c) is still relevant for regulators because total plant value is still used for cost studies, and that the requirement imposes minimal burdens on the carriers.[326]

b. Background

112. The requirement for common carriers to report revenue and capital amounts has been in effect since the 1930s, and originally required monthly filings.[327] Since that time, the Commission has modified the rule to require annual filings, and increased the price threshold for carriers subject to the filing requirements.[328] The Commission has also adopted another requirement that captures similar information. Form 499-A allows the Commission to calculate contributions to the universal service support mechanisms; the telecommunications relay services support mechanism; the cost recovery mechanisms for numbering administration; Interstate Telecommunications Service Provider (ITSP)

[320] USTelecom Petition at 54; 47 C.F.R. § 43.21(c).

[321] USTelecom Petition at 54-55.

[322] *Id*. at 55.

[323] *Id*.

[324] CenturyLink Comments at 3 (footnote omitted).

[325] Michigan PSC Reply at 4.

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

[327] These filings were previously required by 47 C.F.R. § 43.31. *See* 28 Fed. Reg. 13214 (Dec. 5, 1963).

[328] *See Elimination of Part 34, Uniform System of Accounts for Radiotelegraph Carriers, and Part 35, Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers, of the Commission's Rules and Regulations, and Elimination of Annual Reports Form R, for Radio-Telegraph Carriers, and Form O, for Wire-Telegraph and Ocean-Cable Carriers and Amendment of Part 1 and Part 43 of the Commission's Rules*, CC Docket No. 92-145, Report and Order, 8 FCC Rcd 4318 (1993).

regulatory fees; and the cost recovery mechanism for shared costs of long-term number portability.[329] Those entities required to complete and file Form 499-A must provide detailed revenue information.[330]

c. Discussion

113. We find that forbearance from the requirement that carriers file operating revenues is warranted because carriers are filing equivalent information with the Commission in other contexts. We agree with USTelecom that similar revenue information is filed annually at the Commission as part of Form 499-A, which, with few exceptions, is required of all intrastate, interstate, and international providers of telecommunications in the United States.[331] We do not find, nor did any other party provide, any reason why the Commission should continue to require duplicative submission of this information.

114. We also find that conditional forbearance from the requirement that carriers file information regarding the value of their total communications plant is warranted. As USTelecom noted, information regarding the value of a publicly-traded carrier's total communications assets is included in carriers' SEC filings.[332] For carriers that meet the revenue threshold for submission of this information but that are not publicly traded (and therefore not required to file similar information with the SEC), forbearance is conditioned on those carriers providing the value of total communications plant to the Commission in a timely manner if the Commission requests this information to conduct an investigation. With this condition, forbearance is in the public interest, as it relieves carriers from the burden of filing this information with the Commission while ensuring that the Commission still has access to the information. If Michigan or other states require total communications plant information for their cost studies, this Order does not preempt or otherwise prevent them from adopting provisions pursuant to state law to collect this information.

115. We conclude that forbearance from application of section 43.21(c), as conditioned above, is warranted under the section 10 criteria. USTelecom's argument that the Commission can obtain this information from other required Commission filings or SEC filings convinces us that these rules are not necessary to ensure that the charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; that these rules are no longer needed to protect consumers; and that continued enforcement would not serve the public interest. We find that forbearing from enforcing these rules will promote competitive market conditions and promote competition among providers of telecommunications services because it removes duplicative obligations that only apply to certain carriers.[333] These rules are duplicative of other requirements imposed on these carriers, and duplicative filings do not serve the public interest. Therefore, forbearing from the rules will lift unnecessary burdens

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[329] 2013 Instructions to the Telecommunications Reporting Worksheet, Form 499-A, at 2 (*available at* http://www.fcc.gov/document/form-499-instructions) (2013 499A Instructions).

[330] *Id*. at 13-29.

[331] 2013 499A Instructions at 2. "All telecommunications carriers providing interstate telecommunications services, interconnected VoIP providers that provide interstate telecommunications, providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to the universal service fund (USF) and file Form 499-Q on February 1, May 1, August 1, and November 1 each year." *Wireline Competition Bureau Releases 2013 Telecommunications Reporting Worksheets and Accompanying Instructions*, WC Docket No. 06-122, Public Notice, DA 13-306, at 1 n.2 (Wireline Comp. Bur. rel. Mar. 1, 2013). Generally, carriers whose universal service contribution would be less than $10,000 in any given year are not required to file Form 499-Q. *See* 47 C.F.R. § 54.708.

[332] Under Regulation S-K, Part 10, public companies are required to annually and quarterly submit balance sheets for the prior two years, income statements for three years, and cash flow for three years. 17 C.F.R. § 210.1-01.

[333] 47 U.S.C. § 160(b).

from the carriers, which in turn will reduce their costs of providing service and ensure that competing providers face a level playing field. We therefore forbear from section 43.21(c), subject to carriers providing the value of total communications plant to the Commission in a timely manner if the Commission requests this information.

9. Rules Governing Notice of Network Changes

a. USTelecom's Request

116. USTelecom requests that the Commission forbear for all carriers from application of portions of Part 51 of the Commission's rules.[334] USTelecom specifically seeks forbearance from sections 51.329(a)(2), 51.329(c)(2), and 51.333(a)-(f) to the extent that these provisions require the Commission to issue a public notice before network changes can be implemented.[335] USTelecom claims that the Commission's rules currently require "multiple duplicative public filings and involve unnecessary delay and uncertainty."[336]

b. Background

117. Section 251(c)(5) of the Act requires that an incumbent local exchange carrier "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks."[337] The Commission has adopted rules to implement this statutory requirement, and has concluded that "[r]equiring disclosure about network changes promotes open and vigorous competition contemplated by [the Act]."[338] The Commission has further concluded that widespread "availability of pertinent network change information effectively removes potential barriers to entry, which could otherwise frustrate the efforts of new competitors."[339]

118. The Commission's rules describe how ILECs should provide notice.[340] Carriers can use a wide variety of methods to disclose the necessary information, including public notice through industry fora, industry publications, and the Internet. The Commission also functions as a "backstop" source of

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[334] USTelecom Petition at 56.

[335] *Id*. at 57-58, n.90. USTelecom seeks forbearance from the public notice requirement only in situations when the carrier has provided notice on its Internet website, served the appropriate interconnecting service providers, and filed with the Commission. *See also* USTelecom Reply at 28-29 (seeking only to eliminate the Commission's public notice requirement so that the clock for the effective date of changes runs from the date of compliance with an ILEC's remaining requirements to post notice on its publicly accessible Internet site and to serve relevant service providers).

[336] USTelecom Petition at 56-57.

[337] 47 U.S.C. § 251(c)(5).

[338] *See* 47 C.F.R. §§ 51.325-51.335; *see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, 92-237, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19471, para. 171 (1996) (*Local Competition Second Report and Order*).

[339] *Id*., 11 FCC Rcd at 19483, para. 199.

[340] The Commission's rules state that ILECs generally should provide public notice of planned network changes at the "make/buy point" or at least 12 months before implementation of the network change. *See* 47 C.F.R. § 51.331(a). The Commission recognizes, however, that many changes subject to disclosure under § 251(c)(5) can be implemented less than 12 months after the make/buy point. As a result, the rules still allow for ILECs to provide public notice without additional safeguards as long as the notice is provided at least six months before implementation. *See* 47 C.F.R. § 51.331(a)(1).

information by alternatively allowing ILECs to file network change information directly with the Commission.[341] ILECs that choose to provide public notice by methods other than filing notice with the Commission can simply file a certification with the Commission that, among other things, identifies the location of the change information and indicates that public notice has been provided in accordance with the Commission's rules.[342]

119. The rules differ depending on when the ILEC provides notice of the proposed change and implementation date, and whether the change involves retirement and replacement of copper loops or subloops with fiber-to-the-home (FTTH) loops or fiber-to-the-curb (FTTC) loops. In instances of network changes six or more months before a proposed implementation date, changes may occur without the need for comment from potentially affected parties. However, the Commission has determined that additional safeguards are necessary for more potentially disruptive changes, such as those involving short-term notice given less than six months before a proposed implementation date, and those involving the retirement and replacement of copper loops or subloops with FTTH loops or FTTC loops.[343] The Commission's rules require that any ILEC that plans to make these kinds of changes must assure disclosure to affected parties by serving a copy of its public notice on providers that directly interconnect with the ILEC's network, and by including a certificate with its Commission filing to demonstrate compliance with this notice requirement.[344] In addition, the effective date of these kinds of changes is subject to comment from those information service providers or telecommunications service providers that directly interconnect with the ILEC's network, and changes shall not be deemed final or approved until a certain time after the Commission's release of a public notice seeking comment on the proposed change(s).[345]

c. Discussion

120. USTelecom has not satisfied the statutory standard for forbearance from the Commission's network change disclosure rules as requested in its application. USTelecom asserts that the Commission's public notice requirements are duplicative and cause unnecessary delay and uncertainty; however, USTelecom does not acknowledge or address the fact that the Commission's public

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[341] *Local Competition Second Report and Order*, 11 FCC Rcd at 19483, para. 199; *see also* 47 C.F.R. § 51.329(a).

[342] *See* 47 C.F.R. §§ 51.329(a)(2), (c)(2).

[343] 47 C.F.R. § 51.333; *see Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17146-17148, paras. 281-84 (2003) (subsequent history omitted) (*Triennial Review Order*) (establishing additional safeguards under the network change disclosure rules to govern the replacement of copper loops or subloops with FTTH loops); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Reconsideration, 19 FCC Rcd 20293 (2004) (subsequent history omitted) (*Triennial Review FTTC Reconsideration Order*) (amending several Commission rules, including the rules for notice of network changes, in order to allow replacement of copper with FTTC loops to be treated similarly to replacement of copper with FTTH loops under the rules).

[344] *See* 47 C.F.R. § 51.333(a).

[345] *See* 47 C.F.R. § 51.333(b)-(c) (indicating that objections may be filed no later than the ninth business day, short term notices will be deemed final on the tenth business day, and notices of replacement of copper loops or copper subloops with FTTH loops or FTTC loops will be deemed approved on the 90th day after the release of the Commission's notice, unless objections are filed).

notices serve several purposes that are distinct from the notice that the ILEC provides. First, the Commission's public notices provide information about the opportunity to comment and establish a clear time frame for doing so. We agree with COMPTEL and state commenters that the Commission's public notices inform competitive service providers of their right to file an objection and of the appropriate timing and method for filing objections.[346] Second, the broader notice provided by the Commission's public notices promotes the widespread availability of pertinent network change information and helps ensure that a carrier has given adequate and consistent notice to all potentially interested parties.[347] In addition to notifying directly interconnected service providers, this public notice may also alert interested parties that have no reason to check the ILEC's website and that are not entitled to service of notice of the proposed change. Finally, the public notice process enables the Commission to monitor industry changes and identify the extent to which such changes concern other service providers.

121. The record does not demonstrate that the Commission's public notices cause unnecessary delay.[348] The date used to determine whether the ILEC is implementing a long- or short-term change is the date on which the ILEC provides adequate notice of the change.[349] The public notice requirement for long-term network change notices does not trigger any comment period or alter the ILEC's implementation date. For short-term notices, the changes can be implemented within the ILEC's preferred time frame, as long as the ILEC provides sufficient advance notice of the change (*i.e.*, allowing a reasonable amount of time for the Commission to review the filing and release a public notice at least ten (or, as applicable, 90) days before the proposed implementation date) and no comments are received.[350] USTelecom submits that in practice there is often a delay between the date when a carrier

[346] *See* COMPTEL Comments at 15; CACTC Comments at 5 (stating that USTelecom's petition is requesting that the Commission eliminate "the only backstop currently available to competitive carriers to object to [changes], and attempt to accommodate and make other arrangements for, service to affected end-user customers."); CPUC Comments at 10-11 (indicating that the Commission's rules allow competitors to file objections in order to allow time for a smooth transition, especially with the retirement of copper facilities, and also disagreeing with USTelecom's assertion that the Commission's rules require multiple duplicative public filings and involve unnecessary delay and uncertainty); DC PSC Reply at 2 (noting that issuance of the Commission's public notice commences the period for affected telecommunications carriers to file objections to proposed copper loop retirements, and stating that it is unclear whether there would be an opportunity to object to such retirements in the absence of this notice); Michigan PSC Reply at 13 (echoing COMPTEL's statements that the Commission's public notice provides critical information not included on the carrier's web postings).

[347] *See supra* para. 117.

[348] USTelecom and some commenters submit that the filings and public notice required under certain network change provisions of Part 51 are unnecessarily redundant, and that the Commission's public notices are "not necessary to ensure that carrier charges, practices, or classifications are just and reasonable because they do not improve the quality or scope of the notice given." USTelecom Petition at 56-58; *see also* ACS Comments at 6; AT&T Reply at 4-5; Verizon Comments at 8-10 (also suggesting "there is no reason why the Commission cannot rely on the carrier's notice, instead of a Bureau-initiated notice, to act as the trigger to start any necessary waiting periods or related obligations").

[349] The date on which the Commission issues its public notice then determines when comments (if required) should be filed; the notice is released in time to allow for implementation of the change on the requested date unless comments are filed in opposition.

[350] The required comment period for short term notices of network changes and for notices of network changes involving the retirement and replacement of copper loops or subloops with FTTH loops or FTTC loops is 9 business days. In the absence of objections, short-term notices of network change will be deemed final on the 10th business day, and notices of network changes involving the retirement and replacement of copper loops or subloops with FTTH loops or FTTC loops will be deemed approved on the 90th day after release of the Commission's PN. 47 C.F.R. § 51.333(c) & 51.333(b). *See*, *e.g.*, *Wireline Competition Bureau Short Term Network Change Notification*

(continued....)

posts notice online and the date when the Commission releases a public notice announcing the change.[351] USTelecom has provided no data to support the suggestion that any such delay has led to delay in the actual implementation of proposed network changes. The Commission prioritizes release of public notices according to the implementation dates proposed in ILEC filings; USTelecom has provided no evidence that the Commission's rules have delayed implementation of network changes.

122. USTelecom also asserts that these rules cause unnecessary uncertainty, but the record does not offer any support for this claim. In fact, the process provides certainty by setting forth a standardized process and a clear deadline by which interested parties must comment. The ILEC controls when it provides notice.

123. USTelecom asserts that there is "no countervailing public interest that would justify delaying implementation" of proposed network changes and upgrades, in light of the other process requirements the Commission has in place.[352] We, however, find that the public notice and comment period allowed under the Commission's current rules is necessary to ensure the public interest and the interest of competing providers in maintaining interoperability between networks. As the Commission has noted, the inability to maintain a high level of interoperability could degrade the quality of transmission between networks or, in a worse case, could interrupt service between providers.[353] The rules thus also serve to protect consumers from possible service interruptions or outages.[354] We also are not persuaded that reasonable public notice can be presumed to occur when an ILEC simply announces it is making a short-term network change without at least an opportunity for providers potentially affected by the change to provide input regarding difficulties. The Commission's rules thus provide an opportunity to comment on proposed network changes that would occur in less than six months, or that involve retirement and replacement of copper loops or subloops with FTTH loops or FTTC loops.

124. For the reasons stated above, we conclude that USTelecom has failed to demonstrate that the Commission's applicable network change disclosure rules are unnecessary to ensure that carrier charges, practices, or classifications are just and reasonable, or to protect consumers. USTelecom has also failed to demonstrate that forbearance from these rules would be in the public interest. We find that the widespread availability of network change information, which these rules ensure, is an important factor in removing potential barriers to competition. Widespread access to network change information helps ensure continuous interoperability between networks, which benefits the public and competing providers. We find that the Commission's current network change disclosure rules provide an appropriate

(Continued from previous page)
Filed By CenturyLink (Qwest), Report No. NCD-2258, Public Notice (WCB rel. March 13, 2013); *Wireline Competition Bureau Short Term Network Change Notification Filed By Verizon Florida LLC*, Report No. NCD-2207, Public Notice (Wireline Comp. Bur. rel. Aug. 31, 2012).

[351] USTelecom Petition at 57; *see also* AT&T Reply at 20, Verizon Comments at 9.

[352] USTelecom Petition at 59; *see also* AT&T Reply at 20-21; Verizon Reply at 7.

[353] *See Local Competition Second Report and Order*, 11 FCC Rcd at 19491, para. 216. The Commission has noted, for example, that changes that affect transmission, signaling standards, call routing, network configuration, logical elements, electronic interfaces, data elements, and transactions that support ordering, provisioning, maintenance, and billing would trigger public disclosure obligations. *See id*. at 19476, para. 182.

[354] *See id*. at 19495, para. 227 (stating that the "primary concern reflected in § 251(c)(5) is continued interconnection and interoperability."). *See also Wireline Competition Bureau Short Term Network Change Notification Filed By CenturyLink*, Report No. NCD-1996, Public Notice (Wireline Comp. Bur. rel. June 23, 2011) (CenturyLink announced the retirement of copper facilities in Illinois and the movement of all working services to a fiber fed digital loop carrier system. Competitive LEC customer, NTS Services Corp., filed an objection in this proceeding expressing its need for more time to adjust to the changes in order to continue providing services to twenty-three customers, and CenturyLink was able to accommodate this request).

balance between all of these interests as the record does not convince us that the rule imposes significant burdens on ILECs. We therefore deny USTelecom's request for forbearance from the provisions of Part 51 discussed above.

125. Several commenters also suggest that the Commission should not grant USTelecom's request for forbearance while broader issues related to the transition from the copper PSTN to IP networks are under consideration.[355] While we need not address those arguments here, given our conclusion that the broad forbearance from these rules that USTelecom requests is unwarranted, we agree that that proceeding could provide an opportunity for a more detailed look at our current requirements.

10. Service Discontinuance Approval Requirements

a. USTelecom's Request

126. USTelecom requests forbearance from section 214 of the Act and the Commission's associated rules requiring a carrier to obtain Commission approval prior to discontinuing "legacy" offerings where that carrier offers IP broadband services as "replacement services" (at least 4 Mbps download, 1 Mbps upload).[356] USTelecom asserts that, under these circumstances, customers are not losing service but are instead receiving new broadband or IP services via a new, more technologically advanced platform—the IP network. USTelecom further submits that, under these circumstances, forbearance is in the public interest, and that requiring Commission approval prior to the discontinuance of legacy services is unnecessary to protect consumers and unnecessary to ensure just, reasonable, and nondiscriminatory rates and practices.[357] USTelecom maintains that forbearance is consistent with the Commission's desire to promote broadband and accelerate the transition from circuit-switched to IP networks, and USTelecom emphasizes that nothing in its petition is intended to disturb the requirement that carriers provide notice to customers.[358]

b. Background

127. Section 214(a) of the Act states in part that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."[359] This statutory requirement is implemented under Part 63 of the Commission's rules to ensure that customers of domestic telecommunications and interconnected

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[355] *See* Broadview, *et al*. Comments at 11 (urging the Commission to deny USTelecom's request for forbearance while the Commission's Technical Advisory Council is considering related issues regarding the transition from the PSTN to IP networks); CACTC Comments at 3, 7-15 (submitting that petitions for rulemaking in RM-11358 requested additional safeguards regarding ILEC copper loop retirement under the same rules, and that USTelecom, AT&T and Verizon have all filed comments and *ex partes* in that proceeding).

[356] USTelecom Petition at 59. USTelecom uses the term "legacy" offerings but does not define it. For purposes of this section of the forbearance order, we understand legacy offerings to mean narrowband voice offerings. USTelecom lists 47 U.S.C. § 214 and 47 C.F.R. §§ 63.60, 63.61, 63.62, 63.63, 63.71(a)(5), 63.71(c) and 63.90(a)(8), but does not otherwise reference any other specific Commission rules under its discussion of service discontinuance approval requirements. *See also* ACS Comments at 8-10 (suggesting that forbearance should likewise apply for competing providers once broadband service is offered in a service area by any provider); AT&T Reply at 2-4; Verizon Comments at 5-8.

[357] USTelecom Petition at 60-62.

[358] *Id*. at 59 and 62.

[359] 47 U.S.C. § 214(a). The discontinuance, reduction or impairment of service to a community will be generally referred to herein as a discontinuance unless otherwise specified.

VoIP services receive sufficient notice of planned discontinuances of service, and have an opportunity to inform the Commission of any anticipated difficulties before the Commission approves the proposed discontinuance.[360] The Commission's rules require that providers inform customers of a proposed discontinuance, and further require that providers include specific language in their notice in order to assure that customers are aware of their right to object to the proposed discontinuance of service.[361] Providers also are required to notify and submit a copy of their section 214 application to the public utility commission and Governor of each state in which the discontinuance is proposed, and to the Secretary of Defense.[362]

128. Providers must file a section 214 application with the Commission on or after the date on which notice has been given to affected customers.[363] The application must contain: the information provided in the notice to customers, as well as a brief description of the dates and methods of notice to customers; a statement regarding the provider's status as a dominant or nondominant provider with respect to the services to be discontinued; and any other information the Commission may require.[364] The public notice that the Commission releases then announces receipt of the provider's complete application, provides more specific information about how and where interested parties may file comments on the proposed discontinuance, and sets the deadline for comments and the date by which the application will be deemed automatically approved unless the Commission notifies the applicant otherwise.[365]

c. Discussion

129. We find that USTelecom has failed to demonstrate that forbearance from the Commission's discontinuance rules is warranted. Section 214(a) of the Act specifically requires the Commission to determine whether the present or future public convenience and necessity would be adversely affected by any carrier's discontinuance, reduction, or impairment of service to a community. USTelecom and some commenters suggest that the public interest safeguards under section 214 and related rules are not necessary when a carrier discontinues legacy services as long as it provides "replacement" broadband services.[366]

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[360] *See* 47 C.F.R. §§ 63.60-63.601; *see also Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, First Report and Order, 85 FCC 2d 1 (1980) (*Competitive Carrier First Report and Order*); *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, CC Docket No. 97-11, Report and Order and Second Memorandum Opinion and Order, 14 FCC Rcd 11364 (1999); *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, Report and Order, 21 FCC Rcd 9937 (2006); *IP-Enabled Services*, WC Docket No. 04-36, Report and Order, 24 FCC Rcd 6039 (2009). For purposes of the Commission's discontinuance rules at §§ 63.60-63.90, the term "carrier" is defined to include interconnected VoIP providers when used to refer either to all telecommunications carriers or more specifically to nondominant telecommunications carriers. *See* 47 C.F.R. § 63.60(a).

[361] *See* 47 C.F.R. § 63.71(a).

[362] *Id.*

[363] *See* 47 C.F.R. § 63.71(b).

[364] *Id*.

[365] Unless the Commission notifies a provider otherwise, discontinuance applications for dominant and nondominant providers will be automatically granted on the 60th and 31st day, respectively, after the Commission's release of a public notice for the application. *See* 47 C.F.R. § 63.71(c).

[366] USTelecom Petition at 60; ACS Comments at 8-9; Verizon Comments at 5-6; AT&T Reply at 2-4; USTelecom Reply at 30-31; Verizon Reply at 3.

130. The Commission has recognized that "broadband is becoming a necessity of modern life, and [that] the benefits of broadband are immense and growing rapidly" including enabling users to "originate and receive high-quality voice, data, graphics, and video telecommunications."[367] As the Commission previously noted, "[b]roadband can drive local and national economic growth, as well as improve education, healthcare, and energy efficiency."[368] The question of whether specific broadband services are a replacement for particular legacy services, however, has no general answer.[369] For purposes of our analysis here, we need only conclude that application of the discontinuance rules remains necessary and in the public interest.

131. The discontinuance rules are designed to ensure that the Commission is fully informed of any public interest concerns during an orderly transition to alternative services.[370] Commenters are able to inform the Commission of concerns with the existence of reasonable alternatives or concerns with the proposed timing of the discontinuance. Notice and opportunity to comment prior to service discontinuance provide important consumer protections.[371] USTelecom has not demonstrated that the

[367] *See Eighth Broadband Progress Report*, 27 FCC Rcd at 10349, para 7, 10394, para. 120 (2012).

[368] *See Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting,* WC Docket No. 11-59, Notice of Inquiry, 26 FCC Rcd 5384, para. 1 (2011).

[369] *See*, *e.g.*, *FCC Announces First Technology Transitions Policy Task Force Workshop*, GN Docket No. 13-5, Public Notice, 28 FCC Rcd 1150 (Wireline Comp. Bur. 2013) (announcing March 18, 2013 workshop to gather data and analysis in order to establish a factual baseline understanding of important transitions including the market's transition to new technologies); *Pleading Cycle Established On AT&T And NTCA Petitions*, GN Docket No. 12-353, Public Notice, 27 FCC Rcd 15766 (Wireline Comp. Bur. 2012) (announcing the filing of AT&T's Petition requesting that the Commission open a proceeding "to facilitate the 'telephone' industry's continued transition from legacy transmission platforms and services to new services based fully on the Internet Protocol); *FCC Announces Technological Advisory Council Meeting*, Public Notice, 26 FCC Rcd 15290 (2011) (announcing December 20, 2011 meeting to explore, *inter alia*, public safety, disability access, and other matters that might be affected by a move to an all-IP network).

[370] We agree with commenters who assert that the Commission's discontinuance rules permit fact-specific review of a LEC's plans to withdraw services from the market, which allows for a more detailed examination of the consumer and public interest impact of each proposed withdrawal and replacement of service. *See* Full Service Reply at 5.

[371] The NY PSC asserts that an opportunity for comment and Commission review are especially important for low income customers receiving Lifeline services because it is not yet clear that service providers would offer Lifeline services over broadband networks. NY PSC Comments at 1-4; *see also* DC PSC Reply at 4 (concurring with the NY PSC regarding Lifeline services and also submitting that an opportunity for comment and Commission approval are still important because replacement broadband services are not regulated by state Commissions); Michigan PSC Reply at 16-17; Pennsylvania PUC Reply at 3-7 (stating that USTA's forbearance request also could impact the basic Carrier of Last Resort (COLR) obligations that protect end-user customers and are administered by the FCC and state commissions). *But see* USTelecom Reply at 31 (maintaining that the Commission should not "dis-incent the deployment of broadband IP-based networks" to low income customers by denying forbearance and thus refusing to permit carriers to transition services to these networks). As discussed below, we find that the prior approval requirements of the Commission's discontinuance rules are consistent with the Commission's other interests in promoting broadband services. *See infra* para. 132. We note that the Commission is currently conducting a pilot program to test different approaches to increasing broadband adoption among low-income Americans. *See Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 27 FCC Rcd 15842 (Wireline Comp. Bur. 2012) (announcing the selection of 14 projects for the broadband adoption Lifeline pilot program).

notice requirement is no longer necessary to address these policy interests or that it imposes substantial burden or delay in introducing new services.[372]

132. USTelecom asserts that forbearance from the Commission's discontinuance rules would be consistent with the Commission's other "initiatives to promote broadband" and its desire to "accelerate the transition from circuit-switched to IP networks."[373] According to USTelecom, requiring prior approval under the rules when a carrier seeks to discontinue legacy services and replace them with broadband services would cause a delay for both broadband providers and consumers in the delivery and receipt of new broadband services.[374] The Commission's rules, however, do not prevent service providers from introducing broadband services, even before obtaining approval to discontinue legacy services.[375] Moreover, the discontinuance rules do not dictate the time when carriers may introduce new broadband services or the time when customers may choose to subscribe to new broadband offerings.[376] Although USTelecom suggests that the discontinuance process may include a delay between the receipt of a discontinuance application and the release of a public notice after Commission review, USTelecom fails to demonstrate that any such delay has occurred or presents a significant threat of delay in the future.[377]

133. USTelecom also maintains that forbearance when a carrier plans to discontinue legacy services and replace them with broadband services would be consistent with the forbearance previously granted to CMRS providers.[378] When the Commission granted forbearance from the discontinuance requirements for CMRS providers, they were offering relatively new wireless services, and the

[372] *See* Full Service Reply at 11-12; s*ee also* Broadview, *et al*. Comments at 21-22 (noting that USTelecom seeks forbearance that would also apply to the discontinuance of wholesale services and submitting that USTelecom nevertheless fails to explain how forbearance under these circumstances would be in the public interest); Pennsylvania PUC Reply at 5 & 7 (agreeing that USTA's forbearance request does not sufficiently distinguish between retail and wholesale services and that it has the potential for adversely impacting wholesale access service obligations and interconnection).

[373] USTelecom Petition at 59.

[374] USTelecom suggests that there would be a potential for delay in the introduction of new services under the discontinuance rules due to the fact that applications are not deemed filed until the Commission releases public notice of the filing, and because the Commission can release public notice weeks after receiving an application. *Id*. at 60-61; *see also* Verizon Comments at 8.

[375] *See* Michigan PSC Reply at 14-15 (submitting that the Commission's stated goal of encouraging a transition to a modern IP-network can still be accomplished without eliminating public comment and Commission oversight under the discontinuance rules).

[376] *See* COMPTEL Comments at 11-12.

[377] *See* Michigan PSC Reply at 15-16 (submitting that USTelecom has failed to demonstrate actual harm caused by the general discontinuance timeframes and suggesting that applicants should account for the approval process in their planning).

[378] USTelecom Petition at 61 (citing to *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1481, para. 182 (1994); 47 C.F.R. § 20.15(b)(3) for CMRS § 214 forbearance). USTelecom specifically refers to the Commission determination there that a discontinuance application was unnecessary to protect consumers given the presence of adequate and abundantly available substitute services.

Commission recognized the abundant availability of existing alternatives.[379] We thus do not find that decision analogous to the forbearance request here.[380]

134. We find that USTelecom has not demonstrated that forbearance from the discontinuance rules is justified. Enforcement of these rules is necessary to ensure that charges, practices, classifications, or regulations are just and reasonable, and not unjustly or unreasonably discriminatory. The Commission's rules implementing this requirement strike a balance between a provider's interest in discontinuing services and the important consumer protection interests central to section 214(a) of the Act.[381] For the reasons set forth above, we find that USTelecom has failed to satisfy the statutory standards necessary to merit forbearance from the requirements regarding service discontinuance.

11. Structural Separation Requirements for Independent ILECs

a. USTelecom's Request

135. USTelecom requests that the Commission forbear from application of the section 64.1903 separate affiliate requirement for independent ILEC provision of in-region, interstate interexchange services and in-region, international interexchange services (in-region long distance service). It also requests forbearance from application of dominant carrier regulation of in-region long distance service by independent ILECs in the absence of a separate affiliate.[382] USTelecom asserts that "[i]n light of the dramatic changes in the competitive landscape in the intervening 15 years since [r]ule 64.1903 was adopted, there is no longer any justification for the rule, and the Commission should forbear from its continued application."[383] USTelecom asserts that "there are no dominant IXCs, and ILECs currently face

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[379] *See also* Broadview, *et al*., Comments at 18-19 (stating that the Commission's decision with respect to forbearance for CMRS providers was also based on extensive market analysis and a determination that CMRS providers generally lack market power).

[380] The USTelecom Petition seeks authority for existing participants in the marketplace to discontinue legacy services without obtaining prior section 214 authority, which is in contrast to the Commission grant of forbearance for newly-competitive CMRS providers. We note that when the Commission granted forbearance for CMRS providers, it relied on the record established in response to its NPRM and found that § 214 barriers to exit could deter potential entrants from entering the marketplace. We agree with Broadview, *et al*. that the Commission has not done the same market analysis or reached the same conclusions regarding the competitive marketplace for legacy services. Broadview, *et al*. Comments at 18.

[381] In the *Competitive Carrier First Report and Order*, the Commission explained that Congress added the 214 discontinuance requirements in 1943, in part, due to concerns that discontinuance (by the only carrier serving a market) could leave the public without adequate communications service. The Commission also noted that in a competitive marketplace, ease of exit is essential. Nevertheless, the Commission concluded that § 63.71 strikes a good balance between the need to reduce regulatory barriers to exit from competitive markets and the Commission's responsibility to ensure that the public is given a reasonable period of time to make other service arrangements. *Competitive Carrier First Report and Order*, 85 FCC 2d at 49.

[382] USTelecom Petition at 64-67. Throughout this subsection, paras. 135-162, we use the term "integrated basis" to mean providing long distance services without complying with structural separations requirements contained in section 64.1903. We note that USTelecom subsequently clarified that it believes that, under the best reading of relevant precedent, independent ILECs by default would not be subject to dominant carrier regulation even when providing long distance service on an integrated basis, although it argues that forbearance would be warranted if the Commission disagreed with that interpretation. *See, e.g.*, Letter from Bennett L. Ross, Wiley Rein, LLP, Counsel to USTelecom, to Marlene H. Dortch, Secretary, FCC, Docket No. 12-61, at 3-6 (filed Mar. 28, 2013) (USTelecom Mar. 28, 2013 *Ex Parte* Letter).

[383] USTelecom Petition at 66.

robust competition for all-distance services."[384] In Appendix B of its filing, USTelecom argues that "[t]he Commission's legacy telecommunications regulations are largely predicated on the historical assumption that a telephone line from an [ILEC] was the only means for a consumer to communicate[,]" and that "[t]his assumption is not valid in today's marketplace where consumers . . . can choose from telephony services provided by Competitive Local Exchange Carriers ('CLECs'), cable operators, and fixed and mobile wireless providers."[385]

b. Background

136. Section 64.1903 of the Commission's rules requires that independent ILECs providing long distance service in whole or in part over their own switching or transmission facilities do so through an affiliate that is a separate legal entity from the local exchange company.[386] The separate affiliate must: (1) maintain books of account separate from those of the independent ILEC; (2) not jointly own transmission or switching facilities with the independent ILEC; and (3) purchase tariffed services from the independent ILEC only pursuant to the independent ILEC's tariffs.[387] Independent ILECs that provide in-region long distance service exclusively through resale may do so through an affiliate that is a separate corporate division rather than a separate legal entity.[388] Independent ILECs have been classified as nondominant in their provision of in-region long distance services,[389] and therefore they are not required to file tariffs for these services.[390]

137. Section 64.1903 was adopted in the 1997 *LEC Classification Order*, although it has its origins in the Commission's *Competitive Carrier Proceedings*.[391] In the *LEC Classification Order*, the

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[384] *Id.*

[385] *Id*., App. B at 1. "USTelecom estimates that ILEC switched access lines accounted for approximately 45% of U.S. telephone households as of year-end 2010." *Id*., App. B at 2 & n.5. USTelecom states that "[a]s of this same time period, approximately 32% of U.S. households with a telephone were wireless only" and that "approximately 19% were served by cable telephony, and approximately 3% utilized 'over the top' interconnected VoIP service." *Id*. at nn.5-8. USTelecom also states that "more than 99% of the country's rural population is covered by at least one wireless provider, and approximately 97% is covered by at least two providers." *Id*. at 5 & n.17. USTelecom further notes that "more than 93% of U.S. homes [are] passed by cable high-speed broadband infrastructure." *Id*. at 8. USTelecom also cites the availability of other competitive offerings, including Skype, Facebook and Google. *Id.* at 8-10.

[386] 47 C.F.R. § 64.1903 (b).

[387] *Id.* § 64.1903(a)(1)-(3). The separate affiliate also may acquire UNEs and exchange services pursuant to an approved interconnection agreement. *Id.* § 64.1903(a)(3).

[388] An independent ILEC provides in-region long distance services exclusively through resale if it provides those services without using its own "interexchange switching or transmission facilities or capability." *Id.* § 64.1903(b)(1).

[389] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149, 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15763, para. 7 (1997) (*LEC Classification Order*), *recon. denied*, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd 10771 (1999) (*LEC Classification Second Reconsideration Order*).

[390] 47 C.F.R. § 61.19 (mandatorily detariffing all nondominant carrier interstate and international, long distance services, other than dial-around 1+ services, certain LEC-initiated services during the first 45 days of service, international inbound collect calls, and certain on-demand mobile satellite services).

[391] *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Fourth Report and Order, 95 FCC 2d 554, 575-76, para. 31 (1983) (*Competitive Carrier Fourth Report and Order*); *Policy and Rules Concerning Rates for Competitive Common Carrier Services*

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Commission found that the independent ILECs did not possess "classical" market power in the provision of in-region long distance services, and therefore could not raise the prices of these services above competitive levels.[392] On this basis, the Commission classified independent ILECs "as nondominant in the provision of in-region, interstate, domestic, interexchange services."[393] Despite this classification of nondominance, however, the Commission remained concerned with the independent ILECs' control over local bottleneck facilities, which theoretically gave them the ability to exercise "exclusionary" market power in order to raise rivals' costs.[394] The Commission concluded that independent ILECs had the incentive to engage in cost misallocation between local and long distance operations; unlawful, non-price discrimination involving inputs used by long distance competitors; and price squeezes.[395] Accordingly, notwithstanding its conclusion to classify independent ILECs as nondominant, the Commission adopted the current regulatory framework requiring the provision of long distance service through a separate affiliate that "would aid in the detection and prevention of such anticompetitive conduct."[396]

138. Beginning in 2007, the Commission permitted the BOCs to provide long distance service without a section 272 separate affiliate, *i.e.*, on an integrated basis or through an affiliate other than a section 272 affiliate, subject to nondominant carrier regulation.[397] However, the Commission applied a set of alternative safeguards to the BOCs' provision of in-region long distance services outside of a section 272 affiliate. These safeguards included: (1) special access performance metrics to monitor for

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and Facilities Authorizations Therefor, CC Docket No. 79-252, Fifth Report and Order, 98 FCC 2d 1191 1195-1201, paras. 3-12 (1984) (*Competitive Carrier Fifth Report and Order*). Prior to the *LEC Classification Order*, it was clear that an independent ILEC had a "choice" between offering in-region long distance service through a separate affiliate or being regulated as a dominant carrier. *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198-99, para. 9 ("Interstate services provided directly by exchange telephone companies (not through affiliates) are regulated as dominant."); *LEC Classification Order*, 12 FCC Rcd at 15767-68, para. 14 ("In the *Competitive Carrier Fourth Report and Order*, the Commission determined that interexchange carriers affiliated with independent ILECs would be regulated as nondominant interexchange carriers. . . . . The Commission [in the *Competitive Carrier Fifth Report and Order*] added that any interstate, interexchange services offered directly by an independent LEC (rather than through a separate affiliate) or through an affiliate that did not satisfy the specified conditions would be subject to dominant carrier regulation."). As discussed *infra* paras. 154-162, the Commission subsequently removed, in the *LEC Classification Order*, the independent ILECs' ability to "choose" between the separate affiliate structure or dominant carrier regulation.

[392] *See LEC Classification Order*, 12 FCC Rcd at 15847-8, paras. 157-58. The Commission stated that "classical" (or "Stiglerian") market power refers to "the ability of a firm profitably to raise and sustain its price above the competitive level by restricting its own output." *Id.* at 15847-48, para. 156.

[393] *Id.*, 12 FCC Rcd at 15763, para. 7*; see also id*. at 15840-41, para. 143 ("We therefore, classify independent ILECs as nondominant in the provision of these [in-region long distance services.]"); *id*. at 15855, para. 171 ("As previously stated, we conclude that we should not apply dominant carrier regulation to independent ILECs."); *LEC Classification Second Reconsideration Order*, 14 FCC Rcd at 10777, para. 8 ("Similarly, the Commission found that independent ILECs should be classified as nondominant because they do not have the ability profitably to raise and sustain prices of in-region, interstate, domestic, interexchange services by restricting output, but that such LECs should be required to provide these services subject to the *Competitive Carrier Fifth Report and Order* separation requirements in order to prevent and detect cost misallocation, access discrimination, and price squeeze.").

[394] Exclusionary (or Bainian) market power refers to "the ability of a firm profitably to raise and sustain its price significantly above the competitive level by raising its rivals' costs and thereby causing the rivals to restrain their output." *LEC Classification Order*, 12 FCC Rcd at 15803, para. 83 n.214.

[395] *Id.* at 15848-49, paras. 159-60, and 15654, para. 171.

[396] *Id*. at 15859, para. 163.

[397] *See Section 272 Sunset Order*, 22 FCC Rcd at 16488-92, paras. 95-105.

non-price discrimination against competitors; (2) imputation requirements for access charges to guard against the use of access pricing to impede long distance competition; and (3) two consumer protection measures to address the needs of customers with low long distance calling volumes.[398]

c. Discussion

139. We grant in part, subject to the conditions described below, USTelecom's request for forbearance from the requirement that an independent ILEC provide in-region long distance services through the use of a separate affiliate. We conclude that forbearance from section 64.1903 is warranted for independent ILECs subject to price cap regulation. We find that forbearance from this requirement for independent ILECs subject to rate-of-return regulation is not warranted due to the continuing potential for cost misallocation.[399] In the attached Second Further Notice of Proposed Rulemaking, we seek comment, though, on potential alternatives that would reduce regulatory burdens while accomplishing the same objectives as the current requirements.

140. We need not formally grant USTelecom's separate request for forbearance from dominant carrier regulation when in-region long distance services are provided by an independent ILEC on an integrated basis because we conclude that those requirements do not apply in the first instance under existing precedent. As discussed below, we hold that the Commission's prior classification of independent ILECs as nondominant in their provision of in-region long distance services applies regardless of whether we amend, eliminate, or forbear from the application of section 64.1903.

(i) Forbearance from Separate Affiliate Requirement

141. When the Commission adopted the separate affiliate requirement, it identified three reasons for prohibiting independent ILECs from providing long distance service on an integrated basis: concerns about cost misallocation, non-price discrimination, and price squeezes – all related to the exercise of exclusionary market power.[400] The Commission subsequently concluded in the *Section 272 Sunset Order* that BOC exclusionary market power should be addressed through non-structural safeguards rather than structural safeguards such as a separate affiliate. We follow this paradigm in analyzing USTelecom's request for forbearance from the separate affiliate requirement for the independent ILECs. USTelecom has not demonstrated that independent ILECs either individually or collectively lack exclusionary market power within their service areas. We therefore have no evidence to use as a basis for determining that they lack exclusionary market power in their respective areas.[401] Nonetheless, as we have held previously for the BOCs, we find that the original concerns are not significant in the case of price cap carriers (cost misallocation) or can be addressed through measures less burdensome than requiring a separate affiliate (non-price discrimination and price squeezes). As explained below, we cannot make the same finding, based on this record, for rate-of-return carriers.

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[398] *Id*. at 16487-94, paras. 95-108.

[399] Rate-of-return carriers include both cost companies and average schedule companies. *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd 17989, 17992, para. 6 (2007). "Average schedule" companies are those ILECs that receive compensation for use of their interstate common carrier services on the basis of formulas that are designed to simulate the disbursements that would be received by a cost company that is representative of average schedule companies. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 25 FCC Rcd 7252, 7256 (2010).

[400] *See supra* para.138; *LEC Classification Order,* 12 FCC Rcd at 15848-49, paras. 159-60, 15654, para. 171.

[401] This approach is consistent with Commission precedent. *See Section 272 Sunset Order*, 22 FCC Rcd at 16473, para. 64.

142. *Price Cap Carriers*. The Commission has recognized that the separate affiliate requirement imposes significant cost and non-cost burdens on carriers and the Commission.[402] The Commission also noted that the requirement to provide long distance service using a separate affiliate may impair a carrier's ability to compete.[403] The Commission previously found, with respect to the BOCs, that an array of nonstructural safeguards could obviate the need for the separate affiliate rule, while imposing fewer costs and burdens. We find that a similar set of safeguards would be equally effective to curtail the potential exercise of exclusionary market power by independent price cap carriers. Specifically, we will forbear from section 64.1903 for price cap carriers if they (1) submit and obtain Bureau approval of special access performance metrics, and (2) satisfy imputation requirements, including the submission of an imputation plan for review and approval by the Bureau. In addition, independent ILECs subject to price cap regulation remain subject to a number of legal obligations that will limit their ability to exercise exclusionary market power. In particular, the independent ILECs remain subject to: dominant carrier regulation, Part 32 accounting rules, equal access obligations under longstanding Commission precedent and section 251(g) of the Act;[404] section 251 obligations;[405] and the continuing general obligation to provide service on just, reasonable, and not unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the Act.[406]

143. *Special Access Performance Metrics*. As a condition of the relief it granted in the *Section 272 Sunset Order*, the Commission required the BOCs and their independent incumbent LEC affiliates to implement special access performance metrics addressing the order taking, provisioning, and maintenance and repair of those carriers' DS0, DS1, DS3, and OCN services.[407] This was designed in part to implement the requirement for the non-discriminatory provisioning of wholesale services by the BOCs that is contained in section 272(e)(1) of the Act.[408] The Commission also required the BOCs and their independent incumbent LEC affiliates to provide the Commission with their performance measurement results on a quarterly basis.[409] The Commission reasoned that these metrics and the associated filing requirement were necessary to monitor whether the BOCs and their independent incumbent LEC affiliates engaged in non-price discrimination in the provision of special access services to unaffiliated entities.[410]

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[402] *Section 272 Sunset Order*, 22 FCC Rcd at 16480, para. 82, 16482, para. 85.

[403] *Id.* at 16481, para. 82.

[404] 47 U.S.C. § 251(g); *Section 272 Sunset Order*, 22 FCC Rcd at 15855-56, para. 172; *see MTS and WATS Market Structure, Phase III*, Docket No. 78-72, Report and Order, 100 FCC 2d 860 (1985); *Investigation into the Quality of Equal Access Services*, Memorandum Opinion and Order, 60 Rad. Reg. 2d (P&F) 417, 419, 1986 WL 291752 (1986).

[405] 47 U.S.C. § 251.

[406] 47 U.S.C. §§ 201, 202.

[407] *Section 272 Sunset Order*, 22 FCC Rcd at 16488-89, paras. 97-98.

[408] 47 U.S.C. § 272(e)(1) (requiring a BOC and an affiliate that is subject to the requirements of section 251(c) to "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates").

[409] *Id.* at 16488, para. 98.

[410] *Id.* at 16488-89, paras. 97-98 ("The information that AT&T, Qwest and Verizon record and report to the Commission under these metrics will provide the Commission and other interested parties with reasonable tools to monitor each BOC's performance in providing these special access services to itself and its competitors. . . . We conclude that the metrics and the associated reporting requirements that we impose in this Order adequately address commenters' concerns about the BOCs' and their independent incumbent LEC affiliates' incentives and ability to

(continued....)

144. For reasons similar to those set forth in the *Section 272 Sunset Order*, we find that implementation of these metrics is needed to monitor whether price cap independent ILECs engage in anticompetitive non-price discrimination in the provision of special access services to unaffiliated entities. We therefore require, as a condition of the relief granted in this Order, that each price cap independent ILEC submit a plan to measure special access performance, and receive Bureau approval of that plan, prior to providing long distance service on an integrated basis.[411] In addition, the price cap independent ILEC must then implement these metrics and file its performance results, on a quarterly basis, with the Commission. An independent ILEC taking advantage of this relief shall implement these metrics to the extent that it provides one or more of the covered special access services to itself, to any affiliate, or to third parties. The reports are intended to provide the Commission and other interested parties with reasonable tools to monitor the independent ILEC's performance in providing these special access services to itself and its competitors, and evaluating whether any disparities in performance are statistically significant.[412]

145. *Imputation*. As a separate condition of the relief it granted in the *Section 272 Sunset Order*, the Commission required the BOCs and their independent ILEC affiliates to impute access charges to themselves for access services that the LECs would be using in the provision of their own services (and that were previously being purchased by the long distance separate affiliate). This was designed to implement the requirement for access charge imputation by the BOCs that is contained in section 272(e)(3) of the Act.[413]

146. For reasons articulated in the *Section 272 Sunset Order*, we find that a similar requirement is necessary to provide transparency regarding whether price cap independent ILECs engage in anticompetitive discrimination in the provision of access services to unaffiliated entities. To help protect against possible cost misallocation and price squeezes, each price cap independent ILEC taking advantage of this relief must impute to itself its highest tariffed rate for access, including access provided over joint-use facilities, with regard to the independent ILEC's provision of access for any in-region, interstate and international, long distance services that it provides directly.[414] We also require each such

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engage in non-price discrimination in their provisioning of special access services in order to impede competition in the market for in-region, interstate, long distance services.").

[411] When the Commission granted relief to the BOCs from the structural separations requirement, the BOCs had "implemented special access performance metrics designed to help ensure that they refrain from non-price discrimination in their provision of special access services," and the Commission had approved those metrics. *Section 272 Sunset Order*, 22 FCC Rcd at 16487, paras. 96-97. Here, the independent ILECs have not yet developed or received approval of such performance metrics.

[412] We note that these non-price performance metrics involve issues distinct from the special access pricing flexibility matters also before the Commission, and in no way reflect a pre-judgment of those distinct issues.

[413] 47 U.S.C. § 272(e)(3) (requiring a BOC and an affiliate that is subject to the requirements of section 251(c) to "charge the affiliate . . . or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service").

[414] *See Section 272 Sunset Order*, 22 FCC Rcd at 16490, para. 100 (imposing an identical requirement on the BOCs' independent incumbent LEC affiliates). Imputation is an accounting and regulatory device that is used in recognizing intra-company transactions. In the context of access services, this Commission and state commissions have long recognized the potential for incumbent LECs to use their control over their local networks to impede competition in services for which local network access is a needed input. Imputation requirements address this concern by requiring the incumbent LEC to recognize for accounting and other regulatory purposes charges for local network access equal to the amounts that an unaffiliated third party would pay for comparable access. *See, e.g.*, *id*. at 16489-90, para. 287; *Application of Access Charges to the Origination and Termination of Interstate, IntraLATA*

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price cap independent ILEC to charge any non-rule 64.1903 separate affiliate through which it provides in-region, interstate or international, long distance services the same amount for access that it would have charged itself.[415] These requirements will assure that the degree of protection against improper cost shifting does not vary with the independent ILEC's choice of corporate structure for the provision of in-region, interstate and international, long distance services.[416]

147. In order to implement this requirement, we also require, as a condition of the relief granted in this Order, that price cap independent ILECs submit access imputation plans similar to those filed by the BOCs and receive Bureau approval of such plans, prior to providing long distance service on an integrated basis.[417]

148. We find that granting relief from the separate affiliate requirement, subject to these conditions, is consistent with our prior decisions. In light of the safeguards we adopt in this order, we conclude that enforcement of the separate affiliate requirement for the provision of in-region long distance service by independent ILECs subject to price cap regulation is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with in-region long distance service are just and reasonable and are not unjustly or unreasonably discriminatory. In particular, we are limiting relief to price cap carriers, which have little if any incentive to engage in cost misallocation, and we are applying safeguards designed to address price squeezes and non-price discrimination. For the same reasons, we conclude that retention of the separate affiliate requirement for the provision of in-region long distance service by independent ILECs operating under price cap regulation is not necessary for the protection of consumers. We also find that the above conditions will ensure that independent ILECs subject to price cap regulation provide long distance service on an integrated basis in a manner that is consistent with the public interest. The relief granted in this Order from the separate affiliate requirement will not become effective unless and until the Office of Management and Budget approves any information collections associated with these conditions in accordance with the Paperwork Reduction Act and the Bureau approves the price cap carrier's plans.[418]

149. *Rate-of-return Carriers*. We find that USTelecom has not met its burden of showing that it is appropriate to forbear from the separate affiliate requirement for carriers that are not subject to price cap regulation. As a preliminary matter, we note that, when the Commission granted the BOCs relief

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Services and Corridor Services, Memorandum Opinion and Order, FCC 85-172, 57 RR2d (P&F) 1558, 1985 FCC Lexis 3510, para. 9 & n.22 (Apr. 12, 1985) (*Corridor Services Order*) (requiring that LECs impute access charges to themselves in calculating their interstate, intraLATA toll rates); *see also 1998 Biennial Regulatory Review – Part 61 of the Commission's Rules and Related Tariffing Requirements*, CC Docket No. 98-131, Report and Order and First Order on Reconsideration, 14 FCC Rcd 12293, 12312, para. 53 (1999) (requiring that price cap LECs offering interexchange services impute to themselves the same access charges that they impose on interexchange carriers).

[415] *See Section 272 Sunset Order*, 22 FCC Rcd at 16490, para. 100.

[416] *See id.*

[417] We note that in the section of this Order addressing forbearance from the Commission's cost assignment rules, we require price cap independent ILECs to file imputation plans showing how they would comply with the access imputation requirement in the absence of the cost assignment rules. *See supra* Section III.B.3, Cost Assignment Rules.

[418] Obligations associated with the conditions of this forbearance order are information collections as defined by the Paperwork Reduction Act and must be approved by the Office of Management and Budget. Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163.

from the structural separation requirement, the BOCs were subject to price cap regulation, and our analysis was premised on that fact.[419]

150. The ability and incentive of independent ILECs to misallocate costs between their interexchange and exchange access services was one of the major concerns underlying adoption of the separate affiliate requirement in the Commission's 1997 *LEC Classification Order*.[420] Price cap regulation "severs the direct link between regulated costs and prices," and "a carrier is not able automatically to recoup misallocated non-regulated costs by raising basic service rates thus reducing incentives to shift non-regulated costs to regulated services."[421] Independent ILECs providing service pursuant to price cap regulation thus are unlikely to engage in cost misallocation because their interstate access rates and compensation are not tied to cost allocations.[422] In particular, misallocating costs from their long distance service operations to their interstate access offerings will not allow them to increase charges for their interstate access services.

151. In contrast, cost misallocation is still a concern for independent ILECs that operate under rate-of-return cost regulation because a portion of their interstate access charge compensation and universal service support is based on their costs of providing service. This gives them an incentive to engage in cost misallocation and facilitate a price squeeze. The Commission's 2011 intercarrier compensation rules cap or reduce interstate switched access charges, but allow increases in common line and special access rates. Thus, these changes in the access charge rules reduce, but do not eliminate, the incentives for cost misallocation and potential access charge rate increases.[423] We find that it would be unwise to forbear from the separate affiliate requirement for rate-of-return independent ILECs subject to cost regulation. To do so would potentially further increase opportunities for cost misallocation at a time when the Commission has just embarked on a significant transformation of intercarrier compensation and universal service.[424] Accordingly, we do not forbear from application of the separate affiliate requirement to rate-of-return independent ILECs subject to cost-based regulation.

152. We recognize that independent ILEC cost companies participating in the National Exchange Carrier Association (NECA) pools may have somewhat less incentive to misallocate costs than such companies that have their own access tariffs. The NECA pool access rates are based on the average costs for all companies that participate in the NECA pools. While those companies have less direct ability to increase access rates and engage in a price squeeze than do cost companies that file individual tariffs, USTelecom has not shown that they lack any ability or incentive to misallocate costs. To the contrary, they still have an incentive to misallocate costs because disbursements from the NECA pools for services other than switched access are based on participating companies' costs, and cost misallocation would allow them to underprice competitive long distance service. In light of these concerns, and the fact that USTelecom has not specifically addressed the appropriate treatment of these companies, we will treat them like other cost companies.

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[419] *See, e.g., Section 272 Sunset Order*, 22 FCC Rcd at 16484, para. 90 (noting that the BOCs "remain subject to price cap regulation of exchange access services").

[420] *Id*.

[421] *See Wireline Broadband Order*, 20 FCC Rcd at 14925-26.

[422] *See generally Special Access for Price Cap Local Exchange Carriers: AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services,* WC Docket No 05-25 & RM-10593, Report and Order, 27 FCC Rcd 10557, 10562-64, paras. 8-12 (2012).

[423] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17936, para. 804.

[424] *Id*. at 17667, para. 1.

153. As described above, rate-of-return carriers subject to cost regulation continue to have incentives and the potential ability to misallocate costs from their long distance operations to their access services, to increase rates for access services that are not capped or being phased down, and to engage in price squeezes. In light of this, we cannot find that the separate affiliate requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with these carriers' telecommunications services are just and reasonable and not unjustly or unreasonably discriminatory.[425]

(ii) Dominant Carrier Regulation

154. We conclude that we do not need to formally grant USTelecom's related request for forbearance from dominant carrier treatment of its long distance services that are provided other than in compliance with section 64.1903 because the Commission has already classified the independent ILECs as nondominant in the provision of these services. The practical consequence of this is that once the Commission has forborne from the section 64.1903 requirements for a class of independent ILECs, there is no requirement under existing precedent to file tariffs for such services or otherwise comply with dominant carrier regulation of those services as a result of providing long distance services on an integrated basis.[426]

155. As a general matter, a carrier that has been classified as dominant is subject to dominant carrier regulation of its services unless the Commission classifies the carrier as nondominant for a particular service or class of services or forbears from dominant carrier treatment under section 10.[427] USTelecom asserts that the Commission has already largely addressed the issue of dominant carrier regulation for the independent ILECs in the *LEC Classification Order*: "after analyzing 'traditional

[425] Rate-of-return carriers include a small number of average schedule companies. USTelecom has not met its burden of demonstrating that these companies should be granted relief from the separate subsidiary requirement. In light of this and the issues discussed below, we treat the average schedule carriers like other rate-of-return carriers. At the outset, we note that average schedule companies appear to have limited incentives to misallocate costs as long as they continue to use the average schedules for access compensation. However, such companies can convert to cost-based regulation without Commission approval. Thus, an average schedule company could provide in-region long distance service without a separate affiliate, and then convert to cost-based regulation. At that point, the Commission could require the company to change its operations and provide in-region long distance service through a separate affiliate, which would be administratively burdensome, and create an artificial incentive for carriers to remain on the average schedules when they would otherwise convert to cost-based regulation. We do not believe that this is a desirable result. Nor do we find on this record that it is desirable to allow average schedule companies to convert to cost and continue the provision of in-region long distance service without an affiliate.

[426] As the *LEC Classification Order* made clear, section 63.10 of the Commission's rules continues to apply with respect to a carrier being classified as dominant or nondominant for the provision of particular international communications services on particular routes, *e.g.,* based on an affiliation with a foreign carrier. *LEC Classification Order,* 12 FCC Rcd at 15863, para. 189; *see* 47 C.F.R. § 63.10.

[427] *See, e.g.*, *Competitive Carrier First Report and Order,* 85 FCC 2d at 65 (classifying independent incumbent LECs as dominant with respect to both interstate access services and interstate long distance services); *Motion of AT&T Corp. to be Reclassified as a Nondominant Carrier,* CC Docket No. 79-252, Order, 11 FCC Rcd 3271, 3357, para. 169 (1995) (reclassifying AT&T as a nondominant carrier in the market for interstate, domestic, interexchange telecommunications services); *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; Petition of the Frontier and Citizens ILECs for Forbearance under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to their Broadband Services*, WC Docket No. 06-147, Memorandum Opinion and Order, 22 FCC Rcd 19478 (2007) (forbearing from application of dominant carrier requirements to certain special access services of particular dominant carriers).

market power factors—market share, supply and demand substitutability, cost structure, size, and resources—,' the Commission concluded that 'independent ILECs do not have the ability to raise prices by restricting their own output.'"[428] While there is some ambiguity in the Commission's precedent, we agree that the better reading of the *LEC Classification Order* is that the Commission classified independent ILECs as nondominant in their provision of long distance services generally and was not only describing the provision of long distance services through a separate affiliate structure.[429] We recognize that the intervening precedent has not always been clear in this regard, so we explain our interpretation.

156. First, the *LEC Classification Order* examined independent ILECs' ability to exercise market power. Instead of simply referencing prior *Competitive Carrier* orders in which it had previously classified long distance services provided by independent ILECs, the independent ILEC section of the *LEC Classification Order* noted that the Commission was newly considering the types of information that it traditionally looked at when engaging in classification of carriers as dominant or nondominant: market shares, supply and demand substitutability, among others. We interpret this as demonstrating that the Commission was taking a fresh look at the provision of these services and the applicability of dominant carrier treatment on a more general basis. Moreover, in applying this analytical approach, the text of the *LEC Classification Order* treats as distinct the classification finding and the imposition of separate affiliate requirements. For example, in that *Order*, the Commission stated generically that "[w]e also classify the independent ILECs as nondominant in the provision of in-region, interstate, domestic, interexchange services, because the independent ILECs do not have the ability profitably to raise and sustain prices of in-region, interstate, domestic, interexchange services above competitive levels by restricting their own output of these services."[430] The Commission then went on to "conclude, however, that the independent ILECs' control of local exchange and exchange access facilities potentially enables them to misallocate costs from their in-region, interexchange services, discriminate against rivals of their interLATA affiliates, and engage in other anticompetitive conduct," and this "therefore require[d] the independent ILECs to provide their in-region, interstate, domestic, interexchange services through separate affiliates that satisfy the separation requirements adopted in the *Competitive Carrier Fifth Report and Order*."[431] By distinguishing between these two sets of issues—the ability to raise prices to supra-

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[428] USTelecom Mar. 28, 2013 *Ex Parte* Letter at 3 (quoting *LEC Classification Order*, 12 FCC Rcd at 15847, para. 157).

[429] *See, e.g.*, *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198, para. 9 ("Interstate services provided directly by exchange telephone companies (not through affiliates) are regulated as dominant.").

[430] *LEC Classification Order*, 12 FCC Rcd at 15763, para. 7. In discussing dominant carrier regulation, the Commission noted that there are two ways in which a carrier can profitably raise and sustain prices above competitive levels and thereby exercise market power: "First, a carrier may be able to raise prices by restricting its own output (which usually requires a large market share); second, a carrier may be able to raise prices by increasing its rivals' costs or by restricting its rivals' output through the carrier's control of an essential input, such as access to bottleneck facilities, that its rivals need to offer their services." *Id.* at 15802-03, para. 83. Dominant carrier regulation addresses the first concern. *Id*. at 15846, para. 156 ("[D]ominant carrier regulation is generally designed to prevent a carrier from raising prices by restricting its own output of interexchange services."). The separate affiliate requirement addresses the second concern. *Id.* at 15852, para. 167 (finding continued imposition of the *Fifth Report and Order* separation requirements was "necessary to prevent and detect any anticompetitive conduct that may arise as a result of an independent LEC's control of bottleneck facilities.").

[431] *Id*. at 15763, para. 7; *see also*, *e.g.*, *id*. at 15847, para. 157 (similarly treating as distinct the classification decision and the separate affiliate requirements); *id*. at 15854-55, para. 171 (reiterating the general holding that "we should not apply dominant carrier regulation to independent ILECs" and explaining that such regulation is not needed to address the types of concerns that were the target of the separate affiliate requirement).

competitive levels and the ability to engage in anti-competitive conduct—the text of the *LEC Classification Order* reinforces our interpretation that the Commission's nondominant classification for independent ILECs' provision of long distance services was not tied to their use of a separate affiliate.[432]

157. Second, the Commission certainly knew how to specify a conditional classification—such as classifying a service as subject to nondominant treatment only when provided through a separate affiliate—as it had done earlier in the *Competitive Carrier Fourth Report and Order* and the *Competitive Carrier Fifth Report and Order*, but did not do so for independent ILECs in the *LEC Classification Order*.[433] In fact, the BOC portion of the same *LEC Classification Order* was itself clear that the classification it was making regarding nondominant treatment did not pertain to the BOCs themselves, but only to the BOCs' long distance affiliates.[434] The contrast between that discussion for the BOCs and the language used in the *LEC Classification Order* with respect to independent ILECs reinforces our interpretation.[435]

158. Third, it certainly would have been rational for the Commission in 1997 to have treated the BOCs and independent ILECs differently on the question of dominant carrier treatment, given that some of the factors it had considered in its market power analysis of the independent ILECs were "cost structure, size and resources."[436] It also would have been consistent with the Telecommunications Act of

[432] *See id*. at 15804, para. 85 (finding that dominant carrier regulations are generally designed to prevent a carrier from raising prices by restricting its output rather than to prevent a carrier from raising its prices by raising its rivals' costs, such regulations were adopted at a time when AT&T was essentially a monopoly provider of domestic long distance services, and application of these regulations to a carrier that does not have the ability to raise long distance prices by restricting its own output could lead to incongruous results).

[433] *Id*. at 15767-68, para. 14 ("The Commission [in the *Competitive Carrier Fifth Report and Order*] added that any interstate, interexchange services offered directly by an independent LEC (rather than through a separate affiliate) or through an affiliate that did not satisfy the specified conditions would be subject to dominant carrier regulation."); *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198-99, para. 9 ("Interstate services provided directly by exchange telephone companies (not through affiliates) are regulated as dominant."); *Competitive Carrier Fourth Report and Order*, 95 FCC 2d at 575-79, paras. 31-37 (concluding that interexchange carriers affiliated with independent ILECs would be regulated as nondominant interexchange carriers).

[434] *Compare LEC Classification Order,* 12 FCC Rcd at 15835, para. 134 ("We emphasize that our decision to accord non-dominant treatment to the BOCs' provision of in-region, interLATA services is predicated upon their full compliance with the structural, transactional, and nondiscrimination requirements of section 272 and our implementing rules."), *with id.* at 15842, para. 145 (noting that in an NPRM leading up to the *LEC Classification Order,* "[w]e suggested that, regardless of our determination of whether independent LECs should be classified as dominant or non-dominant, some level of separation may be necessary between an independent LEC's interstate, domestic, interexchange operations and its local exchange operations to guard against cost misallocation, unlawful discrimination, or a price squeeze").

[435] *Compare id*. at 15763, para. 7 ("We classify the independent ILECs as nondominant in the provision of in-region, interstate, domestic, interexchange services, because the independent ILECs do not have the ability profitably to raise and sustain prices of in-region, interstate, domestic interexchange services above competitive levels by restricting their own output of these services."); *id.* at 15840-41, para. 143 ("We, therefore, classify independent ILECs as nondominant in the provision of these [long distance] services."); *id.* at 15855, para. 171 ("As previously stated, we conclude that we should not apply dominant carrier regulation to independent ILECs."), *with id.* at 15786, para. 50 (evaluating product market definitions for "BOC interLATA affiliates or independent ILECs"); *id.* at 15799, para. 76 ("In evaluating whether BOC interLATA affiliates and independent ILECs possess market power in the interstate, domestic, long distance market, we conclude that we generally will follow the approach proposed in the *Non-Accounting Safeguards NPRM*.").

[436] *Id.* at 15847, para. 157.

1996 and Commission precedent distinguishing between the BOCs and smaller independent ILECs for purposes of dominant carrier regulation.[437] Furthermore, it made sense for the Commission in the *LEC Classification Order* to assess the classical market power of "BOC affiliates" and "independent ILECs" in 1997 because, with respect to the BOCs, only BOC affiliates would be permitted to provide long distance service for a period of years under section 271/272 requirements in the Telecommunications Act of 1996, whereas with respect to the independent ILECs, both independent ILECs and their affiliates could provide, and in fact were providing, long distance services at that time.[438]

159. Although there are some references in the *LEC Classification Order* that arguably could be viewed as tying the conclusion about whether the independent ILECs are dominant for long distance services to the existence of the separate affiliate requirement, we find that those references appear to be focused on the potential for a price squeeze and other concerns about exclusionary behavior rather than the question of dominance based on classical market power concerns such as high market shares and supply and demand elasticities.[439] In the preceding section, we describe how, for price cap carriers, these concerns are adequately addressed with alternative safeguards that are less burdensome than structural separation.

160. In addition, certain Commission decisions, including some following shortly after the *LEC Classification Order*, support our interpretation of that decision. For example, the Commission previously has characterized the *LEC Classification Order* as having "classified independent incumbent LECs *and their affiliates* as nondominant in the provision of interstate, interexchange services," indicating that the nondominant classification extended to the independent ILECs themselves.[440] In another order, the Commission likewise interpreted the *LEC Classification Order* as finding "that independent ILECs should be classified as nondominant because they do not have the ability profitably to raise and sustain prices of in-region, interstate, domestic, interexchange services by restricting output, but that," notwithstanding that general finding, "such LECs should be required to provide these services subject to the *Competitive Carrier Fifth Report and Order* separation requirements in order to prevent and detect cost misallocation, access discrimination, and price squeeze," consistent with the *LEC Classification Order*'s textual distinction between those two sets of issues discussed above.[441] We

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[437] *See, e.g.*, 47 U.S.C. § 251(f).

[438] *LEC Classification Order*, 12 FCC Rcd at 15856, para. 173 (discontinuing the ability of independent ILECs to choose whether to be regulated as a dominant carrier when providing in-region, interstate, domestic interexchange services or provide such services through the separate affiliate structure). *See id.* at 15835, para. 134 n.391 (noting significant uncertainty about how competition would develop and what types of safeguards would be necessary and appropriate for the BOCs upon expiration of the section 272 safeguards that were subject to a sunset date).

[439] *See*, *e.g*., *id*. at 15840-41, para. 143 ("[W]e conclude that the requirements established in the *Fifth Report and Order*, together with other existing rules, sufficiently limit an independent LEC's ability to exercise its market power in the local exchange and exchange access markets so that the LEC cannot profitably raise and sustain the price of in-region, interstate, domestic, interexchange services by restricting its own output. We, therefore, classify independent ILECs as nondominant in the provision of these services."); *id.* at 15848-49, para. 158 ("We noted in the *Non-Accounting Safeguards NPRM* that an independent LEC may be able to use its control over local exchange and exchange access services to disadvantage its interexchange competitors to such an extent that it will quickly gain the ability profitably to raise the price of in-region, interstate, interexchange services above competitive levels. . . . . We find, as we did with regard to the BOCs, that independent ILECs providing in-region, interstate, interexchange services do not have the ability to engage in these actions to such an extent that they would have the ability to raise prices by restricting output.").

[440] *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21562, 21544-45, para. 24 (1998).

[441] *LEC Classification Second Reconsideration Order*, 14 FCC Rcd at 10777, para. 8.

acknowledge that certain other, more recent decisions could be read to suggest that, under the *LEC Classification Order*, independent ILECs would be subject to dominant carrier regulation of long distance services that were not provided using the section 64.1903 separate affiliate structure. For instance, in a 2010 bureau order waiving section 64.1903 requirements for Puerto Rico Telephone Company, Inc. (PRT), the Bureau stated that "[a] straightforward application of precedent dictates that PRT should be classified as dominant in the provision of in-region, interstate and international, long distance services in the event it provides them through an entity other than a rule 64.1903 separate affiliate."[442] The fact that the Bureau said it was making a "straightforward application of precedent" indicates that there may have been some doubt about whether it was making the correct interpretation and it was choosing the most conservative approach. To resolve uncertainty regarding the proper interpretation of the *LEC Classification Order* arising from the mixed precedent, we expressly overrule the interpretations reflected in the Bureau's *PRTC Order* and any other intervening interpretations of the *LEC Classification Order* insofar as they could be read as contrary to our interpretation in this section regarding dominant carrier treatment of independent ILECs' long distance services.

161. Having found that lack of compliance with the section 64.1903 requirements for independent ILECs no longer results in dominant carrier treatment of their long distance services, as it did prior to the *LEC Classification Order*, we also are not required to affirmatively take up that issue ourselves to resolve USTelecom's forbearance petition. We do note, however, that based on this record we see no need to revisit that *Order's* classification of such services at this point in time. Although we certainly could revisit such classification of telecommunications services at any time if the marketplace developed in ways that were adverse to consumers' interests, we do not find reason to do so today based on the following considerations: (1) an increase in facilities-based alternatives for voice services from cable operators and wireless service providers since 1997;[443] (2) the development of broadband services enabling VoIP services (*e.g.,* Vonage, Skype) to be provided over the broadband service provider's

[442] *Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission's Rules*, WC Docket No. 10-52, Memorandum Opinion and Order, 25 FCC Rcd 17704, 17713, para. 18 (Wireline Comp. Bur. 2010) (granting a temporary waiver of section 64.1903 and deferring application of dominant carrier regulation until PRT filed an interstate tariff or made a showing that it should be classified as nondominant in the provision of in-region long distance services on an integrated basis); *see also, e.g.*, *Section 272 Sunset Order,* 22 FCC Rcd at 16476, para. 72 (finding the BOCs' independent ILEC affiliates to be nondominant in the provision of in-region, long distance services either directly or through affiliates that are not § 64.1903 separate affiliates); *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745, 22753-54, para. 16 (2001) ("[T]he Commission determined that BOC affiliates and independent incumbent LEC affiliates should be classified as nondominant in the provision of in-region, interstate, domestic, long distance services").

[443] By the end of 2011, non-ILECs' share of residential voice service connections had grown to approximately 37 percent. *2013 Local Competition Report* at Table 10 (30.5 million is approximately 37 percent of 83.0 million). As of December 2011, only 3.7 million of the 30.5 million non-ILEC residential voice service connections were reported to be switched access lines. *Id.* Cable-based connections constituted 51 percent of non-ILEC connections. *Id.* at Table 6 (27.8 million cable-based connections is approximately 51 percent of 54.1 million non-ILEC connections.). There also has been an increase in households subscribing to mobile wireless services. For example, the National Center for Health Statistics estimates that between 2003 and 2012, the percentage of households subscribing to mobile wireless services grew from approximately 46 percent to 88 percent, and the percentage of households subscribing only to a mobile wireless service increased from 3.2 percent to 35.8 percent. Stephen J. Blumberg and Julian V. Luke, National Center for Health Statistics, Centers for Disease Control, *Wireless substitution: Early release of estimates from the National Health Interview Survey*, January–June 2012 at Table 1 (Dec. 2012), available at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201212.pdf (CDC Wireless Survey).

facilities;[444] (3) an absence of record evidence of complaints in regulatory filings about long distance prices for any type of ILEC in the more than 15 years since the *LEC Classification Order* adopted nondominant treatment of long distance services; and (4) an absence of record evidence of complaints regarding BOC long distance prices in the more than five years since the BOCs have been providing long distance services on a nondominant basis without the use of a separate affiliate. Further, as the Commission recognized in the *Section 272 Sunset Order*, other continuing legal obligations remain in place to help address potential concerns, including the continued regulation of special access services, substantive equal access obligations, section 251 requirements, and carriers' obligations under sections 201 and 202 of the Act.[445] In addition to the continuing legal obligations cited in the *Section 272 Sunset Order*, the rate averaging and rate integration requirements of section 254(g) and the Commission's implementing rules also will continue to apply to these carriers.

162. Finally, we note that one price cap carrier, PRTC, is operating under a temporary waiver of the separate affiliate requirement in section 64.1903, which expires on May 17, 2013.[446] PRTC is an independent incumbent LEC serving the Commonwealth of Puerto Rico. During 2008, PRTC converted its interstate access services from rate-of-return regulations to price cap regulations.[447] Thus, PRTC is now covered by the forbearance from section 64.1903 that is granted to price cap carriers in this Order and will be treated as nondominant, consistent with our interpretation of Commission precedent above.

12. "Cash Working Capital Allowance" Requirement

a. USTelecom's Request

163. USTelecom requests forbearance from section 65.820(d), the cash working capital allowance rule, for price cap carriers.[448] USTelecom argues that the rule is not useful for ratemaking purposes and serves no regulatory purpose.[449]

b. Background

164. The term "cash working capital" means "[t]he average amount of investor-supplied capital needed to provide funds for a carrier's day-to-day interstate operations" and is part of a carrier's regulated rate base.[450] The cash working capital rule derives from traditional rate-of-return regulation.[451]

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[444] *Eighth Broadband Progress Report*, 27 FCC Rcd 10342 (2012).

[445] *See*, *e.g.*, *Section 272 Sunset Order*, 22 FCC Rcd at 16484, para. 90.

[446] *Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission's Rules*, WC Docket No. 10-52, Order, 28 FCC Rcd 1072, 2496, para. 4 (Wireline Comp. Bur. 2013).

[447] *See Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*, WC Docket Nos. 07-292, 07-291, 08-18, Order, 23 FCC Rcd 7353 (Wireline Comp. Bur. 2008)).

[448] 47 C.F.R. § 65.820(d); USTelecom Petition at 68-69, App. A at A-12.

[449] USTelecom Petition at 68.

[450] 47 C.F.R. § 65.820(d). Telecommunications companies, as other businesses, have day-to-day expenses that have to be met, and as a result they are required to have a source of funds – working capital – in order to pay these obligations. JAMES C. BONBRIGHT, ALBERT L. DANIELSEN & DAVID R. KAMERSCHEN, PRINCIPLES OF PUBLIC UTILITY RATES 243 (Public Utilities Reports, Inc. 1988). Cash working capital may be described as an estimate of investor-supplied cash used to finance operating costs during the time lag before revenues are collected. *Id.* at 244.

Rate-of-return carriers are allowed to include the working capital allowance in the rate base, upon which these carriers are allowed the opportunity to earn a rate of return.[452] The rule provides that larger carriers may calculate the cash working capital allowance either by performing a lead-lag study of interstate revenue and expense items or by using a specified formula, and that smaller carriers, in lieu of using these methods, may make this calculation using a standard established by the Commission.[453] Currently, price cap carriers other than AT&T, Qwest, and Verizon are required under section 65.600 to file the annual Price-Cap Regulation Rate-of-Return Monitoring Report (FCC Form 492A), which includes a cash working capital calculation.[454] To the extent that price cap carriers meet the conditions for forbearance from our Cost Assignment Rules, set forth above, that report will no longer be required for regulatory purposes because that rule is part of the Cost Assignment Rules.[455]

c. Discussion

165. We grant USTelecom's request to forbear from the application of this rule to price cap carriers, with one exception described below. USTelecom asserts that "this calculation is detailed, time consuming, and resource-intensive," but is not required for any regulatory or ratemaking purpose for price cap carriers.[456] We agree in general that the rule does not continue to be necessary for price cap carriers, whose rates are not set so as to earn a particular rate of return on rate base; instead, these carriers' rates are constrained by the Commission's price cap methodology.[457]

166. We maintain the rule for price cap carriers, however, to the extent they seek relief based on a rate-of-return methodology. Under our rules, price cap carriers may seek relief – such as a TCER – that is based on a rate-of-return methodology and thus requires a cash working capital calculation to determine a carrier's cost in that case.[458] If a price cap carrier seeks such relief, it must comply with the methodology as provided in the rule.[459] Otherwise, however, we conclude that the requirement is not necessary to ensure just and reasonable rates as it is not generally used in regulating price cap carriers'

(Continued from previous page)

[451] *See* Letter from Glenn T. Reynolds, Vice President, Policy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 12-61, at 26 (filed June 5, 2012).

[452] For rate-of-return carriers, an allowance for cash working capital is included in the rate base so that investors are compensated for capital they have supplied to a utility. CHARLES F. PHILLIPS, JR., THE REGULATION OF PUBLIC UTILITIES 348 (Public Utilities Reports, Inc. 1993).

[453] 47 C.F.R. § 65.820(d).

[454] 47 C.F.R. § 65.600. In its petition, USTelecom asserted the calculation was required for certain annual reports that are filed. USTelecom Petition at 68. In a subsequent filing, however, it indicated that this calculation was not included in carrier reports filed with the Commission. Letter from Glenn Reynolds, Vice President, Policy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 12-61 (filed March 8, 2013).

[455] USTelecom Petition, App. A at A-7; *see also AT&T Cost Assignment Order*, 23 FCC Rcd at 7308, para. 12; *ARMIS Forbearance Order*, 23 FCC Rcd at 13662, para. 27, n.82. We note that the cash working capital calculation was also required for ARMIS Report 43-01, but we grant conditional forbearance from that report elsewhere in this Order. *See supra* Section III.B.7.

[456] USTelecom Petition at 68.

[457] *See*, *e.g.*, 47 C.F.R. §§ 61.41-.47.

[458] *See*, *e.g.*, *USF/CC Transformation Order*, 26 FCC Rcd at 17997, para. 924 (Total Cost and Earnings Review).

[459] The Michigan PSC is the only party that opposes USTelecom's request to forbear from this rule. It argues that USTelecom did not sufficiently support its claim that the cash working capital calculation serves no regulatory purpose for price cap carriers. Michigan PSC Reply at 5. We disagree consistent with our finding that the calculation is not necessary, subject to the condition we adopt here.

rates. We also find that the cash working capital requirement is not necessary to protect consumers and that forbearance is consistent with the public interest.

13. Rules Governing Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office

a. USTelecom's Request

167. USTelecom seeks forbearance for all relevant carriers from 47 C.F.R. §§ 64.801 and 64.804, which require certain carriers to file periodic reports with the Commission detailing the terms of any unsecured credit extended by the carrier to, or on behalf of, a candidate for federal office.[460] Carriers must extend unsecured credit on substantially equal terms to all candidates or persons on the candidate's behalf.[461] USTelecom argues that, since these provisions were adopted, numerous laws have been enacted governing campaign finance, gifts to government officials or candidates, and credit arrangements that obviate the need for our rules. There were no objections or comments filed in the record regarding these rules or contradicting USTelecom's claims.

b. Background

168. This reporting requirement was established pursuant to the Commission's authority under the Act and Section 401 of the Federal Election Campaign Act of 1971, and was intended to serve as a check on implied contributions by carriers to candidates for Federal office.[462] The regulations were adopted in response to congressional concerns regarding substantial outstanding balances remaining on 1968 campaign accounts.[463] The Commission concluded that inadequate credit practices and procedures, laxity in the administration of the carriers' then-current credit practices and procedures, failure to monitor the candidates' accounts, delays in billing, and lack of appropriate collection efforts were among the major factors contributing to the unpaid balances accrued during the 1968 political campaign.[464] By 1972, when the rules were first proposed, the Commission noted that the major carriers had already revised their credit, billing and collection practices and procedures, and commented, "we would expect that adherence to these revised practices and procedures would help to prevent a recurrence of the unpaid balances that occurred during the 1968 campaign. Nevertheless, we are of the view that *the rules we propose herein will act as additional safeguards against a repetition of the 1968 experience* and will assure equality of treatment among qualified candidates."[465]

c. Discussion

169. In the *USTelecom Short Order*, we agreed with USTelecom that these rules were ripe for forbearance, but declined to forbear from application of all provisions in Subpart H due to the requirement of the Federal Election Campaign Act of 1971, as amended, that the Commission "maintain[]

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[460] USTelecom Petition at 67; *see also* 47 C.F.R. §§ 64.801-64.804.

[461] 47 C.F.R. § 64.804(b).

[462] *See Amendment of Part 64 of the Rules to Provide for Regulations Covering the Extension of Credit to Candidates for Federal Office*, Docket No. 19476, Report and Order, 34 FCC 2d 768, 771 (1972) (citing "sections 4(i), 201(b), 202(a), 203, 218 and 219 of the Communications Act of 1934, as amended, and § 401 of the Federal Election Campaign Act of 1971" as authority for the regulations).

[463] *Amendment of Part 64 of the Rules to Provide for Regulations Covering the Extension of Credit to Candidates for Federal Office*, Docket No. 19476, Notice of Proposed Rulemaking, 33 FCC 2d 999 (1972).

[464] *Id*.

[465] *Id.* at 1000 (emphasis added).

its own regulations with respect to the extension of credit, without security" by regulated entities.[466] We read this provision of the statute as requiring the Commission to maintain a codified and effective rule on the subject of carriers' extensions of unsecured credit to candidates for federal office. However, we do find that some additional forbearance relief is warranted. The Commission acknowledged as early as 1972 that changes to carrier practices were likely on their own to prevent a recurrence of the problems Congress sought to address through section 401. Some 41 years later, we find no evidence that carriers' billing and collections procedures have reverted to the level of laxity found in 1968.[467]

170. In addition to our earlier grant of forbearance from the reporting requirement in § 64.804(g) of our rules, we grant USTelecom's request for forbearance with respect to the recordkeeping and collection action requirements of § 64.804(c)-(f).[468] Given changes in both technology and carriers' practices, these rules are not necessary to ensure that charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; are no longer needed to protect consumers; and continued enforcement of these requirements would not serve the public interest. However, we deny USTelecom's request with respect to the nondiscrimination requirements encompassed in § 64.804(a)-(b) of the rules. Section 64.804(a) provides that, while carriers are under no obligation to extend unsecured credit for communications services to candidates for federal office, if they choose to do so, they must comply with the remaining requirements of section 64.804.[469] In the event a carrier does extend unsecured credit to any candidate, section 64.804(b) requires the carrier to extend unsecured credit on substantially equal terms and conditions to all candidates.[470] The record does not suggest that the obligation to extend credit on substantially equal terms creates any burden or is unnecessary to protect the public interest. Moreover, we find that retaining this rule is consistent with the directive to maintain regulations pursuant to the Federal Election Campaign Act of 1971 while imposing minimal burdens on carriers.

14. Recording of Telephone Conversations with Telephone Companies

a. USTelecom's Request

171. USTelecom requests forbearance for all carriers from rules governing the recording of telephone conversations between a telephone company and the public.[471] USTelecom argues that section 64.501 "has been rendered moot by the development of a robust body of privacy laws at the federal and state level," and relies on the Federal Wiretap Act in support of that argument. It further asserts that there is no reason to treat telephone companies differently from other companies when it comes to rules

[466] 2 U.S.C. § 451; *USTelecom Short Order* at para. 12.

[467] We have not found evidence of any carrier reports filed with the Commission pursuant to § 64.804(g) regarding federal candidates' unpaid balances for communications services resulting from the extension of unsecured credit. To the contrary, at least one carrier reports that neither it nor its wholly-owned affiliates extend unsecured credit for communications services to any candidates for Federal office. *See* Letter from Victoria Carter-Hall, Manager-Federal Regulatory, AT&T, to Julie Veach, Bureau Chief, Wireline Competition Bureau, FCC, Re: Unsecured Political Accounts, dated January 29, 2013.

[468] 47 C.F.R. § 64.804(c)-(f). Although we are forbearing from applying the recordkeeping rules of this section, we remind carriers that we still retain authority under the Act to seek information regarding their practices with regard to any unsecured credit they might extend to a candidate for federal office. *See, e.g.*, 47 U.S.C. §§ 220, 405.

[469] 47 C.F.R. § 64.804(a). To be clear, if a carrier chooses to extend such unsecured credit, the obligation in subsection (b) will apply, but the obligations in subsections (c) through (g) will not.

[470] 47 C.F.R. § 64.804(b).

[471] USTelecom Petition at 70; *see also* 47 C.F.R. § 64.501.

governing the recording of conversations with customers, and also claims that the rule represents an obligation imposed unnecessarily on only a subset of competitors in the communications marketplace.[472]

b. Background

172. Section 64.501 is the present-day iteration of rules first promulgated in 1947 to govern the recording of telephone conversations between telephone companies and members of the public.[473] The Commission instituted a proceeding investigating the use of recording devices in connection with toll telephone service and facilities in 1945, due to the conflict between carriers' then-existing tariff provisions prohibiting such use and the demand for such use that became apparent during and after World War II.[474] At that time, the carriers themselves raised privacy concerns with respect to allowing such recordings, and the need for adequate notice to the parties that their conversations were being recorded.[475]

173. The California PUC (CPUC) opposes eliminating this rule, contending that it has not been rendered moot by the Federal Wiretap Act, which provides less stringent protection to consumers, or by state laws.[476] The CPUC further argues that it is appropriate to treat telephone companies differently from other companies because telephone companies control the network over which communications are sent.[477]

c. Discussion

174. As USTelecom acknowledges, businesses routinely announce that a call "may be recorded for quality control or training purposes."[478] Thus, we question whether the rule imposes a substantial burden. Nonetheless, for carriers that operate exclusively in jurisdictions that permit one caller to record the call without the other party's knowledge, the rule does impose burdens. Moreover, we agree that, since we initiated the rule more than 60 years ago, the Federal Wiretap Act, as well as State laws, have addressed the same issue in a more comprehensive fashion. Notwithstanding the CPUC's arguments, we are not convinced that a telephone company's position as its customers' network provider puts it in a different position when speaking to its customers than any other business.[479] That is, we see

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[472] USTelecom Petition at 70-71.

[473] *See Use of Recording Devices in Connection with Telephone Service*, Docket No. 6787, Report, 11 FCC 1033 (1947).

[474] *Id*. ("[T]his matter became acute because of the widespread use of such devices during and since World War II. The Bell System companies withheld enforcement of the pertinent tariff regulations during the war since it was indicated that the recording devices were being used in war activities. With the termination of hostilities, however, the question of the status of these devices is presented.")

[475] In its 1947 order, the Commission said, "[t]he telephone companies submit that the fundamental principle in solving the problem of the use of recorders in connection with telephone service is that any use without the full knowledge and consent of all parties to the conversation must be prohibited." *Id*. The Commission agreed, noting that it was "keenly appreciative of the importance and desirability of privacy in telephone conversations. Such conversations should be free from any listening-in by others that is not done with the knowledge and authorization of the parties to the call . . . ." *Id*.

[476] California PUC Comments at 11-12. The CPUC notes that the Commission rule requires consent of all parties to the conversation, whereas the Federal Wiretap Act only requires one party to have knowledge that the call is being recorded, and only 12 states, including California, require all parties to consent to interception or recording when that interception is done by a private party not under the color of law.

[477] *Id*. at 12-13.

[478] USTelecom Petition at 70.

[479] Our decision to forbear from applying § 64.501 should not be construed as preferring a single-party consent rule.

no reason that a telephone company should be subject to different requirements with respect to its recording of conversations with its customers than should other businesses.[480]

175. We find that enforcement of this rule is not necessary to ensure that charges, practices, classifications or regulations are just and reasonable, and not unjustly or unreasonably discriminatory, nor is enforcement of the rule necessary to ensure the public interest, in light of other pertinent rules regarding recording of telephone conversations. Competitive market conditions will not be harmed, and might be enhanced, by relieving telephone companies of this burden. We thus conclude that forbearance from this rule is warranted. However, we emphasize that our decision here is not intended to preempt any state requirements regarding such recordings, nor does it preclude any state from adopting rules, like those in California and other states, that require all parties to consent to recording.

15. Prepaid Calling Card Reporting Requirements (§ 64.5001)

a. USTelecom's Request

176. USTelecom requests forbearance from section 64.5001, which establishes reporting and certification requirements for prepaid calling card providers.[481] USTelecom argues that there is no need for any of these requirements.[482]

b. Background

177. Sections 64.5001(a) and (b) require prepaid calling card providers to report to their transport providers specific information, including percentage of interstate usage (PIU) factors and call volumes for which these factors were calculated.[483] Section 64.5001(c) requires that the officer of each prepaid calling card provider submit a quarterly certification to the Commission stating: (1) the percentage of intrastate, interstate, and international calling card minutes for the reporting period;[484] (2) the percentage of total prepaid calling card revenue attributable to interstate and international calls for the reporting period;[485] (3) that the provider "is making the required Universal Service Fund contribution";[486] (4) that this contribution is "based on the reported information";[487] and (5) that the prepaid calling card provider has complied with the reporting requirements as to carriers from which it purchases transport services.[488]

[480] The rule governs the telephone company's conversations with customers, and does not address the very different issue of recording third-party conversations.

[481] USTelecom Petition at 72. Prepaid calling card providers are treated as telecommunications carriers and are subject to the Act and the Commission's rules. *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, 21 FCC Rcd 7290, 7293, 7298, paras. 10, 21 (2006) (*Prepaid Calling Card Services Order*).

[482] USTelecom Petition at 72.

[483] 47 C.F.R. § 64.5001(a), (b).

[484] *Id.* § 64.5001(c)(1).

[485] *Id.* § 64.5001(c)(2).

[486] *Id.* § 64.5001(c)(3).

[487] *Id.* § 64.5001(c)(3); *see also Prepaid Calling Card Services Order*, 21 FCC Rcd at 7298, para. 22 (stating that "prepaid calling card providers must contribute to the federal USF based on interstate and international telecommunications revenues"); *id*. at 7304, para. 38.

[488] 47 C.F.R. § 64.5001(c)(4) (requiring the certification by the calling card provider to include a statement that it has complied with the reporting requirements in § 64.5001(a)).

c. Discussion

178. We grant USTelecom's request for forbearance from the reporting and certification requirements in this rule, except for one provision in section 64.5001(c)(3) as it applies to certain prepaid calling card providers. The provision for which we deny forbearance in part requires an officer of a prepaid calling card provider to certify it "is making the required Universal Service Fund contribution based on the reported information" to the Commission.[489] For that provision, we grant forbearance only to those prepaid calling card providers that have a two-year track record of timely filing required annual and quarterly Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q). Once a prepaid calling card provider has established that track record, it need not comply further with section 64.5001(c)(3).[490]

179. The Commission adopted section 64.5001 on an interim basis for two reasons. First, the Commission adopted this rule to establish "certification and reporting requirements that compel the prepaid calling card provider to share the necessary information with the carriers that it uses to transport traffic."[491] Second, it adopted the rule to address the potential for evasion of universal service contributions that arose from the difficulty in determining whether prepaid calling card calls were used to provide interstate or intrastate traffic.[492]

180. With respect to the first and second prongs of our forbearance analysis, we find that the requirements in rule 64.5001 related to reporting and certifying prepaid calling card traffic for the purpose of distinguishing minutes of use between interstate and intrastate jurisdictions are no longer necessary to ensure just and reasonable rates or to prevent unreasonable or unjust discrimination.[493] As USTelecom explains, and no commenter disputes, "[c]arriers have established business practices for exchanging required data" in the absence of these requirements.[494] Thus, continued enforcement of rules to force that information exchange to ensure just and reasonable rates or to prevent unreasonable or unjust discrimination are no longer necessary.

181. For the same reasons, under the second prong of our analysis, we find that these provisions are not necessary to protect consumers, and note recent consumer protection efforts by the Commission involving the prepaid calling card industry.[495] Because these requirements are no longer

[489] 47 C.F.R. § 64.5001(c)(3). The rule requires the calling card provider to file a certified "statement that it is making the required Universal Service Fund contribution *based on the reported information*." *Id.* (emphasis added). As a result of our forbearance grant, the "based on the reported information" requirement is no longer applicable.

[490] We note prepaid calling card providers are not required to pay USF contributions on revenue generated from prepaid calling cards sold by, to, or pursuant to contract with the Department of Defense, as a result of the Commission's prior forbearance decision. *Prepaid Calling Card Services Order*, 21 FCC Rcd at 7299, para. 25. The grant of forbearance from rule 64.5001(c)(2) does not affect this universal service fund exemption.

[491] *Prepaid Calling Card Services Order*, 21 FCC Rcd at 7300, para. 29.

[492] *Id.* at 7293, 7300-01, paras. 8, 29.

[493] Specifically, we refer to subsections 64.5001(a), (b), (c)(1), (c)(2), and (c)(4). *See* 47 C.F.R. § 64.5001 (a), (b), (c)(1), (c)(2), (c)(4).

[494] *See* USTelecom Petition at 72.

[495] The Commission has found that unfair and deceptive marketing practices are a violation of section 201(b) of the Act, *see*, *e.g.*, *Business Discount Plan, Inc*., Order of Forfeiture, 15 FCC Rcd 14461 (2000), and has issued Notices of Apparent Liability (NALs) against prepaid calling card providers with respect to such activity. *See*, *e.g.*, *STi Telecom Inc. (formerly Epana Networks, Inc.),* Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12808, 12810-11, paras. 6-7 (2011) (finding that the marketing materials used to sell prepaid calling cards were misleading and deceptive regarding the rates and charges applicable to the service and therefore apparently violated Section

(continued....)

necessary to ensure just and reasonable rates or to prevent unreasonable or unjust discrimination, and are not necessary to protect consumers, we also find forbearance here to be in the public interest. As discussed above, the industry has established business practices to achieve the same purposes, and it is in the public interest to remove duplicative, outmoded and unnecessary requirements in response to the marketplace. We find that elimination of these unnecessary requirements will foster competition by removing regulatory burdens and the resulting costs.

182. We also grant in part, under our three-part forbearance analysis, USTelecom's request to forbear from 47 C.F.R. 64.5001(c)(3), the provision of the rule requiring an officer of each prepaid calling card provider to certify quarterly to the Commission, under penalty of perjury, that the provider "is making the required Universal Service Fund contribution."[496] We grant forbearance only to those prepaid calling card providers that have a two-year track record of complying with their obligations to file annual and quarterly Telecommunications Reporting Worksheets, FCC Forms 499-A and 499-Q.[497] A provider will be treated as complying with those obligations if it receives a waiver from the Commission or USAC for an untimely filing. In establishing eligibility for forbearance, the two-year period extends backwards from the due date of each quarterly certification under section 64.5001(c)(3). Thus, for the next quarterly certification, due August 1, 2013, the period will extend back to August 1, 2011. For the subsequent quarterly certification, due November 1, 2013, the period will extend back to November 1, 2011. This will allow a provider that does not currently meet the condition for full forbearance from section 64.5001(c)(3) to meet that condition through compliance with Form 499-A and 499-Q filing obligations for any two-year period. Once a prepaid calling card provider has established that track record, it need not comply further with section 64.5001(c)(3).

183. Forms 499-A and 499-Q, which are used to calculate USF contribution assessments, provide historical and projected data on filers' telecommunications revenues, including prepaid calling card revenues. We find that prepaid calling card providers who have submitted their Forms 499-A and 499-Q in a timely manner over a two-year period have sufficiently guaranteed, by virtue of having their executive officers certify as to the truth and accuracy of the underlying reporting,[498] that enforcement of the rules is no longer necessary to ensure just and reasonable rates and practices, and not unjustly or unreasonably discriminatory rates and practices or to protect consumers. For the same reason, we also find that retaining that certification requirement for those "compliant" providers would not serve the public interest.

184. We deny forbearance from the USF-related certification in section 64.5001, however, for those prepaid calling card providers that lack a track record. The Commission explained that "preserving

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201(b)); *see also Locus Telecommunications, Inc*., Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12818, 12820-21, paras. 7-8 (2011) (same); *Lyca Tel, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12827, 12829, paras. 6-7 (2011) (same), *Touch-Tel USA, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12836, 12838, paras. 6-7 (2011) (same); *Simple Network, Inc*., Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 16669, 16671-72, paras. 6-7 (2011) (same); *NobelTel, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11760, 11762-63, paras. 6-7 (2012) (same).

[496] 47 C.F.R. § 64.5001(c). The forbearance we grant applies to all of the data reporting obligations, including those in section 64.5001(c)(3) requiring certification that the Universal Service Fund contribution be "based on the reported information," (*i.e*., "[t]he percentages of intrastate, interstate, and international calling card minutes for that reporting period"). *See* 47 C.F.R. § 64.5001(a), (c)(1).

[497] *See* Letter from Glenn Reynolds, Vice President, Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-61, at 1 (filed Apr. 18, 2013).

[498] 47 C.F.R. § 54.711(a) ("an executive officer of the contributor must certify to the truth and accuracy" of the information report on Forms 499-A and 499-Q).

and advancing universal service" was a primary purpose of adopting section 64.5001.[499] Prepaid calling card providers that fail to file required Forms 499-A and 499-Q also have a history of not contributing fully to the USF.[500] Retaining the USF-related certification requirement for those prepaid calling card providers should help ensure that each of them makes "an equitable and nondiscriminatory" contribution to support universal service in compliance with section 254(d) and the Commission's USF contribution rules.[501] Thus, we cannot find that this certification requirement, established to protect the federal universal service program, is not still necessary to ensure that the practices of these noncompliant prepaid calling card providers are just and reasonable in this regard.

185. More specifically, making an officer of each prepaid calling card provider that lacks a two-year record of compliance with required filings of Forms 499-A and 499-Q directly accountable for the provider's adherence to the USF contribution rules increases the likelihood of compliance.[502] In addition to requiring each such prepaid calling provider to evaluate in the first instance whether it must contribute to the USF, the need to recertify quarterly should induce the responsible officer to evaluate whether a prepaid calling card provider that has previously been a *de minimis* carrier for USF contribution purposes now must contribute.[503]

186. We also note that universal service supports services for the benefit of consumers, by reducing retail rates for low-income consumers in the Lifeline program, by reducing the costs of broadband-capable networks in high-cost, rural areas, and by ensuring that school, libraries, and health care providers have access to the communications services they need at affordable rates. To the extent a provider does not comply with universal service contribution rules, it increases the burden on other carriers to contribute, which burden is passed on to consumers in their bills. We thus conclude that the certification requirement for prepaid calling card providers lacking a history of Form 499-A and 499-Q compliance is necessary to protect consumers.

187. Lastly, we deny in part USTelecom's request to forbear from this universal service certification requirement because we also find, for the reasons explained above, that retaining this part of the rule for providers lacking a history of Form 499-A and 499-Q compliance is consistent with the public interest. Furthermore, the filing itself only requires a one-page certified report to the Commission.[504]

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[499] *See Prepaid Calling Card Services Order*, 21 FCC Rcd at 7314, para. 70.

[500] *See*, *e.g.*, *ADMA Telecom, Inc*., Forfeiture Order, 26 FCC Rcd 4152, 4162, para. 28 (2011) (forfeitures totaling $361,835 assessed against prepaid calling card provider for failing to file required Forms 499-A and 499-Q and for failing to make required USF contributions); *see also Kajeet, Inc. and Kajeet/Airlink, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16684, 16695-96, paras. 25–26 (2011) (proposing to assess a $455,185 forfeiture against a provider of prepaid calling card services and other telecommunication services for failing to timely and fully contribute to USF; provider also had failed to timely file Form 499 documents); *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6138 (2008) (proposing to assess a $519,503 forfeiture against a prepaid calling card provider for failing to make required USF contributions; provider also had failed to timely file Form 499 documents).

[501] 47 U.S.C. § 254(d).

[502] *Cf. Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 12-23, 11-42, 03-109, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6714, paras. 125-28 (*Lifeline Reform Order*) (requiring that eligible telecommunications officers certify to compliance with certain Lifeline program rules).

[503] *See* 47 C.F.R. § 54.708.

[504] *See*, *e.g.*, Clear Choice Telecom, Inc. Quarterly Report of Prepaid Calling Card Service Providers, WC Docket No. 05-68 (filed Jan. 24, 2013) (certifying by an officer of the corporation, among other things, that Clear Choice is making all required USF contributions based on the reported information).

Indeed, in adopting section 64.5001, the Commission rejected additional reporting and certification requirements because it sought to minimize the burden on carriers.[505] We conclude that the benefits of the continued certification described above outweigh the costs associated with this requirement, particularly in light of the steps we have taken here to significantly reduce the burdens of this rule and make it administratively simple. We therefore find that, going forward, it is in the public interest for each prepaid calling card provider lacking a two-year history of timely Form 499-A and 499-Q compliance to certify quarterly that "it is making the required Universal Service Fund contribution," which must reflect full compliance with Commission rules.[506]

IV. REPORT AND ORDER IN WC DOCKET NO. 10-132

A. *CEI/ONA Notice* and Background

188. On February 8, 2011, the Commission proposed eliminating the legacy CEI/ONA narrowband reporting requirements required under the *Computer III* safeguards "due to a lack of continuing relevance and utility."[507] It explained that, since it raised the issue in the 2006 and 2008 Biennial Review proceedings, no commenter opposed eliminating the reporting requirements or advocated retaining them.[508] The *CEI/ONA Notice* stated that the Commission does not rely on any of the submissions in the course of its decision making.[509] On August 11, 2011, the Bureau granted on its own motion a waiver of the CEI/ONA narrowband reporting requirements pending resolution of the *CEI/ONA Notice*.[510] The Bureau stated that, while it did not prejudge the outcome of the rulemaking, the record suggested that the reports are of limited utility and did not justify the burden and expense of preparing them.[511] No commenter to the *CEI/ONA Notice* supports retaining the reporting requirements.

189. The *CEI/ONA Notice* sought comment on eliminating the BOCs' annual, semi-annual, quarterly, and non-discrimination reporting requirements. Prior to the waiver described above, the BOCs filed annual reports containing projected deployment schedules for ONA services by type of service and percentage of access lines and by market area; disposition of individual requests for ONA services,

[505] *See*, *e.g.*, *Prepaid Calling Card Services Order*, 21 FCC Rcd at 7301-02, para. 31; *id*. at 7314, para. 70 ("In weighing these alternatives we tried to balance our desire not to unduly burden small entities (small prepaid card providers, as well as small LECs and small IXCs) with our goals of ensuring regulatory certainty, preserving and advancing universal service, and avoiding market disruption during the pendency of other rulemakings. The *Order* we adopt achieves this balance.").

[506] 47 C.F.R. § 64.5001(c)(3).

[507] *Review of Wireline Competition Bureau Data Practices, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, WC Docket No. 10-132, CC Docket Nos. 95-20, 98-10, Notice of Proposed Rulemaking, 25 FCC Rcd 1579 (2011) (*CEI/ONA Notice*).

[508] *Id.* at 1583, para. 9 (and citations therein).

[509] *Id*.

[510] *Review of Wireline Competition Bureau Data Practices, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, WC Docket No. 10-132, CC Docket Nos. 95-20, 98-10, 26 FCC Rcd 11280, 11280-81, para. 3 (2011) (*CEI/ONA Reporting Waiver*).

[511] *Id*. The Bureau stated that it found good cause to waive the reporting rules as it would allow the BOCs to avoid or at least delay incurring the expense of preparing reports that the Commission had proposed to eliminate, and that temporarily waiving the reporting requirements would preserve BOC and Commission resources and thus would serve the public interest. This waiver applies to all BOCs subject to these requirements. *Id*.

including action on requests deemed technically infeasible; information about ONA services that were offered through technologies that were new at the time the Commission adopted the requirements, such as Signaling System 7 and Integrated Services Digital Network systems; information about operations support services and billing; and extensive lists of services that the BOC used for its own enhanced services operations.[512] The BOCs were also required to file semi-annual reports containing a consolidated nationwide matrix of ONA services and corresponding state and federal tariff descriptions, computer diskettes and printouts of all tariffs, information on 118 categories of network capabilities requested by ESPs, and the BOC's "ONA Services User Guide," all on paper and diskette.[513] They filed non-discrimination reports or affidavits, most on a quarterly basis, that published intervals for installation, repair dates, trouble reports, and timelines for BOC operations as compared to BOC provisioning of service to competitors.[514] For CEI, the Commission permits the BOCs to post their substantive CEI plans on the Internet and then notify the Bureau at the time of the postings. The BOCs are no longer required to obtain Commission pre-approval before posting the plans, but CEI reporting obligations required the BOCs to file paper reports demonstrating compliance with certain nondiscrimination standards.[515]

B. Discussion

190. We eliminate the CEI/ONA narrowband reporting requirements. As we stated in the *CEI/ONA Notice*, the Commission no longer relies on any of the reports in the course of its decision making, and there is nothing in the record indicating that the reports contain information that remains useful to competitive ESPs.[516] As we explained above, while certain commenters emphasize that they still rely on narrowband CEI and ONA services, they do not object to eliminating these reports.[517] No commenter has indicated that it uses the reported data.[518]

[512] *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced* Services, CC Docket No. 95-20; *1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket No. 98-10, 13 FCC Rcd 6040, 6095-99, paras. 103-11 (1998) (*Computer III FNPRM*). *See generally Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2, Memorandum Opinion and Order, 6 FCC Rcd 7646 (1991) (*ONA Reporting Order*) (establishing reporting requirements for ONA services). In 1994, the Commission extended to GTE Corporation the Commission's requirements regarding ONA unbundling, ONA reporting, and other *Computer III* requirements. *Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, CC Docket No. 92-256, Report and Order, 9 FCC Rcd 4922 (1994).

[513] *Computer III FNRPM*, 13 FCC Rcd at 6095-99, paras. 103-11; *ONA Reporting Order*, 6 FCC Rcd at 7678-79, App. B.

[514] *Computer III FNPRM*, 13 FCC Rcd at 6099-6103, paras. 112-16 (citing *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, CC Docket No. 85-229, Phase II, 2 FCC Rcd 3072 (1987)).

[515] *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20; *1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket No. 98-10, Report and Order, 14 FCC Rcd 4289, 4297, paras. 11-12 (1999) (*Computer III Further Remand Order*); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958, 964, para. 4 (1986) (*Computer III Phase I Order*) (subsequent citations omitted).

[516] In 1998, the Commission stated that a number of years had passed since the Commission imposed the reporting requirements and said some of the information required to be disclosed "may no longer be useful, relevant, or related to either the safeguard or competition functions" and began an inquiry to determine if the reporting requirements should be eliminated or modified. *Computer III FNPRM*, 13 FCC Rcd at 6093-94, para. 100.

[517] *See supra* para. 25.

[518] *CEI/ONA Notice*, 26 FCC Rcd at 1583, para. 9.

191. The narrowband reporting requirements are outdated in many respects. For example, the BOCs are required to report on installation and maintenance intervals for detailed categories of ONA service that the Commission established in 1990.[519] Those reporting categories were based on service codes that were in use by the BOCs' provisioning systems during the 1980s.[520] Recent ONA reports contain data for reporting categories that are still active, such as business and Centrex-based services, but many of the original category codes contain no provisioning data.[521]

192. The BOCs argue that the reports increased their costs of providing service.[522] CenturyLink states that, for each semi-annual report, which was over 500 pages and filed in older file formatting technology, it incurred internal costs plus the cost of outside consultants to prepare the reports.[523] It further states that it incurred costs associated with having to prepare the reports jointly with other BOCs.[524] The Commission itself has identified inefficiencies associated with requiring each BOC to file its own ONA information even though some of this information does not vary among providers. For example, each BOC reported on the network capabilities it used to provide basic narrowband services even if the capabilities did not vary in the industry.[525] In addition, the Commission has previously inquired about whether the annual and semi-annual reports required redundant information on ONA service availability, some of which is already delineated in state and federal tariffs filed by the BOCs.[526] Overall, the record in the *CEI/ONA Notice* contains no evidence that continuing the reports would provide useful information, and we are convinced that the costs and burdens of preparing them outweigh the benefits. The Commission has stated that it must "collect the data it needs, and only the data it needs to carry out its statutory responsibilities."[527] Unnecessary filing and reporting requirements impose administrative costs on carriers that can lead to increased rates for consumers and are not in the public interest.[528]

193. In light of these conclusions, we find that continued application of the narrowband CEI and ONA reporting requirements is no longer necessary. Since the Bureau waived the requirements in 2011, no commenters have indicated that the elimination of the required reports has impeded their

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[519] *Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2 Phase I, Memorandum Opinion and Order and Order on Reconsideration, 5 FCC Rcd 3084, 3093, paras. 73-80 and App. B (1990).

[520] *Id*. at 3093, para. 77.

[521] *See*, *e.g*., Qwest Corporation ONA Nondiscrimination Report, CC Docket No. 88-2, Phase 1; CC Docket No. 96-128 (filed Aug. 1, 2011); Installation and Maintenance Nondiscrimination Reports for Southwestern Bell Telephone, L.P., Ameritech, Pacific Bell, Nevada Bell, and BellSouth Telecommunications, CC Docket No. 88-2, Phase I (filed July 29, 2011).

[522] *CEI/ONA Reporting Waiver*, 26 FCC Rcd at 11280, para. 2.

[523] CenturyLink Comments, WC Docket No. 10-132, at 2-3. *See* Verizon Comments, WC Docket No. 10-132, at 7-10.

[524] CenturyLink Comments, WC Docket No. 10-132, at 2-3.

[525] *Computer III FNPRM*, 13 FCC Rcd at 6098-99, paras. 108-11.

[526] *Id*. at 6099, para. 110.

[527] *Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04-112, First Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 7274, 7275, para. 1 (2011).

[528] *Id*. at 7282-85, paras. 17-27 (eliminating multiple reporting requirements that were outdated, no longer served a useful purpose, and otherwise did not justify the burden of preparing them); *CEI/ONA Notice*, 26 FCC Rcd at 1583, para. 9.

enhanced service offerings or otherwise prevented them from obtaining non-discriminatory access to CEI/ONA services. We find that it is more efficient to detect possible access discrimination by looking at specific, focused information in the context of an individual complaint proceeding under section 208 of the Act than through these outdated monitoring reports.

V. COMPUTER III FURTHER NOTICE OF PROPOSED RULEMAKING

A. Introduction

194. In this Further Notice, we seek comment on how we should streamline or eliminate legacy regulations contained in the *Computer Inquiry* proceedings. We seek data on the changing market for narrowband enhanced services, in particular, the extent to which ESPs continue to need access to the BOCs' basic network transmission services offered through CEI and ONA services. We propose eliminating CEI requirements and seek comment on whether we should retain only limited ONA inputs that ESPs require in areas where there are no competitive alternatives. We also seek comment on the need for the continuing application of the All-Carrier Rule that requires non-BOC incumbent LECs to offer non-discriminatory access to basic network services for unaffiliated ESPs. We undertake this examination of legacy telephone regulations as part of our commitment to adapt requirements that may no longer be necessary as the nation transitions from TDM- to Internet Protocol (IP)-based networks. The Further Notice also advances our efforts to "conduct a data-driven review and provide recommendations to modernize the Commission's policies in a process that encourages the technological transition, empowers and protects consumers, promotes competition, and ensures network resiliency and reliability."[529]

B. Background

195. In its *Computer II* proceedings, the Commission required AT&T (and subsequently the BOCs) to offer enhanced services through structurally separate subsidiaries.[530] In the subsequent *Computer III* proceedings, the Commission determined that the benefits of structural separation were outweighed by the costs and that non-structural safeguards could protect competing ESPs from improper cost allocation and discrimination by the BOCs while avoiding the inefficiencies of structural separation.[531] The Commission adopted CEI and ONA as non-structural safeguards that require the BOCs

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[529] FCC Chairman Julius Genachowski Announces Formation of 'Technology Transitions Policy Task Force,' News Release (Dec. 10, 2012), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db1210/DOC-317837A1.pdf.

[530] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II Final Decision)*, 77 FCC 2d 384 (1980), *recon*., 84 FCC 2d 50 (1980), *further recon*., 88 FCC 2d 512 (1981), *affirmed sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983). The Commission required other facilities-based common carriers to provide the basic transmission services underlying their enhanced services on a nondiscriminatory basis pursuant to tariffs governed by Title II of the Act, referred to as the All-Carrier Rule. *Computer II*, 77 FCC 2d at 474-75, para. 231. These carriers must offer the underlying basic service at the same prices, terms, and conditions to all ESPs, including their own enhanced services operations. The Commission ordered mandatory detariffing of interstate interexchange access services, and competitive local exchange carriers (LECs) need not offer the basic transmission services underlying their enhanced services pursuant to tariff. *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 245(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) (adopting mandatory detariffing of most domestic interstate, interexchange services); Order on Reconsideration, 12 FCC 15014 (1997); Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999), *aff'd, MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C. Cir. 2000).

[531] *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Computer III Phase I Order*), *recon*., 2 FCC Rcd 3035 (1987) (*Computer III Phase I*

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to offer nondiscriminatory interconnection to basic transmission services that competitors purchase to provide enhanced services, primarily to end users that use narrowband telephone technology.[532] The Commission has identified examples of narrowband enhanced services as voice mail, store and forward services, fax, data processing, alarm monitoring, and dial-up gateways to on-line databases.[533] BOCs must comply with CEI and ONA requirements in order to offer enhanced services on an "integrated" basis (*i.e.,* through the regulated telephone company) instead of through a structurally separate affiliate as required by section 64.702 of the Commission's rules.[534]

196. The BOCs' CEI plans detail how they provide unaffiliated ESPs with interconnection to basic transmission services on the same terms and conditions that the BOCs use for their own enhanced services offerings.[535] The BOCs' ONA plans, based on the architecture of the BOCs' networks as they

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Reconsideration Order), *further recon.*, 3 FCC Rcd 1135 (1988) (*Computer III Phase I Further Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Computer III Phase I Second Further Reconsideration Order*); *Phase I Order and Phase I Recon. Order vacated sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); CC Docket No. 85-229, Phase II, 2 FCC Rcd 3072 (1987) (*Computer III Phase II Order*), *recon*., 3 FCC Rcd 1150 (1988) (*Computer III Phase II Reconsideration Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration Order*); *Phase II Order vacated*, *California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceeding*, CC Docket No. 90-368, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied sub nom. California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, CC Docket No. 90-623, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order vacated in part and remanded sub nom. California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 514 U.S. 1050 (1995); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (*Computer III Further Remand Notice*), Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040 (1998) (*Computer III FNPRM*); Report and Order, 14 FCC Rcd 4289 (1999) (*Computer III Further Remand Order*), *recon*., 14 FCC Rcd 21628 (1999) (*Computer III Further Remand Reconsideration Order*); *see also Further Comment Requested to Update and Refresh Record on Computer III Requirements*, CC Docket Nos. 95-20, 98-10, Public Notice, 16 FCC Rcd 5363 (2001) (collectively referred to as *Computer III*).

[532] The Commission defined basic services as the offering of "a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information." *Computer II Final Decision*, 77 FCC 2d at 415-16, para. 83, 420, para. 96. Enhanced services, in turn, were defined as services that "combine[] basic service with computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information, or provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information." *Id.* In other words, an "enhanced service is any offering over the telecommunications network which is more than a basic transmission service." *Id.* at 420, para. 97. The Commission has concluded that the services the Commission has considered "enhanced services" are "information services" as defined in the Communications Act. *See Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended,* CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21955, para. 102 (1996); 47 U.S.C. § 153(24). This Further Notice generally addresses legacy *Computer Inquiry* requirements and uses the term "enhanced services."

[533] *Computer III FNPRM*, 13 FCC Rcd at 6042, para. 1; *Computer III Further Remand Order*, 14 FCC Rcd at 4291-92, n.11 (listing examples of enhanced services); *Bell Operating Companies Joint Petition for Waiver of Computer II Rules*, Order, 10 FCC Rcd 13758, 13768-70, paras. 68-75 (1995) (*CEI Plan Order*) (discussing alarm monitoring services as enhanced services).

[534] 47 C.F.R. § 64.702.

[535] *Review of Wireline Competition Bureau Data Practices, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, WC Docket No. 10-132, CC Docket Nos.
(continued....)

existed in the late 1980s, offer ESPs unbundled, tariffed access to basic transmission services regardless of whether the BOCs' affiliated enhanced services offerings use the same components.[536]

197. The Commission has had in place a long-standing examination of the substantive *Computer III* structure and what safeguards are appropriate to ensure the continued competitiveness of the enhanced services market. In 1998, the Commission sought comment on what safeguards for BOC provision of enhanced services made sense in light of technological, market, and legal conditions, particularly the passage of the market opening provisions in the Telecommunications Act of 1996 (1996 Act), such as the section 251 unbundling requirements.[537] The Commission stated that it wanted to strike a balance between the goal of reducing or eliminating regulatory requirements when competition supplants the need for such requirements and a recognition that, until full competition is realized, safeguards may be necessary.[538] Among other items, the Commission sought comment on whether the ONA model offers ESPs sufficient network functionalities they need, whether the model requires ESPs to purchase unnecessary services or functionalities embedded within the BOCs' networks, and whether

(Continued from previous page)

95-20, 98-10, Notice of Proposed Rulemaking, 25 FCC Rcd 1579, 1580, para. 3 and n.9 (2011) (*CEI/ONA Notice*) (listing nine CEI parameters); *Computer III Further Remand Order*, 14 FCC Rcd at 4291, para. 4; *Computer III Further Remand Reconsideration Order*, 14 FCC Rcd at 21629, para. 6; *see Computer III Phase I Order*, 104 FCC 2d at 1039-42, paras. 155-65.

[536] *CEI/ONA Notice*, 26 FCC Rcd at 6050, para. 11; *Computer III Phase I Order*, 104 FCC 2d at 1064, para. 214; *Computer III FNPRM*, 13 FCC Rcd at 6050, para. 11. Under ONA, ESPs obtain access to various unbundled ONA services, termed Basic Service Elements (BSEs), through access links described as Basic Service Arrangements (BSAs). Examples of narrowband BSAs include line side and trunk side circuit switched service. BSAs must be included in a BOC's interstate access tariff, as well as tariffed at the state level. ESPs use BSEs to configure their services. Other ONA elements include Complementary Network Services (CNSs), which are optional unbundled basic service features (such as stutter dial tone) that an end user may obtain from carriers in order to obtain access to or receive enhanced services, and Ancillary Network Services (ANSs), which are non-Title II services, such as billing and collection. *Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2, Phase I, Memorandum Opinion and Order, 4 FCC Rcd 1, 116, 143-44, paras. 226, 276 (1988) (*BOC ONA Order*) (subsequent citations omitted). In the *Computer III* proceeding, the Commission also adopted, as a non-structural safeguard, a framework governing dominant carrier use of customer proprietary network information to prevent anticompetitive uses of customers' local and long distance services information. The pre-1996 Act CPNI framework was eliminated when the Commission implemented section 222 of the Act. *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8184-93, paras. 176-89 (1998) (*CPNI Order*), *on recon.*, 14 FCC Rcd 14409 (1999) (*CPNI Reconsideration Order*), *vacated sub nom. U.S. West v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert. denied*, 530 U.S. 1213 (2000); *see also Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115; *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149; *2000 Biennial Regulatory Review—Review of the Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 00-257, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860, 14894-96, paras. 79-82 (2002) (affirming previous determinations that the Tenth Circuit vacated only the specific portion of the Commission's CPNI rules relating to the opt-in mechanism). In 1994, the Commission extended to GTE Corporation the Commission's requirements regarding ONA unbundling, ONA reporting, and other *Computer III* requirements. *Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, CC Docket No. 92-256, Report and Order, 9 FCC Rcd 4922 (1994).

[537] *Computer III FNPRM*, *13* FCC Rcd at 6042-48, paras. 1-8.

[538] *Id*. at 6406, para. 7.

ESPs have other means of obtaining such services to enable offerings to their customers.[539] For CEI, the Commission sought comment on streamlining steps it could take to eliminate outdated requirements.[540]

198. Since 1998, the Commission has modified or eliminated many of the *Computer III* non-structural separation requirements. In 1999, it streamlined the CEI requirements.[541] In 2005, the Commission granted the BOCs significant relief from *Computer III* requirements for wireline broadband Internet access services.[542] It stated that these requirements were "adopted based on assumptions associated with narrowband services, single purpose network platforms, and circuit-switched technology," and that broadband platforms had emerged that would generally exert competitive pressure for BOC services.[543] The Commission has also granted forbearance from application of *Computer Inquiry* rules to the extent that the carriers offer other broadband services.[544] In light of these changes, the *Computer III* requirements currently apply only to the provision of enhanced services using narrowband telephone technology. Above, we have permanently eliminated for the BOCs the requirement that they file annual, semi-annual, quarterly, and non-discrimination compliance reports for CEI and ONA service offerings.[545]

C. Discussion

199. In order to determine how we may streamline or eliminate the remaining legacy *Computer III* obligations, we seek comment on the continued viability of the substantive CEI and ONA narrowband requirements. Recognizing that the enhanced services provider industry may continue to use the BOCs' narrowband networks to serve customers, we seek comment on how we might simplify and

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[539] *Id*. at 6085-89, paras. 78-91.

[540] *Id*. at 6076-79, paras. 60-65.

[541] *Computer III Further Remand Order*, 14 FCC Rcd at 4297, paras. 11-12. A BOC must file paper reports to demonstrate that it is complying with the CEI nondiscrimination standards. *Computer III Phase I Order*, 104 FCC 2d at 964, para. 4.

[542] *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, 14875-76, para. 41 (2005) (*WBIAS Order*), *aff'd*, *Time Warner Telecom v. FCC*, 507 F.3d 205 (3rd Cir. 2007).

[543] *WBIAS Order*, 20 FCC Rcd at 14876-86, paras. 42-64.

[544] *See, e.g.*, *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Memorandum Opinion and Order, 22 FCC Rcd 21293, 21318, para. 45 (2007) (*Verizon 6 MSA Forbearance Order*); *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Memorandum Opinion and Order, 23 FCC Rcd at 11729, 11760, para. 44 (2008) (*Qwest 4 MSA Forbearance Order*) (citing *WBIAS Order*, 20 FCC Rcd at 14875-76, para. 41); *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 Corporation for Forbearance 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, 18733-35, paras. 52-58 (2007); Verizon Telephone Companies' Petition for Forbearance from Title II and *Computer Inquiry* Rules with Respect to their Broadband Services Is Granted by Operation of Law, WC Docket No. 04-440, News Release (rel. Mar. 20, 2006); *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 04-440, Order, 20 FCC Rcd 20037 (2004); *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).

[545] *See supra* paras. 192-95.

modernize efficient access to service elements that competitors still need while at the same time eliminating services that are no longer necessary. Below, we propose to eliminate CEI requirements and seek comment on a specific streamlined process we might adopt to review BOC requests to eliminate or modify their ONA offerings. As explained above, the BOCs requested forbearance from enforcement of all CEI and ONA requirements—relief that would have resulted in an immediate, universal elimination of wholesale access to their narrowband networks for ESPs.[546] We have denied the immediate relief that the BOCs requested because the record in that proceeding did not support granting relief.[547] We expect that this Further Notice will provide data that may allow us to grant some relief from these legacy regulations in an efficient and comprehensive manner.

200. The Commission made clear when it adopted the *Computer III* requirements that a "major goal of ONA is to increase opportunities for ESPs to use the BOCs' regulated networks in highly efficient ways, enabling ESPs to expand their markets for their present services and develop new offerings as well, all to the benefit of consumers."[548] The Commission intended the ONA framework to evolve. It did not prescribe a specific network design for ONA services and stated that the BOCs, with input from the enhanced services industry, should implement ONA in a way that matched the capabilities of their networks, "both current and future, with needs of the ESPs."[549] The Commission intended originally that CEI plans would be an interim measure until the BOCs fully implemented ONA.[550] Referring to CEI as a "first phase," the Commission intended CEI to provide ESPs with interconnection to the BOCs' networks that was substantially equivalent to the interconnection the BOCs provided for their own enhanced services until the BOCs fully unbundled their networks to ESPs through ONA.[551] Although the Commission eliminated formal approval of CEI plans in the *Computer III Further Remand Order*, we have continued to require the BOCs to maintain their CEI plans and post them on the Internet.

201. We propose to eliminate the requirement that BOCs maintain and post their CEI plans on the Internet. CEI plans were always intended to be an interim measure, designed to bridge the gap between the Commission's decision to lift structural separation in *Computer III* and the implementation of ONA.[552] In light of the changing market for narrowband enhanced services, we expect that CEI plans are not necessary to protect against access discrimination. We seek comment on this proposal. ONA has provided ESPs a greater level of protection against access discrimination than CEI. Under ONA, not only must the BOCs offer network services to competing ESPs in compliance with the nine CEI "equal access" parameters,[553] but they must also unbundle and tariff key network service elements beyond those they use

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[546] *See supra* paras. 22-29.

[547] *Id*.

[548] *ONA Remand Order*, 5 FCC Rcd at 7720, paras. 7, 11.

[549] *BOC ONA Order*, 4 FCC Rcd at 11, para. 3.

[550] *See Computer III FNPRM*, 13 FCC Rcd at 6077, para. 61.

[551] *Id.* at 6049, para. 10.

[552] *See id*. at 6077, para. 61.

[553] A CEI plan details how a BOC would comply with nine CEI "equal access" parameters with respect to the provision of a specific enhanced service. These parameters include: (1) interface functionality; (2) unbundling of basic services; (3) resale; (4) technical characteristics; (5) installation, maintenance, and repair; (6) end user access; (7) CEI availability as of the date the BOC offers its own enhanced service to the public; (8) minimization of transport costs; and (9) availability to all interested ESPs. *See Computer III Phase I Order*, 104 FCC 2d at 1039-42, paras. 154-66.

to provide their own enhanced services offerings.[554] To the extent that we find it necessary to retain any limited ONA requirements, we expect that ESPs will have adequate access to the BOCs' legacy network through those arrangements.

202. In light of the time that has passed since the *Computer III FNPRM*, we seek current information on whether ONA offerings continue to be an effective means of providing competitive ESPs with access to unbundled network services they need to structure efficient service offerings. To the extent that the requirements or offerings are ineffective, we request that commenters cite to specific instances to support their claims. The Commission is now examining the technological transition of legacy networks and protocols toward modern networks and services in several contexts.[555] ONA requirements are legacy regulations aimed at giving competitors wholesale access to narrowband technologies for the provision of enhanced services, and we are therefore interested in whether competitors are using narrowband ONA offerings to offer new services or whether they are transitioning away from narrowband products. We seek comment on that question. We also ask the BOCs to provide information on specific narrowband ONA offerings that they currently provision for unaffiliated ESPs. In particular, we seek information about specific service inputs that ESPs may still require from the BOCs to serve narrowband customers and on whether we should eliminate all other services.

203. We seek comment on the extent to which the BOCs themselves continue to provide narrowband enhanced services and whether there are sufficient alternatives such that the BOCs are prevented, at least in some areas, from engaging in harmful discrimination against unaffiliated ESPs. We seek data on the alternatives available and the specific markets in which such alternatives are available. Do ESPs still rely primarily on narrowband ONA services, or do they use other means to obtain services? We are interested in whether enhanced service competitors use a combination of inputs from different providers.

204. The Commission originally required the BOCs to maintain a sufficient level of uniformity among their ONA services, in part so that ESPs could market national offerings.[556] Is this requirement still necessary today for narrowband offerings or do ESPs seek more tailored arrangements based on their customer base? Commenters should identify what other network platforms, such as cable or broadband, offer viable options for re-structuring existing enhanced services that customers still use and whether ESPs would have access to those options in the areas in which their customers are located, including in rural areas. If alternatives are available, do they enable functionalities that ESPs require for specific narrowband products, such as alarm monitoring services or voice mail? Commenters should explain whether ESPs use ONA offerings for any public safety related offerings. In addition, we seek comment on whether ESPs obtain from the BOCs unbundled network elements under section 251 of the

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[554] *Computer III FNPRM*, 13 FCC Rcd at 6077, para. 61 (citing *Computer III Phase I Order*, 104 FCC 2d at 1019-20, para. 113; *Computer III Further Remand Proceedings*, 10 FCC Rcd at 8373, para. 18).

[555] *See*, *e.g.*, *Pleading Cycle Established for AT&T and NTCA Petition*, GN Docket No. 12-353, Public Notice, 27 FCC Rcd 15766 (rel. Dec. 14, 2012) (seeking comment on AT&T and National Telecommunications Cooperative Association petitions to open proceedings on the transition from TDM to IP networks); *FCC Chairman Julius Genachowski Announces Formation of "Technology Transitions Policy Task Force*," News Release (Dec. 10, 2012); *Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, GN Docket No. 13-5, Public Notice, DA 13-1016 (rel. May 10, 2013), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-13-1016A1.pdf.

[556] *BOC ONA Order*, 4 FCC Rcd at 13-16, 95-110, paras. 6, 9, 15, 185-213.

Act if the providers are also telecommunications carriers or if they can obtain basic services from competitive telecommunications providers.[557]

205. The ONA framework consists of multiple requirements in addition to the tariffing of basic service offerings. These include the ONA amendment process under which a BOC that seeks to offer an enhanced service that uses a new basic service element, or otherwise uses different configurations of underlying basic services than those in its approved ONA plan, must amend its ONA plan at least 90 days before it offers the new enhanced service.[558] In addition, an ESP can request a new ONA basic service from the BOC and must receive a response from the BOC within 120 days regarding whether the BOC will provide the service. The BOC must evaluate and justify its response using specific factors, including market area demand, utility to ESPs as perceived by the providers themselves, and cost and technical feasibility.[559] We are interested in obtaining information about how often the BOCs received a request under the 120 day process, including the date of the most recent request, and the outcome of the request. The BOCs should also address the last time they amended their ONA plans. ESPs should address whether the 120 day process continues to be of value and whether they contemplate using it in the future. We seek comment on the extent to which the narrowband ONA obligations may increase the BOCs' costs of providing enhanced services. Commenters should identify costs with specificity wherever possible. We also ask commenters to address whether there are continuing benefits associated with the obligations that justify the costs.

206. At the beginning of the ONA implementation process, the Commission found that it would not be reasonable for BOCs to withdraw any services listed in their approved ONA plans and that it would not look favorably on requests for withdrawal.[560] It did, however, outline a process for BOCs to withdraw ONA services. It stated that, once an ONA service element was federally tariffed, the BOC must request and receive advance approval in writing before filing tariff revisions to discontinue offering of that service.[561] The Commission, acting through the Bureau, has granted such approvals in a few limited circumstances, each involving an extended proceeding. In those proceedings, the Bureau evaluated the reasonableness of the withdrawal request to see if circumstances justified the elimination of specific ONA services. It reviewed criteria including whether the BOC had existing customers for the service and whether suitable alternative services existed. It also accepted BOC proposals that existing customers should have an opportunity to continue to purchase the withdrawn ONA service element on a grandfathered basis.[562] We seek comment on what type of simplified process might now be feasible for

[557] The Commission has explained that section 251 requires incumbent LECs to offer physical facilities of the network to telecommunications providers while unbundling under ONA is, in contrast, the unbundling of basic services, not the substitution of underlying facilities. ONA unbundling also does not mandate interconnection of facilities. *Computer III FNPRM*, 13 FCC Rcd at 6090-91, para. 93.

[558] *Computer III Phase I Order*, 104 FCC 2d at 1068, para. 221; *see Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2, Phase I, Memorandum Opinion and Order, 6 FCC Rcd 7646, 7654-55, paras. 14-19 (1991) (*BOC ONA Further Amendment Order*).

[559] *BOC ONA Order*, 4 FCC Rcd at 205-08, paras. 205-08; *BOC ONA Further Amendment Order*, 6 FCC Rcd at 7654-555, paras. 14-19.

[560] *BOC ONA Further Amendment Order*, 6 FCC Rcd at 7652-53, para. 10.

[561] *Id*.

[562] *See BellSouth Open Network Architecture Plan Amendment*, CC Docket No. 88-2, Memorandum Opinion and Order, 18 FCC Rcd 15844, 15847-48, para. 5 (Wireline Comp. Bur. 2003); *Qwest Petition for Permission to Withdraw ONA Services*, WC Docket No. 02-355, Memorandum Opinion and Order, 19 FCC Rcd 7164, 7167, para. 6 (Wireline Comp. Bur. 2004).

BOCs to use to withdraw ONA service elements that they assert are no longer useful or for which there are alternative offerings. Should we use the same criteria the Bureau relied upon in reviewing past requests? We seek comment on how precisely a BOC should define the service area in which it requests to eliminate services. By requiring BOCs to demonstrate with specificity which ONA services they seek to retire and what alternatives are available, we can move toward an orderly and efficient process for eliminating services that may no longer be necessary.

207. We seek comment on what type of process would be most efficient for us to review requests to reduce or eliminate ONA service offerings that are included in the BOCs' ONA plans and tariffs. Because the elimination of basic narrowband service elements currently available under the ONA plans could impact ESPs that have limited alternatives for these services, we seek comment on adopting a discontinuance process that allows for comments, a notice period, and affirmative action by the Commission. This would allow more time for ESPs to transition to other arrangements whether from the BOCs, themselves, or alternative providers. We seek comment on adopting a process that is similar to the standard streamlined process for service discontinuance applications under section 214 of the Act.[563] Under the section 214 process, a dominant carrier such as a BOC that seeks to discontinue, reduce, or impair service must notify affected customers and file an application with the Commission.[564] The application is automatically granted on the 60th day after its filing unless the Commission has notified the applicant that the grant will not automatically be effective.[565] Specifically, we seek comment on the following proposal:

> *A BOC that seeks to withdraw and discontinue narrowband Open Network Architecture (ONA)-related services shall be subject to the following procedures:*
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> *The BOC shall notify all affected customers of the planned withdrawal and discontinuance in writing. The notification shall include the name and address of the carrier, date of planned service withdrawal and discontinuance, points of geographic areas of service affected, and a brief description of the type of service affected. The notification shall also include a statement to customers as follows:*
>
>> *The FCC will normally authorize this proposed withdrawal and discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, file your comments as soon as possible, but no later than 30 days after the Commission releases public notice of the proposed withdrawal or discontinuance. Comments should include specific information about the impact of this proposed withdrawal and discontinuance on you or your company, including any inability to acquire reasonable substitute service. Comments must be filed electronically using the Internet through the Commission's Electronic Comment Filing System (ECFS) and reference the proceeding number on the public notice. ECFS is accessible at http://apps.fcc.gov/ecfs/.*
>
> *The BOC shall file with this Commission, on or after the date on which it has given notice to all affected customers, an application which shall contain the name and address of the carrier, date*

[563] 47 U.S.C. § 214.

[564] 47 C.F.R. § 63.71.

[565] 47 C.F.R. § 63.71(c).

of planned service withdrawal and discontinuance, points of geographic areas of service affected, brief description of the type of service affected, brief description of the dates and methods of notice to all affected customers, or a statement that no customers are currently using the service, and any other supplemental information the Commission may require.

The application to withdraw and discontinue ONA services shall be automatically granted on the 60th day after its filing with the Commission without any notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. For purposes of this section, an application will be deemed filed on the date the Commission releases public notice of the filing.

208. Such a process would set a threshold showing for a BOC to withdraw an ONA service and allow ESPs an orderly notice and comment process to object to the withdrawal. We seek comment on whether we should permit BOCs to include multiple services in a single notice for a particular geographic area. The process would also allow affected ESPs the opportunity to address whether they would be unable to serve customers without access to the service.

209. Because we propose to eliminate CEI and seek comment on streamlining or eliminating ONA requirements, it is important for ESPs to have sufficient detail to understand the impact of any possible reduction in availability. BOCs should comment on what types of transition arrangements might be possible to ensure that ESPs can still serve their narrowband customers. We seek comment on whether BOCs would continue to make CEI and ONA service offerings and network functionalities available through alternative means, including through the use of other tariffed services. Would they be available through a transition to unbundled network elements or resold services? We seek information from the BOCs on whether grandfathering arrangements would be available based on existing prices, terms, and conditions. Should we require BOCs to grandfather existing customers for a period of time (*e.g*., three years), and if so, what would be an appropriate time limit?

210. Non-BOC facilities-based common carriers must provide the basic transmission services underlying their enhanced services on a nondiscriminatory basis pursuant to tariffs under the All-Carrier Rule.[566] The rule requires common carriers to provide basic transmission services at the same prices, terms, and conditions to all ESPs, including themselves.[567] We seek comment on the extent to which ESPs continue to rely on these tariffed transmission services to provide narrowband services to customers and whether there are alternative providers available. In particular, we seek comment on whether we should retain network access requirements under the All-Carrier Rule beyond the time that CEI and ONA may sunset. Would ESPs, including those offering certain services such as alarm monitoring, continue to require access to incumbent LEC networks in non-BOC territory because there are more limited alternatives in those areas, or do cable, wireless, and VoIP platforms offer ESPs viable alternatives? We also seek comment on whether the incumbent carriers themselves continue to provide narrowband enhanced services such that is important to retain the All-Carrier Rule to prevent discriminatory conduct against unaffiliated ESPs.

VI. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

A. Introduction

211. In furtherance of our commitment to revisit "rules that may be outmoded, ineffective, insufficient, or excessively burdensome," while continuing to promote competition and consumer

[566] *Computer II Final Decision*, 77 FCC 2d at 474-75, para. 231.

[567] *Id*.

protection consistent with the Act,[568] we evaluate in this Second Further Notice of Proposed Rulemaking (Second FNPRM) the structural separation requirements of section 64.1903 of the Commission's rules,[569] as they apply to rate-of-return carriers providing facilities-based in-region, interexchange, interstate long distance services (in-region long distance services).[570] Through this proceeding, we intend to modernize our rules to reflect the competitive and marketplace realities for long distance service—at one time an expensive service, today one frequently offered on an unlimited basis by numerous facilities-based providers.

212. Section 64.1903, as written, requires independent ILECs providing long distance services using their own facilities to do so through a separate corporate subsidiary that does not jointly own transmission or switching equipment with the local exchange company.[571] The Commission promulgated section 64.1903 against a regulatory backdrop in which local telephone service, interstate long distance, and intrastate long distance were distinct services, for which consumers often chose separate providers.[572] Since the codification of section 64.1903 more than fifteen years ago, we have seen transformative marketplace and regulatory changes, calling into question whether the current rule is the least burdensome way to ensure that our goals of competition and consumer protection are met. The Commission has acknowledged these changes,[573] and in 2007 granted relief to the Bell Operating Companies (BOCs) from a regulatory framework with similar structural separation requirements as section 64.1903.[574]

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[568] *See* Exec. Order No. 13,579, Regulation and Independent Regulatory Agencies, 76 Fed. Reg. 41587 (2011) (Executive Order 13,579).

[569] 47 C.F.R. § 64.1903.

[570] We use the term "in-region long distance service" to refer collectively to the telecommunications services that this Second FNPRM addresses. This term encompasses the in-region, domestic, interstate, interexchange telecommunications services and the in-region, international telecommunications services that independent ILECs are required to provide only through section 64.1903 separate affiliates or divisions. *See* 47 C.F.R. § 64.1903. These services include both traditional voice services and broadband telecommunications services.

[571] *Id*. Independent ILECs providing services exclusively through resale may do so through a separate corporate division. 47 C.F.R. § 64.1903(b)(1).

[572] *See*, *e.g.*, *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Interexchange Services,* WC Docket Nos. 02-112, 06-120, CC Docket No. 00-175, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16455, paras. 26-27, 16500, para.121 (2007) (*Section 272 Sunset Order*).

[573] Between September 2001 and May 2003, the Commission released three notices of proposed rulemaking that raised the question of what safeguards, if any, independent ILECs and BOCs should be subject to in their provision of in-region long distance services. *See 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, Notice of Proposed Rulemaking, 16 FCC Rcd 17270 (2001) (*Independent Incumbent LEC Separate Affiliate NPRM*) (asking whether structural safeguards should apply to independent ILEC provision of in-region long distance services); *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Notice of Proposed Rulemaking, 17 FCC Rcd 9916 (2002) (*Section 272 Sunset NPRM*) (asking whether structural safeguards should apply to BOC provision of in-region, interLATA telecommunications services); *Section 272(f) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003) (*BOC and Independent Incumbent LEC FNPRM*) (asking whether the Commission should classify the independent ILECs and BOCs as dominant in the provision of in-region long distance services in the event those carriers were allowed to provide those services outside of separate affiliates).

[574] *See Section 272 Sunset Order*, 22 FCC Rcd at 16442, para. 2; *see also* 47 U.S.C. § 272.

213. Today, the Commission adopts, above, the *USTelecom Forbearance Order*,[575] which, among other things, grants the request of the United States Telecom Association (USTelecom) for forbearance from section 64.1903 as it applies to price cap carriers that comply with certain conditions.[576] Based on the record in that proceeding, however, the *USTelecom Forbearance Order* denies similar relief to independent ILECs subject to rate-of-return regulation "due to the continuing potential for cost misallocation."[577] In this Second FNPRM, we take the next steps toward modernizing our rules for the non-BOC ILECs. Considering developments in today's marketplace, we seek comment on the costs and benefits of continuing to apply section 64.1903 to rate-of-return carriers, and whether such carriers continue to have the ability and incentive to engage in anticompetitive behavior.

B. Background

1. Section 64.1903 of the Commission's Rules

214. Section 64.1903 of the Commission's rules sets forth the structural requirements that apply to an independent ILEC's provision of in-region long distance services.[578] That rule as written requires every independent ILEC providing those services using its own switching or transmission facilities to do so only through a separate affiliate that: (1) maintains books of account separate from those the independent ILEC maintains; (2) does not jointly own transmission or switching facilities with its independent ILEC; and (3) purchases tariffed services from the independent ILEC only pursuant to the ILEC's tariffs, except that the separate affiliate also may acquire unbundled network elements (UNEs) and exchange services pursuant to an approved interconnection agreement.[579] Independent ILECs that provide long distance service exclusively through resale, however, may do so through a separate corporate division rather than an entirely separate company.[580]

2. Historical Regulation of Independent ILEC Long Distance Services

215. In the 1980s and 1990s, the Commission developed a regulatory framework to ensure that ILECs could not unduly extend their market power in the local market to the provision of long distance services. When those regulations were created, local telephone service, interstate long distance, and intrastate long distance were distinct services, for which consumers often chose separate carriers. The long distance marketplace has changed dramatically since then, warranting a review of these rules.

216. *Competitive Carrier Proceedings.* Section 64.1903 is rooted in the *Competitive Carrier* proceeding.[581] In a series of orders that began in 1979, the Commission distinguished between carriers

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[575] In this Second FNPRM, we refer to the Order above (paras. 1-187) as the *USTelecom Forbearance Order*. The relevant section of the *USTelecom Forbearance Order* corresponding to this Second FNPRM is section III.B.11, "Structural Separation Requirements for Independent ILECs," *supra* paras. 135-162; *see also infra* para. 228.

[576] *See infra* paras. 227-228.

[577] *USTelecom Forbearance Order, supra* at para. 139.

[578] 47 C.F.R. § 64.1903.

[579] *Id.*

[580] An independent ILEC provides in-region long distance services exclusively through resale if it provides those services without using its own "interexchange switching or transmission facilities or capability." 47 C.F.R. § 64.1903(b)(1).

[581] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); *Policy Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, First Report and Order, 85 FCC 2d 1 (1980) (*Competitive Carrier First Report and Order*); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC
(continued....)

with individual market power (dominant carriers) and those without market power (nondominant carriers).[582] The Commission found it appropriate to continue subjecting dominant carriers to full regulation under Title II of the Act.[583] The Commission further found that because nondominant carriers lacked market power, it was appropriate to reduce their regulatory obligations.[584]

217. In the *Competitive Carrier First Report and Order*, the Commission classified independent ILECs as dominant with respect to both interstate access services and interstate long distance services.[585] As competition emerged in the long distance marketplace, the Commission began reexamining whether it should apply dominant carrier regulation to the interstate long distance services provided by independent ILECs. In the *Competitive Carrier Fourth Report and Order*, the Commission concluded that interexchange carriers affiliated with independent ILECs would be regulated as nondominant interexchange carriers.[586] In the *Competitive Carrier Fifth Report and Order*, the Commission adopted requirements for these separate affiliates that, with minor modifications, are now codified in section 64.1903.[587] In that order, the Commission did not require that every independent ILEC provide interstate long distance services through a separate affiliate.[588] If, however, such a carrier did not provide service through an affiliate, the independent ILEC would be subject to dominant carrier regulation in its provision of domestic, interstate, interexchange services.[589]

218. *LEC Classification Order and Second Reconsideration Order.* In the *LEC Classification Order*, the Commission classified all in-region long distance services provided by an incumbent ILEC as

(Continued from previous page)
Docket No. 79-252, Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17308 (1982); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Second Report and Order, 91 FCC 2d 59 (1982); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Order on Reconsideration, 93 FCC 2d 54 (1983); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28292 (1983); Third Report and Order, 48 Fed. Reg. 46791 (CCB 1983); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Fourth Report and Order, 95 FCC 2d 554 (1983) (*Competitive Carrier Fourth Report and Order*), *vacated*, *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied*, *MCI Telecomm Corp. v. AT&T*, 509 U.S. 913 (1993); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Fifth Report and Order, 98 FCC 2d 1191 (1984) (*Competitive Carrier Fifth Report and Order*); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Sixth Report and Order, 99 FCC 2d 1020 (1985), *vacated*, *MCI Telecomm Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985), *aff'd*, *MCI Telecomm Corp. v. AT&T*, 512 U.S. 218 (1994) (*MCI v. AT&T*) (collectively, the *Competitive Carrier* proceeding); *see* 47 C.F.R. § 61.3(q), (y).

582 *See*, *e.g.*, *Competitive Carrier First Report and Order*, 85 FCC 2d at 10-11, paras. 25-27.

583 *Id.* at 10-11, para. 26.

584 *Id.* at 11, para. 27.

585 *Id.* at 24-25, para. 65.

586 *Competitive Carrier Fourth Report and Order*, 95 FCC 2d at 575-79, paras. 31-37.

587 *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198, para. 9.

588 *Id.*

589 *Id.* at 1198-99, para. 9 ("Interstate services provided directly by exchange telephone companies (not through affiliates) are regulated as dominant.").

nondominant.[590] In its discussion of whether to apply dominant carrier regulation, the Commission focused on the difference between classical (or Stiglerian) market power, which refers to "the ability of a firm profitably to raise and sustain its price above the competitive level by restricting its own output,"[591] and exclusionary (or Bainian) market power, which refers to "the ability of a firm profitably to raise and sustain its price significantly above the competitive level by raising its rivals' costs and thereby causing the rivals to restrain their output."[592] The Commission found that dominant carrier regulation was generally designed to address classical, rather than exclusionary, market power.[593]

219. In analyzing classical market power, the Commission found that independent ILECs did not have the ability to raise the prices of those services above competitive levels by restricting their own output.[594] The Commission also found that the independent ILECs would be unable to use their control of bottleneck local exchange and exchange access facilities to such an extent that they would have the ability to raise prices by restricting their own output.[595] The Commission therefore held that dominant carrier regulation of the independent ILECs' long distance services would be "inappropriate."[596]

220. Despite that classification decision, the Commission was concerned about independent ILECs' ability to exercise exclusionary market power. The Commission suggested that an independent ILEC could allocate the costs of its long distance services to monopoly local exchange and exchange access services, an action that the Commission believed could, under certain circumstances, give the independent ILEC an unfair advantage over its long distance competitors.[597] Further, the Commission indicated that the independent ILEC could gain an unfair advantage over those competitors by discriminating against them in the provisioning of exchange and exchange access services.[598] Finally, the

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[590] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149, 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15763, para. 7 (1997) (*LEC Classification Order*) *recon. denied*, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd 10771 (1999) (*LEC Classification Second Reconsideration Order*); *see also supra* paras. 154-62.

[591] *LEC Classification Order*, 12 FCC Rcd at 15803, para. 83, n.214.

[592] *Id.*

[593] *Id.* at 15847, para. 156.

[594] *Id.* at para. 157.

[595] *Id.* at 15848, para. 158.

[596] *Id.* The Commission also found that independent ILECs were unlikely to be able unilaterally to raise the prices of in-region long distance services except with regard to international routes where the ILECs have market power as a result of affiliations with foreign carriers having bottleneck control in the foreign destination market. *Id.* at 15862-63, paras. 188-89. The Commission therefore classified independent ILECs as nondominant in the provision of in-region long distance services except with regard to those international routes. *Id.* at 15863, para. 189. The Commission also classified the independent ILECs as nondominant in the provision of out-of-region, interstate, interexchange services. *Id.* at 15873-77, paras. 206-11. We note that an independent ILEC that is classified as dominant on an international route because of an affiliation with a foreign carrier is not subject to the tariffing and many of the other requirements that otherwise apply to dominant interstate and international, long distance carriers. That independent ILEC, however, must comply with a different set of requirements set forth in section 63.10(c) through (e) of the Commission's rules, 47 C.F.R. § 63.10(c)-(e).

[597] *LEC Classification Order*, 12 FCC Rcd at 15848, para. 159.

[598] *Id.* at 15849, para. 160.

Commission found that the independent ILEC could potentially initiate a price squeeze to increase its long distance market share.[599]

221. The Commission determined that the section 64.1903 requirements would "aid in the prevention and detection of such anticompetitive conduct"[600] and would be more effective than dominant carrier regulation in doing so.[601] Although the Commission recognized that those requirements would impose some burdens on independent ILECs, it found that these burdens were reasonable relative to the resulting protections against cost misallocation, unlawful non-price discrimination, and price squeezes.[602] The Commission thus mandated that facilities-based, independent ILECs provide long distance services only through section 64.1903 separate affiliates.[603]

222. In the *LEC Classification Second Reconsideration Order*, the Commission relaxed its requirement for the use of a separate affiliate and allowed independent ILECs providing long distance services exclusively on a resale basis to do so through a separate corporate division.[604] The Commission concluded that independent ILEC long distance resellers were less likely than facilities-based providers to be able to engage in anti-competitive behavior in connection with their long distance services.[605] The Commission determined, however, that these resellers still possessed some ability to engage in anti-competitive behavior.[606] The Commission therefore required that the resellers' separate divisions maintain separate books of account and take services from the parent corporation pursuant to tariff or on the same basis as requesting carriers that have negotiated interconnection agreements pursuant to section 251 of the Act.[607]

3. Related Proceedings

223. *2001 and 2003 NPRMs.* Between September 2001 and May 2003, the Commission released three NPRMs that raised the question of what safeguards, if any, independent ILECs and BOCs should be subject to in their provision of in-region long distance services.[608] In the 2001 *Independent*

[599] *Id.* at para. 161.

[600] *Id.* at 15850, para. 163.

[601] *Id.* at 15854, para. 170.

[602] *Id.* at 15852, para. 167.

[603] *Id.* at 15856, para. 173. Because it found that structural requirements were not necessary to prevent the independent ILECs from engaging in anticompetitive conduct in relation to out-of-region, interstate, interexchange services, the Commission did not require those LECs to comply with section 64.1903 in providing those services. *Id.* at 15878, para. 213.

[604] *See LEC Classification Second Reconsideration Order*, 14 FCC Rcd at 10789-90, para. 25; 47 C.F.R. § 64.1903(b)(1).

[605] *LEC Classification Second Reconsideration Order*, 14 FCC Rcd at 10787-88, para. 22.

[606] *Id*. at 10788-90, paras. 24-25.

[607] *Id.* at 10790-91, paras. 25-26. The Commission also required that transactions between the separate divisions and the LEC operations comply with its affiliate transactions rules. *Id.* at 10789-90, para. 26 (citing 47 C.F.R. § 32.27). The Commission rejected proposals for removing the separate affiliate requirement for all rural telephone companies or for all LECs with fewer than two percent of the nation's subscriber lines. *Id*. at 10784-85, para. 17; *Petition for Forbearance of the Independent Telephone and Telecommunications Alliance*, AAD File No. 98-43, Third Memorandum Opinion and Order, 14 FCC Rcd 10816, 10822-28, paras. 8-16 (1999) (denying forbearance from application of the independent ILEC separate affiliate requirements to rural telephone companies and LECs with fewer than 2 percent of the nation's subscriber lines).

[608] *See supra* n.573.

Incumbent LEC Separate Affiliate NPRM, the Commission sought to develop a record on whether the benefits of the independent ILEC separate affiliate requirements outweighed their costs and whether alternative safeguards would provide the same benefits but impose fewer costs.[609] In the 2002 *Section 272 Sunset NPRM*, the Commission undertook a similar cost-benefit analysis regarding the requirements in section 272 of the Act and the Commission's implementing rules regarding the BOCs' in-region, interLATA telecommunications services.[610] In the 2003 *BOC and Independent LEC Further NPRM*, the Commission set out to define and analyze the markets in which the BOCs and independent ILECs provide long distance services, and determine whether these LECs should be classified as dominant in the provision of any of those services that they provided outside of section 272 or section 64.1903 separate affiliates.[611] The 2003 *BOC and Independent LEC Further NPRM* also invited comment on whether the Commission should adopt alternative safeguards to detect or deter any anticompetitive conduct by independent ILECs in the provision of long distance services.[612]

224. *Section 272 Sunset Order*. In the *LEC Classification Order*, the Commission concluded that, so long as the BOCs provided in-region long distance services through section 272 separate affiliates, these affiliates should be treated as nondominant in the provision of such services.[613] The Commission stated that it could not predict how competition would develop once the BOCs received in-region interLATA authority or what safeguards, if any, would be needed after the section 272 safeguards sunset.[614] Subsequently, the Commission made clear that, following sunset of the section 272 safeguards, to the extent a BOC chose to provide in-region long distance services either directly or through an affiliate that is not a section 272 separate affiliate, it would be subject to dominant carrier regulation.[615]

225. In 2007, the Commission comprehensively addressed the long distance services provided by the BOCs and their independent ILEC affiliates. Rather than applying structural safeguards or traditional dominant carrier regulation to these services, the Commission adopted a new framework focusing on targeted safeguards including, among other things, requiring BOCs to provide: (1) special access performance metrics designed to prevent non-price discrimination in the provision of special access services,[616] (2) imputation requirements to help monitor the provision of access services for possible price discrimination,[617] (3) low-volume calling plans intended to prevent customers from having to purchase expensive, high-volume calling plans that were replacing metered long distance calling,[618] and (4) monthly usage information intended to allow subscribers to choose long distance plans that fit their

[609] *Incumbent LEC Separate Affiliate NPRM*, 16 FCC Rcd at 17270, para 1.

[610] *Section 272 Sunset NPRM*, 17 FCC Rcd at 9922, para. 17.

[611] *BOC and Independent Incumbent LEC FNPRM*, 18 FCC Rcd at 10918-36, paras. 8-43.

[612] *Id.* at 10936-38, paras. 45-49.

[613] *LEC Classification Order*, 12 FCC Rcd at 15834-35, paras. 133-34.

[614] *Id.* at 15835, para. 134 n.391.

[615] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Memorandum Opinion and Order, 17 FCC Rcd 26869, 26870, paras. 1-2, nn.5, 8 (2002) (citing *LEC Classification Order*, 12 FCC Rcd at 1576, para. 4 n.12); *see also Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198-99, para. 9 n.23 (determining that the Commission would classify the BOCs as dominant in the provision of interstate, interLATA telecommunications services until it determined what safeguards, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant treatment).

[616] *Section 272 Sunset Order*, 22 FCC Rcd at 16487-89, paras. 97-98.

[617] *Id.* at 16489-16492, paras. 99-105.

[618] *Id.* at 16492-93, paras. 106-07.

calling patterns.[619] The Commission concluded that these alternative safeguards, as well as other continuing statutory and regulatory obligations,[620] would sufficiently address any concerns regarding the BOCs' and their independent ILEC affiliates' exclusionary market power and would adequately protect consumers who make relatively few interstate long distance calls, while imposing fewer costs than either structural safeguards or dominant carrier regulation.[621] The Commission therefore allowed the BOCs and their independent ILEC affiliates to provide long distance services free of structural requirements and subject to nondominant carrier regulation, as long as they complied with certain targeted safeguards and continuing statutory and regulatory obligations.[622] The *Section 272 Sunset Order* applies exclusively to the BOCs and their independent ILEC affiliates,[623] and does not address the regulatory framework under which other independent ILECs provide long distance services.

226. *Puerto Rico Telephone Company Waiver Order.* In December 2010, in response to a waiver request, the Wireline Competition Bureau (Bureau) temporarily waived application of section 64.1903 to allow the Puerto Rico Telephone Company (an independent ILEC) and its affiliate Puerto Rico Telephone Larga Distancia (together, PRT) to provide long distance services without doing so through a separate affiliate.[624] The Bureau also deferred application of dominant carrier regulation to PRT in order to give PRT time to file an interstate tariff or make a showing that nondominant carrier regulation of its long distance services is appropriate.[625] These actions were conditioned on PRT's compliance with certain safeguards patterned after those applied in the *Section 272 Sunset Order*.[626] PRT subsequently made a timely filing purporting to demonstrate that it is nondominant.[627] PRT's temporary waiver from

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[619] *Id.* at 16493-94, para. 108.

[620] In the *Section 272 Sunset Order*, the Commission noted that, in the absence of structural separations requirements contained in section 272, the BOCs remained subject to a number of statutory and regulatory measures designed to detect and deter anticompetitive behavior. These measures include: (1) dominant carrier regulation of interstate exchange access services; (2) equal access obligations under longstanding Commission precedent and section 251(g) of the Act; (3) section 251 obligations; (4) the obligation to provide service on just, reasonable, and not unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the Act. *See id.* at 16484-87, paras. 90-94. The Commission also noted that the Commission's section 208 complaint process may also be used in the event it is believed that an independent ILEC violated the Act or the Commission's rules. *Id.* at 16497, para. 115.

[621] *Id*. at 16494-95, paras. 109-11.

[622] *Id*. at 16488-92, paras. 95-105.

[623] AT&T's Southern New England Telephone Company (SNET) and Woodbury Telephone Company (Woodbury) affiliates and Verizon's former GTE LECs are classified as independent ILECs because they are ILECs that fall outside the definition of "BOC' in section 3(4) of the Communications Act. *See* 47 U.S.C. § 153(4).

[624] *Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission's Rules*, WC Docket No. 10-52, Memorandum Opinion and Order, 25 FCC Rcd 17704, 17711-12, paras. 14-16 (Wireline Comp. Bur. 2010). This waiver was based on findings that compliance with section 64.1903 had reduced PRT's operational efficiency and ability to maintain and expand telephone subscribership throughout Puerto Rico and that alternative safeguards would provide sufficient protection against possible cost misallocation, unlawful discrimination, and price squeezes. *Id*. at 17711-12, paras. 15-16.

[625] *Id.* at 17704-05, para. 1.

[626] *Id*. at 17717-18, paras. 29-32. The temporary deferral was also conditioned on PRT's not increasing existing rates for the services at issue during the deferral period. *Id.* at 11714, para. 21.

[627] Letter from Bennett L. Ross, Counsel for PRT, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-52 (filed Mar. 23, 2011).

the separate affiliate requirement contained in section 64.1903 expires on May 17, 2013.[628] PRT is an independent incumbent LEC serving the Commonwealth of Puerto Rico. During 2008, PRTC converted its interstate access services from rate-of-return regulations to price cap regulations.[629] In the *USTelecom Forbearance Order*, above, we hold that "PRT is now covered by the forbearance from section 64.1903 that is granted to price cap carriers in this Order, and will be treated as nondominant consistent with our interpretation of Commission precedent above."[630]

227. *USTelecom Forbearance Order*. On February 16, 2012, USTelecom filed a petition for forbearance.[631] Among other things, USTelecom asked the Commission to forbear from applying the structural separation requirements of section 64.1903 and forbear from applying dominant carrier regulation for long distance services offered on an integrated basis by independent ILECs.[632] USTelecom asserted that "[i]n light of the dramatic changes in the competitive landscape in the intervening 15 years since section 64.1903 was adopted, there is no longer any justification for the rule, and the Commission should forbear from its continued application."[633] The primary assumption underlying USTelecom's forbearance request was that "there are no dominant IXCs, and ILECs currently face robust competition for all-distance services."[634]

228. Above, in the *USTelecom Forbearance Order*, we relieve independent ILECs subject to price caps of the separate affiliate requirements in section 64.1903.[635] Based on the record, however, we deny relief from section 64.1903 for independent ILECs subject to rate-of-return regulation "due to continuing potential for cost misallocation."[636] Specifically, we hold that "cost misallocation is still a concern for independent ILECs that operate under rate-of-return cost regulation because a portion of their interstate access charge compensation and universal service support is based on their costs of providing service. This gives them an incentive to engage in cost misallocation, increase certain access charges, and facilitate a price squeeze."[637] We also hold that there was no reason to formally grant USTelecom's related request for forbearance from dominant carrier treatment of its long distance services that are provided other than in compliance with section 64.1903 because "the Commission has already classified the independent ILECs as nondominant in the provision of these services."[638] We conclude that "the

[628] *Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission's Rules*, WC Docket No. 10-52, Order, 28 FCC Rcd 1072, 1073, para. 4 (2013).

[629] *See Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Larga Distancia, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules*, WC Docket No. 07-292, Order, 23 FCC Rcd 7353 (2008).

[630] *USTelecom Forbearance Order*, *supra* at para. 162.

[631] *See* USTelecom Petition at 1.

[632] USTelecom subsequently clarified that it believes that, under the best reading of relevant precedent, independent ILECs by default would not be subject to dominant carrier regulation even when providing long distance service on an integrated basis, although it argues that forbearance would be warranted if the Commission disagreed with that interpretation. *See, e.g.*, Letter from Bennett L. Ross, Wiley Rein, LLP, Counsel to USTelecom, to Marlene H. Dortch, Secretary, FCC, Docket No. 12-61, at 3-6 (filed Mar. 28, 2013).

[633] USTelecom Petition at 65.

[634] *Id.* at 66.

[635] *USTelecom Forbearance Order*, *supra* at para. 139.

[636] *Id*.

[637] *Id*. at para. 151.

[638] *Id.* at para. 154.

practical consequence of this is that once the Commission has forborne from the section 64.1903 requirements for a class of independent ILECs, there is no requirement under existing precedent to file tariffs for such services or otherwise comply with dominant carrier regulation of those services as a result of providing long distance services on an integrated basis."[639]

229. *USTelecom Petition for Declaratory Ruling.* On December 19, 2012, USTelecom filed a petition seeking a declaratory ruling by the Commission that ILECs—BOCs as well as independents—should no longer be presumptively dominant when providing interstate mass market and enterprise switched services.[640] USTelecom argues that dominant carrier regulation is inappropriate because the public switched telephone network no longer constitutes a monopoly platform for the delivery of voice services.[641] In support, USTelecom offers data stating that, "the number of switched access lines has fallen at least 50% and continues to decline; and ILEC switched access minutes of use have dropped by more than 70%, all despite an increased population."[642] USTelecom further asserts that wireless and voice over Internet Protocol (VoIP) connections are responsible for this marketplace shift; that only "about one-third of American households purchase an ILEC switched access service"; and that "approximately 40% have 'cut the cord' and rely totally on wireless for their voice service."[643] This matter is pending before the Commission.[644]

4. Marketplace Developments

230. A number of significant marketplace changes have taken place since the Commission adopted section 64.1903 in 1997. Those changes call into question whether this rule remains the best alternative for promoting competition and protecting consumers in the long distance market.

a. Decline in Interexchange Revenues

231. In the 13 years following the breakup of AT&T, the revenues of reporting long distance carriers more than doubled, from $38.8 billion in 1984 to $82.0 billion in 1996, while the (primarily intrastate) long distance service revenues of local exchange companies declined slightly, from $12.4 billion in 1984 to $11.2 billion in 1996.[645] By 1997, the long distance services market was dominated by four major long distance carriers: AT&T Corp., MCI, WorldCom, and Sprint.[646] With combined revenues

[639] *Id.*

[640] United States Telecom Association Petition for Declaratory Ruling, WC Docket No. 13-3, at 9 (filed Dec. 19, 2012).

[641] *Id.* at ii-iii.

[642] *Id.* at iii.

[643] *Id. But see* Stephen J. Blumberg and Julian V. Luke, National Center for Health Statistics, Centers for Disease Control, *Wireless substitution: Early release of estimates from the National Health Interview Survey*, January–June 2012 at Table 1 (Dec. 2012), available at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201212.pdf (CDC Wireless Survey) (reporting approximately 35.8% of homes with only wireless phones).

[644] *See Wireline Competition Bureau Seeks Comment on United States Telecom Ass'n Petition for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services*, WC Docket No. 13-3, Public Notice, 28 FCC Rcd 107 (Wireline Comp. Bur. 2013) (comment cycle closed on Mar. 12, 2013).

[645] *See Trends in Telephone Service*, Federal Communications Commission, Common Carrier Bureau, Industry Analysis and Technology Division at Table 11.2 (Sept. 1999), *available at* http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend299.pdf.

[646] Competition also increased significantly, with AT&T's share of total (intrastate and interstate) long distance revenues plummeting from 68 percent in 1984 to 39 percent in 1997. *Id.* at Table 11.4. Among the carriers

(continued....)

(including intrastate and interstate toll) of $71.2 billion, these four companies held 71 percent of the total long distance marketplace,[647] while ILECs and their affiliates had a combined total of $10.2 billion toll revenues, accounting for 10 percent of the long distance marketplace.[648] At that time, ILECs and their affiliates provided intraLATA toll service but were the presubscribed, or "+1", carrier for interLATA long distance service for only about 2 percent of ILEC switched access lines.[649] From 1999 through 2003, however, the BOCs acquired authority under section 271 to provide interstate, in-region, interLATA services, which permitted them to enter the long distance markets in full.[650] By December 2011, affiliates of ILECs—including the BOCs—were the "+1" long distance carrier for 61 percent of ILEC switched access lines.[651]

232. While the ILECs' share of traditional long distance service lines increased dramatically by 2011, the amount of traditional long distance calling declined. In particular, interstate telephone traffic passing through ILEC switches ("interstate switched access minutes of use") declined by 58 percent from 1997 through 2011.[652] Similarly, between 1997 and 2009, toll service revenues (including both interstate and intrastate toll, often now provided as part of a bundle, which can include unlimited long distance calling) declined from 47 percent of total retail (end user) telecommunications revenues reported to the Commission in 1997 ($89 billion out of a total $189 billion) to 19 percent in 2009 ($43 billion out of a total $225 billion).[653] We note that these declines occurred while overall telecommunications revenues

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providing primarily long distance service at that time, AT&T's revenue share dropped even more sharply, from 90 percent in 1984 to 44 percent in 1997. *Id.* at Table 11.3.

[647] *Id.* at Table 11.2.

[648] *Id.* Additionally, long distance carriers other than the largest four held about 19 percent of total toll revenues and competitive local exchange carriers held less than 1 percent. *Id.*

[649] *Compare Historical Patterns of Entry into Long Distance by Local Exchange Carriers*, Federal Communications Commission, Common Carrier Bureau, Industry Analysis and Technology Division at Table 5 (Sept. 1998), *available at* http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/ilec-ld.pdf (reporting four million lines presubscribed to ILECs at the end of 1996) *with Trends in Telephone Service*, Federal Communications Commission, Industry Analysis and Technology Division at Table 7.1 (Sept. 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf (*2010 Trends in Telephone Service*) (reporting 165 million ILEC access lines in 1996).

[650] *See Section 271 Applications Filed with FCC*, *at* http://transition.fcc.gov/Bureaus/Common_Carrier/in-region_applications/.

[651] *Local Telephone Competition: Status as of December 31, 2011*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 7 (Jan. 2013), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0114/DOC-318397A1.pdf (*2013 Local Competition Report*). Through industry consolidation in the past decade, RBOC successor entities AT&T, Inc. (the successor to AT&T Corp. and SBC Communications, Inc.) and Verizon Communications, Inc. are now included among the five companies reporting the most toll service revenue. *See 2010 Trends in Telephone Service* at Table 9.1.

[652] Interstate switched access minutes of use declined 6% a year, on average, from 1997 through 2011, with the 2011 level (209 billion minutes) being only 42% of the 1997 level (497 billion minutes). *2012 Universal Service Monitoring Report*, CC Docket No. 98-202, at 5-2, 5-3, Chart 5.1, Table 5.1 (2013), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0403/DOC-319744A1.pdf.

[653] *Telecommunications Industry Revenues: 2009*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 1 (May 2011), *available at* http://transition.fcc.gov/wcb/iatd/lec.html. Toll services are telecommunications services—wireline, wireless, or interconnected VoIP services—that enable customers to communicate outside local exchange calling areas. Toll service revenues include revenues from intrastate, interstate, and international long distance services. *Id.* at 6.

reported to the Commission (including both end user and carrier's carrier—provided for resale—revenues) increased, from $231 billion in 1997 to $281 billion in 2009.[654]

b. Increased Subscription to Cable-Based Local Services and Mobile Wireless Services

233. During the same period described above, consumers increasingly turned to providers other than their ILEC for their voice service needs. As of December 2005, coaxial cable lines constituted only 16 percent of reported non-ILEC voice service lines,[655] and only 13 percent of residential lines were provided by non-ILECs.[656] By the end of 2011, non-ILECs' share of residential voice service connections had grown to approximately 37 percent,[657] and cable-based connections constituted 51 percent of non-ILEC connections.[658] By 2011, many cable-based services were interconnected VoIP—a generally "all distance" service with no differentiation in price based on calls within the United States.[659]

234. There also has been an increase in households subscribing to mobile wireless services. For example, the National Center for Health Statistics estimates that between 2003 and 2012, the percentage of households subscribing to mobile wireless services grew from approximately 46 percent to 88 percent, and the percentage of households subscribing only to a mobile wireless service increased from 3.2 percent to 35.8 percent.[660] When combined with households that subscribe to both landline and mobile services but rely primarily on their mobile service, the total percentage of households relying primarily or exclusively on wireless rises to 51.7 percent.[661]

c. The Rise of Bundled Local and Long Distance Subscription

235. The Commission has recognized that stand-alone long distance marketed to U.S. consumers is becoming a fringe market,[662] and that today, "consumers predominantly purchase local and

[654] *Id.*

[655] *Local Telephone Competition: Status as of December 31, 2005*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5 (July 2006), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-266595A1.pdf.

[656] *Id*. at Table 6 (13.9 million is approximately 13 percent of 108.3 million).

[657] *2013 Local Competition Report* at Table 10 (30.5 million is approximately 37% of 83.0 million). As of December 2011, only 3.7 million of the 30.5 million non-ILEC residential voice service connections were reported to be switched access lines. *Id.* These figures include all over the top interconnected VoIP residential connections. In staff's judgment, non-ILECs' share of residential connections is approximately 35%, excluding staff estimates of non-cable based over the top services such as Vonage. *See id*. at Tables 6, 8-11, Figures 6, 7.

[658] *Id.* at Table 6 (27.8 million cable-based connections is approximately 51% of 54.1 million non-ILEC connections.).

[659] Compare, for example, the 23.9 million interconnected VoIP connections provided to cable Internet customers in December 2011 to the 1.9 million non-ILEC cable based switched access lines reported. *Id.* at Figures 6, 7.

[660] CDC Wireless Survey at Table 1.

[661] *Id.* at 1 (reporting 35.8% of homes with only wireless phones plus 15.9% of homes that received all or almost all calls on wireless phones despite also having a landline phone). *See also supra* n.643.

[662] *See*, *e.g.*, *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18483, para. 92 (2005) (*Verizon/MCI Merger Order*); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control,* WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18342, para. 91 (2005) (*AT&T/SBC Merger Order*); *AT&T Inc. and Bellsouth Corp. Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5715, para. 97 (2007); *Section 272 Sunset Order*, 22 FCC Rcd (continued....)

long distance services from a single provider. Evidence suggests that this trend is continuing as the stand-alone wireline long distance market is steadily declining relative to the bundled services market."[663] Between 2008 and 2011, the proportion of residential switched access lines and interconnected VoIP subscriptions with "+1" access to the local provider's long distance services increased from 75 to 80 percent.[664]

236. In 2011, the Commission noted in the *USF/ICC Transformation Order* that many providers no longer distinguish between local and long distance usage.[665] As a result, the Commission concluded that it was appropriate to eliminate the distinction between such services for purposes of supported services and instead to "describe the core functionalities of the supported services as 'voice telephony service.'"[666] More recently, the Commission revised the Lifeline rules and determined that "ETCs are not required to offer toll limitation service to low-income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls."[667] The Commission reached this decision because "[m]any carriers no longer distinguish between toll and non-toll calls in how they price voice telephony."[668]

C. Discussion

237. The Commission adopted section 64.1903 based on the findings in the *LEC Classification Order* emphasizing the need to protect against the exercise of exclusionary market power by independent ILECs—the ability to raise rivals' costs of providing competitive services, including the misallocation of costs (for example misallocating costs from nonregulated to regulated services), non-price discrimination (for example, lower quality wholesale services provided to a competitor), and a price squeeze based on inputs that long distance competitors need, such as access services (for example, raising

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at 16452, para. 23; *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5217, para. 16 (2007).

663 *Verizon/MCI Merger Order*, 20 FCC Rcd at18485-86, para. 96; *AT&T/SBC Merger Order*, 20 FCC Rcd at 18344, para. 95.

664 *See 2013 Local Competition Report* at Tables 8, 10; *Local Telephone Competition: Status as of December 31, 2008*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, at Tables 7, 9 (June 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-299052A1.pdf. (The percentage is calculated by adding together residential presubscribed switched access lines, ILEC residential interconnected VoIP subscriptions, and non-ILEC residential interconnected VoIP subscriptions, and dividing the resulting sum by total residential switched access lines and interconnected VoIP subscriptions.)

665 *See Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform — Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17691-92, para. 76 (2011) (*USF/ICC Transformation Order), pets. for review pending sub nom. In re: FCC*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

666 *Id*. at 17692, para. 77.

667 *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6679, para. 49 (2012).

668 *Id.* at 6756, para. 229.

prices for access services, including both switched and special access, or reducing prices for retail services).[669] In light of the market changes described above, we consider whether the rule continues to offer benefits and whether the benefits justify the regulatory burdens and costs of compliance for rate-of-return ILECs. We also recognize that market conditions alone might justify eliminating the separate affiliate requirement, at least for some independent ILECs subject to rate-of-return regulation, and seek comment on the relevant market characteristics and how they should affect our evaluation of the continued need for the separate affiliate rule.

1. Analyzing Potential for Cost Misallocation

238. The *USTelecom Forbearance Order* granted forbearance from section 64.1903 to independent ILECs subject to price cap regulation but denied this relief to such carriers subject to rate-of-return regulation, including both independent ILECs subject to average schedules[670] and cost companies.[671] Rate-of-return regulation, which preceded price cap regulation, focuses on an ILEC's costs and fixes the profits an ILEC may earn based on those costs.[672] A rate-of-return ILEC may recover only its costs plus a prescribed return on investment.[673] Unlike price cap carriers, rate-of-return carriers are typically small, rural telephone companies concentrated in one area.[674] Also unlike price cap carriers, non-average schedule rate-of-return independent ILEC has the ability and incentive to over allocate costs to common line and special access services because its interstate compensation for those services remains based directly on company-specific costs.[675] We seek comment on this view. The Commission's 2011 reforms to intercarrier compensation rules cap and/or reduce interstate switched access charges, but allow increases in common line and special access rates.[676] Thus, we believe that these changes in the access

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[669] *See, e.g., LEC Classification Order*, 12 FCC Rcd at 15847-57, paras. 158-75 (describing the incentives, ability, and means for an incumbent LEC to improperly allocate costs, engage in price and non-price discrimination, and engage in a price squeeze).

[670] *USTelecom Forbearance Order, supra* at n.425.

[671] *Id*. at para. 151.

[672] *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, 16320, para. 2 (2012).

[673] *Special Access for Price Cap Local Exchange Carriers Order*, WC Docket No. 05-25, Report and Order, 27 FCC Rcd 10557, 10562, para. 8 (2012).

[674] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, 19617, para. 4 (2001).

[675] *Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, CC Docket No. 90–623, Report and Order, 6 FCC Rcd 7571, 7596, para. 55 (1991); *see also Matter of 2000 Biennial Regulatory Review— Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, Amendments to the Uniform System of Accounts for Interconnection, Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd 19911, 19946, para. 85 (2001).

[676] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17936, para. 805. In the *USTelecom Forbearance Order* we note that "[t]he Commission's 2011 intercarrier compensation rules freeze or reduce most interstate access charges, but allow increases in common line and special access rates. Thus, these changes in the access charge rules reduce, but do not eliminate, the incentives for cost misallocation and potential access charge rate increases. We find that it would be unwise to forbear from the separate affiliate requirement for rate-of-return independent ILECs subject to cost regulation. To do so would potentially further increase opportunities for cost misallocation at a time

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charge rules reduce, but may not eliminate, incentives for cost misallocation and potential access charge rate increases. We seek comment on this view and on the interplay between section 64.1903 and our intercarrier compensation and universal service reforms. We seek comment on whether we could address concerns about cost misallocation equally well, and in a less burdensome manner, in ways other than requiring that service be provided through a separate affiliate.

239. The Commission has previously recognized that concerns about cost misallocation are strongest when carriers provide long distance services in whole or in part through their own switching or transmission facilities.[677] When these carriers provide long distance service exclusively through resale, the risk of cost misallocation is reduced, and they operate pursuant to a lesser safeguard—a separate corporate division rather than a separate subsidiary.[678] We seek comment on the extent to which rate-of-return independent ILECs provide long distance service using their own facilities. Could we deter and detect cost misallocation by requiring that independent ILECs offering long distance over their own facilities provide those services through a separate corporate division?

240. We also seek comment on whether we can reduce the burdens on average schedule carriers. Average schedule carriers are a subset of rate-of-return carriers that receive access compensation and universal service support through the use of "average schedules" to avoid the difficulties and expenses involved with conducting company-specific cost studies.[679] Average schedule companies appear to have limited incentives to misallocate costs as long as they continue to use the average schedules for access compensation. However, these companies are permitted to convert to cost-based regulation without Commission approval. Thus, an average schedule company could, in theory, provide in-region long distance service without a separate affiliate, and then convert to cost-based regulation. We seek comment on how we could grant relief from the separate affiliate requirement for average schedule companies and also prevent them from misallocating costs in the future. We could condition relief from section 64.1903 on a commitment not to convert to rate-of-return regulation, or require them to reinstitute a separate affiliate if they do so. We seek comment on these and alternative suggestions. How should the Commission treat cost companies participating in NECA pools? Do these companies possess the ability and incentive to misallocate costs because disbursements from the NECA pools are based on participating

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when the Commission has just embarked on a significant transformation of intercarrier compensation and universal service. Accordingly, we do not forbear from application of the separate affiliate requirement to rate-of-return independent ILECs subject to cost-based regulation." *USTelecom Forbearance Order, supra* at para. 151.

[677] *LEC Classification Second Reconsideration Order*, 14 FCC Rcd at 10787-88, para. 22 (concluding that independent ILEC resellers were less likely than facilities-based providers to be able to engage in anti-competitive behavior in connection with their long distance services).

[678] 47 C.F.R. § 64.1903(b)(1).

[679] *See National Exchange Carrier Association, Inc., 2013 Modification of Average Schedule Universal Support Formula*, WC Docket No. 05-337, Order, 27 FCC Rcd 15178, 15179, para. 5 (Wireline Comp. Bur. 2012) (*2013 Modification Order*). Average schedule carriers "have been assumed, because of their small size, not to have sufficient financial resources or expertise to justify a requirement that they perform jurisdictionally separated cost studies for determining their compensation in originating and terminating interstate telecommunications services." *MTS and WATS Market Structure: Average Schedule Companies*, CC Docket No. 78-72, Report and Order, 103 FCC2d 1017, 1018-19 (1986). "These formulas are developed by NECA using data from a sample group of average schedule carriers and from similarly situated companies that file cost data, and are used to determine support amounts for all average schedule carriers." *2013 Modification Order*, 27 FCC Rcd at 15179, para. 5. Thus, average schedule carriers charge rates that are not directly tied to their costs but are tied to the average costs of similarly situated companies. Average schedule companies, however, may easily move back and forth between average schedules and cost-based rate-of-return regulation.

companies' costs?[680] In the *USTelecom Forbearance Order*, we grant relief to price cap carriers if they: (1) submit and obtain Bureau approval of special access performance metrics, and (2) satisfy imputation requirements, including the submission of an imputation plan for review and approval from the Bureau.[681] Will such nonstructural safeguards obviate the need for section 64.1903, while imposing fewer costs and burdens, for rate-of-return carriers? How should our analysis for rate-of-return carriers differ, if any, from our analysis for price cap carriers?

2. Analyzing Potential for Unlawful Non-Price Discrimination and Price Squeezes

241. Section 64.1903 was intended to prevent unlawful non-price discrimination and price squeezes.[682] Do these concerns remain relevant in light of changes in the market, including the prevalence of bundled local, intrastate long distance, and interstate long distance services? Is the separate affiliate requirement an effective, cost-effective way to prevent these anticompetitive practices? Could the Commission effectively address these concerns through *ex-post facto* investigations, such as under a section 208 complaint process? Are existing statutory and regulatory safeguards sufficient to deter these anticompetitive practices?[683]

3. Costs and Benefits of the Separate Affiliate Requirements of Section 64.1903

242. How many independent ILECs use separate affiliates pursuant to section 64.1903? What costs, if any, would be saved if we eliminate section 64.1903 for independent ILECs subject to rate-of-return regulation? Would the same savings be realized if the independent ILEC were required instead to provide long distance services through a separate division? For example, what incremental costs does an independent ILEC incur in maintaining separate books of account for its long distance services, as opposed to including those costs and revenues in the accounts for its LEC operations? How does that differ depending on whether the separate books of account are for a separate division versus a separate corporation? We particularly seek empirical data on costs and burdens from independent ILECs that have experience providing long distance service through a separate corporate affiliate or a separate division so that we can analyze the differences between these structures.

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[680] We recognize that independent ILEC cost companies participating in the NECA pool may have somewhat less incentive to misallocate costs than such companies that have their own access tariffs. The NECA pool access rates are based on the average costs for all companies that participate in the NECA pools. *See Investigations of Certain 2007 Annual Access Tariffs*, WC Docket No. 07-184, WCB Pricing No. 07-10, Order Designating Issues for Investigation, 22 FCC Rcd 16109, 16110, para. 4 (2007). While these companies have less ability to increase access rates and engage in a price squeeze, they still theoretically retain an incentive to misallocate disbursements from the NECA pools, which are based on a company's costs.

[681] *USTelecom Forbearance Order* at paras. 145-148; We also note in the *USTelecom Forbearance Order* that "[i]n addition, independent ILECs subject to price cap regulation remain subject to a number of legal obligations that will limit their ability to exercise exclusionary market power." *USTelecom Forbearance Order* at para. 142; *see also infra* n.683.

[682] *See supra* para. 237.

[683] ILECs are subject to a number of statutory and regulatory measures designed to detect and deter anticompetitive behavior. These include: (1) dominant carrier regulation of interstate exchange access services; (2) equal access obligations under longstanding Commission precedent and section 251(g) of the Act; (3) section 251 obligations; and (4) the obligation to provide service on just, reasonable, and not unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the Act. *See Section 272 Sunset Order*, 22 FCC Rcd at 16484-87, paras. 90-94. The Commission's section 208 complaint process may also be used in the event it is believed that an independent ILEC has violated the Act or the Commission's rules. *Id.* at 16497, para. 115.

243. What effect, if any, does the prohibition against joint ownership of switching and transmission equipment have on an independent ILEC's operational efficiency and ability to offer innovative services? Does that prohibition significantly limit the independent ILEC's opportunities to take advantage of economies of scope and scale associated with integrated operations? Does the prohibition make it more difficult for an independent ILEC to transform its network from a traditional Time-Division Multiplexing (TDM) network to an all-Internet Protocol (all-IP) network?[684] If so, how? Does section 64.1903 reduce independent ILECs' ability to increase telephone subscribership or extend broadband services to additional areas? If ILECs transition to offering only VoIP services, should section 64.1903 continue to apply? Finally, we seek comment on whether complying with nonstructural safeguards such as special access performance metrics and imputation requirements adequately address issues of non-price discrimination and/or price squeezes.[685] We ask commenters to provide detailed information on the overall costs and burdens of the section 64.1903 requirements on independent ILECs and their customers.

VII. PROCEDURAL MATTERS

A. Memorandum Opinion and Order

244. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507 of the PRA, 44 U.S.C. § 3507. Prior to submission to OMB, the Commission will publish a notice in the Federal Register seeking public comment on the information collection requirement. In addition, that notice will also seek comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4). The information collection contained in this Memorandum Opinion and Order will not go into effect until OMB approves the collection and the Commission has published a notice in the Federal Register announcing the effective date of the information collection.

B. Report and Order in WC Docket No. 10-132

1. Final Paperwork Reduction Act Analysis

245. This *Report and Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. [686] In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

2. Congressional Review Act

246. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[687]

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[684] *See Pleading Cycle Established on AT&T and NTCA Petitions*, Public Notice, GN Docket No. 12-353, 27 FCC Rcd 15766 (Wireline Comp. Bur. 2012) (requesting comments on petitions concerning the transition of telephone networks and services to Internet Protocol); *Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, GN Docket No. 13-5, Public Notice, DA 13-1016 (rel. May 10, 2013), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-13-1016A1.pdf.

[685] *See supra* paras. 225, 241; *see also USTelecom Forbearance Order*, *supra* paras. 143-148.

[686] Pub. L. No. 104-13; 44 U.S.C. §§ 3501-3520.

[687] 5 U.S.C. § 801(a)(1)(A).

3. Final Regulatory Flexibility Analysis

247. Final Regulatory Flexibility Certification. The Regulatory Flexibility Act of 1980, as amended (RFA),[688] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[689] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[690] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[691] 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).[692]

248. This *Report and Order* eliminates CEI/ONA narrowband reporting requirements that have been in place to monitor the BOCs' compliance with access and interconnection services that they must offer to competitive ESPs. It finds that the Commission does not rely on any of the reports in the course of its decision making, and there is nothing in the record indicating that the reports contain information that is currently useful to competitive ESPs. In addition, no commenter to the proceeding indicated that we should retain the reports.[693] The underlying substantive requirements associated with CEI and ONA with which the BOCs must comply will remain in effect.

249. SBA defines small telecommunications entities as those with 1,500 or fewer employees.[694] This proceeding pertains to the BOCs, which, because they would not be deemed a "small business concern" under the Small Business Act and have more than 1,500 employees, do not qualify as small entities under the RFA. Therefore, we certify that the requirements of this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Report and Order* including a copy of this final certification in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[695] In addition, the *Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.[696]

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[688] The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[689] 5 U.S.C. § 605(b).

[690] 5 U.S.C. § 601(6).

[691] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 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.

[692] Small Business Act, 15 U.S.C. § 632.

[693] *See supra* paras. 8-11.

[694] *See generally* 13 C.F.R. § 121.201, NAICS Code 517110, Wired Telecommunications Carriers.

[695] *See* 5 U.S.C. § 801(a)(1)(A).

[696] *See* 5 U.S.C. § 605(b).

C. *Computer III* Further Notice

1. Paperwork Reduction Act Analysis

250. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in 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.

2. Initial Regulatory Flexibility Analysis

251. The Regulatory Flexibility Act of 1980, as amended (RFA),[697] requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[698] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[699] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[700] 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).[701] SBA defines small telecommunications entities as those with 1,500 or fewer employees.[702] This proceeding pertains to the BOCs, which, because they would not be deemed a "small business concern" under the Small Business Act and have more than 1,500 employees, do not qualify as small entities under the RFA. Therefore, we certify that the proposals in this Further Notice, if adopted, will not have a significant economic impact on a substantial number of small entities.

252. The Commission will send a copy of the Notice, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.[703] This initial certification will also be published in the Federal Register.[704]

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[697] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, 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).

[698] 5 U.S.C. § 605(b).

[699] 5 U.S.C. § 601(6).

[700] 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."

[701] 15 U.S.C. § 632.

[702] *See generally* 13 C.F.R. § 121.201, NAICS Code 517110, Wired Telecommunications Carriers.

[703] 5 U.S.C. § 605(b).

[704] *Id.*

3. *Ex Parte* Presentations

253. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[705] 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). 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 rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

4. Comment Filing Procedures

254. 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. All pleadings are to reference CC Docket Nos. 95-20, 98-10. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

- 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.

- 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 12th 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 9300 East Hampton Drive, Capitol Heights, MD 20743.

[705] 47 C.F.R. §§ 1.1200 *et seq.*

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

255. 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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

D. Second Further Notice of Proposed Rulemaking

1. Paperwork Reduction Act Analysis

256. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in 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.

2. Initial Regulatory Flexibility Analysis

257. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[706] the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in this Second NPRM. Written comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments on the Second FNPRM. The Commission will send a copy of the Second FNPRM, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[707] In addition, the Second FNPRM and Supplemental IRFA (or summaries thereof) will be published in the Federal Register.[708]

(i) Purpose of the Proposed Rules

258. In the Second FNPRM, we explore the costs and benefits of continuing to apply the structural separation requirements contained in section 64.1903 of the Commission's rules, 47 C.F.R. § 64.1903, to independent incumbent local exchange carriers (ILECs) subject to rate-of-return regulation and providing in-region, interexchange, interstate long distance services (in-region long distance services) in today's marketplace.

259. In the Second FNPRM, we seek comments addressing marketplace changes such as the decline of stand-alone long distance services, the rise of facilities-based "all-distance services" competition from cable and wireless, and the role of bundles in today's long distance market. We therefore seek comment addressing whether incentives for anticompetitive behavior exist for independent ILECs subject to rate-of-return regulation, and whether granting relief from section 64.1903 is appropriate.

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[706] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, 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).

[707] *See* 5 U.S.C. § 603(a).

[708] *See id*.

(ii) Legal Basis

260. The legal basis for any action that may be taken pursuant to the Second Further NPRM is contained in sections 4(i), 4(j), 10, 201-204, 214, 220(a), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 201-204, 214, 220(a), and 303(r).

(iii) Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

261. 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 rules, if adopted.[709] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[710] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[711] 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.[712]

262. **Small Businesses**. Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.[713]

263. **Wired Telecommunications Carriers**. 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. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.[714] Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.[715] Thus, under this size standard, the majority of firms can be considered small.

264. **Incumbent Local Exchange Carriers (ILECs)**. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[716] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[717] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have

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[709] *See* 5 U.S.C. § 603(b)(3).

[710] *See* 5 U.S.C. § 601(6).

[711] *See* 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."

[712] *See* 15 U.S.C. § 632.

[713] *See* SBA, Office of Advocacy, "Frequently Asked Questions," http://www.sba.gov/advo/stats/sbfaq.pdf (accessed Jan. 2012).

[714] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110" (issued Nov. 2010).

[715] *See id*.

[716] *See* 13 C.F.R. § 121.201, NAICS code 517110.

[717] *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*).

more than 1,500 employees.[718] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Second FNPRM.

265. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[719] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[720] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

266. **Interexchange Carriers (IXCs)**. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[721] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[722] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[723] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Order.

(iv) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

267. In this Second FNPRM, the Commission proposes additional or modified information collections that would impose reporting and recordkeeping on current independent ILECs subject to rate-of-return regulation, including small entities. Specifically, the Second FNPRM invites comment on whether the Commission should replace its legacy framework for the provision of in-region, interstate long distance services provided by independent ILECs subject to rate-of-return regulation with a framework more closely tailored to the needs of consumers and competitors in today's marketplace. The central feature of this proposal is to amend or eliminate the application of section 64.1903 to independent ILECs subject to rate-of-return regulation.

268. Based on these questions, the Commission anticipates that a record will be developed concerning actual burdens and alternative ways in which the Commission could lessen the burdens on small entities subject to these requirements throughout the nation.

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718 *See id*.

719 5 U.S.C. § 601(3).

720 *See* Letter from Jared W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a); *see also* 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 C.F.R. § 121.102(b).

721 *See* 13 C.F.R. § 121.201, NAICS code 517110.

722 *See Trends in Telephone Service* at Table 5.3.

723 *See id.*

(v) Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

269. The RFA requires an agency to describe any significant, specifically small business, 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."[724]

270. The overall objective of this proceeding is to reduce regulatory burdens on independent ILECs to the extent consistent with the public interest, and is part of the Commission's ongoing efforts under Executive Order 13,579 to revisit "rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." The Second FNPRM seeks specific proposals as to which existing regulations might be removed or streamlined in their application to provision of in-region, interstate and international interexchange services by independent ILECs subject to rate-of-return regulation absent current safeguards, and asks parties to comment on whether such independent ILECs should continue to be classified as nondominant in the provision of such services if section 64.1903 is repealed. The Second FNPRM also asks parties to discuss whether, and to what extent, dominant carrier regulation is aptly suited to achieving the Commission's objectives to promote competition and to deter anticompetitive behavior by independent ILECs subject to rate-of-return regulation. The Second FNPRM seeks comment on these matters, especially as they might affect small entities subject to the rules.

(vi) Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

271. None.

3. *Ex Parte* Presentations

272. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[725] 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). 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 rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that

[724] 5 U.S.C. § 603(c)(1)-(c)(4).

[725] 47 C.F.R. §§ 1.1200 *et seq.*

proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

4. Comment Filing Procedures

273. 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. All pleadings are to reference CC Docket No. 00-175. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

- 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.

- 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 12th 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 <u>before</u> entering the building.

  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

274. 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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

VIII. ORDERING CLAUSES

275. Accordingly, IT IS ORDERED, pursuant to section 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 160(c), that USTelecom's petition for forbearance IS GRANTED IN PART, to the extent described above, and conditioned on fulfillment of the obligations set forth herein, AND DENIED IN PART, to the extent described above, AND IS OTHERWISE DENIED.

276. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i) and 4(j), 47 U.S.C. §§ 151, 154(i) and 154(j), that USTelecom's Petition for Waiver in WC Docket No. 08-225 and Cincinnati Bell's Petition for Waiver in WC Docket No. 09-206 ARE DISMISSED as moot, in light of the relief granted herein.

277. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), and 405 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 405, that the Petition for Reconsideration of Embarq, Frontier, and Windstream in WC Docket Nos. 08-190, 07-139, 07-204, 07-273, and 07-21 IS DISMISSED as moot, in light of the relief granted herein.

278. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), and 405 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 405 that the Petition for Reconsideration by Sprint Nextel Corporation, AdHoc Telecommunications Users Committee, COMPTEL, and Time Warner Telecom Inc. in WC Docket Nos. 07-21 and 05-342 filed on May 27, 2008 in WC Docket Nos. 07-21 and 05-342; the Petition for Reconsideration by AdHoc Telecommunications Users Committee, filed on October 6, 2008 in WC Docket Nos. 08-190, 07-139, 07-204, 07-273, and 07-21; and the Petition for Reconsideration by Sprint Nextel Corporation, COMPTEL, tw telecom inc., and One Communications Corp., filed on October 6, 2008 in WC Docket Nos. 08-190, 07-139, 07-204, 07-273, are DENIED.

279. IT IS FURTHER ORDERED that, pursuant to Sections 1, 2, 4, 11, 201-205, 251, 272, 274-276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 161, 201-205, 251, 272, 274-276, and 303(r) this Report and Order in WC Docket No. 10-132 IS ADOPTED. The requirements of this Report and Order shall become effective 30 days after publication in the Federal Register.

280. 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 in WC Docket No. 10-132, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

281. IT IS FURTHER ORDERED that, pursuant to Sections 1, 2, 4, 11, 201-205, 251, 272, 274-276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 161, 201-205, 251, 272, 274-276, and 303(r) this Further Notice of Proposed Rulemaking in CC Docket Nos. 95-20 and 98-10 IS ADOPTED.

282. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 2, 4(i), 4(j), 201-205, 220(a), 251, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 220(a), 251, 272, and 303(r) this Second Further Notice of Proposed of Rulemaking in CC Docket No. 00-175 IS ADOPTED.

283. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking in CC Docket Nos. 95-20 and 98-10 and this Second Further Notice of Proposed Rulemaking in CC Docket No. 00-175, including the Initial Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

284. IT IS FURTHER ORDERED, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and section 1.103(a) of the Commission's rules, 47 U.S.C. § 1.103(a), that this decision SHALL BE EFFECTIVE upon release. Pursuant to sections 1.4 and 1.13 of the Commission's rule, 47 C.F.R. §§ 1.4, 1.13, the time for appeal SHALL RUN from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Comments, Oppositions, & Replies

Comments

Ad Hoc Telecommunications Users Committee (Ad Hoc)
Alarm Industry Communications Committee (AICC)
Alaska Communications Systems Group, Inc. (ACS)
California Association of Competitive Telecommunications Companies (CACTC)
California Public Utilities Commission (CPUC)
CenturyLink
Cincinnati Bell Telephone Company LLC (Cincinnati Bell)
General Communication, Inc. (GCI)
Larry S. Landis
Michigan Public Service Commission (Michigan PSC)
NASUCA, Maine Office of the Public Advocate, and New Jersey Rate Counsel (Consumer Advocates)
National Cable & Telecommunications Association (NCTA)
New York Public Service Commission (NY PSC)
Verizon
Vermont Public Service Board (Vermont PSB)

Oppositions

Broadview Networks, MegaPath Corp., and XO Communications (Broadview, *et al*.)
COMPTEL
Full Service Network LP (Full Service)
New Networks Institute (New Networks)
Maneesh Pangasa
Sprint Nextel Corporation (Sprint)

Reply Comments

Alarm Industry Communications Committee (AICC)
Alaska Communications Systems Group, Inc. (ACS)
AT&T
Computer & Communications Industry Association (CCIA)
Frontier Communications (Frontier)
Full Service Network LP (Full Service)
Michigan Public Service Commission (Michigan PSC)
National Telecommunications Cooperative Association (NTCA)
Pennsylvania Public Utility Commission (Pennsylvania PUC)
Public Service Commission of the District of Columbia (DC PSC)
SureWest Telephone (SureWest)
United States Telecom Association (USTelecom)
Verizon

APPENDIX B

Forbearance Granted in this Order

Category of Rule	Applicable C.F.R. or U.S.C. sections	Scope of Forbearance	Conditions
Equal Access Scripting	Not applicable	All	No
Cost Assignment Rules[726]	47 C.F.R. § 32.23 47 C.F.R. § 32.27(a)-(e) 47 C.F.R. § 32.5280(b)-(c) 47 C.F.R. §§ 36.1-36.2 47 C.F.R. §§ 36.3(a)-(d) 47 C.F.R. §§ 36.101-36.102 47 C.F.R. § 36.111 47 C.F.R. § 36.112(a) 47 C.F.R. §§ 36.121-36.124 47 C.F.R. §§ 36.125(a), (b), (g)-(j) 47 C.F.R. § 36.126 47 C.F.R. §§ 36.141-36.142 47 C.F.R. §§ 36.151-36.153 47 C.F.R. §§ 36.154(a)-(c), (e)-(g) 47 C.F.R. §§ 36.155-157 47 C.F.R. §§ 36.161-36.162 47 C.F.R. § 36.171 47 C.F.R. § 36.172(a), (b) 47 C.F.R. §§ 36.181-36.182 47 C.F.R. § 36.191 47 C.F.R. §§ 36.201-2 47 C.F.R. §§ 36.211-36.216 47 C.F.R. §§ 36.221-36.225 47 C.F.R. §§ 36.301-36.302 47 C.F.R. §§ 36.310-36.311 47 C.F.R. § 36.321 47 C.F.R. § 36.331 47 C.F.R. § 36.341 47 C.F.R. §§ 36.351-36.354 47 C.F.R. § 36.361 47 C.F.R. §§ 36.371-36.382 47 C.F.R. §§ 36.391-36.392 47 C.F.R. §§ 36.411-36.412 47 C.F.R. § 36.421 47 C.F.R. §§ 36.501-36.507 Appendix to Title 47 Part 36 47 C.F.R. §§ 64.901-64.904	Price cap carriers only	Yes

[726] *See supra* n. 119. To the extent that there are any inconsistencies between this Appendix and the Order, the Order controls.

	47 C.F.R. § 65.600 47 C.F.R. §§ 69.301-69.306 47 C.F.R. §§ 69.307(a), (b), (d) 47 C.F.R. §§ 69.309-69.310 47 C.F.R. §§ 69.401-69.409 47 C.F.R. §§ 69.411-69.414 47 U.S.C. § 220(a)(2) (limited to the extent that this provision contemplates separate accounting of nonregulated costs)		
Part 42 Recording keeping Requirements	47 C.F.R. §§ 42.4-42.5 47 C.F.R. § 42.7 47 C.F.R. § 42.10(a)	All	Yes; forbearance from 47 C.F.R. § 42.10(a) applies only to IXCs that maintain a website
ARMIS Report 43-01	47 C.F.R. § 43.21(e)(2)	Price cap carriers only	Yes
Annual Revenue and Total Communications Plant Reporting-	47 C.F.R. § 43.21(c)	All	Yes
Cash Working Capital Allowance" Requirement	47 C.F.R. § 45.820(d)	Price cap carriers only	Yes
Recording of Telephone Conversation with Phone companies	47 C.F.R. § 64.501	All	No

Partial Forbearance Granted in this Order

Category of Rule	Applicable C.F.R. or U.S.C. Sections	Scope of Forbearance	Conditions
Property Record Rules	47 C.F.R. §§ 32.2000(e) and (f)	Price cap carriers only	Yes
Structural Separation Requirement for Independent ILECs	47 C.F.R. § 64.1903	Price cap carriers only	Yes
Rules Governing Extension of unsecured Credit for Interstate and Foreign Communications Services to	47 C.F.R. § 64.804(c)-(f)	All	No

Candidates for Federal Office			
Prepaid Calling Card Reporting Requirements	47 C.F.R. § 64.5001(a), (b), (c)(1), (c)(2), c(4)	47 C.F.R. § 64.5001 (c)(3) only applies to certain providers	No

STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI

Re: *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations et al.,* WC Docket Nos. 12-61, 10-132, 09-206, 08-225, 08-190, 07-273, 07-204, 07-139, 07-21, 05-342, CC Docket Nos. 02-39, 00-175, 95-20, 98-10

With today's Order and accompanying rulemakings, the Commission takes another step forward in our ongoing efforts to retool the agency for the digital age and to remove barriers to private investment, innovation and job creation.

We live in a world imagined by Steve Jobs, Bill Gates, Marc Andreessen and other visionaries, but too many of the FCC rules and processes we inherited were built for the world of Alexander Graham Bell.

That's why I made agency reform a top priority when I arrived in 2009. One of my first acts was to appoint a special counsel for FCC reform, and I directed her to lead an agency-wide effort to look hard and honestly at our rules, to propose eliminating ones that don't make sense or have outlived their usefulness, and to make sure that the benefits of any rule we adopt outweigh the costs.

I also welcomed President Obama's Executive Order calling on all executive departments and agencies to review rules and regulations to ensure they are designed "in a cost-effective manner consistent with the goals of promoting economic growth, innovation, competitiveness, and job creation" – and we have done just that here at the FCC, even as an independent agency not covered by the Order.

These efforts have yielded results. Since January 2010, the Commission has eliminated more than 300 outdated regulations and eliminated dozens of reporting requirements. We have also streamlined data collections, reduced backlogs, and sped processing times. For example, we've cut the time to review routine wireless transactions by more than half, and we've almost entirely eliminated our satellite space station licensing backlog – cutting it from 90 applications in June 2009 to just seven in April 2013.

In every case, we've preserved or strengthened vital protections for consumers and competition, as well as the Commission's access to the data it genuinely needs, even while eliminating rules and reports that no longer make sense.

We brought this same approach to today's Order. Last year, USTelecom, on behalf of its member telephone companies, sought broad forbearance relief from dozens of regulatory requirements in 17 different categories. In February, the Commission granted forbearance from three categories of rules that were unnecessary or outdated.

Today, the Commission removes the majority of burdens identified by USTelecom and grants forbearance from an additional 123 regulations in 11 categories covered by USTelecom's petition. For example: We forbear from prepaid calling card reporting requirements that required over 15,000 hours of compliance work each year. We eliminate requirements that phone companies keep certain paper records, which make little sense in the age of digital databases. And we streamline requirements for companies' property records, which previously required a level of detail that has not been used by the Commission in over a decade. With 126 regulations removed, we're talking about millions of dollars in savings, which will ultimately result in a more dynamic, competitive market and lower prices for consumers.

Even where USTelecom failed to show that forbearance is appropriate under the statute, the Commission is taking steps on its own, through Notices of Proposed Rulemaking or Public Notices refreshing the record, to examine more deeply whether some of the remaining requirements may be streamlined or reduced.

At the same time, today's order unanimously preserves those requirements that remain essential to our fundamental mission to ensure competition, consumer protection, universal service, and public safety, and rejects requests that would short-circuit the ongoing work of the Technology Transitions Task Force. For example, we protect consumers' right to notice when services are being eliminated, a vital protection as we move forward on trials of wireline to wireless, TDM to IP, and copper to fiber technology transitions.

Likewise, even as we eliminate reporting and recordkeeping requirements, it remains critical that the Commission have access to timely, relevant data to drive smart decisionmaking, particularly as we move to broadband all-IP networks. Which is why the kind of relief we grant in today's Order goes hand in hand with the essential work we're doing to strengthen the Commission's broadband data, on initiatives like the National Broadband Map, Form 477 reform, the Measuring Broadband America report, and our business broadband data collection in the special access proceeding.

I thank my colleagues for their contributions, which have helped improve this item. And I particularly thank the excellent teams in the Wireline and Enforcement Bureaus and the Office of General Counsel for many long hours and late nights in getting today's detailed and comprehensive Order and NPRMs over the finish line.

STATEMENT OF
COMMISSIONER AJIT PAI
APPROVING IN PART AND CONCURRING IN PART

Re: *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations et al.,* WC Docket Nos. 12-61, 10-132, 09-206, 08-225, 08-190, 07-273, 07-204, 07-139, 07-21, 05-342, CC Docket Nos. 02-39, 00-175, 95-20, 98-10

It's amazing (and somewhat disturbing) what you can find when you crack open Title 47 of the U.S. Code of Federal Regulations. Take the Commission's rules on basic property records and continuing property records.[727] These rules require a company to label each and every piece of central office equipment, from a million-dollar switch down to a $10 plug-in circuit board, to track how much it cost to buy, and to detail exactly where it's located (with specificity, meaning where on what shelf in which room in which building). If the $10 plug-in circuit board lasts 30 years, the company has to keep records for 30 years and update them each time the plug-in circuit board moves.[728] The only silver lining? These rules burden only a subset of companies (*i.e.*, incumbent local exchange carriers) and cover only regulated assets (*i.e.*, plant for the public switched telephone network).

Or ponder Commission rule 64.1903, which requires a telephone company that offers long-distance service to do so through a separate affiliate—the old structural separation requirement crafted in the 1980s.[729] Of course, it doesn't apply if a company entered the telephone business after 1996. Or is a reseller. Or a cable operator. Or a commercial mobile radio service provider. Or a mobile satellite service provider. Or an interconnected Voice-over-Internet-Protocol service provider. Or one of the three Bell operating companies. In other words, we still have structural separation requirements, but only for the independent companies that encompass a fraction of the market and were never part of Ma Bell in the first place.

Or consider the comparably efficient interconnection (CEI) requirements, a regulatory penumbra around rule 64.702 created by the *Computer Inquiry III* orders of the late 1980s. Under this regime, when a telephone company wants to "enhance" its basic telephone service, such as by letting customers dial *98 to access voicemail,[730] it must post a CEI plan that goes through a multi-step checklist designed to protect non-facilities-based narrowband competitors. Although the Commission intended the filing of CEI plans to be an interim measure[731] designed to protect the then-nascent enhanced services industry, the requirement remains on our books over two decades later. And while independent voicemail, facsimile services, and the like may be worthwhile services, one can only wonder why the Commission should spend its limited resources protecting these narrowband, legacy industries in the era of ubiquitous broadband and mobile apps.

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[727] 47 C.F.R. § 32.2000(e), (f).

[728] *See* Letter from Bennett L. Ross, Counsel for United States Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-61, at 15 (Apr. 18, 2013).

[729] 47 C.F.R. § 64.1903.

[730] *See, e.g.*, Amendment to Comparably Efficient Interconnection Plan for Voice-Mail Services for AT&T Inc.'s Operating Companies, *available at* https://ebiznet.att.com/cei/plans/amendment_vm_plan_star98_113012.doc.

[731] *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040, 6077, para. 61 (1998).

No more—or at least not much longer. Today we establish a process to relieve carriers of some of these outdated rules so long as they draw up, file, and get FCC approval of a compliance plan that better matches the Commission's needs with the carrier's obligations. We also launch several rulemakings aimed at repealing and streamlining other rules.

I will be the first to admit that I wish we had gone further, faster. For example, much sooner than fifteen months after the petition was filed, I would have granted the same relief to independent carriers that we previously afforded AT&T, Verizon, and Qwest—especially as no one opposed that part of the petition.

But today's order is a product of bipartisan compromise, an important first step that holds out the hope for continuing reform. As the proverb goes, "a journey of a thousand miles begins with a single step." I look forward to continuing to working with my colleagues as we continue this journey.

Finally, I want to thank the Commission staff who spent countless hours working on this item, including Julie Veach, Claude Aiken, Eric Bash, Michele Berlove, Bill Dever, Lisa Gelb, Victoria Goldberg, Kalpak Gude, Athula Gunaratne, Paul Hartman, Sherry Herauf, Diane Griffin Holland, John Hunter, Alex Johns, William Kehoe, Christopher Killion, Doug Klein, Robert Krinsky, Greg Kwan, Sean Lev, Travis Litman, Marcus Maher, Carol Mattey, Jodie May, Rodney McDonald, Betsy McIntyre, Claudia Pabo, Wesley Platt, Jennifer Prime, Marv Sacks, Deena Shetler, Chris Sova, Steve Steckler, Jamie Susskind, Suzanne Tetreault, Matthew Warner, Rodger Woock, Suzanne Yelen, David Zesiger, and Cathy Zima. Your dedication to rigorous analysis and the public interest will be all the more necessary as the Commission proceeds with the rulemakings we launch today to reform our accounting systems. But take heart; as a sage government employee once said, "It ain't government work if you don't have to do it twice."[732]

[732] Jerry Gergich, *Parks and Recreation* (ep. 418, 2012).