**Before The**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Federal-State Joint Conference on Accounting Issues | ) | WC Docket 02-269 |
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| 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II | ) | CC Docket No. 00-199 |
| | ) | |
| Jurisdictional Separations Reform and Referral to the Federal-State Joint Board | ) | CC Docket No. 80-286 |
| | ) | |
| Local Competition and Broadband Reporting | ) | CC Docket No. 99-301 |

**COMMENTS OF THE**
**NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

## I. Introduction

The National Association of State Utility Consumer Advocates ("NASUCA") offers these comments in response to the Notice of Proposed Rulemaking ("NPRM") released in these dockets on December 23, 2003.[1] The Federal Communications Commission ("Commission"), through this NPRM, seeks comment on the recommendations of the Federal-State Joint

[1] NASUCA is an association of 44 consumer advocates in 42 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

Conference on Accounting Issues ("Joint Conference"), which were submitted on October 9, 2003.[2]

Pursuant to the directive of 47 U.S.C. § 161, the Commission is required biennially to review those regulations that are "no longer necessary in the public interest as the result of meaningful economic competition between providers." The Commission has conducted several phases of its biennial review thus far, through the issuance of Notices of Proposed Rulemaking ("NPRMs"). Interested parties have provided comments on the Commission's proposals regarding its accounting rules and the Automated Reporting Management Information System ("ARMIS") reporting requirements that apply to certain incumbent local exchange carriers.[3] As a result of the Commission's review thus far, some existing accounts have been eliminated and the Commission declined to adopt the recommendations of various parties to add several new accounts.[4]

The Commission convened the Joint Conference on September 5, 2002 to "provide a forum for an ongoing dialogue between the Commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and

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[2] See Letter from Federal-State Joint Conference on Accounting Issues to Marlene H. Dortch, Secretary, FCC (Oct. 9, 2003) (*Joint Conference Recommendation)* (submitting proposed recommendations to Commission's accounting rules).

[3] See, e.g., *In the Matter of Federal-State Joint Conference On Accounting Issues*; *2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; and Local Competition and Broadband Reporting*, WC Docket No. 02-269, CC Docket Nos. 00-199, 80-286, and 99-301, Order, FCC 02-309 (rel. November 12, 2002).

[4] See, e.g., *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II*; *Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting,* Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd 19913 (2001) (*Phase II Accounting Order* and *Phase III Further Notice*), see 47 C.F.R. § 32 *et seq*.

thorough."[5] In addition, the Commission stated that the "Joint Conference will provide a focused means by which we and interested state commissions may conduct an open dialogue, collect and exchange information, and consider initiatives that will improve the collection of adequate, truthful, and thorough accounting data for regulatory purposes."[6] The Commission also noted that the "Joint Conference has a broad mandate to perform its work, including the ability to recommend additions to, or eliminations of, accounting requirements."[7] The effective date of several *Phase II Accounting Order* changes was delayed to allow the Joint Conference to reexamine the changes and make recommendations.[8]

Prior to making its recommendations to the Commission, the Joint Conference requested comment on the key broad issues regarding regulatory accounting and related reporting requirements.[9] NASUCA and various other parties filed comments and reply comments to the issues raised in the Joint Conference's Request for Comment.

The Joint Conference Recommendation relies on the comments of the parties to make the following three categories of recommendations to the Commission:

- The Joint Conference recommends maintaining or adding accounts and/or subaccounts to the Part 32 accounting requirements (and associated Part 43 ARMIS reporting requirements) that are used to monitor finances of incumbent LECs.
- The Joint Conference recommends certain modifications to the Commission's affiliate transaction rules.

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[5] NPRM, at ¶2.

[6] Id.

[7] Id.

[8] *Federal-State Joint Conference on Accounting Issues,* Order, WC Docket 02-269, FCC 20-309 (November 12, 2002).

[9] Public Notice, *Federal-State Joint Conference on Accounting Issues Request for Comment,* WC Docket No. 02-269, 17 FCC Rcd 24902 (WCB 2002) (*Request for Comment*).

- The Joint Conference makes several recommendations on reporting certain operating data in ARMIS, and on clarifying which entities are subject to the Commission's accounting and reporting requirements.

In the instant NPRM, the Commission seeks comment on these specific recommendations and on the Commission's accounting and reporting requirements in general. In addition, the Commission seeks comment on the Joint Conference's "understanding that the Commission has authority to adopt accounting and reporting requirements in the absence of a federal need."[10] Finally, the Commission seeks comment on further delaying the implementation of certain modifications adopted in the Phase II Accounting Order until January 1, 2005.

In these comments, NASUCA agrees that there exist separate federal and state regulatory responsibilities, under which the accounting information filed by carriers is used for varying purposes.[11] Given the continued market dominance of the incumbent carriers and the changing markets in which they operate, both federal and state regulators should be assured that they will have access to thorough, accurate and truthful accounting information on which to make informed decisions. NASUCA believes the Commission has the authority, even without an explicit federal need, to adopt accounting and reporting requirements. The need to provide a central source for information for use by the states is, in fact, an implicit federal need.

NASUCA's comments also address retaining certain specific accounts and adding others because of the just-mentioned continuing dominance of the carriers in their markets, and the need for state regulators and other stakeholders (including consumer advocates) to have access to information about the operations of the carriers, whether or not there is a federal need identified. Where there is a continuing need for this information, the detriment of losing access

[10] NPRM, at ¶6.

[11] The failure to address a specific proposal or question through these comments should not be deemed to represent acquiescence in the proposal.

to the information outweighs the benefit resulting from reducing the regulatory burden on the carriers.[12] This is especially true in an economic environment where many firms continue to struggle, and the struggle has little to do with the efficiency (or inefficiency) of a specific firm.

Under the standard set for the Commission by 47 U.S.C. § 161, the account detail that is the subject of this NPRM should be retained. This is because even where there exists "meaningful economic competition" for local telecommunications service -- the criterion under § 161 -- the incumbent carriers may remain dominant in their markets, and detailed accounting is still necessary.[13] For residential consumers specifically, competition is minimal at best.

Finally, NASUCA supports the further delay, as proposed by the Commission, of the implementation of certain modifications adopted in the *Phase II Accounting Order* until January 1, 2005.

## II. Authority of the Commission to Adopt Accounting and Reporting Requirements

The Commission requests comment on the Joint Conference's "understanding that the Commission has authority to adopt accounting and reporting requirements in the absence of a federal need."[14] NASUCA agrees with the Joint Conference's belief "that the Commission may

[12] The carriers already have forms established to capture this information. In fact, as a good business practice, the information reported, as well as that proposed to be reported, would be compiled *regardless* of reporting requirements. The main benefit to the carriers from eliminating reporting requirements is not reduced expenses associated with reporting the data. Rather the benefit is the ability to insulate themselves from accountability, including fines, and from the threat of negative reactions that would result from false reporting. In addition, it is likely that any reduced expense will simply further increase the carriers' profits, rather than lead to any benefits for consumers.

[13] Clearly, all of the ILECs are still far more dominant in their local markets than AT&T was in the long distance market when the Commission found it to be "non-dominant." *In the Matter of the Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier,* Order (October 23, 1995), 11 FCC Rcd 3271.

[14] NPRM, at ¶6.

adopt accounting requirements to meet the needs of the states and other stakeholders."[15] The Joint Conference's own mission sheds some light on this issue because it recognizes the need for adequate and effective regulatory and accounting reporting requirements in the current market so that consumers are protected and federal and state responsibilities are carried out.[16] In addition, the Telecommunications Act of 1996 embodies the spirit and substance of this type of federal/state partnership.[17]

The Joint Conference understands that it is in the public interest for the Commission and the states to work together to recognize the multiple uses of accounting and regulatory reporting information and to establish requirements that ensure such information is reliable, adequate, truthful and thorough. As is recognized by the Joint Conference, state and federal telecommunications policy makers use regulatory accounting data and related information for many purposes, including determining interstate and intrastate rates, such as access charges, unbundled network element ("UNE") charges and end-user rates; evaluating jurisdictional separations; and calculating universal service support.[18] Consistency of information is an important consideration given the national impact of setting access charge rates and calculating universal service support and, given that states need to perform comparative analyses for various purposes, especially in setting UNE rates.[19] That in itself creates the federal need justifying federal accounting and reporting standards.

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[15] Joint Conference Recommendation, at 8.

[16] See Request for Comment at [2].

[17] See, e.g., *AT&T Corporation v. Iowa Utilities Board*, 525 U.S. 366, 381 (n. 8), 119 S. Ct. 721, 142 L. Ed.2d 834 (1999).

[18] Request for Comments at [2].

[19] It is difficult to see how states can be induced to establish intrastate support mechanisms without consistent national information on the costs of service. *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203 (10th Cir. 2001).

In addition, 47 U. S.C. § 161 specifies that during the biennial review, the Commission "shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of service." It is thus only when "meaningful economic competition" exists that the Commission is allowed to determine that an accounting requirement is unnecessary. The criterion for eliminating a regulation is not whether there is an identified federal need for any such regulation, as the Commission has maintained in the past.[20]

In the telecommunications marketplace today, competition does not exist in many markets, and even where it does exist, it is not "meaningful economic competition" due to the continued dominance of incumbent carriers. Relaxation of accounting and reporting requirements should only occur when the incumbent local exchange carriers are no longer dominant in their former monopoly service territories. Many local markets across the country have not yet been effectively opened up, however. Even where opened, the level of competition varies considerably. For this reason, the analysis of non-dominance must be conducted on an incumbent carrier-by-incumbent carrier basis.[21] Given this, the Commission continues to have the authority it has always had to require detailed accounting and reporting requirements.

In its discussion of this issue, the Joint Conference addresses the Supreme Court's discussion in *Louisiana PSC v. FCC*, 476 U.S. 355 (1986) (*Louisiana PSC)* of § 220 of the Communications Act and the Commission's ability to impose accounting requirements based on the Communications Act.[22] The Joint Conference concludes that in focusing on the question of

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[20] See, e.g., *Phase II Accounting Order* and *Phase III Further Notice*, ¶207.

[21] Indeed there might need to be a state-by-state review for each incumbent. Nonetheless, in a state-specific review there will need to be information about the dominance of carriers like SBC and Verizon *on a national level*.

[22] Joint Conference Recommendation, at 7.

requiring a federal need for its accounting requirements, the Commission may have applied a limited purpose of section 220 of the Communications Act as opposed to a broader purpose. Given the responsibilities of the Joint Conference and their broad nature, the Joint Conference concludes "that the Commission may adopt accounting requirements to meet the needs of the states and other stakeholders."[23]

NASUCA agrees with the Joint Conference that the Commission has, in fact, recognized its broad purpose with regard to accounting requirements by convening the Joint Conference and stating its purpose. NASUCA also agrees that, even absent section 161's guidance regarding the presence of competition, *Louisiana PSC* implicitly recognizes this broader national purpose and thus allows the Commission to impose accounting requirements, regardless of whether those requirements serve an explicit federal purpose or a state purpose.

## III. Joint Conference Specific Recommendations

### A. Maintaining or adding accounts and/or subaccounts to the Part 32 accounting requirements

NASUCA agrees with the reasoning detailed in the Joint Conference Recommendation for maintaining or adding accounts and/or subaccounts.[24] Maintaining or adding the accounts and subaccounts in question will increase the likeliness that the information captured in regulated accounts is adequate and thorough for use by both federal and state policymakers in determining interstate and intrastate rates, evaluating jurisdictional separations, setting UNE rates, calculating universal service support and preventing cross-subsidization. As previously stated, this is especially true given the continued dominance of the incumbent carriers.

[23] Id., at 8. See *Louisiana PSC*, 476 U.S. at 383 (referring to the "dual [state and federal] regulatory system….").

[24] Joint Conference Recommendation, at 8-21.

*i. Account 5230, Directory Revenue*

In the Phase II Accounting Order, the Commission eliminated Account 5230, Directory Revenue as a separate account, such that directory revenue would be commingled with a variety of other revenues in Account 5200, Miscellaneous Revenue. The Joint Conference recommends that the FCC reinstate Account 5230, Directory Revenue "so that this line of business revenue can be monitored separately."[25] In support of its position, the Joint Conference recognizes that directory revenue was intended to be a continuing source of economic benefit for ratepayers and provides a detailed explanation of how directory revenues have generally been treated for ratemaking purposes.[26] In addition, the Joint Conference recognizes the significant dollar amounts recorded in Account 5230 and recommends this account not be merged into Account 5200, along with hundreds of other miscellaneous revenue accounts containing much less significant dollar amounts.[27]

The Joint Conference also recognizes the fact, as has NASUCA in previously-filed comments, that directory revenues continue to be a controversial issue in various state proceedings and as such should continue to be available in state proceedings as a separate Part 32 account.[28] NASUCA agrees with the Joint Conference's recommendation on directory revenue and urges the FCC to reinstate Account 5230.

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[25] Id., at 2.

[26] See id., at 9.

[27] Id.

[28] See Joint Conference Recommendation at 9; see Comments of the Ohio Consumers' Counsel and The National Association of State Utility Consumer Advocates dated 12/21/00 *In the Matter of 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II and Phase III,* at 4 and Comments of The National Association of State Utility Consumer Advocates dated 1/31/03 *In the Matter of Federal-State Joint Conference on Accounting Issues,* at 14.

*ii. Consolidation Of Accounts 6561-6565 Into One Depreciation and Amortization Expense Account (6562)*

In its *Phase II Accounting Order*, the Commission consolidated Accounts 6561-6565 into one Account 6562, Depreciation and Amortization. The Joint Conference recommends the Commission seek further comment on consolidation of these accounts and any potential state rate proceedings upon which such consolidation may have an adverse effect. As NASUCA stated above regarding Directory Revenue, to the extent the accounts subject to consolidation are the subject of controversy in potential state rate proceedings, they should be reinstated and maintained as separate accounts.

*iii. Addition Of Accounts*

In its Phase II Accounting Order, the Commission declined to adopt the recommendation made by several states and other interested parties (including NASUCA) to add certain accounts to Part 32, Uniform System Of Accounts (USOA).[29] In particular, the Commission declined to add accounts for Optical Switching, Switching Software, Loop and Interoffice Transport, Interconnection – Revenue (with subaccounts for UNEs, Resale, Reciprocal Compensation and Interconnection Agreements), Universal Service Support Revenue and Universal Support Expense.

The Joint Conference recommends the Commission modify its Part 32, USOA to add these accounts with the clarification that only interstate amounts would be recorded in the

[29] See Comments of the Ohio Consumers' Counsel and The National Association of State Consumer Advocates dated 12/21/00 *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 and Phase 3,* CC Docket No. 00-199, at 5-6.

Universal Service accounts. NASUCA agrees with the Joint Conference's reasoning to add these additional accounts.[30]

Further, in previous comments, NASUCA agreed with state staffs that there are several additional subaccounts and new accounts that should be added to the USOA.[31] As recognized by state staffs, additional account detail will allow state staffs "to meet their data needs to implement the 1996 Act and to keep pace with changes in technology and the regulatory environment."[32] The Joint Conference found that

> [i]nformation recorded in the requested accounts will enable the FCC and states to continue to understand the nature of the ILECs' investment and ensure that prices are reflective of their actual costs. The information will allow the monitoring of technology deployment, collocation, and interconnection cooperation. An additional benefit will be the usefulness to states in setting policy direction. Moreover, the addition of these accounts would help states and the FCC better understand the status of local competition and enable regulators to take steps to address issues that may be relevant to the state of competition.[33]

Each of these areas where additional accounts are recommended is one where states are and will be making significant decisions in the next few years. The decisions are unavoidable, and should be based on the most accurate and detailed information available. Further, the information, although predominantly used by state commissions, will also be used by state consumer

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[30] If the Commission adopts the Joint Conference's recommendation that an account for interstate Universal Service revenue be adopted, the Commission should specify that the amounts recorded in the account should be allocated to the intrastate jurisdiction. Only the amounts from the Schools and Libraries and Rural Healthcare programs that are attributable to support for inside wiring and interstate advanced services should not be allocated to the intrastate jurisdiction. The purpose of high cost fund support and low income support is to keep local rates reasonable; hence these amounts should be entirely intrastate. Part 32 already accommodates the need to separately identify interstate, intrastate, and international revenue in separate accounts.

[31] Id.

[32] *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 and Phase 3,* Notice of Proposed Rulemaking, ¶ 20, (rel. October 18, 2000).

[33] Joint Conference Recommendation, at 17.

advocates and other stakeholders. NASUCA agrees with the Joint Conference's recommendation.

## IV. Conclusion

NASUCA commends the Commission for requesting comments on the Joint Conference Recommendation as a result of its analysis of the Commission's accounting and reporting requirements. In light of the changing nature of both the telecommunications marketplace and the financial marketplace, the Commission must exercise its broad authority to ensure that consumers are protected and federal and state regulators have the information necessary to carry out their respective responsibilities.

Respectfully submitted,

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