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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2;	)	CC Docket No. 00-199
Amendments to the Uniform System of Accounts for Interconnection;	)	CC Docket No. 97-212
	)	CC Docket No. 80-286
Jurisdictional Separations Reform and Referral to the Federal-State Joint Board;	)	
Local Competition and Broadband Reporting.	)	CC Docket No. 99-301

INITIAL COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedures, 47 C.F.R. Section 1.49, 1.415, and 1.419 (2001), the National Association of Regulatory Commissioners ("NARUC") respectfully submits these comments on the FCC's Further Notice of Proposed Rulemaking adopted October 11, 2001, and released November 5, 2001 [FCC 01-305 67 Federal Register 5704 (February 6, 2002)] ("*FNPRM*").

NARUC believes a national system of accounting requirements ensuring there is no cross-subsidization, and providing uniformity and comparability among companies is in the public interest. Most of NARUC's member commissions have adopted accounting and cost allocation rules patterned after the FCC's rules.

The FCC and State commissions, working together, have taken several significant steps toward deregulation of the local exchange carriers. *NARUC applauds the efforts of the FCC commissioners and staff to involve the States in this streamlining process, and respectfully suggests that the cooperative effort has been of mutual benefit.* We believe that those joint efforts should continue.

Given the importance of consistent and comparable data to regulators embroiled in phasing out various components of economic regulation, NARUC respectfully reiterates its formal request for the FCC to immediately establish a Federal-State Joint Conference. Section 410(b) authorizes the Commission to "confer with any State commission having regulatory jurisdiction with respect to carriers regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission." This grant of authority expressly covers accounting reform efforts. The Commission has convened such conferences in the past, most recently in 1999 with the establishment of a Joint Conference on Advanced Telecommunications Services.[1] Given the possible impact of changes proposed in this NPRM, NARUC believes a Joint Conference is an absolute prerequisite to develop the record needed to address further changes to the national accounting and reporting rules.

In earlier pleadings, NARUC took the position that, in the transition to more competitive markets, accounting and reporting requirements should be the last requirements to be eliminated. Without adequate accounting records, regulators lack critical information necessary to make informed decisions that impact both telecommunications carriers and their customers. Diminished accounting responsibility and reporting not only undercuts regulatory decision-making and regulator's ability to curtail anticompetitive activity, it also can thwart competition because neither competitors nor users have access to information needed to effectively participate in the competitive process. As discussed more fully below, NARUC suggests requirements should be removed only after there is clear and incontrovertible evidence that doing so would be in the public interest, as determined by both the FCC and State regulators and that the actual competition ILECs face is sufficient to prevent abuse and anti-competitive practices by the ILECs.

In support of these positions, NARUC states as follows:

NARUC'S INTEREST

NARUC is a quasi-governmental nonprofit organization founded in 1889. Members include the governmental bodies engaged in the regulation of carriers and utilities from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands.

NARUC's mission is to improve the quality and effectiveness of public utility regulation in America. Specifically, NARUC is composed of, *inter alia*, state and territorial officials charged with the duty of regulating the telecommunications common carriers within their respective borders. These officials have the obligation to assure that such telecommunications services and facilities as are required by the public convenience and necessity are established, and that services are furnished at rates that are just and reasonable.

Because of the obvious potential impact on State commission procedures, and NARUC's stated goal of promoting more efficient regulation, NARUC has an interest in this proceeding.[2]

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[1] See *Federal-State Joint Conference on Advanced Telecommunications Services*, 14 FCC Rcd 17622 (1999); *see also* 47 C.F.R. Part 1, Appendix A.

[2] NARUC also recognizes that the unique concerns individual NARUC State members may have with the FNPRM may vary. For this reason, NARUC urged its members to submit comments in this proceeding as well. At its Annual Convention held November 11, 2001 in Philadelphia, Pennsylvania,

II. BACKGROUND

In 1999, the FCC initiated a two-phased comprehensive review of its accounting rules and the related reporting requirements for incumbent local exchange carriers ("ILECs") to keep pace with changing conditions in a competitive telecommunications industry. In its first Report and Order in CC Docket No. 99-253, ("*Phase 1 Report and Order*"), adopted March 2, 2000 and released March 8, 2000, the FCC approved accounting rule changes and reporting reform measures for the Automated Reporting Management Information System ("ARMIS"). Later, on October 11, 2001, the FCC adopted another Report and Order (FCC 01-305) in CC Docket Nos. 00-199, 97-212, and 80-286, ("*Phase 2 Report and Order*") which imposed additional and significant revisions to streamline Parts 32 and 64 of the FCC's rules. These reductions were based on FCC determinations that the specific accounting rules/reports involved were no longer necessary or were outdated in the FCC's "pro-competitive, deregulatory" national policy framework for the telecommunications industry. Concurrently with the *Phase 2 Report and Order*, the FCC initiated a *Further Notice of Proposed Rulemaking* seeking comment on, *inter alia,* the appropriate circumstances for eliminating accounting and reporting requirements, whether certain ARMIS data is more appropriately collected through other means; and how to amendment the separations rules to reflect modifications to the Uniform System of Accounts.

NARUC adopted a resolution specifically requesting the establishment of a Federal-State Joint conference to develop comprehensive accounting and reporting changes, under Section 410(b) of the 1996 Telecom Act, to ensure a fully developed record. The resolution also encouraged States to file comments in this proceeding expressing their individual concerns and views regarding the FCC's sunset proposals.

III. DISCUSSION

NARUC appreciates the opportunity to offer comments on the FNPRM. While the NARUC applauds the FCC's continued efforts to simplify and streamline its accounting and reporting requirements, we remain concerned that this process is proceeding far too quickly to allow the necessary measured deliberation over the critical interrelationships between State and federal needs. The FCC must be very careful to assure it does not inadvertently eliminate accounting and reporting rules required to promote universal service, foster efficient competition, and protect consumers. Because of the importance of these issues to the States,[3] NARUC formally requests a Federal-State Joint Conference be immediately convened to develop comprehensive accounting and reporting changes, under Section 410(b) of the Telecommunications Act of 1996 ("1996 Act"). We believe a Joint Conference is needed to ensure a fully developed record. Notwithstanding this request, we offer the comments set forth below.

The *FNPRM* states in an environment where competition will be the main force that sets rates, the FCC's approach will be to eliminate a particular accounting or reporting requirement unless it advances a valid federal regulatory interest.[4] In the instant proceeding, the FCC's concern appears to hinge on whether some of the rules retained in Phase 2 impose unnecessary burdens on the ILECs.

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[3] Congress recognized the need for some coordinated State input into the FCC's accounting procedures not only in Section 410(b), as referenced earlier, but also at 47 USC § 220(i), the source of the FCC's authority to impose accounting requirements. That section requires the FCC to "give reasonable opportunity to each [State] commission to present its views, and shall receive and consider such views and recommendations"…. "before prescribing any requirements as to accounts, records, or memoranda."

[4] When determining what accounting detail/reports the FCC needs to fulfill its statutory duty, the Commission must consider State requirements as 47 U.S.C. §252(e)(5-6) contemplates FCC acting as a State surrogate if and when a particular State "fails to act."

The FCC's accounting and reporting rules were designed to provide uniform accounting data to provide information concerning the financial condition of the ILECs, and to serve as an efficient system for both management and federal and state regulators including the Rural Utilities Services ("RUS") and the National Exchange Carrier Association ("NECA"). As carriers were allowed to provide nonregulated services without the need for structural separations, the accounting and reporting rules served the additional public policy goal of ensuring that the ratepayers of regulated services did not bear the costs and risks of nonregulated activities. With the development of the universal service system, the accounting and reporting rules also served the policy of ensuring proper cost data on which to base a system of sufficient universal service support. The *FNPRM* asks whether these policies, which have relied extensively on accurate accounting and reporting data in their implementation, can be maintained with drastic reductions in accounting and reporting requirements.

NARUC submits these public policy goals remain as important today as they were when they were implemented, and will continue to remain important in the future. A continuing need for uniformity in accounts and publicly available data exists for the FCC and the States to fulfill their regulatory and statutory mandates.

Congress expressed a primary concern in the 1996 Act that the ILECs not subsidize competitive services with their local services. The most effective way federal and State regulators have found to ensure no cross-subsidy is through the implementation of uniform accounting requirements (as required under Section 220 of the Act) and through the use of a regulated/non-regulated cost allocation process. The FCC has in place Parts 32 and 64, and most States have adopted accounting and cost allocation rules patterned on the FCC's rules.

Other public policy programs, such as the Universal Service Fund ("USF"), remain dependent on uniform accounting and reporting requirements. Contributions into the USF, as well as payments of USF support, are directly determined by the existing uniform accounting data. A successful national universal service program will continue to require uniformity in accounting and reporting. Such requirements provide data necessary for States, the FCC, and ILEC competitors to develop critical cost components used to establish proper universal service support.

Other public policies, including the establishment of just, reasonable, and non-discriminatory UNE and interconnection pricing, pole attachment rates, and other rates that ILECs charge its customers, require uniform accounting data. Without a uniform accounting system, subject to public reporting, there will be little, if any, reliable data available upon which to base critical decisions that concern these and other important public policy issues.

Moreover, it will be difficult, if not impossible, for the FCC, State regulators, or other interested parties to make meaningful comparisons of the accounting data between companies or States without a comprehensive, uniform system of accounts. This practice of "benchmarking," or comparing data between companies and States, is well-tested and allows all concerned to make much more informed decisions than would otherwise be possible.[5]

Paragraph 141 of the *Phase 2 Report and Order* acknowledges that metallic and non-metallic cable investment and expense data are used for various purposes, such as inputs to the universal service high cost model for non-rural carriers as well as other forward-looking cost studies. Nonetheless, the same order concludes there is no need to report this data in ARMIS 43-

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[5] ILECs' use "benchmarking" to establish rates and prices. However, as used here, the term "benchmarking" is a comparative analysis tool to compare investments, expenses, revenues, prices, and their interrelationships.

02.[6] NARUC questions the logic of that conclusion. The FCC clearly acknowledges a federal need for this data and yet has chosen not to collect it. If this data is not reported, what will the FCC use as inputs in its universal service cost model? If the FCC intends to gather this data on an ad hoc basis, then States will be required to duplicate the FCC's efforts. The ILECs will thus be responding not only to the FCC's requests, but to fifty-one additional ad hoc data requests for this data. Clearly, this is not the best use of either federal or State resources when the data, which the carriers already keep in separate accounts, could easily be reported on ARMIS 43-02. Additionally, given the ILEC's tendency to assert confidentiality of data reported to all regulators, neither the FCC nor the States would have the ability to ensure the various data responses were the same.

The FCC's accounting and reporting safeguards have been instrumental in bringing competition into the local market. Elimination of these requirements at this time could jeopardize the gains that have been made and could compromise future competition in these markets. The path the FCC adopts to eliminate or reduce accounting and reporting requirements will impact State allocation of resources and access to information. Accordingly, the manner and timing for eliminating any of these requirements; as well as the specific accounting and reporting requirements ultimately eliminated are of critical concern to NARUC and its members. Accounting and reporting requirements should be the last vestiges of regulatory oversight. This is the area most susceptible to abuse and anti-competitive practices by the ILECs.

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6 Paragraph 141 states "the [FCC] proposed to add rows . . . to allow for the reporting of metallic and non-metallic cable investment and expense . .Carriers *already maintain this information in subsidiary record categories . . . The[se] categories are not reported to the [FCC], but the data are used for various purposes, such as inputs to the Commission's universal service high cost model for non-rural carriers as well as other forward-looking cost studies*. . .Given our desire to explore whether there are alternative sources for this information other than annual ARMIS filings, we do not think it makes sense at this time to add these rows to ARMIS."

NARUC's overall concern is that the Commission not inadvertently create a void in FCC and State ability to obtain and rely on accurate information concerning costs and investments by the ILECs. The impact of new technology, changes in the network infrastructure, jurisdictional cost shifting, and changes in the marketplace for telecommunications services, warrant reforms that are conducive, not counter, to the goals of a competitive local exchange market. Deregulatory measures, such as eliminating accounting and reporting requirements for the ILECs, should not be implemented in a broadbrush or hasty manner.

The record of this proceeding provides no evidence to even suggest that the FCC's accounting and reporting requirements have kept alternative firms from entering the market. The rules imposed on ILECs are designed to keep ILECs from acting in non-competitive ways; they also ensure that prices competitors pay for UNEs and interconnection are just, non-discriminatory and reasonable. There is no reason to consider imposing accounting and reporting requirements on non-ILEC participants. There is also no reason to consider, at this time, eliminating entirely the requirements on ILECs. Robust competition in the local services market has not yet developed and the competitive market remains fragile – particularly in the sparsely populated rural areas across the United States where entry is likely to lag significantly. Moreover, the cost and burden on ILECs to retain the existing uniform accounting and reporting system, or even a slightly enhanced system, is minimal. It cannot outweigh the benefits of the need for such requirements.

Elimination/Phase Out of Accounts States Use Regularly Could Cause Severe Problems.

The *FNPRM* notes that if the FCC cannot identify a federal need for a regulation, there is no justification in maintaining the requirement at the federal level. However, the *FNPRM* also correctly recognizes that an immediate deregulation of accounting and reporting requirements could cause severe problems for State regulators.

The following accounts were retained in the *Phase 2 Report and Order:* Account 5040, Private line revenue; Account 5060, Other basic area revenue; Account 1500, Other jurisdictional assets-net; Account 4370, Other jurisdictional liabilities and deferred credits-net; and Account 7910, Income effect of jurisdictional ratemaking differences-net.

However, the *FNPRM* contends these accounts no longer serve a necessary federal purpose and concludes that these accounts should sunset in three years. According to the FCC, a three-year transition period provides States time to develop an alternative means of gathering this information.

NARUC asserts that the FCC's effort to shift these standard requirements to the State or regional level endangers the uniformity and consistency that the FCC Uniform System of Accounts has brought. If the FCC ignores the States' needs for detailed account information, States will be forced to create their own systems of accounts. For ILECs serving more than one State, the ILECs' accounting systems will become more, rather than less, cumbersome. This is because different States may require different details or levels of detail. Fifty-one different accounting systems will ignore the efficiencies of having one uniform system of accounts with which both States and ILECs comply. This will be more burdensome to ILECs, will be more costly to ratepayers, and will lose the uniformity and comparability of data that now exists.

Additionally, to require States to recreate a system that already exists and is fully manned at the federal level, especially during these slow economic times, is not an efficient allocation of resources and doesn't make good economic sense.

Appropriate Circumstances For Elimination Of Accounting And Reporting Requirements.

The FCC's goal in the FNPRM is to seek comment on whether and when it may no longer be necessary to impose FCC accounting and reporting requirements on ILECs. In making such a determination, issues of how to quantify effective competition and determine carrier non-dominance immediately surface. Elimination of the FCC's accounting and reporting requirements for a particular ILEC should not occur until, at a minimum, an ILEC is declared non-dominant by both the FCC and the commissions in all of the States that particular ILEC serves. NARUC provides the following suggested criteria to the FCC for consideration in its deliberations of determining the appropriate time to determine non-dominance of an ILEC.

As noted, *supra*, at a minimum there needs to be a finding of non-dominance before accounting and reporting requirements are eliminated. Elimination without such a finding will provide certain opportunity for cross-subsidization, and result in non-cost based UNE and interconnection pricing. This, in turn, will hamper the development of local competition.

Included in any finding of non-dominance should be an identification of the relevant market and market conditions under which an ILEC may be declared non-dominant. Such an exercise includes the problem of how to quantify "effective competition." In considering how to determine if there is "effective competition," the FCC may wish to consider, among other factors, whether the ILEC has already lost 30% of its market share.

In determining market dominance, the FCC must also address question of whether dominance is determined at the operating company or the holding company level. ILECs are likely to suggest that such determination be made based on a certain number of access lines at the holding company level. However, non-dominance at the holding company level does not necessarily comport with non-dominance at the operating company level or at the State or study area level. If deregulation occurs at an operating company level based on some measurement of non-dominance, a carrier operating in multiple States could be deregulated in some and not in others. The major concern is the possible cross-subsidization between the holding company and the operating company as well as with the possibility of predatory pricing. Without reporting uniformity, such market abuses will be difficult to detect.[4]

Some suggested criteria for consideration in determining the appropriate time of non-dominance follow:

a. Access Lines

Logically, effective competition could be measured based on the number of ILEC access lines. The upside to this approach is that the number of ILEC access lines are measurable and reportable. One would expect that as competition increases in the local exchange market, the ILECs' access lines should decrease. However, one concern is that this measurement would not capture other access lines, e.g., special access, wireless, cableco, etc. Only by capturing all

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7 The FCC must not adopt a one size-fits-all definition of non-dominance. It is critical that the FCC recognize that the level of competition will vary, perhaps dramatically, between product and service types, customer classes, etc. - as well as between States and study areas, and between holding companies and operating companies within a particular holding company. Thus, the FCC should not adopt a one size-fits-all approach to measuring or defining non-dominance. This underlines the need for extensive opportunities for States' participation, on an equal basis with the FCC, in developing such a definition and related criteria, guidelines, or rules. While it may not be possible for the FCC and State regulators to agree completely, an attempt should be made, through a Joint Federal-State Conference to at least define and narrow the differences in definitions, criteria, guidelines, and/or rules. Individual State commissions must retain authority to develop State-specific requirements and rules.

access lines can use of this measure as one determinate of non-dominance be realistic. If the FCC chooses to rely in part on this measure, because of the ever-changing competitive and technological marketplace, it should develop a standard definition for "access lines". Without a standard definition, there will be too much subjectivity to make any assessment useful. An alternative would be to use growth in lines within an exchange as a measurement.

Even though NARUC is aware the FCC has generally discounted using access lines as a measure of competition, we believe access lines could be a valid measure for competition *as long as a standard definition is developed.* However, if the FCC continues dismissing access lines as a measure of competition, it should be consistent and also dismiss the ILEC's access line argument as any basis for reducing or eliminating reporting requirements. If access lines are inappropriate to use as a measure of competition, they are also inappropriate to use as a reason to change or eliminate reporting requirements.

b. Other Alternatives

Minutes-Of-Use (MOU). MOU was used by the FCC in the determination of non-dominance for AT&T in 1995 and also as part of its analysis of NPA-NXX number utilization. Market share alone is not a determinative measure of market power and a number of other factors should be considered, e.g., ease of market entry and exit, presence of alternative supply sources, demand for services from alternative carriers, substitutability of services, and positive revenues and net income for the operating company, state, product or service type and customer class for which a determination of non-dominance is being considered. One potential problem with using MOU's as a factor is that it may not be readily reportable from other industry segments or collected by ILECs under some forms of separation reform.

Existence Of Parallel Facilities. The argument can be made that unless there are parallel facilities open to new market entrants to obtain wholesale services, the local exchange market is not open to a competitive UNE network structure. When facilities-based CLECs are established and operating in metropolitan areas, competitive pricing of ILEC UNEs may result. However, as long as there is a need for universal service support and funding, there will be a fundamental need for a uniform system of accounts. To the extent cost models continue to rely on historical cost relationships, without accounting uniformity, cost data would not be available for the FCC or the states to develop realistic cost models or even evaluate cost studies prepared by the carriers.

Different Tiers of Competition (retail and wholesale). Tiers of competition require unique determinations for resell, UNE-P, UNE loop without switching, and full facility-based competition platforms. Each platform has a unique set of avoidable costs and a different degree of market penetration. As discussed earlier, competition could be measured on the basis of access lines for the retail market. For the wholesale market, if there is no alternative provider for UNEs, there is no competition. Obviously, using such criteria will present a variety of problems. For example, a carrier with 25% retail access line penetration may still rely on UNEs from the ILEC for 98% of those wholesale access lines due to the non-existence of parallel networks. Also, as long as the ILEC loop facilities are being used by CLECs, the ILEC continues to be a monopoly and therefore has the capacity to impede the ability for other market participants to compete. Finally, including wireless provider statistics in any measure may skew any measure of competition because to date, the bulk of wireless customers use wireless service as an adjunct to their wireline service, not as a substitute.

Number Of Collocators. Using the number of collocators as a measurement of market share is inadequate because the measurement would disproportionately reflect advanced services, generally not Plain Old Telephone Services. Moreover, knowing the number of collocators provides little information about the actual market share (as measured by number of access lines or local revenues) of the collocators. Additionally, collocation statistics such as "the number of ILEC lines a CLEC can reach through collocation" are often misused. Such statistics are better used as an indicator of interconnection or of the opportunity to compete, rather than of the actual level of competition. Nor does this measurement address presence or impact of parallel networks, e.g., wireless or cable TV. Although the FCC did use a collocation test in its pricing flexibility proceeding, that test was solely designed to determine whether competition was sufficient for allowing pricing of particular services in small geographical markets where the service was offered (i.e., Statistical Metropolitan Study Areas (SMSAs)). The use of a collocation test in determining whether an ILEC is non-dominant for purposes of this proceeding, where the carrier's entire operations are being examined, is simply not appropriate. NARUC urges the FCC to consider the issue of market dominance in more depth before making broad and perhaps overreaching determinations of market dominance in this proceeding.

Eliminating Some Or All Accounting And Reporting Requirements By A Date Certain.

The FCC argument to justify the elimination of all accounting and reporting requirements by a date certain is predicated on the assumption that a majority of the impacted ILECs already have pricing flexibility. In many States, this is not the case. Furthermore, there are additional reasons justifying retention of certain rules, even where pricing flexibility has been imposed.

For example, even where alternative regulation is the norm, regulators still need access to uniform accounting data to (1) size USF funds, (2) determine contribution levels, and (3) support fair UNE rates, which is clearly both a federal and a State interest. Accounting data is also essential in the 251/252 arbitration process. We respectfully submit the proposed FCC Form 477 local competition data gathering initiative is poorly suited for UNE rate gathering purposes.

Moreover, without uniform accounting and reporting requirements, it will be extremely difficult for the FCC and States to monitor market share and service quality. For this reason, accounting and reporting requirements should be the last areas to be deregulated - accounting is the area most susceptible to abuse and anti-competitive practices. How can the FCC make good, knowledgeable, and sound decisions, (e.g., federal support programs) without uniformity in accounting information? Additionally, elimination of accounting and reporting requirements prior to a finding of non-dominance could destroy ILEC uniformity, lead to higher universal service support requirements as ILECs will unilaterally determine and raise rates, lead to higher UNE prices, make post-merger review unnecessarily complicated, and impede the development of local competition.

ILECs are required to be the carriers of last resort. Until public policies change and allow ILECs to reduce or deny customer access to basic telephone service, ILECs should be subject to regulatory oversight. Look at what happened to Enron and its wholly-owned subsidiary. Portland General Electric. Without the full regulatory oversight that approved the purchase, the electric utility could have ended up in bankruptcy also.

The Securities Exchange Commission recently announced that it is examining accounting transactions of Qwest Communications International Inc. ("Qwest"), Global Crossing Inc. ("Global Crossing"), and WorldCom Inc. ("WorldCom"). Furthermore, a California audit recently released questions the validity of SBC/Ameritech's reports. If SBC's revenues and earnings have been understated, so have Universal Service Fund levels. Without Part 32 accounting information, the monitoring of the Universal Service Fund to ensure adequate funding levels will be thwarted. Indeed, the integrity of the Universal Service Fund will be severely diminished without continued uniform accounting regulations. *NARUC respectfully suggests that the general unease over possible accounting irregularities indicates a strong federal need for continued rather than elimination of accounting regulations.*

Moreover, national security and homeland security issues require service quality and infrastructure data. This data is currently being collected through Part 32 accounting rules and ARMIS reports. Without this data, the FCC could not affirm, with certainty that adequate infrastructure exists or that security issues are addressed.

Any sunset period for the system of accounts would be an abdication of the FCC's oversight responsibility. Generally accepted accounting principles (GAAP) are subject to interpretation. Without uniform accounting and reporting rules to help interpret GAAP, ILECs will develop divergent accounting and reporting systems, and it will become impossible for regulatory agencies to review data in timely and meaningful ways. If State commissions create their own systems of accounts and reporting requirements, ILECs will face much more burdensome requirements and States and the FCC will lose the comparability between States for those ILECs that provide service in more than one State.

The FCC's accounting system follows GAAP and merely provides a uniform structure to meet jurisdictional regulatory requirements; Part 32 does not replace GAAP. Such uniformity reduces regulatory lag because ILECs are aware upfront of the information expected. Until ILECs are fully deregulated, no ILEC should be permitted to forego the Part 32 requirements for an accounting system based on its own interpretation of GAAP. As referenced earlier, the recent events with Enron, Qwest. Global Crossing, and WorldCom dictate a very cautious approach to any reductions in reporting requirements. Of the results that in fact are reported, the credibility of the external auditors' opinions has become questionable. The FCC should retain its accounting and reporting oversight to preclude similar abuses from happening with the ILECs.

ARMIS Requirements

The *FNPRM* asks if certain ARMIS information would be more appropriately collected through other means such as ad hoc data requests or the Local Competition and Broadband Data Gathering Program. NARUC's concern with ad hoc data requests is the ILECs willingness or unwillingness to provide the data without objections. As for broadening the Local Competition and Broadband Data Gathering Program to include ARMIS information, although a poor substitute for existing procedures, if the FCC chooses that alternative, it should also make clear that a similar level of financial information will be reported. Otherwise, the report will be of little use. Perhaps the biggest concern with moving data collection requirements to the Local Competition and Broadband Data Gathering Program, is that that program is temporary and may or may not continue. The final concern with migrating to the Local Competition and Broadband Data Gathering Program existing requirements is that date provided there is proprietary. This means benchmarking no longer available to states or the FCC.

ARMIS reporting requirements should not sunset by any date certain. State regulators often use these reports for comparisons between carriers, or comparison of their state with others, when assessing regulatory needs within their jurisdictions. State legislative bodies often use ARMIS data to help determine whether there is a need to adjust State policies. The FCC needs ARMIS report data for the same purposes.

While there may be less need for comparisons or benchmarking when competitive markets begin to flourish, that time has not yet arrived. Even then, the FCC and the States may be interested in where a given State stands in comparison to others and whether improvements are needed. A consistent database would help regulators make better decisions.

Sunsetting should be based on an expectation that a competitive telecommunications market will be fully functioning at a future time that can be predicted. Consistent with this would be a finding that consumer protection would be adequate to prevent abuses by the ILEC, that deterioration of the competitive environment is unlikely, and that information that would assist in determining a need for improvements is no longer necessary. NARUC asserts that none of these events can be predicted with any certainty.

Setting a date certain for the sunset of any rule could result in the same type of error seen with the many examples of over-optimistic expectations and failures evidenced since implementation of the 1996 Act. Indeed, the large negative financial impacts that abuses of accounting procedures can have are in the public eye these days in the wake of Enron. The cost of maintaining and enforcing accounting rules, and requiring that a positive case be made before eliminating a rule, will be small in comparison and very much in the public interest.

More information regarding telecommunications infrastructure is needed, especially as competitive carriers own more of the infrastructure. For example, while some information may be available from some carriers, others may be reluctant to share that information as long as they are not required to. This would result in an incomplete assessment. Expanding the data collection might also assist in assessing the status of competition and how much of that competition is actually facilities-based. Moving the ARMIS 43-07 information collection to the Local Competition and Broadband Data Gathering Program could possibly help provide a more adequate assessment of infrastructure status. Also, collecting expanded information on new technologies being used in the public switched network would help the FCC and the States perform their statutory duty to assess progress in meeting Section 706 goals.

Notwithstanding the above, the NARUC is concerned that as more information is gathered through the Broadband Data Gathering Program, more data will be classified as confidential. States would not have access to information regarding an ILEC's operations in a different State. Additional concerns are raised with the fact that the Broadband Data Gathering Program is considered a temporary requirement that will sunset in 2.5 years unless the FCC chooses to extend the regulation. If the decision is made to collect ARMIS data through the a Broadband Data Gathering Program, it is imperative that a similar level of financial information be required to be reported. Finally, States need assurances that this form of data collection will not sunset in 2.5 years as currently scheduled.

Continuing Property Records

Continuing Property Records ("CPRs") should continue to be required. To mandate the sunset of any accounting and reporting rules by a date certain simply does not make sense without effective competition. Although it has been alleged the CPR rules largely serve the interests of State regulators, CPR rules also serve the interests of federal regulators. *They are necessary to ensure that the largest and most important accounts, the network plant accounts, accurately reflect those assets actually in service.* Additionally, in an environment when competitors are still largely dependent on the incumbent provider and its facilities to provide service, CPRs provide the only real record of the history of the existing facilities. Also, CPRs provide data for jurisdictional separations and cost allocations studies as well as for the FCC to update its depreciation life and salvage ranges.

Moreover, these records provide the basic information used as the beginning point in forward-looking pricing models. To the extent that the proxy model employed utilizes historical relationships based on erroneous data to determine forward-looking plant specific expense and other expense categories, interstate universal service support for nonrural ILECs may be affected. In establishing any state Universal Service Fund, use of erroneous embedded data similarly may result in misstatements of funding requirements, if estimates of expense levels attributable to universal service are based on faulty historical cost relationships. In either event, the reliance on historical costs that are misstated could mean the calculations used to establish a state USF may be inaccurate. Additionally, interexchange carriers ("IXCs") such as MCI/WorldCom maintain CPRs so the allegation that such rules are burdensome makes little sense. Furthermore, CPRs are also used in valuations of property for sales and mergers as well as for property tax assessments.

Notwithstanding the above, there may be ways to streamline or modify the CPR rules without destroying their integrity or usefulness. NARUC suggests that a separte rulemaking docket be opened to address the detail of a new set of rules that are more useful and simpler. This docket should also address implementation issues such as the use and duration of a test period where both the new and the current rules are in effect.

Eliminating CPR rules outright will create a situation fraught with problems. If CPR requirements are eliminated, it is highly unlikely that alternative information sources, useful to State regulators, would be developed. Even if the information were available, the State regulators would be required to make annual, special requests to each ILEC for the information that they need. Under these conditions, it is unlikely that the information would be consistent from ILEC to ILEC nor is it likely that it would be consistent from one year to the next.

CPRs represent the guideline framework for capitalization and expensing procedures. Without CPR rules, ILECs could change the procedures depending on financial conditions.

The FCC noted that ILECs have an incentive, for engineering purposes, to track their property at the unit level, whether it is cable or the detail components of their various types of switches [*Report and Order* 01-305, ¶ 211] While this is generally true, the information is in a format required by the engineering systems and not in a format that is useful for performing analysis on the data or reviewing costs. The ILECs generally do not have an incentive to track their cost at any level of detail, except for specific projects. Further, if there is no formal requirement to produce the information on a periodic basis, the information needed by regulators will only be produced on a formal request basis. This will make it difficult for the regulator to get a clear understanding of how the investment is evolving over time and to detect any unusual changes in investment.

Affiliate Transactions Rules

Affiliate transactions rules should not be eliminated until there is a finding of effective competition and non-dominance. These rules protect ratepayers from possible cross-subsidies occurring from transactions between the ILECs and their affiliates. Without these rules, the FCC will not be able to uphold its statutory obligations under the 1996 Act to diminish cross-subsidization of potentially competitive services. It simply does not make sense to eliminate these rules until there is effective competition.

Separations Impacts

NARUC is concerned there has been no referral to the 80-286 Separations Joint Board for review and a Recommended Decision with respect to this docket. While some changes may be minor, the elimination of accounts and the introduction of new subaccounts may require more than a simple revision. For example, for those carriers subject to category and factor freezes, eliminating or introducing new categories may require reinitialization of the frozen category percentages. New subaccounts may require identification of new relative use or fixed jurisdictional allocators. The 80-286 Joint Board invested considerable time and effort into the review and analysis of parties' comments and cost data to recommend the Separations Freeze adopted by the Commission in FCC Order 01-162. Any further revision should also be reviewed and analyzed by the Joint Board. The FCC should refer these matters to the 80-286 Joint Board for a recommended decision.

Also, the FCC has approved the Federal-State Joint Board on Separations recommendation for an interim freeze of Part 36 category relationships and jurisdictional allocation factors for price cap carriers and allocations factors for rate-of-return carriers. The detailed Part 32 accounting records and infrastructure ARMIS reports are required for the Joint Board to evaluate some of the alternatives for separations reform. This suggests the time to consider further major simplification, or even elimination, of accounting and reporting requirements is after the Joint Board's analysis of separations reform alternatives is completed and comprehensive separations reform is underway. Accordingly, NARUC respectfully suggests that the question of when to deregulate accounting and reporting requirements is premature and should not be decided until after separations reform.

CONCLUSION

In conclusion, a national system of accounting requirements is in the public interest, ensuring there is no cross-subsidization, and providing uniformity and comparability among companies. Indeed, most states have adopted accounting and cost allocation rules patterned after the FCC's rules. The FCC and the state commissions have made several significant steps toward deregulation of the local exchange carriers and should continue these efforts. In this regard, the NARUC urges the FCC to establish a Federal-State Joint Conference to develop comprehensive accounting and reporting changes to ensure a fully developed record.

Accounting and reporting requirements should be the last requirements that are removed, and then only after there is clear and incontrovertible evidence that: (1) doing so would be in the public interest, as determined by both the FCC and state regulators; (2) the level of actual competition that ILECs face from CLECs is sufficient to provide rigorous and sustainable discipline to prevent abuse and anti-competitive practices by the ILECs; and (3) elimination or modification of the accounting and reporting requirements in question would not increase the abuse or anticompetitive practices by the ILECs or the ability or incentive of ILECs to violate the 1996 Act or engage in such behavior or practices. Without adequate accounting records, regulators would be left with a minimum accounting system providing insufficient information to make informed decisions that impact our nations telecommunications carriers and their customers. Therefore, at the present time, it is simply not in the public interest to deregulate accounting and reporting requirements.

Respectfully Submitted,

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