Wireless network. The terminal, which is part of the same product series used in the earlier Sprint trial, provides customers with increased wireless connectivity through standard telephones, fax machines, and computer equipment.[53]

Wireless and wireline prices for similar service offerings are now comparable. According to one analyst, "[w]ireless pricing dropped below wireline pricing in 2003 for the first time."[54] The services are highly cross-elastic. An econometric analysis by the Competitive Enterprise Institute found that "a one percent increase in wireline prices would result in a nearly two percent increase in wireless demand. In other words, if wireline carriers were to increase their prices, wireless service providers would gain a substantial number of subscribers."[55] Just as important, the wireless carriers would gain a substantial number of minutes.

Finally, entirely new forms of non-traditional wireless technologies will continue to increase consumer choices when making voice calls. WiFi is already a well-documented and growing phenomenon. So-called "hot spots" are proliferating; there are now more than 37,500 Wi-Fi hot spots in the United States.[56] WiMAX, a wireless technology that is being driven by deep-pocketed Silicon Valley companies such as Intel

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[53] Telular Corporation Press Release, *Telular Corporation Announces Approval for Use on the Verizon Wireless Network* (Feb. 1, 2006), https://www.telular.com/v2/html/profile/release_display.asp?ID=218.

[54] V. Grover, Neeham, *New Year's Resolution – Avoid the Bells*, at 1 (Dec. 29, 2003).

[55] Stephen B. Pociask, Competitive Enterprise Institute, *Wireless Substitution and Competition: Different Technology but Similar Service – Redefining the Role of Telecommunications Regulation* at 15 (Dec. 15, 2004) *available at* http://www.cei.org/pdf/4329.pdf.

[56] Forbes, *Wi-Fi Hotspot Directory*, http://www.jiwire.com/search-hotspot-locations.htm (37,627 hotspots in the U.S. as of February 20, 2006).

and Cisco, also is being touted as a new and fierce competitor to existing wireless and wireline technology.[57]

Wireless voice competition will also come from the high-speed data networks currently in service and being expanded across the country, which will enable customers to make wireless VoIP calls. Verizon Wireless and Sprint both are rolling out EV-DO networks that provide high-speed connectivity; Cingular has deployed a GSM equivalent, and T-Mobile is following suit.[58] Cable companies also will begin to offer wireless, adding to the bundles they currently offer.[59] While initially cable is likely to resell

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[57] Telecommunications Americas, *WiMAX: Coming to an Xbox Near You?* at 8 (July 2005), *available at* http://www.telecoms-mag.com/search/article.asp?Id=AR_908&SearchWord.

[58] Verizon's service is now available to more than 140 million people, and there will be nationwide coverage by the end of 2007. Verizon Wireless Press Release, *Verizon Communications Reports Strong 3Q Earnings Highlighted by Continued Gains in Wireless and Broadband* (Oct. 27, 2005); G. Gruman, *Taking IT to the Streets: 3G Arrives*, InfoWorld (Mar. 4, 2005). Sprint's Power Vision EV-DO is now available in 141 major markets, with coverage to more than 90 million people and is expected to reach 220 major markets by early 2006. Sprint Press Release, *Business Mobility Benefits Follow Expansion of Sprint Power Vision(SM) Mobile Broadband Service* (Nov. 8, 2005). Cingular's UMTS/HSDPA network is available to nearly 35 million people in 52 communities, including 16 major metropolitan areas, and the company plans to extend the network rapidly, with service in most major markets by the end of 2006. Cingular News Release, *Cingular Launches 3G Network* (Dec. 6, 2005); Cingular News Release, *Live from Las Vegas: Cingular Completes First 3.6Mbps Mobile Data Call; Commercial 3G Network Used To Showcase HSDPA Evolution* (Jan. 4, 2006). T-Mobile plans to begin deployment of HSPDA in 2006. G. Gruman, *Taking IT to the Streets: 3G Arrives*, InfoWorld (Mar. 4, 2005).

[59] *See* Sprint Nextel News Release, *Sprint Nextel, Comcast, Time Warner Cable, Cox Communications and Advance/Newhouse Communications To Form Landmark Cable and Wireless Joint Venture* (Nov. 2, 2005) (Beginning in 2006, Comcast, Time Warner Cable, Cox, and Advance/Newhouse plan to "offer consumers access to the expanded four element bundle, or 'Quadruple Play,' or any combination of services including video, wireless voice and data services, high speed Internet and cable phone service").

wireless, enhancements are likely to create genuine fixed wireless integration.[60] Such integration would allow cable telephony and wireless to share minutes of use and devices, giving consumers a home phone and a mobile phone in a single package with near seamless interchangeability.[61]

C. <u>VoIP</u>

In addition to obtaining VoIP service from a cable company, any customer with broadband access – which is now available to more than 90 percent of U.S. households from a provider other than the incumbent LEC[62] – can obtain voice service from multiple independent VoIP providers. Vonage, for example, provides service to more than 1.3 million customers in the U.S. and completes more than 35 million calls each week.[63] Skype, a service that allows customers to make ***free*** computer-to-computer calls, was recently acquired by eBay, and reports that 59 million people are registered to use

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[60] *See* Viktor Shvets & Andrew Kieley, Deutsche Bank, *VoIP: State of Play* at 9 (June 22, 2005) ("Integrating VoIP calling with wireless capability is the 'holy grail' for VoIP operators, as it is generally viewed as a 'killer application' which could lead to substantially higher demand for the service. With this sort of capability, VoIP usage in the home not only becomes wireless, but could allow users to make free VoIP calls wherever a WiFi connection is available, or to switch off between cellular and VoIP calling using the same handset").

[61] *See* P. Howe, *Comcast Plans Boston Launch of Internet Phone Service*, Boston Globe at E1 (April 14, 2005) (confirming Comcast's plan to offer a new integrated wireless/VoIP service that would provide a cell phone that would convert to an unlimited fixed-price Internet phone inside a subscriber's home).

[62] *See, e.g., See* NCTA, *Industry Overview: Statistics & Resources*, http://www.ncta.com/Docs/PageContent.cfm?pageID=86 (112.5 million homes passed by cable modem service as of June 2005); *see also* NCTA, *2005 Mid-Year Industry Overview* at Chart 5 (cable modem service is available to approximately 93 percent of homes passed by cable) (citing Morgan Stanley).

[63] Vonage, Form S-1 at 1 (SEC filed Feb. 8, 2006); Vonage, Fast Facts, http://www.vonage.com/corporate /aboutus_fastfacts.php.

Skype's free service.[64] Skype continues to add approximately 150,000 users a day, and more than 3 million people use Skype simultaneously at any one time.[65] AOL, the country's largest Internet service provider, now offers VoIP service.[66] Google offers free PC-to-PC calling worldwide through Google Talk.[67] MSN Messenger provides free PC-to-PC calling worldwide, and MSN acquired Teleo, a PC-to-PSTN VoIP provider, in August 2005.[68] Yahoo! offers free PC-to-PC calling worldwide through Yahoo! Messenger, and in June 2005, Yahoo! acquired Dialpad, a PC-based VoIP provider with 14 million subscribers, and the ability to offer PC-to-PSTN calling.[69] Other companies – like Net2Phone and InPhonex – offer similar, unlimited-free-calling soft-phone software, and also offer call termination on the PSTN at rates well below those offered for circuit-switched service and VoIP services over private IP backbones.[70] Net2Phone claims to

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[64] eBay Press Release, *eBay Completes Acquisition of Skype* (Oct. 14, 2005); eBay Press Release, *eBay To Acquire Skype* (Sept. 12, 2005).

[65] *Id.*

[66] *See* AOL Press Release, *America Online Introduces AOL® Internet Phone Service* (Apr. 7, 2005), *available at http://media.timewarner.com/media/newmedia /cb_press_view.cfm?release_num=55254366.*

[67] Google, *GoogleTalk: Talk and IM with Your Friends for Free*, http://www.google.com/talk/.

[68] MSN, *MSN Messenger*, http://join.msn.com/messenger/overview/; MSN Teleo, *Microsoft Acquires Teleo Inc.*, http://teleo.msn.com/.

[69] Yahoo! Press Release, *Yahoo! Messenger Announces Free, High-Quality Worldwide Calling* (May 18, 2005); Yahoo!, *Yahoo! Messenger with Voice*, http://messenger.yahoo.com/feat_voice.php;_ylt=AmP3BcRmcYGy6q1aSsAa5q5wMMIF; *Yahoo Enters VOIP Fray*, Light Reading (June 15, 2005), http://www.lightreading.com/document.asp?doc_id=75746&site=lightreading&WT.svl=news1_1.

[70] *See Parks Associates Residential VoIP Analysis* at 4-9; InPhonex, *Products and Services*, http://www.inphonex.com/products/products.php.

"route[] millions of minutes daily over data networks."[71] As one analyst has noted, the competition provided by these services simply does not show up at all in the conventional metrics of competition: these Internet-enabled voice services can "substitute[] for calling occasions, even as they leave measured market share untouched."[72]

Customers also view VoIP service as a replacement for their telephone line. Approximately 60 to 70 percent of Vonage customers bring their old phone number when they sign up.[73] And as analysts have noted, third-party VoIP providers offer service "at rates significantly below comparable RBOC prices."[74]

E-mail and instant messaging also displace a significant fraction of traffic that used to travel on wireline networks, including revenue-producing traffic such as long distance calls. If only 5 percent of the estimated nine billion messages U.S. users send each day[75] substitute for a 90-second voice call, that data traffic displaces more than 10

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[71] Net2Phone, *About Net2Phone: Company Overview*, http://web.net2phone.com/about/company/.

[72] J. Halpern, *et al.*, Bernstein Research, *U.S. Telecom and Cable: Flat-Rate Pricing Signals Telephony Voice ARPU Compression* at 4 (Apr. 8, 2004) ("*Bernstein Flat-Rate Pricing Note*").

[73] *See* Doug Shapiro, *et al.*, Banc of America Securities, *Battle for the Bundle* at 30 (June 14, 2005) ("[B]oth Time Warner and Vonage have stated that about 60-70% of customers port their number. For the balance, some of these may be customers moving into an area for the first time who have no local number to port, or people who don't care to port their number, but we believe that some are using VoIP as a second line.").

[74] Jeffrey Halpern, et al., Bernstein Research Call, *Quarterly VoIP Monitor: The "Real" Price Gap for VoIP Driving Rapid Subscriber Growth,* at 5-6 & Exh. 5 (July 15, 2005); Viktor Shvets & Andrew Kieley, Deutsche Bank, *VoIP: State of Play,* at 7 (June 22, 2005).

[75] *See* K. Thies, *E-mails and Records Management in the Legal Environment*, Legal Tech Newsletter (Nov. 14, 2003) ("Almost 9 billion e-mails are sent every day in the United States"); *see also* B. Silverman, *IM Viruses Are Latest Threat to the Networks*, New York Post (June 13, 2004) ("Almost 80 million Americans use instant-messaging services at home or work, according to an April 2004 Nielsen/NetRatings survey"); E. Stein, *Will IM Pay?*, CFO Magazine (May 2004) ("Radicati Group, a technology market

percent of the voice traffic that would otherwise have been handled by wireline networks.[76]

Finally, other technologies are poised to become significant competitors for voice traffic. Broadband-over-powerline (BPL), for example, enables users to have access both to high-speed Internet access and VoIP service. This service is just beginning to be commercially offered. As the FCC observed, four utilities began offering BPL to customers in 2004.[77] Moreover, BPL providers are attracting increasing levels of investment. For example, Current Communications, a provider of BPL started by Liberty Media, recently obtained $100 million in funding from Goldman Sachs, Google, and Hearst.[78] The FCC also has now adopted rules designed to "to provide a framework that will both facilitate the rapid introduction and development of BPL systems" and minimize any harmful interference.[79] As it noted, because power lines reach virtually every customer location, "[t]his new technology offers the potential for the establishment

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research specialist, reckons there are already 60 million business IM accounts. IM could have as many as 182 million business users by 2007, claims Ferris Research").

[76] Ind. Anal. & Tech. Div., WCB, FCC, *Trends in Telephone Service,* at Table 10.1 (Aug. 2003) (Total 2001 Dial Equipment Minutes of 4.8 trillion divided by 2 yields 2.4 trillion conversation minutes; 246 billion/2.4 trillion = 10.3 percent) (5 percent of 9 billion is 450 million multiplied by 365 days yields 164 billion multiplied by 1.5 (90 seconds) yields 246 billion minutes annually).

[77] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, 20 FCC Rcd 2755, ¶ 133 (2005).

[78] *See* Bill Alpert, *Powerline Promise*, Barron's Online (July 11, 2005).

[79] *Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems*, 19 FCC Rcd 21265, ¶ 2 (2004).

of a significant new medium for extending broadband access,"[80] and therefore an additional avenue for obtaining VoIP, "to American homes and businesses."[81]

Verizon's acquisition of MCI does not change these facts. In light of the extremely competitive nature of long distance services today, that acquisition will not reduce competition, and does not reduce Verizon's need for the requested relief. Indeed, the Commission found that "Verizon's acquisition of MCI is not likely to result in anticompetitive effects for mass market services because MCI significantly reduced marketing for local service, long distance service and bundled local and long distance service provided to the mass market."[82] Moreover, the Commission concluded that "competition from intermodal competitors is growing quickly," and the Commission "expect[s] it to become increasingly significant in the years to come."[83]

As the foregoing makes clear, all providers of telephony services, including local, long distance, and bundles of services, face vigorous and increasing competition. Moreover, even if a BOC decides to reintegrate its long distance affiliate after the section 272 requirements sunset, section 272(e) requires that a BOC provide telephone exchange service and exchange access to competitors and other unaffiliated entities in the same time it provides such services to itself, and further requires that a BOC impute to itself an amount "no less than the amount charged to any unaffiliated interexchange carriers" for such services. 47 U.S.C. § 272(e)(1), (3). In these circumstances, continuing to apply

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[80] *Id.* at ¶ 1.

[81] *Id.*

[82] *Verizon / MCI Merger Order,* 20 FCC Rcd 18433, ¶ 102 (2005).

[83] *Id.*

regulations designed for an industry that was entirely different makes no sense and is affirmatively harmful to consumers.

II. In light of the extensive competition for long distance service, the Commission should eliminate outmoded regulations that apply only to some competitors.

Although the Commission has not yet specifically addressed the appropriate regulatory treatment for in-region, interexchange services offered by Bell companies post-sunset, it has already expressed concerns with the effects, in a competitive market, of many of the regulations that would apply if it does not grant a waiver or forbear from applying these regulations. The Commission has repeatedly found that imposing tariffs in a competitive market affirmatively *harms* competition and innovation by imposing burdens on carriers that attempt to make new offerings and by reducing or eliminating both the incentive and ability to discount prices in response to competition and to make efficient price changes in response to changes in demand and cost.

These concerns are even more relevant in light of the intensified competition for all telecommunications services, including long distance. Further, as the Commission recognized, imposing tariffing requirements on only a few competitors would not only "impose significant administrative burdens on the Commission and the [BOCs];" it would also "adversely affect competition."[84]

Likewise price cap regulations do not apply today to providers of long distance services, and no interexchange toll service is subject to price cap regulation. Applying such regulations to Bell company provision of long distance services would be a giant

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[84] *Regulatory Treatment of LEC Provision of Interexchange Services Originating the LEC's Local Exchange Area; Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 15756, ¶ 89 (1997) ("*LEC Classification Order*")

step backwards. And requiring only the BOCs to subject their long distance services to such rules would impose artificial price constraints on a few service providers that would not apply to their competitors. Similarly, CEI/ONA rules today do not apply to providers of long distance services. Subjecting Verizon's long distance services to these requirements, but not the services offered by other long distance providers of interexchange services, will delay or impede full and fair competition among providers of similar services with dissimilar regulatory requirements.[85] These rules would affirmatively disrupt the robust competition that exists today, and therefore would be harmful to the public interest.

The foregoing harmful regulations would apply to Verizon's interstate long distance services in the former Bell Atlantic service areas if Verizon decides not to provide such services from a "272 affiliate" post-sunset. But continuing to operate in compliance with the 272 separate affiliate requirements is not a reasonable alternative. And in the former GTE service areas, moreover, Verizon has no option – the Commission's regulations require that it provide interstate long distance services through a separate subsidiary. But the Commission has found that structural separation imposes additional costs and inefficiencies with no corresponding consumer benefit. Requiring only incumbent independent LECs to incur these costs and inefficiencies provides an artificial advantage to competitors. This adversely affects competition and is harmful to the public interest.

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[85] *See, e.g., Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, etc.*, 20 FCC Rcd 14853, ¶¶ 45, 71, 79 and n.241 (2005) ("*Broadband Framework Order*").

A. The Commission should eliminate certain tariffing requirements that apply to dominant carriers.

Verizon requests a limited waiver of, or forbearance from, section 203 of the Communications Act and Commission dominant carrier tariffing rules, e.g., Rules 61.28, 61.32, 61.33, 61.38, 61.58, 61.59, and 63.21(c).[86] The tariff filing rules for dominant carriers are extensive and detailed. For example, Rule 61.38 requires a dominant carrier to include as part of its filings: (1) a cost of service study for elements for the most recent 12 month period (if changing an existing tariff); (2) a study containing a projection of costs for a representative 12 month period; and (3) estimates of the effect of the tariff filing on the traffic and revenues from the service to which the new tariff or tariff change applies, the carrier's other service classifications, and the carrier's overall traffic and revenue.[87] Tariff filings by dominant carriers must be accompanied by two sets of working papers containing the cost and revenue information required,[88] and proposed rate increases must include "all additional cost, marketing, and other data underlying the working papers to justify a proposed rate increase."[89] Tariff filings by dominant carriers are also subject to specified notice requirements.[90]

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[86] This waiver request also encompasses any ancillary Commission rules to the extent they could be read to impose a tariff filing obligation. *See, e.g.,* 47 C.F.R. §§ 61.13-61.17.

[87] 47 C.F.R. § 61.38(b)(1), (2).

[88] 47 C.F.R. § 61.38(c).

[89] 47 C.F.R. § 61.38(d).

[90] 47 C.F.R. § 61.58. As noted above, Verizon requests waiver of or forbearance from these rules only with respect to long distance services, and not to access services. Verizon also would agree to be subject to Rules 61.18 – 61.25, which set forth the tariffing requirements for nondominant carriers.

The Commission did away with tariffing requirements for long distance services in 1997.[91] The Commission determined that tariffs were not necessary to protect the public interest because competition in the long distance market would prevent carriers from raising prices and from engaging in predatory pricing.[92] Indeed, the former MCI opposed the Commission's plan to detariff long distance services, but the Commission rejected its arguments.[93] As discussed above, since the Commission's determination in that docket, competition has *increased* dramatically, leading to significant price reductions and a wide array of service choices for customers. Accordingly, there is even less reason today to impose tariffing requirements on LECs' long distance services.

Indeed, as noted above, in the *LEC Classification Order* the Commission determined that tariffing would be *contrary* to the public interest because it could harm competition. The Commission was concerned that tariff requirements might "stifle price competition and marketing innovation."[94] According to the Commission, a requirement to file tariffs "would reduce incentives for competitive price discounting, constrain carriers' ability to make rapid, efficient responses to changes in demand and cost, impose costs on carriers that attempt to make new offerings, and prevent customers from seeking

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[91] *LEC Classification Order*; *see also Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended,* 11 FCC Rcd 20730 (1996).

[92] *LEC Classification Order*, ¶¶ 97, 107.

[93] *See* Comments of MCI, *Regulatory Treatment of LEC Provision of Interexchange Services Originating the LEC's Local Exchange Area*, CC Docket No. 96-149 at 64-65 (filed Aug. 15, 1996); Reply Comments of MCI, *Regulatory Treatment of LEC Provision of Interexchange Services Originating the LEC's Local Exchange Area*, CC Docket No. 96-149 (filed Aug. 30, 1996).

[94] *LEC Classification Order*, ¶ 88.

out or obtaining service arrangements specifically tailored to their needs."[95] The Commission also expressed concern that tariffing long distance services could "facilitate tacit coordination of prices" among carriers. And the extensive cost support required in the tariffing process might "discourage the introduction of innovative new service offerings, because it requires a carrier to reveal its financial information to its competitors."[96] These concerns are even more relevant in light of the intensified competition for all telecommunications services, including long distance. Further, as the Commission recognized, imposing tariffing requirements on only a few competitors would not only "impose significant administrative burdens on the Commission and the [BOCs];" it would also "adversely affect competition." *Id.* at ¶ 89. Since then, the Commission has repeatedly reaffirmed that tariffing and cost-justification requirements affirmatively harm competition if they are imposed in a competitive environment.[97]

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[95] *Id.*

[96] *Id.* ¶¶ 89-90.

[97] *See, e.g.*, *2000 Biennial Regulatory Review: Policy and Rules Concerning the International, Interexchange Marketplace*, 15 FCC Rcd 20008 ¶ 18 (2000) ("requiring or permitting non-dominant carriers . . . to file tariffs impedes vigorous competition in the market for interexchange services by: (1) removing the incentives for competitive price discounting; (2) reducing or eliminating carriers' ability to make rapid, efficient responses to changes in demand and cost; (3) imposing costs on carriers that attempt to make new offerings; and (4) preventing or discouraging consumers from seeking or obtaining service arrangements specifically tailored to their needs"); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore*, 84 F.C.C.2d 445, ¶ 87 (1981) ("Applying the tariff requirements to competitive entities, however, has worked the perverse effect of imposing a measure which (1) is superfluous as a consumer protection device, since competition circumscribes the prices and practices of these companies, and (2) stifles price competition and service and marketing innovation."); *see also MCI Telecommunications Corp. v. AT&T*, 512 U.S. 218, 233 (1994) (expressing the Court's "considerable sympathy" with the propositions that, in competitive markets, tariff "filing costs raise artificial barriers to entry and that the publication of rates facilitates parallel pricing and stifles price competition").

B. The Commission should not subject Verizon's long distance services to price cap regulation.

Verizon also requests a limited waiver of or forbearance from Commission Rules 61.41-61.49, which set forth the price cap regulations applicable to the retail offerings of a Bell company. Read strictly, these rules would subject Verizon's long distance services to price cap regulation if Verizon decided to offer long distance services on a more integrated and efficient basis post-272 sunset. This makes no sense. Price cap regulation does not apply today to providers of long distance services, and no interexchange toll service is subject to price cap regulation.

Implementation of price cap regulation would require systems and process changes for which there would be no corresponding public benefit. The Verizon telephone companies, for example, would have to modify systems to track interLATA service elements so that actual price indices could be maintained, and yearly base period demand could be quantified. In addition, systems would need to be designed and implemented for Verizon's long distance services, which are not now subject to price caps. Requiring such efforts would be a giant step backwards. No interexchange toll service is subject to price cap regulation today. The Commission eliminated price cap regulation for interstate toll services in 1999 and permitted price cap ILECs to remove their interstate intraLATA toll and interLATA corridor services from price cap regulation once toll dialing parity was implemented.[98]

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[98] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers: Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, 14 FCC Rcd 14221, ¶ 45 (1999).

As discussed above, consumers have benefited from extensive innovation, along with price reductions and a wide array of choices that have resulted from the robust competition for long distance services today. Requiring only the BOCs to subject their long distance services to price cap rules would impose artificial price constraints on a few service providers that would not apply to their competitors. This would affirmatively disrupt the robust competition that exists today, and therefore would be harmful to the public interest.

C. The Commission should refrain from imposing its *Computer III* requirements, including CEI and ONA requirements.

As noted above, the Commission's CEI and ONA rules today do not apply to long distance providers. Extending these burdensome and costly regulations to Verizon's long distance services and networks will stifle innovation and investment, and harm consumers by slowing the development of new services and increasing the costs of offering them. Verizon's long distance affiliates would need to develop and post CEI plans when they have never needed to do this before. This would delay provision of enhanced services in competition with other providers who have no such requirements. This delay and increase in costs would, in turn, affect the options and prices of various services that are ultimately made available to consumers.

Moreover, the filing and reporting requirements of the CEI/ONA regime would impose administrative costs resulting not only in increased rates for consumers but also in adverse effects on competition.[99] Extending these lopsided obligations to the Bell

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[99] *See Implementation of Section 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, ¶ 177 (1994).

companies' provision of long distance services would place them at a great competitive disadvantage, skewing the market and harming consumers.

D. The Commission should eliminate its accounting requirements to the extent they could be interpreted to require that interexchange services provided on an integrated basis should be treated as non-regulated.

Verizon also requests a waiver of or forbearance from the Commission's accounting requirements, to the extent those requirements could be read to mandate that in-region, interexchange services provided by Verizon on an integrated basis are to be treated as non-regulated. The Commission has not expressly addressed the accounting treatment of integrated interLATA services provided after the sunset of section 272. The Commission has, however, stated that "[a]ll activities that are classified as common carrier communications for Title II purposes will be classified as regulated activities for purposes of our accounting rules."[100] Since integrated interLATA services offered by Verizon would be regulated under Title II regardless of the outcome of these petitions,[101] these services should be treated as regulated for accounting purposes consistent with the *Joint Cost Order*.[102] If the Commission agrees that all interLATA services offered on an

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[100] *Separation of costs of regulated telephone service from costs of nonregulated activities; Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to provide for nonregulated activities and to provide for transactions between telephone companies and their affiliates,* 2 FCC Rcd 1298, ¶ 70 (1987) ("*Joint Cost Order*").

[101] This does not include broadband Internet access services, which the Commission has classified as information services. It also does not include transport for such services, to the extent offered as private carriage. The Commission has already concluded that broadband Internet access services offered by incumbent LECs should be treated as a regulated activity under the Commission's Part 64 cost allocation rules. *Broadband Framework Order* ¶¶ 12, 128-144.

[102] Accounting for such services that continue to be provided through a separate affiliate should continue to be subject only to GAAP accounting requirements and should not otherwise be subject to the Uniform System of Accounts set forth in Part 32 of the

integrated basis after the sunset of section 272 should be treated as regulated under its current accounting rules, then no Commission action on this part of Verizon's waiver request is necessary.

However, the Commission's *Accounting Safeguards Order* creates some uncertainty regarding the appropriate accounting treatment of interLATA services provided after the sunset of section 272. There, the Commission determined that, while certain out-of-region and incidental interLATA services were common carrier services, integrated incidental interLATA services should nevertheless be treated as nonregulated solely for federal accounting purposes.[103] Neither the *Accounting Safeguards Order* nor subsequent orders suggest that the Commission was addressing interLATA services provided on a post-272 sunset basis. If the Commission concludes, however, that it intended to treat integrated interLATA services as nonregulated for accounting purposes, then it should waive or forbear from the requirements of the *Accounting Safeguards Order* so that integrated interLATA services provided after the sunset of section 272 are treated as regulated for accounting purposes.[104] Such treatment is consistent with the Commission's decision in the *Broadband Framework Order* to treat the non-common

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Commission's rules. As such, this could be considered a non-regulated service for affiliate transaction purposes.

[103] *Accounting Safeguards Order* ¶ 75.

[104] Verizon requests a waiver of the applicability of the *Accounting Safeguards Order* to the extent this order requires an accounting treatment that deviates from that stipulated by the *Joint Cost Order* and currently codified in the Commission's rules. For example, Rule 32.5280 specifies the recording of revenue "from regulated services treated as non-regulated for Federal accounting purposes pursuant to Commission order." 47 C.F.R. § 32.5280(c). In the alternative, the Commission could achieve a similar result, although less directly, by waiving the applicability of Rules 64.901(a)-(d) and Rules 32.23(a) and(c) to integrated interLATA services.

carrier provision of broadband Internet access transmission, which the Commission had classified as an enhanced service, as regulated for accounting purposes.

The Commission's original purposes in treating incidental interLATA services as nonregulated – to satisfy sections 254(k) and 271(h) of the Act, and to "achieve greater accuracy" in cost allocation – are no longer valid. Section 254(k) requires the Commission to establish "any *necessary* cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." 47 U.S.C. § 254(k). But Part 64 allocation of integrated interLATA services is not *necessary* for universal service purposes. Under price cap regulation, prices are no longer determined based on cost, and Part 64 cost allocation therefore has no impact on contributions.[105] Similarly, since prices charged for services included in the definition of universal service are not tied to changes in accounting costs, the concept of bearing a share of costs is irrelevant. Finally, the distributions of universal service funds are based on a hypothetical cost model, and thus Part 64 cost allocation has no impact on distributions.

Section 271(h) also does not require the application of the *Accounting Safeguards Order*. That section requires the Commission to ensure that services provided under section 271(g) do not "adversely affect telephone exchange service ratepayers or

[105] *See Broadband Framework Order* ¶¶ 139-142. In some states, Verizon's intrastate services are not subject to price cap regulation. Among these states, some may want to include costs and revenues related to interLATA services offered on an integrated basis, and some may want to exclude them. As a result, Verizon will treat long distance costs as regulated but remove them from the separations process so that no costs are assigned to either interstate or intrastate. The costs would, however, be tracked and therefore would be available should a state, or the Commission, need to look at them in the future.

competition in any telecommunications market." 47 U.S.C. § 271. None of the interLATA services provided after sunset would be provided under the authority of section 271(g), and section 271(h) therefore would no longer apply.

Moreover, since 1996, the Commission has made fundamental changes in interstate regulation and the role that costs play. For example, price cap regulation combined with pricing flexibility, has eliminated the direct link between an incumbent's recorded costs and the prices they charge for services. Elimination of the sharing and lower formula adjustment mechanism has also eliminated the potential incentives for incumbents subject to price cap regulation to shift costs. And under the CALLS plan, rates are not based on the development and reporting of costs under any of the Commission's accounting and reporting rules.[106]

Treating long distance services provided on an integrated basis as non-regulated for accounting purposes would impose burdensome requirements on a few providers of long distance services, which would not be borne by most competitors. Such an asymmetric regulatory requirement would impede robust competition.[107]Accordingly, to the extent the Commission's accounting rules are read to require that integrated interLATA services be treated as nonregulated, they should be waived. As noted above, however, accounting for such services that continue to be provided through a separate affiliate should continue to be subject only to GAAP accounting requirements and not

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[106] *See Broadband Framework Order* ¶ 137, *citing MAG Order,* 19 FCC Rcd 4152, ¶¶ 71-72 (2004); *Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates,* 19 FCC Rcd 5102, n.72 (2003) (pointing out that because the BOCs have taken advantage of pricing flexibility, they cannot resort to the low-end adjustment).

[107] *See Broadband Framework Order* ¶ 134.

otherwise be subject to the Uniform System of Accounts set forth in Part 32 of the Commission's rules.

E. Continuing to operate in compliance with the 272 rules that have sunset is contrary to the public interest.

The rules and requirements specified above will apply to Verizon's long distance operations if, after the sunset of section 272, Verizon decides to provide long distance services on an integrated basis or through a subsidiary or division that does not fully comply with the pre-sunset 272 requirements. But continuing to comply with the pre-sunset 272 requirements imposes significant costs and inefficiencies that hinder Verizon's ability to meet customer demand and affects the quality of service it can offer.

As an example, large business customers frequently seek high-speed, reliable networks and services that traverse LATA boundaries. SONET-based ring networks are a reliable network architecture to meet the needs of such customers. The 272 rules, however, add cost and operational complexity to Verizon's design of these service architectures. For example, a network interconnecting business locations in Massachusetts and Rhode Island could realistically be served over a single ring network. But today, Verizon is required to build an access ring in Massachusetts, another access ring in Rhode Island, and a third backbone ring to span the LATA boundary. The requirement to build three rings instead of one increases cost. The need to interconnect three rings increases complexity and potentially decreases reliability. Moreover, the two access rings must be offered under tariff, while the interLATA ring must be offered under contract. And because the three rings must be offered by separate affiliates that can only deal with each other on an arms-length basis, customers find it frustrating to do business with Verizon. Moreover, the requirement to offer services to other carriers on a nondiscriminatory basis fundamentally complicates Verizon's ability to meet customer demand to manage, monitor, and maintain the service as a single network. As a result, Verizon is seriously hindered in competing with other providers of these services that do not face the same restrictions.

Similarly, as Verizon deploys IP-based services, the 272 requirements may result in less efficient designs. Typically, an edge router provides the first level of traffic aggregation (closest to the customer). Additional routing is required to deliver traffic to other points in the LATA, across LATAs or to deliver the traffic to other carriers' networks. Because of the 272 restrictions, Verizon typically aggregates traffic terminating outside the LATA at a LATA Core Router in order to hand-off IP traffic to the backbone router network. In many cases, however this additional level of aggregation (LATA Core router) has no purpose other than establishing a defined interface point between the local and long distance networks in order to meet the 272 requirements. Instead, it simply adds additional cost and complexity to the network. Moreover, it may introduce latency (or delay) because of the additional routers and links between routers and therefore may impact delay-sensitive services, such as VoIP, transaction-based services, and video-conferencing. In addition, inserting additional routing points into the network to meet 272-related interface requirements may make the network less reliable. Finally, it reduces the capacity of the routers, since links must be dedicated to connecting different aggregation levels rather than pure routing of network traffic between end points.

As described, the 272 requirements impose significant costs and burdens on customers as well as on carriers. By contrast, there are no real benefits that result from continued compliance with those requirements. Therefore, the alternative of complying with all of the pre-sunset 272 requirements after those requirements have sunset is contrary to the public interest.

F. The Commission should not subject Verizon's long distance services in the former GTE service areas to structural separations.

Verizon requests a limited waiver or forbearance from certain regulations that require incumbent independent LECs providing in-region, interstate, interexchange or international services to provide such services through a separate affiliate that must maintain separate books of account and is prohibited from jointly owning transmission or switching facilities with the local exchange company (47 C.F.R.§ 64.1903(a)(1), (2), and (b)). As noted above, Verizon offers long distance services throughout its service areas. It does not offer a "GTE" long distance service separate from a "Bell Atlantic" long distance service. As a result, if the Commission continues to impose the independent ILEC structural separation requirements, it will condemn the company to operating its long distance business as a separate subsidiary even after the section 272 requirement to do so sunsets in the former Bell Atlantic service areas.

This is inconsistent with Congressional intent. The 1996 Act expressly requires *less* separation for independent ILEC long distance services than it does for long distance services provided by the Bell companies.[108] Continuing to require independent ILECs to provide long distance services through a separate subsidiary after the 272 requirements sunset for the Bell companies turns the Act's scheme on its head. This makes no sense.

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[108] 47 U.S.C §§ 271-276 (Part III – Special Provisions Concerning Bell Operating Companies); *see also* H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. at 199 (1996) ("this language removes entirely the GTE Consent Decree's prohibition on GTE's and GTE Operating Companies' entry into the interexchange market").

Moreover, the Commission has found that structural separation imposes additional costs and inefficiencies with no corresponding consumer benefit. It prevents the carriers from taking advantage of scope economies that the carriers could use to produce different services.[109] In addition, it inhibits carriers from providing new services.[110] Where the Commission has eliminated such unnecessary restrictions, output has increased, prices have fallen, and consumers have benefited. For instance, the elimination of structural separation requirements for the provision of customer premises equipment and enhanced services has resulted in increased competition and it has given consumers a choice of a myriad of suppliers.[111] Similarly, a reduction in the regulatory restrictions on the provision of interexchange services by independent local exchange carriers will promote increased competition and consumer choice.

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[109] *See, e.g., Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 2 FCC Rcd 3035, ¶ 25 (1987).

[110] *See, e.g., Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, 6 FCC Rcd 7571, ¶ 8 (1991).

[111] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 16 FCC Rcd 7418, ¶ 10 (2001).

Conclusion

For all the foregoing reasons, the Commission should grant the requested relief pending completion of its ongoing 272 sunset rulemakings, either by granting a waiver of, or forbearing from, the specified rules to the extent necessary.

Respectfully submitted,

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