Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
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1998 Biennial Regulatory Review-- Review of Accounting and Cost Allocation Requirements	)	CC Docket No. 98-81
	)	
United States Telephone Association Petition for Rulemaking	)	ASD File No. 98-64

NOTICE OF PROPOSED RULEMAKING

Adopted: June 2, 1998 Released: June 17, 1998

Comment Date: July 17, 1998
Reply Comment Date: August 3, 1998

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

I. INTRODUCTION

1. Section 11 of the Communications Act of 1934, as amended, requires the Commission, in every even-numbered year beginning in 1998, to review its regulations applicable to providers of telecommunications services to determine whether the regulations are no longer in the public interest due to meaningful economic competition between providers of such service and whether such regulations should be repealed or modified.[1] Section 11 further instructs the Commission to "repeal or modify any regulation it determines to be no longer necessary in the public interest."[2]

2. In this Notice of Proposed Rulemaking ("Notice"), we propose as part of the biennial review to modify our accounting and cost allocation rules.[3] We propose to raise the

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[1] 47 U.S.C. § 161.

[2] *Id.*

[3] 47 C.F.R. § § 32.1 *et seq.* and 64.901 *et seq.* The operation of our cost allocation rules serve to protect ratepayers from different concerns. The cost allocation rules are used to provide guidance to carriers as to how joint and common costs are to be allocated among regulated and nonregulated activities that impact upon regulated

threshold significantly for required Class A accounting thus allowing mid-sized carriers currently required to use Class A accounts to use the more streamlined Class B accounts. In addition, we propose to establish less burdensome cost allocation manual ("CAM") procedures for the mid-sized incumbent local exchange carriers ("LECs") and to reduce the frequency with which independent audits of the cost allocations based upon the CAMs are required.[4] Finally, we propose several changes to our Uniform System of Accounts ("USOA") to reduce accounting requirements and to eliminate or consolidate accounts.

II. STREAMLINING ACCOUNTING REQUIREMENTS FOR MID-SIZED INCUMBENT LECS

3. Section 32.11 of the Commission's rules establishes two classes of incumbent local exchange carriers for accounting purposes: Class A and Class B.[5] Carriers with annual operating revenues above a designated indexed revenue threshold, currently $112 million, are classified as Class A; those with annual operating revenues below the threshold are considered Class B.[6] The classification of a carrier is determined by its lowest annual operating revenues for the five immediately preceding years.[7] Class A carriers must record their transactions in 261 accounts while Class B carriers maintain only 109 accounts. Our accounting system is designed to enable management and policymakers to assess the results of operational and financial events. The financial data contained in the accounts, together with the detailed information contained in the other subsidiary records required by the Commission, provide the information necessary to

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activities. These rules are premised on the assumption that ratepayers benefit from the economies of scope associated with integrated operations of regulated and nonregulated activities. Because costs are recorded in regulated accounts, the Commission retains the ability to scrutinize costs associated with nonregulated activities. These procedures promote fair cost allocation and protect regulated ratepayers from absorbing the costs of nonregulated activities. In addition, as assets are retained on the books of the carrier, any resulting gains from a sale of those nonregulated assets accrue to the carrier and to the benefit of ratepayers and shareholders.

4 Pursuant to section 64.903 of our rules, carriers with annual operating revenues above a certain threshold must file a manual with the Commission on an annual basis that contains certain information regarding its allocation of costs between regulated and nonregulated activities. Among other things, this cost allocation manual must include a description of each of the carrier's nonregulated activities and a statement "identifying each affiliate that engages in or will engage in transactions with the carrier and describing the nature, terms and frequency of each transaction." 47 C.F.R. § 64.903(a).

5 47 C.F.R. § 32.11. All of the Bell Operating Companies (BOCs) qualify as Class A carriers.

6 *See* Annual Adjustment of Revenue Threshold, *Public Notice*, DA 98-785 (rel. Apr. 24, 1998). "Annual operating revenues" includes revenues from both regulated and nonregulated activities, to determine whether carriers must file ARMIS reports and cost allocation manuals. *See Filing Requirements Reform Order* at para. 68; *see also* Reform of Filing Requirements and Carrier Classifications; Anchorage Telephone Utility, Petition for Withdrawal of Cost Allocation Manual, *Order and Notice of Proposed Rulemaking*, 11 FCC Rcd 11716, paras. 30-32 (1996).

7 *See* 47 C.F.R. § 32.11(e).

support jurisdictional separations, cost of service, and management reporting requirements. The basic account structure has been designed to remain stable as reporting requirements change.

4. We propose to streamline accounting requirements for certain mid-sized incumbent LECs based on the aggregate revenues of the incumbent LEC and any LEC that it controls, is controlled by, or with which it is under common control.[8] If the aggregate revenues of these affiliated incumbent LECs are less than $7 billion, then each LEC within that group would be eligible for Class B accounting, even if the annual operating revenue of any individual LEC exceeds $112 million. Among incumbent LECs, this revision would limit Class A accounting to the Bell Operating Companies and the GTE Operating Companies. All other incumbent LECs could use the Class B system of accounts. The $7 billion threshold will provide the Commission with Class A accounting data for nearly 90% of the industry for local exchange telecommunications, as measured by annual operating revenues.

5. We have maintained Class A and Class B accounting requirements since we revised the USOA more than ten years ago. Through our auditing functions and ongoing review of company financial information, we have had sufficient experience with carriers of different size to conclude tentatively that we can maintain the necessary degree of oversight and monitoring while imposing less administratively burdensome accounting requirements on the mid-sized carriers. We have reached this conclusion because we have generally found that mid-sized carriers typically conduct a lower volume of transactions involving competitive products and services than the large incumbent LECs, thus providing easier monitoring and oversight because there are fewer opportunities for these mid-sized carriers to subsidize competitive services with the revenues earned from the provision of noncompetitive services. We therefore tentatively conclude that mid-sized carriers may opt to use Class B accounting. We seek comment on these tentative conclusions and also specifically ask commenters to address any possible effects on jurisdictional separations that could result from adopting these tentative conclusions.[9]

6. For the largest incumbent LECs, however, our review of these rules indicates that we should maintain the level of detail required by Class A accounting. We believe that the more detailed Class A accounting is required to monitor the large incumbent LECs as competition begins to develop in local telephony markets. The more detailed accounting requirements are

[8] *See* 47 C.F.R. § 32.9000. Our rules define "control" as "the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stock-holders, voting trusts, holding trusts, affiliated companies, contract, or any other direct or indirect means."

[9] We note that in several instances our Part 36 separations manual requires Class A and Class B carriers to allocate their costs between jurisdictions in a different manner.

also necessary for the Commission to uphold our statutory obligations under sections 254(k),[10] 260,[11] 271,[12] 272,[13] 273,[14] 274,[15] 275,[16] and 276[17] of the Act. Class A accounting is necessary to ensure that the largest incumbent LECs are in compliance with these provisions, such as section 254(k)'s mandate that "a telecommunications carrier may not use services that are not

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[10] 47 U.S.C. § 254(k). Section 254(k) imposes a general prohibition against cross-subsidization by barring telecommunications carriers from "us[ing] services that are not competitive to subsidize services that are subject to competition."

[11] 47 U.S.C. § 260. Section 260 prohibits an incumbent LEC from subsidizing its telemessaging service with revenues from regulated telecommunications services. Section 260 provides that an incumbent LEC, including a BOC, that provides telemessaging service "shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access," but does not require a separate affiliate.

[12] 47 U.S.C. § 271. Section 271(b) authorizes BOCs to immediately provide "out-of-region" interLATA services but requires BOCs to obtain Commission approval before providing "in-region" interLATA services. Section 271(g) lists specific "incidental interLATA services that BOCs and their affiliates may provide after February 8, 1996. Section 271(h) states that "[t]he Commission shall ensure that the provision of services authorized under [section 271(g)] by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market."

[13] 47 U.S.C. § 272. Section 272 permits a BOC (including any affiliate) that is subject to section 251(c) to manufacture equipment, originate in-region interLATA telecommunications services, other than incidental and previously authorized interLATA services, and provide certain interLATA information services only if it does so through one or more separate affiliates. Each of the separate affiliates must "maintain [separate] books, records, and accounts in the manner prescribed by the Commission" and "shall conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis." In its dealings with the separate affiliate, each BOC must "account for all transactions . . . in accordance with accounting principles designated or approved by the Commission."

[14] 47 U.S.C. § 273. Section 273(d)(3) imposes separate affiliate requirements for the manufacture of telecommunications equipment and customer premises equipment produced by unaffiliated entities.

[15] 47 U.S.C. § 274. Section 274(a) prohibits any "Bell operating company or any affiliate [from] engag[ing] in the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service," other than through "a separated affiliate or electronic publishing joint venture." This separated affiliate or electronic publishing joint venture must, among other requirements, "maintain separate books, records, and accounts and prepare separate financial statements."

[16] 47 U.S.C. § 275. Section 275(b)(2) bars an incumbent LEC, including a BOC, that provides alarm monitoring services from "subsidiz[ing] its alarm monitoring services either directly or indirectly from telephone exchange service operations." but does not require a separate affiliate.

[17] 47 U.S.C. § 276. Section 276(b)(1)(C) directs the Commission to prescribe rules for BOC provision of payphone service that, "at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III proceeding. Section 276(a)(1) states that any BOC that provides payphone service after the effective date of those rules "shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations."

competitive to subsidize services that are subject to competition."[18] The level of detail of the Class A accounting rules allows us to identify potential cost misallocations beyond those revealed by the Class B system of accounts.[19] Although we are cognizant of the necessity of balancing our continuing need for information against our desire not to impose unreasonable or unnecessary reporting requirements, we have found that Class A accounting provides the level of detail needed to ensure that a carriers' emerging competitive activities are not subsidized by its noncompetitive activities. In allocating costs between regulated and nonregulated activities, use of Class A accounts also provides more refined cost allocations without imposing an undue burden on the largest incumbent LECs. Moreover, we have long recognized that, for managerial decision-making and other purposes, incumbent LECs maintain their financial records in significantly more detail than that required for Class A carriers in our Part 32 rules.[20] Because incumbent LECs disaggregate their financial records into much greater detail than our Class A requirements, we tentatively conclude that the burden on the largest incumbent LECs resulting from Class A accounting and reporting requirements does not outweigh our needs for collecting financial information. We therefore intend to maintain the Class A accounting requirements for the largest incumbent LECs. We seek comment on this tentative conclusion and ask for comment whether, instead, we should relax Class A requirements for the largest incumbent LECs.[21]

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18 47 U.S.C. § 254(k).

19 An example from our audit experience illustrates the usefulness of the Class A level of detail in identifying improper cost allocations. Account 7370 (Special charges) is an account maintained at the Class A level of detail and includes, among other things, lobbying expenses. *See* 47 C.F.R. § 32.7370. By analyzing the books of account maintained at the Class A level of detail, Commission staff identified $118 million in lobbying costs that the BOCs improperly included in their revenue requirements between 1989 and 1991. *See* Commission Releases Summary of Lobbying Costs Audit Findings, *Common Carrier Action*, Report No. CC 95-65 (rel. Oct. 16, 1995). In contrast, the Class B level of detail aggregates Account 7370 along with seven other accounts into a single account, Account 7300 (Nonoperating income and expense). By aggregating eight accounts into a single account, the Class B level of detail does not readily permit the type of analysis necessary to identify possible discrepancies, such as the manner in which carriers record their lobbying expenses, creates a greater likelihood that improper cost allocations will occur and not be detected, and significantly complicates our monitoring and oversight efforts.

20 We considered the appropriate level of detail for maintaining books of account and reporting the financial and operating data in these books during a comprehensive eight year review of the USOA. *See* Revision of the Uniform System of Accounts and Financial Reporting Requirements for Telephone Companies (Parts 31, 33, 42, and 43 of the FCC's Rules), CC Docket No. 78-196, *Report and Order*, 60 Rad. Reg. 2d. 1111, para. 109-110 (1986) (noting that many carriers maintain more detailed accounting systems than the Class A level for other purposes). In addition, we note that, although greater detail is possible, we decided on policy grounds to refrain from requiring further disaggregation in, for example, the USOA's plant accounts. *Id*. at paras. 113-22; *see also ARMIS Order* at para. 35 (noting that ARMIS collects only a small subset of the Commission's total data requirements).

21 For example, SBC has recommended that the part 32 accounting rules be eliminated to allow carriers to use traditional Generally Accepted Accounting Principles ("GAAP"). During the transition to GAAP accounting, SBC proposes that even the largest incumbent LECs be permitted to use the Class B system of accounts. *See* Petition for

7. We note that our pole attachment formulas are based on Class A accounting detail.[22] If the Commission adopts Class B accounts for mid-sized incumbent LECs as proposed herein, the ARMIS reports of the mid-sized incumbent LECs would no longer provide the details needed to calculate pole attachment fees using the pole attachment formulas.[23] The details provided in eight Class A accounts are needed to provide data for the pole attachment formulas: six accounts associated with cable and wire facilities investment and expenses, and two accounts associated with network operations expenses.[24] We seek comment on whether mid-sized incumbent LECs should be required to maintain subsidiary record categories to provide the data now provided in the eight Class A accounts and to report in ARMIS the information in the noted accounts as well as other information required by the pole attachment formulas.[25]

8. We note that, while the same indexed revenue threshold is applied for Part 32 carrier classification purposes and Part 64 cost allocation purposes, the threshold is applied differently. As stated above, for Part 32 purposes, the accounting classification for a carrier is determined by its lowest annual operating revenues for the five immediately preceding years. For Part 64 cost allocation purposes, carriers must file CAMs and obtain independent audits of

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Section 11 Biennial Review, filed by SBC Communications, Inc. et al., May 8, 1998, at 11-13, 15, Appendix B. Similarly, Ameritech has recommended the adoption of Class B accounting for all carriers by year end 1999. *See* letter, dated Mar. 13, 1998, from Robin Gleason, Director - Regulatory Finance, Ameritech, to Kenneth P. Moran, FCC.

[22] In 1978, Congress enacted section 224 in order to address concerns raised by cable television operators. *See* 47 U.S.C. § 224. Section 224(b)(1) provides in part that "the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms and conditions are just and reasonable." *See also* 47 C.F.R. §§ 1.1401-1.1416; Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, *Report and Order*, 2 FCC Rcd 4387 (1987), *recon*, 4 FCC Rcd 468 (1989); Implementation of Section 703(e) of the Telecommunications Act of 1996 and Amendment of Rules and Policies Governing Pole Attachments, *Report and Order*, FCC 98-20 (rel. Feb. 6, 1998).

[23] Class B carriers record their investment associated with poles in Account 2410 (Cable and wire facilities). Account 2410 includes the investment associated with poles, as well as the investment associated with aerial cable, underground cable, buried cable, submarine cable, deep sea cable, intrabuilding network cable, aerial wire, and conduit systems. *See* 47 C.F.R. §§ 32.2410-2441. Likewise, Class B carriers record their expenses associated with poles in Account 6410 (Cable and wire facilities expenses), which contains aggregated expense data related to aerial cable, underground cable, buried cable, submarine cable, deep sea cable, intrabuilding network cable, aerial wire, and conduit systems. *See* 47 C.F.R. §§ 32.6410-6441.

[24] The six Class A accounts associated with cable and wire facilities investment and expenses are Account 2411 (Poles), Account 2441 (Conduit systems), Account 2423 (Buried cable), 6411 (Poles expense), Account 6441 (Conduit systems expense), Account 6423 (Buried cable expense). The two accounts associated with network operations expenses are Account 6534 (Plant operations administration expense) and Account 6535 (Engineering expense).

[25] For example, the current and proposed pole attachment formulas require accumulated depreciation as detailed in ARMIS Report 43-02, Table B-5 as follows: for poles as reported on line 0390, for conduit on line 0420, and for buried cable on line 0470.

their cost allocations based upon those CAMs after carriers exceed the indexed revenue threshold. This dichotomy provides unnecessary complexity to our rules. Accordingly, in light of our tentative conclusions to relax accounting requirements for certain mid-sized incumbent LECs, we see no reason to maintain the difference between the application of the indexed revenue threshold for Part 32 and Part 64 purposes. We have tentatively concluded that mid-sized LECs should continue to follow our Class B accounting rules until their annual revenues exceed $7 billion, thus, crossing the $112 million threshold will no longer have an effect on a carrier's cost allocation process. Because we see no reason to maintain the difference between exceeding the indexed revenue threshold for Part 32 accounting or Part 64 cost allocation purposes, we tentatively conclude that carriers should be classified as Class A at the start of the calendar year following the first time their annual operating revenues exceed the indexed revenue threshold. We seek comment on this tentative conclusion.

III. CAM REQUIREMENTS FOR MID-SIZED INCUMBENT LECS

9. Section 64.903 of the Commission's rules requires incumbent LECs with $112 million or more in annual operating revenues to file CAMs setting forth the cost allocation procedures that they use to separate costs between regulated and nonregulated services.[26] These CAMs include the following: (a) a description of each of the company's nonregulated activities; (b) a list of the activities that the company accords incidental accounting treatment; (c) a chart showing all of its corporate affiliates; (d) a statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and frequency of such transactions; (e) for each USOA account and subaccount, detailed specifications of the cost categories to which amounts in the account or subaccount will be assigned and of the basis on which each cost category will be apportioned; and (f) a description of the carrier's time reporting procedures. We tentatively conclude that we should reduce the administrative burden on mid-sized incumbent LECs by eliminating or modifying some of the information required in their CAMs, because our experience has taught us that we can maintain the necessary degree of oversight and monitoring while imposing less administratively burdensome requirements on mid-sized incumbent LECs, which tend to have lower transactional volumes than the largest incumbent LECs.

10. In Section II above, we tentatively conclude that mid-sized incumbent LECs may maintain their accounts at the Class B level. Consistent with our proposed change in the level of accounting detail required, we tentatively conclude that mid-sized incumbent LECs should be permitted to submit their CAMs based upon the Class B system of accounts.[27] We seek comment on these tentative conclusions. In the CAM section that describes nonregulated

[26] 47 C.F.R. § 64.903.

[27] Carriers qualifying for this less-burdensome treatment may, at their discretion, opt to prepare their CAM based on the Class A system of accounts.

activities, carriers must include a matrix that shows each nonregulated product or service and the accounts associated with each product or service.[28] In the CAM section describing cost allocation procedures, carriers are required to provide detail cost pools and allocation methods by account. By allowing mid-sized incumbent LECs to submit their CAMs based upon the Class B system of accounts, we intend to reduce the reporting burden of the nonregulated activity matrix and the cost apportionment section of the CAM.[29] We seek comment on this approach.

11. Section 64.904 of the Commission's rules requires that an independent audit of reported cost allocation data must be performed annually for all carriers that are required to file cost allocation manuals. This rule requires that the audit shall provide a positive opinion that the reported data is presented fairly in all material respects and the audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Common Carrier Bureau. We propose to reduce the audit requirements for the mid-sized incumbent LECs. We tentatively conclude that mid-sized incumbent LECs be required to obtain an audit every two years instead of annually. We also propose that the required audit be an attest audit, which has significantly less stringent standards of testing, reporting and expression of opinion than the audits currently required.[30] As stated before, our experience with carriers of different size leads us to conclude tentatively that we can maintain the necessary degree of oversight and monitoring while imposing less administratively burdensome requirements on mid-sized incumbent LECs.[31] We tentatively conclude that the relaxation of the audit requirements as proposed above should significantly reduce the cost of the audit requirement for mid-sized incumbent LECs. We seek comment on these tentative conclusions.

12. For the largest incumbent LECs, however, our review of these rules indicates that we should maintain the annual audit requirements as presently provided for in section 64.904 of our rules. Because the largest incumbent LECs tend to conduct a much greater transactional volume of competitive services than the smaller and mid-sized carriers, there is a greater risk of harm to consumers and competitors from cross-subsidization among these carriers. As stated above,[32] Class A accounting is necessary to properly monitor the largest incumbent LECs because these carriers tend to offer a large volume of competitive products and services, thereby

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[28] In Responsible Accounting Officer Letter No. 19, 6 FCC Rcd 7536 (1991) ("RAO Letter 19"), the Accounting and Audits Division established a uniform format for the CAMs and a standard procedure for filing CAM revisions.

[29] Class A carriers are required to provide cost allocation procedures for 178 of the Part 32 accounts; Class B carriers are only required to provide cost allocation procedures for 55 accounts.

[30] An attest audit merely requires a written communication that expresses a conclusion about the reliability of the carrier's accounting practices.

[31] *See supra* para. 5.

[32] *Id.*

creating numerous opportunities for these largest carriers to subsidize competitive services with the revenues earned from the provision of noncompetitive services. Accordingly, we believe that these audits are required to monitor the large incumbent LECs as competition begins to develop in local telephony markets and are necessary for the Commission to uphold our statutory obligations under sections 254(k), 260, 271, 272, 273, 274, 275, and 276 of the Act.[33] We therefore intend to maintain the independent CAM audit requirements for the largest incumbent LECs.

IV. ACCOUNTING CHANGES

13. We have conducted a review of our USOA accounts and tentatively conclude that a number of accounts or filing requirements may be reduced or eliminated. A description of these changes and a discussion of our rationale for our tentative conclusions are set forth below. These modifications will apply to all carriers subject to Part 32 and not just the mid-sized incumbent LECs. We invite comment on these proposals, and on whether, as an alternative, we could have less frequent audits for them as well.

14. *Consolidation of Accounts 2114, 2115, and 2116.* The United States Telephone Association ("USTA") has recommended that we consolidate Account 2114, Special purpose vehicles, Account 2115, Garage work equipment, and Account 2116, Other work equipment, into a single new account.[34] We tentatively conclude that the assets recorded in these accounts are similar in nature and have similar prescribed depreciation rates.[35] In addition, these accounts are treated identically under the jurisdictional separations rules set forth in Part 36 of our rules.[36] We tentatively conclude that the consolidation of these accounts into a single account entitled Account 2114, Tools and other work equipment, would reduce the carriers' accounting and reporting burdens and would not affect the amounts separated between the interstate and intrastate jurisdictions. We seek comment on these tentative conclusions.

15. *Consolidation of Accounts 6114, 6115, and 6116.* We also propose to consolidate Account 6114, Special purpose vehicles expense, Account 6115, Garage work equipment expense, and Account 6116, Other work equipment expense, into a single new account entitled Account 6114, Tools and other work equipment expense.[37] The expenses recorded in these

[33] *See supra* n. 10-17.

[34] Letter dated February 19, 1998 from Porter E. Childers, USTA, to Kenneth P. Moran, FCC. *See* 47 C.F.R. §§ 32.2114-32.2116.

[35] *See* Simplification of the Depreciation Prescription Process, *Second Report and Order*, CC Docket No. 92-296, 9 FCC Rcd 3206 (1994). *See id* Appendix B.

[36] 47 C.F.R. §§ 36.111, 36.112.

[37] 47 C.F.R. §§ 32.6114-32.6116.

accounts are related to the assets recorded in Accounts 2114, 2115, and 2116 and should also be combined into a single account. In addition, these accounts are treated identically under the jurisdictional separations rules set forth in Part 36 of our rules.[38] We tentatively conclude that the consolidation of these accounts into a single account would reduce the carriers' accounting and reporting burdens and would not affect the amounts separated between the interstate and intrastate jurisdictions. We seek comment on these tentative conclusions.

16. *Accounting for Nonregulated Revenues.* On September 16, 1997, USTA filed a petition for rulemaking[39] requesting that the Commission amend sections 32.23(c) and 32.5280 of its rules to allow carriers to record revenues from all nonregulated activities in account 5280, Nonregulated operating revenues.[40] Such an amendment would modify the current rule that instructs carriers to record revenue from nonregulated activities in account 5280 only if there is no other operating revenue account to which the revenue relates. USTA argues that the use of specific regulated accounts for nonregulated activities places carriers at a competitive disadvantage because competitors could determine product-specific revenue amounts related to incumbent LECs' nonregulated products and services.[41] The petition also proposed elimination of account 5010, Public telephone revenue.[42] Incumbent LECs record message revenue derived from public and semi-public telephone services provided within their basic service areas in account 5010. USTA argues that account 5010 is no longer needed as a result of the deregulation of payphone services[43] as well as the changes it proposed with respect to account 5280.[44] We tentatively conclude that the Commission's interest in ensuring that such costs and revenues are segregated from the carriers' regulated revenues and expenses would continue to be served by allowing carriers to combine all nonregulated activities into one account. Thus, we tentatively conclude that account 5010 should be eliminated and that the language in sections

38 47 C.F.R. §§ 36.111, 36.112.

39 *See* Petition for Rulemaking of the United States Telephone Association, dated Sep. 16, 1997.

40 47 C.F.R. § 32.5280.

41 *See* Petition for Rulemaking at 2.

42 USTA also requested a waiver of the rules to permit the accounting practice described above pending the outcome of its rulemaking petition. The waiver was granted on December 31, 1997. *See* United States Telephone Association Petition for Waiver of Part 32 of the Commission's Rules, *Order*, 1997 WL 795366 (Dec. 31, 1997).

43 Implementation of the Pay Telephone Reclassification and Compensation Provisions of the telecommunications Act of 1996, CC Docket No. 96-128, *Report and Order*, 11 FCC Rcd 20541 (1996), *Order on Reconsideration*, 11 FCC Rcd 21233 (1996), *aff'd in part and remanded in part, sub nom.* Illinois Public Telecommunications Ass'n v. FCC and United States, 117 F.3d 555 (D.C.Cir. 1997).

44 *See* Petition for Rulemaking at 5.

32.23(c) and 32.5280 should be revised consistent with USTA's petition. We seek comment on these tentative conclusions.

17. *Revision to Section 32.16, Changes in Accounting Standards.* Section 32.16 of the Commission's rules requires carriers to revise their records and accounts to reflect new accounting standards prescribed by the Financial Accounting Standards Board ("FASB"). This section provides that Commission approval of a change in accounting standards shall automatically take effect 90 days after a carrier notifies the Commission of its intention to follow a new standard. In the notification to the Commission, carriers are required to provide a revenue requirement study that analyzes the effects of the accounting change for the current year and a projection for three years into the future.[45] In recent years, as carriers have adopted new FASB standards, we have found that the forecast data is not necessary to determine whether to approve the proposed modification. We therefore tentatively conclude that carriers should be required to provide only current year revenue requirement studies and that the requirement that carriers provide projected revenue requirement data should be eliminated. We seek comment on these tentative conclusions.

18. *Revision to Section 32.2000(b), Telecommunications Plant Acquired.* Section 32.2000(b)(4), requires carriers to submit for Commission approval the journal entries made to record acquisitions from other entities of telecommunications plant that cost more than $1 million for Class A carriers and $250,000 for Class B carriers.[46] It requires that the text for these entries shall include a complete description of the property acquired and the basis upon which the entries were determined. This requirement was established to ensure that plant acquired from other carriers is recorded at original cost as required in section 32.2000(b) and so does not inflate the rate base or allow recovery of depreciation expense already recovered by the previous owner of the plant. The requirement to record plant acquired from other entities at original cost is well established, and we tentatively conclude that other accounting safeguards such as ARMIS reporting and our audit program, together with our ability to obtain additional information as necessary, are sufficient to assure that carriers will comply with this accounting requirement. We tentatively conclude, therefore, that it is no longer necessary to require the routine filing of these journal entries to ensure that carriers comply with the accounting requirements of section 32.2000(b). Accordingly, we propose to eliminate this filing requirement. We seek comment on this proposal.

19. Finally, we seek proposals for other accounts or filing requirements that could be reduced or eliminated.

V. PROCEDURAL MATTERS

[45] 47 C.F.R. § 32.16(a).

[46] 47 C.F.R. § 32.2000(b)(4).

20. *Initial Regulatory Flexibility Analysis*. The Regulatory Flexibility Act (RFA)[47] 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."[48] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[49] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[50] 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).[51]

21. This Notice proposes to raise the threshold significantly for required Class A accounting thus allowing mid-sized carriers currently required to use Class A accounts to use the more streamlined Class B accounts, proposes to establish less burdensome CAM procedures for the mid-sized incumbent LECs and to reduce the frequency with which independent audits of the cost allocations based upon the CAMs are required, and proposes several changes to our USOA to reduce accounting requirements and to eliminate or consolidate accounts. Neither the Commission nor SBA has developed a definition of "small entity" specifically applicable to LECs. The closest definition under SBA rules is that for establishments providing "Telephone Communications, Except Radiotelephone," which is Standard Industrial Classification (SIC) code 4813. Under this definition, a small entity is one employing no more than 1,500 persons.[52]

22. We certify that the proposals in this Notice, if adopted, will not have a significant economic impact on a substantial number of small entities. Pursuant to long-standing rules, incumbent LECs with annual operating revenues exceeding the indexed revenue threshold must

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[47] The RFA, *see* 5 U.S.C. § 601 *et. seq*., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[48] 5 U.S.C. § 605(b).

[49] *Id*. § 601(6).

[50] *Id*. § 601(3) (incorporating by reference the definition of "small business concern" in 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."

[51] Small Business Act, 15 U.S.C. § 632.

[52] 13 C.F.R. § 121.201, SIC code 4813.

report financial and operating data to the Commission. This Notice proposes to reduce certain of these reporting requirements among mid-sized incumbent LECs. These changes should be easy and inexpensive for mid-sized incumbent LECs to implement and will not require costly or burdensome procedures. We therefore expect that the potential impact of the proposal rules, if such are adopted, is beneficial and does not amount to a possible significant economic impact on affected entities. If commenters believe that the proposals discussed in the Notice require additional RFA analysis, they should include a discussion of these issues in their comments.

23. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Notice, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration.[53] A copy will also be published in the Federal Register.

24. *Paperwork Reduction Act*. As part of its continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on information collections contained in this Public Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this Public Notice. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

25. *Comment Filing Procedures*. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments no later than July 17, 1998, and reply comments on or before August 3, 1998. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Room 222, Washington, D.C. 20554, with a copy to Warren Firschein, Accounting Safeguards Division, Common Carrier Bureau, FCC, 2000 L Street, Suite 200, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services (ITS), at its office at 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be made available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

[53] 5 U.S.C. § 605(b).

26. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules.[54] We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

27. Parties are also strongly encouraged to submit comments and reply comments on diskette. Such diskette submissions would be in addition to, and not a substitute for, the formal filing requirements addressed above. Interested parties submitting diskettes should submit them to Warren Firschein, Accounting Safeguards Division, Common Carrier Bureau, 2000 L Street, N.W., Suite 200, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Wordperfect 5.1 for Windows software. The diskette should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding, Docket No., type of pleading (comment or reply comments), date of submission, and filename with the "*.wp extension. The diskette should be accompanied by a cover letter.

28. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the rules, 47 C.F.R. § 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

VI. ORDERING CLAUSES

29. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 2, 4, and 11 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, and 161 that NOTICE IS HEREBY GIVEN of proposed amendments to Part 32 and 64 of the Commission's rules, 47 C.F.R. Parts 32 and 64, as described in this NOTICE OF PROPOSED RULEMAKING.

30. IT IS FURTHER ORDERED that, pursuant to Sections 1, 4, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, and 220, and Section 1.401 of the Commission's rules, 47 C.F.R. § 1.401, the Petition for Rulemaking of the United States Telephone Association is GRANTED to the extent indicated herein.

31. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

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[54] *See* 47 C.F.R. § 1.49.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Separate Statement of Commissioner Harold W. Furchtgott-Roth

In re: Notice of Proposed Rulemaking: 1998 Biennial Regulatory Review -- Review of Accounting and Cost Allocation Requirements

I support adoption of this Notice of Proposed Rulemaking and the initiation of this proceeding. In my view, any reduction of unnecessary regulatory burdens is beneficial. The amount of detailed information required under our current accounting and cost allocation rules is inordinate and should be reduced Over the last few months, I have repeatedly expressed my concern with the Commission's cumbersome accounting requirements. To the extent this item proposes relief to some of the mid-sized carriers, I am all for it.

But, while I support today's efforts, I am disappointed by the Commission's preliminary conclusion that the burden imposed on the largest incumbent LECs by the 261 different accounts that they are required to maintain under our rules is outweighed by the benefits of collecting this financial information. While the item briefly discusses the benefits to the Commission of maintaining the LECs' books in this fashion, there is no discussion of the cost to the incumbent LECs. Without such estimates, how can the Commission conclude that the benefits outweigh the burden imposed? I appreciate that the Commission has asked for comment on this conclusion, and I encourage the parties who would continue to be required to follow the Class A requirements to comment on the specific burdens that these requirements impose. In addition, I hope that parties comment on SBC Communications' suggestion that the part 32 rules be eliminated altogether and that carriers be allowed to use Generally Accepted Accounting Principles ("GAAP"), and Ameritech's proposal that all carriers be allowed to use the Class B accounting requirements by the end of 1999. I would also encourage those parties required to follow the Class B requirements to make additional suggestions for streamlining those requirements as well.

I am becoming increasingly convinced that many of the current regulatory mechanisms -- and certainly the level of detail -- are no longer necessary in today's increasingly competitive environment. We must develop a more forward-looking blueprint to guide the transition from regulation to competition. As I have stated previously, regulation is merely designed, to the extent possible, to replicate a competitive marketplace, but any form of regulation is an imperfect surrogate for full-fledged competition.

In addition, this item should not be mistaken for complete compliance with Section 11 of the Communications Act. As I have explained previously, the FCC is not planning to "review *all* regulations issued under this Act . . . that apply to the operations or activities of any provider of telecommunications service," as required under Subsection 11(a) in 1998 (emphasis added).

See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements, 12 FCC Rcd __ (Jan. 29, 1998). Nor has the Commission issued general principles to guide our “public interest” analysis and decision-making process across the wide range of FCC regulations.

In one important respect, however, the FCC's current efforts are more ambitious and difficult than I believe are required by the Communications Act. Subsection 11(a) -- "Biennial Review" -- requires only that the Commission "*determine* whether any such regulation is no longer necessary in the public interest" (emphasis added). It is pursuant to Subsection 11(b) -- "Effect of Determination" -- that regulations determined to be no longer in the public interest must be repealed or modified. Thus, the repeal or modification of our rules, which requires notice and comment rule making proceedings, need not be accomplished during the year of the biennial review. Yet the Commission plans to complete roughly thirty such proceedings this year.

I encourage parties to participate in these thirty rule making proceedings. I also suggest that parties submit to the Commission -- either informally or as a formal filing -- specific suggestions of rules we might determine this year to be no longer necessary in the public interest as well as ideas for a thorough review of all our rules pursuant to Subsection 11(a).

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