June 5, 2012

EX PARTE

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 12-61

Dear Ms. Dortch:

This is to inform you that on June 1, 2012, I met with Christine Kurth, Legal Advisor to Commissioner McDowell, in connection with the docket identified above. During this meeting, I reviewed USTelecom's Petition for Forbearance in this docket and summarized the rules for which relief is being requested and the arguments supporting that relief. The attached deck was used for purposes of facilitating this discussion.

Please include this notice in the docket referenced above.

Sincerely,

Glenn T. Reynolds

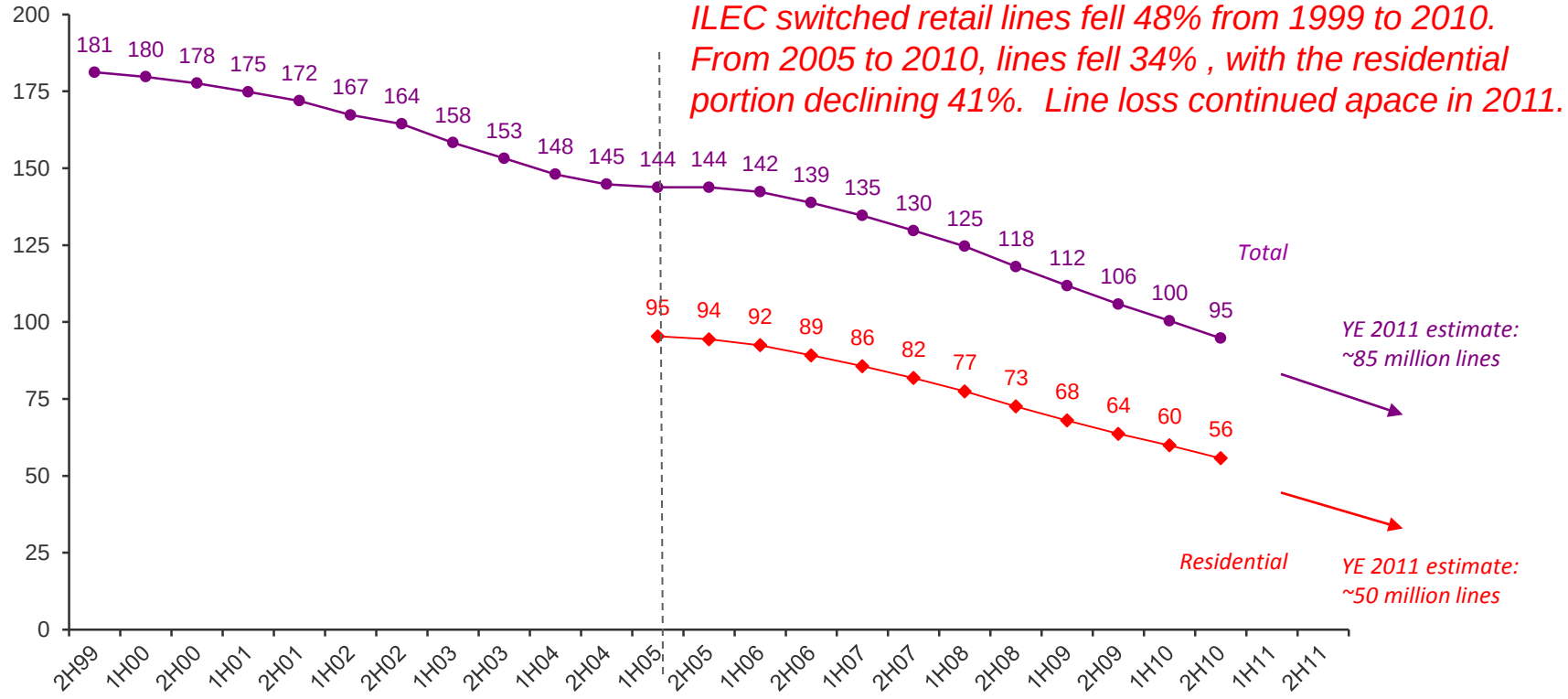
c: Christine Kurth

USTelecom Petition for Forbearance from Legacy Regulations

WC Docket No. 12-61

Legacy Voice Realities

ILEC End-User Switched Access Lines (millions)

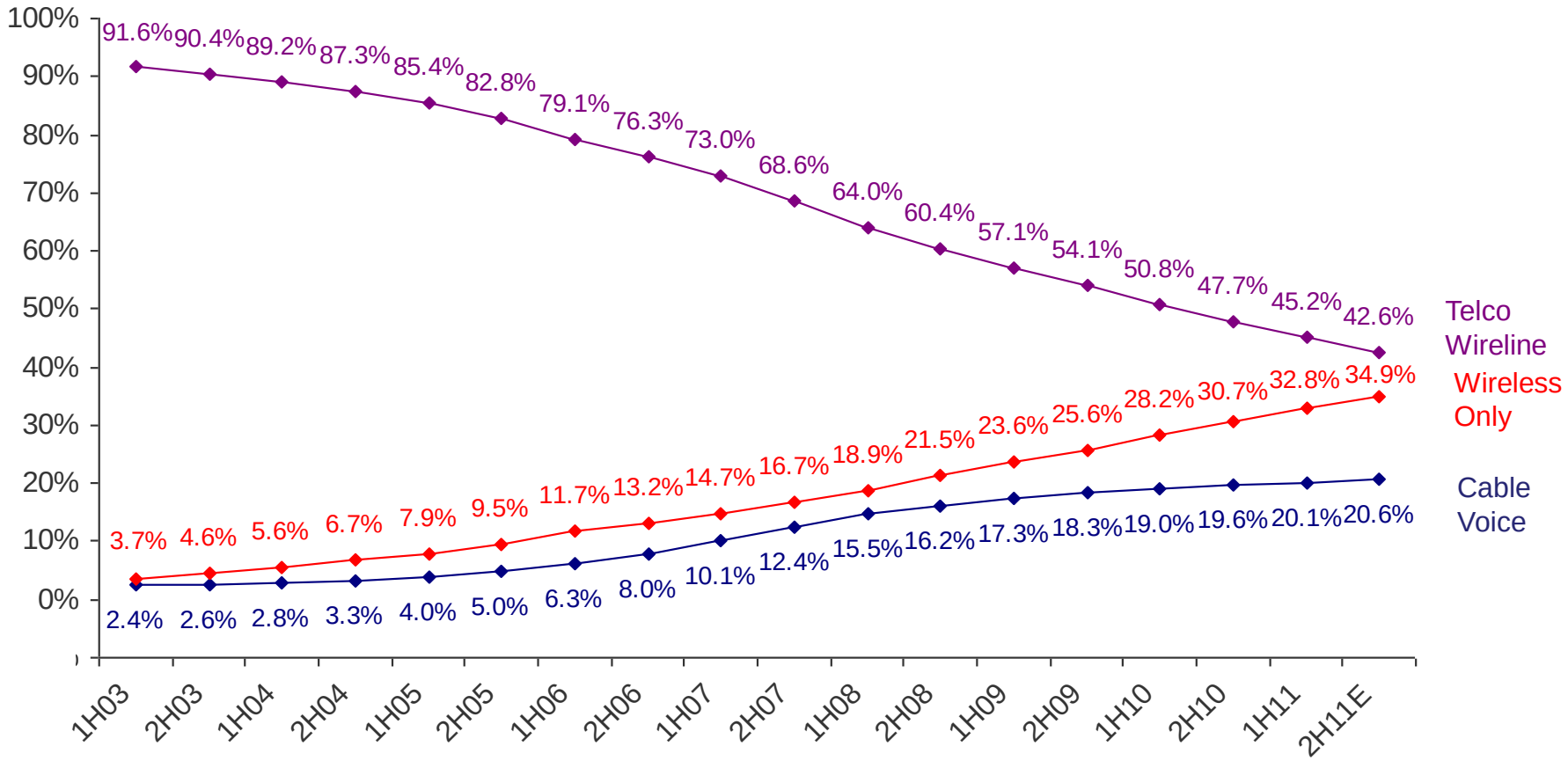


- *Carriers with < 10,000 lines not reporting*
- *Residential and small business line combined*
- *Carriers with < 10,000 lines reporting*
- *Residential and small business lines separated*

Source: Federal Communications Commission, Local Telephone Competition: Status as of December 31, 2010, Tables 2, 4, and 9, and prior versions; company financial statements for AT&T, Verizon, and CenturyLink; and USTelecom analysis.

Wireless-Only and Cable Continue to Take Voice Share

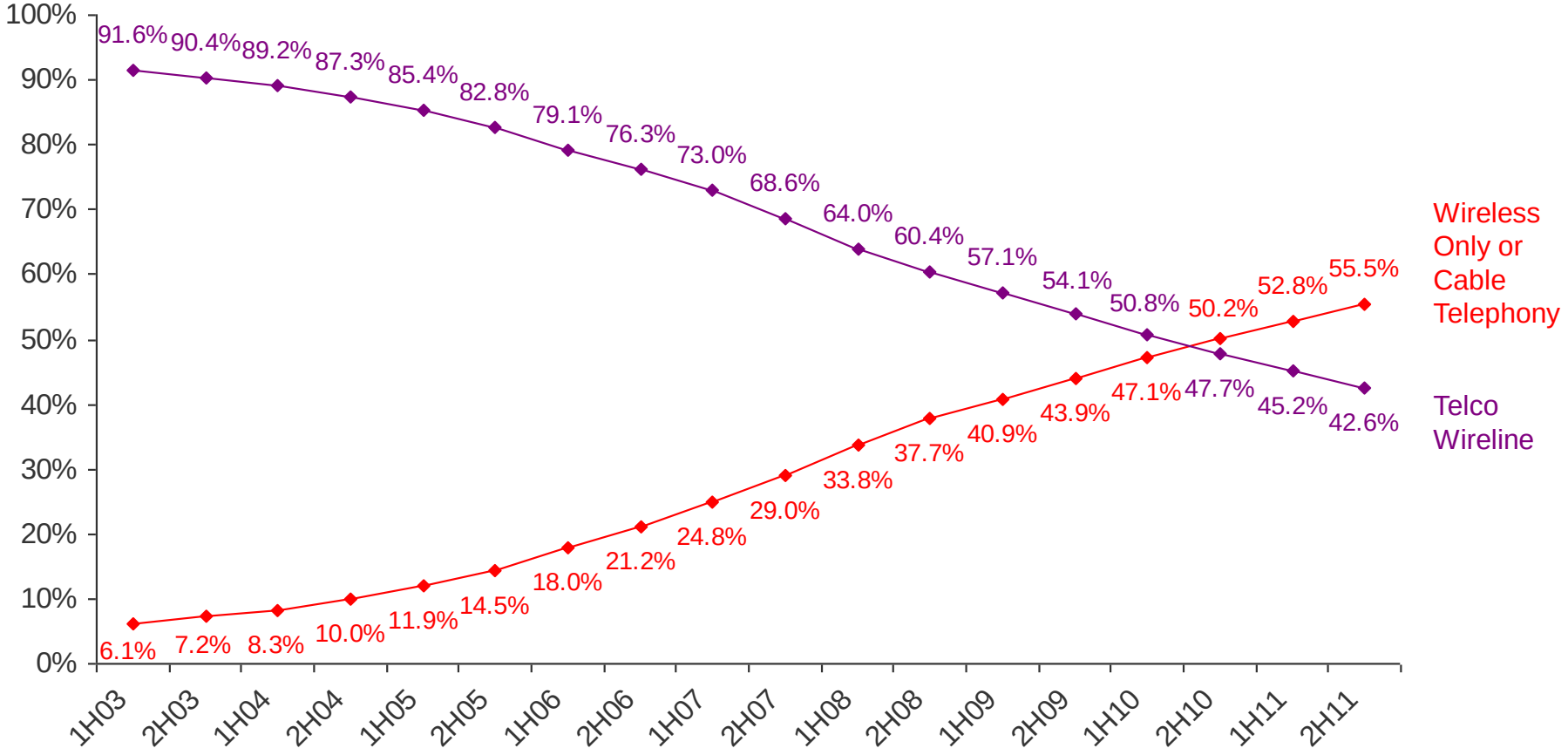
% of U.S. Households Using Telco Wireline and Competitive Voice Alternatives



Source: NCTA; Centers for Disease Control; U.S. Census Bureau; USTelecom Analysis. ~2% of households have no phone.

Majority of U.S. Households No Longer Choose Wireline Voice

% of U.S. Households Using Selected Voice Service Alternatives



Source: NCTA; Centers for Disease Control; U.S. Census Bureau; USTelecom Analysis. ~2% of households have no phone.

Voice Substitution

- *Facilities-based* Residential "Voice Market" shares (YE-2011)
  - ILECS: 43% of HH
  - Wireless-***only***: 35% of HH
    - An additional 17% are "wireless mostly"
    - 87% of HH are currently subscribed to wireless
    - 98% of HH have access to wireless
  - Cable: 20% of HH
    - 93% of HH have access to cable voice
    - Cable has majority of Residential Broadband connections
- *JSI projects that by YE 2012, wireless-only HH will exceed ILEC HH*.
- Consumers also replacing wireline voice usage with OTT, e-mail, texting, social networks, etc.

Legacy Rules Impede Transition to IP-Based Broadband

- ICC/USF Order recognized that traditional rules are "ill-equipped" to address the challenges of transitioning to broadband networks because they are "based on decades-old assumptions that fail to reflect today's networks, the evolving nature of communications services, or the current competitive landscape."

- The National Broadband Plan recognized POTS-based regulatory policies can end up "siphoning investment away from new networks and services."

USTelecom's Petition Offers the Commission a Vehicle for Eliminating Rules That No Longer Offer Any Public Interest Benefit

- Seeking very modest de-regulatory steps by forbearing from antiquated rules that are harmful, costly or just plain meaningless given changes in the technological and competitive landscape.
- Chairman Genachowski has committed to implement President Obama's directive to "streamline and modernize the Commission's rules and reduce burdens on the private sector."
  - USTelecom's Petition provides the Commission a timely vehicle by which the Commission can follow through on this commitment.
- Commission specifically acknowledged USTelecom's petition in its Final Plan for Retrospective Analysis of Existing Rules.

The Requirements in USTelecom's Petition No Longer Serve Any FCC Need

Commission has recognized that Forbearance is required where a rule or data collection *"no longer serves a current, federal requirement."*

-- What is the legitimate need?

-- How is that need served by applying rule to only a subset of providers?

Equal Access Scripting

- Seeking elimination of MFJ originated requirement to read list of alternative LD providers intended to promote *nascent* competition for "stand-alone long distance" service.
- FCC granted Forbearance to BOCs in 2007 finding:
  - "the stand-alone long distance market is becoming a fringe market"
  - "the minority of customers that still take stand-alone long distance now have additional options available"
  - the requirement "is likely to distort competition…by focusing solely on one type of competitive alternative"
- USTelecom petitioned for elimination of the rule for all other ILECs in 2008—virtually no opposition in comments.
- In report on 2010 Biennial Review (rel. December, 2011) staff recommends that the Commission "consider revising the carry-over equal access obligations"

Long Distance Structural Separation Rules

- Independent ILECs must provide in-region LD service through a separate affiliate that maintains separate books of account; purchases service from the ILEC under tariff or generally available contract; and not jointly own facilities.
- Rule is based on a presumption that ILEC is dominant in provision of LD.
- FCC initiated proceeding to reexamine these rules in 2001 in connection with 2000 Biennial Review—proceeding remains pending.
- BOCs relieved of obligations, subject to conditions in 2007.
- FCC waived requirement for PRTC in 2010 (though put off finding of non-dominance) acknowledging that the requirements:
  - "impose significant administrative costs on [carriers] and reduce efficiency"
  - "may delay or prevent [carrier] efforts to respond to technological or marketplace developments, deploy innovative…equipment, and bring new services to market."
- *2010 Biennial Review PN* expresses staff belief that rules "may no longer be necessary in the public interest…as a result of competition…"

Computer Inquiry Rules

- Seeking elimination for narrowband voice services the Pre- '96 Act ONA and CEI obligations premised on ILECs having sole platform for delivery of enhanced services.
  - ONA rules require BOCs to unbundle basic services; provide them under tariffs that, *inter alia*, detail OSS systems and allow unaffiliated ESPs access to the same OSS as BOC affiliates; file reports demonstrating nondiscriminatory service to unaffiliated ESPs.
  - CEI rules obligate BOCs to file plans detailing procedures for complying with "equal access" requirements for each enhanced service they intend to offer, including specifics for interface functionality; unbundling associated basic services; resale; technical characteristics; installation; maintenance and repair; end user access; CEI availability; minimization of transport costs; and availability to all interested customers or ESPs.
  - BOCs may only provide enhanced services if: (i) it does so through a separate affiliate that obtains all telecommunications facilities and services through non-discriminatory tariffs; (ii) the separate affiliate operates independently in the furnishing of enhanced services and CPE; (iii) the separate affiliate deals with affiliated manufacturers on an arms-length basis; (iv) any joint research and development must be done on a compensatory basis; and (v) all transactions between the BOC and affiliate must be in writing.
- *Today, these rules only apply to BOC narrowband services and do not reflect changes in competition and technology*.
  - For example, CTL's BOC Qwest states that it has not received a new ONA service request from an ESP since 2004 but must still file annual reports.

Computer Inquiry Rules (cont.)

- Commission eliminated CI obligations for BOC Broadband Internet access and enterprise broadband services, *finding that regime was based on the "assumption that the incumbent LEC wireline platform would remain the only network platform available to enhanced service providers."*
- Feb. 2011 NPRM proposes eliminating ONA/CEI reporting requirements, finding that they "lack continuing relevance and utility" and that the Commission "does not rely on any of these submissions in the course of its decision making."
- Biennial Review PN recommends that the Commission consider repealing or modifying the remaining CEI/ONA rules.
- Remaining CI obligations on narrowband services should be eliminated for all the same reasons the Commission found supported forbearance with respect to broadband services: they are no longer relevant in light of changes in competition and technology ; they impede innovation; and they distort competition by imposing unnecessary costs on only one of many competitors.

Cost Assignment Rules

- Seeking relief for *mid-size and small price cap carriers* of RoR-era rules that govern the assignment or allocation of common costs and revenues by type of cost, type of service, jurisdiction, and service categories.
- FCC granted forbearance relief from these rules to AT&T, Verizon and Qwest in 2008, and invited other price-cap LECs to seek forbearance.
- In previous Orders, Commission concluded that for carriers under price cap regulation, the Cost Assignment Rules:
  - Serve "no current, federal need"
  - Impose "costs that outweigh their benefits"
  - Distort competition by diverting resources "that otherwise would be directed to 'positive activities that generate consumer benefits.'"
  - "are unnecessary in determining whether [carriers'] rates are just, reasonable, and not unjustly or unreasonably discriminatory."

Part 32 Uniform System of Accounts

- Seeking removal for price-cap carriers of Part 32 USOA rules.
  - Rules adopted "to record company investment, expense, cost and revenue for rate-of-return regulation."
  - They serve no legitimate regulatory purpose under price-cap regulation.
- ILECs – and only ILECs – required to maintain two sets of accounting records: "regulatory books" and GAAP-based "financial books."
- Historic purposes of Part 32 data are no longer relevant for price-cap ILECs:
  - Cost Allocation: already eliminated for BOCs
  - Part 36 Jurisdictional Separations: already eliminated for BOCs and frozen since 2001 for all price cap ILECs.
  - Interstate Access Charge rates: irrelevant under price cap regulation, particularly in light of recent ICC/USF Reform Order transitioning rates to Bill & Keep.
  - Part 43 ARMIS Reports: already eliminated for BOCs and small ILECs; largely eliminated for mid-size ILECs.
- The FCC currently does not use these separate and highly burdensome "regulatory books" in any way.

Part 32 USOA (cont.)

- In the 2010 Biennial Review PN, staff recommends against eliminating Part 32 requirements for price-cap ILECs but does not identify any current or future need for this information. Nor does staff explain how obtaining such information from only one group of providers of identical service can be useful.
    - Since the BOCs were granted Cost Assignment Forbearance in 2008, FCC has not had a single occasion to request this data.
    - Contrary to concern expressed in 2008, FCC found no need for this data for purposes of completing ICC/USF reform.
- ILECs subject to numerous other financial regulatory mechanisms to protect consumers, including GAAP, Sarbanes-Oxley, Federal Corrupt Practices Act—and would continue to be subject to these.
- Costs of maintaining separate books is increasing as Part 32 further diverges from GAAP.
    - Part 32 system of assigning joint costs by service or group is arbitrary.
- FCC has found it is beyond [Commission's] authority to maintain" regulatory requirements where "there is no current, federal need".

Part 32 Property Records Rules

- § 32.2000 (e) & (f) set forth detailed requirements for ILECs—and only ILECs-- to preserve virtually all documentation pertaining to an asset for the life of that asset, including work orders, invoices, and engineering drawings relevant to showing the identity, vintage, location and original cost of the property.
- These rules are totally irrelevant for carriers under price cap regulation and unnecessary even for those carriers under RoR in light of other accounting safeguards, such as GAAP.
- FCC tentatively concluded ***in 2001*** that it should eliminate its property record rules finding, *inter alia*:
    - that ILECs "are subject to a number of other regulatory constraints and appear to have ample incentives to maintain a detailed inventory of their property" including GAAP and Foreign Corrupt Practices Act.
    - "the record shows that our detailed [property record] requirements, which include rigid rules for recording property, impose substantial burdens on incumbent LECs."

Part 42 Recordkeeping Requirements

- Largely adopted in 1986, these rules establish the methods by which carriers maintain records based largely on technology in existence at the time.
  - § 42.4 requires carriers to keep *physical copies* of document indices available at specific physical locations.
  - § 42.5 sets a standard by which records may be maintained on *microfilm*, along with requirements for duplicating records created "in machine-readable medium such as *punch-cards, magnetic tapes and disks*."
  - § 24.10 requires non-dominant IXCs to maintain *physical copy* of information on rates, terms and conditions available during business hours.
- Chairman Genachowski has correctly recognized that widely adopted electronic recordkeeping systems are less costly, more reliable and more user-friendly, committing "to scour the Commission for opportunities to move processes from paper to digital…"

ARMIS Report 43-01

- Report 43-01 requires the listing of revenues, revenue requirements and demand data by study area.
- The Commission has described the "primary purpose" of these reports as "to facilitate the timely and efficient analysis of revenue requirements and rate of return."
- Only applies to mid-size ILECs-- Commission granted forbearance from this requirement to BOCs in 2008 concluding that the report "generally no longer contain[s] data that would serve a current, federal need," and there is "no countervailing public interest benefits to retain [this] requirement."
- *2010 Biennial Review PN* states that staff "believes that the rules relating to ARMIS reporting in Part 43 may not be necessary in the public interest in the current form as the result of meaningful economic competition between providers of telecommunications services."

Annual Revenue & Communications Plant Reports

- § 43.21(c) requires common carriers above the revenue threshold to "file with the *Common Carrier Bureau Chief* a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year."
- As with ARMIS reports, this data serves no on-going federal purpose and is also largely duplicative of other data that is either reported (Form 499-A) or publicly available.
- No value to agency in collecting data from a small number of companies within a large, competitive market.

Network Change Notices

- Commission rules (§ 51.329-51.333) require that prior to making certain changes to their networks, ILECs must provide "notice through industry fora, industry publications, or the carrier's publicly available Internet site" ***and*** file a certification with the FCC.
- If ILEC wishes to make network changes in *less than 6 months*, the FCC must first put out a PN and the clock on deemed approval does not start until PN released – *even though the rules also require the ILEC to notify every interconnected carrier of the proposed change at least a week before they file the certification with the FCC.*
- Typically takes 4-6 weeks for FCC to issue PN (although may be accelerated) but objections are almost never filed with the FCC.
  - *Largest companies indicate that between 2007-2011 they filed 578 short-term change notices…but it appears that only 3 had any objections filed with FCC (some or all of which were subsequently withdrawn).*

Network Change Notices (cont.)

- FCC Public Notice requirement is redundant, provides no public interest benefit and adds significant uncertainty to network change planning.

- Under USTelecom Request, clock for deemed approval of short-term requests would begin upon the ILEC's filing of certification with FCC that it had complied with requirements to post notice on its publicly-available website and individually serve each relevant service provider.

Service Discontinuance Approval Rules

- Service discontinuance rules require a carrier to (i) notify all affected customers, state PUC, and others; then, (ii) file an application with the FCC; then, (iv) wait for the FCC to issue a PN of the filing; and then, (iv) wait for the application to be deemed granted (31 days after PN for non-dominant; 60 days after PN for dominant).
- USTelecom's petition seeks forbearance <u>only as to the requirement to wait for FCC approval at locations where the carrier has deployed broadband</u>.
    - Carrier ***would*** continue to notify customers and others.
    - Carrier ***would*** continue to notify FCC.
- Under these circumstances, customers are not truly losing service but rather have services available via more advanced and capable IP platform.
- FCC previously granted forbearance from approval process to CMRS providers finding that the discontinuance process imposes costs on carriers and is unnecessary to protect consumers" if adequate substitute services are available.
- Forbearance is consistent with the FCC's goal of "encouraging migration to modern, all IP networks."

Traffic Damage Claim Files

- § 64.1 requires carriers engaged in furnishing "radio-telegraph, wire-telegraph, or ocean-cable service" to maintain "separate files for each damage claim of a traffic nature" and prohibits carriers from making payment on such claims "if the amount of payment would be in excess of the total amount collected by the carrier on the message or messages from which the claim arose" unless the claim is made in writing.
- Since 2001, Commission staff has repeatedly recommended the elimination of this rule, finding it to be "outdated" and duplicative of requirements of other federal agencies.

Recording of Telephone Conversations with TelCos

- § 64.501, adopted in 1967, establishes requirements under which "telephone common carriers" may record conversations between representatives of the company and members of the public.
- Rule applicable to one discrete group of businesses is unnecessary in light of the development of extensive body of state and federal laws of general applicability.

Rules Governing Extension of Unsecured Credit for Communications Services to Candidates for Federal Office

- Part 64, Subpart H (§§ 64.801, 64.804) prescribe detailed conditions under which common carriers may extend unsecured credit to a candidate for federal office and requires the carrier to make unsecured credit available on the same terms and conditions to any other candidate for the same office. Carriers must also report unpaid amounts to the FCC.
- Rules' purpose is duplicative in light of other laws governing campaign finance and do not reflect changes in industry competition.

Rules Governing Furnishing of Facilities to Foreign Governments for International Communications

- § 64.301 requires that "common carriers by wire and radio" furnish communications services to a foreign government "upon reasonable demand" but deny such service if such government "fails or refuses" to provide services to the US government.
- Unchanged since 1963, this rule does not recognize changes in technology and industry competition.

Prepaid Calling Card Reporting

- In the context of a dispute about the regulatory status of prepaid calling cards, FCC in 2006 adopted **"interim"** requirements that all prepaid calling providers must file quarterly reports and certifications with percentage of use and revenue information. (§ 64.5001).

- FCC concerns underlying the reporting and certifications requirements have been addressed by established arrangements among carriers for exchanging necessary information.

- Commission actions on inter-carrier compensation and phantom traffic have also ameliorated these concerns.

- Prepaid calling card business has shrunk considerably since that time due to competitive alternatives.

- Not apparent that FCC utilizes data in any manner while rules impose costs on users of prepaid calling cards.

Cash Working Capital Allowance

- "Cash Working Capital" is a traditional RoR regulation concept referring to cash on hand needed by a utility to cover day-to-day operating expenses.
- § 65.820(d) to calculate "cash working capital allowance" either by performing a resource-intensive lead-lag study or using FCC-prescribed formula.
- Price-cap carriers should be relieved of this requirement as the information serves no regulatory purpose under price cap regulation.