only 18 percent of voice connections – 16 percent switched and 2 percent interconnected VoIP.[72] Because of these trends, it is necessarily true that a vast majority of voice customers do not presubscribe to a stand-alone long distance service.[73] For example, in 2013 **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** percent of RBOC lines were presubscribed to a long distance provider and, among those presubscribed lines, only about **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** percent were presubscribed to an independent long distance provider.[74] As Dr. Caves explains, because "ILEC lines accounted for only about 18 percent of voice connections in 2013, the overall share of voice connections that were ILEC lines presubscribed to stand-alone long distance carriers can be estimated at approximately . . .**[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** percent."[75]

Thus, the closed local markets that Section 271 was designed to open have long been open, and the competition in the long distance marketplace that Sections 271 and 272 were designed to encourage has exploded. Today, the separate local and long distance marketplaces have all but disappeared and have been replaced by a multi-technology, bundled, all-distance competitive free-for-all.[76] The vast expansion in competitive alternatives to ILEC services has

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[72] *Mid-2013 Local Telephone Competition Report* at 5, Figure 4, and 29, Table 18. Sixty-nine percent of connections were wireless, and the rest were interconnected VoIP. For purposes of this analysis, ILEC interconnected VoIP connections are treated as "presubscribed" to the ILEC.

[73] Caves Decl. ¶ 92.

[74] *Id.* For purposes of this analysis, the term "RBOC lines" includes all of the lines of independent ILECs affiliated with RBOCs.

[75] *Id.*

[76] *Id.* ¶ 93.

brought with it intense competition in the all-distance market that is rapidly replacing the stand-alone local and long distance markets. All of the alternative technologies – wireless, VoIP and cable – provide bundled all-distance service packages that do not rely in any way on ILEC local facilities.

Notwithstanding drastic changes in the marketplace, ILECs alone – the RBOCs, in the case of the Section 271/272 requirements, and all ILECs, in the case of the legacy equal access rules – remain subject to various requirements designed to preserve markets that existed 20 years ago but that have long since moved beyond requiring such protections. These include costly obligations to maintain network configurations and access offerings that permit other carriers to originate long distance calls from ILEC customers, as well as redundant obligations aimed at ensuring that ILECs maintain openness in their local markets as a condition for participating in the long-distance market. Given the marginal relevance of stand-alone long-distance service and the widespread competition for all-distance services in today's marketplace, as well as the concomitant irrelevance of ILEC facilities to the vast majority of all-distance competitors and their customers, the Commission should forbear from these redundant and unnecessary requirements.

In today's marketplace, the remaining requirements of Section 271 are either moot or redundant. But the burden of the outdated interconnection and access requirements imposed by these legacy requirements are amplified by the PAPs that the Commission "strongly encourage[d]" states to adopt when RBOCs sought Section 271 authority over a decade ago.[77] These PAPs, which address a dwindling segment of the communications market, impose

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[77] *See Bell Atlantic NY Section 271 Order,* 15 FCC Rcd at 4164-65 ¶¶ 429-30.

burdensome recordkeeping and reporting requirements on RBOCs that divert investment away from next-generation network development and product development.

Similarly, the nondiscrimination and imputation requirements of Section 272(e), and related obligations imposed on the RBOCs in the *Section 272 Sunset Order*, no longer serve any purpose. There is no basis for a policy goal of "protecting" the wide-open all-distance marketplace from one set of competitors – RBOCs – simply because of their historical position when any advantage they might have once enjoyed no longer exists. The Commission thus should forbear from enforcing the remaining Section 271 and 272 obligations on RBOCs, as they either are duplicative of other requirements in the Act or are entirely irrelevant to today's competitive market.

The Commission also should forbear from enforcing its legacy equal access requirements, which arose out of the AT&T breakup 30 years ago as a means of counteracting AT&T's pre-existing advantages in providing long distance service through the RBOCs.[78] These requirements, which apply to all ILECs,[79] serve no meaningful purpose in today's market, in which a wide variety of all-distance communications options exist independent of any need for providers to rely on ILEC facilities.

These requirements impose a substantial economic drag on legacy networks without producing commensurate competitive benefits for future networks or consumers. They divert

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[78] *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 195-96 (D.D.C. 1982) ("MFJ"), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

[79] *MTS and WATS Market Structure Phase III: Establishment of Physical Connections and Through Routes among Carriers*, Report and Order, 100 FCC2d 860, 861 (1985) ("*MTS and WATS*") (subsequent history omitted).

crucial investment dollars from the build out of important next-generation networks, while cable, wireless, over-the-top VoIP and other providers continue to grab market share and invest their resources in next-generation networks and services without similar encumbrances.

B. The Commission Should Forbear From Applying the Remaining Section 271 Obligations

Section 271 is a carrot-and-stick provision designed to provide an incentive for the RBOCs to open their local markets to competition in exchange for permission to offer in-region long distance service.[80] The market-opening stick long ago did its work, but the carrot has shriveled, as competition for all-distance voice service from providers across many platforms has rendered Section 271 itself as anachronistic as stand-alone long distance. With the RBOCs and other ILECs barely hanging on to a small fraction of the total voice marketplace[81] and competitive alternatives similarly taking over the all-distance market, the marketplace that motivated the enactment of Section 271 has disappeared. Indeed, Section 271 has long since outlived its usefulness, the Commission having granted its "last Section 271 application" over a decade ago.[82]

Section 271's remaining requirements are redundant, moot, or unnecessary. But Section 271 remains the underpinning of the state-approved PAPs, which likewise are unnecessary today. The Section 271(c) checklist also imposes burdensome interconnection and access requirements

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80 *Bell Atlantic NY Section 271 Order*, 15 FCC Rcd at 3956 ¶ 3.

81 *See Mid-2013 Local Telephone Competition Report* at 5, Figure 4, and 29, Table 18.

82 *Application by Qwest Communications International Inc. for Authorization To Provide In-Region, InterLATA Services in Arizona*, 18 FCC Rcd 25504, 25505 ¶ 2 (2003). *See also Section 272 Sunset Order*, 22 FCC Rcd at 16447 ¶ 12 (RBOCs have obtained in-region interLATA service authority in all of their regions).

that were intended to open local markets but have been superseded by competitive developments in the marketplace. Forbearance from Section 271 is warranted under the Section 10 standard, and such forbearance from the federal impetus for the PAPs will signal that is also time for them to fade into history.

1. The Remaining Requirements of Section 271 Are Not Necessary to Ensure Just and Reasonable Rates and Practices or to Protect Consumers

When Congress enacted Sections 271 and 272, for most consumers, local voice service was virtually synonymous with traditional, incumbent-provided wireline service. As discussed above, today's voice communications marketplace bears little resemblance to the market Congress designed Section 271 to open up. The robust set of facilities-based competitors renders the Section 271(c) checklist and PAP requirements unnecessary to protect consumers or ensure reasonable local or long distance charges and practices.[83] Because the RBOCs have met the competitive checklist in Section 271(c) and obtained in-region interLATA authority in all of their regions, Section 271(c) has been "fully implemented" "throughout the United States."[84] There is thus no barrier under Section 10(d) of the Act to granting the forbearance requested herein.[85]

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[83] *See* 47 U.S.C. § 160(a)(1), (2).

[84] *Petition for Forbearance of the Verizon Tel. Cos. Pursuant to 47 U.S.C. § 160(c)*, 19 FCC Rcd 21496, 21503 ¶ 15 (2004), *aff'd sub nom., Earthlink, Inc. v. FCC*, 462 F.3d 1 (D.C. Cir. 2006). There are no provisions in Section 271 that currently impose obligations independently of the checklist and other requirements of Section 271(c). *See* 47 U.S.C. § 271(d)(6) (authorizing the Commission to initiate enforcement actions in the case of an RBOC that "has ceased to meet any of the conditions required for . . . approval" under Section 271).

[85] *See* 47 U.S.C. § 160(d) (prohibiting forbearance from Section 271 until it has been "fully implemented").

Moreover, the Section 271(c)(2)(B) competitive checklist items generally consist of redundant requirements that qualifying RBOCs already comply with under various other provisions of the Act, including provisions in Sections 224, 251, and 252, as well as with Commission rules governing number administration and portability. In addition, RBOCs would remain subject to the continuing general obligation to provide service at just, reasonable, and not unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the Act. Those provisions are sufficient to ensure just, reasonable and nondiscriminatory rates and practices and to protect consumers.[86]

2. Forbearance Will Serve the Public Interest by Eliminating Costs and Allowing RBOCs to More Efficiently Invest Their Resources in Modern Networks and Services

Although the Section 271 checklist requirements have been overtaken by events and no longer provide any significant benefits to consumers, they continue to impose significant compliance costs on RBOCs, in particular, the compliance costs associated with the PAPs and the underlying Section 271(c) obligations. The PAPs – which were adopted at the Commission's strong urging[87] – were designed to ensure that RBOCs continued to comply with the Section 271 competitive checklist requirements after receiving authority to provide in-region long distance service. These PAPs remain in effect and contain detailed information collection and reporting requirements on a wide variety of performance metrics, as well as audit and accounting

[86] *See id.* § 160(a)(1), (2).

[87] *See Bell Atlantic NY Section 271 Order* 15 FCC Rcd at 4164-65 ¶¶ 429-30.

requirements and self-executing remedies carrying significant penalties for performance shortfalls.[88]

While USTelecom is not directly seeking forbearance from the PAPs, this Commission should encourage the states to terminate the PAPs once it grants forbearance from Section 271. The PAPs were designed to ensure that an RBOC's "local market will remain open" after the RBOC obtains Section 271 authority and thus "would continue to satisfy the requirements of section 271."[89] If the Commission grants forbearance from the requirements of Section 271, PAPs could no longer be justified as supporting those requirements. Because forbearance from Section 271 would provide a strong basis for relief from the PAPs, the costs of compliance with the PAPs thus support the conclusion that forbearance from the application of the Section 271 checklist requirements would promote competition and further the public interest.

AT&T, Verizon, and CenturyLink estimate that they spend a combined total of over **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** each year on PAP compliance, in addition to millions of additional dollars spent complying with the checklist obligations of Sections 271. These resources could be far more effectively spent on transitioning to modern IP networks and expanding broadband access in the companies' service areas. Focusing these resources on broadband expansion would, among other things, provide consumers with increased access to the variety of over-the-top communications options available in today's marketplace, which would better serve the goal of preserving robust competition than

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[88] *See, e.g.*, *Qwest Minn. Section 271 Order*, 18 FCC Rcd at 13361 ¶ 71.

[89] *Bell Atlantic NY Section 271 Order* 15 FCC Rcd at 4164 ¶ 429.

devoting these resources to outdated compliance obligations geared toward preserving a business model customers have rejected.

As the Commission noted in the *USTelecom Forbearance Order*, it has an "obligation to remove costly, overly broad, and outmoded requirements and burdens in response to changes in markets and regulatory needs."[90] In granting conditional forbearance from the cost assignment rules, the Commission found that forbearance would promote competition and thus be consistent with the public interest, explaining that "eliminating unnecessary regulation will generally reduce providers' costs and, in turn, benefit consumers through lower rates and/or more vibrant competitive offerings."[91] Forbearance from the unnecessary and obsolete checklist requirements of Section 271(c) similarly would "enhance competition" by reducing costs,[92] both directly and by providing a basis to eliminate state PAP compliance costs, thereby furthering the public interest.[93]

C. The Commission Should Forbear From Applying the Remaining Section 272 Obligations

As noted above, the Commission recognized almost a decade ago that "long distance service purchased on a stand-alone basis is becoming a fringe market."[94] Also as discussed above, given the large portion of subscribers using intermodal alternatives, only an estimated

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[90] *USTelecom Forbearance Order*, 28 FCC Rcd at 7656 ¶ 55.

[91] *Id.* at 7651 ¶ 41.

[92] *Id.* at 7650 ¶ 41.

[93] *See* 47 U.S.C. § 160(a)(3), (b).

[94] *SBC-AT&T Order*, 20 FCC Rcd at 18342 ¶ 91.

[BEGIN CONFIDENTIAL] [redacted] **[END CONFIDENTIAL]** percent of all voice connections were ILEC lines presubscribed to an independent long distance provider in 2013. Yet the Section 272 requirements are aimed at preserving this infinitesimal and rapidly declining, anachronistic stand-alone long distance market.

The Commission has determined that RBOCs lack classic market power in the mass-market, enterprise, and wholesale long distance markets.[95] In the *Section 272 Sunset Order*, the Commission nonetheless found that the RBOCs had "failed to present persuasive evidence that they no longer possess exclusionary market power within their regions as a result of their control over ubiquitous telephone exchange service and exchange access networks."[96] Whatever merit that position might have had in 2007, it is clear today that an RBOC cannot exercise exclusionary market power in the face of competition from wireless and VoIP services (including both VoIP services provided by cable companies and over the top VoIP) that do not depend on RBOC facilities. Intermodal competition means that an RBOC cannot "indirectly raise prices of [long distance] services by increasing the price of essential inputs that its rivals need to offer their services."[97]

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[95] *See Section 272 Sunset Order*, 22 FCC Rcd at 16449-51 ¶¶ 17-21, 16465 ¶¶ 47, 49, 16469-70 ¶ 59.

[96] *Id.* at 16473 ¶ 64. *See also id.* at 16487-94 ¶¶ 95-108.

[97] *See id.* at 16446 ¶ 10.

1. The Section 272(e) Obligations Are Not Necessary to Ensure Just, Reasonable and Nondiscriminatory Rates and Practices or to Protect Consumers

A robust set of competitors to the RBOCs renders the remaining Section 272(e) requirements unnecessary to protect consumers or ensure reasonable long distance charges and practices.[98] Most of the Section 272 requirements already have sunset, leaving in place only the requirements of Section 272(e)(1) and (e)(3).[99] These provisions, however, like the Section 271 requirements discussed above, are also in place solely for the purpose of protecting competition in a stand-alone long distance market that no longer exists, and they are no longer relevant given the prevalence of bundled all-distance services. Specifically, Section 272(e)(1) requires that an RBOC "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such . . . service . . . to itself or to its affiliates," and Section 272(e)(3) requires, in part, that an RBOC "impute to itself . . . an amount for access . . . that is no less than the amount charged to any unaffiliated" long distance carriers "for such service."[100]

RBOCs also remain subject to the special access performance metrics and imputation obligations that the Commission, in the *Section 272 Sunset Order*, imposed as conditions for relief from the previous requirement that RBOC in-region interLATA services be subject to

[98] *See* 47 U.S.C. § 160(a)(1), (2).

[99] *Section 272 Sunset Order*, 22 FCC Rcd at 16444-45 ¶ 8, 16447 ¶ 12.

[100] 47 U.S.C. § 272(e)(1), (3).

dominant carrier regulation unless they were offered through a Section 272 separate affiliate.[101] Those conditions relate closely to Sections 272(e)(1) and (3).[102]

Enforcement of these Section 272(e) obligations and related additional conditions is not necessary for just, reasonable and nondiscriminatory rates and practices or to protect consumers. First, robust competition protects against the potential for unjust or unreasonable discrimination. RBOCs are not in a position to slow roll services needed by other providers, in violation of Section 272(e)(1), or charge other providers more than the RBOCs impute to themselves for the same service, in violation of Section 272(e)(3), because the intense competition in every segment of the marketplace precludes such discrimination. If a provider does not receive good service from an RBOC at competitive rates, the provider simply moves to one of the many alternative sources, or self-provisions, as cable and other competitors have done so effectively.

Second, these provisions are based on separate local and long distance service silos, and they essentially attempt to control transactions between different entities in these different silos. But today's all-distance marketplace has moved far beyond those 20th Century silos. Consumers

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[101] *Section 272 Sunset Order*, 22 FCC Rcd at 16450 ¶ 18, 16476 ¶ 72, 16487-94 ¶¶ 95-108.

[102] For example, the special access performance metrics include data measuring whether an RBOC "provisions these special access services to itself and its competitors in nondiscriminatory time frames and with nondiscriminatory levels of quality." *Id.* at 16488 ¶ 97 n.284. That measure addresses part of the Section 272(e)(1) obligation to fulfill other carriers' requests for access "within a period no longer than the period in which [an RBOC] provides such . . . service . . . to itself or to its affiliates." 47 U.S.C. § 272(e)(1).

The imputation condition requires RBOCs and their ILEC affiliates "to continue to impute to" themselves their "highest tariffed rate[s] for access" and "to charge any non-section 272 affiliate through which they provide in-region, long distance services the same amount for access that they would have charged a section 272 separate affiliate." *Section 272 Sunset Order*, 22 FCC Rcd at 16490 ¶ 100.

today demand all-distance service from a single provider, and they have many providers from which to choose. Section 272(e) is no longer necessary because consumers do not demand stand-alone long distance service today, and because robust competition protects against the potential for unjust or unreasonable discrimination. As with the Equal Access Scripting Requirements from which the Commission granted forbearance in 2013, the Section 272(e)(1) and (e)(3) requirements and related conditions "only address[] . . . stand-alone long distance service, which has become a fringe market" and thus are "unlikely to ensure" just, reasonable and nondiscriminatory rates and practices or to protect consumers.[103]

In addition, RBOCs also remain subject to other provisions of the Act and the Commission's regulations, including Section 251 obligations and the "continuing general obligation to provide service at just, reasonable, and not unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the Act."[104] Because of increased competition, the prevalence of bundled, all-distance voice services, and these continuing requirements and statutory provisions, the Section 272(e) requirements and related additional conditions are irrelevant to maintaining just, reasonable and nondiscriminatory rates and practices or protecting consumers.[105]

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[103] *US Telecom Forbearance Order*, 28 FCC Rcd at 7637 ¶ 16.

[104] *Section 272 Sunset Order*, 22 FCC Rcd at 16484-85 ¶ 90.

[105] *See* 47 U.S.C. § 160(a)(1), (2).

2. Forbearance From Applying the Section 272(e) Obligations Will Further the Public Interest

Although the Section 272(e) requirements and related additional conditions no longer provide any significant benefits to consumers, they continue to impose significant compliance costs on RBOCs and consumers. To begin with, by attempting to govern transactions between local and long distance providers, these requirements force RBOCs to maintain services and features only useful to a carrier class that is quickly disappearing.

Additionally, AT&T, Verizon, and CenturyLink spend hundreds of thousands of dollars each year on Section 272(e) access reporting, imputation and related compliance efforts. These resources could be far more effectively spent on transitioning to modern IP networks and expanding broadband access for the benefit of consumers. Because they provide little or no benefit and add unnecessary costs, forbearance from the Section 272(e) requirements and related conditions imposed in the *Section 272 Sunset Order* would further the public interest.[106] Forbearance would allow the RBOCs to focus their resources on upgrading and expanding the modern communications networks and services consumers are demanding. Accordingly, forbearance from those obligations meets all of the Section 10 criteria and should be granted.

D. The Commission Should Forbear From its Section 251(g) Legacy Equal Access Requirements

The same market conditions that render Sections 271 and 272 obsolete also make the decades-old equal access obligations imposed on all ILECs unnecessary. Like Sections 271 and 272, the equal access obligations rely on the outdated assumptions that stand-alone long distance services provided over traditional landlines constitute the primary forum for long distance

[106] *US Telecom Forbearance Order*, 28 FCC Rcd at 7637-38 ¶ 17. *See* 47 U.S.C. § 160(a)(3).

competition, and that these long distance services are dependent upon gaining direct, equitable access to ILEC facilities in order to compete. As detailed above, neither of these assumptions obtains today, and these obligations are inefficient and unnecessary. Accordingly, forbearance is appropriate because such requirements are "unlikely to ensure" just, reasonable and nondiscriminatory rates and practices or to protect consumers,[107] and elimination of the burdens of these rules also would further the public interest.[108]

Prior to the Telecommunications Act of 1996, the RBOCs were required to provide equal access to competing interexchange carriers in accordance with the 1982 Modification of Final Judgment ("MFJ") in the federal antitrust case against AT&T.[109] These equal access requirements were considered necessary at the time because competing long distance providers seeking to offer voice service comparable to the pre-breakup AT&T service depended on access to a variety of facilities and services under the control of local exchange carriers, and because the court feared that the RBOCs would give AT&T preferential treatment over its long-distance competitors.

Similar equal access requirements were imposed on GTE companies and (to a more limited extent) independent LECs under a separate consent decree and FCC orders, respectively.[110] The Commission accordingly "look[ed] to federal court decisions and to its own

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107 *US Telecom Forbearance Order*, 28 FCC Rcd at 7637 ¶ 16. *See* 47 U.S.C. § 160(a)(1), (2).

108 *US Telecom Forbearance Order*, 28 FCC Rcd at 7637-38 ¶ 17. *See* 47 U.S.C. § 160(a)(3).

109 *See Allnet Comm'cns Servs., Inc.*, Mem. Op. & Order on Recon., 11 FCC Rcd 8519, 8526-27 ¶ 14 (1996) (summarizing equal access history) ("*Allnet Recon Order*"); MFJ, 552 F. Supp. at 226-28, 232-34 App B.

110 *Allnet Recon Order*, 11 FCC Rcd at 8526-27 ¶ 14.

orders," rather than to a codified set of regulations, "to determine what constitutes the provision of equal access."[111] Section 251(g) of the Act, added as part of the Telecommunications Act of 1996, "imports the obligations of the [MFJ] . . . as well as Commission equal access requirements" "imposed on LECs prior to passage of the 1996 Act."[112]

The 1996 Act also added a requirement for all LECs to provide "dialing parity to competing providers of telephone exchange service and telephone toll service."[113] Although "dialing parity" and "equal access" overlap to a large extent with respect to telephone toll service, Section 251(b)(3)'s dialing-parity requirement is a broader provision that also requires carriers to provide dialing parity for local calls. This Petition does not request any forbearance from the requirement that LECs provide dialing parity for local calls. However, forbearance from this requirement, as it is applied to interexchange service, would follow from the requested relief – *i.e.*, to the extent it codifies the equal-access obligations for interexchange service, forbearance from those obligations would also lift the dialing parity requirement.

This history demonstrates that the equal access obligations rely on the same outdated assumptions as Sections 271 and 272: that stand-alone long distance services are dependent upon

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[111] *Id.*

[112] *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, 17 FCC Rcd 4015, 4016 ¶¶ 3-4 (2002). *See also Section 272 Sunset Order*, 22 FCC Rcd at 16484 ¶ 90 & n.261 (noting that equal access obligations arise "under longstanding Commission precedent and section 251(g) of the Act," citing 47 U.S.C. § 251(g); *MTS and WATS Market Structure, Phase III,* Report and Order, 100 FCC 2d 860 (1985) (subsequent history omitted); and *Investigation into the Quality of Equal Access Services,* Memorandum Opinion and Order, 60 Rad. Reg. 2d (P&F) 417, 419, 1986 WL 291752 (1986)).

[113] 47 U.S.C. § 251(b)(3).

access to ILEC facilities in order to compete. These obligations require ILECs to invest in compliance with a regulatory framework that serves a dwindling market while their cable, wireless, and over-the-top VoIP, and other competitors are subject to no such constraints. Today, competition is primarily inter-modal and involves bundled services offerings. Companies seeking to offer long distance voice service today can offer it through a variety of means that do not involve equal access, including through mobile wireless, broadband, and prepaid platforms. The equal access obligations thus serve no further purpose in protecting consumers or ensuring just and reasonable long distance charges and practices.

At the same time, the equal access obligations continue to impose significant compliance costs and constrain the ability of ILECs to design their networks efficiently. AT&T, Verizon and CenturyLink estimate that they spend a combined total of more than **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** annually on third-party validation activities, in addition to considerable sums on processing presubscription changes. These sums would be better spent on network upgrades and broadband deployment.

In the *USTelecom Forbearance Order*, the Commission granted forbearance from one of the equal access requirements, the Equal Access ("EA") Scripting Requirement.[114] That requirement, which also grew out of the MFJ and was applied by the Commission to all ILECs in 1985, "is preserved by § 251(g) of the Act."[115] The Commission's rationale for relief is directly applicable to this request:

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[114] *USTelecom Forbearance Order*, 28 FCC Rcd at 7634-38 ¶¶ 11-17.

[115] *Id.* at 7635 ¶ 12 & n.36 (citing *Investigation of Access and Divestiture Related Tariffs*, 101 FCC2d 911, 928, App. B, ¶ 1 (1985)).

> While the EA Scripting Requirement originally served an important purpose in . . . fostering the development of nascent competition in the provision of pre-subscribed stand-alone long distance service, we find that it is no longer necessary. First, the market has changed dramatically in the more than 25 years since the requirement was established. When the Commission granted forbearance from the EA Scripting Requirement for the BOCs in 2007, it stated that stand-alone long distance service was becoming a fringe market, adding that stand-alone long distance competition had largely given way to competition between service bundles. . . . These trends appear to have continued in the intervening years.[116]

Accordingly, the Commission held that continued application of the EA Scripting Requirement is not necessary to ensure just, reasonable and nondiscriminatory ILEC mass market long distance service charges and practices or to protect consumers under the first two Section 10 criteria.[117] The Commission also concluded that forbearance met the public interest prong of the Section 10 criteria because "the costs associated with this requirement exceed the benefits," which are "*de minimis*, if any."[118]

The same rationale applies to the remaining equal access requirements. As the Commission held in *USTelecom Forbearance Order*, such requirements "only address[] . . . stand-alone long distance service, which has become a fringe market" and thus are "unlikely to ensure" just, reasonable and nondiscriminatory rates and practices or to protect consumers.[119] Because the costs of those requirements far outweigh the benefits, forbearance also would further

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[116] *Id.* at 7636 ¶ 14.

[117] *Id.* at 7637 ¶ 16.

[118] *Id.* at 7637-38 ¶ 17.

[119] *Id.* at 7637 ¶ 16. *See* 47 U.S.C. § 160(a)(1), (2).

the public interest.[120] Forbearance from the obsolete equal access requirements therefore would meet all of the Section 10 criteria.

III. THE COMMISSION SHOULD FORBEAR FROM ENFORCEMENT OF THE RULE 64.1903 STRUCTURAL SEPARATION REQUIREMENTS

In order to eliminate barriers to infrastructure investment and competition, the Commission should forbear from applying the structural separation requirements of Section 64.1903 of the Commission's rules to independent ILECs – RLECs and price cap ILECs alike – with no conditions.[121] The structural separation requirements of Section 64.1903 are as irrelevant in the current all-distance marketplace as the remaining requirements of Section 272, and for many of the same reasons. The Commission previously concluded that such rules should not apply to price cap carriers that agreed to the same conditions that were applied to the RBOCs and their independent ILEC affiliates in the *Section 272 Sunset Order*,[122] but declined at the time to provide similar relief to RLECs offering facilities-based in-region, interexchange, and interstate long distance services.[123]

The Commission asserted that "cost misallocation is still a concern for independent ILECs that operate under rate-of-return cost regulation," even while acknowledging that (1) long distance service, while "at one time an expensive service," today frequently is "offered on an

[120] *USTelecom Forbearance Order*, 28 FCC Rcd at 7637-38 ¶ 17. *See* 47 U.S.C. § 160(a)(3).

[121] 47 C.F.R. § 64.1903.

[122] *USTelecom Forbearance Order*, 28 FCC Rcd at 7691-93 ¶¶ 142-48 (citing *Section 272 Sunset Order*, 22 FCC Rcd at 16488-90 ¶¶ 97-100).

[123] *Id.* at 7693 ¶ 149.

unlimited basis by numerous facilities-based providers";[124] (2) the *Transformation Order*'s capping and phase-out of interstate switched access rates reduce the incentives for cost misallocation;[125] (3) these concerns are further attenuated for companies receiving NECA pool access rates, which are based on the average costs for all companies that participate in the NECA pools;[126] and (4) average schedule companies have "limited incentives to misallocate costs as long as they continue to use the average schedules for access compensation."[127]

The Commission sought further comment on this issue in the *Second FNPRM*. As USTelecom discussed at length in comments in response to that notice, there is no basis for continued application of structural separation requirements to rate-of-return companies. Such requirements do nothing to promote the public interest, but they do subject the affected carriers – and hence their customers – to unnecessary costs.[128] Moreover, as USTelecom explained, the concerns regarding cost-shifting that led the Commission to defer action on this issue are unwarranted.[129]

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[124] *Second FNPRM*, 28 FCC Rcd at 7721 ¶ 211.

[125] *USTelecom Forbearance Order*, 28 FCC Rcd at 7694 ¶ 151 (citing *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17936 ¶ 804 (2011) ("*Transformation Order*"), *second order on recon.*, 27 FCC Rcd 4648 (2012), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014)).

[126] *Id.* at 7694 ¶ 152.

[127] *Second FNPRM*, 28 FCC Rcd at 7734 ¶ 153 n.425.

[128] *See generally* Comments of the United States Telecom Association, CC Docket No. 00-175, at 4-9 (filed July 12, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7520930209 ("Section 64.1903 Comments").

[129] *See generally id.* at 13-15.

Today, as the industry transitions to an all-IP environment in which the distinction between local and long distance service is technologically and economically irrelevant, the structural separation requirement presents a substantial barrier to smaller carriers' deployment of IP technologies. Accordingly, the Commission should eliminate this outdated and unnecessary rule, either by concluding the still-open proceeding or granting forbearance relief in response to this petition. Forbearance from enforcement of Rule 64.1903 against RLECs would satisfy each of the Section 10 criteria.

There is no basis for applying structural separation requirements to rate-of-return companies. As a threshold matter, the Commission has never found that independent ILECs are dominant in the provision of in-region, interexchange services.[130] In the *LEC Classification Order*, after analyzing "traditional market power factors – market share, supply and demand substitutability, cost structure, size, and resources" – the Commission concluded that, with regard to interstate long distance services, "independent LECs do not have the ability to raise prices by restricting their own output."[131] More recently, in the *Section 272 Sunset Order*, the Commission found vibrant competition for the provision of such services to both mass market and enterprise customers.[132]

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[130] *See id.* at 4-5 (discussing *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, 85 FCC 2d 1 (1980); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor,* Fifth Report and Order, 98 FCC 2d 1191 (1984)).

[131] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15847 ¶ 157 (1997).

[132] *Section 272 Sunset Order*, 22 FCC Rcd at 16460 ¶¶ 36-37.

As noted above, when it relieved price-cap independent ILECs of the Section 64.1903 structural separation requirement but declined to forbear in the context of RLECs, the Commission cited "the continuing potential for cost misallocation" by rate-of-return carriers – specifically, incentives to "misallocate costs from their long distance operations to their access services, to increase rates for access services that are not capped or being phased down, and to engage in price squeezes."[133] Because RLEC interstate switched access rates have been capped by intercarrier compensation reforms, the Commission's concerns focused on special access and common line rates.[134]

In fact, however, rate-of-return carriers are not in a position to shift costs in order to increase common line or special access rates (or universal service recovery associated with common line cost levels), or to effectuate a price squeeze in the rapidly disappearing long distance marketplace or any other market. In any event, the Commission should grant forbearance as to RLECs that participate in the NECA pool, especially in the case of average schedule companies, because they lack any meaningful ability to engage in cost-shifting at all. Finally, for the reasons set forth above, and as further explained below, the irrelevant conditions imposed on RBOCs in the *Section 272 Sunset Order* are no more appropriate for price cap ILECs than they are for RBOCs. The costs of those burdensome conditions far outweigh any benefits they could possibly provide to competition or consumers in today's all-distance marketplace.

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[133] *USTelecom Forbearance Order*, 28 FCC Rcd at 7695 ¶ 153.

[134] *See id.* at 7694 ¶ 151 (observing that recent intercarrier compensation reforms still allow increases in common line and special access rates). Because rule 64.1903 governs only "in-region, interstate" and "in-region, international" services, 47 C.F.R. § 64.1903(a), this request is limited to interstate and international services.

A. The Structural Separation Requirements of Rule 64.1903 Restrain Competition by Adding Unnecessary Costs to RLEC Services

Small, rural, rate-of-return carriers are significantly burdened by the structural separation requirements. These carriers must maintain duplicative switching and transmission equipment and separate management structures – precisely the type of costs the Commission has attempted to reduce with various mechanisms in the universal service high-cost context. And when these carriers deploy new services, they must design these services in a manner consistent with the requirements, adding avoidable costs and diverting resources from efforts such as rural broadband deployment.[135]

To the extent that structural separation ever was justified for rate-of-return carriers, it no longer can be based on today's market circumstances. Today, as discussed above with regard to the remaining obligations imposed by Sections 271 and 272, consumers increasingly choose alternatives to ILEC PSTN connectivity, instead relying on voice services offered by wireless providers, cable operators, and VoIP providers. These alternatives generally make no distinction between local and long-distance calls. Rate-of-return carriers subject to structural separation face pressure from these providers, as well as regional and national providers many times larger than the typical RLEC, which are not subject to the same onerous regulations.[136] In response to the competitive pressures RLECs face from these alternative providers, RLECs have been

[135] *See* Section 64.1903 Comments at 7. In addition, the structural separation requirement imposes unnecessary costs on rural LECs at a time when the Commission is working to limit such costs. *See id.* at 7-8.

[136] *See id.* at 12.

offering voice bundles that include all-distance service, and an increasing number of RLEC voice customers subscribe to, and expect, an all-distance bundle.[137]

Thus, the Commission's distinctive regulatory approach to rate-of-return carriers with respect to the structural separation requirement is no longer relevant in the current marketplace. It serves only to unfairly and arbitrarily impose costs, and a competitive disadvantage, on independent RLECs. Indeed, the Commission has acknowledged that the Section 64.1903 structural separation safeguards "lead to costs . . . that make the [ILECs] less effective marketplace competitors" and place "constraints on the ability of [ILECs] to respond to technological and marketplace developments."[138]

This extra challenge faced by rate-of-return carriers also threatens their ability to transition to and deploy IP technologies, which are entirely indifferent to distinctions between local and long distance calls. As the Commission has recognized, "[m]odernizing communication networks can dramatically reduce network costs, allowing providers to serve customers with increased efficiencies that can lead to improved and innovative product offerings and lower prices."[139] Indeed, the Commission launched its landmark technology transitions

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[137] *See, e.g.*, Industry Analysis and Technology Division, FCC, *Local Telephone Competition: Status as of December 31, 2010*, at 17, Table 6 and 18, Table 7 (Oct. 2011) (showing that the share of switched access lines presubscribed to a non-RBOC ILEC or its affiliated long distance provider at the end of 2010 was 62 percent, on a par with the 61 percent of RBOC switched access lines presubscribed to the RBOC or an affiliated long distance provider), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-310264A1.pdf.

[138] *Section 272 Sunset Order*, 22 FCC Rcd at 16482 ¶ 85, 16494 ¶ 109.

[139] *Technology Transitions*, Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433, 1435 ¶ 2 (2014).

proceeding with the goal "to position all the players – innovators (including those in existing lines of business), legacy service providers and manufacturers, government regulators and the general public – to prepare for, maintain, and facilitate the momentum of technological advances that are already occurring."[140]

The structural separation requirements, however, impose a cost and competitive disadvantage on rate-of-return carriers that is technologically inconsistent with the emerging IP environment. This cost serves as a barrier and challenge to the deployment of IP technology. Eliminating the requirements is a simple and appropriate way to enable rate-of-return carriers to "prepare for, maintain, and facilitate the momentum of technological advances that are already occurring."

B. The Commission Should Forbear Unconditionally From Enforcing Rule 64.1903 Against RLECs

1. RLECs Have Little or no Ability or Incentive to Raise Access Rates Through Cost Misallocation

RLECs have no incentive or ability to misallocate costs in a way that materially affects either their regulated access services or long-distance competition. Other safeguards and marketplace developments preclude manipulation of the only access service elements that might be affected by RLEC cost shifting – common line and special access services.[141] Given these existing safeguards – and the option of applying less onerous conduct-based restrictions in the

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[140] *Id.*

[141] *See USTelecom Forbearance Order*, 28 FCC Rcd at 7694 ¶ 151. *See also Second FNPRM*, 28 FCC Rcd at 7733-34 ¶ 238 (requesting comments on possible non-average schedule RLEC overallocation of costs to common line and special access services).

event they are necessary – there is no reason to continue applying draconian structural separation requirements that have long outlived their utility.

Both market conditions and the *Transformation Order* discourage rate-of-return companies from shifting costs to common line services. Increased common-line costs are reflected in subscriber rates for voice service through increased subscriber line charges, rather than being passed through to other carriers, making an RLEC's retail offering less competitive with other providers' services. As discussed above, RLECs are already losing an enormous amount of market share to CLECs, wireless and VoIP providers. Thus, passing misallocated costs on in the form of increased retail voice service rates would result in a net *loss* of revenue by the RLEC.

Moreover, there is no basis for fearing that costs improperly shifted to common line services will end up compensated through the universal service high-cost mechanisms currently available to rate-of-return companies. The High Cost Loop Support ("HCLS") fund is subject to a cap, so any cost-shifting merely rearranges support among RLECs within the fund without increasing its overall size. Similarly, while Interstate Common Line Support ("ICLS") is not capped, the overall amount of high-cost support for rate-of-return carriers is subject to a budget, and therefore, as in the case of HCLS, cost-shifting would merely rearrange support among rate-of-return carriers within that budget.[142]

RLECs thus have little incentive or ability to raise common line rates through cost shifting. The same is true for special access rates, given that an RLEC's special access rate increases would "squeeze" the rates of its own competitive services, for which special access is an input, as much as or more than any competitors' rates. RLECs thus will not be able to engage

[142] Although some RLECs might attempt to gain an advantage over other RLECs in this regard, on balance, there would be little or no net shifting of RLEC costs to common line services.