

Verizon submitted substantial evidence demonstrating the extent to which telecommunications markets are vibrantly and irreversibly competitive.³ Taken together, this evidence and the evidence in USTelecom's Comments⁴ demonstrate clearly that the market-based competition is rapidly replacing residual regulation as the driving force governing firm behavior and protecting consumers.

As USTelecom explained in our Comments, the text of section 11(a) requires the Commission to take notice of this competition and ask of every rule it administers, "what would happen if we eliminate it?" Unless the answer is that consumers would be harmed, the Commission should eliminate the rule, as directed by the text of section 11(b). Likewise, if the Commission can think of a less-restrictive or less-costly means to achieve substantially the same benefits offered by a current rule, it should revise the rule to adopt the less burdensome alternative. In this way, the Commission could significantly improve consumer welfare and lighten its workload by eliminating obsolete regulations designed to control firm behavior in the absence of competition.

As the staff of the Wireline Competition Bureau reviews the Commission's rules, it should conclude that a number of them are no longer useful. The Commission should then initiate rulemaking proceedings based on staff recommendations and remove the rules that have outlived their usefulness. If these rules were removed, consumers would not be exposed to harm and, indeed, competition and the efficiency of telecommunications carrier operations would be enhanced, which would inevitably benefit consumers in our competitive markets.

Taken together, full set of recommendations we offer for the 2006 Biennial Review is a narrowly-tailored yet substantial package of rule modifications that will "promote competition

³ Verizon Comments, at 6-23.

⁴ USTelecom Comments, at 4-8.

and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”⁵ Specifically, USTelecom makes the following recommendations for the 2006 Biennial Review⁶:

1. Accounting Rules

- Eliminate rules governing valuations of services and assets transferred between regulated and non-regulated affiliates (§ 32.27), and the Cost Allocation Manual and independent audit requirements to the extent they relate to the affiliate transaction rule (§§ 64.903, 64.904, and 32.9000).
- Revise Rule 32.26 by establishing a materiality threshold consistent with Generally Accepted Accounting Practices (GAAP).
- Eliminate the rate of return filing requirements in Rule 65.600(d)(1) and (d)(2), as well as the associated reporting requirements in Part 43, for carriers under price caps.
- Eliminate additional Part 43 reporting requirements that no longer serve legitimate regulatory objectives.

The Commission’s accounting rules were created for the purpose of rate regulation—to allow the Commission to protect consumers in the absence of competition. Competition is thriving and expanding rapidly, so rate regulation is no longer helpful. Accordingly, the Commission should move toward replacing rate regulation completely with market-based competition. USTelecom’s recommendations are concrete steps the Commission can take now to improve consumer welfare and reduce the administrative burden on the Commission and carriers alike,

2. Reporting Requirements

- Revise the Part 42 recordkeeping rules to take into account modern electronic document management techniques.

⁵ Telecommunications Act of 1996, preamble, Pub.L. 104-104, Title I, § 104, 110 Stat. 86.

⁶ The list of recommendations in these Reply Comments supersedes the list set forth in USTelecom’s Comments in this docket. The only modifications are the additional recommendations; the remaining recommendations are the same as in our prior filing.

- Eliminate duplicative and unduly burdensome paper filing of network change disclosures pursuant to Part 51.

These two parts of the extensive regime of reporting requirements imposed on ILECs are notably out-of-touch and useless in today's environment. The Commission should not require companies to maintain files inefficiently; nor should companies be forced to make duplicative filings.

3. *Computer III and Equal Access Requirements*

- Eliminate *Computer III* requirements, including CEI and ONA requirements.
- Eliminate remaining Open Network Architecture ("ONA") reporting requirements, as well as the requirement that former Bell Operating Companies ("BOCs") post comparably efficient interconnection ("CEI") plans and plan amendments on company websites.
- Eliminate carry-over equal access and nondiscrimination obligations that apply to only one among several competing providers, including the obligation to read lists of competing long distance providers, preserved by section 251(g).
- Eliminate the separation requirements that apply to the provision of long distance and all-distance service by independent LECs, but not other competitors.

Telecommunications (including long distance services) and information services are increasingly provided on an integrated basis. Wireless providers, cable companies, and CLECs generally offer integrated packages of local, long distances services; many ILECs now do the same. Market-based competition, therefore, has sent a clear message—many, if not most, consumers prefer integrated local, long distance, and information services. At the same time, the threat of discrimination is largely gone because there are many networks today that are capable of providing these services, and more are on the way. The Commission should respond, therefore, by removing the non-discrimination provisions that were designed to foster competitive stand-alone long distance and information service markets (riding over monopoly local telephone networks). These rules are no longer useful for protecting consumers; instead, they are burdensome and harm consumers by inhibiting choice and increasing prices.

4. *Long Distance Service Rate Regulation*

- Eliminate dominant-carrier regulation for all long-distance services, including those offered by a BOC on an integrated basis.
- Eliminate the requirement that non-dominant carriers post on the Internet the rates, terms, and conditions for interstate, interexchange, and international services for large business and government customers.

There are no dominant providers of long distance voice communications; indeed there is no realistic prospect that any provider will gain such dominance in the future. The Commission should, therefore, remove all residual rules for regulating long distance rates. These rules are no longer useful, and they are increasing the cost of providing service.

5. *LEC Tariff Requirements*

- Eliminate mandatory tariff filing obligations that apply only to ILECs, in favor of permitting all carriers to file base-line tariffs or price lists.

In today's competitive markets, ILECs are just one among a number of providers competing to win business from customers. Those customers have options, and market-based competition protects them from the possibility (now remote) of unreasonable or discriminatory rates. The Commission should recognize, therefore, that it no longer makes sense to impose additional burdensome tariff obligations on ILECs alone.

6. *TELRIC Pricing Rules*

- Eliminate the rules basing costs on a hypothetical network with efficiencies that are not, and cannot be, matched in the real world to establish prices for unbundled network elements (UNEs).

As facilities-based competition has expanded, it has become abundantly clear that prices for leasing network capacity should be based on market factors and negotiations among companies. The Commission's rules for default pricing of unbundled network elements are no longer useful in this environment because they are not based on real-world networks. Instead, they are based on hypothetical networks and efficiencies that cannot be matched in the real

world. The Commission adopted these rules to provide an extra boost to the development of competition, which is no longer necessary given the rapid growth of competition today. Therefore, the Commission should alter the TELRIC pricing rules to reflect current network realities. Not only can this be done without harming consumers, but consumers will benefit from increased network investment and lower administrative and operational costs.

The Commission Can Help Consumers and Itself By Relying on Market-Based Competition Rather than Burdensome Regulation. The common theme for all of the foregoing recommendations is that competition is thriving, growing rapidly, and coming from diverse networks, so regulation aimed at preventing the exercise of monopoly power is useless and, indeed, harmful for society. Robust intra- and inter-modal competition have become the state of affairs throughout the industry. To begin with, the Commission has long recognized that competition for enterprise customers has been strong,⁷ and the Commission can readily eliminate many of its traditional monopoly regulations in this market segment. Competition is also developing in residential and small business markets as CMRS carriers, cable companies, wireline CLECs, and “over-the-top” VoIP providers have entered and are expanding rapidly in most of the country. Taken together, this competition is substantially constraining ILEC conduct, and doing so more effectively than regulators can hope to do. Indeed, ILECs nationwide have already lost approximately 9 percent of their primary access lines to wireless, an additional 6.5 percent to cable and other VoIP providers, and another 7.6 percent to CLECs.⁸

⁷ *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18331, ¶ 73 n.223 (2005) (“competition in the enterprise market is robust”).

⁸ J. Chaplin, *et al.*, JP Morgan, *State of the Industry: Consumer* at Tables 57 & 72 (Jan. 17, 2006).

Section 11 of the 1996 Act directs the Commission, upon biennial review, “to repeal or modify any regulation that is ‘no longer in the public interest as the result of meaningful economic competition between providers of such service.’”⁹ The rules identified by USTelecom, Verizon, and BellSouth clearly are such regulations, ones which stem from the monopoly era, “when the Commission’s main function was rate regulation, which required extensive accounting and reporting information.”¹⁰ Today, rates are set by market competition, so no harm could possibly come from undertaking the targeted elimination USTelecom recommends. Instead, competition will benefit, and operations will be more efficient. Ultimately, consumers stand to gain from the proposed reduction in regulation.

The statutory directive in section 11 reflects Congress’ understanding “that any unnecessary regulation places a corresponding, unnecessary burden on the carriers that are subject to it,”¹¹ thereby compromising carriers’ efficiency and distorting the very marketplace competition that the 1996 Act was designed to facilitate. Rather than protect consumers, outdated Commission rules are harming consumers by burdening only one of a number of competitors, thereby increasing prices and causing customers to move business away from their preferred providers. Moreover, the outdated and useless rules described above are a burden on the FCC, drawing resources away from critical issues such as universal service and intercarrier compensation reform.

⁹ *Cellco Partnership v. FCC*, 357 F.3d 88, 90 (D.C. Cir. 2003) (quoting 47 U.S.C. § 161).

¹⁰ *2000 Biennial Regulatory Review--Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II*, CC Docket 00-199, Report and Order, 16 FCC Rcd 19911, 19913, ¶ 3.

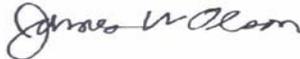
¹¹ *Id.* at 19913, ¶ 2.

CONCLUSION

Consistent with the statutory mandate in 47 U.S.C. § 161, the Commission should modify its rules as described herein.

Respectfully submitted,

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