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

In the Matter of	)	
	)	
2004 Biennial Regulatory Review	)	WC Docket No. 04-179
of Regulations Administered	)	
by the Wireline Competition Bureau	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc., for itself and its wholly owned affiliated companies (collectively "SBC"), submits the following reply comments in response to the recent Public Notice seeking comment in the 2004 Biennial Review of telecommunications regulation within the purview of the Wireline Competition Bureau.

I. INTRODUCTION

Pursuant to Section 11 of the Telecommunications Act of 1996 ("the Act"), the Commission must undertake a comprehensive review of its regulations and is required to take action to eliminate any outdated regulations that are no longer necessary in the public interest due to increased competition.[1] Since 1998, the Commission has dutifully issued public notices and has accepted comments from the industry on rules that have outlived their usefulness. Nevertheless, the Commission has failed to carry out its statutory mandate to *act* on the record established in each biennial review proceeding. In order for the biennial review to produce the results contemplated by Congress, the Commission must go further than merely seeking comments from the industry: it must take action and align its rules with the competitive landscape that has developed since 1996. SBC agrees with Verizon that Commission action in

[1] 47 U.S.C.A. § 161.

this regard is long overdue. Specifically, SBC supports Verizon's comments that the Commission should eliminate the regulatory burdens on wireline broadband internet access services, reform its TELRIC rules, streamline the accounting and ARMIS reporting requirements for Class A companies, eliminate continuing property records rules, and modify the notice of network changes and disclosure rules.[2]

II. THE COMMISSION SHOULD ELIMINATE ITS ACCOUNTING, REPORTING AND SEPARATIONS RULES FOR CLASS A CARRIERS.

SBC endorses Verizon's proposal to allow current Class A companies to transition their accounts and reporting requirements to those required of Class B companies. As BellSouth, Qwest, Verizon and SBC have stated in numerous Commission proceedings, the Commission's existing accounting rules and reporting requirements for Class A carriers are unnecessary because price cap regulation eliminates the need for them.[3] Furthermore, a competitive environment eliminates the justification for these one-sided outdated rules that require incumbent LECs to keep redundant sets of books and file time-consuming CAM reports. Other telecommunications providers are not subject to these requirements and can establish a single accounting system and process to meet their business and regulatory reporting needs. Likewise, Class A incumbent LECs should be permitted to adopt a single set of accounts and accounting procedures to satisfy all of their corporate reporting obligations.

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[2] SBC supports Verizon's comments in general but does not focus on Broadband deregulation or TELRIC reform in these reply comments. SBC's position on these important subject matter can be found in SBC's Comments and Reply Comments in the *Review of Regulatory Requirements on Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, filed March 1, 2002 and April 22, 2002 and *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements And the Resale of Service by Incumbent LECs,* WC Docket No. 03-173, filed December 16, 2003 and January 30, 2004; Verizon Comments at p. 2; Verizon Exhibit B at p. 2.

[3] Verizon Exhibit B at p. 2. *See* Comments of BellSouth, Qwest, SBC and Verizon in *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, filed July 13, 2001; *See* Comments and Reply Comments of BellSouth, Qwest, SBC and Verizon in *Federal-State Joint Conference on Accounting Issues*, WC Docket 02-269, filed January 30, 2004 and February 17, 2004 respectively.

The Commission should also eliminate the Part 36 separation requirements. The Commission's separations procedures were necessary for the rate of return regulation regime to ensure that the federal and state rates of return did not allow ILECs to recover the same costs from both jurisdictions. As discussed above, the justification for the jurisdictional separations process no longer exists since the Class A ILECs are no longer subject to rate of return regulation. In addition, it is impossible to apply the existing separations methodologies to the new telecommunications architectures that exist today. End users are able to send and receive voice, data and video without touching the public switched network. For example, wireless, VOIP and broadband networks allows the origination and termination of these services on overlay networks that are almost entirely separate from the ILECs' legacy networks. As a result, ILEC separations study methodologies can no longer predict, with any reasonable certainty, the jurisdictional nature of all traffic. Consequently, as competition from intermodal providers such as wireless carriers and VOIP providers continues to grow, the separations data reported by ILECs has and will continue to become increasingly useless and meaningless and accordingly should no longer be required.

Despite the claims of the Kansas Corporation Commission ("KCC"), the Commission does not have the authority to adopt or retain any of its rules for the exclusive needs of state regulatory commissions.[4] Section 201(b) of the Act states that "the Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."[5] Likewise, section 4 of the Act provides: "[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this

[4] Comments of the Kansas Corporation Commission at p. 2.

[5] 47 U.S.C. § 201(b).

chapter, as may be necessary in the execution of ***its*** functions"[6] (emphasis added). The statute thus authorizes the Commission to adopt Part 32 accounting and ARMIS reporting requirements only to the extent such rules are necessary to the execution of the FCC's statutory responsibilities; but it may not establish such rules simply to assist states in applying state law.

Commission precedent is aligned with this interpretation. In the *Phase 2 Order*, the Commission concluded that it had no authority to establish federal rules for the purpose of implementing state law: "if we cannot identify a federal need for a regulation, we are not justified in maintaining such a requirement at the federal level."[7] The Commission also observed that the states have independent authority to promulgate rules to carry out state regulatory requirements.[8] Recently, in the *Joint Conference Order*, the Commission confirmed this opinion and declined to add new accounts stating that "[w]hen states need this information, they can request it from carriers."[9] Accordingly, the Commission must reject the KCC's proposal and continue to streamline the accounting, reporting and separations requirements for Class A ILECs since these rules no longer serve a federal need.

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[6] 47 U.S.C. § 154(i).

[7] *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, Report and Order, 16 FCC Rcd 19911, at ¶ 207 (2001) ("*Phase 2 Order*").

[8] *See Phase 2 Order* at ¶ 36 (noting that the Commission's action of consolidating Directory Revenue accounts did not restrict state commissions from receiving disaggregated directory revenues from carriers if state-specific reasons required them to do so).

[9] *Federal-State Joint Conference On Accounting Issues, Report and Order*, WC Docket 02-269, FCC 04-149, 2004 FCC LEXIS 3309 (rel. June 22, 2004), ¶ 23.

III. THE CONTINUING PROPERTY RECORD RULES AND COST ALLOCATION RULE FOR CENTRAL OFFICE EQUIPMENT AND OUTSIDE PLANT ARE OVERLY BURDENSOME AND SHOULD BE ELIMINATED.

SBC also agrees with Verizon that the FCC should eliminate its continuing property record ("CPR") rules.[10] Like the separations rules, the CPR rules have been rendered obsolete by price cap regulation. Moreover, the level of detail required by the CPR rules makes them particularly burdensome given that these rules are not at all necessary. The Commission should, at a minimum, permit price cap ILECs to transition their CPR records to a less burdensome level of detail while remaining compliant with generally accepted accounting principals ("GAAP").

The foregoing discussion concerning CPR rules applies equally to the FCC's forecasting rule for central office equipment ("COE") and outside plant.[11] The Commission's rule does not serve a regulatory purpose nor does it serve the public interest. To the contrary, this rule is overly burdensome for ILECs and injects unnecessary costs into ILEC operations. The current cost allocation rule requires Class A ILECs to utilize a forecasting methodology to allocate the current year's usage of COE and outside plant to regulated or non-regulated accounts, rather than simply using actual network utilization as the basis for the allocations. Since the ILECs track the usage of network investment, the allocations would be more efficient and accurate if they were based on actuals. In light of this less burdensome and more reliable option, the Commission should modify section 64.901(b)(4) to allow ILECs to utilize actuals to allocate COE and outside plant investment.[12]

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[10] Verizon Comments, Exhibit B at p. 2.

[11] 47 C.F.R. § 64.901(b)(4).

[12] As discussed above, SBC believes that this and other accounting and cost allocation rules have outlived their usefulness and should be completely eliminated. However, SBC endorses this proposed change in the event that the Commission elects to streamline its rules on case-by-case basis.

IV. THE COMMISSION SHOULD INCLUDE INTERNET POSTING AS AN OPTION FOR ILECS TO COMMUNICATE NETWORK DISCLOSURES TO THE COMMISSION.

SBC also agrees with the other ILECs' proposal to amend the network disclosure rules to allow ILECs to make network notifications to the FCC via Internet postings.[13] Internet postings are a much faster and more efficient way of communicating network changes to the industry as well as to the Commission. SBC, like BellSouth and Verizon, already utilizes the Internet to make its network disclosures available to carriers that interconnect with SBC[14] and SBC understands that these interconnecting carriers utilize this medium to learn of product and network changes. Likewise, the Commission's rules should also recognize the Internet as a viable and efficient method of communicating network changes and should not require the archaic and wasteful public notice process when ILECs use the Internet to disseminate network changes to the public.

V. THE COMMISSION MUST REJECT AT&T'S ATTEMPT TO ADD NOTIFICATION RULES FOR COPPER RETIREMENT.

As a threshold matter, the Commission should reject AT&T's proposal to add notification rules for copper retirement on procedural grounds alone since the Commission cannot use this proceeding to entertain suggestions for new rules. The Act limits the scope of Biennial Review proceedings to *eliminate unnecessary* regulations – it is not a replacement for the Commission's rulemaking procedures.[15] Indeed, in the 2002 Biennial Review Report , the Commission confirmed that "[a]dding rules, as opposed to modifying or eliminating existing rules, is clearly

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[13] See BellSouth Comments, WC Docket 02-313, at pp. 2-6 (filed Nov. 4, 2002); Verizon Exhibit B at pp. 8-9.

[14] http://www.sbc.com/gen/public-affairs?pid=3137#SBC

[15] 47 U.S.C.A. § 161(b).

beyond the immediate task."[16] Further, it is the Commission's policy not to change regulations unless the Commission is persuaded that the revised regulation is *less burdensome* than the former regulation.[17]

Moreover, AT&T's proposal is nothing more than a late-filed petition for reconsideration of the Triennial Review Order ("TRO"). In the TRO, the Commission examined the network disclosure rules and rejected a series of CLEC proposals to impose more burdensome rules.[18] Instead, the Commission found that minor modifications to its existing rules regarding notices of network changes were sufficient safeguards against concerns raised by CLECs in that proceeding.[19] AT&T could have sought reconsideration of that decision but did not. Its attempt to use the Biennial Review to that end is thus all the more flawed.

While AT&T's proposal should thus not be considered in this proceeding, SBC notes that from a substantive standpoint, it is completely inconsistent with the Commission's goal of encouraging investment in next generation loop facilities. AT&T's proposal would not only unnecessarily lengthen the time period in which CLECs may object to copper retirements, it would also require ILECs to provide circuit-level detail to every CLEC potentially affected by the copper retirements. This proposal adds an unreasonable burden to the ILECs as well as additional costs to copper replacements, which would undoubtedly deter ILEC investment in

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16 *2002 Biennial Regulatory Review, Report,* WC Docket No. 02-313 and GC Docket No. 02-390, 18 FCC Rcd 4622, ¶ 11 (2003).

17 *2000 Biennial Review, Report,* CC Docket No. 00-175, 16 FCC Rcd 1207, ¶ 19 (2001).

18 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advances Telecommunications Capability,* CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 281 (2003) ("*Triennial Review Order*").

19 *Id*.

broadband and fiber-to-the-premise ("FTTP") infrastructure. In the TRO, the Commission ordered ILECs to notify parties of copper loop retirement that could affect their services, and gave CLECs a reasonable period of time to object to network changes. However, the Commission stated that any such objection would be deemed denied unless the Commission rules otherwise within 90 days of the Commission's public notice of the intended retirement.[20] The Commission's policy recognizes that ILECs must have assurances that they will be able to transition away from copper loops, otherwise, ILECs will have no incentive to invest in FTTP architectures. Nothing has changed since the Commission reached this decision, consequently, the Commission should firmly reject AT&T's attempt to rewrite this aspect of the TRO.

[20] *Id.* at ¶¶ 282-283.

VI. CONCLUSION

The outdated rules and regulations discussed above are unnecessary in the competitive telecommunications marketplace that exists today. These rules add unnecessary costs to the ILECs and no longer service the public interest. Accordingly, SBC urges the Commission to execute its statutory mandate and utilize this Biennial Review proceeding to repeal or modify the above-referenced rules.

Respectfully submitted,

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