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

In the Matters of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	
	)	
Reform of Filing Requirements	)	CC Docket No. 96-193
and Carrier Classifications	)	
	)	
Anchorage Telephone Utility, Petition for	)	AAD 95-91
Withdrawal of Cost Allocation Manual	)	

REPORT AND ORDER

Adopted: April 22, 1997 **Released:** May 20, 1997

By the Commission:

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I. INTRODUCTION

1. In the Telecommunications Act of 1996,[1] Congress sought "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[2] To further its goal of deregulation, Congress required the Commission to permit any incumbent local exchange carriers to file cost allocation manuals (CAMs) and Automated Reporting Management Information System (ARMIS) reports annually, to the extent such carrier is required to file such manuals or reports. Congress also directed the Commission to revise its carrier classification and reporting requirement rules by adjusting references to carrier revenues for inflation.[3]

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the Act."

[2] See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

[3] 1996 Act, §§ 402(b)(2)(B), (c).

2. In this Report and Order (*Order*), we revise the rules governing carriers filing CAMs and ARMIS reports so that these rules are in accord with the 1996 Act.[4] Specifically, these rules (1) provide for a uniform filing date of April 1 for all ARMIS reports; (2) reduce the 60-day notice period for a carrier to make changes to its CAM to 15 days; (3) make permanent our interim rules for measuring inflation, used to adjust the threshold revenue values in Part 43 and sections 32.11 and 64.903 of our rules; (4) permit carriers to file the section 43.22 interstate carrier quarterly report on an annual basis; and (5) eliminate the section 43.21(b) supplemental reporting requirement.

3. This *Order* also addresses a Motion for Reconsideration filed by Anchorage Telephone Utility (ATU). On June 22, 1995, ATU filed a petition seeking a declaratory ruling that it is not required to file ARMIS reports or, in the alternative, a waiver of these filing requirements or rulemaking to amend our filing requirements. As discussed below, this petition was denied to the extent that it made requests for declaratory ruling or waiver.[5] In its Petition for Reconsideration, ATU argues that we should require only incumbent local exchange carriers with more than 2% of the nation's access lines to comply with the CAM and ARMIS filing requirements. For the reasons expressed below, we retain the $107 million annual revenue threshold (adjusted annually for inflation) defining those incumbent local exchange carriers that must comply with CAM and ARMIS reporting and filing requirements. Nevertheless, because it has shown a substantial likelihood of individualized harm, we grant ATU a limited two-year waiver of the ARMIS reporting requirements.

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[4] Additionally, several parties used this opportunity to argue that the Commission should either eliminate the requirement for price cap local exchange carriers, particularly those carriers that have elected the no-sharing option, to file CAMs or that the Commission should forbear from requiring CAM filings and ARMIS reports. See BellSouth Comments at 2-4; Cincinnati Bell Comments at 7; Pacific Comments at 2; Bell Atlantic Reply at 1; BellSouth Reply at 1-2. We note, however, that these issues are beyond the scope of this proceeding and accordingly, will not be addressed here.

[5] See infra. paras. 5, 56-61.

II. BACKGROUND

4. On September 12, 1996, the Commission released an Order and Notice of Proposed Rulemaking[6] (the *Order and Notice*) modifying our rules as directed by the 1996 Act to require only annual ARMIS reports and annual cost allocation manual revisions. Furthermore, because the 1996 Act did not specify how we should measure inflation in adjusting annual revenue thresholds used to define (or identify) those incumbent local exchange carriers that must file these annual reports, we adopted interim rules that adjust those thresholds for inflation using a generally-available inflation index.[7] The *Order and Notice* sought comment on additional modifications to our rules, such as whether we should modify or eliminate the 60-day advance notice requirement for cost allocation manual revisions as well as which permanent inflation measure we should incorporate into our rules pertaining to carrier classification and reporting requirements.[8]

5. In addition, the *Order and Notice* addressed a motion filed by ATU for permission to withdraw its CAM.[9] In its petition, ATU contended that because its operating revenues for 1995 were $107,823,490, it was not required to file a CAM with the Commission for 1995.[10] ATU based this conclusion on the provision of the 1996 Act directing that we adjust the filing threshold for inflation, which ATU estimated would increase the threshold to "slightly more than $109 million."[11] We denied ATU's motion primarily because ATU overestimated the new filing threshold after adjusting for inflation; the interim rules adopted in the *Order and Notice* increased the $100 million annual operating revenue threshold for 1994 to $104 million and for 1995 to $107 million.[12] Because ATU's 1995 operating revenue remained above the inflation-adjusted threshold, we required ATU to file a CAM with the Commission for 1995.[13]

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6 Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications, Anchorage Telephone Utility, Petition for Withdrawal of Cost Allocation Manual, Order and Notice of Proposed Rulemaking, CC Docket No. 96-193, 11 FCC Rcd 11716 (1996).

7 Order and Notice, 11 FCC Rcd at 11722 para. 10.

8 Id. at 11727 para. 21, 11729 para. 24.

9 Id. at 11724-26 paras. 16-19.

10 Id. at 11724 para. 16.

11 Id., citing Letter from Paul J. Berman, Covington and Burling, to William F. Caton, Acting Secretary, FCC (Mar. 29, 1996).

12 Order and Notice, 11 FCC Rcd at 11725 para. 18.

13 Id. at 11725-26 para. 19.

III. ANALYSIS

A. Automated Reporting Management Information System Reports

1. Retaining ARMIS Reports 43-01, 43-05 and 43-06

Background

6. ARMIS is an automated system developed in 1987 for collecting financial and operating information from certain carriers.[14] Additional ARMIS reports were added in 1991 for the collection of service quality and network infrastructure information from local exchange carriers subject to our price cap regulations, in 1992 for the collection of statistical data formerly included in Form M,[15] and in 1995 for monitoring video dialtone investment, expense and revenue data.[16] The video dialtone reporting requirement was effectively eliminated by the 1996 Act.[17] Today, ARMIS consists of ten reports.[18]

7. Prior to the passage of the 1996 Act, seven of the ten ARMIS reports were filed on an annual basis. The exceptions were the ARMIS 43-01 report, containing aggregate cost and

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[14] See Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules), CC Docket No. 86-182, Report and Order, 2 FCC Rcd 5770 (1987) (ARMIS Order), modified on recon., Order on Reconsideration, 3 FCC Rcd 6375 (1988).

[15] The Form M for local exchange companies, now discontinued, required the reporting of data now incorporated in the ARMIS 43-02 and 43-08 reports.

[16] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Memorandum Opinion and Order, 6 FCC Rcd 2974 (Com. Car. Bur. 1991); Revision of ARMIS USOA Report (FCC Report 43-02) for Tier 1 Telephone Companies, AAD 91-46, Memorandum Opinion and Order, 7 FCC Rcd 1083 (Com. Car. Bur. 1992); Reporting Requirements on Video Dialtone Costs and Jurisdictional Separations for Local Exchange Carriers Offering Video Dialtone Services, Memorandum Opinion and Order, 10 FCC Rcd 11292 (Com. Car. Bur. 1995).

[17] 1996 Act, § 302(b)(3). See also Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, Report and Order and Notice of Proposed Rulemaking, CS Docket No. 96-46, 61 FR 10475, 10496, FCC 96-99 (rel. Mar. 11, 1996); Second Report and Order, 61 FR 28698, FCC 96-249 (rel. June 3, 1996); Third Report and Order and Second Order on Reconsideration, 61 FR 43160, FCC 96-334 (rel. August 8, 1996).

[18] The ten ARMIS reports are: the Annual Summary Report (formerly referred to as the Quarterly Report) (43-01); the USOA Report (43-02); the Joint Cost Report (43-03); the Access Report (43-04); the Forecast Report (495-A); the Actual Usage Report (495-B); the Service Quality Report (formerly referred to as the Quarterly Service Quality Report) (43-05); the Customer Satisfaction Report (formerly referred to as the Semi-Annual Service Quality Report) (43-06); the Infrastructure Report (43-07); and the Operating Data Report (43-08).

revenue data for the previous calendar quarter, which was filed quarterly, the ARMIS 43-05 report, containing service quality data for the previous calendar quarter, which was filed quarterly, and the ARMIS 43-06 report, containing service quality data for the previous two calendar quarters, which was filed semi-annually. As a result of the 1996 Act's mandate that "[t]he Commission shall permit any common carrier . . . to file . . . ARMIS reports annually,"[19] we amended our rules to require carriers to file the quarterly and the semi-annual reports only once each year.[20] Noting that all but one of the annual ARMIS reports must be filed on or before April 1,[21] we amended our rules to specify that carriers must now file the Annual Summary Report (43-01) and the Customer Satisfaction Report (43-06) on or before April 1.[22] Furthermore, the *Order and Notice* directed the Common Carrier Bureau (Bureau) to make any changes to the form and content of these reports necessary to accommodate the change from quarterly and semi-annual filings to annual filings.[23] In this part of this *Order*, we briefly address whether the 43-01 and 43-06 reports are now repetitive with other existing ARMIS reports and no longer necessary under our modified rules.[24]

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[19] 1996 Act, § 402(b)(2)(B).

[20] Order and Notice, 11 FCC at 11718 para. 4. In a separate proceeding, the Bureau authorized subject carriers to file the ARMIS Service Quality Report (43-05) on an annual basis pursuant to section 402(b)(2)(B) of the 1996 Act. See Revision of Filing Requirements and Implementation of Section 402(b)(2)(B) of the Telecommunications Act of 1996: Annual ARMIS Reports, Order, CC Docket No. 96-23, DA 96-381 (Com. Car. Bur. rel. Mar. 20, 1996).

[21] The exception is ARMIS Report 43-07 (the Infrastructure Report), which must be filed by June 30.

[22] Order and Notice, 11 FCC Rcd at 11718 para. 4. Although not specifically mentioned in the Notice, the ARMIS 43-05 report must also be filed by this date. See note 20, supra.

[23] In light of this directive, a number of parties suggest that we now modify several of our reporting requirements. Specifically, Ameritech and USTA states that several of the schedules contained in the ARMIS 43-02 report should be eliminated. Ameritech Comments at 3-4; USTA Comments at 9. Moreover, Cincinnati Bell and USTA recommend that we allow Rate of Return and Optional Incentive Regulation carriers to file Form 492 [the rate-of-return monitoring report] on an annual basis. Cincinnati Bell Comments at 5; USTA Comments at 10. See also BellSouth Reply at 5. These issues are beyond the scope of this proceeding and accordingly will not be addressed here.

[24] Although the Order and Notice did not, and was not required to, request comment on this issue, a number of parties expressed their relative positions. For the sake of completeness of the record, we briefly summarize these comments here.

AT&T and MCI requested that the Commission clarify whether carriers will be required to report the same information in the new annual 43-01 report as they had in the quarterly reports. MCI Comments at 2; AT&T Reply at 7. Specifically, AT&T and MCI argue that because the 1996 Act does not require the new annual ARMIS reports to contain only aggregate data for an entire year, carriers must continue to report cost and revenue data by quarter in order to provide the Commission with a consistent data series, thereby allowing comparison of carrier operations with prior years. Id. Other parties, however, argue that the ARMIS 43-01 report, when submitted annually, should

Discussion

8. Pursuant to the 1996 Act, subject carriers must be permitted to file the ARMIS 43-01 and 43-06 reports annually. Although nothing in the 1996 Act explicitly limits our ability to require the reporting of quarterly and semi-annual data on an annual basis,[25] we conclude that such a requirement is contrary to the intent of the Act. Compelling carriers to continue to report quarterly and semi-annual data, albeit on an annual basis, would not decrease the regulatory burden on subject carriers and, therefore, would frustrate Congress's goal of "provid[ing] for a pro-competitive, de-regulatory national policy framework."[26] Therefore, we will now require that the ARMIS 43-01 and 43-06 reports contain only annual data.

9. The ARMIS 43-01 report, which will now be filed annually, contains highly aggregated cost and revenue data. The data presented in the ARMIS 43-01 report is also presented in various levels of categorization and disaggregation among the ARMIS 43-02, 43-03 and 43-04 reports. We conclude, however, that other interested parties and we will continue to find the ARMIS 43-01 report a useful analysis tool because it is the only ARMIS report that provides a complete representation of reporting carriers' financial operating data beginning with the Part 32 Uniform System of Accounts and continuing through the Part 64 cost allocation, Part 36 jurisdictional separations, and the Part 69 access elements processes. We conclude that our interests are best served by continuing to require subject carriers to file the separate 43-01 report. Likewise, the ARMIS 43-06 report does not have an analogous annual report. Prior to this proceeding, we did not require carriers to file any service quality data on an annual basis. Furthermore, the 43-06 report is sufficiently different from the 43-05 report so as to not be repetitive even when filed annually. For these reasons, we will continue to require subject carriers to file the Customer Satisfaction ARMIS report.

contain only annual revenue data. Southwestern Bell Comments at 8; USTA Comments at 9. Accordingly, if this causes the 43-01 report to become redundant with the 43-03 and 43-04 reports, it should be eliminated. Bell Atlantic Comments at 5; USTA Comments at 9. See also BellSouth Reply at 5.

[25] See MCI Comments at 3.

[26] See note 2, supra.

2. The Revised ARMIS Filing Dates

Background

10. Pursuant to our rules, carriers must file the annual 43-07 report by June 30 and the remainder of the ARMIS reports by April 1.[27] In the *Order and Notice*, we stated that we saw no reason for continuing our practice of having two different filing dates. Consequently, at paragraph 27, we proposed amending our rules to provide for a uniform filing deadline of April 1 for all ARMIS reports.[28] We invited comment on this proposal.

Comments

11. Most commenters oppose our suggestion to prescribe a uniform filing date for all ARMIS reports. Ameritech contends that nothing in the 1996 Act requires that all ARMIS reports be due on the same date.[29] USTA and US West argue that the filing date for all ARMIS reports should not be consolidated because of the impact on the carriers' work forces.[30] USTA states that for many incumbent local exchange carriers, the same personnel and resources are devoted to the preparation of the ARMIS reports. Therefore, retaining different filing dates for various ARMIS reports allows for more efficient use of resources in the planning, preparation, and filing of the reports.[31]

12. In response to our proposal to establish a uniform filing deadline, several parties have suggested that we stagger the due dates of the ARMIS reports.[32] According to Cincinnati Bell, this would: (1) increase planning and preparation time, allowing for greater efficiency and accuracy; (2) spread out the burden placed on small and mid-size incumbent local exchange carriers that have limited resources; and (3) place less burden on the Commission staff.[33] USTA

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27 See Order and Notice, 11 FCC Rcd 11717-18 paras. 3-4.

28 Id. at 11730 para. 27.

29 Ameritech Comments at 3.

30 USTA Comments at 8; US West Comments at 4-5.

31 USTA Comments at 9. See also Ameritech Comments at 3; Bell Atlantic Comments at 2-3; Pacific Comments at 4.

32 Ameritech Comments at 3; Bell Atlantic Comments at 3; Cincinnati Bell Comments at 4-5; USTA Comments at 8-9. See also BellSouth Reply at 5.

33 Cincinnati Bell Comments at 4-5.

proposes that the due date of ARMIS reports 43-01, 43-02, 43-03, 43-04, 495A and 495B remain April 1 but that the operational and infrastructure reports, i.e., 43-05, 43-06, 43-07 and 43-08, be due on July 1 of each year.[34] Bell Atlantic suggests that we require the filing of all statistical ARMIS reports on June 30, while retaining the April 1 date for the remainder of the reports.[35] Southwestern Bell agrees with the proposal to change to a uniform April 1 filing date for the annual reports required by sections 43.21(a) and 43.21(d).[36]

Discussion

13. We find that, contrary to the assertions of some commenters, requiring a uniform filing date for all ARMIS reports would not place an unnecessary, heavy burden on subject carriers because the same personnel often prepare every ARMIS report.[37] Currently, nine of our ten ARMIS reports are due April 1 of each year. Requiring one more ARMIS report to be filed by that same date should not impose an onerous burden on telecommunications carriers subject to the reporting requirements.[38] Moreover, there is a close relationship between the data reported in the ARMIS 43-07 report with that contained in the 43-08 report. For example, the 43-08 report indicates the quantity of sheath and conductor kilometers of a carrier's cable.[39] The 43-07 report supplements this information by indicating the amount of this cable in use. Accordingly, these reports must be reviewed together in order to fully comprehend the volume of cable use. We have been presented with no tangible evidence to support the contention that it will be difficult or impossible for carriers to comply with this filing requirement or that the requirement will be unreasonably burdensome.[40] For these reasons, we adopt our tentative conclusion and establish a common due date of April 1 for all ARMIS reports.

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[34] USTA Comments at 8-9. See also Ameritech Comments at 3; BellSouth Reply at 5.

[35] Bell Atlantic Comments at 3.

[36] Southwestern Bell Comments at 9.

[37] See Bell Atlantic Comments at 3, USTA Comments at 8, US West Comments at 4.

[38] We note that the carriers' filing burden was not increased when the Order and Notice established April 1 as the filing date of the ARMIS 43-01, 43-05 and 43-06 reports. Although these ARMIS reports were previously required to be filed more frequent than annually, one filing due date was April 1 in addition to other dates throughout the year.

[39] Sheath kilometers refer to the actual length of the pipe that surrounds the cable. Conversely, conductor kilometers refer to the total length of all individual wires or cables inside the sheath.

[40] For example, we have been presented with no cost study showing that a common filing date would significantly increase the costs of subject carriers.

3. Revisions to the Part 43 ARMIS Reporting Requirements

Background

14. In order to assist carriers with compliance, we proposed in the *Order and Notice* to add to section 43.21 of our rules a brief description of four annual ARMIS reports, which are not described in Part 43: the Service Quality Report (43-05); the Customer Satisfaction Report (43-06); the Infrastructure Report (43-07); and the Operating Data Report (43-08).[41] At paragraph 28 of the *Order and Notice*, we invited commenters to file specific alternate rule proposals.

Comments

15. Bell Atlantic argues that by specifying the detailed contents of the service quality reports in the proposed rules, we would unnecessarily limit the Bureau's future ability to alter the information required by the report.[42] Instead, Bell Atlantic asserts, the rules should employ general language to facilitate the Bureau's ability to change the annual reports without initiating a new proceeding to modify the rules.[43]

16. USTA proposes that we implement certain word changes for our proposed rules in sections 43.21(g) and (h). Specifically, USTA suggests that we modify 43.21(g) to specify that carriers must file the Service Quality Report by July 1 instead of our proposed date of April 1.[44] In addition, USTA suggests that we modify the second sentence in 43.21(g) to read: "[t]he report shall contain data relative to network measures of service quality, as defined by the Common Carrier Bureau, from the previous calendar year on a study area basis."[45] USTA also would have us delete our proposed reference to specific data that the report shall contain, i.e., installation and repair intervals, trunk blockage, switch downtime and service quality complaints.

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41 Order and Notice, 11 FCC Rcd at 11731 para. 27.

42 Bell Atlantic Comments at 4-5.

43 Id.

44 USTA Comments at 10. See also BellSouth Reply at 5. Our proposed language read: "The report shall contain data from the previous calendar year on a study area basis including information on installation and repair intervals, trunk blockage, switch downtime, and service quality complaints." See Order and Notice, Appendix C.

45 USTA Comments at 10.

17. Similarly, USTA suggests that we modify 43.21(h) to specify that carriers must file the Customer Satisfaction Report by July 1 instead of our proposed date of April 1.[46] Furthermore, USTA suggests that we modify the second sentence in 43.21(h) to read: "[t]he report shall contain data relative to customer measures of service quality, as defined by the Common Carrier Bureau, from the previous calendar year on a study area basis."[47] USTA would delete our proposed reference to specific data that the report shall contain, i.e., a summary customer satisfaction survey and information on transmission quality and dial tone response.

18. Sprint maintains that the new proposed rules should be modified to cite the specific ARMIS report number that the carrier is to use and that adding clarity by indicating the specific form to be used would enable carriers to comply with the filing requirement in a more efficient manner.[48] Bell Atlantic argues that Sprint's proposal should be denied because codifying the report numbers would make it more difficult to streamline the reporting requirements as competition evolves.[49] USTA argues that there is no reason to add specific report numbers to the Commission rules as suggested by Sprint.[50] According to USTA, this would only eliminate the ability of the Commission to consolidate the reports except by specific rulemaking.[51]

Discussion

19. As determined above, we now require a common filing date of April 1 for all ARMIS reports.[52] Accordingly, we decline to adopt USTA's proposal to modify our proposed rules for 43.21(g) & (h) to reflect a report filing date of July 1. We do, however, adopt the suggestion of USTA to amend the last sentence in these rules to be less specific about the data to be filed. This will facilitate our ability to assure that the reporting requirements of these ARMIS reports continue to provide the information most helpful to our analysis of network and service quality. These rules, as adopted here, are found in Appendix B of this *Order*.

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46 Id.

47 Id.

48 Sprint Comments at 3-4.

49 Bell Atlantic Reply at 3.

50 USTA Reply at 5.

51 Id.

52 See section III.A.2, supra.

20. We adopt our proposal to add to our Part 43 rules a brief description of the four annual ARMIS reports not currently described in Part 43, namely, the Service Quality Reports (43-05 and 43-06), the Infrastructure Report (43-07) and the Operating Data Report (43-08). We conclude that such descriptions in our rules would facilitate the reporting by carriers, particularly those that may first pass the filing threshold in the future. We disagree with Sprint that this proceeding should add to each new rule a citation to the number of the corresponding ARMIS report that a carrier must file to comply with that rule. The Sprint proposal should be considered in a more comprehensive rulemaking at a later date in which we examine consolidation or even elimination of some of the ARMIS reports. The rules changes adopted in this *Order* are found in Appendix B.

B. Cost Allocation Manual Filings

Background

21. Prior to the passage of the 1996 Act, our rules required carriers to file quarterly updates to their cost allocation manuals.[53] Section 402(b)(2)(B) of the 1996 Act provides that "[t]he Commission shall permit any common carrier . . . to file cost allocation manuals . . . annually, to the extent such carrier is required to file such manuals."[54] Section 402(b)(2)(B) supersedes our requirement that cost allocation manuals be filed more frequently than annually. As a result, in the *Order and Notice* we amended Section 64.903(b) of our rules to permit carriers to update their cost allocation manuals annually, rather than quarterly.[55] Carriers are now required to file their annual updates on the last working day of each year.[56]

22. Section 64.903(b) of our rules requires subject carriers to file certain changes to their cost allocation manuals "at least 60 days before the carrier plans to implement the changes."[57] This requirement applies to "changes to the cost apportionment table and to the description of time reporting procedures."[58] At paragraph 21 of the *Order and Notice*, we

[53] Pursuant to section 64.903(a) and (b) of our rules, local exchange carriers with "annual operating revenues of $100 million or more" had to file cost allocation manuals with the Commission and "update [them] . . . at least quarterly," but changes to the cost apportionment table and to the description of time reporting procedures had to be filed at least 60 days before the carrier planned to implement the changes.

[54] 1996 Act, § 402(b)(2)(B).

[55] Order and Notice, 11 FCC Rcd at 11719 para. 6.

[56] Id.

[57] 47 C.F.R. § 64.903(b).

[58] Id.

proposed retaining the existing requirement for carriers to file proposed changes to their cost apportionment tables or proposed changes to their descriptions of time reporting procedures at least 60 days before such changes are implemented. Alternatively, we proposed eliminating opportunities for carriers to modify their cost allocation manuals between annual filings. This latter approach would require carriers to seek a waiver of our rules before implementing changes to their cost allocation manuals as filed. At paragraph 21, we invited comment on these proposed alternatives. In particular, we asked interested parties to discuss whether the proposed alternatives are consistent with section 402(b)(2)(B)'s mandate that we permit carriers to file CAMs on an annual basis.

Comments

23. AT&T, Cox and Sprint agree that the 60-day notice provision should be retained.[59] AT&T states that the Commission specified this advance notice requirement precisely because of the need for review of changes to cost categories and allocation mechanisms and employee time reporting prior to those changes becoming effective.[60] According to AT&T, given the express prohibitions in the 1996 Act, it remains essential for the Commission to review and approve cost allocation procedures before they take effect.[61] Cox and Sprint contend that the 60-day notice provision enables the Commission to ensure that each carrier's CAM reflects the carrier's new ventures and changes in the carrier's accounting for existing ventures.[62] Sprint argues that the 60-day notice requirement promotes the 1996 Act's deregulatory national policy framework, which is designed to accelerate rapidly private sector deployment of advanced telecommunications[63] and that section 402(b)(2)(B) does not explicitly require that the 60-day notice period be eliminated.[64]

24. Bell Atlantic, BellSouth and Southwestern Bell argue that the 60-day notice requirement is contrary to the intent of the 1996 Act and should be eliminated because otherwise, incumbent local exchange carriers will be required to file revisions to their CAMs more

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59 Sprint Comments at 2; AT&T Reply at 2; Cox Reply at 4-5.

60 AT&T Reply at 2.

61 Id. at 3.

62 Sprint Comments at 2; Cox Reply at 5.

63 Sprint Comments at 2.

64 Id. But see Southwestern Bell Reply at 2.

frequently than on an annual basis.[65] Southwestern Bell contends that if the Commission continues requiring CAM changes on dates other than the date of the annual CAM filing, the burden of frequent CAM filings will be further increased, instead of being reduced as intended by the 1996 Act.[66] US West argues that there is no evidence that the 60-day waiting period for these types of amendments serves any useful purpose, and it should therefore be eliminated.[67]

25. BellSouth, Cincinnati Bell, Puerto Rico Telephone and USTA contend that retaining the 60-day notice period is contrary to the demands of a competitive market and would place incumbent local exchange carriers at a competitive disadvantage.[68] Puerto Rico Telephone states that during that two-month period, major changes could easily occur that would make the proposed CAM changes, and more importantly, the underlying operating changes, meaningless.[69] Cincinnati Bell contends that the 60-day notice requirement severely limits the speed at which a carrier may react to customer needs and places the carrier at a competitive disadvantage when compared to a new competitor.[70]

26. BellSouth and Puerto Rico Telephone state that allowing carriers to update their CAMs and report all changes once a year, with no requirement to provide interim updates when implementing changes, is most consistent with section 402(b)(2)(B).[71] Alternatively, Puerto Rico Telephone suggests that carriers be allowed to file and implement changes to their CAMs simultaneously.[72] This alternative would strike a compromise between the deregulatory demands of section 402(b)(2)(B) and the Commission's need to track changes in the allocation of carriers' costs. Similarly, Bell Atlantic argues that the Commission should permit carriers to implement changes that require CAM amendments at any time between annual filings without obtaining

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65 Bell Atlantic Comments at 2; BellSouth Comments at 4; GTE Comments at 2; US West Comments at 3; Southwestern Bell Comments at 2. See also USTA Comments at 6; Bell Atlantic Reply at 2.

66 Southwestern Bell Comments at 3. See also NYNEX Comments at 2.

67 US West Comments at 4.

68 BellSouth Comments at 4-5; Cincinnati Bell Comments at 3; Puerto Rico Telephone Comments at 5; USTA Comments at 7.

69 Puerto Rico Telephone Comments at 5.

70 Cincinnati Bell Comments at 3.

71 Puerto Rico Telephone Comments at 3; BellSouth Reply at 3. See also Southwestern Bell Comments at 4-5.

72 Puerto Rico Telephone Comments at 3-4.

waivers or filing formal CAM amendments in advance.[73] USTA states that the Commission should require that the CAM be updated on or before the last working day of the calendar year for all changes that were effective in that calendar year.[74] Under USTA's proposal, incumbent local exchange carriers could provide preliminary notification to the Commission staff of significant changes.[75]

27. Several parties suggest that the Commission retain a CAM change notice filing requirement, but that it be reduced from 60 days.[76] Pacific suggests that the notice period be shortened to 15 days.[77] NYNEX recommends that streamlined CAM filings could be provided on 15 days notice prior to implementation, but with a 60-day FCC Staff review period to reject the CAM changes if warranted.[78] Cincinnati Bell proposes that the Commission reduce the notice period to no longer than seven days, which is consistent with the new standard established in the Act for certain tariff changes to become effective.[79]

28. Bell Atlantic, BellSouth and Southwestern Bell suggest that the Commission replace the 60-day procedure with an informal cooperative process, whereby an incumbent local exchange carrier, at the time it implements such changes, would informally notify the Commission of any cost apportionment and time reporting changes via a letter to the Accounting & Audits Division of the Bureau.[80] GTE proposes a similar informal process whereby the carriers keep the staff informed, the staff offers its advice, and these activities lead to annual CAM submissions in a form that will satisfy the Commission's needs.[81]

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[73] Bell Atlantic Comments at 2.

[74] USTA Comments at 7. See also USTA Reply at 5.

[75] Id.

[76] Ameritech Comments at 2; Cincinnati Bell Comments at 4; NYNEX Comments at 2-3; Pacific Comments at 3-4.

[77] Pacific Comments at 3-4. Under Pacific's proposal, the Commission would list CAM filings in a proposed "CAM Revisions Public Reference Log," similar to the Tariff Transmittal Public Reference Log for tariffs. Parties would then report opposition to CAM changes within 10 calendar days of the publication of the CAM Revisions Public Reference Log; replies to oppositions would be due within 5 calendar days of the filing of oppositions.

[78] NYNEX Comments at 2-3.

[79] Cincinnati Bell Comments at 4.

[80] Southwestern Bell Comments at 5-6; Bell Atlantic Reply at 3; BellSouth Reply at 3-4. See also Southwestern Bell Reply at 3.

[81] GTE Comments at 1.

29. All responding parties oppose our proposal to prohibit CAM changes except on an annual basis and to require incumbent local exchange carriers to seek a waiver of the rules before implementing any changes.[82] NYNEX contends that prohibiting CAM changes except on an annual basis would appear to prevent carriers from introducing new nonregulated products or services except on an annual basis, thereby frustrating "rapid[ ] private sector deployment of advanced telecommunications and information technologies and services to all Americans..."[83] Southwestern Bell opposes the Commission's alternative to allow incumbent local exchange carriers to seek a waiver of the rules before implementing CAM changes because waivers are rarely considered in a timely fashion.[84] BellSouth contends that such a procedure is a waste of resources for both the carrier and the Commission and is inconsistent with section 402(b)(2)(B)'s requirement that carriers update their CAMs no more frequently than annually.[85] Ameritech argues that such a procedure would be more burdensome and costly than the existing rules, which would be inconsistent with the overall deregulatory thrust of the 1996 Act.[86] Cincinnati Bell argues that the waiver process provided for under this proposal is unduly burdensome, and unnecessarily restricts the introduction of new services.[87] USTA opposes the waiver process because it is time consuming.[88]

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[82] Ameritech Comments at 2; BellSouth Comments at 5; Cincinnati Bell Comments at 4; GTE Comments at 2; NYNEX Comments at 2; Pacific Comments at 2; Puerto Rico Telephone Comments at 4; Southwestern Bell Comments at 6-7; Sprint Comments at 2-3; USTA Comments at 7. See also BellSouth Reply at 4-5.

[83] NYNEX Comments at 2 (citation omitted).

[84] Southwestern Bell Comments at 6-7. See also Pacific Comments at 3.

[85] BellSouth Comments at 5. See also Ameritech Comments at 2-3; BellSouth Reply at 5.

[86] Ameritech Comments at 2-3. See also Sprint Comments at 2-3.

[87] Cincinnati Comments at 4. See also Puerto Rico Telephone Comments at 4.

[88] USTA Comments at 7.

Discussion

30. We find that a notice requirement is consistent with the 1996 Act. The formal amendment filings do not constitute CAMs; they are merely notice of CAM changes. We are unpersuaded by the argument of Bell Atlantic, BellSouth and Southwestern Bell that the 60-day notice requirement is contrary to the intent of the 1996 Act because it requires incumbent local exchange carriers to file revisions to their CAMs more than once a year. Carriers must submit notice only if they choose to amend or modify an existing CAM. If a carrier decides neither to offer a new product or service nor to change its existing accounting or time reporting systems, it has no duty to provide notice. For this reason, we conclude that the advance notice requirement is consistent with the intent of the 1996 Act.

31. We decline to adopt our alternate proposal to prohibit CAM changes unless waiver is first obtained. We agree with the commenting parties that such a proposal would be unduly burdensome to incumbent local exchange carriers. The commenters have persuaded us that this alternate proposal would create unnecessary regulation and potentially slow the process by which incumbent local exchange carriers can offer new products and services.

32. The purpose of the Commission's 60-day notice requirement is to ensure that each carrier's cost allocation and time reporting procedures reflect the carrier's current accounting practices and to give the Bureau and third parties an adequate period to review CAM changes and offer comments. Despite recent and expected changes in the industry due to increased competition, this purpose remains valid.[89] Accordingly, we adopt our proposal to retain a notice period for a carrier to make changes to its CAM. We conclude, however, that we should shorten the notice period.

[89] The 1996 Act prohibits the Bell operating companies, or, in some cases, all incumbent local exchange carriers, from using their telephone exchange service and exchange access operations to subsidize their competitive ventures. See, e.g., 47 U.S.C. §§ 254(k), 260(a)(1), 272(b)(5), 272(c)(2), 274(b)(4), 275(b)(2), and 276(a)(1). As we explained in the Accounting Safeguards Order, we believe that Congress's primary intent in prohibiting this subsidization was to protect subscribers to regulated services from increased rates. Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order, CC Docket No. 96-150, FCC 96-490, paras. 24-25 (rel. Dec. 24, 1996). We developed our cost allocation rules to help ensure that interstate ratepayers do not bear the costs and risks of nonregulated activities. See, e.g. Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, Report and Order, CC Docket No. 86-111, 2 FCC Rcd 1298 para. 1, modified on recon., 2 FCC Rcd 6283 (1987), modified on further recon., 3 FCC Rcd 6701 (1988), aff'd sub nom. Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990). Because a carrier's cost allocation manual describes how it separates the costs of regulated from those of nonregulated activities, it must be updated to reflect modifications to its nonregulated service offerings. Moreover, pursuant to Sections 201-205 of the Act, the Commission has a continuing obligation to ensure just, reasonable and non-discriminatory rates. The reporting requirements at issue here facilitate compliance with these sections.

33. As several parties have commented, retaining the 60-day period would place incumbent local exchange carriers at a competitive disadvantage. A lengthy notice period such as 60 days provides non-incumbent local exchange carriers with the knowledge of when incumbent local exchange carriers intend to introduce a new product or service, and with the time to respond accordingly. Therefore, after carefully considering the arguments of the parties, we have decided to shorten the notice period to 15 days. We believe that a 15-day period balances the interest of incumbent local exchange carriers in maintaining the ability to make rapid changes to their CAMs with the public interest in reviewing proposed changes prior to implementation. A 15-day notice period will provide the Bureau with sufficient time to determine whether further information is required to facilitate its review process and, if necessary, to issue a temporary stay until the carrier submits additional information concerning the proposed changes.

34. We also reject the proposal of Bell Atlantic, BellSouth and Southwestern Bell to replace the 60-day procedure with an informal cooperative process. As noted above, there remains a valid purpose in requiring incumbent local exchange carriers to report changes to their cost allocation and time reporting procedures prior to implementation. Giving carriers the option of providing this information would undermine our ability to review such changes.

35. We therefore retain the notice period requirement for CAM changes, but shorten it to 15 days. The 15-day period will begin to run upon receipt of the proposed CAM change filing by both the Office of the Secretary and the Common Carrier Bureau. Accordingly, carriers with annual revenues exceeding the threshold are required to serve proposed CAM changes on both the Office of the Secretary and the Bureau. Proposed CAM changes will be available for public comment immediately upon receipt by the Commission. Moreover, we retain the right to direct carriers to reverse CAM changes at any time, even after the 15-day notice period has concluded.

C. Inflation Adjustments

Background

36. Section 402(c) of the 1996 Act mandates that we "adjust the revenue requirements" of sections 32.11, 64.903, and Part 43 of our rules "to account for inflation as of the release date of the Commission's Report and Order in CC Docket No. 91-141, and annually thereafter."[90] Prior to the passage of the 1996 Act, our rules established a $100 million threshold in "annual revenues from regulated telecommunications operations" for the purpose of classifying carriers for accounting purposes.[91] In addition, section 64.903(a) of our rules required incumbent local exchange carriers with "annual operating revenues of $100 million or more" to file cost allocation manuals describing how they allocate costs between regulated and nonregulated activities[92] and imposing annual audit obligations on those incumbent local exchange carriers that must file a cost allocation manual.[93] Similarly, Part 43 of our rules required that "carriers having annual operating revenues in excess of $100 million" shall file certain reports with the Commission.[94]

37. The 1996 Act is silent with respect to the method we should use to adjust the thresholds for inflation. In the *Order and Notice*, we adopted interim rules to adjust those thresholds for inflation using a generally available inflation index, the Gross Domestic Product Chain-type Price Index (GDP-CPI).[95] We chose to rely on GDP-CPI rather than the Gross Domestic Product Price Index (GDP-PI) because the Bureau of Economic Analysis of the Department of Commerce, which produces both indices, considers the GDP-CPI to be a more accurate measure of price changes.[96] At paragraph 24 of the *Order and Notice*, we proposed

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90 1996 Act, § 402(c).

91 47 C.F.R. § 32.11.

92 Id. § 64.903(a).

93 Id. § 64.904(a).

94 Id. § 43.21(a).

95 Order and Notice 11 FCC Rcd at 11722 para. 10.

96 Id., citing Improved Estimates of the National Income and Product Accounts for 1959-95: Results of the Comprehensive Revision, Survey of Current Business, Jan/Feb. 1996, at 1-2, 19-20. The GDP-CPI utilizes chain-type annual-weighted indices to measure real output and prices. Id. As discussed in the Order and Notice, chain-type weighted indices represent an improvement over fixed-weighted indices, such as the GDP-PI, because they "eliminate distortions in the measurement of prices for periods beyond the base year that are found in fixed-weighted indices." Order and Notice, 11 FCC Rcd at 11729 para. 24.

making permanent these interim rules for measuring inflation. We also requested that commenters discuss alternative methods to measure inflation, such as an inflation index that is derived from a broad sample of economic sectors or designed to track relevant industry sectors.

38. We invited comment on how we should calculate the GDP-CPI value for the specific date, October 19, 1992, and in particular, on the method we adopted for doing this in our interim rules. We proposed that we adjust our fixed, $100 million and $75 million thresholds[97] for inflation by multiplying the fixed threshold by the ratio of the value of the annual GDP-CPI for the revenue year to the value of the GDP-CPI on October 19, 1992. We invited comment on these proposals.[98]

39. In the *Order and Notice*, we noted that revenue thresholds that are adjusted based on fourth quarter GDP-CPI values for the revenue year could not be determined until the Department of Commerce releases those GDP-CPI values in April of the following year. Consequently, we proposed amending our cost allocation manual filing requirements so that a carrier with operating revenues that equal or exceed the inflation adjusted threshold for the first time in that revenue year would file its initial cost allocation manual 90 days after our publication of the adjusted threshold for that year in the Federal Register. We proposed requiring such carriers to implement their initial annual cost allocation manual audit requirement in the calendar year following publication and to file the audit report on or before April 1 of the subsequent calendar year. We proposed amending our rules to require any carrier for which operating revenues first exceeded an adjusted threshold for a given year to begin filing reports required pursuant to Part 43 of our rules in the calendar year following our publication of that adjusted threshold in the Federal Register.[99] We invited comment on these proposals.

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[97] Pursuant to section 43.22(d), "[e]ach record carrier with operating revenues over $75 million for a calendar year shall file a letter showing selected income statement and balance sheet items for that year with the Common Carrier Bureau Chief." All other reporting and filing requirements are subject to the $100 million annual revenue threshold (adjusted annually for inflation).

[98] Order and Notice, 11 FCC Rcd at 11730 para. 25.

[99] For example, a carrier that first exceeds the annual revenue threshold for the 1998 calendar year must first implement its CAM procedures and begin data collection in 2000 and file ARMIS reports by April 1, 2001, assuming that the adjusted threshold had been published in the Federal Register during 1999.

Comments

40. We received limited comment on our proposed rules to account for inflation. Pacific supports the adoption of GDP-CPI for both the interim and final rules to adjust the revenue thresholds pursuant to section 402(c) of the 1996 Act.[100] No party objected to the proposals for adjusting for inflation presented in the *Order and Notice*.

Discussion

41. We adopt our proposed rules to account for inflation as presented in the *Order and Notice*. First, we make permanent our interim rule calling for use of the GDP-CPI to adjust the filing reporting threshold. As explained in the *Order and Notice*, the GDP-CPI reflects price changes in all sectors of the economy.[101] We choose to rely on the GDP-CPI rather than the GDP-PI, because the Bureau of Economic Analysis of the Department of Commerce, which produces both indices, considers the GDP-CPI a more accurate measure of price changes.[102]

42. Second, we make permanent our interim rules to adjust the revenue thresholds in our rules for inflation for the calendar year in which the revenues were recorded. We will adjust the revenue thresholds for inflation based on the annual average value of the Department of Commerce GDP-CPI for the revenue year relative to the value of the GDP-CPI on October 19, 1992. Thus, the inflation adjusted revenue thresholds for 1995, for example, apply to revenues recorded during the year ending December 31, 1995.[103]

43. Third, we make permanent our interim rules to adjust the revenue thresholds for inflation by multiplying the fixed revenue thresholds in our rules by the ratio of the annual value of the GDP-CPI in the revenue year to the October 19, 1992 GDP-CPI value, and rounding the result to the nearest $1 million. For the purposes discussed here, we calculated the value of the GDP-CPI index on October 19, 1992 to be 100.69.[104] In Appendix B of the *Order and Notice*, we calculated the GDP-CPI for 1993 as 102.6; for 1994 as 105.0; and for 1995 as 107.6 by using

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100 Pacific Comments at 5. See also AT&T Reply at 8-9.

101 Order and Notice, 11 FCC Rcd at 11721 para. 10.

102 See note 96, supra.

103 Based upon our experience with the rules being adopted in this Report and Order, the Commission may revisit the determination of the indexed revenue threshold or perhaps the commencement date for adjusting the revenue threshold for inflation.

104 See Order and Notice, 11 FCC Rcd 11747 Appendix B.

1992 as our base year. We then created ratios between the annual GDP-CPI figures and the GDP-CPI as of October 19, 1992 as indicated above. These ratios were multiplied by the original $100 million revenue threshold to adjust for inflation. Accordingly, we calculated the inflation-adjusted revenue threshold as $102 million for 1993; $104 million for 1994; and $107 million for 1995. We adopt these findings on a permanent basis and therefore raise the $100 million inflation-adjusted revenue threshold to $102 million for 1993; to $104 million for 1994; and to $107 million for 1995.

44. Fourth, we adopt our proposal to amend our cost allocation manual filing requirements so that a carrier with operating revenues that equal or exceed the inflation adjusted threshold for the first time would file its initial cost allocation manual 90 days after our publication of the adjusted threshold for that year in the Federal Register. Such carriers will implement their initial annual cost allocation manual audit requirement in the next calendar year, and the audit report must be filed on or before April 1 of the following calendar year. Similarly, we adopt our proposal to amend our rules to require any incumbent local exchange carrier, for which operating revenues first exceeded an adjusted threshold for a given year, to begin data collection for ARMIS reports pursuant to Part 43 of our rules in the calendar year following our publication of that adjusted threshold in the Federal Register.

D. Other Filings

1. Section 43.22 Quarterly Filings

Background

45. Section 402(b)(2)(B) of the 1996 Act provides that "[t]he Commission shall permit any common carrier . . . to file . . . ARMIS reports annually, to the extent such carrier is required to file such . . . reports."[105] Section 43.22 of our rules, "Quarterly reports of communication common carriers," requires filing of two reports.[106] One of these is an ARMIS report for which we now require annual, rather than quarterly, filing.[107] Section 43.22 also requires a second quarterly report to be filed by "designated interstate carrier[s]" with annual operating revenues above a defined threshold (the Interstate Carrier Quarterly Report).[108]

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105 1996 Act, § 402(b)(2)(B).

106 47 C.F.R. § 43.22.

107 See Order and Notice, 11 FCC Rcd 11718 para. 4.

108 47 C.F.R. § 43.22(b).

46. Although section 402(b)(2)(B) of the 1996 Act does not direct us to change the filing requirements for the Interstate Carrier Quarterly Report, at paragraph 36 of the *Order and Notice* we proposed amending our rules to require that this report be filed annually, on or before April 1. Consequently, we directed the Common Carrier Bureau to make any changes to the form and content of this report necessary to accommodate the change from quarterly to annual filing. We received no comment on this proposal.

Discussion

47. We adopt our proposal to permit carriers to file the Interstate Carrier Quarterly Report on an annual basis. This report must now be filed on or before each April 1. The annual filing of this report now corresponds with the annual filing requirement for all ARMIS reports. The modified rule appears in Appendix B of this *Order*.

2. Section 43.21 Annual Filings

Background

48. Section 43.21 of our rules requires communications common carriers that maintain separate "departments or divisions" for carrier operations and noncarrier activities to file separate annual supplemental reports that show how the consolidated report required pursuant to subsection 43.21(a) has been developed.[109] Previously, only AT&T, on behalf of its General and Long Lines divisions, submitted such supplemental reports. Neither AT&T nor the Bell Operating Companies currently operate pursuant to the "departments or divisions" model contemplated in Section 43.21(b). At paragraph 38 of the *Order and Notice*, we tentatively concluded that section 43.21(b) should be deleted from our rules. We sought comment on this tentative conclusion.

49. The remaining annual reporting requirements of section 43.21 of our rules require some reports to be filed by April 1 and others by March 31.[110] At paragraph 39, we proposed changing the current March 31 filing date to April 1 for annual reports filed pursuant to sections 43.21(a) and 43.21(d) of our rules.[111] We invited comment on this proposal.

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[109] Id. § 43.21(b).

[110] See id. §§ 43.21(a), (d) (establishing filing dates of March 31); §§ 43.21(e), (f) (establishing filing dates of April 1).

[111] This proposal would not affect the filing date for annual report Forms 10-K (or any superseding form) pursuant to Section 43.21(c), which will continue to be filed annually, not later than the date prescribed by the Securities and Exchange Commission.

Comments

50. All responding parties support our proposal to eliminate the reporting requirement contained in section 43.21(b) that provides that supplemental information be submitted by carriers that maintained separate departments or divisions for carrier and noncarrier operations.[112] Southwestern Bell concurs with our proposal to change the filing date for the remaining section 43.21 annual reports to April 1.[113]

Discussion

51. We adopt our proposals in the *Order and Notice* regarding section 43.21. First, we eliminate the section 43.21(b) supplemental report. As stated above, because no carrier currently files this report and we do not anticipate requiring a carrier to file this supplemental report in the foreseeable future, we believe this requirement is unnecessary. Second, we change the filing date for the remaining section 43.21 reports to April 1. In this way, we will coordinate the filing dates of the remaining section 43.21(b) reports with the Part 43 ARMIS reports.

[112] Ameritech Comments at 3; Southwestern Bell Comments at 9; USTA Comments at 9.

[113] Southwestern Bell Comments at 9.

E. Carriers Subject to These Filing Requirements

Background

52. In this section, we clarify which local exchange carriers will be subject to the modified filing requirements adopted in this *Order*. Under our current rules, local exchange carriers with annual operating revenues of $107 million or more must file cost allocation manuals[114] and ARMIS reports[115] with the Commission. Our rules do not differentiate between incumbent and non-incumbent local exchange carriers with regard to these filing requirements because this distinction did not exist prior to the passage of the 1996 Act.[116] We now must address whether both incumbent and non-incumbent local exchange carriers are subject to the CAM and ARMIS filing requirements. A number of parties, including AT&T and Teleport, request that we confirm that these new CAM and ARMIS filing requirements will only apply to incumbent local exchange carriers.[117] AT&T and Teleport believe that the reporting requirements should not be imposed upon non-incumbent local exchange carriers because they do not possess bottleneck facilities and thus have no ability to engage in unlawful cross-subsidization regardless of whether their annual company operating revenues exceed the prescribed threshold.[118] Cox and Teleport state that if the Commission does contemplate imposing certain reporting requirements on competitive local exchange carriers, then it must initiate and complete a separate rulemaking to investigate such a course of action.[119] Bell Atlantic, Southwestern Bell and USTA argue that our CAM and ARMIS filing requirements should apply to all local exchange carriers, including non-incumbent local exchange carriers, once their revenues surpass the necessary threshold.[120]

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114 See 47 C.F.R. § 64.903(a), (b).

115 See 47 C.F.R. §§ 43.21, 43.22.

116 See 47 U.S.C. § 251(h) for a definition of "incumbent local exchange carrier."

117 Teleport Comments at 2-4; AT&T Reply at 8.

118 Teleport Comments at 4; AT&T Reply at 8. See also Teleport Reply at 2.

119 Teleport Comments at 4-5. See also Cox Reply at 7; Teleport Reply at 3.

120 Bell Atlantic Reply at 4; Southwestern Bell Reply at 4-5; USTA Reply at 3-4. See also ATU Comments at 3-6. Specifically, Bell Atlantic argues that the Commission should apply the CAM and ARMIS reporting rules to all carriers--not just incumbent local exchange carriers--so long as their revenues exceed the reporting threshold. Bell Atlantic Reply at 4. Southwestern Bell contends that the rules do not distinguish between incumbent local exchange carriers and non-incumbent local exchange carriers, and that non-incumbent local exchange carriers should therefore be subject to the same requirements as incumbent local exchange carriers. Southwestern Bell Reply at 4-5. USTA

Discussion

53. We clarify that only incumbent local exchange carriers are subject to our CAM and ARMIS filing requirements once their revenues surpass the necessary threshold.[121] The CAM and ARMIS reports enable us to monitor whether all costs have been properly allocated to regulated and nonregulated products and services. Our interest in verifying that costs have not been improperly allocated is not germane for any carrier that does not provide a telecommunications service for which either the retail rates or the rate of return is regulated.[122]

54. We note that our decision here not to impose our filing requirements on non-incumbent local exchange carriers does not require a separate rulemaking proceeding. Generally, before promulgating a rule, an agency is required to publish general notice of its proposal in the Federal Register unless those subject to the rule are actually named and either personally served or have actual notice.[123] Section 553(b)(A) of the Administrative Procedures Act (APA), however, makes an exception to the general notice requirement for "interpretative rules."[124] We find that our determination here that non-incumbent local exchange carriers are not subject to our CAM and ARMIS filing requirements is merely interpretative in nature.[125] Our clarification that our filing requirements do not apply to non-incumbent local exchange carriers does not represent

states that requiring only incumbent local exchange carriers to file CAMs and ARMIS reports is contrary to the development of fair competition. USTA Reply at 3-4.

[121] Similarly, non-incumbent local exchange carriers are not subject to the filing requirements established in section III.D. of this Order.

[122] We note that our decision not to require new, small local exchange carriers to comply with these filing and reporting requirements is consistent with Section 257 of the 1996 Telecommunications Act, 47 U.S.C. § 257. That section requires, among other things, that the Commission eliminate market entry barriers for small businesses in the ownership and operation of telecommunications services and information services. Id. at § 257(a). The Commission issued a Notice of Inquiry in May 1996 to begin implementing Section 257. See Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Notice of Inquiry, GN Docket No. 96-113, 11 FCC Rcd 6280 (1996).

[123] 5 U.S.C. § 553(b).

[124] Id. § 553(b)(A).

[125] Admittedly, there is "no bright line that separates" interpretive and substantive rules. Friedrich v. Secretary of Health, 894 F.2d 829, 834 (6th Cir.), cert. denied, 498 U.S. 817 (1990). The courts have ruled that "an interpretative rule simply states what the administrative agency thinks the statute means, and only 'reminds' affected parties of existing duties." First National Bank of Lexington v. Sanders, 946 F.2d 1185, 1188 (6th Cir. 1991), citing Friedrich v. Secretary of Health, 894 F.2d at 834.

a change in an existing rule nor the adoption of a new rule, but merely explains our position on a subject about which our rules were previously silent.[126] As such, a separate rulemaking proceeding is not necessary.

F. Other Matters

55. In the *Order and Notice*, we stayed our Part 43 reporting requirements to the extent that they are currently imposed upon carriers that first crossed the revenue threshold in 1996.[127] In addition, we stayed our rule requiring each carrier to file a CAM within 90 days of first reaching the operating revenue threshold to the extent that the rule would first apply to a carrier because of its 1996 operating revenues.[128] Because this *Order* establishes permanent rules for adjusting the revenue thresholds for inflation, these stays are lifted. In accordance with the rules established in this *Order*, once the revenue threshold for 1996 is published in the Federal Register,[129] carriers with operating revenues exceeding the threshold for the first time must begin compliance with our filing and reporting requirements as indicated herein.[130]

IV. ATU'S PETITION AND PROPOSALS TO INCREASE THE REPORT FILING THRESHOLD

Background

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[126] See Metropolitan School Dist. of Wayne Township v. Davila, 969 F.2d 485, 489-92 (7th Cir. 1992) (holding that an expression of agency opinion on a subject never before considered may be interpretive when the agency's ruling does not constitute a change in policy); Southern California Edison Co. v. Federal Energy Regulatory Comm'n, 770 F.2d 779, 783 (9th Cir. 1985) (holding that "[i]nterpretative rules merely clarify or explain existing law or regulations" and go "to what the administrative officer thinks the statute or regulation means") (citations omitted).

[127] Order and Notice, 11 FCC Rcd para. 15. Furthermore, in an earlier Memorandum Opinion and Order, the Bureau temporarily stayed the dates for filing of future ARMIS reports for those companies that had not begun to file ARMIS reports by June 30, 1995. Because this Order clarifies the criteria for filing ARMIS reports, this stay is lifted. Memorandum and Order, 10 FCC Rcd 13470 (Com. Car. Bur. 1995).

[128] Id.

[129] We expect that the revenue threshold for 1996 will be published in or about April 1997.

[130] In another proceeding, the Bureau stayed the filing of ARMIS reports for those companies that have not yet begun filing such reports, "pending issuance of an order clarifying the criteria for filing ARMIS reports." Memorandum Opinion and Order, 10 FCC Rcd 13470 (Com. Car. Bur. 1995). Because these criteria have been clarified in this *Order*, this stay is lifted as well.

56. On June 22, 1995, ATU filed a "Petition for a Declaratory Ruling, or in the Alternative, for Waiver or Rule Making," requesting a determination that incumbent local exchange carriers with more than $100 million in annual operating revenues, but less than $100 million in annual revenues from regulated telecommunications operations, were not subject to our ARMIS filing requirements.[131] In support of its petition, ATU cited discrepancies between statements in previous Commission orders to the effect that only Tier 1 local exchange carriers were required to file such reports and Sections 43.22 and 43.21(f) of our rules requiring filing by local exchange carriers with annual operating revenues of $100 million or more.[132]

57. At the same time, ATU also filed a "Petition for an Extension of Time" requesting an extension for the filing of its initial ARMIS 43-01 report "until at least 90 days after the Commission resolves [its] Petition for Declaratory Ruling, or in the [A]lternative for Waiver or Rule Making, filed [June 22, 1995]."[133] On June 30, 1995, in response to ATU's filings and to requests from other incumbent local exchange carriers for clarification concerning the timing or applicability of our ARMIS report filing rules, the Bureau stayed the dates for the filing of future ARMIS reports for those carriers that had not yet begun filing such reports.[134]

58. In the *Order and Notice*, we explained that continuing to require ARMIS reports from those incumbent local exchange carriers for which annual operating revenues, both regulated and nonregulated, exceed a defined, inflation-adjusted threshold is necessary to provide us with the financial and operating data we need to administer our accounting, cost allocation, jurisdictional separations, and access charge rules, and to preserve our ability to monitor industry

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131 Letter from Paul J. Berman and Alane C. Weixel, Covington & Burling, to William F. Caton, Acting Secretary, FCC, at 4-5 (June 22, 1995).

132 See, e.g., id. at 5-8 (discussing Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6833-34 paras. 381-383 (1990), modified on recon., Order on Reconsideration, 6 FCC Rcd 2637 (1991), aff'd sub nom. National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993); Elimination of FCC Form 901, Monthly Form Required from Telephone Companies, CC Docket No. 87-503, Report and Order, 3 FCC Rcd 6261 para. 1 & n.2 (1988); ARMIS Order, supra note 13 paras. 24-25; Waiver of FCC Form 901, Monthly Form Required from Telephone Companies, Memorandum Opinion and Order, 3 FCC Rcd 567 (Com. Car. Bur. 1988)). For tariff review purposes, the term "Tier 1 local exchange carrier" has traditionally referred to a company having annual revenues from regulated operations of $100 million or more. For accounting purposes, the Commission uses the terms "Class A" and "Class B" companies as defined in section 32.11(a)(1) and (2) of the Commission's rules to differentiate between large and small carriers. 47 C.F.R. §§ 32.11(a)(1), (2).

133 Letter from Paul J. Berman and Alane C. Weixel, Covington & Burling, to William F. Caton, Acting Secretary, FCC, at 4-5 (June 22, 1995) (regarding Extension of Time for FCC ARMIS Form 43-01).

134 DA 95-1488, Memorandum Opinion and Order, 10 FCC Rcd 13470 (Com. Car. Bur. 1995).

developments and quantify the effects of alternative regulatory proposals.[135] Otherwise, detection of improper subsidization of nonregulated services in violation of our cost allocation rules, a Commission responsibility explicitly imposed by the 1996 Act, would be impaired by a reporting requirement threshold based solely on regulated revenues.[136]

59. Although we believed that our rules in this area were clearly stated, we decided "to reevaluate whether these reporting requirements should apply only to those incumbent local exchange carriers for which annual revenues from regulated telecommunications operations exceed a defined, inflation-adjusted threshold."[137] We tentatively concluded that we should continue to require only those companies with annual operating revenues equal to or exceeding a defined, inflation-adjusted threshold to file ARMIS reports. Accordingly, we granted ATU's petition for rulemaking to consider these issues, and dismissed ATU's petition to the extent that it makes alternative requests for declaratory ruling or waiver.

60. On October 15, 1996, ATU filed a Petition for Reconsideration of the Commission's decision denying ATU's petition for declaratory ruling or waiver. Specifically, ATU argues that a "rational connection" between the Commission's analysis and the rules adopted is lacking.[138] ATU claims that the Commission's rules state that local exchange carriers with annual operating revenues of $100 million must file certain ARMIS reports, but the order adopting these rules does not provide any explanation for the $100 million threshold.[139] Accordingly, it asserts, applying ARMIS reporting requirements to ATU--a non-Tier 1, non-Class A local exchange carrier--is "arbitrary and capricious and contrary to the public interest."[140]

61. Tier 1 local exchange carriers have been defined as "those companies having more than $100 million in total company regulated revenues, as determined by the 1984 Annual Statistical Volume II of the USTA Statistical Reports of Class A and B telephone companies for

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135 ARMIS reports have been a valuable source of cost information to the Commission in its evaluation of tariffs filed under rate-of-return regulation. Cost information from these reports has also played an important role in tariff investigations, certain rulemakings concerning cost issues, and in the evaluation of exogenous cost adjustments under the price cap rules (for example, in determining the cost effects of property transfers).

136 For a discussion of the accounting safeguards required by the 1996 Act, see Accounting Safeguards Notice, supra note 87.

137 Notice para. 31.

138 ATU Petition for Reconsideration at 2.

139 Id. at 2-3.

140 Id. at 3. See also ALLTEL Reply at 2.

the year 1983."[141] The classification of carriers into "Tier 1" and "Tier 2" began in 1985 for the tariff review process. In the 1990 Tariff Review Plan, however, the definition of "Tier 1" was modified to equate "Tier 1" companies with "Class A" companies and "Tier 2" companies with "Class B" companies, as defined by section 32.11(a) and 32.11(e) of our rules.[142] In the *Order and Notice*, we concluded that, by limiting ARMIS reporting requirements to Tier 1 local exchange carriers, we would impair our ability to collect financial and operating data reflecting the present structure of the telecommunications industry, including the widespread growth of nonregulated activities since 1983.[143] At paragraph 33, we tentatively concluded that we should continue to require ARMIS report filings by those carriers with annual operating revenues equal to or above a defined, inflation-adjusted threshold. We invited comment on these tentative conclusions and, specifically, requested comment on alternative rule proposals.

Comments

62. ATU argues that it should not be required to comply with our CAM and ARMIS reporting requirements because it "stands on the cusp" of the filing revenue threshold, as its operating revenues were $107,309,169 for 1994 and approximately $107,900,000 for 1995.[144] Moreover, due to "impending competition in local exchange services and continued competition in deregulated services," ATU predicts that there is a reasonable likelihood that its revenues for 1996 or 1997 may fall below the required reporting, filing, and auditing threshold.[145] For this reason, ATU fears that it will be required to incur the expense of learning how to prepare ARMIS reports and support a CAM audit for 1994 and 1995, only to find that any experience and expertise with these matters will not be necessary or useful in the future.[146] ATU contends that, because it accounts for only one tenth of 1% of access lines nationwide, there is little if any benefit from forcing ATU to comply with the ARMIS and CAM filing and auditing requirements.[147]

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[141] Commission Requirements for Cost Support Material to Be Filed with 1990 Annual Access Tariffs, Order, 5 FCC Rcd 1364 para. 3 (Com. Car. Bur. 1990). See also Commission Requirements for Cost Support Material to Be Filed with 1989 Annual Access Tariffs, Order, 4 FCC Rcd 1662, 1663 para. 10 (Com. Car. Bur. 1988); ARMIS Order, supra note **Error! Bookmark not defined.**, at 5844 n.4.

[142] Commission Requirements for Cost Support Material to Be Filed with 1990 Annual Access Tariffs, Order, 5 FCC Rcd 1364 para. 4 (Com. Car. Bur. 1990).

[143] Order and Notice para. 33.

[144] ATU Comments at 11. In section III.C., supra, we determine that the inflation-adjusted revenue threshold was $104 million for 1994 and $107 million for 1995.

[145] ATU Comments at 13.

[146] Id. at 13. ATU estimates that these requirements would add approximately $500,000 annually in new

63. Because of these concerns, ATU proposes that the ARMIS reports and CAM filings and audits only be required for local exchange carriers with more than 2% of access lines nationwide.[148] ATU argues that if the Commission adopts a reporting threshold based on access lines, all smaller local exchange carriers will be exempt from regulatory burdens that will inhibit their ability to compete.[149] The premise of ATU's argument is that there cannot be a critical need for ARMIS and CAM information from carriers on the cusp of the Commission's reporting threshold. It adds that as competition increases, total operating revenues of incumbent local exchange carriers will likely decline. Thus, ATU argues, those carriers "on the cusp" of the reporting threshold may be required to prepare ARMIS and CAM filings some years and not others. ATU asserts that such fluctuating reporting requirements will undermine the Commission's claim that information from these carriers is necessary.[150]

64. Similarly, USTA argues that the Commission should "forbear from applying its CAM rules and ARMIS reporting requirements for those companies with less than [2%] of the [n]ation's subscriber lines installed in the aggregate nationwide."[151] According to USTA, such an increased threshold would recognize that the nine largest local exchange carriers together provide approximately 90% of the access lines provided by local exchange carriers throughout the United States.[152] Moreover, "[g]iven the increase in competition, there is even less reason to require the CAM today for any [local exchange carrier]."[153] According to USTA, modifying the threshold to 2% of the access lines will promote competition by reducing any disparity in regulatory treatment among local exchange carriers and their competitors.[154]

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expenses starting as early as next year. See id. at 11.

147 Id. at 13.

148 Id. at 14. ATU bases its proposed 2% figure on the language of section 251(f) of the Act, which requires that incumbent local exchange carriers with less than two percent of access lines may petition for suspension or modification of the expanded interconnection, unbundling and other statutory requirements on incumbents. Id. See also Cincinnati Bell Comments at 6; ALLTEL Reply at 3-4; Citizens Reply at 2.

149 ATU Reply at 1. See also Cincinnati Bell Comments at 6-7.

150 Id. at 4.

151 USTA Comments at 4.

152 Id.

153 Id. at 5.

154 Id. at 5.

65. GCI maintains that our CAM and ARMIS filing requirements must apply to ATU and other similarly-situated carriers.[155] GCI asserts that these CAM and ARMIS requirements are imposed on carriers such as ATU to ensure that they do not use their monopoly local exchange business to cross-subsidize and support their competitive businesses. GCI adds that because "local exchange carriers such as ATU can enter the long distance business at any time, it is important that they meet the filing requirements for CAM and ARMIS" outlined in the *Order and Notice*.[156] GCI further states that ATU's proposal for the Commission to impose its reporting requirements only on carriers with more than 2% of the access lines is inconsistent with the intent of the 1996 Act because it specifically states that the requirement for filing should be based on an inflation factor over the $100 million threshold.[157]

66. Several commenters argue that the reporting threshold should remain based on revenue, but be raised.[158] USTA contends that the Commission could raise the threshold to $250 million as an alternative to 2% of the access lines.[159] Southwestern Bell agrees, adding that the revenue threshold should be based only on the carrier's regulated revenues, which would minimize the burden of the Commission's filing requirements on those entities that have made only relatively small entries into the local exchange market.[160]

67. AT&T argues that the Commission should not adopt USTA's proposals for revising the filing thresholds for CAM and ARMIS reports.[161]

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155 GCI Reply at 4.

156 Id.

157 Id. at 4-5.

158 USTA Comments at 5 n. 6; Southwestern Bell Reply at 7. But see ALLTEL Reply at 1-3 for a discussion of perceived fundamental defects in the revenue standard.

159 USTA Comments at 5 n. 6.

160 Southwestern Bell Reply at 7.

161 AT&T Reply at 5-6.

Discussion

68. In the *Order and Notice*, we tentatively concluded that our reporting requirements should continue to be based on total, and not solely regulated, operating revenues.[162] The purpose of our cost allocation rules is to ensure that costs associated with nonregulated operations are not shifted to ratepayers purchasing regulated services. Our cost allocation rules apply to carriers' total costs; therefore, it is appropriate that total costs be used to calculate the reporting requirement threshold. Accordingly, we will continue to require carriers to comply with our filing requirements once their total operating revenues surpass the applicable threshold level.

69. We do not agree that we should look to the language of section 251(f) of the Act when establishing a CAM and ARMIS filing threshold. Section 251(f) concerns the process for local exchange carriers to petition for suspension or modification of certain obligations, including restrictions on resale of its telecommunications services, the duty to provide dialing parity to competitors, and the duty to provide interconnection at just, reasonable and nondiscriminatory rates. This section has no application to the CAM and ARMIS filing threshold and therefore does not affect our decisions on this matter.[163] Moreover, we are unpersuaded that we should modify our threshold level by adopting a standard that reflects a percentage of the nation's access lines. Under such an approach, it would be necessary to determine the total number of access lines in use on an annual and expedited basis. Otherwise, carriers "on the cusp" of the access line filing threshold could not determine whether they are subject to our reporting requirements for a particular year. Moreover, in the past we have discovered discrepancies among carriers in interpreting the definition of "access line." Clearly, the simpler approach is to retain a standard based on operating revenue.[164]

70. We require some carriers to file CAMs and ARMIS reports to satisfy our interests in protecting ratepayers from improper cost allocations, and to ensure a base level of service quality. We established a filing threshold of $100 million because we found that for carriers with annual revenues at this level, the benefits of requiring compliance outweighed the burdens that compliance imposed upon them. We find again that, for carriers with annual revenues in excess of this threshold (adjusted for inflation), the benefits to ratepayers outweigh the costs to those carriers of requiring compliance with these reporting rules. Therefore, we retain our filing threshold of $100 million, as adjusted annually for inflation.

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162 Order and Notice para. 32.

163 See GCI Reply at 5.

164 In addition, there is insufficient notice in this proceeding to adopt a threshold based on access line use.

71. Given the conclusions we reach in this rulemaking proceeding, we find it appropriate to reexamine ATU's petition for waiver of its obligation to comply with ARMIS reporting requirements and to file with the Commission a CAM for the separation of costs of its regulated and nonregulated activities. A petition for waiver of the Commission's rules may be granted for good cause shown.[165] The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.[166] The U.S. Court of Appeals for the D.C. Circuit has stated that waivers permit a more rigorous adherence to an effective regulation by allowing the agency to take into account considerations of hardship, equity, or more effective implementation of overall policy on an individualized basis, while also emphasizing that "[a]n applicant for waiver faces a high hurdle even at the starting gate."[167] In *WAIT Radio*, the court explained that "[t]he very essence of a waiver is the assumed validity of the general rule . . . ."[168] Given the validity of the rule, the test identified in *WAIT Radio* requires the party seeking the waiver to demonstrate that the rule is unjust as applied to the party given the unique circumstances of the situation.[169] A waiver is thus appropriate only if special circumstances warrant a deviation from the general rule and such deviation will better serve the public interest than strict adherence to the general rule.[170] Therefore, the relevant test is whether petitioner has shown such special circumstances as individualized hardship or inequity that warrant deviation from our rule that incumbent local exchange carriers must comply with our reporting and filing requirements once their annual revenues surpass the adjusted threshold.

72. We find that ATU's concern that it may be subject to our CAM and ARMIS reporting and filing requirements for only one year has some merit. The threshold was initially established at a level intended to determine clearly which carriers are subject to our reporting requirements. Currently, however, ATU's annual revenues barely exceed our filing and reporting threshold. Moreover, ATU has shown that there is a likelihood that its revenues will soon decrease once again to a level below the reporting and filing threshold. Under these unique circumstances, we find that there is good cause shown to waive ATU's compliance with our reporting requirements. The public interest will not be served by requiring ATU to incur

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165 See section 1.3 of the Commission's rules, 47 C.F.R. § 1.3.

166 Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

167 WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

168 WAIT Radio v. FCC, 418 F.2d at 1158.

169 See Northeast Cellular Tel. Co. v. FCC, 897 F.2d at 1166, citing WAIT Radio v. FCC, 418 F.2d 1153. See also Industrial Broadcasting Co. v. FCC, 437 F.2d 680 (D.C. Cir. 1970).

170 See Northeast Cellular Tel. Co. v. FCC, 897 F.2d at 1166.

substantial initial costs associated with training personnel and developing procedures designed to comply with our rules, when there is a likelihood that ATU will fall back below the reporting threshold within one or two years. We find that ATU has met its burden of showing special circumstances that warrant an exemption from our reporting and filing threshold by demonstrating that it would suffer individualized hardship should it be required to comply fully with our reporting and filing requirements for calendar years 1996 and 1997.

73. Neither the public interest generally nor the Commission's ARMIS reporting requirements will be undermined by a limited waiver granted to this one entity. This is especially true where that one entity, ATU, is the only one of which we are presently aware that is so close to the filing threshold, and the only one that has made a showing that it is likely to fall below the reporting requirement threshold in the coming year or two. We will limit the waiver grant to two years and will re-evaluate whether the waiver should continue based upon review of ATU's 1997 annual revenues. If, however, ATU's 1997 revenues exceed the revenue threshold, as adjusted for inflation, then it must comply with the reporting requirements beginning in 1998. Finally, we believe the waiver demonstrates flexibility in our regulatory approaches that advances the general deregulatory and pro-competitive goals of the 1996 Act. Consequently, we grant ATU a limited two-year waiver of our ARMIS reporting and filing requirements.

74. We note, however, that the initial CAM filed by ATU has revealed that the methodology it uses to allocate costs and record affiliate transactions is flawed.[171] Although only those carriers with annual revenues exceeding the threshold must file a CAM, the *Joint Cost Order* requires that all incumbent local exchange carriers, regardless of annual revenue, must comply with our cost allocation and affiliate transaction rules.[172] We require incumbent local exchange carriers to file a CAM to verify that they are in compliance with these rules. We cannot ignore ATU's failure to observe our rules and therefore decline to waive our CAM filing requirement. Accordingly, we will require that ATU file a CAM reflecting accounting procedures that are in compliance with our cost allocation and affiliate transaction rules. We find that the CAM filing process is much less burdensome than the ARMIS reporting requirements. Moreover, we believe that ATU can correct the flaws in its initial CAM without great expense or difficulty. Therefore, ATU must file a revised CAM incorporating the adjustments as discussed with Commission staff by April 30, 1997.[173] Six months after receiving final approval of its

[171] Specifically, ATU's treatment of certain nonregulated activities is not clearly stated. From the CAM, we are unable to determine whether certain nonregulated services are provided through ATU itself or through a separate affiliate. Moreover, several Part 32 accounts were inexplicably omitted from the CAM's cost apportionment tables.

[172] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, Report and Order, CC Docket No. 86-111, 2 FCC Rcd 1298, 1304 para. 47 (1987) (Joint Cost Order), recon., 2 FCC Rcd 6283 (1987) (Reconsideration Order), further recon., 3 FCC Rcd 6701 (1988) (Further Reconsideration Order), aff'd sub nom. Southwestern Bell Corp. v. FCC, 896 F. 2d 1378 (D.C. Cir. 1990).

[173] Over the past several weeks, ATU has worked closely with Common Carrier Bureau staff towards

CAM, ATU must submit a report by an independent auditor attesting that ATU's cost system in place in the company reflects the company's CAM requirements.

V. FINAL REGULATORY FLEXIBILITY CERTIFICATION

75. In the *Order and Notice*, the Commission certified that the proposed rules would not have a significant economic impact on a substantial number of small entities.[174] No comments were received concerning the proposed certification. For the reasons stated below, we certify that the rules adopted herein will not have a significant economic impact on a substantial number of small entities.[175] This certification conforms to the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).[176]

76. The *Order and Notice* certified that no regulatory flexibility analysis was required because the entities affected by the proposed rules were either large corporations, affiliates of such corporations, or were dominant in their field of operations and therefore not small entities.[177] Section 32.2000(a)(4), however, applies to all carriers providing interstate services, some of which may be small entities.[178] Although we consider small incumbent local exchange carriers to be dominant in their field of operations, we will include such companies in our regulatory flexibility analysis.[179] Consequently, we cannot certify that no regulatory flexibility analysis is required for the reasons offered in the *Order and Notice*.

77. Nonetheless, we believe that we may still certify that no regulatory flexibility analysis is necessary here because we do not believe the rules adopted in this *Order* will have a significant economic impact on the carriers that must comply with our filing and reporting requirements. This *Order* adjusts our filing and reporting threshold for inflation and allows carriers to file ARMIS

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correcting these problems.

[174] Order and Notice para. 47.

[175] 5 U.S.C. § 605(b).

[176] Id. §§ 601-611. SBREFA was enacted as Subtitle II of the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

[177] Order and Notice para. 42-4.

[178] The SBA defines small telecommunications entities as those having fewer than 1,500 employees. 15 C.F.R. § 121.201 SIC Code 4813 (Telephone Communications, Except Radiotelephone).

[179] See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Report and Order, paras. 1328-30, CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996).

reports on an annual basis. As such, it prevents additional carriers from becoming subject to these filing and reporting requirements solely due to the cumulative effect of inflationary pressure. It also reduces the regulatory burden on those carriers that must comply with our ARMIS filing requirements by allowing these reports to be filed only once per year. Accordingly, we do not believe the rules adopted or modified herein will have a significant economic impact on a significant number of small entities.

78. We therefore certify, pursuant to section 605(b) of the RFA, that the rules adopted in this Order do not have a significant economic impact on a substantial number of small entities. The Commission will publish this certification in the Federal Register, and shall provide a copy of this certification to the Chief Counsel for Advocacy of the SBA. The Commission will also include the certification in the report to Congress pursuant to the SBREFA.[180]

VI. PAPERWORK REDUCTION ACT

79. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and has been approved in accordance with the provisions of that Act. We have amended the existing rules only where we are certain that the existing rules will not fulfill the overall goals of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Second, in accordance with the overall policy underlying the 1996 Act, we will revisit these issues in the future to determine if our regulations are still necessary once competition increases.

VII. ORDERING CLAUSES

80. Accordingly, IT IS ORDERED that, pursuant to Sections 402(b)(2)(B) and 402(c) of the Telecommunications Act of 1996, Pub. L. No. 104-104, and Sections 1, 4, 201-205, 215, 218, 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(a), 154, 201-205, 215, 218 and 220, and Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B), Parts 32, 43, and 64 of the Commission's rules, 47 C.F.R. Parts 32, 43, and 64 ARE AMENDED, as described in Part III, above.

81. IT IS FURTHER ORDERED that, pursuant to Sections 402(b)(2)(B) of the Telecommunications Act of 1996, Pub. L. No. 104-104, and Sections 1, 4, 201-205, 215, 218, 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(a), 154, 201-205, 215, 218 and 220, the Petition for Reconsideration by Anchorage Telephone Utility IS DENIED.

[180] Id. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

List of Commenters in CC Docket No. 96-193

Ameritech Operating Companies (Ameritech)
Anchorage Telephone Utility (ATU)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation and BellSouth Telecommunications, Inc. (BellSouth)
Cincinnati Bell Telephone Company (Cincinnati Bell)
GTE Service Corporation and its affiliated domestic telephone operating, long distance and wireless companies (GTE)
MCI Telecommunications Corporation (MCI)
NYNEX Telephone Companies (NYNEX)
Pacific Bell and Nevada Bell (Pacific)
Puerto Rico Telephone Company (Puerto Rico Telephone)
Southwestern Bell Telephone Company (Southwestern Bell)
Sprint Corporation (Sprint)
Teleport Communications Group Inc. (Teleport)
U S West, Inc. (US West)
United States Telephone Association (USTA)

List of Reply Commenters in CC Docket No. 96-193

ALLTEL Telephone Services Corporation (ALLTEL)
ATU
AT&T Corp. (AT&T)
Bell Atlantic
BellSouth
Citizens Utilities Companies (Citizens)
Cox Communications, Inc. (Cox)
General Communication, Inc. (GCI)
Southwestern Bell
Teleport
USTA

Petitions for Reconsideration in CC Docket No. 96-193

ATU

APPENDIX B

Final Rules

Parts 32, 43 and 64 of Title 47 of the Code of Federal Regulations (C.F.R.) are amended to read as follows:

PART 32 -- UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 is revised to read as follows:

AUTHORITY: Secs. 4(i), 4(j), and 220, as amended; 47 U.S.C. 154(i), 154(j) and 220; Telecommunications Act of 1996, Pub. L. No. 104-104, sec. 402(c), 110 Stat. 56 (1996) unless otherwise noted.

2. Section 32.11 is amended by revising paragraphs (a) (1) and (2) to read as follows:

§ 32.11. Classification of companies.

(a) * * *

(1) Class A. Companies having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold.

(2) Class B. Companies having annual revenues from regulated telecommunications operations that are less than the indexed revenue threshold.

(b) * * *

(c) * * *

(d) * * *

(e) * * *

3. Section 32.9000 is amended by adding the definition of "indexed revenue threshold for a given year" in alphabetical order to read as follows:

§ 32.9000. Glossary of terms.

Indexed revenue threshold for a given year means $100 million, adjusted for inflation, as measured by the Department of Commerce Gross Domestic Product Chain-type Price Index ("GDP-CPI"), for the period from October 19, 1992 to the given year. The indexed revenue threshold for a given year shall be determined by multiplying $100 million by the ratio of the annual value of the GDP-CPI for the given year to the estimated seasonally adjusted GDP-CPI on October 19, 1992. The indexed revenue threshold shall be rounded to the nearest $1 million. The seasonally adjusted GDP-CPI on October 19, 1992 is determined to be 100.69.

PART 43 -- REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for Part 43 is revised to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. No. 104-104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) unless otherwise noted. Interpret or apply secs. 211, 219, 220, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.01 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 43.01. Applicability.

(a) * * *

(b) Except as provided in paragraph (c) of this section, carriers becoming subject to the provisions of the several sections of this part for the first time, shall, within thirty (30) days of becoming subject, file the required data as set forth in the various sections of the part.

(c) Carriers becoming subject to the provisions of §§ 43.21 and 43.43 for the first time, because their annual operating revenues equal or exceed the indexed revenue threshold for a given year, shall begin collecting data pursuant to such provisions in the calendar year following the publication of that indexed revenue threshold in the Federal Register. With respect to such initial filing of reports by any carrier, pursuant to the provisions of § 43.21(d), (e), (f), (g), (h), (i), (j), and (k), the carrier is to begin filing data for the calendar year following the publication of that indexed revenue threshold in the Federal Register by April 1 of the second calendar year following publication of that indexed revenue threshold in the Federal Register.

3. Section 43.21 is amended by revising the first two sentences of paragraph (a), removing paragraph (b), revising paragraph (c), revising paragraph (d), revising the introductory text of paragraph (f), revising paragraph (g), redesignating paragraphs (c) through (g) as paragraphs (b) through (f), and adding new paragraphs (g), (h), (i), (j), and (k) to read as follows:

§ 43.21. Annual reports of carriers and certain affiliates.

(a) Communication common carriers having annual operating revenues in excess of the indexed revenue threshold, as defined in § 32.9000, and certain companies (as indicated in paragraph (b) of this section) directly or indirectly controlling such carriers shall file with the Commission annual reports or an annual letter as provided in this section. Except as provided in paragraph (b) of this section, each annual report required by this section shall be filed no later than April 1 of each year, covering the preceding calendar year. * * *

(b) Each company, not itself a communication common carrier, that directly or indirectly controls any communication common carrier that has annual operating revenues equal to or above the indexed revenue threshold, as defined in § 32.9000, shall file annually with the Commission, not later than the date prescribed by the Securities and Exchange Commission for its purposes, two complete copies of any annual report Forms 10-K (or any superseding form) filed with that Commission.

(c) Each miscellaneous common carrier (as defined by § 21.2 of this chapter) with operating revenues for a calendar year in excess of the indexed revenue threshold, as defined in § 32.9000, shall file with the Common Carrier Bureau Chief a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. This letter must be filed no later than April 1 of the following year. Those miscellaneous common carriers with annual operating revenues that equal or surpass the indexed revenue threshold for the first time may file the letter up to one month after publication of the adjusted revenue threshold in the Federal Register, but in no event shall such carriers be required to file the letter prior to April 1.

(d) * * * [Formerly 43.21(e)]

(e) Each local exchange carrier with annual operating revenues equal to or above the indexed revenue threshold shall file, no later than April 1 of each year, reports showing:

(1) * * *

(2) * * *

(3) * * *

(f) Each local exchange carrier with operating revenues for the preceding year that equal or exceed the indexed revenue threshold shall file, no later than April 1 of each year, a report showing for the previous calendar year its revenues, expenses, taxes, plant in service, other investment and depreciation reserves, and such other data as are required by the Commission, on computer media prescribed by the Commission. The total operating results shall be allocated between regulated and nonregulated operations, and the regulated data shall be further divided into the following categories: State and interstate, and the interstate will be further divided into common line, traffic sensitive access, special access and nonaccess.

(g) Each local exchange carrier for whom price cap regulation is mandatory and every local exchange carrier that elects to be covered by the price cap rules shall file, by April 1 of each year, a report designed to capture trends in service quality under price cap regulation. The report shall contain data relative to network measures of service quality, as defined by the Common Carrier Bureau, from the previous calendar year on a study area basis.

(h) Each local exchange carrier for whom price cap regulation is mandatory shall file, by April 1 of each year, a report designed to capture trends in service quality under price cap regulation. The report shall contain data relative to customer measures of service quality, as defined by the Common Carrier Bureau, from the previous calendar year on a study area basis.

(i) Each local exchange carrier for whom price cap regulation is mandatory shall file, by April 1 of each year, a report containing data from the previous calendar year on a study area basis that are designed to capture trends in telephone industry infrastructure development under price cap regulation.

(j) Each local exchange carrier with annual operating revenues that equal or exceed the indexed revenue threshold shall file, no later than April 1 of each year, a report containing data from the previous calendar year on an operating company basis. Such report shall contain statistical data designed to monitor network growth, usage, and reliability.

(k) Each designated interstate carrier with operating revenues for the preceding year that equal or exceed the indexed revenue threshold shall file, no later than April 1 of each year, a report showing for the previous calendar year its revenues, expenses, taxes, plant in service, other investment and depreciation reserves, and such other data as are required by the Commission, on computer media prescribed by the Commission. The total operating results shall be allocated between regulated and nonregulated operations, and the regulated data shall be further divided into the following categories: State and interstate, and the interstate will be further divided into common line, traffic sensitive access, special access, and nonaccess.

4. Section 43.22 is removed.

5. Paragraph (a) of section 43.43 is revised to read as follows:

§ 43.43 Reports of proposed changes in depreciation rates.

(a) Each communication common carrier with annual operating revenues that equal or exceed the indexed revenue threshold, as defined in § 32.9000, and that has been found by this Commission to be a dominant carrier with respect to any communications service shall, before making any change in the depreciation rates applicable to its operated plant, file with the Commission a report furnishing the data described in the subsequent paragraphs of this section, and also comply with the other requirements thereof.

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) * * *

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 is revised to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. No. 104-104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228 unless otherwise noted.

2. Section 64.903 is amended by revising the introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 64.903. Cost allocation manuals.

(a) Each local exchange carrier with annual operating revenues that equal or exceed the indexed revenue threshold, as defined in § 32.9000 of this chapter, shall file with the Commission

within 90 days after the publication of that threshold in the Federal Register, a manual containing the following information regarding its allocation of costs between regulated and nonregulated activities:
* * *

(b) Each carrier shall ensure that the information contained in its cost allocation manual is accurate. Carriers must update their cost allocation manuals at least annually, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at least 15 days before the carrier plans to implement the changes. Annual cost allocation manual updates shall be filed on or before the last working day of each calendar year. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in cost apportionment tables must be quantified in $100,000 increments at the cost pool level. The Chief, Common Carrier Bureau may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure.

(c) * * *

3. Paragraph (a) of section 64.904 is revised to read as follows:

§ 64.904. Independent audits.

(a) Each local exchange carrier required to file a cost allocation manual, by virtue of having annual operating revenues that equal or exceed the indexed revenue threshold for a given year or by order by the Commission, shall have an audit performed by an independent auditor on an annual basis, with the initial audit performed in the calendar year after the carrier is first required to file a cost allocation manual. The audit shall provide a positive opinion on whether the applicable data shown in the carrier's annual report required by § 43.21(e)(2) of this chapter present fairly, in all material respects, the information of the carrier required to be set forth therein in accordance with the carrier's cost allocation manual, the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86-111 and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, 64.901, and 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Common Carrier Bureau.

(b) * * *