

Recommendation

As in the *2004 Staff Report*, the WCB staff continues to recommend that the Commission initiate a rulemaking to consider the repeal of Subpart A, as these rules may no longer be necessary in the public interest for reasons other than the development of competition.

PART 64, SUBPART D – PROCEDURES FOR HANDLING PRIORITY SERVICES IN EMERGENCIES

Description

The Part 64, Subpart D rules require that common carriers maintain, provide, and (if disrupted) restore facilities and services in accordance with the policies and procedures set forth in Part 64, Appendix A of the Commission's rules. Appendix A establishes policies and procedures and assigns responsibilities for the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. These requirements are promulgated pursuant to sections 1 and 201 through 205 of the Communications Act as amended.¹⁸⁶

Purpose

Subpart D is intended to ensure that critical communications services are available during times of national emergency. Subpart D promotes public safety and national security by establishing clear procedures and criteria for ensuring that critical communications services are available in times of national emergency. Complying with these requirements may impose administrative costs on carriers.

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

Pursuant to its participation as a member of the National Communications System, the Commission continues to evaluate its role in emergency preparedness planning, including the requirements set forth in Part 64, subpart D and Appendix A.

The Bureau was actively involved in providing relief to consumers, carriers, and relief organizations in the areas affected by Hurricanes Katrina, Rita, and Wilma in order to permit rapid restoration of telephone service, relief to telecommunications consumers, and an analysis of restoration progress, including where to focus relief efforts. The Bureau continues to provide assistance as the region recovers. For example, in 2005, the Commission released an Order to enable \$211 million in universal service funds to be used to respond to the disaster.¹⁸⁷ Among other things, this support was used to

¹⁸⁶ 47 U.S.C. §§ 151, 201-05.

¹⁸⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 20 FCC Red 16883 (2005).

provide wireless handsets and free calling minutes for those eligible for individual housing relief under FEMA rules, support for rural and non-rural health care providers for up to 50 percent of advanced telecommunications and information services costs, and support for the rebuilding of hurricane-damaged facilities. Prior to both Hurricanes Rita and Wilma, the Bureau assisted in outreach efforts to carriers and Public Safety Answering Points (PSAPs) and 911 Emergency Service officials to establish contact and assess existing levels of preparedness. The Bureau also worked with the industry to help restore service to consumers. It assisted in a coordinated outreach effort designed to identify where relief was most critically needed and to ascertain progress in the restoration of service. 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.

More recently, the Bureau has been working with industry to ensure it will have the necessary flexibility to plan for and respond quickly to similar situations that may arise in the future. In March and April 2006, the Bureau received petitions from AT&T, BellSouth, Verizon, and Qwest seeking Special Temporary Authority (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 Bureau granted AT&T's petition, providing for a limited STA and waiver of the rules.¹⁸⁸ An Order granting comparable relief to Verizon, BellSouth, and Qwest was adopted and released on June 9, 2006.¹⁸⁹ In addition, Evslin Consulting and pulver.com filed a petition for rulemaking requesting that the Commission initiate a proceeding to ease the effect of long-term telephone outages in the event of natural disasters or other public crises. The pleading cycle for this petition closed on May 12, 2006.¹⁹⁰

Comments

No party filed comments addressing Part 64, subpart D or Appendix A.

Recommendation

Because these rules are not competition-related, we cannot find that the rules are no longer necessary in the public interest as a result of meaningful economic competition. Competitive developments have not affected the need for these rules because they are public safety rules whose purposes are unaffected by competition. Moreover, following the events of September 11, 2001, and in the aftermath of Hurricanes Katrina, Rita and Wilma, it is vitally important that adequate procedures exist to ensure that critical communications services are maintained during times of national emergency. WCB staff accordingly does not find that Part 64, subpart D and Appendix A 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 repeal or modification is not warranted at this time.

¹⁸⁸ *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).

¹⁸⁹ *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).

¹⁹⁰ *Pleading Cycle Established for Petition for Rulemaking to Preserve Post-Disaster Communications*, RM-11327, Public Notice, 21 FCC Rcd 3639 (WCB Apr. 7, 2006).

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

Description

Part 64, subpart G addresses two issues: (1) the provision of enhanced services and customer premises equipment (CPE) by Bell Operating Companies (BOCs); and (2) the provision of operator services. These rules were adopted pursuant to the Commission's authority under sections 4, 201-205, 403, and 404 of the Act, as amended.¹⁹¹

The BOCs may provide enhanced services and CPE pursuant to nonstructural safeguards established in the *Computer III*¹⁹² (enhanced services) and *Furnishing of CPE*¹⁹³ proceedings, or through a separate subsidiary as provided in section 64.702 of the Commission's rules. If a BOC provides enhanced services or CPE through a separate subsidiary, the separate subsidiary must: (1) obtain all transmission facilities necessary for the provision of enhanced services pursuant to tariff; (2) operate independently, with its own books of accounts, separate officers, personnel, and computer facilities; (3) deal with any affiliated manufacturing entity on an arm's length basis; and (4) compensate the BOC for any research or development performed for the subsidiary. Section 64.702 requires that transactions between the subsidiary and the parent or any other affiliate be put in writing, and it bars BOCs from engaging in marketing or sales on behalf of a CPE or enhanced services subsidiary. The BOC must also obtain Commission approval of the capitalization plans for any such separate subsidiary.

The remainder of subpart G addresses the provision of telephone operator services and certain activities by call aggregators.¹⁹⁴ These rules require that operator service providers identify themselves at the beginning of each call and provide consumers with information concerning their rates. The rules also prohibit aggregators from blocking access to "800" and "950" access numbers on aggregator telephones presubscribed to an operator service, and they require that customers be able to obtain access to the operator services provider of their choice. Additionally, subpart G contains restrictions on charges related to the provision of operator services, minimum standards for routing and handling of emergency telephone calls, and rules governing the filing of international tariffs and the provision of operator services for prison inmates. The Commission has forborne from applying some of these restrictions to CMRS carriers and aggregators.¹⁹⁵

¹⁹¹ 47 U.S.C. §§ 154, 201-205, 403, 404.

¹⁹² *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III)*, Report and Order, Phase I, 104 FCC 2d 958 (1986) (subsequent citations omitted).

¹⁹³ *Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies*, 2 FCC Rcd 143 (1987) (*CPE Order*), *aff'd sub nom. Illinois Bell Telephone Co. v. FCC*, 883 F.2d 104 (D.C. Cir. 1989) 47 C.F.R. § 64.702.

¹⁹⁴ Operator services refer to "any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call," subject to certain exceptions. 47 C.F.R. § 64.708(i). An aggregator is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls, using a provider of operator services." 47 C.F.R. § 64.708(b).

¹⁹⁵ *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services*, WC Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857 (1988).

Purpose

The subpart G rules for enhanced services and CPE are designed to permit the competitive offering of these products and services by the BOCs without anticompetitive discrimination or improper cost shifting. The subpart G rules for operator services protect consumers by ensuring that they have information about the rates charged by operator service providers and that they can reach the operator services provider of their choice. The rules also promote public safety by prescribing minimum standards for the handling of emergency telephone calls by operator services providers and call-aggregators.

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

On September 23, 2005, the Commission released the *Wireline Broadband Internet Access Services Order*, which eliminated *Computer Inquiry* requirements and Title II obligations applicable to wireline broadband Internet access services offered by facilities-based providers on a non-common carrier basis.¹⁹⁶ Accompanying the Order is the *Broadband Consumer Protection NPRM*, which seeks comment on any non-economic regulatory requirements necessary to ensure that consumer protection needs are met by all providers of broadband Internet access service, regardless of the underlying technology. Time Warner Telecom, Earthlink, COMPTTEL, and ACN Communications Services sought review of the *Wireline Broadband Internet Access Services Order* in the U.S. Courts of Appeals for the D.C. and Third Circuits. On January 30, 2006, the D.C. Circuit granted the Commission's motion to transfer the cases to the Third Circuit, which consolidated the cases on February 7, 2006. The consolidated appeals are pending.

¹⁹⁶ *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, 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. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Internet Access Services Order*).

The Commission released a Memorandum Opinion and Order on November 7, 2006, classifying Broadband over Power Line (BPL)-enabled Internet access service as an information service under the Communications Act.¹⁹⁷ The Commission further held that the transmission component underlying BPL-enabled Internet access service is “telecommunications,” and that the offering of this telecommunications transmission component as part of a functionally integrated, finished BPL-enabled Internet access service offering is not a “telecommunications service.” This approach is consistent with the framework that the Commission established for cable modem service and wireline broadband Internet access service, and furthers the goal of developing a consistent regulatory framework across broadband platforms by regulating like services in a similar manner.

Comments

Verizon contends that the Commission should eliminate its *Computer III* requirements, including the Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA) rules. According to Verizon, the CEI and ONA rules are anachronistic: the implicit assumption underlying CEI and ONA requirements that the LEC wireline platform would remain the only network available to enhanced service providers is unfounded today.¹⁹⁸ BOCs now have business reasons to sell services and facilities to unaffiliated enhanced service providers in order to keep customers on their networks; subjecting only the BOCs to these costly regulations stifles innovation and investment.¹⁹⁹ AT&T endorses Verizon’s comments and proposal to eliminate CEI and ONA requirements.²⁰⁰

Similarly, USTelecom argues that BOCs should no longer be required to file ONA reports and post CEI plans on company websites.²⁰¹ According to USTelecom, the ONA and CEI requirements force BOCs to reveal sensitive strategic information that their competitors are not also required to disclose.²⁰² USTelecom further states that the reports are massive documents, and their compilation imposes substantial administrative burdens on BOCs and the Commission, but they contain only information that is no longer useful, such as details about deployments of services which are either obscure or now ubiquitous.²⁰³ According to USTelecom, the semi-annual ONA reports contain no unique information that is not publicly available elsewhere, and are rarely, if ever, used. In addition, quarterly ONA nondiscrimination reports describing delivery of service for each ONA service of the reporting BOC require extensive record tracking from affiliated enhanced service providers and are likewise not useful.²⁰⁴ These reporting requirements now inhibit choice and increase prices, USTelecom claims.²⁰⁵

¹⁹⁷ *United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, FCC 06-165 (rel. Nov. 7, 2006).

¹⁹⁸ See Verizon Comments at 32.

¹⁹⁹ See Verizon Comments at 33.

²⁰⁰ See AT&T Reply at 2 and 6-8.

²⁰¹ See USTelecom Comments at 17.

²⁰² USTelecom Comments at 17.

²⁰³ USTelecom Comments at 18.

²⁰⁴ USTelecom Comments at 19. USTelecom also states that Verizon, AT&T, and Qwest have advised the Commission of the lack of ONA service activity and the superfluity of the ONA reporting and posting requirements, in the *Computer III Further Remand Proceedings* and the *1998 Biennial Regulatory Review*. *Id.*

Furthermore, if these requirements were repealed, USTelecom argues, customers would still have a remedy under section 202(a) for any improper discriminatory activities.²⁰⁶

Recommendation

Based on its review of the rules and the comments in this Biennial Review proceeding, staff believes that the rules may still be necessary in the public interest but merit further consideration. Staff notes that petitions for forbearance from these rules, as well as other proceedings addressing these rules, are currently pending before the Commission.²⁰⁷ Staff recommends that in the context of the records in those proceedings the Commission consider whether 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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²⁰⁵ USTelecom Reply at 4.

²⁰⁶ USTelecom Comments at 17.

²⁰⁷ See, e.g., *Verizon Post Sec. 272 "Sunset" Forbearance Proceeding*, 21 FCC Rcd 2924 (to the extent these carriers seek relief from Part 64 rules); *Broadband Consumer Protection NPRM*, 20 FCC Rcd 14853, 14929-935.

PART 64, SUBPART I – ALLOCATION OF COSTS

Description

Section 254(k) of the Communications Act of 1934, as amended, requires the Commission, with respect to interstate services, to establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included within the definition of universal service bear no more than a reasonable allocation of joint and common costs of facilities used to provide these services.²⁰⁸ The requirements in Part 64, subpart I of the Commission's rules are based on the Commission's authority under section 201 and 220 of the Act.²⁰⁹ Subpart I prescribes procedures for the allocation of carriers' costs between regulated and non-regulated activities. Subpart I requires that all incumbent LECs subject to separation of regulated and non-regulated costs²¹⁰ use the attributable cost method of cost allocation, and lists a number of cost allocation principles that such carriers must follow. Subpart I provides that these carriers are also subject to the affiliate transaction rules, and requires that all incumbent LECs with annual operating revenues at or above a specified indexed level (currently \$119 million), except midsized incumbent LECs, file cost allocation manuals (CAMs) with the Commission. Finally, subpart I provides that all carriers required to file CAMs must also have an independent auditor audit their compliance with the Commission's cost allocation requirements.

Purpose

The Part 64, subpart I rules protect consumers by preventing cost-shifting and cross-subsidization between regulated and non-regulated activities provided by carriers subject to the cost allocation requirements. These rules ensure that carriers compete fairly in non-regulated markets and that regulated ratepayers do not bear the risks and burdens of the carriers' competitive, or non-regulated, ventures. Subpart I provides the basic policy objectives and general outline for carriers to follow in designing their own cost allocation methodologies, which are subject to minimal Commission scrutiny. In fact, compliance oversight is largely delegated to the carriers' independent auditors. Similar to the Part 36 rules, the Part 64 cost allocation rules help to define those financial criteria that are subject to federal and state regulatory oversight. The cost allocation and affiliate transaction rules impose administrative costs on carriers subject to these requirements.

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

²⁰⁸ 47 U.S.C. § 254(k).

²⁰⁹ 47 U.S.C. §§ 201, 220.

²¹⁰ Average schedule companies do not perform cost studies and do not perform cost allocations pursuant to Part 64, subpart I.

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 reflecting a comprehensive review of the accounting and ARMIS reporting requirements and addressing recommendations made by the Federal-State Joint Conference on Accounting Issues.²¹¹ As part of that order, the Commission decided to retain section 32.27 affiliate transaction rules, which are related to rules in sections 64.903 - 64.904. In addition, the Commission is also presently examining these and other Part 64 rules in other proceedings.²¹²

Comments

USTelecom and Verizon propose that the Commission eliminate the cost allocation manual and independent audit requirements in sections 64.903 - 64.904 to the extent they relate to the affiliate transaction rule.²¹³ We have addressed those issues above in our discussion of Part 32.²¹⁴

Recommendation

In the past, the vast majority of incumbent LEC costs and revenues have been regulated. Accordingly, the Part 64 cost allocation rules have been of relatively small significance. As competition and deregulatory actions are realized, however, the magnitude of nonregulated costs is likely to grow, and the separation of costs associated with non-regulated activities from regulated costs is likely to become more significant.²¹⁵

Based on its review of the rules and the comments in this Biennial Review proceeding, staff believes that the rules may still be necessary in the public interest but merit further consideration. Staff notes that petitions for forbearance from these rules are currently pending before the Commission and staff recommends that, in the context of the records in those proceedings, the Commission consider whether these rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the

²¹¹ *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).

²¹² See, e.g., *BellSouth Cost Allocation Forbearance Proceeding*; 20 FCC Rcd 19873, *RAO Letter 12 Modification Proceeding*, 21 FCC Rcd 72. See also *AT&T Post Sec. 272 “Sunset” Forbearance Proceeding*, 21 FCC Rcd 6862; *Qwest Post Sec. 272 “Sunset” Forbearance Proceeding*, 20 FCC Rcd 19389; *Verizon Post Sec. 272 “Sunset” Forbearance Proceeding*, 21 FCC Rcd 2924 (to the extent these carriers seek relief from Part 64 rules).

²¹³ USTelecom Reply at 3; Verizon Reply at 8.

²¹⁴ See *supra* at pp. 13-15.

²¹⁵ See, e.g., 47 C.F.R. § 61.45(d)(1)(v) (listing as exogenous “the reallocation of investment from regulated to non-regulated activities pursuant to § 64.901”).

public interest.²¹⁶ 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.

²¹⁶ See *BellSouth Cost Allocation Forbearance Proceeding*, 20 FCC Rcd 19873. See also *AT&T Post Sec. 272 "Sunset" Forbearance Proceeding*, 21 FCC Rcd 6862; *Qwest Post Sec. 272 "Sunset" Forbearance Proceeding*, 20 FCC Rcd 19389; *Verizon Post Sec. 272 "Sunset" Forbearance Proceeding*, 21 FCC Rcd 2924 (to the extent these carriers seek relief from Part 64 rules).

PART 64, SUBPART M – PROVISION OF PAYPHONE SERVICE

Description

Part 64, Subpart M implements section 276 of the Communications Act of 1934, as amended, concerning the provision of payphone service. These rules govern compensation to payphone providers by carriers that receive calls from payphones; require states to review and remove any state regulation that limits market entry and exit by payphone providers; and establish regulations to ensure that individuals with disabilities can use payphones. This subpart provides for contracts between providers and sets a default compensation rate if the parties cannot reach an agreement. These rules also require carriers to establish arrangements and track the data necessary for the calculation, verification, billing and collection of payphone compensation.

Purpose

Subpart M helps to ensure that payphone providers receive fair compensation for completed intrastate and interstate calls made from their payphones, encourages competition among payphone service providers (PSPs), and promotes the deployment of payphone services.

Analysis

Status of Competition

The latest data published by the Commission indicates that payphones owned by local exchange carriers constituted more than 60 percent of the payphone market, with the remaining approximately 39 percent of payphones owned by independent payphone providers.²¹⁷

Recent Efforts

The Commission released a further notice of proposed rulemaking on March 14, 2005 to consider modification of the default rate of per-payphone compensation that applies when carriers are unable to pay per-call compensation to payphone service providers.²¹⁸ This action followed the Commission's modification, in a report and order released August 12, 2004, of the default rate of per-call compensation for "dial-around" calls set forth in section 64.1300(c) of the Commission's rules.²¹⁹ The Commission also issued an Order on Reconsideration clarifying and modifying the Payphone Compensation Rules on October 22, 2004.²²⁰

²¹⁷ Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service: Tables Compiled as of April 2005*, at Table 7.5.

²¹⁸ *Request to Update Default Compensation Rate for Dial-Around Calls From Payphones*, WC Docket No. 03-225, Further Notice of Proposed Rulemaking, 20 FCC Rcd 5833 (2005).

²¹⁹ *Request to Update Default Compensation Rate for Dial-Around Calls From Payphones*, WC Docket No. 03-225, Report and Order, 19 FCC Rcd 15636 (2004).

²²⁰ *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Reconsideration, 19 FCC Rcd 21457 (2004).

Comments

No party filed comments addressing Part 64, subpart M.

Recommendation

WCB staff does not find that the rules are “no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service.” Staff finds that these rules facilitate competition in the provision of payphone service and ensure that PSPs, which provide a necessary public service by making available payphones for public use, receive fair compensation for calls made from their payphones. We therefore recommend that these rules be retained.

PART 64, SUBPART N – EXPANDED INTERCONNECTION**Description**

Part 64, Subpart N was adopted pursuant to the Commission's authority under sections 1, 4, and 201 through 205 of the Communications Act, as amended.²²¹ Subpart N provides that Class A LECs, which do not participate in the National Exchange Carrier Association tariff, must provide expanded interconnection.²²² Subpart N requires incumbent LECs to allow interconnection with their networks through physical or virtual collocation for the provision of interstate special access and switched transport services. Any interested party may take expanded interconnection.

Purpose

Subpart N is designed to increase competition in the provision of interstate services by removing barriers to the competitive provision of special access and switched transport services. Specifically, subpart N makes collocation and interconnection available to any interested party (*e.g.*, large businesses and universities), while the interconnection and collocation rights specified in section 251(a) and (c) of the Communications Act and Part 51 of the Commission's rules are limited to telecommunications carriers or a subset thereof. Subpart N likely imposes some costs on incumbent LECs, which are passed on to the requesting parties.

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

There has been no Commission action addressing these rules since the previous biennial review.

Comments

No party filed comments addressing Part 64, subpart N.

²²¹ 47 U.S.C. §§ 151, 154, 201-205.

²²² AT&T, BellSouth, Qwest and Verizon are subject to this requirement.

Recommendation

Because the Part 64, subpart N rules serve to ensure that special access and switched transport services are competitively provided, WCB staff does not find that the 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 repeal or modification is not warranted at this time.

**Part 64, SUBPART Q – IMPLEMENTATION OF SECTION 273(D)(5) OF THE
COMMUNICATIONS ACT: DISPUTE RESOLUTION REGARDING EQUIPMENT
STANDARDS**

Description

Part 64, Subpart Q implements Section 273(d) of the Act, as amended, by establishing procedures to be followed by non-accredited standards organizations when setting industry-wide standards or generic requirements for telecommunications equipment or CPE. Section 273(d)(5) of the Act directs the Commission to prescribe a dispute resolution process when all parties involved in such standards setting cannot agree on a dispute resolution process. It provides for resolution of technical disputes by a three-member panel, whose recommendation can be overturned if three-fourths of the funding parties vote to do so.

Purpose

Subpart Q ensures the fair, prompt and economical resolution of disputes that arise in the context of private sector development of technical standards for telecommunications equipment and CPE.

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

There has been no Commission action addressing these rules since the previous biennial review.

Comments

No party filed comments addressing Part 64, subpart Q.

Recommendation

The default dispute resolution process provides for the fair, prompt, and economical resolution of disputes when the parties cannot agree on a mutually satisfactory process. WCB staff accordingly does not find that the subpart Q 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 repeal or modification is not warranted at this time.

PART 64, SUBPART R - GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION REQUIREMENTS

Description

Section 64.1801 was adopted to enable the Commission to meet its duty, under section 254(g) of the Act, to adopt rules requiring providers of interexchange telecommunications services to charge subscribers geographically averaged and integrated rates. In section 254(g), Congress codified the Commission's pre-existing geographic rate averaging and rate integration policies. Providers of interexchange telecommunications services are required to charge rates in rural and high-cost areas that are no higher than the rates they charge in urban areas. This is known as the geographic rate averaging rule. Providers of interexchange telecommunications services are also required to charge rates in each state that are no higher than in any other state. This is known as the rate integration rule.

Purpose

The Commission has explained that geographic rate averaging benefits customers in rural areas by ensuring that they share in lower prices resulting from nationwide interexchange competition. Further, the policy of integrating "offshore points" such as Hawaii and Alaska into the mainland's interstate interexchange rate structure makes the benefits of growing competition available throughout the nation.

Analysis

Status of Competition

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Recent Efforts

There has been no Commission action addressing these rules since the previous biennial review.²²³

²²³ WCB staff notes that Core Communications, Inc. (Core) filed a petition for forbearance on April 27, 2006. In its petition, Core requests, among other relief, forbearance from the application of statutory and regulatory obligations for rate averaging and rate integration. See *Pleading Cycle Established for Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, WC Docket No. 06-100, 21 FCC Rcd 5075 (Wireline Comp. Bur. 2006). Comments were filed on June 5, 2006 and reply comments on June 26, 2006. This proceeding is still pending.

Comments

No party filed comments addressing Part 64 subpart R.

Recommendation

WCB staff does not find that the rules are “no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service.” Staff finds that these rules ensure that rural areas and “offshore points” such as Hawaii and Alaska benefit from lower prices resulting from competition. WCB staff therefore recommends that section 64.1801 be retained.

**PART 64, SUBPART S – NONDOMINANT INTEREXCHANGE CARRIER CERTIFICATIONS
REGARDING GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION
REQUIREMENTS**

Description

Part 64, subpart S facilitates Commission oversight and enforcement of section 254(g) of the Communications Act of 1934, as amended, which requires providers of interexchange telecommunications services to charge subscribers geographically averaged and integrated rates. Section 64.1900 requires each nondominant provider of interexchange telecommunications service that provides detariffed interstate, domestic, interexchange services to file an annual certification with the Commission that it is in compliance with the geographic rate averaging and rate integration requirements of section 254(g) of the Act.

Purpose

This rule was adopted to enable the Commission to meet its statutory duty of ensuring that rates for these services comply with section 254(g) and to investigate and resolve related complaints.

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

There has been no Commission action addressing these rules since the previous biennial review.

Comments

No party filed comments addressing Part 64 subpart S.

Recommendations

WCB staff does not find that the geographic rate averaging and rate integration requirements in Part 64 subpart S are “no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service.” The annual geographic rate averaging and rate integration certification obligations emphasize the importance placed on the rate averaging and rate integration requirements of the 1996 Act and put carriers on notice that they may be

subject to civil and criminal penalties for noncompliance. WCB staff therefore recommends that section 64.1900 be retained.

**PART 64, SUBPART T – SEPARATE AFFILIATE REQUIREMENTS FOR INCUMBENT
INDEPENDENT LOCAL EXCHANGE CARRIERS THAT PROVIDE IN-REGION
INTERSTATE DOMESTIC INTEREXCHANGE SERVICES OR IN-REGION
INTERNATIONAL INTEREXCHANGE SERVICES**

Description

Part 64, Subpart T establishes separate subsidiary requirements applicable to the provision of in-region, interstate domestic, interexchange services and in-region international interexchange services by incumbent independent LECs. Subpart T generally requires that the separate affiliate: (1) maintain separate books of account; (2) not own transmission or switching facilities jointly with its affiliated exchange company, although the separate affiliate may share personnel or other assets or resources with an affiliated exchange company; (3) take, pursuant to tariff, any services for which its affiliated exchange carrier is required to file a tariff (although the separate affiliate may also take unbundled network elements and services for resale pursuant to the terms of pre-existing negotiated agreements approved under section 252 of the Act); and (4) be a separate legal entity from the affiliated exchange company, although the separate affiliate may share personnel, office space and marketing with the affiliate exchange companies.

Purpose

Subpart T is designed to prevent incumbent independent LECs from engaging in anticompetitive activity in the provision of in-region long distance services.

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

There has been no Commission action addressing these rules since the previous biennial review.

Comments

Verizon contends that the Commission should eliminate the separation requirements that apply to independent LEC long distance and all-distance services. It asserts that regulations that apply to the provision of independent incumbent LECs but not to other competitors complicate the design and

planning for advanced all-distance services.²²⁴ In particular, Verizon points to sections 64.1903(a)(1),(2) and (b) of the rules: these rules still require incumbent LECs that provide in-region, interstate, interexchange or international services on a facilities basis to provide such services through a separate affiliate, which must keep separate books of account and is prohibited from jointly owning transmission or switching facilities with the LEC.²²⁵ Similarly, while an independent LEC may offer interexchange services on a resale basis through a separate corporate division, Verizon notes that it may not own interexchange switching or transmission facilities.²²⁶ Verizon notes that, since Section 272 of the Act has sunset, Verizon could integrate its local and long distance operations and offer both through its incumbent LECs in former Bell Atlantic jurisdictions, but the Commission's independent LEC separation requirements prevent independent LECs from determining the most efficient structure for their long distance operations and ultimately inhibit carriers from providing new services.²²⁷ In support of its proposal to eliminate these rules, Verizon asserts that, where the Commission has eliminated unnecessary regulation, output has increased and prices fallen, citing as an example the elimination of structural separation requirements for the provision of customer premises equipment and enhanced services, which Verizon maintains has increased competition and consumer choice.²²⁸

Both USTelecom and AT&T support Verizon's comments and proposal to eliminate the separation requirements that apply exclusively to independent LEC provision of long distance and all-distance services.²²⁹ COMPTTEL, however, asserts that Verizon's request for elimination is not in the public interest, referencing as support its opposition to AT&T's Forbearance Petition in WC Docket No. 06-120.²³⁰ GCI also objects to removal of any structural separation requirements that would apply to rate-of-return carriers and their long distance affiliates.

Recommendation

Based on its review of the rules and the comments in this Biennial Review proceeding, staff believes that these rules may still be necessary in the public interest but merit further consideration. Staff notes that petitions for forbearance and other proceedings addressing these rules are currently pending before the Commission.²³¹ Staff recommends that in the context of the records in those proceedings the Commission consider whether 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, and that the Biennial Review comments of Verizon,

²²⁴ Verizon Comments at 30.

²²⁵ See Verizon Comments at 31; 47 C.F.R. §§ 64.1903(a)(1),(2) and (b).

²²⁶ Verizon Comments at 31.

²²⁷ Verizon Comments at 31.

²²⁸ Verizon Comments at 31-32.

²²⁹ See USTelecom Reply at 4; AT&T Reply at 2 and 4-5.

²³⁰ See COMPTTEL Reply at 4 and attachment; *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 Service*, WC Docket No. 06-120 (filed June 2, 2006).

²³¹ *BellSouth Cost Allocation Forbearance Proceeding*, 20 FCC Rcd 19873. See also *AT&T Post Sec. 272 "Sunset" Forbearance Proceeding*, 21 FCC Rcd 6862; *Qwest Post Sec. 272 "Sunset" Forbearance Proceeding*, 20 FCC Rcd 19389; *Verizon Post Sec. 272 "Sunset" Forbearance Proceeding*, 21 FCC Rcd 2924 (to the extent these carriers seek relief from Part 64 rules); *Separate Affiliate Proceeding*, 17 FCC Rcd 9916 (2002).

USTelecom, AT&T and COMPTTEL addressing these rules be incorporated into the records of those proceedings. 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.

PART 64, SUBPART U – CUSTOMER PROPRIETARY NETWORK INFORMATION

Description

Section 222 of the Communications Act, as amended, restricts carrier use of customer proprietary network information (CPNI), which, among other things, identifies to whom, where, and when a customer places a call, and identifies the types of service offerings to which the customer subscribes and the extent to which the service is used.²³² Except as required by law or with customer approval, section 222(c)(1) of the Act stipulates that a carrier can only “use, disclose or permit access to CPNI in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.”

Purpose

The Commission adopted CPNI rules in order to implement the provisions of section 222 to protect consumer privacy and to foster competition.

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

On February 14, 2006, the Commission released the *EPIC CPNI NPRM* seeking comment on what additional steps, if any, the Commission should take to further protect the privacy of customer proprietary network information (CPNI).²³³ This *NPRM* directly responds to a petition for rulemaking filed by the Electronic Privacy Information Center (EPIC), alleging that numerous web sites are obtaining and selling telephone customers’ call detail records illegally. In the *EPIC CPNI NPRM*, the Commission sought comment on the nature and scope of the problem identified by EPIC, including “pretexting,”

²³² 47 U.S.C. § 222.

²³³ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information*, Notice of Proposed Rulemaking, CC Docket No. 96-115, 21 FCC Red 1782 (2006) (*EPIC CPNI NPRM*).

which is the practice of pretending to be a particular customer in order to obtain access to that customer's call detail or other private telephone records. The NPRM also sought comment on carriers' existing practices to protect the privacy of CPNI, the sufficiency of the Commission's existing rules that protect CPNI, the feasibility and advisability of EPIC's proposed CPNI security measures, as well as other approaches to address this problem.

Comments

No party filed comments addressing Part 64, subpart U.

Recommendation

Consistent with the Commission's examination of the rules in Part 64, subpart U in the *CPNI Third Report and Order*,²³⁴ WCB staff does 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." We also note that the Commission is currently considering whether to expand the rules in its *EPIC CPNI NPRM*.²³⁵

²³⁴ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd. 14860 (2002).

²³⁵ *EPIC CPNI NPRM*, 21 FCC Rcd 1782 (2006).

**PART 64, SUBPART V – TELECOMMUNICATIONS CARRIER SYSTEMS SECURITY AND
INTEGRITY PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW
ENFORCEMENT ACT (CALEA)**

Description

Section 105 of CALEA requires that telecommunications carriers establish safeguards to ensure that interception of communications or access to call-identifying information can be activated only in accordance with a court order or other lawful authorization, and with the affirmative intervention of an officer or employee of the carrier.²³⁶ Section 229(a) of the Communications Act directs the Commission to “prescribe such rules as are necessary to implement the requirements of [CALEA],”²³⁷ and section 229(b) specifically requires the Commission to promulgate “rules to implement section 105 of [CALEA].”²³⁸ Part 64, subpart V of the Commission’s rules instructs carriers to comply with these statutory requirements by requiring them to adopt policies and procedures for the supervision and control of their employees and officers, and by requiring carriers to maintain secure records of each interception of communications or access to call-identifying information. Additionally, subpart V requires carriers to submit to the Commission for review a statement describing procedures implementing CALEA requirements.²³⁹

Purpose

Subpart V implements section 105 of CALEA and helps protect privacy rights by ensuring that any interception is carried out in accordance with required legal authorization. Commission rules contained in subpart V promote the statutory goals and requirements of CALEA by ensuring that affected carriers comply with CALEA-mandated communications security and integrity requirements. Compliance with these requirements increases carrier costs, however.

Analysis**Status of Competition**

Not relevant.

Comments

No party filed comments addressing Part 64, subpart V.

Recommendation

The Part 64, Subpart V rules are promulgated under CALEA. While CALEA is a communications-specific statute codified in Title 47, it does not fall within the Communications Act of 1934, as amended. As such, the CALEA rules are outside the scope of the Commission’s section 11 biennial review.

²³⁶ 47 U.S.C. § 1004.

²³⁷ 47 U.S.C. § 229(a).

²³⁸ 47 U.S.C. § 229(b).

²³⁹ 47 U.S.C. § 229(c); 47 C.F.R. § 64.2105.

PART 64, SUBPART X – SUBSCRIBER LIST INFORMATION**Description**

Section 222(e) of the Communications Act requires carriers providing telephone exchange service to provide subscriber list information to requesting directory publishers “on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions.”²⁴⁰ Part 64, Subpart X implements this statutory provision, addressing third-party rights to subscriber list information, which includes listed subscribers’ names, addresses and telephone numbers, as well as headings under which businesses are listed in yellow pages directories.

Purpose

Subpart X is intended to implement section 222(e) of the Act and encourage the development of competition in directory publishing by ensuring that competing directory publishers can obtain subscriber list information from LECs.

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

On September 13, 2004, the Commission released a memorandum opinion and order on reconsideration addressing petitions for reconsideration of the *Subscriber List Information Order*,²⁴¹ which adopted rules to implement section 222(e) of the Act.²⁴² That Order: (1) denied requests to modify certain aspects of the complaint procedures, notification requirements, and unbundling requirements established in the *Subscriber List Information Order*; (2) eliminated a requirement that carriers provide requesting

²⁴⁰ 47 U.S.C. § 222(e).

²⁴¹ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (*Subscriber List Information Order*).

²⁴² 47 U.S.C. § 222(e).