Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Biennial Regulatory Review of	)	WC Docket No. 08-183
Regulations Administered by the	)	
Wireline Competition Bureau	)	

COMMENTS OF VERIZON

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Introduction

The communications landscape has changed dramatically since the Commission first adopted its *Computer Inquiry* rules (including its Comparably Efficient Interconnection – or CEI – and Open Network Architecture – or ONA – rules). As the Commission has acknowledged, its *Computer Inquiry* proceedings began over "four decades ago in an era far different from today in terms of the technological, marketplace, and regulatory environment for telecommunications carriers."[2] At that time, the BOCs' telephone networks were the "primary, if not sole, facilities-based platform available for the provision of 'information services' to customers,"[3] and the CEI and ONA requirements were based on the "implicit, if not explicit, assumption that the incumbent LEC wireline platform would remain the only network platform available to enhanced

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[1] The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

[2] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*; Report and Order, 20 FCC Rcd 14853, ¶ 21 (2005) ("*Title I Order*"); *see also id.* ¶ 1 ("Those regulations were created over the past three decades under technological and market conditions that differed greatly from those of today.").

[3] *Id.* ¶ 3; *see also id.* ¶ 47 (the *Computer Inquiry* rules were premised on the presence of a "single platform capable of delivering [enhanced] services . . . and only a single facilities-based provider of that platform.").

service providers."[4] That assumption is wholly unfounded today. The Commission's *Computer Inquiry* and its continuing property records rules were designed for another era and apply only to a limited number of providers in today's competitive marketplace. They are no longer necessary in the public interest and should be eliminated.

1. The communications marketplace is robustly competitive today. Cable companies have been particularly successful competitors and collectively are expected to serve more than 17 million lines by year-end 2008.[5] Cable companies provide voice service on a nearly ubiquitous basis over their own networks and are expected to offer IP-based telephony service to some 92 percent of U.S. households by the end of 2008.[6]

For example, Comcast currently markets voice telephone service to more than 45 million homes, which represents 90 percent of its cable footprint. As of June 2008, Comcast had more than 5.6 million voice telephone customers and it added approximately 1.2 million VoIP customers in the first half of 2008 — an increase of 27 percent since the end of 2007.[7] Likewise, Time Warner Cable had more than 3.4 million voice telephone customers as of June 2008 which represents a 13 percent penetration of service-ready homes passed, and it added 531,000 VoIP customers during the first half of

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[4] *Id.* ¶ 43.

[5] *See* Craig Moffett et al., Bernstein Research, *U.S. Telecom, Cable & Satellite: Value Migration Accelerates* at 22, Exhibit 34 (Sept. 3, 2008).

[6] Benjamin Swinburne & David Gober, Morgan Stanley, *Cable Guy II: Revisiting Our Bullish Cable/Satellite Thesis* at 5 (Sept. 3, 2008).

[7] Financial Tables *attached to* Press Release, "Comcast Reports Second Quarter 2008 Results" (July 30, 2008) (available at http://media.corporate-ir.net/media_files/irol/11/118591/Earnings_2Q08/Q208.htm).

2008 — an increase of more than 18 percent since the end of 2007.[8] Cox currently serves more than 2.5 million telephone subscribers.[9] As of June 2008, Charter provided telephone service to approximately 1.2 million customers, which represents a 12 percent penetration of service-ready homes passed, and an increase of more than 22 percent over the number of customers it served at the end of 2007.[10] Independent VoIP providers also have been successful in gaining customers.[11] As a result, analysts report that VoIP providers continue to experience double-digit growth rates, and that they are expected to add more than 4 million customers in 2008.[12] Analysts estimate that cable and

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[8] Press Release, "Time Warner Cable Reports 2008 Second-Quarter Results" (Aug. 6, 2008) (available at http://files.shareholder.com/downloads/TWC/401404825x0x218765/fb7b1498-0032-494d-914e-d39cd69155db/q22008earnings.pdf); Press Release, "Time Warner Cable Reports 2008 First-Quarter Results" (Apr. 30, 2008) (available at http://files.shareholder.com/downloads/TWC/401404825x0x191457/0c619a0a-8bf4-4b99-a1ee-5c69507980a6/q12008earnings.pdf).

[9] News Release, "Cox Communications Receives J.D. Power and Associates' Highest Honor in Regional Residential Telephone Customer Satisfaction for Sixth Consecutive Year" (Sept. 15, 2008) (available at http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=1197098&).

[10] Press Release, "Charter Reports Second Quarter Financial and Operating Results" (Aug. 5, 2008) (available at http://phx.corporate-ir.net/phoenix.zhtml?c=112298&p=irol-newsArticle&ID=1183565&highlight=).

[11] For example, Vonage, the largest independent VoIP provider, serves more than 2.6 million customers, having experienced a nearly 7% increase in customers since June 2007. *See* Vonage Holdings Corp. Reports Second Quarter 2008 Results (Aug. 7, 2008) (available at http://pr.vonage.com/releasedetail.cfm?ReleaseID=326895). Skype, a subsidiary of eBay, allows customers to make free Skype-to-Skype voice and video calls and send instant messages using its software; as of June 2008, more than 338 million people have registered to use Skype's service — an increase of more than 118 million users since June 2007. *See* eBay Inc., Form 10-Q at 22 (SEC filed July 24, 2008).

[12] *See* Benjamin Swinburne & David Gober, Morgan Stanley, *Cable Guy II: Revisiting Our Bullish Cable/Satellite Thesis* at 6, Exhibit 10 (Sept. 3, 2008); Craig Moffett et al., Bernstein Research, *U.S. Telecommunications: Wireline Unplugged* at 36, Exhibit 52 (June 2008).

independent VoIP providers will serve more than 36 million subscribers — over 30 percent of U.S. households — by the end of 2011.[13]

In addition, consumers continue to flock to wireless services. During the last three years for which Commission data are available, the number of wireless subscribers has grown by an average of nearly 23 million new subscribers each year, and there were more than 249 million wireless subscribers as of June 2007.[14] Moreover, government estimates are that 15.8 percent of households have fully "cut the cord" — and use *only* wireless phones, while some analysts estimate that the percentage of households that have cut the cord will reach 19 percent by the end of the year, and a third of households by 2012.[15] Another 13.1 percent of households that have both wireless and wireline phones using their wireless phones almost exclusively, and those numbers have been steadily increasing.[16] Indeed, annual wireless usage has increased to more than 2.2 *trillion* minutes in 2008 from approximately 195 billion in 2000[17] with "[c]lose to half the

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[13] *See* Jeff Wlodarczak et al., Wachovia Capital Markets, *U.S. Q1'08 Video/Data/Phone Trends* at 12 (May 15, 2008).

[14] Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Local Telephone Competition: Status as of December 31, 2007* at Table 14 (Sept. 2008) ("*FCC Local Competition Report*").

[15] *See* Stephen J. Blumberg & Julian V. Luke, Div. of Health Interview Statistics, Nat'l Ctr. for Health Statistics, CDC, *Wireless Substitution: Early Release Estimates from the National Health Interview Survey, July-December 2007* at 1 (May 13, 2008) ("*CDC Wireless Survey*"); Simon Flannery et al., Morgan Stanley, *Cutting the Cord: Voice First, Broadband Close Behind* at 3, Exhibit 2 (Oct. 1, 2008).

[16] *See CDC Wireless Survey* at 3.

[17] *See* CTIA, *Wireless Quick Facts: Mid-Year Figures*, http://www.ctia.org/advocacy/research/index.cfm/AID/10323 (comparing annualized data for June 2008 with June 2000).

minutes of use in the U.S. . . . now wireless."[18] Analysts estimate that those with wireless and wireline telephones make 68 percent of all their long-distance calls, and 51 percent of all their local calls, on their wireless phones, rather than their wireline phones.[19] Wireless providers are also deploying third- and fourth-generation wireless networks, which give consumers the ability — much like IP-based wireline services — to engage in simultaneous voice and data communications. Indeed, the next generation of wireless services is expected to utilize VoIP and other IP-based technologies to integrate further the suite of communications services available to consumers.

Unsurprisingly, the flip side of this massive growth in intermodal services is a comparably large decline in traditional wireline services. The Commission's most recent data show that end-user switched access lines declined by almost 34 million lines — to less than 158.5 million — from a peak of nearly 192.4 million lines in December 2000.[20] Traditional wireline access minutes have also been decreasing significantly: from a high of about 792 billion interLATA minutes in 2000 to less than 544 billion such minutes in 2006.[21] And industry analysts estimate that, by the end of 2008, traditional, wireline telephone companies will provide circuit-switched telephone service to only 64 percent of the more than 107 million households with some form of telephone service.[22]

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[18] Tim Horan and Ned Baramov, Oppenheimer, *Cautious on the RLEC Sector* at 23 (June 18, 2008).

[19] *See* Margo DeBoer, Yankee Group, *One in Seven US Households Say "No Thanks" to Wireline Phone Services in 2010*, at 4, Exhibit 2 (Dec. 2006).

[20] *See FCC Local Competition Report* at Table 1.

[21] *See* Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Trends in Telephone Service* at Table 10.2 (Aug. 2008).

[22] *See* Jeff Wlodarczak et al., Wachovia Capital Markets, *U.S. Q1'08 Video/Data/Phone Trends* at 12 (May 15, 2008).

All available evidence suggests that the trends in favor of wireless and IP-based services — and away from traditional wireline services — will continue and that these changes will continue to have significant and ever-increasing effects on the communications marketplace.

2. The Commission should eliminate its *Computer III* requirements, including the CEI and ONA requirements.

A. In its pre-divestiture *Computer II* proceeding, the Commission established a regulatory framework that distinguished between "basic" transmission services, which were subject to full common carrier regulation under Title II of the Act, and "enhanced" services, which were subject to minimal, if any, regulation under Title I.[23] Based on its perception that an incumbent LEC's (ILEC) telephone network was the "primary, if not sole facilities-based platform available for the provision of [enhanced] services to consumers,"[24] the Commission required AT&T to offer enhanced services through a structurally separate affiliate in order to prevent AT&T from: (i) using its dominant position in local telephone services to obtain an anticompetitive advantage over rival ESPs by shifting costs from its enhanced services operations to its regulated services, and (ii) discriminating against unaffiliated ESPs in the provision of then-bottleneck basic

[23] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Final Decision, 77 F.C.C.2d 384 (1980) (*Computer II*). Under this framework, a basic service is an offering of pure transmission capability for the movement of information that is virtually transparent to the end user. *Id.* ¶ 95. An enhanced service is one that "combines a basic service with computer processing applications that act on the format, content, code, protocol or similar aspects of a subscriber's transmitted information," or that involves "subscriber interaction with stored information." *Id.* ¶ 5.

[24] *Title I Order* ¶ 3.

network services.[25] The Commission acknowledged that requiring structural separation inevitably would impose inefficiencies, as well as other costs and burdens, on AT&T that ultimately would redound to consumers' detriment, but found that, under then-existing market conditions, these costs were outweighed by the benefits of minimizing the risk of anticompetitive conduct.[26] It observed, however, that the "locus of the balance changes with circumstances," and committed to "adjust the balance as circumstances change or additional evidence is brought to light."[27]

Following divestiture of AT&T in 1984, the Commission extended the structural separation requirements of *Computer II* to the BOCs.[28] Two years later, in the *Computer III* proceeding, the Commission undertook a fundamental reexamination of its rules and policies for regulating telecommunications and computer services "in light of the continuing significant changes in the communications and computer services marketplaces."[29] At that time, it determined that the costs ("in lost innovation, inefficiency, and delay") of the structural separation requirements imposed on AT&T and the BOCs in *Computer II* "substantially outweigh[ed] their benefits" in preventing cross-

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[25] *Id.* ¶¶ 23-25. The Commission required other facilities-based common carriers to provide the basic transmission services underlying their enhanced services pursuant to tariff under Title II of the Act, but did not subject them to the strict structural separation required of AT&T. *Computer II* ¶ 231.

[26] *Computer II* ¶¶ 8-12.

[27] *Id.* ¶ 12.

[28] *Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Equipment by the Bell Operating Companies*, Report and Order, 95 F.C.C.2d 1117, ¶¶ 2-4 (1983).

[29] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, Report and Order, 104 F.C.C.2d 958, ¶¶ 1-2 (1986) ("*Computer III*") (noting that the Commission "sought to tailor more directly the extent of [its] regulation to the degree of competition in particular markets, in order to permit the public to realize the full benefits of competition where competition can function").

subsidization and discrimination.[30] The Commission therefore eliminated these requirements, replacing them with a regime of non-structural safeguards – in particular, its CEI and ONA rules.[31]

The CEI rules require a BOC's enhanced services operations to obtain the basic services it uses to offer enhanced service pursuant to tariff, and to offer those basic services to unaffiliated ESPs under the same tariffs and on an unbundled and functionally equal basis.[32] They also require a BOC to establish, maintain and post on the Internet service-specific CEI plans that describe the basic services that underlie each enhanced service (or group of services) and how a BOC will provide unaffiliated ESPs with equal access to those services consistent with nine CEI parameters.[33] Additionally, a BOC must notify the Commission of any changes to its CEI plans.[34]

The ONA rules require the BOCs to develop and maintain detailed plans for unbundling and making available to ESPs the basic components of their networks irrespective of whether the BOCs' enhanced services operations utilize those components

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[30] *Id.* ¶ 2.

[31] *Id.* The Commission relieved legacy AT&T (*i.e.*, AT&T Corp.) of the obligation to comply with most of the CEI and ONA requirements when it declared AT&T non-dominant in 1995. *Title I Order* ¶ 26 n.69.

[32] *Id.* ¶ 27.

[33] *Id.* The Commission's rules originally required affirmative Commission approval of CEI plans. As a result, many enhanced services were delayed for years while the Commission considered comments that were filed in opposition to the BOCs' proposed CEI plans. Once the Commission replaced the requirement for prior approval with an opportunity to file complaints alleging that a posted CEI plan violated Commission rules, new enhanced services could be offered more promptly. Moreover, the Petitioners are unaware of a single complaint filed against any CEI plan.

[34] *Id.* ¶ 30.

in providing enhanced services to end users.[35] In the *BOC ONA Reconsideration Order,* the Commission required a BOC to make available as ONA services certain OSS capabilities (including service order entry and status; trouble reporting and status; diagnostics, monitoring, testing and network reconfiguration; and traffic data collection).[36]

The ONA rules also establish a series of procedural requirements governing the amendment of the BOCs' ONA plans. In particular, the ONA rules establish procedures for unaffiliated ESPs to request that a BOC offer a new tariffed service. Specifically, a BOC must respond to a request for a new service within 120 days of receiving the request, and, in evaluating the request, must consider: market demand for the new service, the utility of the new service to ESPs, the feasibility of offering the service based on its cost, and the technical feasibility of offering the new service.[37] Finally, the ONA rules subject the BOCs to detailed and extensive annual, semi-annual and quarterly reporting requirements, as well as an obligation to file annual sworn declarations relating to those requirements.[38]

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[35] *Id.* ¶ 28. The ONA rules require the BOCs to separate and make available four groups of components: (1) BSAs (switching and transport services that allow an ESP to communicate with its customers via the BOC's network); (2) BSEs (optional unbundled features, such as calling number identification, that an ESP may find useful in configuring an enhanced service); (3) CNSs (optional unbundled basic service features that end users may obtain from a carrier to access an enhanced service such as call waiting and forwarding); and (4) ancillary network services ("ANSs") (non-common carrier services, such as billing and collection, that ISPs might find useful). *Id.* n. 78.

[36] *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 3084, ¶ 26 (1990) ("*BOC ONA Reconsideration Order*").

[37] *Title I Order* ¶ 30.

[38] *Id.*

B. As shown above, the assumptions underlying the *Computer Inquiry* rules are no longer valid. The CEI and ONA rules have become anachronisms that no longer reflect the realities of the communications marketplace, in which the Commission itself has recognized that "separate and different"[39] technologies and platforms now compete for the same customers.

The Commission has eliminated the application of these rules to wireline broadband Internet access services and Verizon's other broadband transmission services. As the Commission found, the development of new platforms, services, and service providers since 1966 – and the concomitant competitive pressures created by customers' migration to those new platforms, services, and service providers – now give the BOCs business reasons to sell services and facilities to unaffiliated enhanced service providers in order to keep customers on their networks. Far from having incentives to discriminate against unaffiliated ESPs, which was the animating assumption behind the CEI and ONA requirements, the BOCs have ample incentive under current market conditions to keep as much traffic as possible on their networks, and thus maximize utilization of those networks, in order to achieve economies of scale and scope.[40]

Nevertheless, the CEI and ONA rules remain in force for other enhanced services the BOCs provide today, and BOCs must consider the requirements of the rules in the development of new services. For example, if a BOC were to offer a new enhanced service or provide an existing service using a new BSE, the CEI and ONA rules could

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[39] *Id.* ¶ 42.

[40] *See id.* ¶ 64 (competition provides the BOCs incentives to continue making services available to enhanced service providers in order to "maximize[e] the traffic on their networks, as this enables them to spread fixed costs over a greater number of revenue-generating customers").

require it to develop a CEI plan and/or amendments to its CEI plan, and the BOC also could be required to develop and tariff new basic service arrangements, basic service elements, and possibly complementary network services. In some instances, the BOC might have to consider whether it would need to tear apart what would otherwise be an integrated service, so that an underlying transmission service could be created and tariffed, rather than designing services in the most cost efficient and consumer-friendly manner. These requirements, at the very least, could prevent the BOCs from designing and offering enhanced services in an efficient manner. In some cases they could even cause the BOCs to shelve new services if complying with the rules made offering them uneconomical. The CEI and ONA rules thus may stifle BOC incentives to develop and deploy new services.

Moreover, the CEI and ONA rules also could undermine competitive conditions in the enhanced services market, rather than promoting competition as intended. In particular, if a BOC were to offer a new enhanced service, it would be required to disclose publicly how it would do so even before making that service available, and also to take any underlying basic services through a publicly available tariff. As a result, the CEI and ONA requirements would give unaffiliated ESPs advance information about new BOC competitive offerings. As the Commission has long recognized, advance publication of prices and other terms and conditions in a competitive market undermines competition in many ways, including: reducing incentives to innovate and to make rapid, efficient responses to changes in demand and cost; facilitating price coordination; and limiting the ability of customers to obtain services that are tailored to their specific

needs.[41] The CEI and ONA requirements thus may deny consumers the benefits of new services and lower prices that would result from allowing the BOCs to compete on an equal footing with all other enhanced services providers.

C. As shown above, continued application of the remaining CEI and ONA requirements significantly increases the BOCs' costs of providing information services and inhibits the BOCs' ability to compete vigorously. By contrast, the Commission's CEI and ONA rules do not apply to other providers of voice services, including the "all distance" offerings of cable and over-the-top VoIP providers. Subjecting only the BOCs to these anachronistic and costly regulations in a competitive marketplace stifles innovation and investment, skews competition, and harms consumers by slowing the development of new services and increasing the costs of offering them.[42]

3. The Commission also should eliminate the requirement for price cap carriers to maintain Continuing Property Records. The Commission has recently eliminated a number of outdated reporting requirements that applied to certain ILECs.[43] The Commission found that "it is generally not in the public interest to continue to impose the [specified] ARMIS . . . reporting obligations on a subset of providers."[44] Having taken this significant step, the Commission should go on to eliminate the

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[41] *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Further Notice of Proposed Rulemaking, 84 F.C.C.2d 445, ¶ 87 (1980).

[42] *See id.* ¶¶ 65-70, 85.

[43] *Petitions of AT&T Inc., et al. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WC Docket No. 07-139, et al., FCC 08-203 (Sept. 6, 2008).

[44] *Id.* ¶ 21. *See also* ¶¶ 17-18.

requirements in Part 32 of its rules that prescribe specific requirements for recording investment in property, plant, and equipment and for maintaining certain supporting records, including basic property records and Continuing Property Records ("CPR").[45] Like the ARMIS reports, it is no longer in the public interest to maintain these requirements.[46]

The Commission's property record rules were developed under rate-of-return regulation and are no longer in the public interest under price cap regulation.[47] Under the Commission's price cap regime, carriers' interstate rates are unaffected by underlying accounting costs or the property records the Commission's rules require them to maintain.

Despite this, the information that price cap carriers must maintain in order to comply with the Commission's property records rules is voluminous. In effect, Verizon must preserve all documentation pertaining to an asset for the entire life of that asset; in some instances that can involve decades which can result in an inordinate amount of data. Most competitive companies are not subject to these detailed reporting requirements, and their application only to some competitors skews the market.

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[45] ILECs are required to account for investment in property, plant, and equipment in the 2000 series of accounts in Part 32. The requirements for maintaining basic property records and CPR are contained in, respectively, 47 C.F.R. §§ 32.2000(e) and (f).

[46] While Verizon has a pending petition seeking forbearance from these reporting requirements, *Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket No. 07-273 (Nov. 26, 2007), the Commission can act earlier to eliminate the property reporting requirements through a rulemaking.

[47] *See, e.g., Revision to amend Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies as it relates to the treatment of certain individual items of furniture and equipment costing $500 or less*, Report and Order, 3 FCC Rcd 4464, ¶ 14 (1988).

Seven years ago, the Commission recognized that its property records rules served no real purpose for price cap carriers, but imposed substantial burdens on ILECs. As a result, the Commission "tentatively conclude[d]" that it "should eliminate our detailed CPR rules in three years."[48] That time period has long since passed. The public interest is not served by compelling Verizon and other price cap carriers to keep property records beyond the period required by Generally Accepted Accounting Principles ("GAAP"), which is the standard with which publicly-traded companies in all other industries must comply.

Instead, other legal requirements, many of which apply to all competitors, compel price cap carriers to maintain accurate records of their assets. For example, Verizon is subject to expanded recordkeeping and reporting obligations in its capacity as a publicly traded company, including those imposed by the Securities and Exchange Commission, GAAP, the Foreign Corrupt Practices Act, and the Sarbanes-Oxley Act. In addition, the Commission has adopted and expanded reporting requirements for all telecommunications carriers and broadband providers through its Form 477. The information that Verizon must record, maintain, and disclose in order to comply with these legal and regulatory obligations obviates the need for the continued enforcement of the Commission's property records rules and they should be eliminated.

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[48] *2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19911, ¶ 212 (2001).

Conclusion

For all the foregoing reasons, the Commission should eliminate the specified rules and requirements, which are "no longer necessary in the public interest."

Respectfully submitted,

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