

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

In the Matter of)	
)	
Petition of USTelecom for Forbearance Under	)	WC Docket No. 12-61
47 U.S.C. § 160(c) from Enforcement of)	
Certain Legacy Telecommunications)	
Regulations)	
)	
Review of Wireline Competition Bureau Data	)	WC Docket No. 10-132
Practices)	
)	
Petition of Cincinnati Bell Telephone	)	WC Docket No. 09-206
Company LLC for Waiver from Application)	
of the Equal Access Scripting Requirement)	
)	
Petition of United States Telecom Association	)	WC Docket No. 08-225
for Waiver from Application of the Equal)	
Access Scripting Requirement)	
)	
Service Quality, Customer Satisfaction,	)	WC Docket No. 08-190
Infrastructure and Operating Data Gathering)	
)	
Petition of Verizon for Forbearance, 47	)	WC Docket No. 07-273
U.S.C. § 160(c) from Enforcement of Certain)	
of the Commission’s Recordkeeping and)	
Reporting Requirements)	
)	
Petition of Qwest Corporation for	)	WC Docket No. 07-204
Forbearance from Enforcement of the)	
Commission’s ARMIS and 492A Reporting)	
Requirements Under 47 U.S.C. § 160(c);)	
Petition of the Embarq Local Operating)	
Companies for Forbearance Under 47 U.S.C.)	
§ 160(c) from Enforcement of Certain of)	
ARMIS Reporting Requirements; and Petition)	
of Frontier and Citizens ILECs for)	
Forbearance Under 47 U.S.C. § 160(c) from)	
Enforcement of Certain of the Commission’s)	
ARMIS Reporting Requirements)	
)	
Petition of AT&T Inc. for Forbearance Under	)	WC Docket No. 07-139
47 U.S.C. § 160(c) from Enforcement of)	

Certain of the Commission’s ARMIS Reporting Requirements)	
)	
Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission’s Cost Assignment Rules	)	WC Docket No. 07-21
)	
)	
Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission’s Cost Assignment Rules	)	WC Docket No. 05-342
)	
)	
Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers)	CC Docket No. 02-39
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)	
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules)	CC Docket No. 00-175
)	
)	
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
)	

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION

NTCA–The Rural Broadband Association (NTCA)¹ hereby submits these comments in response to the Second Further Notice of Proposed Rulemaking in the above-captioned proceedings.² The record demonstrates that transformative technological and marketplace

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite and/or long-distance services, as well.

² *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, et. al.*, Memorandum Opinion and Order and Report and Order and Further Notice

changes render structural separation rules for rate-of-return carriers that offer long distance services unnecessary. Accordingly, forbearance from these rules will not harm competition. Concerns regarding potential allocation of costs are also of decreasing relevance in today's evolving marketplace.

II. THE COMMISSION SHOULD FORBEAR FROM ENFORCEMENT OF STRUCTURAL SEPARATION RULES FOR RATE-OF-RETURN CARRIERS, AS MARKETPLACE CHANGES HAVE RENDERED THESE REQUIREMENTS UNNECESSARY

The Second Further Notice considers whether section 64.1903 of the Commission's rules, which require separate corporate structures for the provision of long distance services by rate-of-return carriers, remains the best alternative for promoting competition and protecting consumers in the long distance market in light of significant changes in the marketplace.³ The Second Further Notice observes that the Commission has lifted similar requirements on price cap carriers in the accompanying *USTelecom Forbearance Order*,⁴ and seeks comment on whether the Commission's original concerns that led to the imposition of the structural separations regime continue to be relevant.⁵

The Second Further Notice wisely recognizes that market conditions alone can justify eliminating the separate affiliate requirement for rate-of-return carriers.⁶ It further acknowledges that structural separation requirements imposed on rate-of-return carriers occurred "against a regulatory backdrop in which local telephone service, interstate long distance, and intrastate long distance were distinct services, for which consumers often chose separate providers," and that the transformative marketplace and regulatory changes that have occurred since that time call

of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, WC Docket No. 12-61, *et. al.* (released May 17, 2013) ("Second Further Notice").

³ Second Further Notice, ¶¶230-236.

⁴ *Id.*, ¶240.

⁵ *Id.*, ¶241.

⁶ *Id.*, ¶237.

into question “whether the current rule is the least burdensome way to ensure that our goals of competition and consumer protection are met.”⁷ As discussed below, the record demonstrates that section 64.1903 of the Commission’s rules has been overtaken by market developments, and forbearance will result in no harm to competition and that less burdensome alternatives, if necessary, are available.

A. The Record Demonstrates That Forbearance Will Not Harm Competition

The Second Further Notice itself provides a thorough recitation of the evidence regarding the relevant changes that have occurred in the marketplace since section 64.1903 was imposed. Specifically, interexchange revenue has fallen dramatically⁸ while cable and wireless substitution have greatly increased, and many voice services are provided on an “all distance” basis with no differentiation in price for calls made within the United States.⁹ The Second Further Notice recognizes that consumers now rarely distinguish between local and long distance service, to the extent that the Commission called standalone long distance service a “fringe market” eight years ago.¹⁰ The Second Further Notice also relates that the Commission’s universal service rules have changed to eliminate the distinction between local and long distance services because there is generally no longer any difference between toll and nontoll pricing of voice telephony.¹¹

Section 64.1903 assumed a growing standalone long distance marketplace, and conditions under which small rate-of-return carriers would have the ability and incentive to engage in discrimination and price squeezing¹² to the detriment of multiple standalone long

⁷ *Id.*, ¶212.

⁸ *Id.*, ¶¶230-232.

⁹ *Id.*, ¶¶233-234.

¹⁰ *Id.*, ¶235.

¹¹ *Id.*, ¶236.

¹² *Id.*, ¶241.

distance carriers. As the Second Further Notice demonstrates, these conditions do not exist. Forbearance from section 64.1903 would therefore not give rise to circumstances that impede competition or negatively impact the consumer experience. Today, the rules impose costs on small carriers in order to protect what the Commission itself has termed a “fringe market” from discrimination and price squeezing that is not occurring. Therefore, forbearance is appropriate.

B. Concerns Regarding Misallocation Are Decreasingly Relevant

The Second Further Notice also inquires about the alleged ability and incentive of non-average schedule rate-of-return carriers to over allocate costs to common line and special access services in order to maximize the interstate compensation they derive from these services.¹³ However, the Second Further Notice also states that the Commission has previously recognized that concerns about cost misallocation are reduced when carriers resell long distance services, rather than provide them through their own switching or transmission facilities; as a result, these carriers are permitted to operate through a separate corporate division rather than a separate subsidiary.¹⁴ The Second Further Notice also raises the issue of the treatment of average schedule companies, stating that these providers have limited incentives to misallocate costs because they participate in pooling mechanisms managed by the National Exchange Carrier Association (NECA) to avoid the expense of company-specific cost studies.¹⁵

In today’s marketplace, allocation concerns are decreasing in relevance. As the Second Further Notice observes, changes to access cost recovery and universal service mechanisms dilute the incentive of carriers to misallocate costs.¹⁶ Even if these reforms were not having this effect, technological and marketplace changes would be doing so regardless. Spurred by

¹³ *Id.*, ¶238.

¹⁴ *Id.*, ¶239.

¹⁵ *Id.*, ¶240.

¹⁶ *Id.*, ¶238.

consumer demand, providers increasingly bundle voice, video and data offerings, and voice services (especially long distance) are increasingly being provided via voice over Internet protocol (VoIP) technologies. There is no indication that these trends will abate. Indeed, as the Second Further Notice indicates,¹⁷ they are most likely to accelerate.

In the event the Commission determines that some form of rule remains necessary even in light of these transformative changes, less burdensome alternatives are available. For example, the Second Further Notice notes that relief for price cap carriers was conditioned on submittal of special access performance metrics and imputation requirements.¹⁸ It also observes that existing safeguards, such as equal access obligations and requirements that carriers provide service on just, reasonable, and not unreasonably discriminatory rates, terms, and conditions remain in place.¹⁹ As the Second Further Notice suggests, in the event that any concerns are raised, the Commission could effectively address them through investigations pursuant to established processes.²⁰

III. CONCLUSION

The structural separations rules were designed with the assumption that the standalone long distance market would remain robust, as long as incumbent local exchange carriers were not permitted to impede competition in this space. If this assumption was ever accurate, it clearly does not apply to the marketplace of today, or indeed of most of the last decade. The rise of bundled voice and data services, along with cable and wireless substitution, has transformed the marketplace originally envisioned and for which the rules were designed. Section 64.1903 serves no purpose in today's environment, much less in the marketplace of tomorrow.

¹⁷ *Id.*, ¶235.

¹⁸ *Id.*, ¶240.

¹⁹ *Id.*, ¶241.

²⁰ *Id.*

Accordingly, the Commission should forbear from enforcing these requirements without further delay.

Respectfully submitted,

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