distorts the competitive landscape without any demonstrable benefit to consumers. Instead, it increases the operating costs of small and mid-sized ILECs, the voice carriers least able to afford additional burdens, particularly as they compete against voice providers that do not have the same regulatory obligations. Consequently, these ILECs must divert resources that could contribute to bringing customer advanced services, including broadband.

The overview of the market for voice services presented above demonstrates that small and mid-sized ILECs are subject to vigorous competition from all platforms. They no longer have market dominance. With cord cutters at record levels, and consumers shifting from making traditional "long distance" calls to substituting wireless "all distance' or VoIP service, wireline long distance is eroding. As explained above, approximately 44.5 percent of customers are primarily using these alternatives to traditional wireline long distance services for their long distance calling as part of an "all-distance" package. In this competitive market, small and mid-sized ILECs cannot afford to be handicapped in their ability to compete. By requiring them to divert tight resources to the provision of EA Scripting, the Commission is inadvertently placing these carriers at a competitive disadvantage when they no longer have offsetting market power.

The EA Scripting Requirement is particularly anachronistic for small and mid-sized ILECs. Unlike companies such as Verizon and AT&T, they generally do not have significant, facilities-based long distance affiliates. Indeed, typically, small and mid-sized ILECs compete in the long distance market by reselling long distance service they secure on a wholesale basis from their own long distance competitors, including affiliates of the very companies that have already received forbearance from the EA Scripting Requirement. Small and mid-sized ILECs, unlike AT&T, and Verizon also generally do not have facilities-based wireless affiliates to help counterbalance overall corporate revenue declines caused by the loss of traditional long distance revenue to wireless competition. Thus, waiving the EA Scripting Requirement is all the more appropriate for small and mid-sized ILECs.

In light of competition and the need for a level playing field for all,[90] requiring only small and mid-sized ILECs to abide by the EA Scripting Requirement is inconsistent with the public interest. Cross-platform competition is trending upward and the market will continue to exert price discipline on long distance offerings to the benefit of consumers. Continuing to single out small and mid-sized ILECs for a regulatory obligation originally designed to foster a fledgling stand-alone long distance market injects a regulatory distortion into what is now a much broader and more competitive communications market. In addition, continued application of dialing parity obligations provide further assurance that waiving the EA Scripting Requirement will not cause competitive harm. Waiver of the EA Scripting Requirement will therefore better serve the public interest than its continued application to a subset of ILECs.[91]

1. Waiver Will Serve Equity by Removing a Unique and Unwarranted Hardship from Small and Mid-Sized ILECs

The EA Scripting Requirement imposes an undue hardship on small and mid-sized ILECs that alone are still subject to it.[92] Currently, these small and mid-sized ILECs alone are forced to spend staff time developing creating rotating lists of wireline long distance carriers and to read these lists to their customers. For example, staff of Blackfoot Communications, a USTelecom member company in Missoula, Montana with fewer than 20,000 access lines, at regular intervals must gather data on competing wireline carriers, then once a week randomly select the carriers to put on a list provided to its marketing staff, which is printed and posted for Blackfoot staff to

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[90] *See Northeast Cellular*, 897 F.2d at 1166 *citing WAIT Radio* at 1159.
[91] *See Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1159.
[92] *See WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

read to its customers. This wastes the time and effort of various staff members, and raises the already high costs of providing service. It also potentially creates an annoyance for Blackfoot's customers when they listen to the list as if they were still in the MFJ-era of wireline only long distance service when there were no cross-platform "all-distance" options. Moreover, it is inequitable to impose this burden of the EA Scripting Requirement only on one small segment of the telecommunications industry. Other providers of voice services do not have this burden and can compete more efficiently and effectively without the time and money involved in complying with this outdated requirement. Equity therefore counsels lifting the EA Scripting Requirement from the shoulders of small and mid-sized ILECs.[93] Waiver is therefore warranted to better serve consumers whose service providers now struggle under this unique burden, which adds costs and inefficiencies to those least able to shoulder them.

2. <u>Public Policy No Longer Favors the Equal Access Scripting Requirement</u>

The public policy underpinning the EA Scripting Requirement no longer exists. First, USTelecom members face a highly competitive market for long distance and one in which there is excess capacity. This market exerts price discipline. Small and mid-sized ILECs cannot significantly raise their rates for long distance service without losing customers to their competitors.

Second, there is no need to tell consumers about one segment of the market for long distance services. The days when consumers were unaware of long distance options are long past. Advertising spend by providers of "all-distance" and bundled communications services demonstrates that consumers are aware of the multiplicity of choices in the marketplace.[94]

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[93] *Id.*
[94] *See* section II.B.5 *supra.*

Consumers now avail themselves of a host of options, increasingly cutting the cord and/or relying on their mobile phones for "all-distance" calling; selecting bundled services including broadband, voice and video from a single provider; or perhaps choosing a dial-around or calling card option.

3. Waiving the Equal Access Scripting Requirement Will Benefit Consumers

As demonstrated above, ILECs are subject to the discipline of the market, which ensures that consumers have a range of choices for long distance and "all-distance" service at reasonable prices. Approximately 44.5 percent of all voice customers have already turned to cable and wireless as their primary provider[95] and whatever their primary choice for local service, a large proportion of all customers use an "all-distance" plan whenever they make long distance calls. In light of all the different options for long distance service, it is actually counterproductive to require an ILEC to provide lists of wireline long distance providers. The unduly narrow focus of the EA Scripting Requirement may cause consumers not to investigate other available alternatives for their long distance service.

With vigorous intermodal competition, the rationale for the EA Scripting Requirement disappears. Requiring an ILEC to recite a list of alternative *wireline* providers makes no sense in an intermodal environment. It not only fails to mirror real market conditions, but it distorts them. As the Commission has already found, "competition for stand-alone long distance

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[95] *See supra* at n. 45. Based on the 2007 and 2008 figures, cable had at least 16.5 million lines (1st quarter 2008), representing 14.3 percent of households, as discussed in section I. B. 2. Wireless only households were 17.1 percent (2nd quarter, 2008), and wireless mostly households were 13.1 percent (4th quarter, 2007), as discussed in section 1. B. 3. The substantial and growing use of alternatives to presubscribed long distance obtained through a wireline ILEC is more than sufficient to ensure that customers have the ability to choose from a number of providers and alternative platforms. In this situation, the Equal Access Scripting Requirement is no longer necessary.

services would function better absent the market-place distorting effects of the current EA Scripting Requirement."[96] Placing costs on just one subcategory of voice providers runs counter to the Commission's expressed desire to establish regulatory parity, whenever possible.

The EA Scripting Requirement wastes the time of consumers. Consumers now have more competitive choices and their knowledge about these choices is much broader than they were over 20 years ago when the EA Scripting Requirement was put in place. ILEC competitors have engaged in significant, widespread advertising campaigns to ensure that consumers are aware of their choices in the marketplace. As we have demonstrated above, cable and wireless spending on advertising is in the top tier of all advertising spend, ensuring that customers know about their choices in the marketplace.[97]

Finally, continued application of section 251(b)(3) of the Communications Act[98] provides further assurance that the grant of this Petition will not result in competitive harm. The requirement for dialing parity contained in section 251(b)(3) is separate from and unaffected by this Petition. Small and mid-sized ILECs would continue to be subject to the obligations of section 251(b)(3) that require ILECs to offer nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays.

B. The Equal Access Scripting Requirement Disserves the Commission's Goals

The retention of the EA Scripting Requirement for independent ILECs runs counter to the three goals that the Commission set in the NOI. As the Commission stated,

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[96] *Equal Access Memorandum Opinion and Order* at 16500 ¶ 122.
[97] *See* notes 52-55 *supra* and accompanying text.
[98] 47 U.S.C. § 251(b)(3).

"First, we seek to facilitate an environment that will be conducive to competition, deregulation and innovation. . . . Second, we seek to establish a modern equal access and nondiscrimination regulatory regime that will benefit consumers. . . .[Third] We also seek to balance regulatory costs against these benefits. Finally, we seek to harmonize the requirements of similarly-situated carriers as much as possible."[99]

Thus, as the Commission suggested, its deregulatory and market-oriented policies are designed to abolish such antiquated regulations so that companies are able compete effectively and innovate more aggressively. Second, as the Commission found when it examined the costs and benefits of equal access scripting with respect to AT&T, Verizon and Qwest, the costs outweigh any possible remaining benefits. Third, as the Commission found, consumers are not benefited by the narrowly focused EA Scripting Requirement, in light of the many cross-platform long distance offerings. The Commission's final goal in the NOI – "to harmonize the requirements of similarly situated carriers as much as possible" – can only be achieved when the Commission frees the remaining ILECs from the unwarranted burdens of the EA Scripting Requirement. It would be, at the least, incongruous, to find that relief for AT&T, Verizon, and Qwest, and their ILEC affiliates would not disserve the public interest, while relief for small and mid-sized ILECs would. The small and mid-sized ILECs are the presubscribed long distance provider for a smaller portion of their local customer base: As of June 30, 2007, 66 percent of AT&T, Verizon, and Qwest residential customers received both local and long distance service

[99] *Equal Access NOI*, 17 FCC Rcd. 4015, 4015-16 ¶ 2.

from the company, while only 61 percent of other ILECs' residential customers received both local and long distance service from their respective companies.[100]

The record in the refreshed NOI proceeding supports this conclusion. The majority of commenters see no need for continuing any equal access obligations.[101] Of those commenters arguing in favor of retention, most focus on the underlying obligation to provide equal access, not on the EA Scripting Requirement. None of the proponents of retaining the EA Scripting Requirement provide *facts* showing that their markets lacks competition. For example, GCI argues that Equal Access Scripting is required because of the lack of true competition, yet as its filing indicates, GCI alone passes 85 percent of all Alaskan households.[102]

In fact, many commenters concede that there is strong intermodal competition and that the EA Scripting Requirement is therefore no longer necessary for consumers subscribing to bundled services, who comprise the vast majority of subscribers. A few commenters try to argue that the EA Scripting Requirement is still a necessity for the small number of consumers who want stand-alone service. This assumes that more than 20 years after the creation of the EA Scripting Requirement, this hypothetical consumer would still be incapable of recognizing an alternative long distance provider and requesting long distance service from that provider. There is no evidence in the record to support such a contention, and in the face of television and radio

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[100] Federal Communications Commission, Local Telephone Competition Status as of June 30, 2007, March 2008, Table 6.
[101] For example, the Independent Iowa Telecommunications Association focused its comments on requirements, such as dialing parity, which are not part of this forbearance petition. To the extent that the unsupported comments are in tension with the solid factual picture presented in the Iowa Telecom market data, we believe that the retention of dialing parity will ensure that there is full and fair competition for a consumer's long distance business.
[102] GCI Comments at 2.

advertising campaigns by all types of long distance provider from cable to dial-around long distance service, this unsupported assertion is unpersuasive.

In the face of realizing the Commission's goal of treating similarly situated entities the same, these make-weight arguments are unpersuasive. The waiver of the EA Scripting Requirement best serves the Commission's goals of streamlining regulations, benefiting consumers, and establishing regulatory parity.

III. Conclusion

The public interest would be served by granting this request for waiver of the EA Scripting Requirement. The EA Scripting Requirement adds a burden on a particular group of competitors – the smaller and mid-sized ILECs – and thereby unnecessarily distorts the market and raises costs for consumers. Removing the last vestige of this regulation will reduce costs now borne by the small and mid-sized ILECs alone (and their customers) and allow them to compete without this handicap. Relief will increase regulatory parity, which further spurs competition, and thus benefits consumers.

EA Scripting is a regulatory regime from which the Commission has already granted forbearance to AT&T, Verizon, and Qwest to achieve intermodal parity. It is time to go the distance and include the independent ILECs in this relief. The same considerations that motivated the Commission to forbear from enforcing the EA Scripting Requirement with respect to AT&T, Verizon, and Qwest compel granting waiver here. Today there can be no doubt that there is a competitive market for long distance services and that consumers have adequate protection. Mid-sized and small independent ILECs compete against wireless and cable providers, as well as facilities-based and over-the-top VoIP providers. Calling cards and dial-around services are also nationally available and popular with a segment of consumers.

All should compete on a level playing field. It is not in the public interest to require USTelecom members to hew to this anachronistic and ineffective regulatory requirement. Applying the EA Scripting Requirement to just one subgroup of voice providers is inequitable and flies in the face of the Commission's consistent efforts to establish regulatory parity.[103] The Commission, accordingly, should now act to waive the EA Scripting Requirement for small and mid-sized ILECs.

Respectfully submitted,

Genie Barton
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November 7, 2008

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[103] *See*, e.g., *Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, 22 FCC Rcd 19531-32 ¶ 1 (2007) ("We believe that these steps we take to ensure regulatory parity among providers of similar services will minimize marketplace distortions arising from regulatory advantage."); *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(C) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements; Petition of the Frontier And Citizens ILECs for Forbearance Under Section 47 U.S.C. § 160(C) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 19478 (2007) ("Forbearing from application of dominant carrier regulation will increase competition by freeing the petitioners from unnecessary regulation and will serve the public interest by promoting regulatory parity among providers of these services.").

APPENDIX A

Appendix A

USTelecom Small and Mid-Sized ILEC Member Companies

ACI (Alenco Communications Inc.)

Amherst Telephone Company

Armstrong Telephone Co.-Pennsylvania

Baca Valley Telephone Company

Beehive Telephone Company

Beggs Telephone Company

Ben Lomand Telephone Cooperative, Inc.

Bergen Telephone Company

Big Bend Telephone Company, Inc.

Blackfoot Telephone Cooperative, Inc.

Blanca Telephone Company

Blossom Telephone Company

BPS Telephone Company

Bush-Tell, Inc.

Cambridge Telephone Co.

Carnegie Telephone Co., Inc.

Carr Communications

Cascade Utilities, Inc.

Center Junction Telephone Co., Inc.

USTelecom Small and Mid-Sized ILEC Member Companies

Central Arkansas Telephone Cooperative

CenturyTel, Inc.

Champaign Telephone Co.

Chapin Telephone Co.

Cherokee Telephone Co.

Chesnee Telephone Co.

Citizens Telephone Company of Brevard

Citizens Telephone Company of Kecksburg

Citizens Telephone Company of Leslie

Citizens Telephone Corporation

Clarksville Mutual Telephone

Clear Lake Independent Telephone Company

Clear Lake Telephone Co.

ComSouth Telecommunications, Inc.

Consolidated Communications

Coon Creek Telephone Company

Coon Valley Farmers Telephone Co.

Cooperative Telephone Exchange

Crown Point Telephone Corporation

Cumberland Telephone Company

USTelecom Small and Mid-Sized ILEC Member Companies

D & E Communications

Danville Mutual Telephone Company

Darien Telephone Company

Delcambre Telephone Company

Delhi Telephone Company

Doylestown Telephone Co.

Dubois Telephone Exchange

Ducor Telephone Co.

Dunbarton Telephone Company

Dunnell Telephone Co.

Duo County Telephone Coop. Corp.

EATEL

Egyptian Telephone Coop. Assn.

Ellington Telephone Co.

EMBARQ Corporation

Empire Telephone Corporation

Epic Touch Company

FairPoint Communications, Inc.

Farmers Telephone Co.

Farmers Telephone Co., Inc.

USTelecom Small and Mid-Sized ILEC Member Companies

Fidelity Telephone Co.

Fishers Island Telephone Corp

Flat Rock Telephone Coop., Inc.

Foresthill Telephone Co.

Fort Jennings Telephone Co.

Fort Mojave Telecommunications, Inc.

Grafton Telephone Co.

Granby Telephone Co.

Grand Telephone Co. Inc

Guadalupe Valley Telephone Cooperative

Gunnison Telephone Co.

H & B Communications Inc

Hamilton Telecommunications

Harmony Telephone Co.

Harrisonville Telephone Co

Hartman Tel Exchanges Inc

Hat Island Telephone Co.

Hawaiian Telcom

Hemingford Co-op Telephone Company

Hickory Telephone Co.

USTelecom Small and Mid-Sized ILEC Member Companies

Highland Telephone Coop.

Hillsboro Telephone Co.

Hinton Telephone Co.

Home Telephone Co.

Home Telephone Co.

Home Telephone Co. Inc.

Hood Canal Communications

Hot Springs Telephone Co.

Inland Telephone Co.

InterBel Telephone Coop., Inc.

Iowa Telecom

Ironton Telephone Co.

Jefferson Telephone Co.

Johnson Telephone Co.

Kalama Telephone Co.

Kaleva Telephone Co.

Kalida Telephone Co.

Keystone Arthur Telephone Co

Kinsman Mutual Telephone

Leaf River Telephone

USTelecom Small and Mid-Sized ILEC Member Companies

Le-Ru Telephone Co.

Lexcom Communications

Lincoln County Tel System, Inc

Lismore Coop. Telephone Co.

LITC Corporation

Livingston Telephone Co.

Lynnville Telephone Company

Mabel Coop. Telephone Co

Madison Telephone Company

Magazine Telephone Company

Marseilles Telephone Company

McClure Telephone Co.

Medicine Park Telephone Co

Mescalero Apache Telecom, Inc.

Metamora Telephone Company

MGW Telephone Co.

Midvale Telephone Exch Inc

Millington Telephone Co.

Minford Telephone Co.

Moapa Valley Telephone Co.

USTelecom Small and Mid-Sized ILEC Member Companies

Monitor Coop. Telephone Co

Monon Telephone Co.

Monroe Telephone Co.

Montrose Mutual Telephone Co.

Mosinee Telephone Co. - Bought Out By TDS Telecom 5/30/2008

Moultrie Independent Tel Co

Mutual Tel Co of Morning Sun

New Hope Telephone Cooperative

Newport Telephone Co.

Niagara Telephone Co.

Nortex Communications

North English Cooperative Tel Co

North Penn Telephone Co.

North State Communications

Northeast Florida Tel Co

North-State Telephone

Noxapater Telephone Co.

NSight Teleservices.

Nucla-Naturita Telephone Co.

Ogden Telephone Company

USTelecom Small and Mid-Sized ILEC Member Companies

Olin Telephone Co Inc

Oneida County Rural Tel. Co.

Onslow Coop Telephone Assn

Oregon-Idaho Utilities Inc.

Pattersonville Telephone Co.

Pattersonville Telephone Co.

Peace Valley Telephone

Pennsylvania Telephone Co

Phillips County Telephone Co.

Pigeon Telephone Co.

Pine Belt Telephone Co. Inc.

Pine Drive Telephone Co.

Pine Telephone System

Pinnacles Telephone Co.

Pioneer Telephone Coop.

Ponderosa Telephone

Pottawatomie Telephone Co.

Prairie Grove Tel. Co.

Price County Telephone Co.

Rainier Connect

USTelecom Small and Mid-Sized ILEC Member Companies

Reynolds Telephone Co.

Rice Belt Telephone Co.

Richmond Networx / Telephone Co.

Rico Telephone Co.

Riviera Telephone Co.

Roome Telecommunications Inc.

Sebastian Telephone Co.

Sharon Telephone Co.

Shawnee Telephone Co.

Shenandoah Telecommunications Company

Sierra Telephone Company

Silver Star Communications

Siskiyou Telephone Co.

Smart City Telecom

Smithville Telephone Company, Inc.

Sodtown Telephone Co.

Solarus

South Canaan Telephone Co.

South Central Utah Tel Assn Inc.

Southern Montana Telephone Company

USTelecom Small and Mid-Sized ILEC Member Companies

Southwest Texas Telephone Co

Spring Grove Cooperative Tel. Co.

Stelle Telephone Co.

Stoneham Coop Telephone

SureWest Communications

Sycamore Telephone Co.

Tatum Telephone Co.

Tenino Telephone Co.

Teton Telecom

Thacker-Grigsby Tel Co Inc

The Grandview Mutual Telephone Co

The Nova Telephone Co.

Toledo Telephone Co., Inc.

Tonica Telephone Co.

Topsham Telephone Co., Inc.

Twin Valley Telephone

Union Springs Telephone Co Inc

Union Telephone Co.

Union Telephone Co.

UNITEL, Inc.

USTelecom Small and Mid-Sized ILEC Member Companies

Van Horne Co-op Telephone Co.

Ventura Telephone Co., Inc

Venus Telephone Co.

Vernon Telephone Coop.

Villisca Farmers Tel

Volcano Telephone Co.

Wahkiakum West Telephone

Waldron Telephone Co.

Washington County Rural Tel Coop

West Central Telephone Assn

West Texas Rural Telephone Cooperative, Inc.

WesTel Systems

Wikstrom Telephone Co., Inc.

Wilkes Telephone & Electric Company

Willard Telephone Co.

Windstream Corporation

Woodstock Telephone Co.

Wyoming Mutual Telephone Co

Yukon-Waltz Telephone Co.

Zenda Telephone Co.