

directory publishers with notice of changes in subscriber list information in circumstances where customers choose to cease having their numbers listed; and (3) modified the contract disclosure requirement to allow carriers to withhold from disclosure those portions of their contracts that are unrelated to the provision of subscriber list information and to subject such disclosures to confidentiality agreements.²⁴³

The Commission's *Subscriber List Information/Directory Assistance First Report and Order (SLI/DA First Report and Order)* concluded that local exchange carriers (LECs) must provide competing directory assistance (DA) providers that qualify under section 251(b)(3) of the Communications Act with nondiscriminatory access to the LECs' local DA databases, and must do so at nondiscriminatory and reasonable rates.²⁴⁴ Under the *SLI/DA First Report and Order*, the Commission found that, to the extent DA providers qualify under section 251(b)(3) of the Act, a LEC's failure to provide access may also violate section 201(b). The Commission further concluded that LECs are not required to grant competing DA providers nondiscriminatory access to non-local DA databases. It declined, however, to limit the manner in which DA providers use the information beyond certain limitations announced in the *Local Competition Second Report and Order*, including DA providers being held to the same standard as the providing LEC in terms of the types of information they can legally release, and all DA providers being bound by state limitations. Finally, the Commission concluded that the language concerning directory publishing "in any format" in section 222(e) applies to telephone directories on the Internet; however, the Commission found that section 222(e) does not apply to orally provided directory listing information.

On April 29, 2005, the Commission adopted an *Order on Reconsideration (SLI/DA Order on Reconsideration)*²⁴⁵ resolving a joint petition for reconsideration of the *SLI/DA First Report and Order* filed by BellSouth and SBC. In their joint petition for reconsideration, BellSouth and SBC specifically requested that the Commission reconsider and/or clarify its conclusions in the *SLI/DA First Report and Order* to make clear that LECs may place contractual restrictions on competing DA providers' use of DA information, including limits on resale and prohibitions on use for purposes such as sales solicitation, telemarketing, and directory publishing. The *SLI/DA Order on Reconsideration* denied this request and reaffirmed that the imposition of such contractual restrictions by a providing LEC is inconsistent with the nondiscriminatory access requirements of section 251(b)(3). The *Order* clarifies, however, that competing DA providers may not use data obtained pursuant to section 251(b)(3) of the Act for purposes not permitted by the Act, the Commission's rules, or state regulations, and that the use of similar data for directory publishing is governed separately under section 222(e) of the Act. The *Order* further denies BellSouth and SBC's joint request that the Commission reconsider its conclusion that LECs are required to provide nondiscriminatory access to their entire local DA database, including local DA data acquired from third parties.

²⁴³ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Memorandum Opinion and Order on Reconsideration, 19 FCC Rcd 18439 (2004).

²⁴⁴ *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, CC Docket No. 99-273, First Report and Order, 16 FCC Rcd 2736 (2001) (*SLI/DA First Report and Order*).

²⁴⁵ *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 Communications Act of 1934, as Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Order on Reconsideration, 20 FCC Rcd 9334 (2005) (*SLI/DA Order on Reconsideration*).

On September 16, 2005, InfoNXX filed a petition for clarification or, in the alternative, reconsideration of the *SLI/DA Order on Reconsideration*.²⁴⁶ InfoNXX requests that the Commission clarify or reconsider its rules to find that access to nonpublished numbers can only be restricted where the LEC DA operators have access to the numbers solely for the purpose of providing emergency contact services, and where emergency services are also made available to competitive DA providers.

Comments

No party filed comments addressing Part 64, subpart X.

Recommendation

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” because they facilitate competition in directory publishing by ensuring that competing directory publishers can obtain subscriber list information from LECs. Therefore, staff recommends that repeal or modification of Part 64, subpart X is not warranted at this time.

²⁴⁶ See Petition for Clarification or, in the Alternative, Reconsideration of InfoNXX, Inc., CC Docket No. 99-273 (filed Sept. 16, 2005).

PART 64, SUBPART Z – PROHIBITION ON EXCLUSIVE TELECOMMUNICATIONS CONTRACTS

Description

Congress amended section 224 of the Communications Act, as amended,²⁴⁷ to grant telecommunications service providers, in addition to cable service providers, access to conduits or rights-of-way in order to fulfill the market-opening goals of the 1996 Act. Part 64, subpart Z implements this section by:

(1) prohibiting carriers from entering contracts that restrict, or effectively restrict, owners and managers of commercial multiple tenant environments (MTEs) from permitting access by competing carriers; (2) clarifying the Commission rules governing control of in-building wiring, and facilitating exercise of building owner options regarding that wiring; (3) establishing that the access mandated by Congress in section 224 of the Communications Act includes access to conduits or rights-of-way that are owned or controlled by a utility within MTEs; and (4) providing that parties with a direct or indirect ownership or leasehold interest in property, including MTEs, should have the ability to place in areas within their exclusive use or control antennas one meter or less in diameter used to receive or transmit any fixed wireless service, and prohibiting most restrictions on their ability to do so.²⁴⁸

Purpose

Part 64, subpart Z is intended to significantly advance competition and customer choice, reduce the likelihood that incumbent LECs can obstruct their competitors' access to MTEs, and address certain anticompetitive actions by premises owners and other third parties. A substantial portion of both residential and business customers nationwide are located in MTEs. Thus, the absence of widespread competition in such environments would insulate incumbent LECs from competitive pressures and deny facilities-based competitive carriers the ability to offer their services in a sizable portion of local markets. Furthermore, this would jeopardize the full achievement of the benefits of competition by forcing consumers living in MTEs to pay supra-competitive rates for local telecommunications services and denying them the benefits of advanced and innovative 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

²⁴⁷ 47 U.S.C. § 224.

²⁴⁸ *Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57. 16 FCC Rcd 7064 (2000).

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 Z.

Recommendation

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” because they facilitate competition and customer choice by prohibiting anticompetitive actions in multiple tenant environments. We therefore recommend that repeal or modification of Part 64, subpart Z is not warranted at this time.

PART 65 – INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

Description

Section 201 of the Communications Act, as amended, requires that rates for common carrier communications services be just and reasonable.²⁴⁹ Part 65 sets forth the procedures and methodologies used by the Commission to prescribe an authorized interstate rate of return for the exchange access services of incumbent LECs subject to rate-of-return regulation. Price cap incumbent LECs also use the Commission prescribed rate of return for certain purposes. The Part 65 rules describe the methodologies to be used in calculating the cost of equity, the cost of debt, the weighted average cost of capital (both equity and debt), the interstate rate base, and the carriers' interstate rate of return. These rules also require the filing of certain rate-of-return reports.

Part 65 is organized into seven lettered subparts:

- A – General
- B – Procedures
- C – Exchange Carriers
- D – Interexchange Carriers
- E – Rate of Return Reports
- F – Maximum Allowable Rates of Return
- G – Rate Base

Purpose

The Part 65 rules are designed to protect consumers from excessive rates by prescribing an authorized interstate rate of return used to set local exchange access rates for incumbent LECs subject to rate-of-return regulation. The authorized interstate rate of return is also used by price-cap incumbent LECs for certain purposes, including, for example, calculating payments to and disbursements from the Universal Service Fund and in the low end adjustment formula. Information on earnings (from which profitability can generally be determined) is also necessary for Commission oversight and provides valuable information in the policy making process.

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

²⁴⁹ 47 U.S.C. § 201(b).

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

USTelecom comments that the Commission should eliminate the rate-of-return report filing requirements in sections 65.600(d)(1) and (d)(2) for price cap carriers because the rate-of-return calculation is no longer used for business purposes and no longer serves a legitimate regulatory purpose.²⁵⁰ USTelecom believes competition is thriving and rate regulation is no longer useful.²⁵¹ USTelecom comments that carriers that are subject to alternative regulation should not be required to calculate the “cash working capital allowance” required by section 65.820(d) because it serves no useful business purpose and completing the calculation is a “detailed, time consuming, and resource-intensive” process.²⁵² In addition, USTelecom asserts that, with every change to “interstate operating expenses, depreciation, or amortization,” carriers may have to refile their annual ARMIS reports to reflect these changes, which is an undesirable outcome.²⁵³

Recommendations

WCB staff does not find that the Part 65 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 no changes at this time. Part 65 rules are necessary to protect consumers from excessive rates and to enable incumbent LECs to calculate payments to and disbursements from the Universal Service Fund and the low end adjustment formula. Information provided to the Commission under these rules is necessary for Commission oversight and input in the policy-making process. Information filed pursuant to Part 65 is also relevant to the Commission’s analysis in pending proceedings.²⁵⁴

²⁵⁰ See USTelecom Comments at 12.

²⁵¹ See USTelecom Reply at 3.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ See, e.g., *Intercarrier Compensation Proceeding*, 20 FCC Rcd 4685.

PART 68 – CONNECTION OF CUSTOMER PREMISES EQUIPMENT TO THE TELEPHONE NETWORK

Description

Part 68 was established in 1974 as the result of the ruling in *Hush-A-Phone v. United States* that Bell Operating Companies could not bar direct connection of customer premises equipment (CPE) to the public switched telephone network (PSTN), provided the CPE would not cause harm to the PSTN.²⁵⁵ Part 68 requires that CPE be tested to show that it will not harm the PSTN or carrier personnel, and then be listed with the Administrative Council for Terminal Attachments (ACTA), a private industry group that maintains a master database of all CPE approved for connection to the PSTN. Carriers are obligated to permit the free connection of approved CPE to the PSTN, but they can require disconnection of CPE that is not approved or that causes harm to the PSTN. Part 68 provides for the identification, review and publication of technical criteria used in testing CPE for Part 68 compliance. Part 68 also establishes the right of customers to use competitively provided inside wiring.

In addition, Part 68 implements a statutory requirement for telephone equipment compatibility with hearing aids,²⁵⁶ and it contains consumer protection provisions mandated by statute: a requirement that all facsimile transmissions include source labeling,²⁵⁷ and a requirement that limits the duration of line seizure by automatic telephone dialing systems.²⁵⁸

Part 68 is organized into seven lettered subparts:

- A – General
- B – Conditions on Use of Terminal Equipment
- C – Terminal Equipment Approval Procedures
- D – Conditions for Terminal Equipment Approval
- E – Complaint Procedures
- F – Reserved
- G – Administrative Council for Terminal Attachments

Purpose

The Part 68 rules are designed to foster competition in the provision of CPE and inside wiring by permitting the connection of competitively provided CPE and inside wiring to the PSTN. Part 68 is also intended to ensure that the connection of CPE and inside wiring does not harm the PSTN or injure carrier personnel. In addition, Part 68 is designed to ensure the compatibility of hearing aids and telephone receivers so that persons with hearing aids will be able to use virtually all telephones.

Part 68 provides a number of benefits to consumers and the industry. Part 68 benefits consumers by fostering competition in the provision of CPE and inside wiring. The competition engendered by Part 68 has greatly increased innovation in CPE and reduced prices. Part 68 also benefits consumers and the

²⁵⁵ *Hush-A-Phone v. United States*, 238 F.2d 266 (D.C. Cir. 1956).

²⁵⁶ Hearing Aid Compatibility Act of 1988, 47 U.S.C. § 610.

²⁵⁷ 47 U.S.C. § 227(d)(2).

²⁵⁸ 47 U.S.C. § 227(d)(3).

industry by preventing harm to the PSTN and carrier personnel. Under current Part 68 rules, both the technical criteria development process and the CPE approval process have been privatized. Hence, the benefits described here are realized with minimal involvement of Commission staff, except in cases where parties file oppositions to proposed technical criteria directly with the Commission under section 68.614. In addition, Part 68 benefits people with hearing disabilities and those who communicate with them by requiring that telephone receivers be compatible with hearing aids.

Analysis

Status of Competition

The markets for CPE and the installation of inside wiring in single family residences are fully competitive.

Recent Efforts

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

Comments

No party filed comments addressing Part 68.

Recommendation

The Part 68 rules are necessary to ensure that connection of CPE to inside wiring does not harm the PSTN or injure carrier personnel. In addition, these rules ensure the compatibility of hearing aids and telephone receivers so that persons with hearing disabilities will be able to use virtually all telephones. Competitive developments thus have not affected the need for these rules because they remain important for reasons of public safety and accessibility. Therefore, WCB staff does not find that the Part 68 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 69 – ACCESS CHARGES

Description

Sections 201 and 202 of the Communications Act of 1934, as amended, require that rates, terms and conditions for telecommunications services be just and reasonable,²⁵⁹ and they prohibit unjust or unreasonable discrimination.²⁶⁰ Part 69 implements these sections of the Act by establishing rules that perform the following major functions: First, the Part 69 rules establish the rate structure for access charges to be paid by IXCs to LECs for the origination and termination of long distance calls, as well as the access charges to be paid directly by end users.²⁶¹ These rate structure rules establish the access charge rate elements as well as the nature of the charges, such as whether they are assessed on a per-minute or a flat-rate basis. Second, the Part 69 rules govern how rate-of-return LECs calculate their access charge rates. Third, the Part 69 rules, in conjunction with the Part 61 price cap rules, establish the degree of pricing flexibility available to price cap LECs. Finally, Part 69 provides for the establishment of the National Exchange Carrier Association (NECA), which files tariffs on behalf of many of the smaller, rate-of-return LECs.

Purpose

The Part 69 rules protect customers from the exercise of market power by incumbent LECs. The requirement for a minimum set of access charge rate elements and the pricing rules for both rate-of-return and price cap LECs greatly reduce the Commission resources required to ensure carrier compliance with sections 201 and 202 of the Act, and greatly facilitate analysis of access charges by other interested parties. The creation of NECA facilitates the filing of access charge tariffs by smaller rate-of-return LECs and greatly reduces the administrative costs involved.

Part 69 is organized into eight lettered subparts:

- A – General
- B – Computation of Charges
- C – Computation of Charges for Price Cap Local Exchange Carriers
- D – Apportionment of Net Investment
- E – Apportionment of Expenses
- F – Segregation of Common Line Element Revenue Requirement
- G – Exchange Carrier Association
- H – Pricing Flexibility

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

²⁵⁹ 47 U.S.C. § 201.

²⁶⁰ 47 U.S.C. § 202.

²⁶¹ LECs subject to price cap regulation must offer a basic set of access rate elements but are free to offer additional access services.

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 an effort to reform and unify intercarrier compensation charges, the Commission, in 2005, released a further notice of proposed rulemaking in the *Inter-carrier Compensation Proceeding*.²⁶² In 2006, the Commission received a proposed intercarrier compensation plan – the Missoula Plan – filed by the National Association of Regulatory Utility Commissioners’ Task Force on Intercarrier Compensation.²⁶³ The Missoula Plan is the product of a 3-year process of industry negotiations led by NARUC.²⁶⁴ Supporters of the plan include AT&T, BellSouth Corp., Cingular Wireless, Global Crossing, Level 3 Communications, and 336 members of the Rural Alliance, among others.²⁶⁵ According to its supporters, the Missoula Plan “unifies intercarrier charges for the majority of lines, and moves all intercarrier rates charged for all traffic closer together.”²⁶⁶ Its supporters maintain that adoption of the Missoula Plan would represent a major step forward in intercarrier compensation reform.²⁶⁷ The Missoula Plan was filed in the docket of the ongoing *Inter-carrier Compensation Proceeding* and the Commission sought comment on the Plan.²⁶⁸ The supporters of the Missoula Plan also filed two supplements amending the original plan dealing with the issues of “phantom traffic,”²⁶⁹ and creating a mechanism to compensate

²⁶² *Inter-carrier Compensation Proceeding*, 20 FCC Rcd 4685.

²⁶³ Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force, CC Docket No. 01-92, at 2 (filed July 24, 2006) (attaching the Missoula Plan). Although the Missoula Plan was filed by the NARUC Task Force, members of the task force and NARUC have not taken positions on the Missoula Plan. *See id.* at 2.

²⁶⁴ *Id.* at 1-2.

²⁶⁵ *Id.* at 2. *See also id.*, Attach. (providing a complete list of supporters).

²⁶⁶ *Id.*, Attach. (Executive Summary) at 1.

²⁶⁷ *Id.*, Attach. (Executive Summary) at 2.

²⁶⁸ *Missoula Plan PN*, 21 FCC Rcd 8524 (establishing the due dates for comments and reply comments). The due date for comments was extended to October 25, 2006 and the due date for reply comments was extended to January 11, 2007 by two subsequent orders. *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Order, 21 FCC Rcd 9772 (rel. Aug. 29, 2006); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Order, DA 06-2339, (rel. Nov. 20, 2006).

²⁶⁹ Letter from Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 6, 2006). Comments on the revised phantom traffic filing were filed on December 7, 2006 and reply comments on January 5, 2007. *Comment Sought on Missoula Plan Phantom Traffic Interim Process and Call Detail Records Proposal*, Public Notice, CC Docket No. 01-92, DA 06-2294 (Wireline Comp. Bur. Nov. 8, 2006); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Order, DA 06-2548 (Wireline Comp. Bur. Dec. 20, 2006).

states that have been early adopters of access charge reforms.²⁷⁰

In 2005, the Commission released a notice of proposed rulemaking in the *Special Access Proceeding* to examine the special access regulatory regime that should follow the expiration of the CALLS plan.²⁷¹ The Commission is currently reviewing the record compiled in that proceeding. The Commission is also reviewing Part 69 rules in a BellSouth forbearance proceeding.²⁷²

Comments

Verizon comments generally that the Commission should eliminate regulations preventing companies from negotiating commercial agreements to provide switched access services.²⁷³ Verizon believes that market-based solutions are preferable and promote new technologies and reliable service.²⁷⁴ In its reply comments, COMPTEL asserts that Verizon did not specifically discuss competition in the switched access market and does not adequately support its request to eliminate portions of Part 69.²⁷⁵ COMPTEL also asserts that it is unaware of any Commission rules that “prevent willing carriers from entering into voluntary commercial agreements for any telecommunications service.”²⁷⁶

Recommendation

Part 69 rules help to ensure carriers’ rates, terms and conditions for providing telecommunications services are just and reasonable. In response to Verizon’s comments, WCB staff notes that there is currently a process in place for switched access pricing flexibility governed by section 69.713 of the Commission’s rules.²⁷⁷

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 a petition for forbearance from certain Part 69 rules is currently pending before the Commission, and these rules are also under consideration in the *Intercarrier Compensation Proceeding* and the *Special Access Proceeding*. 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.²⁷⁸ 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.

²⁷⁰ Letter from the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Feb. 5, 2007).

²⁷¹ *Special Access Proceeding*, 20 FCC Rcd 1994.

²⁷² *BellSouth Cost Allocation Forbearance Proceeding*, 20 FCC Rcd 19873.

²⁷³ Verizon Comments at 34.

²⁷⁴ *See id.* at 34-36.

²⁷⁵ COMPTEL Reply at 2.

²⁷⁶ *Id.* at 3.

²⁷⁷ 47 C.F.R. § 69.713 (setting out the triggers for pricing flexibility for common line, traffic-sensitive, and tandem-switched transport services).

²⁷⁸ *See generally BellSouth Cost Allocation Forbearance Proceeding*, 20 FCC Rcd 19873; *Intercarrier Compensation Proceeding*, 20 FCC Rcd 4685; *Special Access Proceeding*, 20 FCC Rcd 1994.