

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

In the Matter of)
)
Biennial Regulatory Review of Regulations) WC Docket No. 04-179
Administered by the Wireline Competition Bureau)
_____)

REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION

UNITED STATES TELECOM ASSOCIATION

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
DISCUSSION.....	2
I. The FCC’s Continued Failure to Meet its Section 11 Requirements to Eliminate or Modify its Rules.	2
II. Analysis of the Applicable Rules that Require Elimination or Modification by the Commission in this Proceeding.	4
PART 1 – PRACTICE AND PROCEDURE	4
PART 1, SUBPART J – POLE ATTACHMENT COMPLAINT PROCEDURES.....	4
PART 32 – UNIFORM SYSTEM OF ACCOUNT.....	5
PART 42 – PRESERVATION OF RECORDS OF COMMON CARRIERS.....	5
PART 43 – REPORTS OF COMMUNICATIONS COMMON CARRIERS AND CERTAIN AFFILIATES.....	6
PART 51 – INTERCONNECTION.....	7
PART 53, SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES	10
PART 54 – UNIVERSAL SERVICE.....	11
PART 61 – TARIFFS	11
PART 64, SUBPART A –TRAFFIC DAMAGE CLAIMS	13
PART 64, SUBPART C – FURNISHING OF FACILITIES TO FOREIGN GOVERNMENTS FOR INTERNATIONAL COMMUNICATIONS	13
PART 64, SUBPART E – USE OF RECORDING DEVICES BY TELEPHONE COMPANIES	13
PART 64, SUBPART G – FURNISHING OF ENHANCED SERVICES AND CUSTOMER PREMISES EQUIPMENT BY BELL OPERATING COMPANIES; TELEPHONE OPERATOR SERVICES	14
PART 64, SUBPART H – EXTENSION OF UNSECURED CREDIT FOR INTERSTATE AND FOREIGN COMMUNICATIONS SERVICES TO CANDIDATES FOR FEDERAL OFFICE	14
PART 64, SUBPART I – ALLOCATION OF COSTS.....	15
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.....	16
PART 65 – INTERSTATE RATE-OF-RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES.....	16
PART 69 – ACCESS CHARGES.....	17
III. AT&T’s Requests Under Section 51.329(c) are Unfounded and Should Not Be Considered in this Proceeding.	17
IV. The Kansas Corporation Commission Seeks Further Accounting Regulations, Contrary to Section 11 and the Overall Intent of the Telecommunications Act of 1996.....	19
CONCLUSION.....	20

SUMMARY

The United States Telecom Association (USTA) is deeply concerned that the intent of the biennial review has been diminished because the Federal Communications Commission (Commission or FCC) has failed to eliminate unnecessary regulations identified in previous biennial reviews. USTA reminds the Commission of the statutory mandate to aggressively eliminate unnecessary regulatory burdens on common carriers. USTA believes that neither the report issued by the Commission to fulfill its year 2000 biennial regulatory review obligation¹ nor the recommendations of Commission staff released concurrently in the 2000 and 2002 Biennial Regulatory Review Updated Staff Reports² provided adequate changes to the rules. Therefore, USTA recommends the following rule changes to eliminate unnecessary regulation:

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 contained in Subpart J in accordance with USTA's comments in the 2000 Biennial Review.

Part 32. USTA continues to support substantial reduction in the FCC's accounting requirements, elimination of continuing property record rules and the streamlining or elimination of class A accounts.

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

Part 43. Eliminate the ARMIS reports, or, in the alternative, continue to significantly streamline the network reports as previously recommended by USTA.

Part 51. Continue to eliminate rules that hamper ILEC provisioning of advanced services, delete section 51.329(c)(3) and encourage the Commission to move forward with the UNE Triennial Review.

Part 53. Delete sections 53.203(a)(2) and 53.203(a)(3), which contain separate affiliate requirements that prevent BOCs from offering consumers seamless, end-to-end service.

¹ *The 2000 Biennial Regulatory Review*, CC Docket No. 00-175, Report (rel. Jan. 17, 2001) (FCC Report).

² *Biennial Regulatory Review 2000*, CC Docket No. 00-175, Updated Staff Report (Jan. 17, 2000) (Staff Report); *Wireline Competition Bureau, Federal Communications Commission, Biennial Regulatory Review 2002*, Staff Reports, WC Docket No. 02-313, GC Docket No. 02-390, DA 03-804 (Dec. 31, 2002).

Part 54. Eliminate the “parent trap” rules in section 54.305(a).

Part 61. Restructure Part 61 to include only tariff requirements and move the rules associated with price cap regulation to a new Part XX. Move the rules associated with rate of return regulation to Part 69. Permit all ILECs 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 ILECs, are permitted to bundle enhanced services.

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 ILECs provide interexchange service through a separate affiliate.

Part 65. Eliminate reporting requirements except when a lower formula adjustment is filed. 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. Modify section 65.702 to measure earnings on an overall interstate basis.

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.

Finally, the Commission should disregard the comments submitted in this proceeding by AT&T and the Kansas Corporation Commission (KCC), as being contrary to the intent of section 11 of the Communications Act of 1934, as amended (the Act). Both AT&T and KCC seek increased regulation, rather than the elimination or modification of existing rules. Moreover, AT&T’s requests under section 51.329(c)(1) are unfounded. On the other hand, the KCC seeks additional regulation of accounting requirements, which is directly contrary to the FCC’s determination in the 2000 Biennial Review. Thus, the FCC should disregard AT&T and KCC’s comments in this proceeding.

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The United States Telecom Association (USTA),³ through the undersigned and pursuant to Commission Rules 1.415 and 1.419,⁴ hereby submits its reply comments in response to the Public Notice⁵ in the above-referenced proceeding. In the Notice, the FCC begins the “process of conducting its comprehensive 2004 biennial review of telecommunications regulations pursuant to section 11 of the Communications Act of 1934, as amended.”⁶ The Commission seeks comment on the repeal and modification of the Commission’s rules that are no longer in the public interest.

³ USTA is the Nation’s oldest trade organization for the local exchange carrier industry. USTA’s carrier members provide a full array of voice, data and video services over wireline and wireless networks.

⁴ 47 C.F.R. §§ 1.415 and 1.419.

⁵ *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, Public Notice, FCC 04-105, WC Docket No. 04-179 (May 11, 2004).

⁶ 47 U.S.C. § 161.

DISCUSSION

I. The FCC's Continued Failure to Meet its Section 11 Requirements to Eliminate or Modify its Rules.

USTA continues to be troubled by the Commission's failure to modify or eliminate regulations identified in the biennial review process in a timely manner.⁷ The Commission's lack of action in this regulatory review is certainly not because it lacks ample recommendations for regulations that can and should be eliminated or modified; USTA and other interested parties have previously provided the Commission with such recommendations. On October 18, 2002, USTA filed comments, and on November 4, 2002, USTA filed reply comments in the *Biennial Review 2002* proceeding,⁸ urging the Commission to eliminate or revise more than 20 regulations ranging from practice and procedure regulations to interconnection regulations to access charge regulations. Moreover, the regulations that USTA addressed in its comments and reply comments in the *Biennial Review 2002* proceeding were not raised for the first time. USTA's recommendations regarding most of these regulations have been before the Commission since the *Biennial Regulatory Review 2000* proceeding.⁹ USTA again urges the Commission to take action on the recommendations it made in the *Biennial Review 2002*

⁷ See USTA Comments at 2.

⁸ *Biennial Review 2002*, Comments of the United States Telecom Association, WC Docket No. 02-313 and WT Docket No. 02-310 (Oct. 18, 2002) and *Biennial Review 2002*, Reply Comments of the United States Telecom Association, WC Docket No. 02-313 and WT Docket No. 02-310 (Nov. 4, 2002).

⁹ See *Biennial Review 2000*, Comments of the United States Telecom Association, CC Docket No. 00-175 (Oct. 10, 2000).

and *Biennial Review 2000* proceedings by conducting a serious review of all regulations and determining which regulations are no longer necessary in the public interest.

Moreover, the Commission's piecemeal approach through independent rulemakings to eliminate unnecessary regulation identified in the biennial reviews results in many unnecessary rules remaining in effect for much longer than they should. Congress did not intend for the Commission to identify, but never actually eliminate, unnecessary rules every two years.¹⁰ Rather, Congress imposed on the Commission a statutory obligation to aggressively look for opportunities to eliminate unnecessary regulatory burdens.

In order to assist the Commission in fulfilling its obligation to eliminate unnecessary regulation, USTA again recommends that the Commission institute a process whereby any rule identified for elimination in a biennial regulatory review would automatically sunset in 90 days unless the Commission is petitioned to retain that rule.¹¹ The burden would be then on the petitioning party to justify retention of the rule. In addition, USTA urges the Commission to require rulemaking proceedings to be initiated and completed within 90 days after a rule has been identified for modification in a biennial regulatory review. Such deadlines for Commission action would ensure that the results of a biennial regulatory review are enacted in a timely manner consistent with the deregulatory, pro-competitive intent of the biennial review requirement.

¹⁰ 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").

¹¹ See USTA 2002 Comments at 3.

II. Analysis of the Applicable Rules that Require Elimination or Modification by the Commission in this Proceeding.

PART 1 – PRACTICE AND PROCEDURE

USTA continues to recommend that the Commission modify its procedural rules to require the Commission to resolve waiver requests and petitions for reconsideration within one year.¹² Accordingly, any filing that the Commission does not deny within a year should be deemed approved.

PART 1, SUBPART J – POLE ATTACHMENT COMPLAINT PROCEDURES

USTA continues to recommend that the Commission streamline the pole attachment rules contained in Subpart J.¹³ In the *Consolidated Partial Order on Reconsideration* in the Pole Attachment proceeding,¹⁴ USTA stressed the importance of streamlining the pole attachment rules, as it initially did in this proceeding. In both proceedings, USTA sought specific changes to the calculation of the pole attachment methodology and complaint procedures. USTA encourages the Commission to reconsider these arguments in this proceeding.

¹² See USTA 2000 Comments at 6; USTA 2002 Comments at 4.

¹³ See USTA 2000 Comments at 7; USTA 2002 Comments at 5.

¹⁴ See *Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, CS Docket Nos. 97-98 and 97-151, Consolidated Partial Order on Reconsideration, FCC 01-170 (rel. May 25, 2001).

PART 32 – UNIFORM SYSTEM OF ACCOUNT

The FCC should eliminate the continuing property record rules.¹⁵ The FCC has stated that these rules are rigid and place a substantial burden upon incumbent local exchange carriers (ILECs).¹⁶ Thus, we agree with Verizon that “detailed continuing property records are no longer necessary in the public interest, [and] the Commission should repeal them.”¹⁷

Moreover, the Commission should streamline or eliminate Class A accounts. “The Commission should move toward a unified, streamlined level of accounting, so that carriers that currently are required to keep Class A accounting requirements can transition to keeping their accounts at the Class B level of detail.”¹⁸ We agree with Verizon that Class A accounts have no regulatory purpose.

PART 42 – PRESERVATION OF RECORDS OF COMMON CARRIERS

With the exception of sections 42.10 and 42.11, USTA continues to support elimination of Part 42, as it is outdated and unnecessary.¹⁹ In addition, USTA continues to recommend 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.

¹⁵ 47 C.F.R. § 32.2000(f).

¹⁶ 2000 Biennial Regulatory Review-Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, 16 FCC Rcd 19911, ¶ 212 (2001).

¹⁷ See Verizon Comments Exhibit B at 3.

¹⁸ *Id.* at 3-4.

¹⁹ See USTA 2000 Comments at 16; USTA 2002 Comments at 8.

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

USTA continues to support streamlining of the automated reporting management information system (ARMIS) reporting requirements.²⁰ In the Commission's 2000 biennial regulatory review of ARMIS reporting requirements, the FCC maintained the requirement that all local exchange carriers (LECs) at or above a set threshold must file ARMIS 43-01 financial reports at the study area level.²¹ It also required all price cap carriers to file ARMIS 43-05 service quality reports at the holding company and study area level for all study areas,²² even if the LEC is not required to file ARMIS 43-01 reports for certain study areas because it does not meet the threshold. USTA urges the Commission to eliminate requirements that price cap carriers file ARMIS 43-05 reports for those study areas where the LEC is not required to file ARMIS 43-01 reports. Continuing to require price cap carriers to file ARMIS 43-05 reports when they are not required to file ARMIS 43-01 reports is burdensome and unnecessary.

Overall, however, USTA continues to maintain that the Commission's efforts would be better directed toward eliminating Part 43 because most of those reports have outlived their usefulness.

²⁰ See USTA 2000 Comments at 17; USTA 2002 Comments at 9.

²¹ See generally *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; 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, CC Docket Nos. 00-199, 97-212, 80-286, and 99-301 (rel. Nov. 5, 2001) (2000 Biennial Review Report-ARMIS).

²² *Id.*

PART 51 – INTERCONNECTION

Even though ILECs are not subject to section 251 unbundling with regard to broadband facilities, based on the requirements of the *Computer Inquiries*, ILECs are subject to unbundling obligations for these same facilities. In the UNE Triennial Order proceeding, the FCC correctly held that there was significant intermodal competition in the broadband market, thereby allowing the Commission to eliminate section 251 unbundling requirements for broadband facilities.²³ In its ruling, the FCC cited the extensive competition to wireline facilities in the broadband market: cable providers are dominant in the broadband market and there are other competitive options for broadband services from third generation wireless, satellite, and power line facilities.

We agree with Verizon that there is no need for the Commission to require Bell Operating Companies (BOCs) to comply with Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA) rules (also known as the Computer Rules)

²³ See generally *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16798 (2003), *Errata*, 18 FCC Rcd 19020 (2003) (Triennial Order). See also *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (stating that the D.C. Circuit upheld the Commission's decision not to impose unbundling on the broadband capabilities of hybrid loops and fiber-to-the-home (FTTH), as well as its decision to eliminate line sharing). The Court found that the FCC was not "arbitrary or capricious in thinking that any damage to broadband competition from denying unbundled access to the broadband capacities of hybrid loops is likely to be mitigated by the availability of loop alternatives or intermodal competition." It agreed with the FCC "that robust intermodal competition from cable providers-the existence of which is supported by very strong record evidence, including cable's maintenance of a broadband market share on the order of 60% . . . means that even if all competitive local exchange carriers (CLECs) were driven from the broadband market, mass market consumers will still have the benefits of competition between cable providers and ILECs." *USTA* at 40.

for broadband services. Because ILECs are not dominant in the broadband market, Verizon also urges the Commission to modify or forbear from applying economic Title II regulations to such services. Verizon explains that the intermodal competition that exists today for broadband services is sufficient to eliminate any anti-competitive risks.

Similarly, they state that the current status of intermodal competition for broadband services eliminates the need for ILECs to be subject to any unbundling obligations that section 271 of the Telecommunications Act of 1996 (1996 Act) might be construed to impose. Finally, elimination or reduction of regulations imposed on broadband services is critical to facilitating ILECs' ability to meet the goals of section 706 of the 1996 Act: reasonable and timely deployment of advanced telecommunications capabilities to all Americans.

USTA agrees with the Commission's proposed deletion of section 51.329(c)(3) of its rules, which requires paper and diskette copies of ILECs' public notices or certifications sent to the Chief of the Wireline Competition Bureau. This is an appropriate elimination of an unnecessary regulation. However, further modification of network change disclosure requirements is necessary. The Commission should modify its rules with respect to implementation of network changes for both normal and short interval notices to permit the clock to start as soon as an ILEC posts such notices on its web site. Currently, the clock does not start on short-term notices until the Commission issues a Public Notice. As a result, when the issuance of a Public Notice is delayed by the Commission, it can lead to scheduling problems in implementing network changes, additional and unnecessary service costs to ILECs, unnecessary service deterioration, and

unnecessary service complaints.²⁴ In addition, when a revision is made to a previously posted network change notice, USTA advocates that there must be no more than a 60-day implementation delay beyond the original network change implementation timeframe. Delays beyond that lead to the same problems with scheduling, additional costs, service deterioration, and service complaints enumerated above.

Several other modifications are necessary to the network change notification requirements that the Commission implemented in its UNE Triennial Order.²⁵ The Commission's rule requiring ILECs to provide 90-days notice when replacing the distribution portion of the copper loop with fiber is unnecessarily burdensome and has a harmful impact on deployment of broadband services. As long as there is no opposition to such a network change, implementation should be allowed to occur in a timely manner, not to exceed 60 days. In addition, the Commission should modify the requirement stated in the UNE Triennial Order that ILECs must provide at least 91-days prior notice before any planned retirement of copper loops to be replaced by fiber-to-the-home (FTTH)²⁶ to: "ILECs should file their disclosures for copper loop retirements, *whenever practicable*, at least 91 days prior to their planned retirement date." It is not uncommon for copper loop to be retired unexpectedly, in non-emergency situations such as discovery of deteriorating outside plant, road moves, and bridge replacements. In these circumstances, ILECs must

²⁴ Service quality complaints resulting from the delayed issuance of a Commission Public Notice on proposed network changes will be reflected in ILECs' ARMIS service quality reports.

²⁵ *See generally* Triennial Order.

²⁶ Triennial Order at ¶283.

file waivers from compliance with the 91-day requirement, which places unnecessary burdens on both ILECs and Commission staff. Moreover, when a retirement must take place in less than 90 days, the Commission should use its best efforts to rule on any opposition in a timely manner so that local communities are not disrupted more than necessary.

Finally, the FCC should not impose Part 51 requirements on ILECs to provide collocation and unbundled network elements that would place them at a distinct competitive disadvantage in the provisioning of telecommunications services. USTA urges the Commission to move forward with the UNE Triennial Review proceeding and to create rules that are consistent with *USTA v. FCC*²⁷ that will promote facilities-based competition.

PART 53, SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

USTA supports the FCC's elimination of the Commission's Rules under section 53.203(a)(2) and (3), which prohibit the sharing of operating, installation and maintenance functions between the BOC and the Section 272 affiliate.²⁸ These rules were not required by statute and were unwarranted. Moreover, we agree with Verizon that the FCC "should allow the remaining rules to sunset three years after a BOC has

²⁷ See generally, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

²⁸ See Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates, 19 FCC Rcd 5102 (2004).

obtained 271 authority, in accordance with the statutory presumption” under section 272(f)(1) of the Act.²⁹

PART 54 – UNIVERSAL SERVICE

USTA continues to recommend that the Commission eliminate the “parent trap” rule in section 54.305(a).³⁰ Under the “parent trap” rule, a carrier that acquires an exchange from an unaffiliated carrier may only receive the same level of universal support for the acquired exchange (at the same per-line support level for which the exchange was eligible prior to the transfer).³¹ In many cases an acquired exchange is not eligible for universal service support because it was served by a large carrier that also served a major metropolitan area, thus leaving the acquiring carrier with no universal service funds to provide upgrades to that exchange’s customers. USTA supports elimination of the “parent trap” rule.

PART 61 – TARIFFS

USTA continues to recommend restructuring of the Part 61 and Part 69 rules.³² USTA has suggested that Part 61 contain only carrier tariff requirements, that rules associated with price cap regulation be moved to a new Part XX, and that rules associated with rate of return regulation be moved to Part 69.³³ USTA continues to maintain that this restructuring would assist in simplifying and clarifying the current rules.

²⁹ Verizon comments Exhibit B at 10.

³⁰ 47 U.S.C. §54.305(a).

³¹ USTA 2002 Reply Comments (noting NTCA’s view on the “parent trap” rule).

³² See USTA 2000 Comments at 22; USTA 2002 Comments at 18.

³³ See USTA 2000 Comments 22; USTA 2002 Comments at 18.

USTA holds that there are several rules that meet the statutory requirements for elimination pursuant to biennial review. USTA recommends that the Commission eliminate the price cap all-or-nothing rule.³⁴ The concerns prompting the implementation of the “all-or-nothing” rules have not materialized. Moreover, there are many other regulatory safeguards that prevent or allow detection and correction of abuse by carriers that become affiliated through mergers or acquisitions.³⁵

USTA continues to maintain that all ILECs should be permitted to file contract-based tariffs.³⁶ ILECs should have the same opportunity as their competitors to respond directly to customer requests. Almost every state permits some form of contract-based tariffs.³⁷ USTA continues to recommend that the Commission make its tariff filing requirements consistent with section 204(a)(3) of the Act.³⁸ In addition, USTA maintains that the notice period to file corrections to tariffs should be streamlined from three days to one day. USTA believes there is no need for the requirement that tariffs be in effect for 30 days before any changes can be made. Finally, the special permission period

³⁴ See 47 C.F.R. §§ 61.41(b) and (c)(2). These rules together make up what is commonly referred to as the price cap “all-or-nothing” rule. See also *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order, CC Docket No. 00-256 (Feb. 26, 2004) (modifying the “all-or-nothing” rule to permit rate-of-return carriers to bring recently acquired price cap carrier lines back to rate-of-return regulation without obtaining a waiver).

³⁵ See generally *Valor Telecommunications, LLC Petition for Waiver of Section 61.41 of the Commission’s Rules*, WCB/Pricing 02-26, Comments of the United States Telecom Association (Oct. 10, 2002) (Valor Petition). In the Valor Petition, USTA supported the relief requested – a temporary waiver – but also urged the Commission repeal the “all-or-nothing” rules.

³⁶ See USTA 2000 Comments at 22; USTA 2002 Comments at 18.

³⁷ See USTA Petition at 34.

³⁸ See USTA 2000 Comments at 22; USTA 2002 Comments at 18.

should be extended from 60 to 90 days.³⁹ These changes are consistent with the establishment of a pro-competitive, de-regulatory statutory framework and should be considered as part of the Commission's biennial review of its rules.

PART 64, SUBPART A – TRAFFIC DAMAGE CLAIMS

USTA continues to recommend that Part 64, Subpart A be deleted.⁴⁰ Because ILECs maintain records of traffic damage claims as required by the Internal Revenue Service and the Securities and Exchange Commission, there is no need for the Commission to duplicate these requirements. Commission staff has also recommended deletion of Part 64, Subpart A.⁴¹

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

Because the furnishing of facilities to foreign governments for international communications could be handled contractually, consistent with applicable treaties and other federal laws, USTA renews its recommendation that Part 64, Subpart C be eliminated.⁴²

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

Commission staff recommended the removal of Part 64, Subpart E in the Staff Report.⁴³ USTA continues to support the staff's recommendation to eliminate this subpart.⁴⁴

³⁹ See USTA 2000 Comments at 22; USTA 2002 Comments at 19.

⁴⁰ See USTA 2000 Comments at 23; USTA 2002 Comments at 20.

⁴¹ See 2000 Staff Report at 113-114.

⁴² See USTA 2000 Comments at 24; USTA 2002 Comments at 21.

⁴³ See Staff Report at 120.

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

USTA continues to recommend the deletion of Part 64, Subpart G.⁴⁵ The Commission has eliminated the bundling restriction that limited the ability of common carriers to offer consumers packages of telecommunications services and customer premises equipment (CPE) and has clarified, but not eliminated, the prohibition on bundling enhanced services.⁴⁶ USTA urges the Commission to eliminate the prohibition on the bundling of enhanced services as it has done for CPE. This prohibition is no longer necessary in a competitive environment. Every provider of telecommunications services, except the ILEC, is permitted to bundle enhanced services. Allowing ILECs to bundle products and services fosters competition, thereby benefiting consumers.

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

USTA continues to recommend the deletion of Part 64, Subpart H because contracts and current state and federal laws should provide sufficient oversight.⁴⁷

⁴⁴ See USTA 2000 Comments at 25; USTA 2002 Comments at 22.

⁴⁵ See USTA 2000 Comments at 26; USTA 2002 Comments at 23.

⁴⁶ *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61 and 98-183, Report and Order, FCC 01-98 (rel. March 30, 2001).

⁴⁷ See USTA 2000 Comments at 27; USTA 2002 Comments at 24.

PART 64, SUBPART I – ALLOCATION OF COSTS

USTA encourages further streamlining of the allocation rules and the elimination of the requirement to allocate costs between regulated and non-regulated activities.

USTA believes that in a competitive environment such an allocation is unnecessary.

In the 2000 Biennial Review Report-ARMIS, the Commission eliminated annual Cost Allocation Manual (CAM) filings for mid-sized carriers. The Commission still required mid-sized carriers to be prepared to produce documentation of how they separate regulated from nonregulated costs and to file an annual certification that they are complying with section 64.901 of the Commission's rules regarding such separations.⁴⁸ The Commission's elimination of the annual CAM reporting requirement for mid-sized carriers did reduce some regulatory burdens and this relief should continue. In addition, USTA believes it is appropriate to provide BOCs with the same relief. As with the mid-sized companies, BOCs should file an annual certification of compliance and retain necessary documentation to demonstrate how they separate regulated and nonregulated costs. Unless there is evidence of a compliance problem, BOCs, like mid-sized companies, should not be required to prepare and submit these time-consuming and burdensome reports.

⁴⁸ See 2000 Biennial Review Report-ARMIS, ¶¶190-191.

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

USTA continues to recommend the immediate elimination of the requirement that independent ILECs provide interexchange service through a separate affiliate.⁴⁹ USTA has discussed with Commission staff the cost savings that result when independent ILECs are able to use the same equipment and personnel for both local exchange and interexchange services.⁵⁰ The Commission’s decision to impose this requirement relied solely on the “potential” for improper behavior as justification. This is a weak justification for imposing such a burdensome and unnecessary requirement on the smallest independent ILECs that must compete against unregulated global companies such as AT&T and Sprint to provide interexchange service.

PART 65 – INTERSTATE RATE-OF-RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

USTA continues to support streamlining the Part 65 rules to reduce the regulatory burden that these rules impose on all ILECs.⁵¹ Except when a lower formula adjustment is filed, reporting requirements should be eliminated. 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 of the Commission’s Rules to calculate the

⁴⁹ See USTA 2000 Comments at 29; USTA 2002 Comments at 25.

⁵⁰ See Letter to William F. Caton, Acting Secretary, Federal Communications Commission, from Lawrence E. Sarjeant, USTA regarding *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area*, CC Docket Nos. 96-149 and 00-175 (Feb. 22, 2002).

⁵¹ See USTA 2000 Comments at 31; USTA 2002 Comments at 28.

maximum allowable rate of return on all access elements in the aggregate (instead of for each access category). Further, the Commission should modify section 65.702 of the Commission's Rules to measure earnings on an overall interstate basis instead of separately for each access category.

PART 69 – ACCESS CHARGES

USTA continues to recommend revising Part 69 so that it applies only to rate-of-return carriers.⁵² In addition, USTA maintains that section 69.4 should be deleted, eliminating detailed rate element codification and the public interest petition requirement for the establishment of new rate elements.⁵³ This will facilitate innovation and accelerate the delivery of new service options to the customers of rate-of-return carriers.

III. AT&T's Requests Under Section 51.329(c) are Unfounded and Should Not Be Considered in this Proceeding.

The biennial review proceeding is not the forum for the FCC to consider AT&T's requests, as the purpose of the proceeding is to eliminate and modify unnecessary regulatory requirements. The Commission sought comment in the *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*⁵⁴ Notice regarding whether it should modify the titles enumerated in section 51.329(c)(1) of its rules by adding specific titles to identify notices of replacement of copper loops or copper subloops with FTTH loops. Arguably, the Commission's proposal was made with the intent to minimize regulatory burdens, as it is tasked with doing in biennial regulatory

⁵² See USTA 2000 Comments at 22; USTA 2002 Comments at 29.

⁵³ USTA 2000 Comments at 33.

⁵⁴ 19 FCC Rcd 764 (2004) (Biennial NPRM).

reviews. However, AT&T has seized another opportunity to request that the Commission impose additional regulatory requirements on ILECs, which is not only unfounded, but outside the scope of this proceeding.

AT&T argues that ILECs must provide notice of replacement of cooper loops and subloops with FTTH and hybrid loop fiber deployments.⁵⁵ In the UNE Triennial Order, the Commission confirmed that retirement of copper loops that have been replaced with FTTH should not be subject to a blanket prohibition, but only to appropriate network disclosure requirements.⁵⁶ ILECs do provide appropriate notice of such planned changes in full compliance with the Commission's rules. USTA believes that AT&T's request is an inaccurate interpretation of the Commission's notification rules and should be dismissed.

Lastly, AT&T complains that CLECs do not have adequate time to object to proposed network changes because of the "extremely short timeframe (just 9 business days following public notice for cooper loop replacements) in which to analyze those filings and file objections to such network changes."⁵⁷ AT&T requests that "ILEC notices of all cooper loop retirements be provided directly to potentially affected CLECs."⁵⁸ In short term notices for network changes, the Commission requires ILECs to individually serve CLECs with notice five business days in advance of filing with the Commission for short-term notification. This advance notice combined with nine

⁵⁵ See MCI Comments at 15-16.

⁵⁶ See UNE Triennial Order, ¶¶271, 281.

⁵⁷ AT&T Comments at 3.

⁵⁸ *Id.*

additional business days after the Commission releases its Public Notice about the proposed network change provides CLECs with adequate time to object to any such changes.

IV. The Kansas Corporation Commission Seeks Further Accounting Regulations, Contrary to Section 11 and the Overall Intent of the Telecommunications Act of 1996.

USTA maintains that the accounting requirements and obligations articulated by the KCC are unnecessary and contrary to the intent of the 1996 Act. The intent of the 1996 Act was to promote competition in the telecommunications marketplace through reduction of regulation and opening of markets to provide consumers with new technologies at reasonable rates. Free markets provide consumers with a choice of providers at reasonable rates; better quality of service naturally ensues. Only through less regulation, rather than the additional regulation proposed by KCC, will the intent of the 1996 Act become a reality. Thus, the FCC should continue to reduce accounting requirements for ILECs in this proceeding.⁵⁹

The KCC asks the Commission to “maintain, or add, accounts that appear to benefit only state commissions.”⁶⁰ We disagree with KCC. The FCC should not maintain or add any accounts that benefit state commissions. In fact, the FCC recently rejected many of the recommendations of the Federal-State Joint Conference on

⁵⁹ The Commission in the 2000 Biennial Review recommended that substantial reductions to its accounting requirements should occur.⁵⁹ USTA embraced the Commission’s recommendation and submitted comments in the accounting reform proceedings that echoed the FCC’s desire for pro-competitive and deregulatory accounting requirements.

⁶⁰ KCC Comments at 2.

Accounting Issues (Joint Conference).⁶¹ The Joint Conference recommended that the FCC *not* make many of the regulatory reforms that it adopted or proposed in the 2000 Biennial Review. Given the FCC's clear indication that it intends to reduce the accounting requirements for LECs, the KCC's request is unreasonable.

In the future, to the extent that the FCC eliminates or modifies by reduction any accounting requirements for LECs, the FCC should ensure, by preemption if necessary, that the same or substantially similar accounting requirements be eliminated or modified by state regulatory agencies. Without a corresponding reduction in state regulation, the benefit of any reduction in federal accounting requirements is essentially lost. LECs would still expend essentially the same amount of time and incur the same expenses to comply with state reporting requirements that they would have if they were still reporting to the FCC. LECs need one level of accounting detail for all reporting jurisdictions and should not be required to report to states what they are not required to report to the Commission.

CONCLUSION

USTA believes that in order to promote fair and efficient competition in the converging, global communications marketplace, the Commission must carry out the deregulatory mandate set forth in section 11 of the Act by aggressively eliminating regulations identified in the review process as "no longer necessary in the public interest

⁶¹ The FCC convened a Federal-State Joint Conference on Accounting Issues (Joint Conference). The purpose of the Joint Conference was to institute a dialogue that seeks to "ensure that regulatory accounting data and released information filed by carriers are adequate, truthful, and thorough."

⁶¹ See *Resolution Seeking Termination of the Federal Communications Commission's*

as the result of meaningful economic competition between providers of telecommunications service.”⁶² Convergence in communications offerings has rendered many current rules obsolete, such that they no longer serve the public interest. Yet, the Commission has failed to expeditiously eliminate these rules. USTA again urges the Commission to take a more aggressive approach to eliminate or modify the rules addressed herein to fulfill its obligations under section 11 of the Act.

Respectfully submitted,

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⁶² 47 U.S.C. § 161; Telecommunications Act of 1996, Pub. Law No. 104-104, § 202, 110 Stat. 56 (1996).

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on August 11, 2004, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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