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

In the Matter of	)	
	)	
Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks	)	WC Docket No. 18-141
	)	
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules	)	CC Docket No. 00-175

MEMORANDUM OPINION AND ORDER

Adopted: April 12, 2019 **Released: April 15, 2019**

By the Commission: Chairman Pai and Commissioners O'Rielly, Carr, Rosenworcel, and Starks issuing separate statements.

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I. INTRODUCTION

1. In section 10 of the Communications Act,[1] Congress gave the Commission the authority to forbear from enforcing statutory provisions and regulations that are no longer necessary in light of changes in the industry.[2] Today, we exercise that authority to grant relief from certain requirements that

[1] 47 U.S.C. § 160.

[2] *See, e.g., Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, 24 FCC Rcd 9543, 9546, para. 5 (2009) (citing legislative history).

were first established more than two decades ago—in the early days of Bell Operating Company (BOC) entry into the long-distance telephone service market. At the time, Congress and the Commission had concerns about the ability of BOCs and other incumbent carriers to leverage their monopolies in the local telephone service market to dominate the long-distance market. Since then, the communications marketplace has undergone tremendous transformation, and these requirements have outlived their usefulness. Accordingly, in this Memorandum Opinion and Order, we act on portions of a petition for forbearance filed by USTelecom—The Broadband Association (USTelecom).[3] Specifically, we grant forbearance from: (1) the requirement that independent rate-of-return carriers offer long-distance telephone service through a separate affiliate; (2) nondiscriminatory provisioning interval requirements applicable to BOCs and independent price cap carriers; and (3) the redundant statutory requirement that BOCs provide nondiscriminatory access to poles, ducts, conduit, and rights-of-way. In taking this action, we continue the Commission's efforts to eliminate unnecessary, outdated, and burdensome regulations that divert carrier resources away from deploying next-generation networks and services to American consumers.

II. BACKGROUND

A. Separate Long-Distance Affiliate Requirements and Related Nondiscriminatory Provisioning Requirements

2. *BOC Entry into In-Region Long-Distance and Section 272 of the Act.* Prior to the Telecommunications Act of 1996 (the 1996 Act), BOCs were categorically prohibited from providing long-distance service[4] out of concern that they could leverage their local monopolies to harm their long-distance competitors by a variety of means, including potentially subsidizing competitive operations with noncompetitive operations and discriminating in the provisioning of critical inputs for long-distance service to unaffiliated providers of such service.[5] The 1996 Act granted BOCs the immediate right to

[3] Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018) (Petition); *see also Pleading Cycle Established for Comments on USTelecom's Petition for Forbearance from Section 251(c) Unbundling and Resale Requirements and Related Obligations, and Certain Section 271 and 272 Requirements*, Public Notice, 33 FCC Rcd 4614-15 (2018). This order does not address, and should not be construed as prejudging, USTelecom's request for forbearance from obligations arising from sections 251(c)(3) and (4) of the Act relating to unbundled network elements and resale. *See* Petition at 24-33. That request remains pending and the statutory deadline for Commission action on it is August 2, 2019. *See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Order, DA 19-75 (WCB Feb. 14, 2019).

[4] We use the term "long-distance" to refer to all interexchange service or telephone toll service, the latter being defined as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." 47 U.S.C. § 153(55). When we use the term long-distance with respect to limitations placed on BOCs pursuant to sections 271 and 272 of the Act, *Id.* §§ 271, 272, and the Modification of Final Judgment (MFJ) prescribing the Bell System divestiture, we refer specifically to interLATA interexchange service, which is long-distance service between points located in two different local access and transport areas (LATAs). *See United States v. American Telephone & Telegraph, Co.*, 552 F. Supp. 131, 227 (D.C.C. 1982) (*MFJ*); *aff'd sub. nom. Maryland v. United States*, 460 U.S. 101 (1983). A LATA is "a contiguous geographic area—(A) established before February 8, 1996, by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree [the consent decree entered into as part of the AT&T antitrust litigation]; or (B) established or modified by a Bell operating company after February 8, 1996, and approved by the Commission." *See* 47 U.S.C. § 153(31).

[5] *MFJ*, 552 F. Supp. at 142-43; *see also SBC Communications Inc. v. FCC*, 138 F.3d 410, 412 (D.C. Cir. 1998) (stating that "[d]ivestiture was called for, in large part, because it was thought 'that a corporation that enjoyed a monopoly on local calls would ineluctably leverage that bottleneck control in the interexchange (long distance) market'") (quoting *United States v. Western Elec. Co.*, 969 F.2d 1231, 1238 (D.C. Cir. 1992)).

provide long-distance service that did not originate in their regions and created a path for them to provide in-region long-distance service as well.[6] To provide in-region long-distance service, they were required to comply with various structural, transactional, and nondiscrimination safeguards detailed in section 272 of the Act.[7] In particular, to prevent BOCs from obtaining anticompetitive advantages in the provision of in-region long-distance service, section 272 required a BOC to provide in-region long-distance service through a separate affiliate and to comply with, among other requirements, section 272(e)'s nondiscrimination requirements.[8] Most relevant here, section 272(e)(1) requires a BOC 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" (hereinafter, the section 272(e)(1) "provisioning interval requirement").[9]

3. *1997 LEC Classification Order and the Separate Affiliate Requirement for Independent Incumbent LECs.* In light of the 1996 Act's separate affiliate obligations for BOC in-region long-distance entry, in the 1997 *LEC Classification Order*, the Commission adopted section 64.1903 of its rules, codifying a requirement that independent incumbent LECs[10] also must offer in-region long-distance service through separate affiliates.[11] In that order, the Commission also addressed the appropriate regulatory treatment of the BOCs' separate long-distance affiliates.[12] Specifically, the Commission concluded that the Act's section 272 protections sufficiently prevented the BOCs' separate long-distance

[6] 47 U.S.C. § 271(b)(1)-(2). The BOCs controlled sole access to the local network at that time in the areas where in-region long-distance service would be provided, and concern relating to the provision of critical inputs for long-distance service included access to the local network at reasonable rates and on reasonable terms and conditions for purposes of originating and terminating long-distance calls (part of what is known as exchange access). *See infra* n.9 (discussing exchange access).

[7] 47 U.S.C. § 272.

[8] *See id.* § 272(a)-(b), (e).

[9] *Id.* § 272(e)(1). Telephone exchange service is defined by section 3(54), in pertinent part, to mean "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge," that is, what is commonly understood to be local telephone service. 47 U.S.C. § 153(54). Exchange access is defined as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(20). Exchange access can be provided as an input to long-distance service on a switched or dedicated basis. *USTelecom Petition for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services*, Second Report and Order, 31 FCC Rcd 8283, 8287, para. 12 (2016) (*USTelecom Switched Access Declaratory Ruling*) (switched access); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Order, 20 FCC Record 18290, 18304-05, para. 24 (2005) (*SBC-AT&T Order*) (dedicated access).

[10] "Independent incumbent LECs" refers to non-BOC incumbent LECs.

[11] *See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LECs Local Exchange Area*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15759, 15763, para. 7 (1997) (*LEC Classification Order*). On reconsideration, the Commission adopted a resale exception to the separate affiliate requirement, allowing independent LECs that provide long-distance services originating in their service areas solely on a resale basis to do so through a separate corporate division rather than a separate legal entity. *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LECs Local Exchange Area*, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd 10771, 10773, para. 2 (1999).

[12] *LEC Classification Order*, 12 FCC Rcd at 15763, para. 6.

affiliates from exercising market power and, therefore, concluded that such affiliates should be classified as non-dominant and subject to lighter-touch regulation.[13]

4. *2007 Section 272 Sunset Order*. Except for section 272(e), all other section 272 obligations automatically sunset at various dates certain.[14] Most pertinently, the BOC long-distance separate affiliate requirement automatically sunset on a state-by-state basis three years after a BOC received long-distance authority for a particular state unless the Commission extended such obligations.[15] By December 3, 2006, three years after the last BOC long-distance entry under section 271 was granted, only section 272(e) remained in effect. While BOCs were no longer required to offer in-region long-distance service via a separate section 272 long-distance affiliate, those that chose not to maintain such an affiliate were subject to traditional dominant carrier regulation of their in-region long-distance service.[16] The Commission soon determined, however, that dominant carrier regulation of BOCs' in-region long-distance services imposed unwarranted costs and burdens[17] that could better be addressed through two targeted safeguards. Specifically, in the 2007 *Section 272 Sunset Order*, the Commission granted the BOCs relief from dominant carrier regulation of their in-region long-distance service subject to two conditions. First, the Commission imposed quarterly reporting of special access service provisioning metrics[18] to demonstrate compliance with the section 272(e)(1) provisioning interval requirement.[19] At the time, special access services were typically purchased by competitive long-distance providers as an input to long-distance service. Second, the Commission imposed specific imputation requirements for

[13] *Id.* at 15763, para. 6.

[14] 47 U.S.C. § 272(f).

[15] *Id.* § 272(f); *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Memorandum Opinion and Order, 17 FCC Rcd 26869, 26870-71, paras. 1-2, 8 (2002); *see also Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements et al.*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16447, para. 12 (2007) (*Section 272 Sunset Order*) ("The Commission granted its final interLATA authority for a BOC for an in-region state on December 3, 2003.").

[16] *See Section 272 Sunset Order*, 22 FCC Rcd at 16447, para. 11 & n.41.

[17] *See LEC Classification Order*, 12 FCC Rcd at 15806-98, paras. 88-90; *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunsets*, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5213-14, para. 10 (2007) (*Qwest Section 272 Sunset Forbearance Order*).

[18] Specifically, the section 272(e)(1) special access performance metric reporting obligation requires the BOCs and their independent incumbent LEC affiliates to report to the Commission quarterly on performance metrics related to their "order taking, provisioning, and maintenance and repair" of DS0, DS1, DS3, and OCn special access services. *Section 272 Sunset Order*, 22 FCC Rcd at 16487-89, paras. 96-98. These obligations were similar to previous special access metric reporting obligations imposed or voluntarily agreed to in other situations that have long since ceased to apply. *See, e.g.*, *SBC-AT&T Order*, 20 FCC Record at 18317-18, para. 51; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5235, para. 54, 5244, para. 72; *Section 272 Sunset Order*, 22 FCC Rcd at 16489, para. 96 & n.282. For purposes of this order, we use the term "special access" to refer to dedicated (non-switched) connectivity provided by Time Division Multiplexing (TDM) at DS0, DS1, DS3, and OCn capacities. *See Section 272 Sunset Order*, 22 FCC Rcd at 16448, para. 96. Special access is a subset of the category of services to which the Commission now refers to as "business data services" (BDS). BDS, in turn, refers to "[t]he dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections," and includes packet-switched services. *See* 47 CFR § 69.801(a); *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, 3461, para. 3 (2017) (*BDS Order*); *aff'd in rel. part by Citizens Comm's Co. of Minnesota, LLC v. FCC*, 901 F.3d 991 (Eighth Cir. 2018) (*BDS Appeal*).

[19] *Section 272 Sunset Order*, 22 FCC Rcd at 16487-89, paras. 96-98; *see also Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations et al.*, Memorandum Opinion and Order, Report and Order, Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7691, para. 143 (2013) (*2013 USTelecom Forbearance Order*).

access charges to ensure continued compliance with BOC obligations under section 272(e)(3).[20] The Commission recently eliminated the imputation requirements and BOCs are no longer subject to section 272(e)(3) imputation obligations of any type.[21] As a result, the only section 272(e) obligation applicable today to BOCs that have availed themselves of the conditional relief provided in the *Section 272 Sunset Order* is the section 272(e)(1) time interval requirement and the related uncodified special access performance metric reporting obligations imposed as a condition of relief from dominant carrier regulation of in-region long-distance service post-section 272 sunset.

5. *2013 USTelecom Forbearance Order*. In 2013, in response to a petition filed by USTelecom, the Commission granted forbearance from section 64.1903 for independent price cap LECs[22] conditioned upon, among other things, implementing special access performance metric reporting requirements similar to those applied to BOCs in the *Section 272 Sunset Order*.[23] Just as it did in 2007 with respect to BOCs, the Commission recognized that separate affiliate requirements for independent price cap LECs imposed significant cost and non-cost burdens that may impair their ability to compete.[24] The Commission reasoned that any concerns regarding forbearance from the section 64.1903 separate affiliate obligation for these carriers would be alleviated by the special access performance metric reporting and imputation conditions, similar to those imposed on the BOCs in the *Section 272 Sunset Order*, as well as a number of remaining regulatory obligations.[25]

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[20] *See Section 272 Sunset* Order, 22 FCC Rcd at 16489-94, paras. 99-105. Under Section 272(e)(3), a BOC must "charge [its section 272(a)] 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." 47 U.S.C. § 272(e)(3). Imputation is an accounting and regulatory device that is used in recognizing intra-company transactions. In the context of access services, the Commission and state commissions recognized the potential for 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 addressed this concern by requiring the BOC 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. *Id.* at 16489, n.287. AT&T and Verizon, the two BOCs at the time with independent incumbent LEC affiliates, voluntarily agreed to subject such affiliates to the same conditions applicable to BOCs in the *Section 272 Sunset Order* when the BOC operation availed itself of the separate long-distance affiliate relief. *See id.* at 16445-46, para. 9. For purposes of the special access reporting and imputation obligations arising from the *Section 272 Sunset Order*, when we refer to "BOCs," we also include their affiliated incumbent LECs that are subject to the same obligations through such voluntary commitments.

[21] *See Comprehensive Review of the Part 32 Uniform System of Accounts, Jurisdictional Separations and Referral to the Federal State Joint Board*, Report and Order, 32 FCC Rcd 1735, 1748, para. 43 (2017) (forbearing from section 272(e)(3)).

[22] The term "price cap LEC(s)" refers to any incumbent LEC, whether a BOC or an independent LEC, subject to price cap regulation. *See* 47 CFR § 61.41. Under an incentive-based price cap regulatory regime, rather than rates guaranteeing a particular rate-of-return-based on the cost of providing a regulated service, as a general matter, the carrier first initializes allowable revenue levels for particular services based on historic rate-of-return-based rates, and then, in future years, sets rates within certain parameters based essentially on caps on projected revenue, with certain potential adjustments. *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 12968-69, paras. 13-16 (2000), *rev'd and remanded, Texas Office of Public Utility Counsel v. FCC*, 265 F. 3d 313 (5th Cir. 2001).

[23] *2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7690-93, paras. 139, 141-148.

[24] *Id.* at 7691, para. 142 (citing *Section 272 Sunset Order*, 22 FCC Rcd at 16480-81, para. 82, 16482, para. 85).

[25] *2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7691, para. 142 (stating that the independent price cap LECs remain subject to, *inter alia*, the continuing general obligation to provide service on just, reasonable, and not (continued….)

6. The Commission, however, declined to grant forbearance relief to independent rate-of-return[26] LECs due to concerns about cost misallocation between their interexchange and exchange access services.[27] Such concerns are unique to rate-of-return LECs,[28] as opposed to price cap LECs (and BOCs, all of which are regulated under price caps), because their rates (and their universal service support) are based on determinations of their costs.[29] The Commission explained that rate-of-return LECs could not only inflate their rates by misallocating long-distance costs to regulated services, but also engage in price squeezes on their downstream long-distance competitors.[30] Although it denied forbearance from enforcement of section 64.1903 for independent rate-of-return LECs at that time, the Commission adopted a concurrent *Structural Separation Second Further Notice* to further explore whether forbearance relief from independent rate-of-return LEC separate affiliate requirements was warranted.[31]

7. *2015 USTelecom Forbearance Order.* In 2015, the Commission acted on another USTelecom petition which, in pertinent part, sought forbearance from all then-remaining section 272 obligations for all BOCs in all regions.[32] USTelecom argued that the decline of stand-alone long-distance service and the rise of intermodal competition had eliminated the need for any protections section 272

(Continued from previous page)
unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the Act.). In the *Section 272 Sunset Order*, the Commission also noted that the Commission's section 208 complaint process may also be used in the event a party believes that an independent incumbent LEC violated the Act or the Commission's rules. *Section 272 Sunset Order*, 22 FCC Rcd at 16497, para. 115. When we refer to special access performance metric reporting obligations with respect to independent price cap LECs unaffiliated with BOCs, such obligations apply only insofar as such price cap LEC has availed itself of forbearance from section 64.1903.

[26] By the term "rate-of-return LEC(s)," we mean incumbent LECs subject to rate-of-return regulation. *See* 47 CFR § 61.38-39.

[27] *2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7693-95, paras. 149-153. The Commission distinguished independent rate-of-return LECs that base their rates on cost from independent price cap LECs that are unlikely to engage in cost misallocation because their interstate access rates and compensation are not tied to cost allocations and 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. *Id.* at 7694, para. 150. The Commission acknowledged that while the 2011 *USF/ICC Transformation Order* reduced the incentives for rate-of-return providers' potential cost misallocation, it did not eliminate that possibility. *Id.* at 7993, para.151; *see Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 at 17936, para. 804 (2011), *aff'd*, *FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (*USF/ICC Transformation Order*).

[28] These concerns are unique to LECs to the extent that they are regulated on a rate-of-return basis. The Commission began the process of increasingly separating rate-of-return LECs' rates and universal service support from cost in the *USF/ICC Transformation Order*. *See infra* paras. 20-21.

[29] *2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7694, para. 151.

[30] *Id.* at 7694, para. 151. In the relevant price squeeze scenario, a rate-of-return LEC is in the long-distance business and competes against other providers of long-distance services that are reliant on the rate-of-return LEC for critical inputs to their services—inputs that are priced on a rate-of-return (cost) basis. *See id.* If the rate-of-return LEC misallocated costs to its rate-of-return regulated operations that provide critical inputs (such as incumbent LEC special access) to competitors, this would also inflate the cost-based rates for such inputs, imposing greater costs on its long-distance competitors, making it harder for them to compete, despite the fact that the rate-of-return LECs' *total* costs (regulated and long-distance) have remained the same. *See id.*

[31] *Id.* at 7720-36, paras. 211-43. We incorporate the record from that *Structural Separation Second Further Notice* herein.

[32] *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations that Inhibit Deployment of Next Generation Networks*, Memorandum Opinion and Order, 31 FCC Rcd 6157, 6178-82, paras. 37-45 (2015) (*2015 USTelecom Forbearance Order*).

may afford to competitors in the stand-alone long-distance market.[33] In the *2015 USTelecom Forbearance Order*, the Commission denied this request on the basis that USTelecom had not demonstrated that competition would be protected in a particular long-distance market segment—long-distance service provided to enterprise customers.[34] The Commission concluded, among other things, that USTelecom had not provided sufficient data about that market segment, which, competitors had alleged, has different characteristics from long-distance service provided to mass-market customers.[35] In reviewing the petition, however, the Commission was "cognizant of the broad market trends associated with the services at issue"[36] and recognized that "the marketplace is evolving."[37]

B. Nondiscriminatory Access to Poles, Ducts, Conduits, and Rights-of-Way

8. Section 271 of the Act prohibited BOCs from providing in-region long-distance services without first obtaining Commission authorization.[38] To receive such authorization, BOCs were required to demonstrate, among other things, that they had satisfied the conditions of a fourteen-point market-opening competitive checklist,[39] many of which were merely references to other independent statutory duties.[40] One such checklist item, section 271(c)(2)(B)(iii) (item 3), mandates that BOCs provide "nondiscriminatory access to poles, ducts, conduits, and rights-of-way owned by the BOC at just and reasonable rates in accordance with section 224" to other telecommunications carriers.[41] Section 224, in turn, imposes on all local exchange carriers, including BOCs, a duty to "provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[42]

9. In the *2015 USTelecom Forbearance Order*, the Commission granted in large part USTelecom's request to forbear from enforcement of all other section 271 obligations, most of which were contained in the section 271(c)(2)(B) competitive checklist.[43] The Commission granted forbearance from checklist items for which other independent section 251 safeguards already address;[44] however, it denied forbearance from checklist item 3 which corresponds to requirements in section 224 of the Act.[45] In denying relief from checklist item 3, the Commission acknowledged that while it had forborne from other section 271 checklist items with concurrent section 251 obligations,[46] it was necessary to retain

[33] *See id.* at 6179, para. 39.

[34] *See id.* at 6179-82, paras. 40-45.

[35] *See id.* at 6180-81, paras. 41-42.

[36] *See id.* at 6161, para. 6, 6180, para. 40.

[37] *See id.* at 6180, para. 40.

[38] 47 U.S.C. § 271(a).

[39] *Id.* §§ 271(c)(2)(B)(i)-(xiv), 271(d)(3).

[40] *See, e.g.*, *id.* §§ 251(c)(2), 252(d)(1) (interconnection), 251(c)(3), 252(d)(1) (nondiscriminatory access to network elements), 252(d)(2) (reciprocal compensation) (overlapping statutory requirements with sections 271(B)(i)-(ii), (xiii) of the competitive checklist, respectively).

[41] *Id.* § 271(c)(2)(B) (governing access and interconnection provided or generally offered by a Bell Operating Company to "other telecommunications carriers," as defined by 47 U.S.C. § 153(51)), *referencing* 47 U.S.C. § 224.

[42] *Id.* § 224(f).

[43] *See 2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6165-66, para. 11-12.

[44] *See id.* at 6165-66, para. 12.

[45] *See id.* at 6168-71, paras. 19-23.

[46] *See id.* at 6170, para. 19.

checklist item 3 due to the nature and continued importance of section 224.[47] It explained that checklist item 3 "acts as an additional mechanism to enforce section 224 against the BOCs"[48] and would remain in place "to ensure further deployment of a wide range of services."[49] Further, the Commission found that USTelecom failed to address checklist item 3 in any detail or submit evidence sufficient to show why this provision met the section 10 requirements.[50] The Commission explained that access to poles has "broad ramifications, including for broadband deployment" and, therefore, checklist item 3 remained necessary.[51]

C. USTelecom Forbearance Petition

10. On May 4, 2018, USTelecom filed a petition seeking "nationwide forbearance from outmoded regulatory mandates that distort competition and investment decisions."[52] USTelecom's petition addressed three categories of requirements from which it sought forbearance.[53]

11. First, USTelecom seeks forbearance from (1) the section 64.1903 long-distance separate affiliate requirement for independent rate-of-return LECs; and (2) the section 271(e)(1) provisioning interval requirement for BOCs and the related special access performance reporting obligations for all price cap LECs.[54] USTelecom argues that these provisions are based on outdated determinations that independent incumbent LECs and BOCs possess market power, are no longer relevant in today's highly competitive marketplace, and thus are not needed to ensure just, reasonable, and nondiscriminatory charges and practices, or to protect consumers. Further, USTelecom argues that such forbearance is in the public interest because it will eliminate regulatory disparities that no longer serve any relevant purpose.[55]

12. Second, USTelecom seeks forbearance from the BOC-specific section 271(c)(2)(B)(iii) competitive checklist item regarding access to poles, ducts, conduit, and rights-of-way.[56] USTelecom argues that this provision is duplicative of the requirements for nondiscriminatory access in section 224, and thus is not necessary to ensure that rates and terms are just, reasonable, and nondiscriminatory, or to protect consumers.[57] In addition, USTelecom argues that forbearance is in the public interest because the continued presence of overlapping requirements drains valuable compliance time and resources from the budgets of BOCs (and BOCs alone).[58]

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[47] *See id.*

[48] *See id.* at 6170-71, para. 21.

[49] *See id.* at 6165-66, para. 12.

[50] *See id.* at 6171, para. 22-23.

[51] *See 2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6171, para. 23.

[52] Petition at 1. USTelecom states that forbearance "[r]elief is sought for all [BOCs] or all ILECs, depending on the class to which the specific obligation at issue applies." *Id*. at 2 n.3. The specific regulations and the associated relief that USTelecom seeks, as well as a list of pending proceedings in which USTelecom has taken a position regarding relief that is identical to, or comparable to, the relief sought in this Petition, are detailed in Appendix A to the Petition. *Id.*

[53] With respect to all categories of relief, USTelecom requests clarification that by forbearing from these sections, we eliminate any remaining conditions imposed on BOCs. Petition at 34-35.

[54] *Id.* at 2.

[55] *Id.* at iv.

[56] *Id.* at 2.

[57] *Id.* at iv.

[58] *Id.*

13. Third, USTelecom seeks forbearance from incumbent LEC-specific unbundling and resale mandates in section 251(c)(3) and 251(c)(4) of the Act and associated section 251 and 252 obligations,[59] a request that we do not address at this time.[60]

D. Forbearance Under Section 10 of the Act

14. Section 10 of the Act requires the Commission to forbear from applying any requirement of the Act or of our regulations to a telecommunications carrier or telecommunications service if and only if the Commission determines that: (1) enforcement of the requirement "is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;" (2) enforcement of that requirement "is not necessary for the protection of consumers;" and (3) "forbearance from applying that requirement is consistent with the public interest."[61] Forbearance is warranted only if all three criteria are satisfied.[62]

III. FORBEARANCE ANALYSIS

15. We conclude that the statutory forbearance criteria with respect to the (1) the long-distance separate affiliate requirement for independent rate-of-return LECs, (2) the BOC-specific nondiscriminatory provisioning interval requirement and special access performance metric reporting obligations for all price cap LECs, and (3) the BOC-specific statutory provision requiring non-discriminatory access to poles, ducts, conduits, and rights-of-way are satisfied. We therefore grant USTelecom's request for forbearance from these obligations.

A. Forbearance from Enforcing the Burdensome Separate Long-Distance Affiliate Requirement for Independent Rate-of-Return LECs

16. We find that section 10's statutory criteria are satisfied with respect to eliminating section 64.1903's separate affiliate obligations for independent rate-of-return LECs. We therefore forbear from the application of this rule to independent rate-of-return LECs. The Commission's sole basis for declining to forbear from section 64.1903 for independent rate-of return LECs in 2013 was a concern about potential cost misallocation.[63] We no longer find this concern warranted given existing regulations and Commission enforcement mechanisms that prohibit this behavior, changes in the marketplace and other regulatory changes that have occurred in the past six years, and the costs and burdens associated with structural separation requirements. Moreover, we decline to impose special access performance

[59] *Id.* at 2.

[60] *See supra* n.3.

[61] 47 U.S.C. § 160(a). In making the public interest determination, the Commission must also consider, pursuant to section 10(b) of the Act, "whether forbearance from enforcing the provision or regulation will promote competitive market conditions." *Id.* § 160(b). Section 10(d) prohibits the Commission from forbearing from the requirements of section 271 until it determined that those requirements have been "fully implemented." The Commission determined that the checklist portion of section 271(c) was "fully implemented" once a Bell Operating Company obtained section 271 authority in a particular state. Accordingly, because the Bell Operating Companies have obtained section 271 authority in all of their states, the Commission has found that the checklist requirements of section 271(c) are "fully implemented" for purposes of section 10(d) throughout the United States. *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21503, para. 15 (2004), *aff'd sub nom. EarthLink, Inc. v. FCC*, 462 F.3d 1 (D.C. Cir. 2006). Therefore, the prohibition in section 10(d) of the Act against forbearing from section 271 prior to such a determination is not applicable here.

[62] *CTIA v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three prongs of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong).

[63] *2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7690, para. 139.

metric reporting or imputation conditions similar to those the Commission previously imposed when forbearing from the BOCs' and independent price cap LECs' separate affiliate requirements for in-region long-distance service.[64]

17. *Section 10(a)(1)—Not Necessary to Ensure Just and Reasonable Charges and Nondiscriminatory Practices.* In considering forbearance from section 64.1903's separate affiliate obligation, we must first determine whether this rule remains necessary to ensure just and reasonable rates in light of a potential for independent rate-of-return LECs[65] to misallocate long-distance related costs as rate-of-return regulated costs.[66] Such misallocation could lead to overearnings from rate-of-return-regulated services and, in the case of services provided to competitors, potential price squeezes.[67] In addition, we must consider whether the rule, or conditions such as special access performance metric reporting requirements, are necessary to prevent discriminatory practices.[68] In both cases, we conclude such requirements are not necessary.

18. There are multiple statutory and regulatory safeguards to prevent the potential cost misallocation that the separate long-distance affiliate requirement for rate-of-return LECs is intended to prevent. Rate-of-return LECs are subject to numerous accounting, cost allocation and separations requirements that: (1) require carriers to keep separate accounting for regulated and nonregulated activity, (2) prevent carriers from using noncompetitive services to subsidize competitive services, and (3) require carriers to allocate costs among service categories.[69] Moreover, in the unlikely event a rate is based on misallocated costs, it remains subject to investigation and enforcement pursuant to a number of statutory provisions such as sections 201, 202, 203, 204, 205, 254(k), and 208 of the Act.[70] All of the forgoing statutory provisions and regulatory obligations to which independent rate-of-return LECs must comply work to ensure that such carriers' rates are properly set.[71] It is these direct requirements and

[64] *Id.* at 7691, para. 143; *Section 272 Sunset Order*, 22 FCC Rcd at 16488-89, paras. 97-98.

[65] Historically, all incumbent LECs were regulated on a rate-of-return basis. In 1990, the Commission began the process of encouraging carriers to move from rate-of-return to incentive regulation by adopting price cap rules governing the largest incumbent LECs' (including all BOCs') interstate access charges and allowing other incumbent LECs to elect price cap regulation voluntarily. *See Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, 6818, paras. 257-59 (1990) (limiting mandatory price cap regulation to "the eight largest LECs"). Price cap regulation is designed to "reward companies that became more productive and efficient, while ensuring that productivity and efficiency gains are shared with ratepayers." *Id*. at 6787, para. 1.

[66] For purposes of this order, when we refer to a rate-of-return LEC's "regulated" cost, we refer to the cost that is used to determine the incumbent LEC's rate-of-return-based regulated rates and universal service support. Due to recent regulatory changes, not all rate-of-return LECs' rates and universal service support is based on cost. *See infra* paras. 20-21.

[67] *2013 Forbearance Order*, 28 FCC Rcd at 7964, para. 151.

[68] 47 U.S.C. § 160(a)(1).

[69] *See, e.g.*, 47 U.S.C. § 254(k) (prohibiting "use [of] services that are not competitive to subsidize services that are subject to competition"); 47 CFR §§ 32.23 (requiring separate accounting classification for regulated and nonregulated activities), 64.901 (prescribing methods for allocating the cost of regulated and nonregulated activities), Part 36 (setting forth rules regarding how cost is to be allocated among service categories). The Petition does not seek forbearance from these cost allocation rules and they remain in full force and effect.

[70] 47 U.S.C. §§ 201, 202, 203 (tariffing obligation), 204 (authority to suspend and investigate new and revised rates), 205 (authority to prescribe just and reasonable rates), 254(k) (prohibition on subsidizing competitive services with noncompetitive service revenue), 208 (complaints).

[71] No party has asserted that section 64.1903 of our rules is necessary to prevent unreasonably or unjustly discriminatory rates.

obligations that the Commission uses to ensure that rate-of-return carriers are allocating costs properly. The separate affiliate requirement is an indirect tool, which does not by itself prohibit the misallocation of costs but adds an additional compliance burden by requiring the rate-of-return carrier to maintain a separate structure for long-distance services.[72] There is no evidence in the record demonstrating that this indirect layer of regulation has had any incremental effect on preventing rate-of-return carriers from misallocating costs. In the absence of the separate affiliate requirement, we are confident that the direct regulations that remain in place have and will continue to prevent this conduct.

19. The Commission did not address the sufficiency of these statutory and regulatory backstops in the *2013 USTelecom Forbearance Order*, instead focusing on the general concern for preventing cost misallocation. Since the *2013 USTelecom Forbearance Order*, the Commission has updated and clarified its rate-of-return rules to better ensure that only appropriate costs form the basis for rate-of-return LECs' regulated rates under section 201 and their universal service support under section 254(e).[73] The Commission's decision to update these rules was brought about based on its continuing active investigation and enforcement activity with respect to both interstate rates and universal service,[74] enforcement activity that continues.[75] In addition to the Commission's enforcement and investigatory rules, to the extent rate-of-return LECs that participate in the National Exchange Carrier Association (NECA) pool inflate their exchange access costs, such changes should be apparent to NECA, which has its own authority to audit carriers' cost allocation practices.[76] We therefore are increasingly confident that a separate long-distance affiliate requirement is unnecessary to achieve the statutory goal of preventing cost misallocation from actually harming competition or consumers.[77]

20. Moreover, regulatory and marketplace changes since 2013 also diminish the concerns about cost misallocation in the absence of section 64.1903. If a rate-of-return LEC were to misallocate long-distance costs, it would likely treat such costs as either switched access or special access costs.[78]

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[72] *See* 47 CFR § 64.1903 (requiring the carrier to maintain separate books and prohibiting the joint ownership of transmission and other facilities, but providing that the carrier can share personnel and resources with its affiliated entities).

[73] *See generally Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (rel. Mar. 23, 2018) (*2018 Rate-of-Return Reform Order*).

[74] *Id.*, at 6, para. 13 (referencing universal service investigations), at 24, para. 50 (referencing interstate rate investigations), both citing *Sandwich Isles Communications, Inc.*, Order, 31 FCC Rcd 12999 (2016) (*Sandwich Isles*), *aff'd*, *Sandwich Isles Commc'ns, Inc. v. FCC*, 741 Fed. App'x. 808 (D.C. Cir. 2018).

[75] *See, e.g.*, *Blanca Telephone Company Seeking Relief from the June 22, 2016 Letter Issued by the Office of the Managing Director Demanding Repayment of a Universal Service Fund Debt Pursuant to the Debt Collection Improvement Act*, Memorandum Opinion and Order and Order on Reconsideration, 32 FCC Rcd 10594 (2017) (subsequent history omitted).

[76] The NECA pool access rates are based on the average costs for all companies that participate in the NECA pools. *See 2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7694, para. 152. NECA seeks to ensure compliance of its pool members with the Commission's rules through contractual obligations between the parties. *See, e.g.*, *Sandwich Isles Communications, Inc. v. National Exchange Carrier Ass'n*, 799 F.Supp.2d 44, 46-47 (D.D.C. 2011). The Commission monitors rate-of-return LEC cost filings as well as NECA filings for significant unexplained changes in reported cost. In addition, such filings are publicly available, providing carriers and other members of the public the opportunity to review and petition to suspend tariff filings based on concerns regarding cost misallocation.

[77] *See* 47 U.S.C. § 254(k).

[78] As a practical matter, there do not appear to be many opportunities to mischaracterize long-distance cost as common line cost, the latter referring to the cost of loops connecting subscriber premises to switches. Long-distance costs, by their nature, concern costs between the switch and other exchanges. It would appear to be obvious if truly interexchange facilities were being mischaracterized as common lines; among other things, relevant facilities would

(continued….)

The Commission, however, disconnected switched access costs from rate-of-return LECs' interstate switched access rates in the 2011 *USF/ICC Transformation Order*.[79] Thus, the only remaining "certain access charges" referenced in the *2013 USTelecom Forbearance Order*[80] for which that Commission could have had cost misallocation concerns necessarily must relate to special access charges.

21. The risk of rate-of-return LECs misallocating long-distance costs to special access is diminishing as more rate-of-return LECs convert to incentive rate regulation.[81] In the 2016 *Rate-of-Return Reform Order*, the Commission gave rate-of-return LECs the option of receiving forward looking, model-based universal service support based on the Alternative Connect America Cost Model (A-CAM), which more than 200 rate-of-return LECs opted to receive (A-CAM carriers).[82] Last year, in the *A-CAM Rate-of-Return BDS Order*, the Commission allowed rate-of-return LECs that receive universal service support under the A-CAM to voluntarily migrate away from a cost-based regulatory framework for BDS, in which their lower speed offerings (DS1 and DS3 channel terminations) would be subject to incentive regulation and their higher speed offerings would be relieved of ex ante pricing regulation altogether.[83] The Commission continues to consider measures to encourage more rate-of-return LECs to transition from cost-based regulation to incentive-based regulation.[84]

22. As rate-of-return LECs transition their BDS, including special access services, toward incentive regulation, fewer carriers will be filing special access rates based on cost on an annual basis—either on their own or as part of the NECA pool. With fewer carriers filing cost-based tariffs of their own or participating in the NECA pool, individual carriers misallocating long-distance cost to special access and, thus, attempting to inflate their special access rates, should be even more obvious to detect.[85]

(Continued from previous page)
not be connecting customer premises to local switches, as common lines do. *Compare Connect America Fund et al., Report and Order*, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3117-18, para. 81 (2016) (*Rate-of-Return Reform Order*) (describing common line cost) *with* 47 CFR § 36.156 (describing interexchange cost). *See also, e.g., Sandwich Isles Communications, Inc.*, 31 FCC Rcd at 13021, para. 74. Further, the substantial number of rate-of-return LECs that have elected the Alternative Connect America Cost Model have no incentive to misallocate costs to common line because their common line cost recovery is no longer based on costs.

[79] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17983-84, para. 900.

[80] *2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7728-29, para. 228.

[81] Beginning in 2008, a number of rate-of-return LECs voluntarily converted many of the largest rate-of-return operations entirely to price cap rate regulation. *See, e.g., Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, Order, 23 FCC Rcd 5294 (2008).

[82] *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3094-3117, paras. 17-90; *see also Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13775, 13776, para. 5 (2016); *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive $454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, Public Notice, 32 FCC Rcd 842 (WCB 2017); *Wireline Competition Bureau Authorizes 35 Rate-of-Return Companies to Receive More than $51 Million Annually in Alternative Connect America Cost Model Support and Announces Offers of Revised A-CAM Support Amounts to 191 Rate-of-Return Companies to Expand Rural Broadband*, Public Notice, 31 FCC Rcd 13328, 13328, para. 1 (WCB 2016).

[83] *See Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10405, para. 3 (2018) (*A-CAM Rate-of-Return BDS Order*).

[84] *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176, at 11-23, paras. 31-69 (Dec. 13, 2018); *A-CAM Rate-of-Return BDS Order*, 33 FCC Rcd at 10405, para. 4.

[85] NECA has its own audit tools for rate-of-return LECs participating in its pools. *See supra* n.76.

23. The competitive marketplace may also serve to limit the incentive to misallocate costs to special access service. The *A-CAM Rate-of-Return BDS Order* granted electing carriers (carriers previously electing A-CAM and subsequently electing the newly-provided incentive regulation) the right to engage in contract-based pricing.[86] Growing competition may make this right increasingly attractive, causing more rate-of-return LECs to elect A-CAM funding and incentive regulation.

24. In short, as more rate-of-return LECs elect incentive regulation, an increasingly significant number of rate-of-return LECs will no longer have an incentive to misallocate long-distance costs to special access services. As the number of potentially relevant rate-of-return LECs continues to decline, it becomes less challenging for the Commission (and NECA, to the extent that the carriers participate in NECA pooling) to enforce pre-existing cost allocation rules through pre-existing mechanisms, minimizing the total potential harm from any cost misallocation that may otherwise be missed.

25. We therefore conclude that section 64.1903 is no longer necessary for independent rate-of-return LECs' provision of in-region long-distance service to ensure that rates are just and reasonable.[87] For the same reasons that we conclude that this requirement is not necessary to prevent cost-misallocation, we also conclude that previously-expressed concerns about independent rate-of-return LECs engaging in price squeezes based on cost misallocation are also no longer relevant.[88]

26. We also see no reason to adopt an access charge imputation plan filing requirement on these independent rate-of-return LECs and increase their regulatory burden when existing statutes and regulations sufficiently protect against misallocation of costs. The Commission forbore from this obligation in 2017 for price cap LECs and we see no reason to impose it here. The statutory and regulatory provisions applicable to independent rate-of-return LECs that continue to require proper cost allocation and are designed specifically to prevent cross-subsidization[89] including, in particular, section 254(k),[90] render an imputation condition unnecessary. Moreover, there is no evidence in the record that such a new regulatory obligation is warranted, nor has any party sought such a condition.[91]

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[86] *A-CAM Rate-of-Return BDS Order*, 33 FCC Rcd at 10433, para. 77.

[87] For these reasons, we reject arguments that merely repeat the concerns regarding cost misallocation raised by the Commission in the *2013 USTelecom Forbearance Order*. *See, e.g.*, Comments of the New Jersey Division of Rate Counsel, WC Docket No. 00-175, at 2-5 (filed July 12, 2013) (in response to the *Structural Separation Second Further Notice*).

[88] With regard to forbearance from requiring a separate long-distance affiliate, the concern regarding a rate-of-return LEC engaging in a price squeeze is entirely derivative of cost misallocation concerns. If the rate-of-return LEC is unable to inflate its prices for critical inputs through cost misallocation, it cannot engage in a price squeeze. Put differently, to the extent that a rate-of-return LEC nevertheless attempts to engage in a price squeeze through cost misallocation, our existing enforcement mechanisms regarding cost misallocation would prevent the price squeeze—thus, because *successful* cost misallocation is no more likely following forbearance, neither is an ultimately successful price squeeze.

[89] *See supra* n.70.

[90] 47 U.S.C. § 254(k).

[91] These findings and conclusions also lead us to conclude that enforcement of section 64.1903 against independent rate-of-return LECs is unnecessary to prevent unjustly or unreasonably discriminatory rates. No party raised any claims that such rates might result and the only apparent potential scenario for discrimination with regard to independent rate-of-return LEC's regulated services would be failing to charge their own long-distance operations the exchange access charges that they charge unaffiliated long-distance providers, that is, failing to impute. The same regulatory backstops that require such imputation, particularly section 254(k), would prevent such failure to impute. *Id.* § 254(k).

27. Similarly, we conclude that it is not necessary to adopt a special access performance metric reporting obligation applicable to independent rate-of-return LECs as a condition of receiving forbearance from the section 64.1903 separate affiliate requirement. We forbear from the special access performance reporting requirement for BOCs and independent price cap LECs herein, and, for the same reasons discussed below,[92] we decline to impose this obligation anew to a decreasing category of independent incumbent LECs.[93] Finally, no party has suggested that we impose special access performance metric reporting obligations on independent rate-of-return LECs as a condition for receiving forbearance from section 64.1903.[94]

28. *Section 10(a)(2)—Not Necessary to Protect Consumers.* We find that the same statutory and regulatory safeguards that prohibit cost misallocation[95] and discriminatory service provisioning[96] serve to prevent harm to consumers in the event we forbear from enforcement of section 64.1903 with regard to independent rate-of-return LECs. Moreover, no commenter specifically addresses harms to consumers related to a grant of section 64.1903 forbearance, particularly any harms that are not derivative of section 10(a)(1).[97]

29. *Section 10(a)(3)—Forbearance Is Consistent with the Public Interest.* The Commission has consistently recognized the costs and burdens associated with maintaining separate affiliates and the inefficiencies that occur to a provider's operations.[98] Indeed, the record in response to the 2013 *Structural Separation Second Further Notice* confirms how compliance with section 64.1903 can result in wasteful duplicative switching and transmission equipment as well as separate management structures,[99]

[92] *See infra* para. 32.

[93] Moreover, we see no value in requiring relatively small carriers to create what for them would be entirely new systems for measuring and reporting the provisioning of legacy special access services from which their customers are migrating away. *See A-CAM Rate-of-Return BDS Order*, 33 FCC Rcd at 10415, para. 31 ("[T]he record shows that demand for lower speed TDM-based transport and end user channel terminations services is shrinking as purchasers increasingly prefer higher speed and packet-based services."). *Id*. (footnote omitted)). Further, we have no reason to believe that the number of instances of special access provisioning by the diminishing number of independent rate-of-return LECs will be sufficiently large to make any meaningful comparison of metrics.

[94] More generally, we also conclude that enforcement of section 64.1903 is not necessary to ensure that the charges, practices, classifications, or regulations for independent rate-of-return LEC critical inputs into long-distance service are just and reasonable and are not unjustly or unreasonably discriminatory. We have been presented with no theory under which the separate affiliate requirement for rate-of-return LECs fulfills such purposes other than preventing cost misallocation, a role filled sufficiently by other statutory and regulatory safeguards.

[95] 47 U.S.C. §§ 201, 254(k); 47 CFR §§ 32.23, Part 36, 64.901.

[96] 47 U.S.C. §§ 202(a), 251(b), 208.

[97] Public Knowledge's argument regarding data on long-distance competition appears to be made in reference not only to BOCs and independent incumbent LECs, but also independent rate-of-return LECs. *See* Public Knowledge Objection at 27-28. We reject such argument with regard to independent rate-of-return LECs for the same reason that we reject it with regard to BOCs and independent price cap LECs. *See infra* para. 40.

[98] *See, e.g.*, *Section 272 Sunset Order*, 22 FCC Rcd at 16480, para. 83; *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof; Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, Report and Order, 104 FCC 2d 958, 964, para. 3 (1986); *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21911, para. 7, 21913, para. 13 (1996).

[99] Comments of USTelecom, WC Docket No. 00-175, at 6-7 (filed July 12, 2013) (USTelecom Structural Separation Comments).

and delays in bringing new services to consumers.[100] We agree with USTelecom that such costs divert resources away from publicly-beneficial projects, such as broadband deployment.[101] We find that the public interest is better served by eliminating this burdensome regulatory obligation whose purpose can be satisfied through other existing regulatory obligations so that these incumbent LECs can free up these resources to devote to next-generation network and service deployment. In light of the protections afforded both by the statutory and regulatory backstops and changes in the competitive marketplace discussed above, we conclude that unconditional forbearance from enforcement of section 64.1903 for independent rate-of-return LECs is in the public interest.

B. Forbearance from Enforcing Unnecessary Nondiscriminatory Provisioning Interval Requirements

30. We conclude that forbearance is warranted from the BOC-specific statutory provisioning interval requirement and associated special access performance metric reporting obligations, as well as similar reporting obligations imposed on independent price cap LECs as a condition of prior forbearance relief.[102] Section 272 of the Act was enacted to limit the ability of BOCs to leverage their market position with respect to local exchange service to obtain anticompetitive advantage in the provision of long-distance service.[103] Congress established a presumption that all but the obligations in section 272(e) would sunset a mere three years after long-distance authority was granted on a state-by-state basis, which occurred in every case.[104] As a result of subsequent Commission forbearance, section 272(e)(1) is the sole remaining section 272 obligation carried forward from the early days of BOC entry into the long-distance market that has any practical effect.[105] When section 272 sunset, as Congress intended, and the Commission adopted the special access performance metric reporting obligations, it foreshadowed a time

[100] *Id.* at 6-7 (observing that "every time a company considers a new service that may invoke an interexchange service, the company must dedicate lawyers, engineers and other personnel to figure out whether the service implicates the separate affiliate rule, and if so, whether the service can be offered in a way that complies with the rules").

[101] *Id.* at 7.

[102] Throughout the remainder of this section, unless otherwise noted, when we refer to section 272(e)(1) or to "provisioning interval requirements," we are collectively addressing the BOC-specific statutory provision and uncodified special access performance metric reporting obligations adopted by the Commission in the *Section 272 Sunset Order* as a condition of no longer operating a section 272 separate long-distance affiliate and the similar special access performance metric reporting obligations imposed upon the independent price cap LECs in the *2013 USTelecom Forbearance Order* as a condition of forbearance relief from the separate long-distance affiliate requirement in section 64.1903 of the rules. *See Section 272 Sunset Order*, 22 FCC Rcd at 16487-94, paras. 95-105; *2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7690-93, paras. 139, 141-148.

[103] *Section 272 Sunset Order*, 22 FCC Rcd at 16492, para. 105; *see also 2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6180, para. 40.

[104] 47 U.S.C. § 272(f).

[105] While USTelecom suggests that section 272(e)(1) is the last remaining BOC-only section 272 obligation, sections 272(e)(2) and (4) have not previously been the subject of a Commission grant of forbearance. Because these sections relate specifically to the BOCs' section 272(a) separate affiliates, to the extent any BOC has continued to operate any prior section 272 separate affiliate to offer long-distance, sections 272(e)(2) and (4) continue to apply. While we expect it is unlikely that the BOCs continue to use such affiliates, it is nevertheless a possibility. Since neither the Petition nor the record contain any information or discussion specific to sections 272(e)(2) and (4) notwithstanding the Commission's prior reference to these provisions in 2015, we do not include these provisions in our forbearance analysis. *See 2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6179, n.114 (noting that although these subsections "apply to BOCs' provision of interLATA services though a separate [section 272] affiliate," they "otherwise have no practical effect").

when section 272(e)(1) might no longer be necessary.[106] That time has come. With the relief we grant in this order, as a practical matter, there are no more effective section 272 obligations.[107]

31. *Section 10(a)(1)—Not Necessary to Ensure Just and Reasonable Charges and Nondiscriminatory Practices*. The section 272(e)(1) provisioning interval requirement prohibits a BOC from fulfilling requests from unaffiliated parties for telephone exchange service and exchange access more slowly than it does for itself or its own affiliates.[108] The Commission's stated purpose in imposing special access performance metric reporting obligations was related to enforcement of section 272(e)(1).[109] Thus, our section 10(a)(1) analysis is focused on whether the continuing enforcement of section 272(e)(1), including the related special access performance metric reporting requirements for both BOCs and independent price cap LECs, is necessary to ensure that these carriers' provisioning practices to competitive providers are not unjustly or unreasonably discriminatory.[110]

32. Statutory obligations and Commission regulations regarding unjust and unreasonable discrimination independently render the provisioning interval requirements unnecessary to prevent unjust or unreasonable discrimination. Specifically, sections 201 and 202 of the Act prohibit incumbent LECs (and competitive LECs) from engaging in unreasonably discriminatory behavior and will protect against such practices.[111] Indeed, when the Commission recently forbore from enforcing tariffing obligations on the vast majority of BDS, the Commission recognized that sections 201 and 202 are sufficient regulatory backstops for protecting against unjust and unreasonable rates and we are unpersuaded that sections 201

[106] *See Section 272 Sunset Order*, 22 FCC Rcd at 16488, para. 97 ("The BOCs and their independent incumbent LEC affiliates must continue to abide by special access performance metrics until there is an affirmative Commission determination that such metrics no longer are necessary.").

[107] As previously noted, USTelecom does not seek forbearance from sections 272(e)(2) and (4). *See supra* n.105. These provisions are applicable only to the operation of a long-distance affiliate subject to the requirements of section 272. The only apparent reason for continuing to operate such an affiliate would have been to avoid having to abide by the conditions of the *Section 272 Sunset Order*. Once the Commission granted forbearance from the imputation requirements, the sole remaining condition was the special access performance metric reporting obligation. Because we forbear from such condition in this order, continued operation of a section 272 long-distance affiliate would be a truly voluntary undertaking conferring no apparent benefit on the BOC for continuing to do so.

[108] 47 U.S.C. § 272(e)(1). *See* 47 U.S.C. §§ 153(54), (20) for definitions of telephone exchange service and exchange access, respectively.

[109] *Section 272 Sunset Order*, 22 FCC Rcd at 16488, para. 97 (such metrics "are necessary to monitor whether the BOCs and their independent incumbent LEC affiliates are engaging in non-price discrimination in the provision of special access services to unaffiliated entities . . . ." *Id*.). The Commission used the same justification with regard to price cap LECs in the *2013 USTelecom Forbearance Order*. *2013 USTelecom Forbearance Order*, 28 FCC Rcd at 7962, para. 144.

[110] We need not conduct a separate analysis of whether these requirements are necessary to ensure that these carriers' rates and charges are just and reasonable and not unjustly or unreasonably discriminatory. This is because, under a scenario in which forbearance from enforcing the pertinent nondiscriminatory provisioning obligations could lead to rates that are not just and reasonable or unjustly or unreasonably discriminatory, this would result from the anticompetitive effects of unjust and unreasonable discrimination—the general subject matter of provisioning interval requirements. Thus, so long as enforcement of such obligations is not necessary to prevent unjust and/or unreasonable discrimination, so, too, is enforcement unnecessary to ensure just and reasonable and not unjustly or unreasonably discriminatory rates and charges. Further, because section 272(e)(1) solely concerns comparative provisioning, we find that, to whatever extent these obligations pertain to ensuring just and reasonable practices, it necessarily follows that they prevent the opposite from occurring, that is, unjust and unreasonable discrimination. Therefore, our analysis under section 10(a)(1) focuses on the extent to which the relevant provisioning interval requirements are necessary to prevent such discrimination.

[111] 47 U.S.C. §§ 201, 202.

and 202 would not similarly protect against unreasonable practices such as discriminatory provisioning intervals.[112] Moreover, the Commission has specifically interpreted section 251(b)(1) of the Act as prohibiting discriminatory provisioning of any telecommunications services for resale.[113] In addition, the Commission's section 208 complaint process along with its Market Disputes Resolution process for rapid resolution of complaints between carriers, including incumbent LECs and their competitor customers, are additional backstops to further prevent discriminatory behavior.[114] Furthermore, we find that the special access performance metrics have not been helpful for enforcement purposes—indeed they do not appear to have even been used for such purposes since the *Section 272 Sunset Order* became effective. Moreover, there do not appear to have been any formal complaints regarding special access provisioning filed against BOCs or independent price cap LECs.

33. Not only are these nondiscriminatory provisioning interval requirements unnecessary to serve their stated purpose, we find that the increasingly competitive marketplace prevents BOCs and independent price cap LECs from provisioning telephone exchange service and exchange access service in unjustly or unreasonably discriminatory intervals.[115] In general, for discriminatory behavior to result in significant harm to purchasers, the marketplace must be devoid of competitive options.[116] Otherwise, competitors could provide the relevant service on more favorable conditions, resulting in there being no unjust and unreasonable discriminatory effect.[117] Indeed, the Commission recognized decades ago that the rise of "efficient, facilities-based alternatives to the local exchange and exchange access markets offered by BOCs," that is, facilities-based competition, would "eliminate the need" for incumbent LEC and BOC-specific safeguards prescribed by the 1996 Act.[118] To the extent that facilities-based competition in telephone exchange service and exchange access does not exist at some locations, existing regulations, as described above, serve as an independent basis to prevent such harm.[119] We are, therefore,

[112] *See BDS Order*, 32 FCC Rcd at 3505-06, para. 102 & n.308, 3532, para. 162.

[113] In the *Local Competition First Report and Order*, the Commission concluded that complying with the obligation to provision telecommunications service for resale without unreasonable restrictions under section 251(b)(1) entails provisioning service with the same timeliness as provisioned to a LEC's subsidiaries, affiliates, and direct customers. *See Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15970, para. 970 (in the context of unreasonable restrictions under section 251(c)(4)), 15981, para. 977 (1996) (*Local Competition First Report and Order*) (concluding that the same restrictions that are unreasonable under section 251(c)(4) are unreasonable under section 251(b)(1)).

[114] 47 U.S.C. § 208; 47 CFR §§ 1.720-1.740. *See also* https://www.fcc.gov/general/market-disputes-resolution-division.

[115] Although our analysis of telephone exchange service provisioning need only concern BOCs (because section 272(e)(1) only applies to BOCs), we nevertheless include independent price cap LECs in our discussion as a matter of convenience.

[116] *See* Steven C. Salop, *The Raising Rivals' Cost Foreclosure Paradigm, Conditional Pricing Practices, and the Flawed Incremental Price-Cost Test*, 81 ANTITRUST L.J. 371, 378 (2017); R. Glenn Hubbard & Anthony Patrick O'Brien, Microeconomics 522-529 (4th ed. 2013); Hal R. Varian, Intermediate Economics 462-72 (8th ed. 2010); David M. Mandy, *Killing the Goose That May Have Laid the Golden Egg: Only the Data Know Whether Sabotage Pays*, 17 J. REG. ECON. 157, 161 (2000).

[117] *See id*.

[118] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, Notice of Proposed Rulemaking, 11 FCC Rcd 18877, 18883-84, para. 9 (1996).

[119] *See infra* para. 32.

unpersuaded by some commenters' generalized concerns that BOCs and independent price cap LECs may have motives to discriminate.[120]

34. The Commission has recognized an evolving level of competition since 1996 in the marketplaces for telephone exchange service (what is generally understood to be local telephone service) and exchange access (switched and dedicated local network services provided by LECs to long-distance carriers to connect to their long-distance customers).[121] In evaluating the switched access subset of the exchange access marketplace in 2016, the Commission concluded that "switched access telephone lines are far from 'a monopoly platform for the delivery of voice services,'"[122] a conclusion equally relevant to the telephone exchange market.[123] This trend has continued—as of year-end 2017, Commission data indicate that incumbent LEC legacy platform (non-VoIP) switched access lines and voice over internet protocol (VoIP) connections have fallen to 48% of business and government-grade connections and to 43% of residential connections nationwide.[124] In addition, between 2009 and 2017, the number of residential, business, and government-grade incumbent LEC legacy platform (non-VoIP) switched access lines has dropped from 105.8 million to 39.3 million, while the number of competitive VoIP lines has increased to 53.1 million connections.[125] As of year-end 2017, Commission data indicate that competitive LECs' share of business and government-grade VoIP and switched access connections has risen to 57% and their share of residential connections has increased to 52%.[126] Thus, we agree with USTelecom that, over time, the number of alternatives for voice service has "risen dramatically."[127]

35. When the Commission rejected USTelecom's request for forbearance from section 272(e)(1) in 2015, it cited as a significant basis for its denial the lack of marketplace data, specifically referencing the lack of data regarding special access competition, but the Commission explicitly stated that it did not seek to prejudice its then-ongoing rulemaking regarding special access.[128] Special access is a subset of BDS, a broader class of dedicated connectivity used by competitive carriers, businesses, non-profits, and government institutions that includes special access.[129] BDS competition is relevant both to telephone exchange service and exchange access competition. Specifically, with regard to telephone exchange service, BDS sometimes provides the connectivity used by businesses, particularly large businesses, for telephone exchange service, as well as non-time division multiplexed (TDM) services that

[120] *See, e.g.*, CDT Comments at 8; Full Service Comments at 3, Public Knowledge Opposition at 28; Public Knowledge Reply at 9-10.

[121] *See supra* n.9.

[122] *USTelecom Switched Access Declaratory Ruling*, 31 FCC Rcd at 8293, para. 28; Petition at 36.

[123] The relationship between the competitive marketplace for telephone exchange service and switched access is particularly strong in the context of service provisioning. When a local exchange carrier poorly provisions switched access (an input into long-distance service) to long-distance carriers, it affects the inbound and outbound long-distance calls of its telephone exchange customers. To the extent that such telephone exchange service customers have a choice of local providers, they will be less likely to tolerate such poor service. Thus, at least in the instance of service provisioning, a competitive retail local exchange marketplace creates competition in the switched access marketplace.

[124] Staff Analysis of FCC Form 477 Fixed Voice Subscription Data, Local Exchange Telephone Subscription Data, and Interconnected VoIP Subscription Data (as of December 31, 2017).

[125] *Id.*; *see* Petition at 7; *see also* Petition at 8-11.

[126] *Id.*

[127] *Id.*; Petition at 8.

[128] 2015 USTelecom Forbearance Order, 31 FCC Rcd at 6180-81, para. 42 & n.129.

[129] *See generally BDS Order*.

compete with telephone exchange service.[130] And with regard to exchange access, BDS, including special access, is purchased by long-distance providers to provide dedicated connectivity between their networks and high-capacity customers

36. In the 2017 *BDS Order*, after more than ten years of studying the BDS marketplace—with particular focus on the subset of special access services, numerous requests for public comment, and the most comprehensive data collection the Commission has ever conducted—the Commission developed a new regulatory regime for BDS provided by price cap LECs, including BOCs.[131] The Commission determined that all packet-based dedicated services and higher-capacity time division multiplex (TDM) dedicated services need no longer be regulated by the Commission to ensure just and reasonable rates under sections 201 and 202 of the Act.[132] And for lower-capacity legacy TDM services, the Commission significantly reduced regulatory constraints on the provision of such services.[133] The Commission recognized robust competition with respect to price cap BDS, generally,[134] concluding that price cap LECs generally face "intense competition" from BDS providers, competition that continues to grow.[135] The Commission found that "[t]o a large extent in the business data services market, the competition envisioned in the Telecommunications Act of 1996 has been realized"[136] and it streamlined its regulation of price cap LECs' BDS to promote long-term innovation and investment.[137] Among other things, the Commission observed that within all price cap LEC territories nationally, 64.1 percent of all locations with BDS demand in price cap areas were within a quarter mile of at least one facilities-based competitive provider, as compared to 79.5 percent that were within a half mile, and 89.4 percent that were within a mile.[138] The Commission found that "business data services with bandwidths in excess of the level of a DS3 generally experience reasonably competitive outcomes, and to the extent they do not today, will do so over the medium term even where a facility-based competitor has no nearby facilities."[139] The Commission came to this conclusion "based on a record that shows almost no evidence of competitive problems in the supply of these higher bandwidth services, and which shows higher bandwidth opportunities are particularly attractive to competitive LECs."[140] In light of the level of competition, the Commission declined to narrow or eliminate past tariff-filing forbearance (with one limited exception), and expanded this previously-granted tariff-filing forbearance to remove all remaining ex ante rate

[130] *See id*., 32 FCC Rcd at 3482, para. 44.

[131] *Id.* at 3460-61, para. 1.

[132] *Id.* at 3499-3500, paras. 87-89 (and, with regard to the just and reasonable standard, *id*. at 3466-67, paras. 10-11).

[133] *Id.* at 3502-3527, paras. 94-144.

[134] *Id.* at 3460-61, at para. 1.

[135] *Id.* at 3461, para. 1; *see also* Petition at 11-15. Some commenters question the *BDS Order's* relevance to our forbearance analysis based on the Commission's conclusions in the *BDS Order* with which those commenters disagree. However, on appeal, the Eight Circuit found that the Commission's reliance on these conclusions was not arbitrary or capricious. Thus, we afford no weight to oppositions based on such arguments. *See, e.g.*, Public Knowledge Opposition at 26 (arguing that one competitor is insufficient to justify competitive relief); Raw Bandwidth Comments at 30-31 (questioning the fact that a competitor that does not currently serve a location is considered to be a competitor if it can deploy service in a typical provisioning interval). *See BDS Appeal*, 901 F.3d at 3459.

[136] *BDS Order*, 32 FCC Rcd at 3462, para. 5.

[137] *Id.* at 3461-63, para. 3, 5 (finding that reducing government intervention and allowing market forces to continue working would spur entry, innovation, and competition in BDS markets served by price cap LECs).

[138] *Id.* at 3481-82, para. 43.

[139] *Id.* at 3468, para. 16.

[140] *Id.*

regulation of price cap LECs' packet-based services and TDM-based services in excess of a DS3, relying on sections 201, 202, and 208 as statutory backstops.[141]

37. As for services at lower capacities reliant on legacy technology (DS1 and DS3 TDM services),[142] the Commission found that "any prior advantage an incumbent might have enjoyed at lower bandwidths is now *less competitively relevant* in light of customer demand that attracts a number of traditional and non-traditional competitors that are improving legacy cable networks and expanding with new facilities to meet demand."[143] The Commission nevertheless created a "competitive market test" for determining price cap LEC service territories that were sufficiently competitive to deregulate these DS1 and DS3 services at a county level. Based on the Commission's analysis of then-available data, over 90% of locations with BDS demand in price cap LEC territories were deemed competitive.[144] And even for the counties deemed generally non-competitive based on then-current data, the Commission also eased regulation by permitting price cap LECs to enter into negotiated individualized rates and terms through contract tariffs and volume and term discounts for DS1 and DS3 channel terminations[145] on one day's notice.[146] This relief was premised on the notion that such contract tariffs and volume and term discounts are sometimes necessary to respond to competition.[147] Thus, even though the Commission determined that competition may not be sufficient to completely deregulate DS1 and DS3 channel terminations in a particular county, it did determine that competition may be sufficient to warrant competitive response, meaning that there is some current or potential competition in all counties served by price cap LECs.

38. The existence of competitive options for BDS in large swaths of the country serves as yet an additional deterrent, separate from statutory and regulatory backstops, against incumbent LECs provisioning to competitors on a slower basis than they do to themselves or their affiliates. In particular, the Commission has previously acknowledged carriers' customers' ability to negotiate the particular terms and conditions on which BDS is provided.[148] Further, it is important to recognize that the forbearance granted by the Commission in the *BDS Order* is generally effectuated through mandatory

[141] *Id.* at 3499-3500, paras. 87-89, 3529-34, paras. 155-70. To ensure a level playing field, the Commission modified past forbearance granted to Verizon so that sections 201, 202, and 208 could continue to apply to Verizon services to which they did not apply pursuant to a "deemed granted" forbearance petition. *Id.* at 3534-37, paras. 171-77; *see* 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, at 1-2 (filed Dec. 20, 2004).

[142] *BDS Order*, 32 FCC Rcd at 3463, para. 6.

[143] *Id.* at 3498, para. 84 (footnote omitted) (emphasis added).

[144] *Id.* at 3525-26, paras. 141-42; 47 CFR §§ 69.803.

[145] A channel termination is the dedicated channel connecting an incumbent LEC's end office switch and an end user's premises. *See* 47 CFR § 69.801(d).

[146] *BDS Order*, 32 FCC Rcd at 3540, para. 185; 47 CFR §§ 69.807(b).

[147] *BDS Order*, 32 FCC Rcd at 3540, para. 185.

[148] *Id.* at 3470-71, para. 23. We note that provisioning interval performance standards are sometimes included in incumbent LEC contract (negotiated) tariffs. *See, e.g.*, Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, § 41.170.7(B), Original Page 41-1530 (issued Nov. 10, 2010) (providing subscriber level agreement for the provision of special access service at capacities of DS1 and DS3, among others, that includes performance penalties for missed installation intervals); BellSouth Telecommunications, Tariff F.C.C. No. 1, § 25.12.1(G)(3), Original Page 25-151 (issued Jun. 16, 2011) (contract tariff exclusively for DS1s and DS3s that includes performance penalties for missed installation intervals).

detariffing on a service-by-service basis (with geographic qualifications for DS1s and DS3s).[149] Because tariffs not only serve as enforceable obligations concerning rates, but also terms and conditions, this mandatory detariffing represents a shift not only to allowing rates to be determined by competition, but also the terms and conditions on which service is provided. Thus, in a competitive market, failure by an incumbent LEC to negotiate adequate terms and conditions, and to abide by such terms and conditions, could subject it to the loss of the customer to a competitor, contractual financial performance penalties, or both. Continuing to impose strict provisioning and reporting obligations on only one type of provider in this marketplace seems dramatically at odds with a world in which terms and conditions are mandatorily detariffed for a high percentage of BDS customers.[150]

39. The Commission's decision to grant substantial BDS detariffing forbearance in the 2017 *BDS Order*, based on an evaluation of a substantial record of competitive data, serves as a move further away from reliance on heavy-handed, silo-specific regulation to protect competition and consumers and, instead, toward relying on more general statutory provisions, such as sections 201, 202, and 208 of the Act. Thus, we afford no weight to claims made by commenters simply repeating—without analysis and without regard for the Commission's later conclusions in the *BDS Order*—the Commission's outdated conclusion in the *2015 USTelecom Forbearance Order* regarding the sufficiency of section 202 and the argument that nothing relevant has changed since then.[151]

40. *Section 10(a)(2)—Not Necessary to Protect Consumers*. We find that the same statutory and regulatory safeguards that prohibit discriminatory service provisioning[152] serve to prevent harm to consumers in the event we forbear from enforcement of section 272(e)(1) and the related special access performance metric reporting obligations for BOCs and independent price cap LECs. We therefore afford no weight to arguments that are derived from the premise that the competitive marketplace and statutory and regulatory backstops are insufficient to prevent discriminatory practices.[153] This includes Public Knowledge's apparent claim that USTelecom must demonstrate a certain (unspecified) level of competition in the long-distance market to justify forbearance.[154] Regardless of the current level of long-distance competition, because section 272(e)(1) and special access performance metric reporting are not

[149] *See* 47 CFR § 61.201 (adopted in the *BDS Order*). This mandatory detariffing follows a transition that begins with voluntary detariffing so as to allow carriers to establish their new contractual business relationships. *BDS Order*, 32 FCC Rcd at 3533-34, paras. 166-170.

[150] And practically speaking, given the highly automated carrier ordering and provisioning systems in place today, in our predictive judgement, we find it unlikely that incumbent LECs would interrupt these automated systems to single out a particular competitor for discriminatory provisioning.

[151] *See, e.g.*, CDT Comments at 7-10; Full Service Comments at 3; INCOMPAS et al. Opposition at 76-77; Public Knowledge Opposition at 26-28. Specifically, the objection cited by the Commission in the *2015 USTelecom Forbearance Order* with regard to the sufficiency of sections 201 and 202 of the Act was based on an argument that section 272(e)(1) supposedly prohibits *all* discrimination (in provisioning intervals) while section 202 only prohibits unjust and unreasonable discrimination. *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6181, para. 43. This argument was and is spurious because, even if section 272(e)(1) could be read to apply even to just and reasonable discrimination, the forbearance standard of section 10(a)(1) requires the Commission only to consider whether such discrimination would be *unjustly* or *unreasonably* discriminatory. 47 U.S.C. § 160(a)(1). Section 10(a)(1), by its express terms, does not require the Commission to conclude that the requirement from which the Commission is considering forbearing is necessary to prevent even *just* and *reasonable* discrimination. We note that neither the *2015 USTelecom Order* nor commenters opposing forbearance discuss why section 251(b)(1) does not also serve as a statutory backstop.

[152] U.S.C. §§ 202(a), 251(b), 208.

[153] *See, e.g.*, Public Knowledge Opposition at 26-27; INCOMPAS et al. Opposition at 76-77; CDT Comments at 9-10.

[154] Public Knowledge Opposition at 27-28.

necessary to prevent BOCs and independent price cap LECs from engaging in discriminatory provisioning, granting forbearance from those obligations will not decrease the current level of competition, and thereby result in harm to consumers, as Public Knowledge speculates.

41. *Section 10(a)(3)—Forbearance Is Consistent with the Public Interest*. Finally, we find that forbearing from section 272(e)(1) and the uncodified special access performance metric reporting obligations is in the public interest. We agree with USTelecom that undue regulatory burdens can stand in the way of competition and innovation.[155] Eliminating outdated and unnecessary regulation serves the public interest by generally reducing "carriers' costs and, in turn, benefit[ting] consumers through lower rates and/or more vibrant competitive offerings."[156] Continuing to subject one subset of special access providers to unique and outdated requirements burdens them unnecessarily. The majority of telecommunications carriers are not subject to the section 272(e)(1) requirements, and we do not have good cause to treat BOCs and other incumbent LECs differently from other providers solely because customers were, at one period in history, entirely dependent on them for access to long-distance services. We compare these benefits against our conclusions above that the competitive marketplace and existing statutory and regulatory backstops serve to prevent any public interest detriments from granting forbearance.[157] And we conclude that the section 10 criteria are met and forbearance from section 272(e)(1) and the related special access performance metric reporting is required.

C. Forbearance from Enforcing the Redundant Statutory Non-Discriminatory Access to Poles, Ducts, Conduits, and Rights-of-Way Requirement

42. We grant USTelecom's request for forbearance from the essentially duplicative requirement imposed as a condition of the BOC's provision of in-region long-distance service that a BOC provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way.[158] We find that this remaining long-distance entry checklist item is redundant with section 224 obligations (including state-certified obligations pursuant to section 224(c)(2)), which remain in full force and effect, and that eliminating this obligation will remove any competitive distortions that may occur in the marketplace as a result of the disparate treatment of BOCs vis-à-vis other LECs.

43. *Section 10(a)(1)—Not Necessary to Ensure Just and Reasonable Charges and Nondiscriminatory Practices*. We conclude that section 271(c)(2)(B)(iii) is not necessary to protect against unreasonably discriminatory rates or practices regarding BOC-owned or controlled poles, ducts, conduits, and rights-of-way.[159] We find that this checklist item, based entirely on a reference to section 224, is redundant with the obligations of section 224, which remain in effect, and no harm will result from our forbearing from this checklist item.[160] Section 224 imposes upon *all* LECs, including BOCs, a duty to "provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[161] The Commission has previously

[155] *See* Petition at 23.

[156] *See A-CAM Rate-of-Return BDS*, 33 FCC Rcd at 10450, para. 134; *2013 USTelecom Forbearance* Order, 28 FCC Rcd at 7651, para. 41; *see also* Petition at 23. Thus, we disagree with commenters asserting that there is no public interest benefit to granting forbearance. *See* CDT Comments at 10; Public Knowledge Opposition at 28.

[157] And, given these conclusions, we afford no weight to assertions of public interest harms based on claims regarding sections 10(a)(1) and (2).

[158] *See* 47 U.S.C. §§ 271(c)(2)(B)(iii) (requiring BOCs to comply with section 224 of the Act); 47 U.S.C. § 224; Petition at 2, 38-43, Appx. A, 1.

[159] For convenience, we refer to poles, ducts, conduits, and rights-of-way as "poles" or "pole attachments," as appropriate throughout the remainder of this order.

[160] *See* Petition at 39-40; *see also* CALTEL Comments at 39.

[161] *See* 47 U.S.C. § 224.

acknowledged that checklist item 3 imposes obligations "concurrent" with those of section 224, just as other section 271 checklist items imposed obligations concurrent with those of section 251.[162] Pursuant to section 224, some states have elected to directly regulate poles, ducts, conduits, and rights-of-way, and in such states, BOCs comply with section 224 through compliance with the applicable state requirements.[163] Therefore, we agree with USTelecom that checklist item 3 is not necessary to ensure just and reasonable rates and practices, as section 224 or analogous state requirements will continue to apply.[164] We also conclude that checklist item 3 is not necessary to ensure that such rates are not unjustly or unreasonably discriminatory or that the pertinent BOC practices, classifications, and regulations are just and reasonable and not unjustly or unreasonably discriminatory.

44. Section 224 also has a rigorous enforcement mechanism to ensure access and reasonable rates, terms, and conditions, and that renders checklist item 3 unnecessary.[165] The Commission ensures the effectiveness of section 224 with its broad authority to "enforce[e] any determinations resulting from complaint procedures" and to "take such action as it deems appropriate and necessary, including issuing cease and desist orders."[166] These enforcement procedures, established decades ago, "have been refined through rulemakings and enforcement actions,"[167] and are "adequate to establish just and reasonable rates, terms, and conditions for pole attachments."[168] Between 2011 and 2017, the Enforcement Bureau issued ten orders regarding section 224 pole attachment complaints, and in all but one, "the complaint was dismissed because the parties had reached a settlement."[169] Significantly, only two of the defendants in those ten cases were incumbent LECs.[170] Section 224 sufficiently provides the Commission with the necessary tools to ensure competitive access to poles at just and reasonable rates, terms and conditions, obviating the need for checklist item 3's redundant obligations.[171] States that have retained jurisdiction over pole attachments (in lieu of the Commission) must certify that they have similar tools at their disposal.[172]

45. To the extent that section 271(c)(2)(B)(iii) is at all distinguishable from section 224 in the rights it provides, such distinction lies only in the requirement under section 271 that the Commission act

[162] *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6170, para. 19; *see also* Petition at 39-40.

[163] *See* 47 U.S.C.§ 224(c)(l) (providing that "nothing in this section [224] shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in subsection [224(f)], for pole attachments in any case where such matters are regulated by a State."); *see also* Petition at 38 n.109 (noting that 20 states plus the District of Columbia have certified that they regulate pole attachments) (citing *States That Have Certified That They Regulate Pole Attachments*, Public Notice, 25 FCC Rcd 5541 (WCB 2010)).

[164] Petition at 39.

[165] *See* 47 U.S.C. § 224(b).

[166] *See id.* § 224(b)(1).

[167] *Amendment of Commission's Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 2110, para. 10 (2001); *see also* Petition at 40.

[168] *Implementation of Section 703(e) of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 6777, 6781, para. 16 (1998); *see also* Petition at 40.

[169] Petition at 42 (noting section 224 pole attachment-related orders are posted on the Commission's website at https://www.fcc.gov/enforcement/orders/l840).

[170] *Id.* at 42.

[171] The Commission has promulgated detailed procedural and substantive rules implementing section 224. *See* 47 CFR § 1.1401 *et seq*.

[172] *See* 47 U.S.C. § 224(c)((2).

on complaints within 90 days unless waived by the parties.[173] This distinction, however, was neither relied upon nor mentioned as a basis for denying USTelecom's request for this same forbearance relief in 2015.[174] Nevertheless, recent Commission actions will serve to ensure that pole attachment complaints are addressed promptly, with access complaints now subject to a 180-day shot clock pursuant to the 2017 *Wireline Infrastructure Order*,[175] and other types of pole attachment complaints subject to a 270-day shot clock.[176] Thus, to the extent that the 271 checklist provision was ever necessary to facilitate prompt adjudication of pole attachment complaints, it is no longer necessary for that purpose.[177] Moreover, the 90-day complaint period, to the Commission's knowledge, has never been used for a 271-related pole attachment complaint, which is telling of its lack of continued benefit.

46. Although the Commission declined to forbear from section 271(c)(2)(B)(iii) in 2015—prior to our pole attachment reforms in 2017 and 2018[178]—it is no longer necessary to continue to single out one category of LECs (BOCs) for duplicative pole access regulation. This is especially true given incumbent LECs' declining share of pole ownership compared to electric utilities[179] and thus diminished bargaining power vis-à-vis utilities.[180] In 2018, on the basis of these "changed circumstances," the Commission modified its rules to reflect that incumbent LECs and other marketplace participants are "similarly situated" and that incumbent LECs presumptively should not be subject to unique burdens.[181] We agree with USTelecom that any previous concern regarding incumbent LECs' substantial pole ownership and the corresponding potential for anticompetitive behavior by incumbent LECs "has been considerably diminished," and even if there are BOCs that retain some bargaining power, section 224 serves as sufficient protection for competitive providers seeking to attach.[182] In light of these findings, we therefore disagree with commenters that assert more state-specific information is needed to understand

[173] 47 U.S.C. § 271(d)(6); 47 CFR § 1.736.

[174] *See 2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6170-71, paras. 19-23.

[175] *Accelerating Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Ruling 32 FCC Rcd 11128, 11132, para. 9 (2017) (*Wireline Infrastructure Order*).

[176] *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178, 7185, para. 21 (2018).

[177] *See* Petition at 38, 40-41; *see also* CALTEL Comments at 39; USTelecom Reply at 35-36; CenturyLink Reply at 28.

[178] *See generally Wireline Infrastructure Order*, 32 FCC Rcd 11128*; Accelerating Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (*Wireline Deployment and OTMR Order*).

[179] *Wireline Deployment and OTMR Order*, 33 FCC Rcd at 7768-69, para. 125; *see also* Petition at 41-42 (contending BOCs do not "enjoy any lingering advantages with respect to access to poles"); CenturyLink Reply at 28, 30.

[180] *Wireline Deployment and OTMR Order*, 33 FCC Rcd at 7768-69, paras. 125-26 (finding that incumbent LEC pole ownership and thus incumbent LEC bargaining power vis-à-vis utilities have both declined); USTelecom Reply at 35-36.

[181] *Wireline Deployment and OTMR Order*, at 65, para. 126; *see also* USTelecom Reply at 36.

[182] Petition at 41-42. The Michigan PSC asserts that the *2015 USTelecom Forbearance Order* found that the "access obligation in checklist item 3 is not dependent on whether or not there is competition;" however, the Commission also noted that "it functions as an incentive to the BOCs to continue to provide nondiscriminatory access to poles and other infrastructure even as the BOCs continue to compete and deploy new facilities." *See* Michigan PSC at 7 (citing *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6171, para. 22). We find that the decline in BOC pole ownership is relevant to indicate the lack of potential for anticompetitive behavior and renders section 224 and other existing obligations sufficient to protect access to poles.

the "practical effects of forbearance from this request."[183] Public Knowledge's observation regarding the BOCs' "increased use of enforcement remedies to secure pole access,"[184] does not support retention of an additional redundant enforcement remedy "to be used *solely against [BOCs]*."[185] Instead, as USTelecom notes, it "merely underscores [the BOCs'] marketplace disadvantage."[186] There is no longer good cause to hold BOCs to a unique standard not applicable to their other LEC competitors.

47. Further, the evaporating significance of checklist item 3 is underscored by the virtually non-existent use of section 271(d)(6) as an enforcement mechanism for any 271 checklist obligations.[187] No commenter disputes the fact that the Commission has never issued a decision adjudicating a pole attachment complaint brought under section 271(d)(6), and the last 271 checklist item complaint of any type was in 2002.[188] Moreover, as recognized in the *2015 USTelecom Forbearanc*e *Orde*r, the Commission has never acted under section 271(d)(6) to suspend or revoke a BOC's section 271 approval in any state[189]—meaning that the checklist item 3 enforcement mechanism has never been used, and therefore continuing to require this duplicative compliance obligation is unnecessary.

48. Based on the forgoing, we find that checklist item 3's redundant pole access obligation placed specifically on BOCs has served its original purpose,[190] ensuring that BOCs opened local markets to competition before being granted authority to offer in-region long-distance service, and has outlived its usefulness as an "additional enforcement mechanism."[191] Changes since 2015 render section 271(c)(2)(B)(iii) particularly unnecessary today, and we thus disagree with parties that claim that there is no reason for us to depart from conclusions in the *2015 USTelecom Forbearance Order*.[192]

49. *Section 10(a)(2)—Not Necessary to Protect Consumers*. Similar to our finding that checklist item 3 is not necessary to guard against unreasonably discriminatory rates or practices, it is also not necessary to protect consumers. As we explained above, section 271(c)(2)(B)(iii) is a redundant obligation, duplicating the "market-opening provisions of section 224 and analogous state mandates, and thus provides no additional tangible benefit."[193] Specifically, the only non-redundant feature of checklist

[183] *See* CALTEL Comments at 9-10, 39-41; CALTEL Reply at 26; *cf.* USTelecom Reply at 36 (contending that due to the recent Commission findings "CALTEL's inability to 'fathom' the pole ownership data underlying USTelecom's request, as well as its demand for more information on the subject, are beside the point").

[184] *See* Public Knowledge Opposition at 10-12 (arguing that BOCs have complained in other contexts about infrastructure owners and the significant barriers to entry or impediments that can affect deployment).

[185] USTelecom Reply at 36 n.143.

[186] *Id.*

[187] Petition at 42 (citing *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6169, para.18 & n.62 ("[S]ection 271 (d)(6) has not been a frequent enforcement mechanism for competitive LECs.")).

[188] *See generally WorldCom, Inc. v. Verizon New England, et al.*, Memorandum Opinion and Order, 17 FCC Rcd 15115 (2002) (pertaining to nondiscriminatory access to unbundled network elements under section 271(c)(2)(B)(ii) rather than pole attachments under section 271(c)(2)(B)(iii)).

[189] *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6168, n.56.

[190] *See* Petition at 40-41. USTelecom also points out that the Commission granted its last application to authorize BOC long-distance entry nearly fifteen years ago, and asserts the "RBOC/ILEC-dominated world contemplated by the checklist has virtually disappeared in the intervening years." *Id.* (citing *Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona*, Memorandum Opinion and Order, 18 FCC Rcd 25504, 25505, para 2 (2003).

[191] *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6170, para. 19.

[192] *See, e.g.*, Public Knowledge Opposition at 9-12; Michigan PSC Comments at 7-9.

[193] Petition at 43.

item 3—the 90-day complaint period—creates no meaningful benefit for consumers.[194] In fact, its continued existence results in unnecessary disparate regulatory treatment of competing providers by continuing to place these burdens on BOCs vis-à-vis their competitors.[195] Equivalent provisions that are applicable to poles owned or controlled by a broader range of parties, including the new section 224 regime, are "more than sufficient to protect consumers and ensure parity in the marketplace."[196]

50. *Section 10(a)(3)—Forbearance Is Consistent with the Public Interest*. The public interest is not served by imposing redundant or additional compliance obligations on BOCs, but not their similarly situated LEC competitors. There is no good reason to continue to subject BOCs to the threat of enforcement action under two separate statutory provisions when other LECs are only subject to one statutory provision. Conversely, there is no good reason today to allow non-BOCs to avail themselves of two different causes of action while BOCs only have access to one. We find that leveling the playing field and eliminating this redundant obligation applicable only to a subset of incumbent LECs will remove competitive distortions created by uneven compliance obligations. Moreover, it will further regulatory parity among all categories of LECs with respect to pole attachment rights and obligations. For these reasons, granting the requested forbearance from section 271 checklist item 3 would serve the public interest.

IV. ORDERING CLAUSES

51. Accordingly, IT IS ORDERED that, pursuant to sections 1-4, 10, 201, 202, 224, 251(b)(1), 271, and 272 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 160, 201, 202, 224, 251(b)(1), 271 and 272, this Memorandum Opinion and Order IS ADOPTED.

52. IT IS FURTHER ORDERED that, pursuant to sections 1-4, 10, 201, 202, 224, 251(b)(1), 271, and 272 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 160, 201, 202, 224, 251(b)(1), 271 and 272, the petition for forbearance filed by USTelecom IS GRANTED to the extent discussed herein.

53. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 CFR § 1.103(a), this Memorandum Opinion and Order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[194] *See supra* paras. 43-48.

[195] Petition at 43.

[196] *Id.* at 41. For this reason, we also disagree with Public Knowledge's claim that forbearance would not serve the public interest because "it would unnecessarily limit the tools the Commission has to achieve its important public interest objectives." Public Knowledge Opposition at 9.

STATEMENT OF
CHAIRMAN AJIT PAI

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141; *2000 Biennial Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175.

This *Order* takes us back to 1996. That year, Congress passed the Telecommunications Act, granting authority to the FCC to forbear from enforcing obsolete statutory requirements or regulations. That same year, Hootie and the Blowfish topped the charts, lamenting "Time . . . you ain't no friend of mine."[197]

These markers converge with respect to this petition for forbearance, which asks the FCC to consider whether particular regulations established over two decades ago are necessary given epochal marketplace changes in the years since. Back then, the "Baby Bell" companies and other incumbent carriers had monopolies in the local telephone market and were looking to enter the long-distance market. Today, the marketplace has shifted dramatically, so much so that most people as old as these rules probably haven't heard of the phrase "Baby Bell" and don't think of "long-distance" as a distinct service.

In keeping with our statutory obligation, we therefore grant relief from these outdated requirements. For example, we forbear from enforcing the burdensome rule that smaller, rural carriers (unlike their larger, urban brethren) must offer long-distance telephone service through a separate affiliated company. And we relieve incumbent carriers from the obligation to submit unnecessary reports about their legacy "special access" services.

By modernizing our rules, we will enable carriers to focus scarce resources on delivering the networks and services of the future to American consumers, rather than on complying with needless regulations from the past.

For their time and diligent work on this item, I'd like to thank Pamela Arluk, Michele Berlove, Allison Baker, Megan Capasso, Justin Faulb, Ed Krachmer, Kris Monteith, Terri Natoli, and Claudia Pabo of the Wireline Competition Bureau; Pam Megna and Eric Ralph of the Office of Economics and Analytics; and Malena Barzilai and Rick Mallen of the Office of General Counsel.

[197] HOOTIE & THE BLOWFISH, *Time*, *on* CRACKED REAR VIEW (Atlantic Records 1994); *see also* Billboard, Hootie & The Blowfish Chart History, Adult Top 40 (1996), https://www.billboard.com/music/hootie-the-blowfish/chart-history/adult-pop-songs/song/38001.

STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141; *2000 Biennial Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175.

This item applies the Commission's forbearance authority in a straightforward, thorough, and reasoned manner, and I fully support it. As a general matter, the item recognizes the very different competitive and regulatory landscape that has emerged since certain requirements at issue were introduced, and rightfully forbears from imposing obligations that disparately burden certain silos of providers or are duplicative and unnecessary. While extremely limited in scope, these actions are strongly justified as a matter of public policy.

I am particularly pleased that we forbear from enforcing the obligation to maintain a separate long-distance affiliate for independent rate-of-return local exchange carriers. This is a fairly costly and time-consuming burden, particularly for small carriers, and the resources dedicated to it could be used much more productively. Don't get me wrong: I am strongly in favor of ensuring the proper allocation of costs by rate-of-return providers, as necessary, and I have worked hard to eliminate waste, fraud, and abuse in the high-cost program. However, to the extent that there is no evidence of the rule's effectiveness in preventing misallocation of long-distance costs to special access services, and that our other safeguards are sufficient to monitor this diminishing subset of carriers, we should rightfully move on.

I thank the staff from the Wireline Competition Bureau for their meticulous forbearance analysis. Of course, the true heavy lifting on the larger petition will come in a future item, and I look forward to deciding the remaining issues in due course.

STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141; *2000 Biennial Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175.

If I had to describe the FCC's wireline regulations, the words "modern" or "adaptable" are not the first ones that would roll off my tongue. Arcane, maybe. Reticulated, perhaps. But if I'm feeling generous, "nostalgic" could work.

In fact, today's wireline decision does bring back some fond memories for me. Sixteen years ago, when I was in law school, I interned at the FCC for Commissioner Kathleen Abernathy. One of the projects I worked on back then was the FCC order that granted the final Section 271 application. I knew right then that telecom was for me—that I had found my calling.

Now, for those that aren't steeped in the arcana of Section 271, Congress put the provision in place to provide the Bell Operating Companies with a path to providing in-region long-distance service. And Congress included other safeguards to ensure that a single provider would not dominate the market for long-distance communications. A lot has changed in the intervening years. The reason for these rules and their regulatory costs no longer make sense in today's marketplace. So, we now eliminate some of the requirements that lived on beyond that last FCC decision in 2003. This will help free up capital that can be put into deploying more broadband infrastructure.

I want to thank the Wireline Competition Bureau for its work on this item. It has my support.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141; *2000 Biennial Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175.

Section 10 of the Communications Act is powerful. In it, Congress gave the Federal Communications Commission the right to forbear from key provisions of the law that apply to telecommunications carriers and telecommunications services. To do so, the agency needs to find that the provisions at issue are not needed to ensure that service is just and reasonable; that enforcement is not necessary to protect consumers; and that forbearance itself is in the public interest. Under the statute, we can do so on our motion or upon petition. In the instant case, we have a petition. Petitions need to be resolved within one year, although the law provides the opportunity for an extension of 90 days. If the FCC fails to do its job and resolve the petition within this time, under the statute it is deemed granted.

I think the agency needs to take this duty seriously. Here, we begin the Section 10 process with a petition that seeks forbearance from a broad range of duties that the statute imposes on incumbent carriers. In the decision before us, we grant forbearance from some of these duties, including the requirement to offer long distance service through an affiliated entity and file certain provisioning reports. I support this order. That is because I believe at this time it removes redundant duties and outdated filing obligations.

But take note, because we do not address the heart of this Section 10 forbearance petition today. Instead, we save for another day the most complex issues before us, including forbearance from unbundling and resale obligations that are designed to foster competition. I fear that this is intentional because if the FCC does not act on the remainder of this petition by August 2, the issues we do not address here will be deemed granted under the law. In fact, this kind of thing has happened before. So let me lay down a marker. I believe the FCC needs to resolve the outstanding issues in this petition with a decision. Instead of leaving the remainder of the petition to languish and take effect as a matter of law, I believe we need to vote on it.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141; *2000 Biennial Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175.

Today's order eliminates regulations that were part of the process of opening up long-distance service markets to competition two decades ago. The regulations we consider today served an important purpose in that context. But – times have changed. The copper lines of the legacy telephone network are no longer the only service option. The regulations today's order addresses were adopted before widespread use of cell phones, before cable companies provided voice service over cable, and before all-inclusive, all distance voice service plans were the norm.

Even though times and the communications marketplace have changed, we still have to take a careful look as we consider eliminating regulations, and be mindful that we don't take actions that undercut competition. The Communications Act defines the analysis we must consider in a forbearance petition.[198] Consistent with that required forbearance analysis, I also apply the framework I previously announced that when the Commission is considering proposals to eliminate a regulation, I will also look to see whether, in my judgment, we are still meeting the broader statutory obligations and key missions underlying the regulation.[199]

In this case, granting the forbearance requests addressed in today's order makes sense to me. Critical statutory protections are preserved. But, I am aware that there is more to come with the forbearance petition today's order addresses. More controversial aspects of US Telecom's forbearance petition remain pending, are not addressed in this order, and must be addressed this summer. I will be looking closely to ensure that the Commission meets its statutory obligations and key missions as it evaluates the forbearance criteria and addresses the remaining requests.

I know that the analysis required for an order like this one is rigorous, and I thank the staff of the Wireline Competition Bureau for your hard work in preparing this Order.

[198] *See* 47 U.S.C. § 160 (c).

[199] *Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(F)(2)*, Report and Order, 2019, WL 696578, (Feb. 15, 2019) (concurring Statement of Commissioner Starks).