# Federal Communications Commission
# 2006 Biennial Regulatory Review
## WC Docket No. 06-157

# Wireline Competition Bureau
## Staff Report
## February 14, 2007

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## I. OVERVIEW

1. This Staff Report has been prepared pursuant to the Federal Communications Commission's biennial regulatory review process, as required by section 11 of the Communications Act of 1934, as amended (the Act).[1] Section 11 requires the Commission, in every even-numbered year, to conduct a review of its rules promulgated under the Act that apply to any provider of telecommunications service[2] and, for each such rule, to determine whether it is "no longer necessary in the public interest as the result of meaningful competition among providers of such service."[3] By Public Notice dated August 10, 2006, the Commission invited comments on what rules should be modified or repealed as part of the 2006 Biennial Review.[4]

2. In this Staff Report, the Wireline Competition Bureau (WCB or the Bureau) staff details its extensive review, analysis, and recommendations concerning the rules under the Bureau's purview that fall within the scope of section 11. Building upon the findings and recommendations set out in previous biennial reviews, the staff herein identifies and explains the purpose of each applicable rule, discusses competitive and other issues associated with the rule, summarizes and addresses relevant filed comments and, where appropriate, recommends modification or repeal of the rule or rule part. This Staff Report sets out staff findings and recommendations and does not reflect formal Commission opinions or binding Commission determinations.

## II. SCOPE OF REVIEW

3. WCB develops and recommends policy, goals, objectives, programs, and plans for the Commission on matters concerning wireline telecommunications. The Bureau's overall objectives include ensuring choice, opportunity, and fairness in the development of services and markets; developing deregulatory initiatives; promoting economically efficient investment in infrastructure; promoting development and widespread availability of services; and fostering economic growth. In carrying out its responsibilities, the Bureau administers rules in the following parts:[5]

Part 1 – Practice and Procedure
Part 32 – Uniform System of Accounts for Telecommunications Companies
Part 36 – Jurisdictional Separations Procedures
Part 42 – Preservation of Records of Communication Common Carriers
Part 43 – Reports of Communication Common Carriers and Certain Affiliates
Part 51 – Interconnection
Part 52 – Numbering
Part 53 – Special Provisions Concerning Bell Operating Companies

[1] 47 U.S.C. § 161.

[2] *Id.*

[3] *Id.*

[4] *The Commission Seeks Public Comment in the 2006 Biennial Review of Telecommunications Regulations*, CG Docket No. 06-152, EB Docket No. 06-153, IB Docket No. 06-154, ET Docket No. 06-155, WT Docket No. 06-156, and WC Docket No. 06-157, Public Notice, 21 FCC Rcd 9422 (rel. Aug. 10, 2006) (Public Notice).

[5] These rule parts also contain regulations administered by other bureaus in the Commission.

Part 54 – Universal Service
Part 59 – Infrastructure Sharing
Part 61 – Tariffs
Part 63 – Extension of Lines, New Lines and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status
Part 64 – Miscellaneous Rules Relating to Common Carriers
Part 65 – Interstate Rate of Return Prescription Procedures and Methodologies
Part 68 – Connection of Terminal Equipment to the Telephone Network
Part 69 – Access Charges

4. In furtherance of the Commission's 2006 Biennial Review effort, the Bureau staff reviewed all of the foregoing rules that fall within the scope of section 11 of the Act, as well as all relevant comments filed in response to the Public Notice. Based on this review, the Bureau considered whether the rule was no longer necessary in the public interest as a result of meaningful economic competition, including whether repeal or modification of any rules might be appropriate as the result of prevailing competitive conditions. The staff considered each rule's underlying purpose, whether the purpose has continuing relevance and whether it could be accomplished more effectively through other means. The staff considered the advantages and disadvantages of the existing rules as well as the effects, if any, of competitive developments since the period covered in the previous Biennial Review.

## III. RECENT AND ONGOING ACTIVITIES

5. In the period following the last biennial review, the Commission initiated or continued a number of proceedings designed to streamline wireline telecommunications regulation. The Bureau continues to devote considerable resources to the consideration of regulatory reforms as competition in the provision of telecommunications and information services progresses. The following describes some of the market-opening and deregulatory initiatives the Bureau has undertaken or continued since the last biennial regulatory review.

### 1. Broadband and Competition Policy

6. In the *Wireline Broadband Internet Access Services Order*,[6] the Commission concluded that, like cable modem service, wireline broadband Internet access services are information services having a telecommunications transmission component, and that an offering of wireline broadband Internet access service does not include a separate "telecommunications service" offering. Hence, facilities-based wireline broadband Internet access service providers will no longer be required to offer the broadband transmission component as a stand-alone telecommunications service under Title II. Also in this Order, the Commission relieved the Bell Operating Companies of all other *Computer Inquiry*

[6] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises; Consumer Protection in the Broadband Era*, CC Docket Nos. 95-20, 98-10, 01-337, 02-33, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14915, paras. 32-111 (2005) (*Wireline Broadband Internet Access Services Order*), *petitions for review pending, Time Warner Telecom v. FCC*, No. 05-4769 (and consolidated cases) (3rd Cir. filed Oct. 26, 2005).

requirements applicable to wireline broadband Internet access services. The Bureau anticipates that these actions will spur investment in and deployment of innovative broadband capabilities.

7. In the *Verizon Fast Packet Order*, the Commission granted certain regulatory relief for Verizon's provision of advanced services that rely on packet technology.[7] In particular, the Commission granted a limited waiver to Verizon, enabling it to offer packet-based advanced services via contract tariffs (Phase I pricing flexibility) for packet-based advanced services in the same metropolitan statistical areas where it already has qualified for Phase I or II pricing flexibility for other special access services.[8] The Commission further granted Verizon the opportunity to apply for Phase II pricing flexibility for these services in the same areas by satisfying the competitive showings set forth in the pricing flexibility rules.

8. On September 16, 2005, the Commission partially granted a petition for forbearance filed by Qwest seeking relief from statutory and regulatory obligations that apply to it as the incumbent local telephone company in the Omaha-Council Bluffs, NE-IA Metropolitan Statistical Area (Omaha MSA).[9] In its petition, filed on June 21, 2004, Qwest sought relief from certain dominant carrier regulations, as well as the requirements of section 251(c) and sections 271(c)(2)(B)(i-vi) and (xiv).[10] Qwest also requested that the Commission forbear from regulating it as the incumbent local exchange carrier (LEC) in the Omaha MSA.[11] To the extent the Commission granted Qwest's petition, it relied on the particular market characteristics of the Omaha MSA, including the substantial infrastructure investment made by Cox Communications, Inc. in its competitive network. With regard to section 251(c)(3) unbundling obligations for transmission facilities, the Commission granted Qwest relief in targeted wire center service areas where intermodal deployment is extensive. For mass market telephone services, the Commission granted Qwest relief from dominant carrier regulations that applied to it in the entire Omaha MSA.

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[7] *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services; Petition for Forbearance Under 47 U.S.C. Section 160 (c) from Pricing Flexibility Rules for Fast Packet Services*, WC Docket No. 04-246, Memorandum Opinion and Order, 20 FCC Rcd 16840 (2005) (*Fast Packet Order*).

[8] Phase I pricing flexibility allows price cap LECs to customize offerings through individual contract tariffs, including the ability to lower rates, in order to respond to competition. It requires price cap LECs to continue to offer special access services at generally available rates that are subject to price caps. *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-157, CCB/CPD File No. 98-63, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14258, para. 69, & 14288, para. 122 (1999) (*Pricing Flexibility Order*), *aff'd WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001). Phase II pricing flexibility allows price cap LECs to offer the qualifying services free from the Commission's part 69 rate structure and part 61 price cap rules, provided the LECs continue to make the services generally available through tariffs. *Pricing Flexibility Order*, 14 FCC Rcd at 14301, para. 153. Accordingly, price cap LECs are free to both raise and lower their rates for qualifying services when they obtain Phase II relief.

[9] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, FCC 05-170 (rel. Dec. 2, 2005) (*Qwest Omaha MSA Order*).

[10] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223 (filed June 21, 2004).

[11] *Id.*

### 2. Universal Service

9. On June 14, 2005, the Commission initiated a broad inquiry into the management and administration of the Universal Service Fund (USF), as well as the Commission's oversight of the USF and the Universal Service Administrative Company (USAC).[12] In particular, the Commission sought comment on ways to improve the management, administration, and oversight of the USF, including simplifying the process for applying for USF support, speeding the disbursement process, simplifying the billing and collection process, addressing issues relating to USAC, and exploring performance measures suitable for assessing and managing the USF programs. The Commission also sought comment on ways to further deter waste, fraud, and abuse through audits of USF beneficiaries or other measures, and on various methods for recovering improperly disbursed funds. The rulemaking is intended to enhance program integrity and deter waste, fraud and abuse for the benefit of beneficiaries and contributors.

10. The Commission also continued its more particularized efforts to reform several aspects of the universal service program. In 2005, the Commission modified and clarified its rules pertaining to the High Cost Support Mechanism to ensure that the support methodology encourages investment in and upgrades of the infrastructure of small, rural exchanges. The Commission amended section 54.305, a rule governing the safety valve mechanism, so that calculation of the support that a rural carrier receives includes recognition of investments in newly acquired exchanges.[13] This change was intended to effectuate the Commission's intent when it adopted the safety valve mechanism of encouraging substantial investments in rural exchanges. The Commission also clarified that section 36.605 of the Commissions rules enables carriers to qualify for safety net additive support in more than one year and for every year for which they qualify.[14]

11. In August 2005, WCB clarified certain aspects of the Commission's rules in light of the decision of the United States Court of Appeals for the Fifth Circuit affirming in part, remanding in part, and reversing in part the Commission's 1997 Universal Service Order.[15] Specifically, WCB made clear that Commission rules permit Commercial Mobile Radio Services (CMRS) providers to recover their universal service contributions through rates charged for all of their services.[16] This order explained that

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[12] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) ("*NPRM*").

[13] *Federal-State Joint Board on Universal Service, National Telephone Cooperative Association Petition for Reconsideration*, CC Docket No. 96-45, Order and Order on Reconsideration, 20 FCC Rcd 768 (2005).

[14] *Federal-State Joint Board on Universal Service, Darien Telephone Company, Inc., Logan Telephone Cooperative, Inc. and Roanoke & Botetourt Telephone Company, Requests for Review of Decisions of the Universal Service Administrative Company*, CC Docket No. 96-45, Order, FCC 06-112 (rel. August 7, 2006) (*Safety Net Additive Order*).

[15] *Federal-State Joint Board on Universal Service Petition for Reconsideration and Clarification of the Fifth Circuit Remand Order of BellSouth Corp.*, Order, CC Docket Nos. 96-45 and 96-262, 20 FCC Rcd 13779 (2005) (*Fifth Circuit Remand Order*); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("*TOPUC*"); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, 12 FCC Rcd 8776 (1997), and Erratum, 13 FCC Rcd 24493 (1997), *aff'd in part, rev'd in part, remanded in part sub nom, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied*, 530 U.S. 1210, *cert. dismissed*, 531 U.S. 975 (2000).

[16] *See Fifth Circuit Remand Order*.

all carriers, including CMRS providers, have significant flexibility in the manner in which they may recover universal service contribution costs.[17]

### 3. Other Deregulatory Initiatives

12. In response to the 2005 hurricane season, the Bureau granted Special Temporary Authority (STA) and waivers from the structural separation requirements of section 272 and the Commission's network disclosure rules in order to allow carriers to engage in disaster recovery. Specifically, in response to Hurricane Katrina, the Bureau granted BellSouth an STA for a 120-day period to enable it to use its corporate network in its entire region without complying with section 272 and the Commission's rules implementing section 272.[18] The Bureau also provided relief from compliance with section 272 to the extent that such compliance was a condition precedent to BellSouth's authority to carry in-region, interLATA traffic within its region under section 271.[19] In response to Hurricane Rita, the Bureau granted SBC similar relief, limited to 45 days, from section 272 and the Commission's rules governing compliance with section 272.[20] With respect to the Commission's network disclosure rules, the Bureau granted BellSouth a 180-day waiver of the prior notice and waiting period requirements of sections 51.325-51.335 in order to allow BellSouth to make necessary network changes in response to Hurricane Katrina.[21] In addition, the Bureau extended certain routine filing deadlines for carriers in the affected areas, allowing carriers time to focus on such immediate needs as restoring service to customers.[22]

13. Since then, the Bureau has been working with industry to ensure that carriers have the necessary flexibility to plan for and respond quickly to hurricanes and other disaster situations that may arise in the future. In March and April 2006, the Bureau received petitions from AT&T, BellSouth, Verizon, and Qwest seeking STA and waiver of the Commission's structural separation requirements and network disclosure rules to support integrated disaster planning and response. On April 20, 2006, the

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[17] *See id.*

[18] *Joint Application by BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Florida and Tennessee*, Order, WC Docket No. 02-307, Order, 20 FCC Rcd 14657,14659 para. 4 (WCB 2005) (*BellSouth STA Order*).

[19] *BellSouth STA Order* 20 FCC Rcd at 14659, para. 4.

[20] *See Application by SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Order, 20 FCC Rcd 14832, 14835 para. 4 (WCB 2005) (*SBC STA Order*).

[21] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Order, 20 FCC Rcd 14713 (WCB 2005) (*Network Disclosure Waiver Order*).

[22] *See, e.g., Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up; Federal-State Joint Board on Universal Service*, CC Docket Nos. 02-6, 96-45, WC Docket Nos. 02-60, 03-109, Order, DA 05-2484 (rel. Sept. 21, 2005) (permitting State commissions, carriers, and program beneficiaries in the affected areas of Louisiana, Mississippi, and Alabama to postpone filing certain USF forms, payments and data for a period of up to 150 days); *Commission Extends Form 477 Filing Deadline For Entities Operating In Alabama, Louisiana and Mississippi*, WC Docket No. 04-141 Public Notice, 20 FCC Rcd 14495 (2005) (extending Form 477 filing deadline by 60 days).

Bureau granted AT&T's petition, providing for a limited STA and waiver of the rules.[23] An order granting comparable relief to Verizon, BellSouth, and Qwest was adopted and released on June 9, 2006.[24]

14. In various proceedings, the Commission made it easier for filers, including small entities, to comply with the Commission's filing requirements. For Form 477, the Commission allowed filers to file certification statements by email and facsimile and eliminated the requirement that filers provide redacted versions of their filings.[25] The Commission also eased filing requirements for Form 43-02, the Uniform System of Accounts (USOA) Report, Table C-5, by requiring carriers to file annual SEC 10K reports with the Commission electronically, rather than by paper copy.[26] Finally, in Form 499A, the Commission made it easier for state and local governmental entities to identify themselves as tax exempt, whereas previously these small governmental entities were required to send a letter to the Commission certifving their IRS tax-exempt status.[27]

## IV. SUMMARY OF BIENNIAL REGULATORY REVIEW

15. This Staff Report is the product of the Bureau's thorough review of the Commission's regulations pertaining to wireline telecommunications that are implicated by section 11. The Bureau has continued to pursue efforts to streamline its rules in keeping with prevailing competitive conditions. The WCB staff's recommendations in this Report are the latest step in this process and are intended to assist the Commission in carrying out its mandate under section 11 that it identify and modify or eliminate unnecessary or outdated rules, while preserving those regulations that continue to be necessary in the public interest. The Bureau recommends that the Commission initiate proceedings to modify or eliminate rules as set forth herein.

16. Based on its careful consideration of the comments received and the staff's analysis of the rule parts under WCB's purview, the staff makes several recommendations to the Commission. We find that many of the rule parts and subparts continue to be necessary in the public interest, and thus

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[23] *Petition of AT&T Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response*, WC Docket No. 06-63, Order, 21 FCC Rcd 4306 (WCB 2006).

[24] *Petitions of BellSouth Corporation, Verizon, and Qwest Communications International Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response*, WC Docket No. 06-63, Order, 21 FCC Rcd 6518 (WCB 2006).

[25] *Local Telephone Competition and Broadband Deployment*, WC Docket No. 04-141, Report and Order, FCC Rcd 22340, 22353, para. 25. Filers instead may now request confidential treatment of their data by using a drop-down box located on Form 477's first page. *See* Form 477 available at http://www.fcc.gov/Forms/Form477/477.xls.

[26] *In re Revision of ARMIS Annual Summary Report (FCC Report 43-01), ARMIS USOA Report (FCC Report 43-02), ARMIS Joint Cost Report (FCC Report 43-03), ARMIS Access Report (FCC Report 43-04), ARMIS Service Quality Report (FCC Report 43-05), ARMIS Customer Satisfaction Report (FCC Report 43-06), ARMIS Infrastructure Report (FCC Report 43-07), ARMIS Operating Data Report (FCC Report 43-08), ARMIS Forecast of Investment Usage Report (FCC Report 495A), and ARMIS Actual Usage of Investment Report (FCC Report 495B) for Certain Class A and Tier 1 Telephone Companies*, CC Docket No.86-182, Order, 20 FCC Rcd 1048, 1050, para. 5 (2004).

[27] *See* current Form 477 Instructions at 11, available at http://www.fcc.gov/Forms/Form477/477instr.pdf. *See also* Form 477 Frequently Asked Questions (FAQs) at #25, available at http://www.fcc.gov/broadband/broadband_data_faq.html. State and local governmental entities may now identify their IRS status on line 604 of the revised form. *See* Form 499A available at http://www.fcc.gov/Forms/Form499-A/499a0706.pdf.

recommend that no changes be made to them at this time. For other rules that are the subject of ongoing rulemaking or other proceedings, or are under consideration by the Federal-State Joint Conference on Accounting (Joint Conference) or by a Federal-State Joint Board, we in some cases find that the rules in their current form may no longer be necessary in the public interest as a result of competition, or may be necessary in the public interest but merit further consideration. In such cases, we recommend that any Commission action should occur after the resolution or recommendations in those contexts. In some cases, we recommend that the Commission initiate a proceeding to address our findings.

17. *Rules that are necessary in the public interest.* As explained more fully in attached Appendix I, WCB staff recommends that the Commission take no action to modify or eliminate rules in Parts 1, Subpart E, 52, 59, 63, 65, and 68. The staff recommends that there be no modification or elimination of the rules in Parts 42 or 64, except to the extent discussed in Appendix I.

18. *Rules subject to ongoing action.* The Joint Conference and the Commission already are examining specific aspects of Part 43 of the Rules raised by commenters.[28] The Joint Conference and the Commission will continue to examine those issues in response to the Notice of Proposed Rulemaking regarding the Joint Conference's recommendation. In addition, WCB Staff recommends that the Commission consider modification or elimination of other sections in existing proceedings.[29]

19. *Initiate a rulemaking proceeding.* WCB staff recommends that the Commission initiate a rulemaking proceeding to consider whether the public interest would be served by modifications to rule sections 42.4, and 51.333, and the repeal of Part 64, Subpart A.

20. *Eliminate regulations.* WCB staff recommends that the Commission eliminate rule sections 1.5000-1.5007.

[28] *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, 16 FCC Rcd 19911, 19984-89, paras. 205-217 (2001).

[29] As discussed in Appendix I below, WCB Staff recommends that the Commission consider in the context of existing rulemaking proceedings changes to Part 32, 36, 51, 53, 54, 61, Part 64, Subparts G, I and T, and Part 69. The staff believes that these rules may still be in the public interest, but merit further consideration.

## APPENDIX I: RULE PART ANALYSIS

## PART 1, SUBPART E – COMPLAINTS, APPLICATIONS, TARIFFS, AND REPORTS INVOLVING COMMON CARRIERS

### Description

Sections 1.771 to 1.774 of Part 1 set out essential information about tariff filings and petitions for pricing flexibility.[30] Detailed tariff filing requirements are provided in Part 61 of the Commission's rules. Sections 1.785 to 1.795 of Part 1 apply to financial and accounting reports and requests filed by carriers and affiliates.[31]

Section 1.815 requires common carrier licensees or permittees with 16 or more full-time employees to file an annual employment report with the Commission (FCC Form 395).[32] This report provides statistical information on the racial, ethnic, and gender makeup of a carrier's work force in nine specific job categories. The rule was adopted to enable the Commission to monitor industry trends in minority and female employment and to raise appropriate questions regarding these patterns.[33]

Additionally, since 1994, common carrier licensees or permittees have been able to use FCC Form 395 to report incidents of employment-related discrimination complaints. An annual employment-related discrimination report must be filed by *all* common carrier licensees or permittees regardless of the number of employees, pursuant to sections 22.321(c), 23.55(d), 101.4 and 101.311 of the Commission's rules. Pursuant to these requirements, any complaint filed against any subject company involving EEO violations of any federal, state, territorial, or local laws must be reported to this Commission. A check-off box on the FCC Form 395 can be utilized to satisfy this reporting requirement.

### Purpose

Sections 1.771 to 1.774 and 1.785 to 1.795 are procedural rules that facilitate the Commission's and staff's review of carriers' tariff filings, pricing flexibility filings, and financial and accounting reports. Section 1.815 enables the Commission to monitor the employment practices of larger common carrier licensees and permittees for evidence of discriminatory behavior that would be incompatible with the carrier's operation in the public interest.

### Analysis

#### Status of Competition

Not applicable.

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[30] 47 C.F.R. §§ 1.771-1.774.

[31] 47 C.F.R. §§ 1.785-1.795.

[32] 47 C.F.R. § 1.815.

[33] *See Rulemaking to Require Communications Common Carriers to Show Nondiscrimination in Their Employment Practices*, Docket No. 18742, Report and Order, 24 FCC 2d 725, 727-28, para. 6 (1970).

### Recent Efforts

In the 2002 Biennial Review NPRM, the Commission sought comment on whether the information collected from FCC Form 395 is necessary to identify or address issues relating to unlawful discrimination by common carriers, given the availability of similar information from other sources.[34] After reviewing the comments submitted in response to the *2002 WCB Biennial NPRM,* the Commission concluded, in the *2002 Biennial Review R&O*, that the requirement that common carriers file FCC Form 395 on an annual basis remains necessary in the public interest and that repeal or modification of this rule was not warranted.[35]

### Comments

No party filed comments addressing Part 1, Subpart E.

### Recommendations

WCB staff finds that the requirements in sections 1.771 to 1.774 and the financial and accounting reports and requests under sections 1.785 to 1.795 provide essential information that the Commission and staff rely on in the administration of their responsibilities. Accordingly, pursuant to our Section 11 biennial review, we do not find that these rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Therefore, WCB staff recommends maintaining sections 1.771 to 1.774 and 1.785 to 1.795 of Part 1 of the Commission's rules.

As the Commission stated in the *2002 Biennial Review R&O*, information submitted pursuant to the FCC Form 395 continues to be useful for monitoring workplace diversity on a company-specific as well as on an industry-wide basis. Also, this requirement continues to be useful for providing the Advisory Committee on Diversity for Communications in the Digital Age access to information that could materially contribute to its mission, which is to make recommendations to the Commission regarding policies and practices that will further enhance the ability of minorities and women to participate in telecommunications and related industries. Accordingly, the WCB staff does not find that this requirement is "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service," and we recommend retaining the existing FCC Form 395 reporting requirement at this time, because collection and public reporting of this information continues to be necessary in the public interest.

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[34] *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, Notice of Proposed Rulemaking, WC Docket No. 02-313, 19 FCC Rcd 764, 766, para. 6 (2004) (*2002 WCB Biennial NPRM*).

[35] *See Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, Report & Order, FCC 06-86 (rel. Aug. 21, 2006), at paras. 4-5 (*2002 Biennial Review R&O*), *corrected by* Erratum (WCB rel. Sept. 19, 2006).

## PART 1, SUBPART T – EXEMPT TELECOMMUNICATIONS COMPANIES

### Description

In September 1996, the Commission adopted sections 1.5000-1.5007 of the rules to implement Section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA 1935).[36] Section 34 of the PUHCA 1935 vested the Commission with jurisdiction to determine whether a company warrants exempt telecommunications company status based on specific statutory criteria. Sections 1.5000-1.5007 of our rules establish the procedures for applying for and grant of exempt telecommunications company status, as well as notification and comment and reply procedures for such applications.

On August 8, 2005, the President signed the Energy Policy Act of 2005 (EPAct 2005) into law, repealing the PUHCA 1935 and enacting the Public Utility Holding Company Act of 2005 (PUHCA 2005) in its place.[37] Congress further directed the Federal Energy Regulatory Commission (FERC) to issue final regulations and submit further recommendations to Congress four months after the date of enactment.[38] The EPAct 2005 makes no mention of exempt telecommunications companies, nor any relevant mention of telecommunications as they relate to exempt telecommunications company status, and the PUHCA 2005, which replaces PUHCA 1935, does not address exempt telecommunications companies at all.

### Purpose

Section 103 of the Telecommunications Act of 1996 (1996 Act) added Section 34(a)(1) to the PUHCA 1935. Prior to the 1996 Act, the provisions of PUHCA 1935 deterred entry into the telecommunications industry by registered public utility holding companies. The new section 34(a)(1) allowed public utility holding companies to enter the telecom industry without prior Securities and Exchange Commission (SEC) approval by acquiring or maintaining an interest in an exempt telecommunications company.

### Analysis

#### Status of Competition

The composition of competition in local service markets has changed since completion of the 2004

[36] *See Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as added by Section 103 of the Telecommunications Act of 1996*, GC Docket No. 96-101, Report and Order, 11 FCC Rcd 11377 (1996); *see also* 47 C.F.R. §§ 1.5000-1.5007.

[37] *See Energy Policy Act of 2005*, Pub. L. No. 109-58, 119 Stat. 594.

[38] *I.e.*, by December 2005. FERC has released several items to seek comment on, and issue and review regulations in response to PUHCA 2005. *See Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Docket No. RM05-32-000, Notice of Proposed Rulemaking, 112 FERC P 61300, 2005 WL 2250793 (Sept. 16, 2005); *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Docket No. RM05-32-000, Order No. 667, 113 FERC P, 61248, 2005 WL 3450593 (Dec. 8, 2005); *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Docket No. RM05-32-001, Order No. 667-A, Order on Rehearing, 115 FERC P 61096, 2006 WL 1068266 (April 24, 2006); *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Docket No. RM05-32-002, Order No. 667-B, Order on Rehearing, 116 FERC P 61073, 2006 WL 2038707 (July 20, 2006).

Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

**Recent Efforts**

The Bureau received a filing updating the status of a current exempt telecommunications company in July 2006, which also notified the Bureau of the repeal of the PUHCA 1935.[39]

**Comments**

No party filed comments addressing Part 1, Subpart T.

**Recommendations**

WCB staff believes that sections 1.5000-1.5007 of the rules are no longer necessary in the public interest, although for reasons outside of the scope of section 11: they were adopted to implement a section of the PUHCA 1935, which Congress repealed in 2005. The superseding act, PUHCA 2005, does not revive the section of the PUHCA 1935 that our rules implement. Staff therefore recommends that sections 1.5000-1.5007 of the rules be eliminated.

[39] Letter from F.J. Buri, Corporate Secretary, Alliant Energy Corporation, to Marlene H. Dortch, Secretary, FCC, re: LNT Communications LLC – Notice to Cease Status as ETC Under Section 34(a)(1) of PUHCA 1935, per 47 C.F.R. § 1.5006(c) (dated July 18, 2006).

## PART 32 – UNIFORM SYSTEM OF ACCOUNTS

### Description

Section 220 of the Communications Act of 1934, as amended, requires the Commission to prescribe a uniform system of accounts for telephone companies.[40] Part 32 of the Commission's rules implements the requirements of section 220 and contains the Uniform System of Accounts (USOA) for incumbent LECs.[41] The USOA is an historical financial accounting system that discloses the results of operational and financial events in a manner that enables both the companies' management and regulatory agencies to assess these results.

The USOA performs four general functions. First, the USOA sets forth a standardized chart of accounts and thereby directs companies how to record certain transactions in their books of account. Second, the USOA establishes rules for a carrier's affiliate transactions. Third, the USOA specifies accounting treatment for depreciation expenses. Finally, the USOA requires carriers to maintain property records of all telecommunications plant in service.

Part 32 is organized into seven lettered sub-parts:

A – Preface
B – General Instructions
C – Instructions for Balance Sheet Accounts
D – Instructions for Revenue Accounts
E – Instructions for Expense Accounts
F – Instructions for Other Income Accounts
G – Glossary

### Purpose

The USOA operates as a nonstructural safeguard to prevent an incumbent LEC from exercising its market power.[42] Specifically, through standardized accounting procedures, the USOA helps to ensure that ratepayers of regulated services do not bear the costs and risks associated with an incumbent LEC's competitive operations. The USOA deters cost misallocations by providing the initial information needed to identify cost-shifting and cross-subsidization. Because the USOA incorporates Generally Accepted Accounting Principles (GAAP), Part 32 reduces the carriers' cost of complying with the Commission's rules.

### Analysis

#### Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the

[40] 47 U.S.C. § 220.

[41] 47 C.F.R. Part 32.

[42] *See Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996).

1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

**Recent Efforts**

In June 2004, the Commission released an order that reflected a comprehensive review of the accounting and ARMIS reporting requirements and addressed recommendations made by the Federal-State Joint Conference on Accounting Issues.[43] The Commission adopted some of the recommendations that resulted in rule revisions but sought to retain certain rules, including the affiliate transactions rules, which allow both the states and the Commission to carry out their statutory oversight responsibilities. On February 15, 2005, the Commission extended the Joint Conference until March 1, 2007, providing additional time for its examination of accounting and reporting issues. In addition, the Commission is also presently examining a number of Part 32 rules in other proceedings.[44]

**Comments**

USTelecom urges the Commission to revise section 32.26 by establishing a materiality threshold consistent with GAAP. USTelecom contends this "would enable ILECs and their auditors to more efficiently prepare and audit ILEC accounts, and would result in a more useful product for the Commission and its staff."[45] USTelecom also advocates the elimination of section 32.27, governing valuations of services and assets transferred between regulated and non-regulated affiliates.[46] USTelecom asserts that: (1) customers expect bundles of services that require inputs from affiliates; (2) affiliate transaction rules involve cost allocations that may negatively affect their ability to price these services in a competitive market; and (3) competition has removed any cost-shifting and cross-subsidy

[43] *In the Matter of Federal-State Joint Conference on Accounting Issues, 2002 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting,* WC Docket No. 02-269, CC Docket Nos., 00-199, 80-286, 99-301, Report and Order, 19 FCC Rcd 11732 (2004) (*Joint Conference on Accounting Order*).

[44] *See, e.g., BellSouth Telecommunications, Inc. Petition for Forbearance From the Commission's Cost Assignment Rules,* WC Docket No. 05-342, Public Notice, 20 FCC Rcd 19873 (2005) (*BellSouth Cost Allocation Forbearance Proceeding*); *Petition of BellSouth Corporation, AT&T Inc., and Qwest Corporation Requesting Modification of RAO Letter12,* WC Docket No. 05-352, Public Notice, 21 FCC Rcd 72 (2006) (*RAO Letter 12 Modification Proceeding*).

[45] USTelecom Comments at 11-12; USTelecom Reply at 3 (also referencing 47 C.F.R. §§ 64.903-64.904 to the extent they relate to the affiliate transaction rule).

[46] USTelecom Reply at 3. USTelecom also argues that section 32.9000 (glossary of terms) should be modified to the extent it is affected by its proposed rule changes. USTelecom Reply at 3.

concerns.[47] AT&T and Verizon also assert that the Part 32 affiliate transactions rules are outdated regulatory requirements that should be eliminated.[48]

**Recommendations**

WCB staff notes that the Commission is already considering revisions to section 32.26 in a proceeding in which BellSouth, AT&T, and Qwest seek modification of Responsible Accounting Officer (RAO) Letter 12 to eliminate the $1 million materiality threshold applicable to Joint Cost audits and ARMIS filings.[49] Based on comments filed in this Biennial Review proceeding, the staff believes that this rule as implemented through RAO Letter 12 may not be necessary in the public interest as a result of competition and recommends that the Commission consider revising the rule in the pending proceeding. The staff also recommends that the Biennial Review comments regarding this rule be incorporated into the Commission's pending proceeding.

With respect to the Part 32 affiliate transaction rules, the staff notes that these rules are the subject of several pending proceedings, including several forbearance proceedings.[50] Based on its review of the rules and the comments in this Biennial Review proceeding, staff believes that the Part 32 affiliate transaction rules require further review to determine whether they are necessary in the public interest in their current form. Staff recommends that in the context of the records in the pending *BOC Post Sec. 272 "Sunset" Petition* proceedings the Commission consider whether, in connection with the affiliate transaction rules, these rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in the pending proceedings.

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[47] USTelecom Comments at 10 ("For example, even where there is a clear market price for a service that is transferred from one affiliate to another, that price cannot automatically be used for regulated affiliate transfer pricing. Rather, transfers of services from a non-regulated affiliate to a regulated affiliate must be priced at the higher of cost or market value, and transfers in the other direction be priced at the lower of cost or fair market value.") (citing 47 C.F.R. § 32.27(b), (c) and asserting that net book cost is used for assets and the tariffed rate or fully distributed cost for services)).

[48] AT&T Reply at 8-9; Verizon Reply at 8.

[49] *RAO Letter 12 Modification Proceeding*, 21 FCC Rcd 72.

[50] *See, e.g., RAO Letter 12 Modification Proceeding* 21 FCC Rcd 72; *BellSouth Cost Allocation Forbearance Proceeding* 20 FCC Rcd 19873. *See also BellSouth Corporation's Petition for Waiver*, WC Docket No. 05-277, Public Notice, 20 FCC Rcd 15277 (2005) (*BellSouth Post Sec. 272 "Sunset" Waiver Proceeding*); *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Public Notice, 21 FCC Rcd 6862 (2006) (*AT&T Post Sec. 272 "Sunset" Forbearance Proceeding*); *Petition of the Verizon Local and Long Distance Telephone Companies for Interim Waiver with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services; Petition of the Verizon Local and Long Distance Telephone Companies for Forbearance under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-56, Public Notice, 21 FCC Rcd 2924 (2006) (*Verizon Post Sec. 272 "Sunset" Interim Waiver or Forbearance Proceeding*) (*see also* Memorandum of Points and Authorities in Support of Verizon's Petitions for Interim Waiver or Forbearance); *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply after Section 272 Sunset Pursuant to 47 U.S.C. § 160*, WC Docket No. 05-333, Public Notice, 20 FCC Rcd 19389 (2005) (*Qwest Post Sec. 272 "Sunset" Forbearance Proceeding*) (collectively "*BOC Post Sec. 272 Sunset Petition Proceedings*") (to the extent these carriers seek relief from Part 32 rules).

## PART 36 - JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

### Description

The Part 36 jurisdictional separations rules contain procedures and standards for dividing telephone company investment, expenses, taxes, reserves, operating revenues, and other income between the state and the federal jurisdictions. The division of costs between the state and federal jurisdictions is necessary for the calculation of state and federal earned rates of return. In addition to allocating costs between the federal and state jurisdictions, Part 36 also serves a universal service function. Specifically, Part 36 permits carriers that serve high-cost areas to allocate additional local loop costs to the interstate jurisdiction and to recover those costs through the high-cost universal service support mechanism, thus making intrastate telephone service in high-cost areas more affordable.

Part 36 is organized into six lettered subparts:

A – General
B – Telecommunications Property
C – Operating Revenues and Certain Income Accounts
D – Operating Expenses and Taxes
E – Reserves and Deferrals
F – Universal Service Fund[51]

### Purpose

Part 36 is intended to recognize the dual system of telecommunications regulation, with interstate communications regulated at the federal level.

### Analysis

#### Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since

[51] Part 36, Subpart F of the Commission's rules details the calculation of high-cost loop support for rural local exchange carriers (LECs) and the data required to receive such support. *See* 47 C.F.R. Part 36, Subpart F. Part 54 of the Commission's rules establish a comprehensive framework for the implementation of Sections 214(4)(e) and 254 of the Act, which, among other things, direct the Commission to establish specific, predictable and sufficient mechanisms to preserve and advance universal service. *See* 47 U.S.C. §§ 214(e) and 254; 47 C.F.R. Part 54. *See also* pp. 38-43, *infra* (discussing Part 54 of the Commission's rules in detail).

1993.

**Recent Efforts**

*Jurisdictional Separations.* On May 15, 2006, the Commission adopted an Order extending, on an interim basis, the existing freeze of Part 36 category relationships and jurisdictional cost allocation factors, which allowed the Commission to provide stability for carriers that must comply with the Commission's separations rules while the Commission considers issues related to comprehensive, permanent reform of the jurisdictional separations process.[52] The Commission also adopted a Further Notice of Proposed Rulemaking seeking comment on issues related to reform of the jurisdictional separations process, including several proposals submitted to the Commission since its adoption of the *2001 Separations Freeze Order*.[53]

*High Cost.* On June 28, 2004, the Commission adopted the *Rural Referral Order*, which asked the Federal-State Joint Board on Universal Service (Universal Service Joint Board) to review what changes, if any, should be made to high-cost support for rural carriers at the end of the *Rural Task Force* plan.[54] Pursuant to the *Rural Referral Order*, the Universal Service Joint Board has issued three Public Notices seeking comment on high-cost support for rural carriers. In the first Public Notice, issued in August 2004, the Universal Service Joint Board sought comment on a range of related issues, including the definition of a rural carrier, whether rural carriers should receive support based on embedded costs or forward-looking cost estimates, whether carriers should be required to consolidate multiple study areas for the purpose of calculating universal service support, and whether the Commission should modify section 54.305 of its rules, which provides that carriers acquiring exchanges receive support for those exchanges based on the exchanges' pre-transfer level of support.[55] In August 2005, the Universal Service Joint Board issued a Public Notice seeking comment on several proposals developed by state Universal Service Joint Board Members and staff, including one based on NARUC's proposal in the Intercarrier Compensation proceeding that would delegate significant authority to the states to determine how federal universal service should be distributed.[56] In August 2006, the Universal Service Joint Board sought comment on the merits of reverse auctions to determine high-cost support levels.[57]

Also, on May 16, 2006, the Commission extended the high-cost universal service support rules adopted in the *Rural Task Force Order* on an interim basis until the Commission concludes its rural review proceeding and adopts changes, if any, to those rules as a result of that proceeding.[58]

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[52] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Order and Further Notice of Proposed Rulemaking, CC Docket No. 80-286, 21 FCC Rcd 5516 (2006) (*Separations Freeze Extension Order and FNPRM*).

[53] *See id.*

[54] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538 (2004) (*Rural Referral Order*). *See also* pp. 38-43, *infra* (discussing the Commission's Part 54 universal service rules).

[55] *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16083 (2004)(*RTF Plan Extension Order*).

[56] *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 14267 (2005).

[57] *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 9292 (2006).

(continued....)

### Comments

No party filed comments addressing Part 36, subpart F.[59]

### Recommendation

The staff notes that issues related to Part 36 are under review in the *Separations Freeze FNPRM* and believes that possible changes to Part 36 rules are within the scope of the review contemplated by that Notice. Because rules in Part 36 enable the Commission to regulate interstate communications consistent with the dual federal-state system in the Act, WCB staff concludes that Part 36 remains necessary in the public interest, in some form, but merits further consideration for possible amendment. Staff recommends that the Commission consider, in the context of the record in the *Separations Freeze FNPRM* proceeding, whether the Part 36 rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues raised in the pending *Separations Freeze FNPRM* proceeding.

(Continued from previous page)

[58] *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514 (2006).

[59] Although the Navajo Nation Telecommunications Regulatory Commission (NNTRC) identified Part 36 in its comments, the issues referred to are more appropriately addressed in connection with Part 54. *See* NNTRC at 2, 4.

## PART 42 – PRESERVATION OF RECORDS OF COMMON CARRIERS

### Description

Part 42 implements sections 219 and 220 of the Communications Act of 1934, as amended, which authorize the Commission to require communications common carriers to keep records and file reports. Part 42 sets forth rules governing the preservation of records of communications common carriers, including all accounts, records, memoranda, documents, papers, and correspondence prepared by or on behalf of such carriers. It also requires non-dominant interexchange carriers to make available information concerning the rates, terms, and conditions for their services.

### Purpose

Part 42 was established to facilitate enforcement of the Communications Act by ensuring the availability of carrier records needed by the Commission to meet its regulatory obligations. Part 42 is also intended to aid enforcement of criminal statutes by requiring the retention of telephone toll records. In addition, Part 42 serves the public interest by giving consumers access to information about the rates, terms, and conditions for domestic, interstate, interexchange services.

By relying primarily on general instructions to guide the preservation of records, Part 42 gives regulated common carriers significant flexibility to choose how to preserve records. This approach allows carriers to choose storage media, reducing their record storage and retrieval costs. Part 42 also gives carriers flexibility in determining proper retention periods, although it specifies the retention period for toll records in order to assist law enforcement activities.

Notwithstanding these benefits, Part 42 may increase carriers' recordkeeping costs to some extent. Requiring interexchange carriers to post information concerning their rates for domestic, interstate, interexchange services may increase the risk of tacit price collusion.

### Analysis

#### Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the 1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

#### Recent Efforts

As part of the 2002 Biennial Regulatory Review, the Commission initiated a Notice of Proposed Rulemaking (NPRM) seeking comment on whether there are reasonable and less costly alternatives to the

current Part 42 rules that would ensure that accurate carrier records are kept and maintained.[60] In 2006, the Commission released a Report and Order in response to the NPRM, finding that the elimination or modification of Part 42 was not warranted at that time.[61]

**Comments**

USTelecom suggests revising the Part 42 recordkeeping rules to take into account modern electronic document management techniques. In particular, USTelecom argues that the Commission should eliminate the requirement mandating the location where carriers must keep their records in Rules 42.4 and 42.10, and revise the rules to permit carriers to satisfy disclosure obligations solely via Internet posting.[62]

With specific regard to section 42.10, USTelecom contends that "[t]he text of the rule suggests that non-dominant IXCs . . . keep a physical, hard copy of information concerning rates, terms, and conditions, *in addition* to any information the carrier may make available on an Internet Web site."[63] USTelecom contends that "[s]uch a requirement is redundant and, therefore, unnecessary."[64] Further, USTelecom asserts that "[t]he Web has become a primary medium through which service providers communicate with customers, and all carriers today have Web sites pursuant to which they provide service information to consumers on a much more convenient basis than traveling to an IXC . . . ."[65] Verizon, meanwhile, asks the Commission to eliminate the requirement that non-dominant carriers update their websites within 24 hours after the effective date of a change in the rates, terms, or conditions of a service that results from negotiated agreements with large business and government customers.[66] Verizon contends that "[l]arge business and government customers . . . do not obtain rates and terms they like by shopping carriers' posted rates and terms; instead they demand and receive individually negotiated deals that meet their individual needs, largely through formal bidding processes."[67] Verizon contends that "the requirement to post rates, terms, and conditions for these customers does not serve a useful purpose, [and] there are no benefits that outweigh the costs imposed by the regulations."[68]

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[60] *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, Notice of Proposed Rulemaking, 19 FCC Rcd 764, 769, para. 15 (2003).

[61] The Commission concluded that current Part 42 record retention requirements assist the Commission to carry out its regulatory responsibilities and therefore continue to be necessary in the public interest at this time. *See 2002 Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, Report and Order, FCC 06-86, para. 18-21 (2006).

[62] *See* USTelecom Comments at 15-16.

[63] *Id.* at 16 (emphasis in original).

[64] *Id.*

[65] *Id.*

[66] Verizon Comments at 36.

[67] *Id.*

[68] *Id.*

**Recommendation**

The Part 42 rules are necessary to ensure that carriers adequately maintain information important to the ability of the Commission to meet its regulatory obligations and to provide the Commission and the public readily available access to comparable information for all submitting carriers. WCB staff therefore does not find, with the exception of section 42.4 discussed below, that these rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore recommends that the Part 42 rules should not be eliminated or modified at this time.

In adopting the public disclosure requirements of section 42.10, the Commission sought to balance the burden on non-dominant carriers of providing service and rate information with the ability of consumers to have ready access to this information in a detariffed and competitive environment. In the *Second Order on Reconsideration*, the Commission stated that a public disclosure requirement is necessary in a competitive market to make certain that non-dominant IXCs provide complete information about the rates, terms, and conditions of their interstate, domestic, interexchange services to enable customers to bring to the Commission's attention violations of the Communications Act and to choose the calling plans that best meet their needs.[69] In 1996, the Commission required non-dominant IXCs to disclose to the public information about all of their interstate, domestic, interexchange services in an easy to understand format, in a timely manner, and in at least one location during regular business hours.[70] In order to minimize the burden on IXCs, the Commission did not require carriers to make rate and service information available in any particular format or at any particular location. The Commission did, however, encourage the carriers to consider ways to make this information more widely available to the public, including posting information on-line, mailing relevant information to consumers, or responding to inquiries over the telephone.[71] In 1999, the Commission required carriers that had Internet websites to post rate and service information at their websites in a timely and easily accessible manner.[72] In 2000, the Common Carrier Bureau required Internet websites and public disclosure sites to be updated no later than 24 hours after the effective date of a change in the rates, terms, or conditions of a detariffed service.[73] In clarifying that the disclosure and web-posting requirements apply to individually negotiated contract services as well as to mass-market offerings, the Bureau reiterated the objective of publicly

[69] *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004, 6009, para. 9 (*Second Order on Reconsideration*) (citing *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20745-46, para. 25 (1996) (*Second Report and Order*)).

[70] *Second Report and Order*, 11 FCC Rcd at 20776-77, paras. 84, 86; *see also Second Order on Reconsideration*, 14 FCC Rcd at 6009-10, para. 9. The Commission eliminated the public disclosure requirement through the *Order on Reconsideration* but reestablished it in the *Second Order on Reconsideration*. *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Order on Reconsideration, 12 FCC Rcd 15014, 15047-54, paras. 59-73 (1997) (*Order on Reconsideration*); *Second Order on Reconsideration*, 14 FCC Rcd at 6007, 6015, paras. 4, 18.

[71] *Second Order on Reconsideration*, 14 FCC Rcd at 6010, para. 9 (citing *Second Report and Order*, 11 FCC Rcd at 20773-78, paras. 78-87).

[72] *Second Order on Reconsideration*, 14 FCC Rcd at 6015-16, para. 18. Carriers that did not have Internet websites were exempted from this requirement to avoid imposing undue burdens on them. *Id.*

[73] *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Order, 15 FCC Rcd 22321, 22322, 22328, paras. 1, 17 (Com.Carr.Bur. 2000) (*2000 Bureau Order*).

disclosing information regarding *all* services.[74] In addition, WCB staff notes that the Commission found in the *2000 Biennial Review Report* that the public disclosure and information maintenance requirements benefit consumers and further the public interest by enabling consumers to determine the most appropriate rate plans to meet their individual calling needs.[75] USTelecom argues for carrier disclosure solely through the Internet, asserting that all carriers today have websites. USTelecom does not provide evidence of this or, perhaps more significantly, that all consumers have readily available Internet access. We find USTelecom's unsupported arguments unpersuasive.

Further, we disagree with Verizon's contention that there is no benefit to large business and government customers when Verizon posts updated rates of detariffed services and contracts on the web. The Commission has specifically declined to exempt individually negotiated contracts from its public disclosure requirements, explaining that information about services and rates should be made available to consumers in the business and residential mass market. For example, in clarifying that the disclosure and web-posting requirements apply to individually negotiated contract services as well as to mass-market offerings, the Bureau reiterated the objective of publicly disclosing information regarding *all* services.[76] In conclusion, WCB staff finds that section 42.10 and its related requirements are necessary in the public interest and that repeal or modification is not warranted at this time.

With respect to section 42.4, however, WCB staff believes that USTelecom's concerns have some merit. Given that the focus of section 42.4 is ensuring Commission access to the master index of a carrier's records, we recommend that the Commission initiate a proceeding to consider revising section 42.4 to eliminate the requirement that carriers maintain that index at their operating company headquarters, so long as the master index remains accessible to the Commission for review upon request.

[74] *Id.* at 22321, 22328-29, paras. 1, 20 (citing *Second Order on Reconsideration*, 14 FCC Rcd at 6013-15, para. 16 n.60; *Second Report and Order*, 11 FCC Rcd at 20776-77, paras. 84-86).

[75] *See 2000 Biennial Regulatory Review, Policy and Rules Concerning the International Interexchange Marketplace*, 16 FCC Rcd at 10668-72.

[76] *2000 Bureau Order*, 15 FCC Rcd *at* 22321, 22328-29, paras. 1, 20 (citing *Second Order on Reconsideration*, 14 FCC Rcd at 6013-15, para. 16 n.60; *Second Report and Order*, 11 FCC Rcd at 20776-77, paras. 84-86).

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

### Description

Section 211 of the Communications Act of 1934, as amended, requires carriers to file with the Commission copies of all contracts, agreements, or arrangements with other carriers that relate to any traffic affected by the Act.[77] Section 219 authorizes the Commission to require all carriers that are subject to the Act to file annual reports with the Commission.[78] Section 220 allows the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers.[79]

Part 43 of the Commission's rules implements these sections by establishing rules that perform three major functions. First, Part 43 prescribes general requirements and filing procedures for several reports that various carriers must file. These include the annual Automated Reporting Management Information System (ARMIS) reports on financial and operating data that are filed by common carriers with operating revenues exceeding an indexed revenue threshold, reports on proposed depreciation changes, reports on international telecommunications traffic, and international circuit status reports. Second, Part 43 requires that certain carriers file with the Commission copies of specified contracts, agreements, and arrangements with other carriers. Third, Part 43 sets forth the Commission's International Settlements Policy, which is designed to ensure that U.S. telecommunications carriers pay nondiscriminatory rates for termination of international traffic in foreign countries.[80]

### Purpose

The reports required by Part 43 assist the Commission in monitoring the industry to ensure that carriers comply with the Commission's rules, and in tracking market and other industry developments, which improves the Commission's ability to identify developing regulatory issues and analyze the effects of alternative policy choices. The reports of proposed changes in depreciation rates allow the Commission to monitor the depreciation rates for dominant carriers' capital assets.[81] The contract-filing requirement helps the Commission to identify potential instances of anti-competitive conduct, and to enforce its International Settlements Policy.

### Analysis

#### Status of Competition

The composition of competition in local service markets has changed since completion of the 2004 Biennial Regulatory Review. Competitive LECs continue to use all modes of entry contemplated by the

[77] 47 U.S.C. § 211. Section 211 also permits the Commission to require the filing of any other contracts.

[78] 47 U.S.C. § 219.

[79] 47 U.S.C. § 220.

[80] *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements*, CC Docket No. 90-337, Report and Order on Reconsideration, 14 FCC Rcd 7963, 7974 (1999).

[81] Only those carriers with annual operating expenses that equal or exceed the indexed revenue threshold defined in section 32.9000 and that have been found by the Commission to be dominant carriers with respect to communications services are required to file depreciation change reports.

1996 Act. Competitive LECs provided 29.8 million (or 17 percent) of the approximately 172 million nationwide switched access lines in service to end-user customers as of June 30, 2006, as compared to 29.8 million lines (or 16 percent) of the approximately 183 million switched access lines at year-end 2003. Among competitive LEC lines, the lines provided over cable systems increased from 3.3 million to almost 6.0 million (or by 81 percent). In addition, wireless telephone service subscribers increased by 38 percent over this 2 ½ year period, and consumers appear to be using wireless telephones as substitutes for wireline services to an increasing extent. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by almost 60 percent since 1993.

**Recent Efforts**

The Commission established a Federal-State Joint Conference on Accounting Issues "to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough."[82] On October 9, 2003, the Joint Conference filed its recommendations with regard to certain accounting and reporting requirements adopted in the *Phase II Report and Order* in CC Docket No. 00-199.[83] On June 24, 2004, the Commission released a *Report and Order* in which it adopted certain recommendations and denied other recommendations set forth in the *Joint Conference Report*.[84] The Commission also is considering a pending review of its accounting and ARMIS reporting procedures in Phase 3.[85] The Commission extended the Joint Conference until March 1, 2007 to review accounting and reporting issues that remain outstanding.[86]

**Comments**

USTelecom proposes eliminating the Part 43 reporting requirement associated with the rate of return filing requirements in Rule 65.600(d)(1) and (d)(2).[87] USTelecom also proposes eliminating additional Part 43 reporting requirements that it claims no longer serve legitimate regulatory objectives. Specifically, USTelecom argues that data measured in the ARMIS 43-05, Service Quality Report, should be collected by the states, not the Commission, and that the Commission should rely on formal complaints filed with the Commission and state commissions to measure customer satisfaction, instead of the ARMIS 43-06 Report.[88] USTelecom also argues that the Commission should eliminate the

[82] *Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-269, Order, 17 FCC Rcd 17025 (2002).

[83] Letter from Federal-State Joint Conference on Accounting Issues to Marlene H. Dortch, Secretary, FCC (October 9, 2003) (*Joint Conference Report*).

[84] *Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-269, Report and Order, 19 FCC Rcd 11732 (2004).

[85] *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, 16 FCC Rcd 19911, 19984-89, paras. 205-217 (2001).

[86] *Federal-State Joint Conference on Account Issues*, WC Docket No. 02-269, Order, 20 FCC Rcd 3942 (2005).

[87] *See* USTelecom Comments at 12.

[88] *See* USTelecom Comments at 13.

duplicative ARMIS 43-07 and 43-08 reporting requirements, or simplify them by removing the collection of data that duplicates the data required under Form 477.[89] Finally, USTelecom proposes eliminating Rule 43.21(d)(1) and (2) requirements because the information contained in the ARMIS 495A and 495B reports required under these sections is generally redundant to the ARMIS 43-03 report. Finally, it contends that the reports required by Rules 43.21(f) and 43.21(k) are no longer necessary.[90]

AT&T agrees with USTelecom that the ARMIS 43-05 Service Quality Report, ARMIS 43-07 Infrastructure Report, and 43-08 Operational Report are outdated regulatory requirements and should be eliminated.[91] Verizon also supports USTelecom's assessment of the reporting requirements.[92]

**Recommendation**

WCB staff finds that Part 43 in its current form may no longer be necessary in the public interest as a result of competition between telecommunications service providers, but merits further consideration. The staff notes that issues concerning these rules are being considered by the Federal-State Joint Conference on Accounting Issues, and that the Joint Conference may recommend modification or elimination of certain provisions of Part 43. The staff therefore recommends that the Commission await the recommendations of the Joint Conference before completing any action on these rules. Nothing in this staff recommendation should be interpreted as prejudging in any way the Commission's consideration of the issues currently under consideration by the Joint Conference.

[89] *See* USTelecom Comments at 13.

[90] *See* USTelecom Comments at 14.

[91] *See* AT&T Reply at 8-9.

[92] *See* Verizon Reply at 6.