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Federal Communications Commission  
Washington, D.C. 20554

OCT 10 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Biennial Review 2000 )

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**COMMENTS  
OF THE  
UNITED STATES TELECOM ASSOCIATION**

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## SUMMARY

The United States Telecom Association (USTA) is concerned that there is no process in place to ensure that the biennial review proceedings needed to actually modify or eliminate regulations which have been identified in the review process are initiated and concluded in a timely manner. Thus, there is no assurance that the purpose of Section 11, to eliminate unnecessary regulation, will ever be achieved. USTA believes that the staff report did not provide sufficient rules changes. USTA recommends the following:

Part 1. Limit the time to consider waiver requests and petitions for reconsideration to one year. If such filings are not denied within one year, they should be deemed granted.

Part 1 – Subpart J. Streamline the pole attachment rules to relieve carriers of the requirement to determine the average number of attachers, and to use Part 32 to determine operating expenses and actual capital costs.

Part 17. Eliminate duplication and confusion regarding the Part 17 requirements.

Part 20, Section 20.11. Deny requests to expand the rules to require reciprocal compensation to CMRS providers for the traffic sensitive elements of their mobile network to switch or terminate local traffic to mobile customers that originates on another carrier's network.

Part 20, Section 20.20. Accelerate the sunset of the rule requiring incumbent LECs to utilize a separate affiliate for CMRS operations.

Part 22, Subpart J. Suspend the September 30, 2001 compliance date for the additional "punchlist" capabilities and packet mode capability pursuant to the Communications Assistance for Law Enforcement Act until completion of the remand proceedings.

Part 32. Set a firm date by which to complete the conversion to GAAP and permit incumbent LECs that already rely on GAAP for financial purposes to utilize GAAP for regulatory purposes. The first step of the transition should be to forbear from regulating depreciation and to permit all LECs to utilize Class B accounts. Revise the staff report regarding the purpose and advantage of Part 32.

Part 36. Adopt the Federal-State Joint Board recommendation to freeze jurisdictional separations on January 1, 2001 as specified in USTA's comments filed September 25, 2000.

Part 42. Eliminate this section except for Sections 42.10 and 42.11 that should be moved to Part 61.

Part 43. Eliminate the ARMIS reports, or consolidate ARMIS 43-01 through 43-04 into a single report and significantly streamline the network reports as previously recommended by USTA.

Part 51. Resist any effort to apply these rules to incumbent LEC provision of advanced services as well as any effort that interferes with the network configuration decisions of incumbent LECs.

Part 52. Resolve outstanding numbering issues including the development of national pooling standards, support for industry numbering guidelines and the adoption of a cost recovery mechanism for local number portability costs borne by non-LNP capable carriers.

Part 54. Reconsider the decision to require service providers to reimburse the schools and libraries program for payments or commitments made by ineligible recipients or ineligible uses of the equipment funded and refrain from revising the universal service definition.

Part 61. Restructure Part 61 to include only tariff requirements and move the rules associated with price cap regulation to a new Part XX and the rules associated with rate of return regulation to Part 69. Permit all incumbent LECs to file contract-based tariffs. Ensure that the tariff filing requirements are consistent with Section 204(a)(3) of the Act. Streamline the notice period to file corrections and extend the special permission period.

Part 64 – Subpart A. Delete this Subpart.

Part 64 – Subpart C. Delete this Subpart.

Part 64 – Subpart E. Delete this Subpart.

Part 64 – Subpart G. Delete this Subpart since all providers except incumbent LECs are permitted to bundle equipment and service.

Part 64 - Subpart H. Delete this Subpart.

Part 64 – Subpart I. Move toward eliminating this Subpart and revise the purpose and recent efforts sections of the staff report.

Part 64 – Subpart T. Eliminate the requirement that independent incumbent LECs provide interexchange service through a separate affiliate.

Part 64 – Subpart W. Suspend the September 30, 2001 compliance date.

Part 65. Eliminate reporting requirements except when a lower formula adjustment is filed and exclude services that are not subject to price cap regulation. Modify Section 65.700 to calculate the maximum allowable rate of return on all access elements in the aggregate and modify Section 65.702 to measure earnings on an overall interstate basis.

Part 68. Ensure that the rules continue to protect the public switched network from harmful CPE and transfer responsibility for the development of new, as well as for the maintenance of existing, technical requirements to the private sector consistent with USTA's comments in CC Docket No. 99-216.

Part 69. Revise this section so that it only applies to rate of return carriers, eliminate the detailed rate element codification and public interest petition requirement and streamline the access structure into four elements.



However, USTA agrees with the staff that there are many advantages to such a review. As the staff points out, in most instances, market forces will yield more economic results than regulation. Eliminating unnecessary regulations could reduce regulatory costs, which in turn can result in reduced charges to consumers. USTA also commends the staff for the consistent analysis it applied during its review. A common set of guidelines is necessary to ensure that the regulations are subject to the same level of scrutiny. However, USTA recommends that the Commission add to its analysis a determination that it has complied with the definition of small business as articulated by the U.S. Small Business Administration by including small incumbent LECs within that definition when contemplating the adoption of a new regulation.<sup>3</sup>

USTA supports the staff's recommendation that the Commission utilize an analysis similar to that employed in the staff report whenever the Commission adopts new rules. However, USTA would strongly encourage the Commission to make clear that the rule will still be subject to a subsequent review every two years to justify its continued application. It may be even more effective to include a sunset provision for any new rule.

USTA is concerned that there is no process in place to ensure that the biennial review proceedings needed to modify and/or eliminate regulations which have been identified in the review process are initiated and concluded in a timely manner. Thus, there is no assurance that the purpose of Section 11, to eliminate unnecessary regulation, will ever be achieved.<sup>4</sup> This is evidenced by the fact that the staff report lists proceedings initiated as part of the 1998 biennial review that are still pending, even as the 2000 biennial review comes to a close. The staff report appears to justify this omission by stating that the statute does not require the Commission to

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<sup>3</sup> See, Letter from Jere W. Glover, Chief Counsel, Office of Advocacy and Eric E. Menge, Assistant Chief Counsel for Telecommunications, U.S. Small Business Administration, to Chairman William E. Kennard, May 27, 1999.

actually repeal or modify its rules by the end of 2000. Such an interpretation renders the whole review meaningless. While undertaking to review and identify unnecessary rules must be accomplished, if the identified rules are allowed to continue to operate indefinitely or proceedings are initiated but never completed, the unnecessary regulations will continue to operate to the detriment of the public interest. Congress surely did not intend for the Commission to only identify unnecessary rules every two years, but never to actually eliminate them. Once the rule is identified as unnecessary in the public interest, it should not languish indefinitely. USTA recommends that the Commission institute a process under which any rule identified for elimination in a biennial regulatory review would automatically sunset within ninety days unless a party petitioned the Commission to retain the rule. The burden would be on the petitioning party to justify retention of the rule. In addition, the Commission should require that a rulemaking proceeding be initiated and completed within ninety days after a rule has been identified for modification in a biennial regulatory review. These time constraints for Commission action would impose some much-needed discipline and to ensure that the results of a biennial regulatory review are actually enacted in a timely manner consistent with the intent of the statute.

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<sup>4</sup> See, 141 Cong.Rec. S7881, June 7, 1995. (Section 11 “establishes a process that will require continuing justification for rules and regulations every two years. Every two years, in other words, all rules and regulations will be on the table. If they don’t make sense, there is a process established to terminate them.”).

## II. SUMMARY OF COMMON CARRIER REVIEW

Inexplicably, the summary of common carrier activities omits the most significant regulatory reform enacted by the Commission since the 1998 biennial review. The Pricing Flexibility Order provided a specific framework whereby carriers subject to price cap regulation would receive limited relief from pricing rules in the provision of interstate access services upon satisfaction of specific competitive triggers.<sup>5</sup> This market-based approach is economically sound, administratively simple and serves the public interest by providing customers with greater choices. The staff should recommend that the Commission move expeditiously to complete the framework for switched access services.<sup>6</sup> USTA is actively participating in the other ongoing activities listed by the Bureau and looks forward to continuing its efforts to convince the Bureau that market forces are infinitely superior to regulation to determine efficient levels of output, investment and price.

The staff recommends that the Commission address several new initiatives. USTA will comment on the specific rules changes recommended by the staff below. The staff recommendation to initiate a Commission proceeding to consider the current system of intercarrier compensation for the origination and termination of traffic and to identify alternative approaches raises significant issues. One current compensation mechanism, the payment of reciprocal compensation to CLECs for Internet bound traffic, certainly exemplifies regulation gone awry. This requirement has resulted in gross market distortions, has impeded local competition and is completely inconsistent with the requirements of the Telecommunications

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<sup>5</sup> Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, FCC 99-206, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-262, CC Docket No. 94-1, CCB/CPD File No. 98-63 and CC Docket No. 98-157 (rel. Aug. 27, 1999).

Act. However, this is a problem that must be resolved now and must not wait a further proceeding. The Commission must clarify once and for all that Internet bound traffic is interstate communications for which reciprocal compensation does not apply.

It may be reasonable for the Commission to initiate a public discussion of how competitive and technological developments in the origination, delivery and termination of communications offerings will impact carrier and customer relationships. Certainly the growth of Internet telephony calls into question the relevance of many current regulations. The Internet is not constrained by geographic boundaries or service distinctions, but is governed solely by market forces. Customers communicate anywhere in the world for a single nationwide rate. Current regulations are based on geographic boundaries, such as local access transport areas, and service distinctions, such as local, long distance, cable, satellite, and wireless, and are managed by regulatory bodies who dictate terms of entry, prices, and business operations. Such regulations should be examined to determine if they are impeding innovation and competition.

However, in addressing alternatives to current compensation arrangements, the Commission must recognize that a "one-size fits all" approach may not be appropriate. An alternative compensation arrangement that accommodates the business operations of a LEC participating in CALLs will not necessarily accommodate a rate of return LEC who has not implemented access reform. The Commission must carefully consider the full impact of any alternatives given the diverse circumstances under which incumbent LECs operate.

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<sup>6</sup> Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, CC Docket Nos. 96-262, 94-1 and CCB/CPD File No. 98-63, Comments of USTA filed October 29, 1999.

### **III. RULE PART ANALYSIS**

#### **PART – 1 PRACTICE AND PROCEDURE**

The staff report does not recommend any changes to the Part 1 rules. However, USTA has pointed out that the failure to consider and resolve certain applications for waiver of the rules and petitions for reconsideration in timely manner is a definite disadvantage in that it creates and perpetuates uncertainty for carriers and their customers. As a result of such delays, new service offerings could languish and customers may be denied choices. USTA has recommended that the Commission limit the time it has to consider waiver requests and petitions for reconsideration to one year. If such filings are not denied within one year, they should be deemed granted.

## **PART 1, SUBPART J – POLE ATTACHMENT COMPLAINT PROCEDURES**

USTA also recommends that the Commission streamline the pole attachment rules contained in Subpart J. As explained in USTA's petition for reconsideration, Section 1.1417(d), which requires a carrier to determine the average number of attachers per pole based on three different demographic zones within a state, creates a significant administrative burden with very little, if any benefit in return.<sup>7</sup> The location definitions are confusing and overlapping and create far more complexity than is necessary. USTA has proposed that the Commission modify this rule to state simply that each utility shall establish a presumptive average number of attachers for each state.

Further, the Commission should not require that carriers utilize Part 32 to determine the operating expenses and actual capital costs used to set pole attachment rates. USTA is also seeking reconsideration of a Commission decision to exclude certain administrative expenses contained in certain Part 32 accounts in the pole attachment formula.<sup>8</sup> USTA has also objected to the Commission's methodology to avoid negative pole attachment rates because it requires a level of accounting detail that is not currently available. Such disputes could be avoided if LECs were permitted to utilize Generally Accepted Accounting Principles (GAAP) without specifying Part 32 accounts.

The Commission could also reduce the number of unnecessary complaints if it utilized general presumptions regarding the reasonability of pole attachment rates. For example, the Commission could adopt a presumption that a rate is not excessive if an equal or higher rate has been in effect for a period of over twelve months without complaint. Likewise, the Commission

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<sup>7</sup> USTA Petition for Reconsideration, CS Docket No. 97-151, filed April 13, 1998.

<sup>8</sup> Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98, Petition for Reconsideration and Clarification, filed June 16, 2000. USTA also requested that the costs of ducts reserved for maintenance and municipal uses be treated as unusable space and recovered from all users.

could adopt a presumption that rates established under a long term agreement are presumed reasonable for the length of the agreement.

**PART 17 – CONSTRUCTION, MARKING AND LIGHTING OF ANTENNA  
STRUCTURES**

USTA supports the Commission's efforts to eliminate duplication and confusion regarding the Part 17 requirements.

**PART 20, SECTION 20.11 – INTERCONNECTION TO FACILITIES OF LOCAL EXCHANGE CARRIERS**

While USTA agrees that Section 20.11 needs no further clarification at this time, the Commission should ensure that its requirement that interconnection arrangements between LECs and CMRS providers are reasonable and nondiscriminatory not be subverted. The Commission should, therefore, deny the request for clarification filed by Sprint PCS regarding reciprocal compensation for CMRS providers that would unreasonably expand the current rules to require reciprocal compensation to CMRS providers for the traffic sensitive elements of their mobile network to switch or terminate local traffic to mobile customers that originates on another carrier's network.<sup>9</sup> The Commission should not be promulgating rules or guidelines that seek to impose further obligations on LECs to subsidize their competitors.

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<sup>9</sup> Reciprocal Compensation for CMRS Providers, CC Docket Nos. 96-98, 95-185 and WT Docket No. 97-207, USTA Comments filed June 1, 2000.

**PART 20, SECTION 20.20 – CONDITIONS APPLICABLE TO PROVISION OF CMRS SERVICE BY LOCAL EXCHANGE CARRIERS**

While the staff report notes that Section 20.20 requiring incumbent LECs to utilize a separate affiliate for CMRS operations will sunset on January 1, 2002, the Commission should accelerate that timeframe and eliminate this requirement immediately. Wireless has rapidly evolved to a full service platform providing not just traditional local telephony services, but also Internet access. Incumbent LECs do not have the ability to restrain CMRS competition. Already more people have wireless phones than have cable television and in five years it is estimated that there will be one billion mobile devices. Wireless subscribership has grown at more than fifty percent throughout the last decade. The competitive conditions in the local exchange market, which the staff indicates is the justification for this rule, have already changed and no longer merit continued application of this rule.

**PART 22, SUBPART J – REQUIRED CAPABILITIES PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)**

USTA agrees with the staff recommendation that the Commission reconsider its capability requirements based on the decision of the D.C. Circuit decision vacating and remanding four of the capability requirements ordered by the Commission.<sup>10</sup> However, USTA recommends that the Commission also suspend the September 30, 2001 compliance date for the additional capability requirements and the packet-mode capability until it has completed its proceedings as directed by the Court, allowing a reasonable time for carrier implementation.<sup>11</sup>

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<sup>10</sup> *United States Telecom Association v. FCC*, No. 99-1442, slip op. (D.C. Cir. Aug. 15, 2000).

<sup>11</sup> Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, Comments of USTA filed September 15, 2000.

## **PART 32 – UNIFORM SYSTEM OF ACCOUNTS**

USTA strongly supports the staff's recommendation that there be substantial reductions in the Commission's accounting requirements. As USTA has pointed out countless times, the Part 32 rules do not reflect current business and market operations and subject incumbent LECs to needless regulatory requirements.<sup>12</sup> USTA has urged the Commission to set a firm date by which to complete the conversion to GAAP and to permit incumbent LECs that already rely on GAAP for financial purposes to utilize GAAP for regulatory purposes. Such a step would pave the way for a substantial reduction in onerous accounting, recordkeeping and reporting requirements without materially affecting the Commission's ability to monitor incumbent LECs. The first steps in the transition should be to forbear from regulating depreciation and to permit all LECs to utilize Class B accounts.

The staff misstates both the purpose and advantage of Part 32. Part 32 is a historical financial accounting system that, as mentioned above, is no longer used to manage business operations. The financial community does not use Part 32 results. Part 32 is not reflected in competitive reporting data. Its purpose is to enable regulators to assess the results of operational and financial events within a specified accounting period. It does not prevent the possibility of anti-competitive behavior, it is not required to allocate costs and it does not provide information, which would be useful in a complaint proceeding.<sup>13</sup> Part 32 is just a Commission staff tool and the Commission staff has not justified its purpose.

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<sup>12</sup> Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I, CC Docket No. 99-253, August 23, 1999.

<sup>13</sup> The Commission has found that the affiliate transaction rules satisfy the Act's accounting safeguards requirements. The affiliate transaction rules can be implemented without Part 32 because those rules rely on the value of specific services or assets and not on the account to which the cost is booked. Further, Part 32 does not allocate costs between regulated and competitive operations, jurisdictions or services. The current separations rules utilize Class B accounts. Part 64 cost allocation rules can be used without Part 32. In fact, the Part 64 cost allocation rules are similar to those adopted by the European Union, yet the European Union does not prescribe

Further, the report understates the disadvantages of the Part 32 rules. Over the years, USTA has provided many examples of how Part 32 increases the costs of performing internal accounting functions because it establishes record-keeping requirements and accounting procedures that are different from Security and Exchange Commission requirements. It also includes requirements, such as depreciation studies, that are not necessary in a competitive environment. “The additional costs associated with maintaining Part 32 compliance when converting to packaged systems is substantial due to the amount of customization required to enable the new systems to capture and report regulatory information according to Part 32. Typically, mappings must be developed to get from the native accounts of the packaged system to Part 32 accounts...The ongoing functionality of new systems is often severely diminished due to the level of records and data that must be added in order to comply with Part 32.”<sup>14</sup>

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standard accounts for telecommunications carriers. Because Part 32 does not uniquely identify tariff costs, neither Part 32 nor a Part 32 report can be used to pursue a complaint. In fact, Part 32 includes nonregulated costs.

<sup>14</sup> Letter from Carl R. Geppert, Arthur Andersen, CC Docket No. 98-81, ASD File No. 98-44 and CC Docket No. 98-177, July 15, 1998 at p.21.

## **PART 36 – JURISDICTIONAL SEPARATIONS PROCEDURES**

USTA supports the Federal-State Joint Board recommendation to freeze jurisdictional separations on January 1, 2001 as specified in USTA's comments filed September 25, 2000.<sup>15</sup>

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<sup>15</sup> Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80-286, Comments of USTA, September 25, 2000.

## **PART 42 – PRESERVATION OF RECORDS OF COMMON CARRIERS**

USTA has suggested that this part of the rules be eliminated, as it is outdated and unnecessary. Incumbent LECs should be permitted to determine the most efficient manner in which to conduct their recordkeeping. USTA has also suggested that Sections 42.10 and 42.11, regarding the public availability and retention of information concerning detariffed interexchange services, be maintained, but moved to Part 61 which contains other tariff requirements, thereby eliminating the need for this part of the rules.

## **PART 43 – REPORTS OF COMMUNICATIONS COMMON CARRIERS AND CERTAIN AFFILIATES**

While USTA supports the staff recommendation to continue efforts to streamline the ARMIS reporting requirements, the Commission's efforts should be directed toward eliminating them. As USTA has pointed out, most of the reports have outlived their usefulness and nothing in the staff report contradicts that assessment. As the staff report indicates, the reports are unnecessarily detailed. In addition, some of the ARMIS reports require incumbent LECs to provide competitive information. None of the information contained in the reports is necessary to meet any of the statutory obligations created by the Telecommunications Act.

At the very least, the Commission should consolidate the ARMIS 43-01 through 43-04 into a single report as recommended by USTA.<sup>16</sup> This step alone would reduce the number of pages to be filed from 191 to five. The ARMIS network reports should be eliminated, although USTA has also suggested ways to streamline these reports to alleviate the regulatory burden they impose.

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<sup>16</sup> USTA Petition for Rulemaking, 2000 Biennial Review, filed August 11, 1999, RM 9707.

## **PART 51 – INTERCONNECTION**

USTA urges the staff to recommend that none of the rules in this section be applied to incumbent LEC provision of advanced services. Both incumbent LECs and their competitors are at the early stages of developing and deploying advanced services and the Commission has stated that it is committed to removing barriers to competition so that “incumbent LECs are able to make their decisions to invest in, and deploy, advanced telecommunications services based on market demands and their own strategic business plans, rather than on regulatory requirements.”<sup>17</sup> The Part 51 rules currently impose requirements on incumbent LECs to provide collocation and unbundled network elements that would place them at a distinct competitive disadvantage in the provision of advanced services. These rules are in stark contrast to the position taken by competitors, such as AT&T, who refuse to provide access to their own facilities. USTA urges the Commission to permit fair competition by ensuring that none of these rules apply to the provision of advanced services.

In addition, the Commission must not impose regulations that interfere with the network configuration decisions made by incumbent LECs. The Telecommunications Act does not give the Commission any authority to dictate network configuration or the particular technologies that an incumbent may decide to use in providing its retail services. Any suggestion that the Commission promulgate rules that may in any way prejudice technology choices in the marketplace must be rejected.

The deployment of advanced broadband networks and services should be determined by market forces, technological advances, consumer demand and individual business decisions by providers, not by regulatory fiat. Incumbent LECs should not be trying to upgrade their

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<sup>17</sup> Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-48 (rel. Mar. 31, 1999) at ¶ 2.

networks and deploy advanced services operating under rules which do not apply to their competitors and which only serve to restrict investment and devalue their infrastructure.

Regulation that delays innovation or investment is not in the public interest.

## **PART 52 – NUMBERING**

The importance of the numbering rules cannot be overstated. However, there are many numbering issues outstanding. Well over half of the states have requested interim numbering authority to implement thousand block pooling and employ number conservation measures. The Commission has granted many of these requests. In the absence of national pooling standards, the grant of additional authority to individual states could erode nationwide number conservation. The Commission should implement national pooling standards. Orderly, national numbering conservation and administration measures are essential to the optimization of the North American Numbering Plan. USTA is also concerned over instances where the Commission staff has ignored the guidelines adopted by the industry and implemented by the North American Numbering Plan Administrator. Finally, the Commission must adopt a cost recovery mechanism for local number portability (LNP) costs borne by non-LNP capable carriers.

## **PART 54 – UNIVERSAL SERVICE**

USTA recommends that the Commission reconsider its decision to require service providers to reimburse the schools and libraries program for payments or commitments made by ineligible recipients or ineligible uses of the equipment funded.<sup>18</sup> The Commission's rules do not permit the delegation of collection authority to the Universal Service Administrative Authority. The Commission's decision is not supported by legal precedent and impermissibly delegates collection authority to the Universal Service Administrative Authority. In addition, the Commission should not entertain requests to alter the rules concerning the services that are included in the definition of universal service. The Act is clear that such a determination must be made by the Federal-State Joint Board based on the specific criteria contained therein.

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<sup>18</sup> Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21, 96-45, USTA Petition for Reconsideration, filed November 15, 1999.

## **PART 61 – TARIFFS**

In its 1998 and 2000 biennial review petitions, USTA has recommended restructuring the Part 61 and Part 69 rules. USTA suggested that Part 61 contain only carrier tariff requirements. Rules associated with price cap regulation would be moved to a new Part XX and rules associated with rate of return regulation would be moved to Part 69.<sup>19</sup> USTA believes that this restructuring would assist in simplifying and clarifying the current rules.

While the staff report did not include any changes in the Part 61 rules, USTA believes that there are several rules that meet the statutory requirements for elimination pursuant to biennial review. All incumbent LECs should be permitted to file contract-based tariffs.<sup>20</sup> Such reform is long overdue. Incumbent LECs should have the same opportunity as their competitors to respond directly to customer requests. USTA provided evidence in its 2000 biennial review petition that practically every state permits some form of contract-based tariffs. USTA also has recommended that the Commission make its tariff filing requirements consistent with Section 204(a)(3) of the Act. The notice period to file corrections to tariffs should be streamlined from three days to one day and there is no need for the current requirement that tariffs be in effect for thirty days before any changes can be made. Finally, the special permission period should be extended from sixty to ninety days. These changes are consistent with the establishment of a pro-competitive, de-regulatory statutory framework and should be considered as part of biennial review.

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<sup>19</sup> By consolidating the price cap rules into a new section, the Commission could relieve price cap carriers from certain requirements that no longer apply to price cap regulation, such as the codified rate structure and study area averaging. The new provisions associated with the Pricing Flexibility Order and the CALLs Order would be included in the new part. USTA would urge the Commission to proceed with new rules for Phase II pricing flexibility for switched services as discussed in its comments filed October 29, 1999 in CC Docket No. 96-262. Any new access reform proposal ultimately adopted for rate of return carriers would be included in Part 69.

<sup>20</sup> Under the Pricing Flexibility framework, price cap LECs are permitted to file contract-based tariffs in Phase I.

**PART 64 – MISCELLANEOUS RULES RELATION TO COMMON CARRIERS**

**SUBPART A – TRAFFIC DAMAGE CLAIMS**

USTA agrees with the staff recommendation to delete this subpart. Incumbent LECs maintain records of traffic damage claims as required by the IRS and the SEC. There is no need for the Commission to duplicate these requirements.

**PART 64 – SUBPART C - FURNISHING OF FACILITIES TO FOREIGN GOVERNMENTS FOR INTERNATIONAL COMMUNICATIONS**

The staff report indicates that this subpart has not been reviewed since 1963. This function could be handled through contract consistent with applicable treaties and other federal laws. USTA recommends that this subpart be eliminated.

**PART 64 – SUBPART E – USE OF RECORDING DEVICES BY TELEPHONE COMPANIES**

USTA supports the staff report recommendation to eliminate this section.

**PART 64 – SUBPART G – FURNISHING OF ENHANCED SERVICES AND  
CUSTOMER PREMISES EQUIPMENT BY BELL OPERATING COMPANIES;  
TELEPHONE OPERATOR SERVICES**

The prohibition on the bundling of enhanced services and CPE is no longer necessary in a competitive environment. Every provider of telecommunications services except the incumbent LEC is permitted to bundle equipment and service. Further, technology is blurring the distinction between CPE and service. These provisions should be eliminated.

**PART 64 – SUBPART H – EXTENSION OF UNSECURED CREDIT FOR INTERSTATE AND FOREIGN COMMUNICATIONS SERVICES TO CANDIDATES FOR FEDERAL OFFICE**

The staff report indicates that this section has not been reviewed in five years. Contracts and current state and Federal laws should provide sufficient oversight. This Subpart should be deleted.

## **PART 64 – SUBPART I – ALLOCATION OF COSTS**

USTA has urged the Commission to streamline the CAM filing and audit requirements with the ultimate goal of eliminating the requirement to allocate costs between regulated and nonregulated activities. In a competitive environment, such an allocation is unnecessary.

The staff report erroneously characterizes the purpose and recent efforts regarding this Subpart. Part 64 – Subpart I was not designed to implement Section 254(k) of the Act. This Subpart was implemented in the 1980's when all LECs operated under rate of return regulation. Its purpose was to make sure that all of the costs of nonregulated activities were removed from the rate base and allowable expenses for interstate regulated services. It only applies to incumbent LECs. Section 254(k) was not enacted until 1996 and applies to all telecommunications service providers. The Commission, without notice or comment, codified Section 254(k) in Part 64 – Subpart I in 1997. The Commission should accurately portray the purpose of this Subpart.

Further, the recent efforts included in the report should be clarified. While the Commission eliminated the pre-filing requirement, the rules still require multiple CAM filings throughout the year to record changes to cost apportionment and time reporting. The administrative burdens of multiple CAM filings have not been significantly alleviated.

**PART 64 – SUBPART T – SEPARATE AFFILIATE REQUIREMENTS FOR INCUMBENT INDEPENDENT LOCAL EXCHANGE CARRIERS THAT PROVIDE IN-REGION, INTERSTATE DOMESTIC INTEREXCHANGE SERVICES OR IN-REGION INTERNATIONAL INTEREXCHANGE SERVICES**

The staff report contains no explanation for its recommendation to provide for a triennial review of the requirement that independent incumbent LECs provide interexchange service through a separate affiliate. This recommendation makes no sense and the requirement should be eliminated immediately. For many years, independent incumbent LECs have been free to offer long distance services within their service territories. This has proved beneficial to rural customers. There is no evidence before the Commission of any anticompetitive implications. The Commission's decision to impose this requirement relied solely on a "potential" for improper behavior as justification. It is ludicrous to impose such a burdensome and unnecessary requirement on the smallest incumbent LECs who must compete against unregulated global companies such as AT&T, WorldCom and Sprint to provide interexchange service. There is no need to delay the elimination of this requirement.

**PART 64 – SUBPART W- REQUIRED NEW CAPABILITIES PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)**

USTA agrees with the staff recommendation that these rules be reassessed given the D.C. Circuit Court remand of the requirements contained in this Subpart. USTA recommends that the Commission immediately suspend the September 30, 2001 compliance date in order to avoid confusion and uncertainty.

## **PART 65 – INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES**

USTA continues to support streamlining the Part 65 rules to reduce the regulatory burdens that these rules impose on all incumbent LECs. Reporting requirements should be eliminated except when a lower formula adjustment is filed. Services that are excluded from price cap regulation should not be subject to the prescribed rate of return. The Commission should modify Section 65.700 to calculate the maximum allowable rate of return on all access elements in the aggregate instead of for each access category and Section 65.702 to measure earnings on an overall interstate basis instead of separately for each access category.

## **PART 68 – CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORKS**

USTA supports the staff report recommendation to ensure that the rules continue to protect the public switched network from harmful CPE. However, USTA also agrees that it is possible to transfer responsibility for the development of new, as well as for the maintenance of existing technical requirements, to the private sector. USTA encourages the Commission to continue its efforts in that regard, consistent with USTA's comments in CC Docket No. 99-216.

## **PART 69 – ACCESS CHARGES**

As noted above, USTA recommends revising Part 69 so that it only applies to rate of return carriers. In addition, Section 69.4 should be deleted, thereby eliminating detailed rate element codification and public interest petition requirement for the establishment of new rate elements. This will facilitate innovation and accelerate the delivery of new service options to the customers of rate of return carriers. The access structure should be streamlined into four elements to simplify the current structure.

#### IV. CONCLUSION

While USTA applauds the staff's efforts to release the 2000 biennial review report, the recommendations for action are not sufficient. Removing regulatory burdens and avoiding the imposition of new burdens on incumbent LECs will permit these carriers to serve their customers in a more cost-effective and efficient manner and will provide the appropriate incentives to encourage investment in the telecommunication infrastructure. Convergence in communications offerings has rendered many current rules obsolete, such that they no longer serve the public interest. Much more needs to be done to eliminate current rules. USTA incorporates its 1998 and 2000 biennial review petitions by reference into the record of this proceeding and urges the Commission to take a more aggressive approach to fulfilling its commitments to rely on market forces rather than regulation to enhance the development of economically efficient and fair competition.

Respectfully submitted,

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