

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

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FCC Mail Room

In the Matter of)
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Review of Wireline Competition Bureau Data) WC Docket No. 10-132
Practices)
)
)
Computer III Further Remand Proceedings: Bell) CC Docket Nos. 95-20, 98-10
Operating Company Provision of Enhanced)
Services; 1998 Biennial Regulatory Review –)
Review of Computer III and ONA Safeguards and)
Requirements)

NOTICE OF PROPOSED RULEMAKING

Adopted: February 8, 2010

Released: February 8, 2011

Comment Date: [30 days after publication in the Federal Register]

Reply Comment Date: [45 days after publication in the Federal Register]

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker issuing separate statements.

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, we continue the Commission's examination of its data practices through the *Data Innovation Initiative*, including the identification of data collections that can be eliminated without reducing the effectiveness of our decision-making.¹ In this proceeding, we propose the removal of the narrowband comparably efficient interconnection (CEI) and open network architecture (ONA) reporting requirements that currently apply to the Bell Operating Companies (BOCs) due to a lack of continuing relevance and utility, and we seek comment on that proposal.

II. BACKGROUND

2. The Commission initiated its *Computer Inquiry* proceedings more than 40 years ago,² and imposed CEI and ONA obligations in the *Computer III* proceedings over 20 years ago.³ The

¹ See *Pleading Cycle Established for Comments on Review of Wireline Competition Bureau Data Practices*, Public Notice, WC Docket No. 10-132, DA 10-1189 (rel. June 29, 2010) (*WCB Data Innovation Initiative Public Notice*).

² See *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Docket No. 16979, Notice of Inquiry, 7 FCC 2d 11 (1966) (*Computer I NOI*); *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Docket No. 16979, Final Decision and Order, 28 FCC 2d 267 (1971) (*Computer I Final Decision*), *aff'd in part sub nom. GTE Service Corp. v. FCC*, 474 F.2d 724 (2d Cir. 1973), *decision on remand*, 40 FCC 2d 293 (1973) (*Computer I*).

³ *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Computer III Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Computer III Phase I Reconsideration Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Computer III Phase I Further Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Computer III Phase I Second Further Reconsideration Order*); *Phase I Order and Phase I Recon. Order vacated sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); CC Docket No. 85-229, Phase II, 2 FCC Rcd 3072 (1987) (*Computer III Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Computer III Phase II Reconsideration Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration Order*); *Phase II Order vacated, California I*, 905 F.2d 1217 (9th Cir. (continued...))

Commission has described the origins and development of those dockets elsewhere in detail.⁴ The Commission adopted comparably efficient interconnection (CEI), open network architecture (ONA), and other nonstructural requirements as alternatives to the *Computer II* structural separation requirements for the BOCs.⁵

3. A BOC that complies with the CEI obligations may offer enhanced services on an integrated basis so long as (i) the BOC's enhanced services operations take under tariff the basic services it uses in offering enhanced services and (ii) the basic services are made available to other enhanced service providers and users under the same tariffs on an unbundled and functionally equal basis.⁶ In addition, the BOC may not discriminate in favor of its own enhanced services operations in providing CEI and must file reports to substantiate that nondiscrimination.⁷ BOCs also must post service-specific CEI plans on the Internet⁸ (*i.e.*, one CEI plan per service or group of services) that describe and demonstrate how a BOC is providing unaffiliated enhanced service providers with equal access to its basic services by its compliance with nine CEI parameters.⁹

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1990); *Computer III Remand Proceeding*, CC Docket No. 90-368, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied sub nom. California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, CC Docket No. 90-623, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order vacated in part and remanded sub nom. California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 514 U.S. 1050 (1995); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (*Computer III Further Remand Notice*), Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040 (1998) (*Computer III Further Remand Further Notice*); Report and Order, 14 FCC Rcd 4289 (1999) (*Computer III Further Remand Order*), *recon.*, 14 FCC Rcd 21628 (1999) (*Computer III Further Remand Reconsideration Order*); see also *Further Comment Requested to Update and Refresh Record on Computer III Requirements*, CC Docket Nos. 95-20, 98-10, Public Notice, 16 FCC Rcd 5363 (2001) (collectively referred to as *Computer III*).

⁴ See, e.g., *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, 3036-40, paras. 33-43 (2002) (*Wireline Broadband NPRM*).

⁵ *Computer III Phase I Order*, 104 FCC 2d at 964, para. 3. An ONA plan includes a description of how a BOC unbundles its network to enable its competitors to provide enhanced services generally. *Id.* at 1019-20, para. 113, 1064-67, paras. 214-19. A CEI plan includes a description of how a BOC unbundles its network to enable its competitors to provide a particular enhanced service or set of enhanced services that the BOC intends to provide. *Id.* at 1055-56, paras. 190-91.

⁶ *Computer III Further Remand Order*, 14 FCC Rcd at 4297-98, para. 4. We note that SBC's advanced services affiliate provides basic services under contracts posted on the Internet, rather than under tariffs, but these services are nevertheless made generally available to the public. See *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, 17 FCC Rcd 27000 (2003) (*SBC Advanced Services Forbearance Order*).

⁷ *Computer III Phase I Order*, 104 FCC 2d at 964, para. 4.

⁸ *Computer III Further Remand Order*, 14 FCC Rcd at 4291, para. 4; *Computer III Further Remand Reconsideration Order*, 14 FCC Rcd at 21629, para. 6.

⁹ *Computer III Further Remand Order*, 14 FCC Rcd at 4291, para. 4; *Computer III Further Remand Reconsideration Order*, 14 FCC Rcd at 21629, para. 6; see *Computer III Phase I Order*, 104 FCC 2d at 1039-42, paras. 155-65. These nine CEI parameters are: (1) the "interface functionality" parameter (the BOC must make available standardized hardware and software interfaces that are able to support the transmission, switching, and signaling functions identical to those used in the BOC's enhanced service, as well as the information and technical specifications associated with these interfaces); (2) the "basic service unbundling" parameter (the BOC must separate the basic service functions that underlie its enhanced service offering from other basic service offerings and (continued...))

4. Unlike CEI plans, ONA plans apply to enhanced services generally and impose more specific and comprehensive unbundling requirements on the BOCs, not unlike section 251's facilities unbundling obligations. Through ONA, BOCs must separate key components of their basic services into "basic service elements," and make those components, or building blocks, available to unaffiliated enhanced service providers to build new services regardless of whether the BOC's affiliated enhanced services operations use these unbundled components.¹⁰ In refining its rules for filing ONA plans, the Commission subsequently categorized the BOCs' "basic service elements" into four groups, which the BOCs are required to make available to information services providers.¹¹ In a subsequent order, the Commission also determined that certain operations support systems (OSS) capabilities – namely service order entry and status; trouble reporting and status; diagnostics, monitoring, testing, and network reconfiguration; and traffic data collection – are ONA services under the Commission's ONA rules.¹² Finally, the ONA rules contain certain procedural requirements governing the amendment of ONA plans. These procedures allow information service providers to request and receive new ONA services and impose various annual, semi-annual, and quarterly reporting requirements.¹³

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_____ must assign a specific rate to them for tariffing purposes); (3) the "resale" parameter (the BOC must "take" basic services used in its enhanced service offerings at their unbundled tariffed rates); (4) the "technical characteristics" parameter (the BOC must provide basic services with technical characteristics that are equal to those used by the BOC in its enhanced service offering); (5) the installation, maintenance and repair parameter (the BOC must provide the same installation, maintenance, and repair intervals to unaffiliated enhanced service providers as it does to its own enhanced services operations, with associated reporting requirements); (6) the end-user access parameter (if a BOC offers its end users the ability to use abbreviated dialing or signaling to activate or access the BOC's enhanced offerings, it must provide the same capabilities to end users all of enhanced services that use the BOC's facilities); (7) the "CEI availability" parameter (the BOC's CEI plan must be available and fully operational the day that the BOC posts it on the Internet, and the BOC must give enhanced services competitors the opportunity to test the CEI facilities and services for their enhanced service offerings); (8) the transport costs minimization parameter (the BOC must provide competitors with interconnection facilities that minimize their transport costs); and (9) the "recipients of CEI" parameter (the BOC cannot restrict the availability of a CEI offering to any particular class of customer or enhanced service competitor). *Computer III Further Remand Order*, 14 FCC Rcd at 4297-99, para. 13.

¹⁰ *Computer III Phase I Order*, 104 FCC 2d at 1064, para. 214.

¹¹ These four groups are: (1) basic serving arrangements (BSAs), which are fundamental tariffed switching and transport services that allow the ISP to communicate with its customers through the BOC network, *see Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1, 36, para. 56 (1988) (*BOC ONA Order*) (noting that examples of BSAs include line-side and trunk-side circuit-switched service and line-side and trunk-side packet-switched service); (2) basic service elements (BSEs), which are optional unbundled features that an ISP may require or find useful in configuring an enhanced service, *see id.*, 4 FCC Rcd at 36, para. 57 (providing calling number identification as an example of a BSE); (3) complementary network services (CSAs), which are optional unbundled basic service features that an end user may obtain from a carrier in order to access or receive an enhanced service such as call waiting and call forwarding, *see id.* (stating that stutter dial tone is a CNS); and (4) ancillary network services (ANSs), which are non-common carrier services that an ISP might find useful such as billing and collection, and protocol conversion, *see id.*

¹² *Filing and Review of Open Network Architecture Plans*, 5 FCC Rcd 3084, 3087, para. 26 (1990) (*BOC ONA Reconsideration Order*).

¹³ *Computer III Phase I Order*, 104 FCC 2d at 1066, para. 218. In 1991, the Commission determined that the BOCs' ONA plans were a sufficient enough safeguard against discrimination to warrant elimination of the *Computer II* structural separation requirement for all enhanced services, notwithstanding their failure to comply fully with the *Computer III* rules. *BOC Safeguards Order*, 6 FCC Rcd at 7599-7601, paras. 62-64. In this same order, the Commission determined that its cost accounting safeguards, in addition to adoption of price cap regulation for the LECs, was a sufficient enough safeguard against cross subsidization to warrant elimination of structural separation. *Id.* at 7577-88, paras. 12-41. In 1994, the Ninth Circuit affirmed the cross subsidization determination (continued....)

5. As part of its 1998 Biennial Review, the Commission sought comment on the interplay between the safeguards and terminology established in the Telecommunications Act of 1996 and the *Computer III* regime,¹⁴ including the continued application of the *Computer III* safeguards to BOC provision of enhanced services.¹⁵ In 2001, the Common Carrier Bureau invited parties to update and refresh the record in these proceedings.¹⁶

6. In 2005, the Commission relieved the BOCs from CEI and ONA obligations with respect to wireline broadband Internet access services offered by facilities-based providers in the *Wireline Broadband Internet Access Services Order*.¹⁷ In 2006, Verizon obtained additional relief from *Computer Inquiry* requirements when its petition for forbearance regarding enterprise broadband services was deemed granted by operation of law without a vote by the Commission, pursuant to section 10 of the Act.¹⁸ In 2007, the Commission forbore from applying the *Computer III* and other BOC-specific *Computer Inquiry* rules to any of AT&T's broadband information services to provide AT&T parity with Verizon.¹⁹ The Commission concluded, among other things, that application of the *Computer III* CEI and

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in the *BOC Safeguards Order*, but vacated and remanded the portion addressing ONA plans because it found that the Commission had not sufficiently explained its conclusion that removing structural separation requirements was in the public interest, given that the ONA requirements the Commission implemented after *Computer III* did not require fundamental unbundling of the BOCs' networks. See *California III*, 39 F.3d at 927-30 (citing *BOC Safeguards Order*, 6 FCC Rcd at 7571). In 1995, the Commission clarified that the Ninth Circuit's partial vacatur of the *BOC Safeguards Order* reinstated the CEI plan requirements and that the BOCs were still required to comply with their ONA plans pending the Commission's review of the ONA regime. *Computer III Further Remand Notice*, 10 FCC Rcd at 8369, para. 11. The Commission also determined that the BOCs could continue to offer existing enhanced services pursuant to the ONA plans that the Commission had approved prior to the Ninth Circuit's decision in *California III*. See *Computer III Further Remand Notice*, 10 FCC Rcd at 8368-69, para. 10 (citing *Bell Operating Companies' Joint Petition for Waiver of Computer II Rules*, Memorandum Opinion and Order, DA 95-36 (Com. Car. Bur. Jan. 11, 1995) (*Interim Waiver Order*)).

¹⁴ Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996).

¹⁵ *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10, Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040 (1999).

¹⁶ *Further Comment Requested to Update and Refresh Record on Computer III Requirements*, CC Docket Nos. 95-20, 98-10, Public Notice, 16 FCC Rcd 5363 (CCB 2001).

¹⁷ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises; Consumer Protection in the Broadband Era*, CC Docket Nos. 02-33, 95-20, 98-10, 01-337, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Order*), *aff'd*, *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

¹⁸ See *Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services Is Granted by Operation of Law*, WC Docket No. 04-440, News Release (rel. Mar. 20, 2006) (announcing that Verizon's petition for forbearance from certain Title II and *Computer Inquiry* requirements for enterprise broadband services was granted by operation of law). Verizon's "deemed granted" petition was upheld in *Sprint Nextel Corp. v. FCC*, 508 F.3d 1129 (D.C. Cir. 2007).

¹⁹ *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C.* (continued....)

ONA requirements unnecessarily constrains how AT&T may offer its broadband transmission services to its enterprise customers, and that removal would promote competitive market conditions by increasing the competitive pressure on all enterprise service providers.²⁰ The Commission subsequently extended the same relief to Qwest.²¹

7. Earlier this year, as part of the agency's reform agenda to improve its fact-based, data-driven decision making, the Wireline Competition Bureau (Bureau) initiated an examination of its data practices to improve the way the Commission collects, uses and disseminates data. The Bureau solicited and received recommendations with regard to four issues: (1) the utility and rationale for each of its existing data collections; (2) additional data that commenters believe the Bureau needs to inform Commission policymaking activities; (3) how it may improve collection and analysis processes for existing collections; and (4) how it may improve dissemination of reports and analyses it produces.²²

III. DISCUSSION

8. We propose to eliminate the remaining narrowband BOC-specific CEI and ONA reporting requirements, and seek comment on this proposal. In its comments, Verizon asserts that these obligations can increase the BOCs' costs of providing information services, and that there is no reason for any of these requirements to continue.²³ AT&T asks the Bureau to determine whether the benefits of the data collected outweigh the burdens associated with its collection, and seeks the elimination of these requirements.²⁴ No commenter or reply commenter in this docket argues for the retention of any of the BOC-specific CEI and ONA reporting requirements.

9. The record supports this proposal. No commenter to the *WCB Data Innovation Initiative Public Notice* has identified any utility to any service provider for the reports and filings that BOCs must generate to comply with CEI and ONA, and since the Commission does not rely on any of these submissions in the course of its decision making, we propose elimination of these remaining *Computer III* requirements. Further, in both the 2006 and 2008 Biennial Review proceedings, where the BOCs sought elimination of the CEI and ONA reporting requirements pursuant to section 11 of the Act,²⁵ no commenter voiced any opposition to their elimination or advocated in support of their continued application.²⁶

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§ 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services, WC Docket No. 06-125, Memorandum Opinion and Order, 22 FCC Rcd 18705, 18733-34, paras. 52-57 (2007) (*AT&T Enterprise Forbearance Order*).

²⁰ *Id.* at 18734, para. 57.

²¹ *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, Memorandum Opinion and Order, WC Docket No. 06-125, 23 FCC Rcd 12260 (2008) (*Qwest Enterprise Broadband Forbearance Order*).

²² *WCB Data Innovation Initiative Public Notice* at 1-3.

²³ Verizon Comments at 4.

²⁴ AT&T at 2-4.

²⁵ 47 U.S.C. § 161.

²⁶ See, e.g., Comments of Verizon, WC Docket No. 06-157 at 32-34 (filed Sept. 1, 2006); Comments of the United States Telecom Association, WC Docket No. 06-157, at 16-20 (filed Sept. 1, 2006); Comments of AT&T Inc., WC Docket No. 08-183, at 2-5 (filed Oct. 6, 2008); Comments of Qwest Communications International, Inc., WC Docket No. 08-183, at 2-7; Comments of Verizon, WC Docket No. 08-183, at 10-12 (filed Oct. 6, 2008).

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

10. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Regulatory Flexibility Analysis

11. The Regulatory Flexibility Act of 1980, as amended (RFA),²⁷ requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”²⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.³⁰ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).³¹ SBA defines small telecommunications entities as those with 1,500 or fewer employees.³² This proceeding pertains to the BOCs which, because they would not be deemed a “small business concern” under the Small Business Act and have more than 1,500 employees, do not qualify as small entities under the RFA. Therefore, we certify that the proposals in this Notice, if adopted, will not have a significant economic impact on a substantial number of small entities.

12. The Commission will send a copy of the Notice, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.³³ This initial certification will also be published in the Federal Register.³⁴

C. Ex Parte Presentations

13. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda

²⁷ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁸ 5 U.S.C. § 605(b).

²⁹ 5 U.S.C. § 601(6).

³⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

³¹ 15 U.S.C. § 632.

³² *See generally*, 13 C.F.R. § 121.201, NAICS Code 517110, Wired Telecommunications Carriers.

³³ 5 U.S.C. § 605(b).

³⁴ *Id.*

summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

D. Comment Filing Procedures

14. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All pleadings are to reference CC Docket Nos. 95-20, 98-10 and WC Docket No. 10-132. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

15. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

16. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington D.C. 20554.

17. *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

18. Parties should send a copy of each filing to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554, or by e-mail to CPDcopies@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

19. Filings and comments will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

E. Contact Persons

20. For further information about this rulemaking proceeding, please contact Jeremy Miller, Industry Analysis and Technology Division, Wireline Competition Bureau at (202) 418-0940.

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 2, 4, 10, 11, 201-205, 251, 271,

272, 274-276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 160, 161, 201-205, 251, 271, 272, 274-276, and 303(r) this Notice of Proposed Rulemaking IS ADOPTED.

22. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Marlene H. Dortch".

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

- Re: *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10; *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*; WC Docket No. 07-38; *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190; *Review of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132.
- Re: *Review Of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10.

Commission policymaking is only as good as the facts and data on which our decisions are based. That's why data reform has been an important priority since I arrived here as Chairman. It's why it's vital that the Commission collect the data it needs to do its job and serve the public, why the Commission shouldn't waste resources collecting data it doesn't need, and why, wherever possible, we should use modern technology to increase the benefits of data collection and reduce the burdens.

It was with these principles in mind that I appointed Mary Beth Richards as Special Counsel for FCC Reform as one of my very first actions, and charged her and our FCC Reform Team, including Chief of our Office of Strategic Planning Paul de Sa, our new Chief Data Officer Greg Elin and the new data officers in the bureaus and offices, Managing Director Steven VanRoekel, and General Counsel Austin Schlick with conducting an agency-wide data review. This Data Innovation Initiative is a comprehensive effort to modernize and streamline how we collect, use, and disseminate data.

I am very pleased that in the first phase of the reform team's review, staff has identified 20 discrete data collections to target for elimination. These are collections that once made sense, but appear to have become unnecessary as technology, markets, and policies have evolved. Today, we are formally proposing the elimination of two of these—the comparably efficient interconnection and open network architecture reporting obligations—and I am instructing the FCC Reform Team and our data officers to move forward on the other 18, while continuing their agency-wide data review.

I'm also pleased to announce that today the Wireline Competition Bureau will be eliminating a separate outdated reporting requirement imposed on a carrier more than 20 years ago. That collection was imposed for reasons that no longer justify the costs it imposes on the carrier, or on the Commission.

We approach the review we launch today—of one of the FCC's most important data-gathering tools, Form 477—in the same spirit of efficient, effective governance. Since 2000, the FCC has relied on data gathered through Form 477 to inform its policies relating to voice and broadband services. In 2004 and in 2008, the Commission made modifications to parts of the Form 477 program in order to collect more information

will also ensure that we don't collect voice and broadband data that we no longer need.

These data efforts are just part of the FCC Reform Team's larger initiative to remove regulatory barriers to a thriving broadband economy. In the last year, the Commission has taken a number of actions to deliver on this goal, including expediting licensing of spectrum that can be used for broadband services; lifting restrictions on some mobile satellite spectrum that can be used for broadband; setting limits on how long localities can take to approve or deny tower sharing requests; significantly streamlining the E-Rate program's application forms; and making it easier for radio stations to certify compliance with our rules.

A few weeks ago, as part of this effort, we launched our biennial review of the FCC's telecommunications regulations to determine which of our regulations are no longer necessary due to competition. Tomorrow we will be hosting a conference with leaders from across the broadband marketplace to identify further opportunities to remove regulatory barriers to broadband buildout. And there is more to come, particularly when it comes to using technology to promote FCC reform and improved interaction with the public.

All of these efforts are in line with the President's recent executive order to ensure that our regulatory systems "use the best, most innovative, and least burdensome tools for achieving regulatory ends" in order to "promot[e] economic growth, innovation, competitiveness, and job creation." As I informed senior staff last week, I expect the FCC to perform its responsibilities consistent with the principles in the executive order.

In the months ahead, we will continue to look for opportunities to use modern technology and common sense to help make the FCC a model of excellence in government. I thank the data reform team for the important reforms it has already identified.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Review Of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10.

Gathering good data—an issue near and dear to this Commissioner’s heart, as I know it is to the Chairman’s—is critical to the FCC’s ability to do its job. For far too many years, we moved away from this responsibility, relying less on our own analysis and substituting limited commercial data for our own. Certainly we should be smart, sparing and efficient about the information we collect to avoid undue burdens. But the public interest must always be our lodestar in these considerations. Consumers are certainly my first and foremost concern, but markets, too, rely on credible and reliable government data. How can a country dig its way out of a recession without solid economic indicators like unemployment numbers and GDP? As I’ve said before, if federal and state governments decided tomorrow to stop gathering data and regulating how it is reported, the U.S. economy would screech to a halt.

If we want the Internet economy to continue to drive growth and opportunity in this country, we must have regular, systematic reporting of high-quality broadband data. How will we know where to invest scarce public resources if we don’t know with any meaningful specificity where broadband is deployed? How can innovators and investors make informed decisions with regard to new technologies and applications if we don’t know the broadband speed that American consumers are actually getting? Without understanding the value proposition broadband offers—that is, the price per bit—how can we promote its adoption and ensure that no American is on the wrong side of the digital divide?

These are not new questions before the Commission. We have asked many of them twice before. In 2008, I concurred with the Commission’s further notice on many of these questions because I believed it was time then for a final Order detailing the kinds and amounts of data the Commission needs to protect American consumers. While I am more optimistic now that we will get action soon, consistency compels me to concur this time, too, on the first Notice before us today, the *Form 477 NPRM*. I look forward to the third time being the charm with a final Order in the very near term.

I vote to approve the second Notice, an NPRM proposing the elimination of legacy reporting obligations stemming from the *Computer Inquiries*. The Commission has already relieved carriers of the underlying obligations, partly through a controversial and altogether untidy “deemed granted” forbearance process. The original idea had been acquiring data to maintain competition. The forbearance process under two previous Commissions was tragically aimed at getting rid of both.

The history behind this item, though, begs a different question—not whether we are collecting data irrelevant to the Commission, but whether we have all the new data the Commission needs to understand what is going on in the world of business, technology and consumer information. I freely admit that the particular information here may be a vestige of a bygone era, but I only want to emphasize that ridding ourselves of unneeded data requirements is actually less important than guaranteeing we have the data we need.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

- Re: *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10; *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*; WC Docket No. 07-38; *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190; *Review of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132.
- Re: *Review Of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10.

Many thanks to Mary Beth Richards and Greg Elin for your presentation. Your dedicated work in conducting a comprehensive review of the Commission's data collection obligations is appreciated. I wholeheartedly support reducing the Commission's regulatory burdens wherever possible, including eliminating certain reporting requirements. I am encouraged to hear that your team has already targeted 20 collections to discontinue soon.

In that spirit, I support the Notice of Proposed Rulemaking which proposes to eliminate the Commission's remaining *Computer III* requirements. Due to various reforms over the years, collection of this information may no longer be necessary, and it does not appear that the Commission relies on this data in its decision making process. In short, collection of this data is likely antiquated and burdensome. I commend the Chairman for taking this step to clear unnecessary regulatory underbrush.

In addition, I support the Notice of Proposed Rulemaking which seeks to modernize the FCC Form 477 Data Program. Given that the Form 477 process has not been reformed in more than 10 years, initiating this proceeding will hopefully result in a more efficient and effective program. It is important for the FCC to obtain appropriate and relevant data to help us make informed decisions, and this rulemaking will open the dialogue on this topic. However, we must ensure that we have adequate legal authority to require the collection of the information discussed in this notice. As such, I was encouraged that the Chairman agreed to ask about our legal authority throughout this rulemaking.

I am hesitant, however, about the section of the notice which discusses whether the FCC should collect broadband pricing information. Although such efforts may have the best of intentions, I am concerned that if the FCC ultimately decides that it should collect broadband pricing information, the process could lay the foundation for the FCC to engage in rate regulation of broadband Internet services in the future. I hope that doesn't happen. I will be interested to learn more about others' perspectives during the comment cycle. In sum, I do support our effort to modernize this process but we must be wary that we aren't taking one step forward and two steps back by reducing data collection requirements in some areas, but then imposing new and unnecessary burdens in other areas.

I thank Sharon Gillett and her team for their long hours working on these two notices, and I look forward to reviewing the record and working with my colleagues and stakeholders on these proceedings.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

- Re: *Modernizing the FCC Form 477 Data Program, WC Docket No. 11-10; Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership; WC Docket No. 07-38; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, WC Docket No. 08-190; Review of Wireline Competition Bureau Data Practices, WC Docket No. 10-132.*
- Re: *Review Of Wireline Competition Bureau Data Practices, WC Docket No. 10-132; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, CC Docket Nos. 95-20, 98-10.*

Good policy must be informed by complete, accurate, and relevant information. We should be mindful, however, that the collection of data for accurate analysis occupies the resources of both industry and the Commission, and that ultimately, consumers and taxpayers are the ones who pay. Accordingly, it is appropriate for the FCC to periodically review the need for the information it requests. Where currently collected data is no longer relevant for the benefit of Congress, the Commission, or consumers, we should begin proceedings to explore the elimination of that information, as we do today, with respect to the CEI/ONA data.

Of course, to the extent that data from industry is required so that we can fulfill our statutory obligations, then it is important that we ensure that the information we obtain is sufficient for us to do so. As such, it is important to periodically assess whether the data we are collecting, relays the information we need to make good policy choices and to issue reports required by statute. With respect to the information we collect on the Form 477, which we use as our primary tool for analyzing the status of local telephone and broadband networks and services, I support the Notice's consideration of modifications to the types of data reported on the Form. As the Notice describes, our various duties to promote policies that ensure universal service, public safety, a competitive communications marketplace, and the reasonable and timely deployment of broadband networks, require that we have the data necessary to make informed decisions, and issue knowledgeable reports, just as Congress intended.

I believe it is appropriate for us to revisit the type of data we seek on the Form 477, given that both a GAO Report and the National Broadband Plan found that the data was insufficient, and limits our ability to fulfill certain of our policymaking and reporting duties. Certainly, we must balance the need for information with the burden that data collection may have on industry. The Notice recognizes this careful balance, by seeking guidance on the possible use and limitations of publicly available or third-party commercial data, to avoid such burdens on industry, including small businesses.

I am pleased that we are exploring the use of additional broadband data, such as pricing information, so that we can better assess affordable and comparable prices. As we consider explicitly supporting broadband networks and service in our USF/ICC Reform NPRM adopted today, it is important that we have the information necessary to determine whether rates in rural areas are comparable to rates in urban areas, so that we can assess whether we have met the goals of Section 254 for ensuring universal service. Furthermore, the Broadband Data Improvement Act, requires that we compare pricing for broadband service with other countries; thus, the collection of pricing information may be necessary to fulfill that obligation.

Finally, I am pleased that we are undertaking a significant effort to allow the public to access the data we collect, as well as our analysis of that information, through our website. It is important that as we are informed, we use every tool at our disposal to inform the public.

Many thanks are due to Mary Beth, Greg and the other data experts, for your work on our Data Innovation Initiative, as well as to the Wireline Competition Bureau for your work on the Form 477 and CEI/ONA Notices.

**STATEMENT OF
COMMISSIONER MEREDITH ATTWELL BAKER**

- Re: *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10; *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*; WC Docket No. 07-38; *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190; *Review of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132.
- Re: *Review Of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10.

I support the process to right-size our data collections and appreciate the comprehensive approach we are taking. I also support the specific decision to review the narrowband *Computer III* CEI and ONA requirements. This is an overdue and welcome step forward. I hope we use the same standard – whether the Commission relies on a submission in the course of its normal decision-making – to make more proposals to eliminate or scale back other outdated data submissions.

The Commission also proposes to potentially expand its data requirements associated with our broadband deployment reporting. I welcome all efforts to ensure that we have reliable and accurate data to inform our decision-making. In a number of places, the *Notice* proposes increases—potentially significant ones—in the type and scope of data gathering required. In the spirit of the broader data initiative, I believe the Commission should act judiciously and answer a few threshold questions before expanding any of our data collection obligations: What is the nexus between the data to be requested and our statutory responsibilities? Is this new data integral to fulfilling a statutory responsibility? Is the data gathering the best and least burdensome means to acquire the data?

I appreciate that many of these questions are explicitly raised in the *Notice*, and welcome the Chairman's recognition of the heavy burden well-intentioned data requests may have on industry. I will be watching this proceeding closely with particular attention on proposals surrounding broadband pricing and customer satisfaction metrics. Thank you.