

to reclassify payphones as nonregulated, detariffed CPE. NPRM at ¶ 59. USTA's comments in CC Docket No. 96-128 explain how the transfer of payphone equipment to nonregulated status should be accomplished. For example, USTA explains that the identified payphone and related equipment, including associated taxes and depreciation, should be transferred at net book value in accordance with the asset transfer rules as stated in Section 32.27(c) of the Commission's current rules.

D. The Current Safeguards are Sufficient to Meet the Act's Requirements for Separated Operations.

1. Section 272 - Manufacturing and InterLATA Services.

Section 272 is quite specific in describing the structural and transactional requirements related to the provision of services covered by this section of the Act as well as the nondiscrimination safeguards. In addition, Section 272(d) includes a biennial joint Federal/State audit. With such clear and specific requirements, Section 272 is self-executing. There is certainly no need for further accounting or record keeping requirements. If the Commission insists that additional requirements are necessary then, at most, the Commission should prescribe the use of generally accepted accounting principles (GAAP). NPRM at ¶ 68.

The Computer II separate subsidiary requirements are excessive and inconsistent with the Act and should not be resurrected to implement the requirement of Section 272(b)(5) that transactions be conducted on an arm's length basis. The existing Computer II requirements relating to arm's length transactions (compensatory pricing and auditability) are fully covered in the existing affiliate transaction rules. As an alternative, the streamlined affiliate transaction

rules recommended by USTA in its Attachment are sufficient to meet the statutory requirements.

Likewise, there is no need for detailed rules to implement Section 272(b)(5). NPRM at ¶ 74. In fact, the Commission should acknowledge its efforts in other proceedings to simplify and streamline reporting requirements which only add unnecessary administrative costs to the provision of service. For example, the Commission recently proposed to remove the current requirement that billing and collection contracts be filed.²³ The Commission could simply require that any transactions be available at a location designated by the carrier.²⁴ However, the standards for confidential and or proprietary treatment as discussed in the Comments of the Joint Parties in GC Docket No. 96-55 should be adopted and applied.²⁵

As discussed above, the rules for imputation required in Sections 272(e)(3) and (4) do not require additional accounting procedures to address any difference in the rate charged the affiliate and any underlying costs of the facilities and services because the rate charged is the same as that charged to others. Therefore, there is neither improper cross subsidy nor unreasonable discrimination.

The current affiliate transactions rules do not require modification to reflect valuations in publicly filed agreements when no tariffs are filed. However, under USTA's streamlined rules, if

²³See, Notice of Proposed Rulemaking, CC Docket No. 96-23, released February 27, 1996 at ¶ 10.

²⁴USTA would further suggest that current CAM requirements satisfy the transaction identification requirement.

²⁵Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, Notice of Inquiry and Notice of Proposed Rulemaking, released March 25, 1996.

there is no tariff rate, the valuation requires either the prevailing price or cost, which would include the rates filed in the interconnection and collocations agreements, both of which meet the requirements of Sections 272(e)(3) and (4).

The current rules are adequate with regard to the rate of return used to value affiliate transactions. NPRM at ¶ 88. Incumbent exchange carriers are permitted to utilize a rate of return which is appropriate for affiliate transactions, and the method of regulation, for those affiliate transactions not at a tariff rate or prevailing price, which must be computed using fully distributed cost. If the rate is different than the current rate of 11.25 percent, carriers must reference the rate of return utilized in their CAM.²⁶

The Commission also requests comment on its tentative conclusion that the affiliate transaction rules should apply between each BOC and any interLATA affiliate pursuant to Section 272(a). NPRM at ¶ 89. The Commission must not exceed the scope of this proceeding beyond what is required by the Act. To the extent that the current affiliate transactions rules apply, the Commission need not codify the status of the entities to the transaction. The Commission must not extend those rules to transactions between other regulated affiliates or transactions between nonregulated affiliates since those transactions are not subject to the requirements of the Act. The Commission could determine that any interLATA telecommunications service affiliate established pursuant to Section 272(a) be deemed to be nonregulated for Title II purposes only. Then, the existing affiliate transactions rules would apply and no additional modifications would be required.

²⁶See, Letter from Jose-Luis Rodriguez, Accounting and Audits Division, to Mr. Kevin Smith, Director of Federal Relations, U S WEST, Inc., April 20, 1992 at pp. 3-4.

USTA opposes the application of the Joint Cost rules to an interLATA affiliate that also provides nonregulated services. Section 254(k) does not justify extending the current rules to affiliates engaged in regulated and nonregulated activities. NPRM at ¶ 90. Section 254(k) is specifically limited to ensure that the discrete services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of providing universal service.

No additional accounting safeguards are needed if any separate affiliate subject to the requirements of Section 272(b)(3) share in-house or outside services. Although the language of this section prohibits the BOCs and their affiliates from sharing employees, there is absolutely nothing in the language which would prohibit the BOCs and their affiliates from entering into arm's length transactions that allow the affiliate to purchase from the BOC administrative functions. Such arm's length transactions should meet the requirements of Section 272(b)(5).

Finally, the Commission seeks comment on the necessity of specifying the scope and availability of the biennial audit report described in Section 272(d). NPRM at ¶ 93. The language of this section is clear and no further detailed rules are required. In fact, the content and scope of the report should be determined by the independent auditor in conformance with standards used by the American Institute of Certified Public Accountants, Inc. This is consistent with existing CAM requirements, including the requirement that the independent auditor is retained by the incumbent exchange carrier.

2. Section 273 - Manufacturing by Certifying Entities.

Again, there is no additional accounting safeguard required for the certifying entity described in Section 273(d) of the Act. NPRM at ¶ 97. The requirements of the Act itself are sufficient. The affiliate transaction rules should not apply to either the certifying entity or the separate affiliate discussed in Section 273(d)(3) since both are nonregulated. The application of the rules to either are beyond the scope of the current Commission rules and the requirements of the Act. The requirements of Section 273(d)(3)(B) are sufficient.

To the extent that the Joint Cost rules are deemed necessary, those rules are sufficient to meet the requirements of Section 273(g).

3. Section 274 - Electronic Publishing.

The requirements of Section 274 are clear and unique accounting rules are not warranted to implement this Section of the Act. To the extent that the affiliate transactions rules apply, such rules provide more than adequate accounting treatment for the joint activities permitted pursuant to Section 274(c)(2). There is no need to distinguish, for Title II accounting purposes, between transactions involving a BOC and its separated affiliate and its electronic publishing joint venture. Nor is there any need to distinguish between asset transfers and services of electronic publishing in Section 274(b)(4). However, the appropriate affiliate transactions rules may apply to network access and interconnections for basic telephone service by a BOC under common ownership or control with a separate affiliate or electronic publishing joint venture. NPRM at ¶ 117.

The Commission seeks comment on whether it should specify the scope of the annual compliance review required under Section 274(b)(8). Again, the language of the Act is clear and no detailed rules are necessary. The compliance review should be conducted in accordance with standards used by the American Institute of Certified Public Accountants, Inc. However, the Commission should ensure the protection of material which is confidential and/or proprietary.

4. Separated Operations Under Sections 260, 271, 275 and 276.

The Commission requests comment on whether the affiliate transaction rules as modified should apply to the separated operations described in Sections 260, 271, 275 and 276. NPRM at ¶ 118. As explained above, USTA does not support the Commission's proposal to modify the affiliate transaction rules. However, as currently specified in the Commission's rules, the affiliate transaction rules are more than sufficient to meet the requirements of the Act.

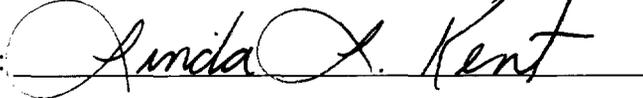
IV. CONCLUSION.

As explained above and in other proceedings dealing with the application of the Commission's accounting and affiliate transaction rules, competition and price cap regulation, particularly price cap regulation with no sharing obligation, obviate the need for those rules. The Commission is required to forbear if it finds that the specific criteria of Section 10 are met. The Commission should carefully analyze the necessity of maintaining the current rules and forbear from applying those rules where appropriate. If retained, the rules should be streamlined as

suggested by USTA to ensure that the rules are consistent, specific and predictable. There is no instance described in the NPRM where the heavy burden necessary to justify the imposition of more detailed rules is warranted.

Respectfully submitted,

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STREAMLINING OF PART 64 AND RELATED JOINT COST RULES & REPORTS

(Sections Underlined Are Modifications to the Rules.
Sections Lined Out are Eliminations of the Rules.)

64.901 Allocation of costs.

(a)***

(b)***

(1)***

(2)***

(3)***

(i)***

(ii)***

(iii)***

(4) The allocation of central office equipment and outside plant investment costs between regulated and nonregulated activities shall be based upon ~~the relative regulated and nonregulated usage of the investment during the calendar year when nonregulated usage is greatest in comparison to regulated usage during the three calendar years beginning with the calendar year during which the investment usage forecast is filed~~ actual usage during the calendar year or other apportionment basis as provided in Section 64.903(a)(5).

64.902 Transactions with affiliates.

64.903 Cost allocation manuals.

(a) ***

(1) ***

(2) ***

(3) ***

(4) ***

(5) ***

(6) ***

(b) Each carrier shall ensure that the information contained in its cost allocation manual is accurate. Carriers must update their manuals annually on December 31, ~~at least quarterly, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at least 60 days before the carrier plans to implement the changes.~~ 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 and such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or to prescribe a different procedure.

(c) ***

64.904 Independent audits.

(a) Each local exchange carrier required by this part or by Commission order to file a cost allocation manual shall have performed ~~annually,~~ biennially, by an independent auditor, an audit that provides a positive opinion on whether the applicable data shown in the carrier's annual report required by 43.21(f)(2) of this chapter for the calendar year under audit presents 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 sections 32.23, 32.27, 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) The report of the independent auditor shall be filed at the time that the local exchange carrier files the annual report required by 43.21(f)(2) of this chapter for the calendar year under audit.

43.21 Annual Reports of Carriers and Certain Affiliates.

~~(e) Each communications common carrier required by order to file a manual allocating its costs between regulated and nonregulated operations shall file, on or before April 1: (1) A three year forecast of regulated and nonregulated use of network plant for the current calendar year and the two calendar years following, and investment pool projections and allocations for the current calendar year, and (2) A report of the actual use of network plant investment for the prior calendar year.~~

(f) ***

32.27 Transactions with affiliates.

(a) ***

(b) Charges for assets purchased by or transferred to the regulated telephone activity of a carrier from affiliates shall be recorded in the operating accounts of the regulated activity at the invoice price prevailing price or cost less all applicable valuation reserves in the absence of a prevailing price. ~~If that price is determined by a prevailing price held out to the general public in the normal course of business. If a prevailing price for the assets received by the regulated activity is not available, the charges recorded by the regulated activity for such assets shall be the lower of their cost to the originating activity and the affiliated group less all applicable valuation reserves, or their fair market value.~~

(c) Assets sold or transferred from the regulated account to affiliates shall be recorded as operating revenues, incidental revenues or asset retirements according to the nature of the transaction involved. If such sales are reflected in tariffs on file with a regulatory commission ~~or in a prevailing price held out to the general public,~~ the associated revenues shall be recorded at the prices contained therein in the appropriate revenue accounts. If no tariff ~~or prevailing price~~ is applicable, the proceeds from such sales shall be prevailing price or cost determined at the higher of costs less all applicable valuation reserves in the absence of a prevailing price, ~~or estimated fair market value of the asset.~~

(d) Services provided to an affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. In the absence of a tariff rate, services shall be provided at prevailing price or ~~Services provided by an affiliate to the regulated activity, when the same services are also provided by the affiliate to unaffiliated persons or entities, shall be recorded at the market rate. When a carrier provides substantially all of a service to or receives substantially all of a service from an affiliate which are not also provided to unaffiliated persons or entities, the services shall be recorded at cost in the absence of prevailing price~~ which shall be determined in a manner that complies with the standards and procedure for the apportionment of joint and common costs between the regulated and nonregulated operations of the carrier entity.

(e) ***

(f) ***