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

In the Matters of	)	
	)	
1998 Biennial Regulatory Review --	)	CC Docket No. 98-117
Review of ARMIS Reporting Requirements	)	
	)	
Petition for Forbearance of the Independent	)	
Telephone and Telecommunications	)	AAD File No. 98-43
Alliance	)	

REPORT AND ORDER IN CC DOCKET NO. 98-117
FIFTH MEMORANDUM OPINION AND ORDER IN AAD FILE NO. 98-43

Adopted: May 18, 1999 Released: June 30, 1999

By the Commission: Commissioner Ness issuing a statement, Commissioner Furchtgott-Roth dissenting in part and concurring in part and issuing a statement, Commissioner Powell concurring and issuing a statement.

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I. INTRODUCTION

1. In this Order, as part of our biennial review under section 11 of the Communications Act of 1934, as amended (Communications Act),[1] we adopt the proposals set forth in our Notice of Proposed Rulemaking to reduce the Automated Reporting Management Information System (ARMIS) reporting requirements with one minor modification.[2] Our adoption of the proposal in the *ARMIS Notice* to reduce reporting requirements for mid-sized incumbent local exchange carriers (ILECs) -- *i.e.*, ILECs or affiliated ILECs with aggregate revenues of less than $7 billion -- corresponds to accounting changes addressed in the *Accounting Reductions Report and Order* adopted concurrently in CC Docket No. 98-81.[3] In the *Accounting Reductions Report and Order*, we raise the revenue threshold for carriers that are allowed to use Class B accounts, allowing mid-sized ILECs currently required to use Class A accounts to use the more streamlined Class B accounts. In this Order, we also adopt the proposal in the *ARMIS Notice* to reduce the filing burden on mid-sized ILECs by eliminating the requirement to file 21 tables from the ARMIS 43-02 USOA Report. In addition, we eliminate tables C-1, C-2, C-4, C-5, and I-3 through I-7.

2. In this Order, we eliminate the requirement that carriers report data pertaining to inside wire and payphone investment, and most of the currently reported equal access information. We also eliminate from ARMIS reports 43-01 and 43-04 an additional 48 rows unrelated to equal access, payphone, and inside wire. The elimination of these rows, together with the elimination of the equal access and payphone rows, reduce the number of ARMIS 43-04 rows by approximately 15 percent.

3. In addition, we revise the ARMIS reporting requirements for ILECs by eliminating paper filing and diskette filing requirements. This change will become effective as soon as the electronic filing procedures and improved software discussed in the *ARMIS Notice* are developed and implemented.[4]

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[1] 47 U.S.C. 161.

[2] 1998 Biennial Regulatory Review -- Review of ARMIS Reporting Requirements, CC Docket No. 98-117, *Notice of Proposed Rulemaking*, 13 FCC Rcd 13695 (1998) (*ARMIS Notice*). Twelve parties filed comments and thirteen parties filed reply comments in this proceeding. A list of the parties filing comments and reply comments is in Appendix A.

[3] *See* 1998 Biennial Regulatory Review -- Review of Accounting and Cost Allocation Requirements, Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, CC Docket No. 98-81 and AAD File No. 98-43, *Report and Order in CC Docket 98-81, Order on Reconsideration in CC Docket 96-150, Fourth Memorandum and Opinion in AAD File No. 98-43*, FCC 99-106 (rel. June 30, 1999) *(Accounting Reductions Report and Order)*.

[4] We direct the Accounting Safeguards Division (the Division) of the Common Carrier Bureau to advise the public when the new filing system is finalized. Once the new system is in place, it will be unnecessary to file ARMIS reports on paper copies or diskettes. Companies must continue to file ARMIS reports under current procedures -- including paper filing and diskettes -- until the new procedures are implemented.

4. Our actions today go a long way toward granting the relief requested by the Independent Telephone and Telecommunications Alliance (ITTA) in its petition for forbearance.[5] Although we do not agree to forbear from applying the seven ARMIS financial and operating reports to mid-sized ILECs and requiring mid-sized price cap ILECs to file the ARMIS 43-05 Service Quality Report as requested by ITTA, our actions today significantly reduce the reporting requirements for mid-sized ILECs by allowing these carriers to report at the Class B level rather than Class A and eliminating the requirement to file 21 tables. Thus, through the modifications to our reporting requirements in this Order, and the rule changes in the *Accounting Reductions Report and Order*, a significant amount of the relief sought by ITTA is realized. We discuss additional forbearance issues raised by ITTA in separate proceedings.[6]

5. As we discuss in the *Accounting Reductions Report and Order*, further review of our accounting and cost allocation regulations, including our ARMIS reporting requirements, is warranted.[7] We recognize that our accounting rules need to be streamlined and we believe such changes should be carefully determined after the views of all parties affected by the changes have been considered. As the Common Carrier Bureau announced recently,[8] it has initiated a broad and comprehensive review of our accounting and reporting requirements. The comprehensive review will be undertaken in two phases. Phase 1, which has already begun and will conclude by the end of the year, will address current accounting

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[5] ITTA lists nine issues for which they request forbearance. Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, filed February 17, 1998 (Petition). The deadline for the Commission's action on ITTA's petition was extended by 90 days to May 18, 1999. *See* Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, AAD File No. 98-43, *Order*, 14 FCC Rcd 1018 (1999). In this Order, we address the second and third issues raised in the petition. The first issue in the forbearance petition is addressed in the *Accounting Reductions Report and Order* adopted concurrently in CC Docket No. 98-81.

[6] Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Implementation of Section 601(d) of the Telecommunications Act of 1996, WT Docket No. 96-162, *First Order on Reconsideration*, Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, AAD File No. 98-43, *First Memorandum Opinion and Order*, FCC 99-102 (rel. June 30, 1999); Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, AAD File No. 98-43, *Second, Third, Sixth Memorandum Opinions and Orders*, FCC 99-102, 99-104, 99-105, 99-108 (rel. June 30, 1999); 1998 Biennial Regulatory Review -- Review of Accounting and Cost Allocation Requirements, Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, CC Docket No. 98-81 and AAD File No. 98-43, *Report and Order in CC Docket 98-81, Order on Reconsideration in CC Docket 96-150, Fourth Memorandum and Opinion in AAD File No. 98-43*, FCC 99-106 (rel. June 30, 1999).

[7] *See Accounting Reductions Report and Order* at 6.

[8] *See* "Common Carrier Bureau Announces Initiative to Undertake Comprehensive Review of Part 32 and ARMIS Requirements," *Public Notice*, DA 99-695 (rel. Apr. 12, 1999); "Common Carrier Bureau Announces Agenda for Initial Workshop for Phase I of the Comprehensive Review of Accounting and Reporting Requirements and Treatment of Ex Parte Presentations in Related Proceedings," *Public Notice*, DA 99-758 (rel. Apr. 19, 1999). The first workshop was held on Wednesday, April 21, 1999.

and reporting requirements that can be eliminated or streamlined in order to minimize the burdens on the industry while retaining sufficient information needed for the Commission and state agencies to meet their responsibilities. Phase 2, which will begin in the last quarter of 1999, will examine the current accounting and reporting structure and address long-term changes needed as local exchange markets become competitive, and will assess what, if any, interim measures should be made as competitive milestones are reached. During this process, the Common Carrier Bureau will continue to work closely with the National Association of Regulatory Utility Commissioners (NARUC) and state commissioners so that, in addition to eliminating unnecessary reporting requirements, the Commission and states will focus on further steps necessary to eliminate unnecessary overlap of Federal and state reporting requirements.[9]

6. The reporting modifications that we adopt herein shall become effective for the 1999 ARMIS filings due April 1, 2000. Each year we revise the ARMIS reports to reflect changes to the accounting and cost allocation rules that the Commission adopted during the year. That order contains all the detailed computer specifications and instructions for the carriers to submit the necessary ARMIS filings. The 1999 Annual ARMIS Order, which will be released by the Division, will contain the new instructions pertaining to the modifications discussed in this Order. The 1999 Annual ARMIS Order will include detailed instructions for the modifications that become effective for the 2000 ARMIS filings, *e.g.*, reporting modifications resulting from allowing mid-sized ILECs to use Class B accounts.

II. BACKGROUND

7. The Communications Act seeks to develop efficient competition by opening all telecommunications markets through a pro-competitive, deregulatory national policy framework.[10] In furtherance of that goal, section 11 of the Communications Act, requires the Commission 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 competition between providers of such service and whether such regulations should be repealed or modified.[11] Pursuant to section 11, we released the *ARMIS Notice* in which we proposed to reduce certain ARMIS reporting requirements.

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[9] We note that in a recently adopted resolution, NARUC recommended improving the monitoring of telecommunications service quality by requiring standardized reports. *See* NARUC Resolution Adopting NARUC State Staff Service Quality White Paper, Adopted in Convention, November 11, 1998. The resolution recommended that ILECs and competitive local exchange carriers (CLECs) collect service quality data on a monthly basis and report such data to Federal and state regulatory commissions on a quarterly basis. This would make the service quality information accessible to the states to facilitate comparisons between jurisdictions. NARUC also urged the Commission to ensure that its program imposes only reasonably necessary reporting obligations on industry participants in order to effectively monitor retail telecommunications service quality.

[10] *See* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., 1 (1996).

[11] 47 U.S.C. 161. On February 5, 1998 the Commission released a list of 31 proposed proceedings as part of the 1998 biennial regulatory review. "FCC Staff Proposes 31 Proceedings as Part of 1998 Biennial Regulatory Review," Report No. GN 98-1 (rel. Feb. 5, 1998).

8. ARMIS is an automated system developed by the Commission in 1987 for collecting financial and operating information from certain carriers.[12] Additional ARMIS reports were added in 1991 for the collection of service quality and network infrastructure information from ILECs subject to price cap regulation, and in 1992 for the collection of statistical data formerly included in Form M.[13] Currently, there are ten ARMIS reports.[14] Our rules require ILECs whose revenues surpass the necessary threshold to file ARMIS reports 43-01, 43-02, 43-03, 43-04, 43-08, 495A, and 495B.[15] In addition, all ILECs for whom price cap regulation is mandatory must file ARMIS Reports 43-05, 43-06, and 43-07.[16] In the Telecommunications Act of 1996,[17] Congress required the Commission to permit ILECs to file ARMIS

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[12] *See* Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, *Order*, 2 FCC Rcd 5770 (1987) (*ARMIS Order*), *modified on recon., Order on Reconsideration*, 3 FCC Rcd 6375 (1988) (*ARMIS Recon*).

[13] The Form M for local exchange companies, now discontinued, required the reporting of a series of financial reports which showed the details of various accounts. Some of these reports were eliminated. The rest were incorporated in the ARMIS 43-02 and 43-08 reports.

[14] ARMIS 43-01, the Annual Summary Report, contains a highly aggregated comprehensive view of carriers' financial and cost allocation processes; ARMIS 43-02, the USOA Report, contains the financial operating results of the carriers' telecommunications operations for every account in the Uniform System of Accounts; ARMIS 43-03, the Joint Cost Report, contains the allocation of the carriers' revenues, expenses, and investments between regulated and nonregulated activities; ARMIS 43-04, the Access Report, contains data regarding the separation of the carriers' regulated revenues and costs between the state and interstate jurisdictions, and allocation of interstate amounts among the access charge categories; ARMIS 43-05, the Service Quality Report, contains data on the quality of the carriers' customer service; ARMIS 43-06, the Customer Satisfaction Report, contains the results of surveys of customer satisfaction conducted by the LECs; ARMIS 43-07, the Infrastructure Report, contains data regarding the carriers' telecommunications infrastructure; ARMIS 43-08, the Operating Data Report, contains operational information regarding network plant, lines, and telephone calls; ARMIS 495A, the Forecast of Investment Usage Report, displays the forecasts of expected regulated and nonregulated investment usage; and ARMIS Report 495B, the Actual Usage of Investment Report, displays the actual usage of regulated and nonregulated investment.

[15] *See* Reform of Filing Requirements and Carrier Classifications, CC Docket No. 96-193, *Report and Order*, 12 FCC Rcd 8071, 8095-96, 53-54 (1997) (*Filing Requirements Order*). Class A LECs are companies having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold. The indexed revenue threshold for a given year means $100 million, adjusted for inflation, as measured by the Department of Commerce Gross Domestic Product Chain-type Price Index, for the period from October 19, 1992 to the given year. 47 C.F.R. 32.11(a)(1), 32.9000. *See* "Annual Adjustment of Revenue Threshold," *Public Notice*, DA 98-785 (rel. Apr. 24, 1998) (adjusting annual indexed revenue threshold to $112 million). *See also Accounting Reductions Report and Order* at 11-14

[16] This is required for all mandatory price cap ILECs even if their revenues do not surpass the necessary threshold.

[17] Telecommunications Act of 1996, Pub. L. No. 104-104, Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934.

reports annually.[18] We revised our rules governing the filing of ARMIS reports consistent with the 1996 Act.[19] In addition, eight ARMIS reports were recently revised to improve definitions, descriptions, and instructions.[20]

9. ARMIS plays an important role in assisting the Commission to administer accounting, cost allocation, jurisdictional separations, and access charge rules. ARMIS data is used for various regulatory functions and also permits the Commission to determine whether joint costs incurred in providing regulated and nonregulated services are properly allocated, which is useful and necessary for monitoring the application of our joint cost rules. ARMIS reports permit the Commission to monitor industry developments and to quantify the effects of alternative regulatory proposals. In addition, ARMIS data are relied upon by many state commissions and used by the public. ARMIS data include information for almost ten years and are indispensable for analyzing service quality and infrastructure, as well as economic and financial trends, for the largest ILECs. Recently, the Commission has made the ARMIS information available through the Internet so that an even greater segment of the public can access this information.[21]

10. On February 17, 1998, ITTA filed a petition for forbearance requesting that the Commission forbear from applying certain ARMIS reporting regulations to mid-sized ILECs serving fewer than two percent of the nation's access lines.[22] Two of the issues raised by ITTA are that the seven ARMIS financial and operating reports are no longer necessary for administering the Commission's rules and that the Commission should forbear from requiring mid-sized LECs to file the ARMIS 43-05 Annual Service Quality Report. We address the ITTA petition in section III.F below.

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[18] 1996 Act, 402(b)(2)(B), (c).

[19] *See* Reform of Filing Requirements and Carrier Classifications, CC Docket No. 96-193, *Order and Notice of Proposed Rulemaking*, 11 FCC Rcd 11716, 11718, 4 (1996) (amending our rules to specify that carriers must file ARMIS quarterly report, 43-01, and the ARMIS semi-annual service quality report, 43-06, once a year).

[20] *See* Revision of ARMIS Annual Summary Report (FCC Report 43-01), ARMIS USOA Report (FCC Report 43-02), ARMIS Joint Cost Report (FCC Report 43-03) ARMIS Access Report (FCC Report 43-04), ARMIS Service Quality Report (FCC Report 43-05), ARMIS Customer Satisfaction Report (FCC Report 43-06), ARMIS Infrastructure Report (FCC Report 43-07), and ARMIS Operating Data Report (FCC Report 43-08) for Certain Class A and Tier 1 Telephone Companies, *Order*, 12 FCC Rcd 21831 (1997).

[21] *See* "Automated Reporting Management Information System (ARMIS) Data Now Available on the Commission's Internet Web Site," *Public Notice*, 13 FCC Rcd 18829 (1998).

[22] Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, filed February 17, 1998 (Petition). The deadline for the Commission's action on ITTA's petition was extended by 90 days to May 18, 1999. *See* Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, AAD File No. 98-43, *Order*, 14 FCC Rcd 1018 (1999).

III. DISCUSSION

A. Reduced Reporting Requirements for Eligible Reporting Carriers

11. In the *ARMIS Notice*, we proposed to streamline the ARMIS reporting requirements for certain mid-sized ILECs. Under this proposal, ILECs that were required to file ARMIS reports (*i.e.*, ILECs with annual revenues in excess of $112 million) would be eligible for streamlined reporting if the ILEC, together with its ILEC affiliates, had aggregate annual revenues of less than $7 billion.[23] We hereby adopt the proposal in the *ARMIS Notice*. Streamlined reporting will result from allowing these carriers to account at the Class B level rather than the Class A. This change is consistent with the accounting changes for mid-sized ILECs addressed in our *Accounting Reductions Report and Order* in CC Docket No. 98-81.[24]

12. In addition, we adopt the proposal in the *ARMIS Notice* to reduce the filing burden on mid-sized ILECs by eliminating the requirement to file 21 tables from the ARMIS 43-02 USOA Report. The balance sheet information contained in tables B-3 and B-5 through B-15 may not be crucial for these carriers to report on a regular basis. We also eliminate tables C-1, C-2, C-4, C-5, and I-3 through I-7. This reduction in reporting requirements is based on a balancing of our regulatory needs for information from mid-sized ILECs against our desire not to impose unreasonable or unnecessary reporting requirements on telephone companies. We do not believe that retaining these 21 tables for mid-sized ILECs is needed to provide us with information relative to the regulation of those carriers or the industry as a whole. We note that over the years staff analysis and usage of the data provided in these tables has been mostly limited to the largest ILECs because they have the greatest opportunities and incentives for shifting costs between services, as explained below. Therefore, continued regular collection of this information from mid-sized carriers no longer appears necessary. We conclude that mid-sized ILECs are no longer required to file these 21 tables. The mid-sized ILECs will continue to file the following six tables in the ARMIS 43-02 report: B-1, Balance Sheet Accounts; B-2, Statement of Cash Flows; B-4, Analysis of Assets Purchased from or Sold to an Affiliate; C-3, Board of Directors and General Officers; I-1, Income Statement Accounts; I-2, Analysis of Services Provided to or Sold to an Affiliate.

13. In the *ARMIS Notice*, we sought comment on whether Class B level reporting would provide sufficient data for calculating pole attachment rates,[25] because our pole attachment formulas are

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[23] *See ARMIS Notice*, 13 FCC Rcd at 13698, 6-7.

[24] *See Accounting Reductions Report and Order* at 11-14. The $7 billion threshold will not be indexed for inflation, but will be monitored by the Commission on a regular basis. *Id.* at 18.

[25] The Commission reviews complaints about pole attachment rates under section 224 of the Communications Act. 47 U.S.C. 224. In reviewing the rates charged by ILEC owners of poles, ducts, conduit and rights-of-way, the Commission applies data taken from ARMIS reports. Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, CC Docket No. 86-212, *Report and Order*, 2 FCC Rcd 4387 (1987), *recon. denied*, 4 FCC Rcd 468 (1989); *see also* Letter from Kenneth P. Moran,

based on Class A level of accounting detail.[26] We disagree with those commenters that argue that Class A level of detail is not needed to calculate pole attachment fees.[27] As The National Cable Television Association (NCTA) explains, pole rents are currently determined by isolating the costs of a bare pole, currently booked to Class A account 2411; the Class B account 2410 also includes aerial cable, undersea cable, buried cable, intrabuilding network wiring, and conduit systems, none of which is included in the rental for attachment to a bare pole.[28] Without further Commission action, the mid-sized ILECs would no longer provide the level of detail in their ARMIS reports under Class B accounting to calculate the pole attachment fees.[29] Pursuant to our *Accounting Reductions Report and Order*, we are, therefore, requiring these carriers to continue to maintain subsidiary records to provide the information needed for the pole attachment formulas.[30] Detailed instructions for filing this information will be provided in the 1999 Annual ARMIS Order.[31]

B. Modification of the Filing Requirements for Equal Access, Payphone, Inside Wire, and Other Reports for All Carriers

14. Equal access. Under equal access provisions, all local exchange carriers must permit access to all long distance carriers by dialing "1" plus the called party's number.[32] To assure proper accounting for equal access implementation, new cost categories were established following the AT&T divesture. In the *ARMIS Notice*, we proposed to eliminate equal access information from the ARMIS 43-04 Access Report because the nearly complete transition to equal access reduced our need to monitor its deployment.[33] We proposed to eliminate the corresponding rows and columns from the ARMIS 43-01

Chief, Accounting and Audits Division, Common Carrier Bureau, to Paul Glist, Esq., Cole, Raywid & Braverman, 5 FCC Rcd 3898 (1990).

[26] *ARMIS Notice*, 13 FCC Rcd at 13700-01, 10.

[27] *See, e.g.*, Bell Atlantic Comments at 9-10; SBC Comments at 29.

[28] NCTA Reply Comments at 4.

[29] *See Accounting Reductions Report and Order* at 15.

[30] *Id.*

[31] The Commission is currently considering issues regarding the pole attachment formulas. *See* Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98, *Notice of Proposed Rulemaking*, 12 FCC Rcd 7449 (1997). When a report and order is released, we will specify the subsidiary record categories carriers must maintain in order to provide data for the pole attachment formulas.

[32] *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499, 15511, 17 (1996) (*Local Competition Order*).

[33] *See* "Distribution of Equal Access Lines and Presubscribed Lines," *Report*, Industry Analysis Division, Common Carrier Bureau (Nov. 1997) (concluding that at the end of 1996, 99.4 percent of the nation's telephone

Annual Summary Report pertaining to equal access, for all carriers.

15. We now conclude, however, that complete elimination of all equal access rows from the ARMIS 43-04 Access Report would be inappropriate. Carriers continue to report significant amounts of equal access costs. For 1997, carriers reported $329 million in equal access investment and $38 million in expenses.[34] We must continue to require the reporting of equal access data for the jurisdictional separations process because Part 36 of our rules requires that equal access costs be separately identified and allocated.[35] We have determined, however, that we can effectively monitor the jurisdictional separation of these costs by retaining only seven of the 62 rows currently reported, and thus eliminating the remaining 55 rows, for all carriers.[36] We note that the amount of equal access expenses are relatively small and have declined each year since 1993. We believe that the time has come for the Federal State Joint Board to consider eliminating the equal access separations provisions, but as long as these requirements remain in place, we cannot completely eliminate this reporting requirement.

16. Payphone and Inside Wire Data. In the *ARMIS Notice*, we proposed to eliminate the inside wire and payphone columns and rows from the ARMIS 43-04 Access Report.[37] We also proposed to eliminate the corresponding columns from the ARMIS 43-01 Annual Summary Report pertaining to inside wire and payphone information. Many commenters support this proposal.[38] We conclude that the current

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lines had been converted to equal access; Bell operating companies had converted almost 100 percent of their lines to equal access and other companies had converted 97.6 percent of their lines).

[34] These figures were derived from the ARMIS 43-04 Access Reports filed by ILECs for 1997.

[35] 47 C.F.R. 36.191(b).

[36] We will require carriers to continue to report information for the following seven rows in 43-04: Row 30 -- Total Equal Access Investment; Row 40 -- Equal Access Accumulated Depreciation Reserve; Row 42 -- Equal Access Accumulated Amortization; Row 44 -- Equal Access Current Deferred Operating Income Taxes; Row 46 -- Equal Access Non-Current Deferred Operating Income Taxes; Row 83 -- Equal Access Minutes-of-Use; and Row 84 -- Total Equal Access Expenses. *See* Appendix B for a complete list of the rows, columns, and tables eliminated.

[37] Installation and maintenance of inside wire were deregulated in Detariffing the Installation and Maintenance of Inside Wiring, *Second Report and Order*, 51 Fed. Reg. 8498 (Mar. 12, 1986); *recon*., 1 FCC Rcd 1190 (1986); *further recon*., 3 FCC Rcd 1719 (1988). The Payphone Orders required ILECs to deregulate, detariff, and reclassify ILEC payphones as customer premises equipment for regulatory purposes effective April 15, 1997. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, *First Report and Order*, 11 FCC Rcd 20541 (1996); *Order on Reconsideration*, 11 FCC Rcd 2233 (1996); *aff'd in part and remanded in part, sub nom.* Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555 (D.C.Cir. 1997); *Order on Remand*, 13 FCC Rcd 4998 (1998); *aff'd in part and remanded in part*, MCI v. FCC, 143 F.3d 606 (D.C.Cir. 1998).

[38] *See, e.g.*, AT&T Comments at 2; BellSouth Comments at 7; SBC Comments at 4; Sprint Comments at 3; USTA Comments at 7; US West Comments at 3.

data collected in ARMIS 43-01 and 43-04 no longer are necessary to be collected and thus we eliminate the inside wire and payphone columns and rows in the ARMIS 43-01 Annual Summary Report and the ARMIS 43-04 Access Report.[39]

17. Other ARMIS Report Rows Eliminated. In the *ARMIS Notice*, we proposed to eliminate from ARMIS reports 43-01 and 43-04 an additional 48 rows unrelated to equal access, payphone, and inside wire. None of the commenters opposed this proposal. We believe that the data collected in these rows are no longer needed to regulate ILECs or the industry as a whole for the reasons given above. Thus, we conclude that it is no longer necessary to require parties to submit data for these specific rows in ARMIS reports 43-01 and 43-04.[40] We note that the elimination of these rows, together with the elimination of the equal access and payphone rows discussed above, reduce the number of ARMIS 43-04 rows by approximately 15 percent.

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[39] Specifically, we are eliminating rows 1422, 1423, 1424, 5032, and 5033 from report 43-04.

[40] We are eliminating the following rows:

(1) row 1980 from report 43-01, which is no longer necessary because the common line transition support has expired;

(2) rows 999, 1004, 1210, 1211, 1391, 1419, 1521, 5020, 5021, 5070, and 5071 from report 43-04, which are in conflict with our order on direct assignment;

(3) rows 1214, 1215, 1217, and 1219 from report 43-04, which are no longer necessary because our transition to relative dial equipment minutes allocator for central office equipment category 3 has been completed;

(4) rows 1241, 1242, 1243, 1281, 1282, 1283, 1334, 1340, 1341, 1351, 1352, and 1360 from report 43-04 because teletypewriter exchange service is no longer a regulated service;

(5) rows 1427, 1456, 1457, and 1458 from report 43-04 because the transition from subscriber plant factor to 25 percent Gross Allocator had been completed;

(6) rows 7240, 7241, 7242, 7243, 7244, 7247, 7251, 7252, 7253, 7254, 7255, 7256, 7257, and 7258 from report 43-04 because the methodology reflected in these rows for Other Billing and Collection expense allocation no longer applies; and

(7) row 9000 from report 43-04, which is no longer necessary since common line transitional support has expired.

C. Elimination of the Paper Filing Requirement

18. As we noted in the *ARMIS Notice*, the Commission relies increasingly on data filed electronically to maintain internal databases and generate reports. For example, we recently implemented mandatory electronic filing of tariffs and associated documents,[41] permitted electronic filing of comments and other pleadings,[42] and required electronic filing for certain wireless radio applications.[43] We also note that a principal way in which the Commission has increased the public's access to the Commission's information and documents is through the Internet.[44]

19. Currently, carriers are required to submit both paper copies of ARMIS reports and diskettes in American Standard Code for Information Interchange (ASCII) format to the Division. The Commission and some users of the ARMIS data utilize the ASCII (*i.e.*, diskette) versions of the reports. Other users prefer accessing the ARMIS data through the paper filings. In the *ARMIS Notice*, we proposed to eliminate the paper filing requirement. We also proposed to develop Internet-based capabilities by which ARMIS users could obtain paper copies of the ARMIS reports. Commenters support our proposal to eliminate paper filing and to make ARMIS data available over the Internet.[45] Several commenters note the

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[41] *See* Electronic Tariff Filing System (ETFS), DA 98-914, *Order*, 13 FCC Rcd 12335 (1998) (requiring ILECs to file tariffs and associated documents using the Common Carrier Bureau's electronic tariff filing system as of July 1, 1998).

[42] *See* Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd 11322 (1998) (permitting parties to file comments and other pleadings electronically via the Internet in informal notice and comment rulemaking proceedings (except in broadcast allotment proceedings), and the electronic filing of pleadings and comments in proceedings involving petitions for rulemaking (except in broadcast allotment proceedings) and Notice of Inquiry proceedings).

[43] *See* Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development of and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd 21027 (1998) (*ULS Order*). In the *ULS Order*, the Commission mandated electronic filing for (1) applicants and licensees in services licensed by auction (even if the particular license was not acquired at auction) and for applications filed by frequency coordinators; (2) applicants and licensees in common carrier services which are not subject to auction because they operate on shared spectrum; and (3) volunteer examiner-coordinators in the Amateur service. *See also* Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 412, 62 (1997) (requiring electronic filing of all short-form and long-form applications beginning January 1, 1999, unless not feasible due to technical failure or other difficulties).

[44] *See* Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Business, GN Docket No. 96-113, *Report*, 12 FCC Rcd 16802, 16845-46, 78-79 (1997).

[45] *See, e.g.*, Ameritech Comments at 4; AT&T Comments at 1; Bell Atlantic Comments at 6 n.5; BellSouth Comments at 6; GSA Comments at 2 & Reply Comments at 2-3; SBC Comments at 3 & n.9; Sprint Comments at 2 & Reply Comments at 4; MCI Comments at 1-2; USTA Comments at 6 & Reply Comments at 3; US West Comments at 3.

cost savings of our proposal.[46]

20. On September 24, 1998, the Division released a Public Notice announcing that ARMIS information is available on the Commission's Internet web site.[47] The Commission plans to develop software enhancements that will permit parties to print out paper copies of ARMIS reports from the Internet and will require carriers to file ARMIS reports electronically over the Internet. The system will be designed to allow users to select only those reports they need for a particular year or company. In addition, we anticipate that Internet access to the original ASCII data will be available. We direct the Division to keep the public advised of such progress through Public Notices. Once the new system is finalized it will be unnecessary to file paper copies or diskettes. Companies must continue to file ARMIS reports under current procedures -- including paper filing and diskettes -- until the new procedures are implemented.

D. Maintaining ARMIS Reporting Requirements

21. We next address several specific issues raised by commenters that are beyond those set forth in our *ARMIS Notice*. We agree with the ILECs' claims[48] that effective competition in the local exchange market could warrant removing or greatly streamlining detailed ARMIS reporting,[49] but we disagree that such competition has developed to the point today to justify radical changes in ARMIS reporting requirements. We intend, however, to continue to monitor our needs for reporting requirements from ILECs as competition develops.[50]

22. In addition, we are not persuaded at this time by ILECs' claims that the requisite financial

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[46] *See, e.g.*, Sprint Comments at 2 (estimating a cost savings of $6,800 annually); USTA Comments at 6 (estimating a cost savings of approximately $150,000 annually); GSA Comments at 2 (stating that access to ARMIS data on the Internet would greatly reduce GSA's costs).

[47] *See* note 21, *supra*. The database web site address is http://www.fcc.gov/ccb/armis/db/. Descriptions of the reports and carrier filing requirements are available on the database web site and the ARMIS web site at http://www.fcc.gov/ccb/armis/.

[48] *See, e.g.*, SBC Comments at 10 & Reply Comments at 17; CBT Reply Comments at 5.

[49] *See* AT&T Reply Comments at 3; MCI Reply Comments at 2 (noting that the ILECs have presented no evidence in this proceeding that would allow the Commission to conclude that meaningful competition exists; thus, there is no basis for removing the Commission's regulatory tools -- Class A accounting, detailed cost allocation manual filings, audits, and ARMIS reports -- which are all needed to protect consumers).

[50] The most recent data submissions show that competitive local exchange carriers (CLECs) and competitive access providers (CAPs) together account for only one percent of nationwide local exchange service revenues. (*See* Table 8.1, Trends in Telephone Service, Common Carrier Bureau, July 1998). In 1997, ILECs had 97.5 percent of the local telecommunications market (*i.e.*, local exchange, local private line, and other local services as well as interstate and intrastate access services) as measured by revenues. Telecommunications Industry Revenue: 1997, Table 4 (Industry Analysis Div., October 1998).

detail could be provided on an as-needed basis instead of an annual ARMIS filing.[51] One objective of the Uniform System of Accounts is to maintain a sufficiently detailed and current regulatory accounting-based system that facilitates recurrent regulatory decisionmaking without undue delay or reliance on *ad hoc* information requests and special studies.[52] Without annual filings, the Commission, state regulators, and the public would not have access to the information contained in the complete ARMIS database. In addition, maintaining the ARMIS database, accessible on the Internet, will increase the public's access to the Commission's information. Providing financial data on demand may suffice for a specific analysis, but it would not provide the financial and operating data needed to administer accounting, cost allocation, jurisdictional separations, and access charge rules, and it would not preserve the Commission's ability to monitor industry developments and quantify the effects of alternative regulatory proposals. Moreover, this proposal would not permit state regulators or other parties to use the ARMIS data for their purposes. We, thus, reject this proposal to eliminate our ARMIS reporting requirements.

23. We disagree with the commenters' argument that ARMIS data at the Class A reporting level are unnecessary for the Commission to enforce structural separation and nondiscrimination requirements under the Communications Act because the Commission has required the structurally separate affiliates to maintain separate books of account based on generally accepted accounting principles, not Part 32 accounts reported in ARMIS.[53] Recently, in the *Second BellSouth Louisiana Order*, the Commission used BellSouth's ARMIS filings and cost allocation manuals (CAMs)[54] to determine that there were significant discrepancies between such filings and BellSouth's section 272(b)(5) Internet disclosures regarding transactions between the Bell operating company (BOC) and its section 272 affiliate.[55] The Commission noted that BellSouth failed to disclose fully all transactions between BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. BellSouth Long Distance is a section 272

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[51] *See, e.g.*, Ameritech Reply Comments at 4; SBC Reply Comments at 8-10; US West Reply Comments at 3; USTA Reply Comments at 4.

[52] *See* Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B 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 (P&F) 1111, 2 (1986).

[53] *See, e.g.*, Bell Atlantic Comments at 7; Ameritech Comments at 7; BellSouth Comments at App. 4, p. 10; US West Comments at 5; USTA Comments at 5.

[54] Pursuant to section 64.903 of our rules, carriers with 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 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).

[55] *See* Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, *Memorandum Opinion and Order*, 13 FCC Rcd 20599, 20791-92, 335 & n.1046 (1998) (*Second BellSouth Louisiana Order*).

affiliate established to provide in region interLATA services once section 271 approval is obtained. Under section 272(b)(5), transactions between a BOC and its section 272 affiliate must be publicly disclosed and must be conducted on an arm's length basis; the Commission concluded that BellSouth had not shown that it would comply with either requirement of this section of the Communications Act. Without the Class A level of detail contained in ARMIS 43-02, Table I-2, the Commission might not have found the discrepancies in the filings which revealed that BellSouth failed to fully disclose all such transactions.

24. In addition, the Commission's ARMIS data are relied upon by many state commissions. From January 1997 to July 1998, ARMIS data were used in a large number of state public utilities proceedings.[56] State regulators use ARMIS data to assess the reasonableness of price cap or incentive

[56] *See* ALLTEL Carolina, Inc., Docket No. P-118, Sub 86, North Carolina Utilities Commission (July 8, 1998); Regulations for Competition in the Local Telecommunications Market, General Order, Louisiana Public Service Commission (June 18, 1998); TCG Delaware Valley, Inc., P-00971256, Pennsylvania Public Utility Commission (June 16, 1998); Petition by Metropolitan Fiber Systems of Florida, Inc. for Arbitration with BellSouth Telecommunications, Inc., Docket No. 960757-TP, Order No. PSC-98-0604-FOF-TP, Florida Public Service Commission (April 29, 1998); Telecommunications Act of 1996, Cause No. 40618, Indiana Utility Regulatory Commission (May 7, 1998); US West Communications, Inc., Docket No. RPU-96-9, Iowa Utilities Board (April 23, 1998); Communications Infrastructure of the State of Hawaii, Docket No. 7702, Order No. 16272, Hawaii Public Utilities Commission (April 3, 1998); BellSouth Telecommunications, Inc., Order No. U-22418, Louisiana Public Service Commission (March 26, 1998); Reciprocal Compensation Related to Internet Traffic, Case 97-C-1275, New York Public Service Commission (March 19, 1998); Telecommunications Act of 1996, Docket No. 97-5018, Nevada Public Service Commission (March 11, 1998); Bundled and Unbundled Telephone Services and Service Elements, Docket No. 96-0035, Nevada Public Service Commission (March 5, 1998); GTE North Incorporated, Case No. U-11281, Michigan Public Service Commission (February 25, 1998); Avoided Cost for Development of Wholesale Discounts from Retail Rates, Docket No. 2518, Rhode Island Public Utilities Commission (January 29, 1998); Petition for Approval of Resale, Interconnection, and Unbundling Agreement Between BellSouth Telecommunications, Inc., and Business Telecom, Inc., Docket No. 971561-TP, Order No. PSC-98-0170-FOF-TP, Florida Public Service Commission (January 28, 1998); Ameritech Michigan, Case No. U-11280, Michigan Public Service Commission (January 28, 1998); Local Resale, Docket No. 25677, Alabama Public Service Commission (December 22, 1997); Local Exchange Competition for Telecommunications Services, Docket No. TX95120631, New Jersey Board of Public Utilities (December 2, 1997); BellSouth Telecommunications, Inc.'s Entry into InterLATA Services, Docket No. 960786-TL, Order No. PSC-97-1459-FOF-TL, Florida Public Service Commission (November 19, 1997); AT&T Communications of New York, et al., Cases 95-C-0657, 94-C-0095, 91-C-1174, New York Public Service Commission (September 22, 1997); US West Communications, Inc., Case No. USW-S-96-5, Order No. 27100, Idaho Public Utilities Commission (August 12, 1997); Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc. with FiberSouth of Florida, Inc., Docket No. 970376-TP, Order No. PSC-97-0789-FOF-TP, Florida Public Service Commission (July 2, 1997); Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc. with WinStar Wireless, Inc., Docket No. 970366-TP, Order No. PSC-97-0786-FOF-TP, Florida Public Service Commission (July 2, 1997); Petitions by AT&T Communications of the Southern States, Inc., et al., Concerning Interconnection and Resale, Docket Nos. 960847-TP, 960980-TP, Order No. PSC-97-0064-FOF-TP, Florida Public Service Commission (January 27, 1997, as amended May 21, 1997); US West Communications, Inc., Docket Nos. 70000-TF-96-319, 72000-TF-96-95, Wyoming Public Service Commission (April 23, 1997); Sprint Communications Company, L.P., Docket No. P-294, Sub 9, North Carolina Utilities Commission (April 7, 1997); General Order, Louisiana Public Service Commission (April 1, 1997); AT&T Communications of New York, Inc., *et al.*, Cases 95-C-0657, 94-C-

regulation plans;[57] and 18 states and the District of Columbia employ rate-of-return regulation and use ARMIS data in their regulatory processes.[58]

25. We also observe that ARMIS data have been used in a variety of recent Commission proceedings. For example, in our tariff investigation of access charges,[59] the Commission used ARMIS data to allocate excess residential lines by state for each carrier in order to calculate the excess residential loops for each price cap LEC.[60] ARMIS data were used to find that exogenous cost changes were miscalculated because the carriers' jurisdictional separations of Other Billing and Collection costs were not in compliance with our rules.[61] In that same Order, ARMIS data were also used to find that the base factor

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0095, 91-C-1174, New York Public Service Commission (April 1, 1997); Pacific Telesis Group, Decision 97-03-067, Application 96-04-038, California Public Utilities Commission (March 31, 1997); 1996 Annual Reports, Case No. 97-174-AU-UNC, Ohio Public Utilities Commission (March 6, 1997); Sprint Communications Company, L.P., Docket No. 961173-TP, PSC-97-0230-FOF-TP, Florida Public Service Commission (February 26, 1997); Local Exchange Competition, Case No. 95-845-TP-COI, Ohio Public Utilities Commission (February 20, 1997); MCI Telecommunications Corp., Docket No. P-141, Sub 30, North Carolina Utilities Commission (February 4, 1997); AT&T Communications of the Southern States, Inc., Docket No. P-140, Sub 51, North Carolina Utilities Commission (February 4, 1997); MCImetro Transmission Services, ARB 9, Order No. 97-038, Oregon Public Utility Commission (February 3, 1997); Sprint Communications Company, L.P., Case No. 96-1021-TP-ARB, Ohio Public Utilities Commission (January 30, 1997); AT&T Communications of the Southwest, Inc., Case Nos. TO-97-40, TO-97-67, Missouri Public Service Commission (January 22, 1997); Sprint Communications Company, L.P., Case No. TO-97-124, Missouri Public Service Commission (January 15, 1997); AT&T Communications of Ohio, Inc., Case No. 96-752-TP-ARB, Ohio Public Utilities Commission (January 15, 1997); Southwest, Inc., Case No. TO-97-63, Missouri Public Service Commission (January 15, 1997); AT&T Communications of the Southwest, Inc., ARB 5, Order No. 97-021, Oregon Public Utility Commission (January 13, 1997); MCI Telecommunications Corp., Case No. 96-888-TP-ARB, Ohio Public Utilities Commission (January 9, 1997).

[57] *See* MCI Reply Comments at 5.

[58] *Id.* The Public Service Commission of Wisconsin (Wisconsin Commission) states that it develops four measures for determining incentives and penalties for price regulated companies based on data from Table II of ARMIS 43-05 report for all companies nationwide. Wisconsin Commission Reply Comments at 2. The Wisconsin Commission also uses the ARMIS 43-07 report to develop price regulation incentive and penalty benchmarks for various technologies based on comparisons between Wisconsin companies and similar companies nationwide. *Id.* at 2-3.

[59] Interexchange carriers must purchase interstate access services from local exchange carriers in order to provide long-distance telephone service to business and residential telephone customers. The Commission regulates the manner in which ILECs provide access in order to prevent market power from being exercised to the detriment of consumers.

[60] *See* Tariffs Implementing Access Charge Reform, CC Docket No. 97-250, *Memorandum Opinion and Order*, 13 FCC Rcd 14683, 14693-94, 17 (1998).

[61] *See* 1997 Annual Access Tariff Filings, CC Docket No. 97-149, *Memorandum Opinion and Order*, 13 FCC Rcd 3815, 3867-3901, 125-204 (1997).

portion forecasts in the 1997 annual access tariff filings were unreasonable.[62] In our section 706 proceeding, ARMIS report 43-08 provided the amount of spare or "dark" fiber, as a percent of total fiber deployment.[63] As discussed above, in the *Second BellSouth Louisiana Order*, the Commission used ARMIS filings and CAMs to determine that there were significant discrepancies between such filings and BellSouth's section 272(b)(5) Internet disclosures.

26. At this time we do not eliminate the carriers' obligations to file ARMIS reports, as suggested by some commenters;[64] however, as previously noted, the Common Carrier Bureau has initiated a broad and comprehensive review of its accounting and reporting requirements.[65] As a result of that proceeding, we will have a more complete record upon which to determine which ARMIS reporting requirements may be modified or reduced. Although we set no criteria for elimination of ARMIS reporting, we note that the Commission has previously reduced the reporting and accounting requirements imposed on interexchange carriers as competition in that market developed and we fully expect to provide similar regulatory relief in the local exchange and exchange access markets as circumstances warrant.

E. ARMIS Reporting Requirements at the Class A Level for Large ILECs

27. In the *ARMIS Notice*, we tentatively concluded that we would maintain the Class A level of detail for the reporting requirements of the largest ILECs -- the BOCs and GTE -- to allow us to continue to uphold the statutory obligations to prevent cross-subsidization and discrimination under sections 254(k), 260, and 271-276 of the Communications Act.[66]

28. The largest ILECs conduct a much greater transactional volume of nonregulated services

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[62] *See* 1997 Annual Access Tariff Filings, CC Docket No. 97-149, *Memorandum Opinion and Order*, 13 FCC Rcd 3815, 3823-32, 15-35 (1997). *See also* Tariffs Implementing Access Charge Reform, CC Docket No. 97-250, *Memorandum Opinion and Order*, 13 FCC Rcd 14683 (1998).

[63] The ILECs' total dark fiber was approximately 66% in 1991, 63% in 1992, 70% in 1993, 65% in 1994, 68% in 1995, 68% in 1996, and 67% in 1997. *See* Inquiry Concerning the Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, *Notice of Inquiry*, 13 FCC Rcd 15280, 15288, 23 & n.19 (1998).

[64] *See, e.g.*, Bell Atlantic Comments at 2-4; BellSouth Comments at 4; USTA Comments at 2 & Reply Comments at 1.

[65] *See* "Common Carrier Bureau Announces Initiative to Undertake Comprehensive Review of Part 32 and ARMIS Requirements," *Public Notice*, DA 99-695 (rel. Apr. 12, 1999); "Common Carrier Bureau Announces Agenda for Initial Workshop for Phase I of the Comprehensive Review of Accounting and Reporting Requirements and Treatment of Ex Parte Presentations in Related Proceedings," *Public Notice*, DA 99-758 (rel. Apr. 19, 1999). The initial workshop was Wednesday, April 21, 1999.

[66] *See ARMIS Notice*, 13 FCC Rcd at 13702-02, 13.

than small and mid-sized carriers. This situation creates additional opportunities to shift costs from nonregulated services to regulated services, resulting in subsidization of nonregulated services with the revenues earned from the provision of regulated services and a greater risk of harm to consumers and competitors from such cross-subsidization.[67] The Class A level of detail specified in the Part 32 accounting rules allows us to identify potential cost misallocations beyond those revealed by the Class B system of accounts. The information reported by the largest ILECs, at the Class A level, permits us to protect consumers and otherwise advance the public interest by assuring that new market entrants as well as established carriers are not adversely affected by potentially anti-competitive practices. We believe that we should retain the Class A level of reporting for the largest ILECs, *i.e.*, the BOCs and GTE, at this time.[68] This does not increase the reporting requirements for the largest ILECs; it simply does not extend to the largest ILECs the reporting reductions that we find appropriate for the mid-sized ILECs.

[67] As AT&T observes, the large ILECs account for $5.6 billion in nonregulated expenses, as compared to $0.9 billion for all other LECs required to file the ARMIS 43-03 Joint Cost Report, and thus the ratepayer impact of any cost-shifting would be greater for these largest carriers. *See* AT&T Reply Comments at 5 & n.10.

[68] As discussed above, the Common Carrier Bureau is undertaking a comprehensive review of our current accounting rules under Part 32 and the reporting requirements of ARMIS. *See* note 65, *supra.*

F. Independent Telephone and Telecommunications Alliance's Petition for Forbearance

29. On February 17, 1998, ITTA filed a petition for forbearance requesting that the Commission forbear from applying certain regulations to mid-sized ILECs serving fewer than two percent of the nation's access lines.[69] ITTA argues (1) that the seven ARMIS financial and operating reports are no longer necessary for administering the Commission's rules[70] and (2) the Commission should forbear from requiring mid-sized ILECs to file the ARMIS 43-05 Annual Service Quality Report.[71] Two commenters, CBT and ATU, support the ITTA petition;[72] five commenters would have the relief sought by ITTA extended to all carriers.[73]

30. The ITTA Petition is filed under section 10 of the Communications Act.[74] Specifically, section 10 provides that the Commission shall forbear from applying any regulation or any provision of the Communications Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers;

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[69] Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, filed February 17, 1998 (Petition). The deadline for the Commission's action on ITTA's petition was extended by 90 days to May 18, 1999. *See* Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, AAD File No. 98-43, *Order*, 14 FCC Rcd 1018 (1999). Comments were filed by GTE Service Corporation (GTE), United States Telephone Association (USTA), the Telecommunications Resellers Association (TRA), General Communication, Inc. (GCI), Ameritech, SBC Communications, Inc. (SBC), AT&T, and Bell Atlantic. Reply Comments were filed by Cincinnati Bell Telephone Company (CBT), ITTA, and ATU Telecommunications (ATU).

[70] *See* Petition at 19-22. ITTA supports the reductions in reporting burdens proposed in the *ARMIS Notice* and notes that the adoption of some of the proposals -- such as eliminating Class A accounting requirements for mid-sized LECs -- may moot some issues raised in the ITTA Petition. ITTA Comments at 2-4.

[71] Petition at 21.

[72] *See* CBT Reply Comments at 5-11; ATU Reply Comments at 2.

[73] *See* Ameritech Comments at 2-4; SBC Comments at 1-2; Bell Atlantic Comments at 2-5; USTA Comments at 11-13; GTE Comments at 4-8.

[74] 47 U.S.C. 160.

and

(3) forbearance from applying such provision or regulation is consistent with the public interest.[75]

31. As an initial matter, we note that, under section 11 of the Communications Act, we are streamlining the ARMIS reporting requirements for certain mid-sized ILECs by changing the reporting for these carriers from the Class A accounting level to the Class B level. In addition, we are reducing the filing burden on mid-sized carriers by eliminating the requirement to file 21 tables from the ARMIS 43-02 USOA Report. These actions taken today will significantly reduce the reporting requirements for the mid-sized ILECs. We believe that ARMIS reports, at the Class B level of reporting at least, still are necessary for mid-sized ILECs. ARMIS reports are needed to administer accounting, cost allocation, jurisdictional separations, and access charge rules, and to preserve the Commission's ability to monitor industry developments and quantify the effects of alternative regulatory proposals. In addition, the Commission's ARMIS data are relied upon by many state commissions to assess the reasonableness of price cap or incentive regulation plans and for rate-of-return regulation. For these reasons, and the reasons set forth below, we deny ITTA's petition for forbearance from applying the seven ARMIS financial and operating reports to mid-sized ILECs.

32. ARMIS Financial and Operating Reports. We conclude that ITTA has not demonstrated that the three requirements of section 10 have been satisfied.[76] With respect to the first prong of the section 10 standard for forbearance, we disagree with ITTA's claims that the seven ARMIS financial and operating reports are not necessary to ensure that mid-sized carriers charge just and reasonable rates, and that the information contained in these ARMIS reports is of little use to the Commission.[77] As discussed above, these ARMIS reports are needed to administer our accounting, cost allocation, jurisdictional separations, and access charge rules and to preserve the Commission's ability to monitor industry developments and quantify the effects of alternative regulatory proposals. In addition, the Commission uses these ARMIS reports to monitor the ILECs' interstate earnings as part of its overall evaluation of the price cap regime, for low-end formula adjustments, rate increases that exceed the price cap indices, exogenous cost changes, base factor portion forecasts, and subscriber line charges. We cannot assume that, absent these seven ARMIS reports, market conditions or any other factor will adequately ensure that charges, practices, classifications, and services of the mid-sized ILECs are just and reasonable and are not unjustly or unreasonably discriminatory. ITTA has not brought such evidence to our attention. Therefore, we conclude that the first prong of the section 10 forbearance test has not been satisfied.

33. Second, we find that ITTA has not demonstrated that enforcement of such regulation or

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[75] 47 U.S.C. 160(a).

[76] AT&T and GCI argue that ITTA has failed to show that the elimination of these reporting requirements meets the standards set forth in section 10(a) of the Communications Act. *See* AT&T Comments at 1-6; GCI Comments at 4-6.

[77] Petition at 20.

provision is not necessary for the protection of consumers.[78] We disagree with ITTA's claims that, without the seven ARMIS financial and operating reports, the Commission still can review a carrier's rates in response to a complaint.[79] As discussed above, we are not persuaded that requisite financial detail could be provided on an as-needed basis instead of an annual ARMIS filing. One of the goals in implementing the Uniform System of Accounts (USOA) is to have an up-to-date regulatory accounting system maintained in sufficient detail to facilitate recurrent regulatory decisionmaking without undue delay or reliance on *ad hoc* information requests and special studies.[80] Under the ITTA proposal, we would not have a complete ARMIS database available to the Commission and the public, including state regulators. We fail to see how this proposal would adequately protect consumers. Thus, we conclude that the second prong of the test has not been met.

34. We find that ITTA has not shown that any harm caused by requiring the seven ARMIS financial and operating reports outweighs the public interest benefits of these reporting requirements. In evaluating whether forbearance is consistent with the public interest, we must "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services."[81] We reject ITTA's contentions that the expenses imposed by ARMIS reporting are significant on a per-subscriber basis and that forbearance of these ARMIS reporting requirements would permit mid-size ILECs to become more efficient and hence more competitive.[82] The record also does not show that eliminating the requirement to file the seven ARMIS financial and operating reports will protect ratepayers and ensure that the mid-sized carriers' rates will be just, reasonable, and non-discriminatory. We believe that protecting ratepayers and ensuring that the mid-sized carriers' rates are just, reasonable, and non-discriminatory are significant elements of our public interest analysis. We therefore conclude that ITTA has not satisfied the third prong of the section 10 forbearance standard.

35. ARMIS Service Quality Report. ITTA also contends that the Commission should forbear from requiring mid-sized ILECs to file the ARMIS 43-05 Annual Service Quality Report.[83] In support of the first and second prongs of the forbearance standard, ITTA argues that ARMIS 43-05 is not necessary to protect consumers or to ensure against unreasonable pricing or practices, the quality of service offered

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78 47 U.S.C. 160(a)(2).

79 Petition at 20.

80 *See* Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B 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 (P&F) 1111, 2 (1986).

81 47 U.S.C. 160(b).

82 Petition at 20-21.

83 *Id*. at 21.

by price cap carriers "has not been a particular concern," many states require service quality reports, and mid-sized ILECs have a strong economic incentive to keep their quality of service high in order to retain customers.[84] We are unpersuaded by ITTA's arguments for the reasons set forth below.

36. In the ARMIS 43-05 Service Quality Report, price cap ILECs provide key service quality information on a study area basis.[85] The ARMIS 43-05 organizes the carrier's service quality information into five tables: (1) installation and repair intervals for interexchange carriers; (2) installation and repair intervals for local access customers; (3) common trunk blockage; (4) total switch downtime and occurrences of two minutes or more duration; and (5) federal and state service quality complaints. Through the ARMIS 43-05, the Commission, state commissions, and the public monitor trends in the quality of service provided by price cap ILECs. This information on the quality of service offered by ILECs is used to protect consumers and to protect other carriers from unreasonable practices or discrimination.

37. We also find that ITTA's allegation that quality of service "has not been a particular concern" is without basis in fact. We note that the Common Carrier Bureau has a pending proceeding proposing modifications to ARMIS service quality reporting requirements.[86] In addition, NARUC recently adopted a resolution regarding the service quality issue. NARUC specifically noted that ARMIS data and service quality investigations conducted in numerous states indicate preliminary trends in service quality that raise concern regarding the quality of the network.[87] NARUC recommended that the Commission update the service quality monitoring program to account for technological and regulatory developments in the telecommunications industry, to collect service quality information on a more frequent basis than the current annual requirement, and to make service quality information easily accessible on the Internet. NARUC also requests that the Commission expand the collection of service quality information to include all LECs, both incumbent and competitive LECs.

38. We reject ITTA's argument that, because states require service quality reports, the Commission should forbear from requiring them. As discussed in paragraph 24, above, the Commission's ARMIS data are relied upon by many state commissions. The Wisconsin Commission states that it develops measures for determining incentives and penalties for price regulated companies based on data

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[84] *Id.* at 22.

[85] A study area is a geographic segment of a carrier's telephone operations that generally corresponds to a carrier's entire service territory within a state.

[86] *See* "Common Carrier Bureau Solicits Comments on Proposed Modifications to ARMIS Service Quality Reporting Requirements," *Public Notice*, 13 FCC Rcd 5078 (1998). For example, in comments in that proceeding, the Public Service Commission of the District of Columbia states that it has historically relied on the ARMIS service quality reports. *See* Reply Comment for the District of Columbia, in AAD File Nos. 98-22, 98-23, at 1 (filed May 15, 1998).

[87] *See* NARUC Resolution No. 2, Resolution Regarding a Federal Service Quality Reporting Program, Winter Meeting, March 1998.

from the ARMIS 43-05 report.[88] ITTA also argues that mid-sized ILECs have an economic incentive to keep service quality high; however, many consumers have not experienced the benefits of growing competition and cannot change LECs in response to poor quality of service. We view the ARMIS 43-05 as a critical tool for protecting the interests of consumers during the transition to competition. In addition, we note that, despite ITTA's assertion to the contrary, the ARMIS data suggests a decline in the quality of service provided by price cap ILECs.[89] Thus, we conclude that ITTA has failed to satisfy the first and second prongs of the forbearance standard.

39. Finally, we find that ITTA has failed to meet the third prong of the section 10 forbearance standard. ITTA argues that the savings for each mid-size ILEC by not filing ARMIS service quality reports would benefit consumers through reinvestment in the LEC's infrastructure.[90] We reject ITTA's argument. The record does not show that eliminating the requirement to file the ARMIS 43-05 will protect ratepayers and ensure that the mid-sized carriers' rates will be just, reasonable, and non-discriminatory. We believe that protecting ratepayers and ensuring that the mid-sized carriers' rates are just, reasonable, and non-discriminatory are significant parts of our public interest analysis. ITTA has not shown that any harm caused by requiring the ARMIS 43-05 report outweighs the public interest benefits of these reporting requirements. We find that the ARMIS 43-05 Service Quality Report is necessary for monitoring the quality of service provided by price cap ILECs, including mid-sized LECs. We believe that the existing service quality reports are the least burdensome method of monitoring the quality of telecommunications

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[88] Wisconsin Commission Reply Comments at 2.

[89] The ARMIS reports of certain mid-sized carriers indicate some disturbing trends in the quality of service provided to interexchange carriers and local customers. For example, several mid-sized carriers reported increased duration for installing service. Southern New England Telephone (SNET) reported an average installation duration of 5.3 days for residential customers in 1997, which increased from 1.7 days in 1994. Similarly, Aliant reported an average installation interval of 2.3 days for residential customers in Metropolitan Statistical Area (MSA) areas in 1997, which increased from 1.9 days in 1994. SOURCE: ARMIS 43-05 Service Quality Report, Table II. Other mid-sized carriers report an increased duration for repairing service provided to local residential and business customers. Aliant reported an average repair time for initial out-of-service trouble reports for residential customers of 46 hours in 1997, which increased from 9.7 hours in 1994. CBT reported an average repair time for initial out-of-service troubles of 22.2 hours in 1997, which increased from 16.5 hours in 1994. Similarly, SNET reported an average repair time of 27.1 hours in 1997, which increased from 17.2 hours in 1994. SOURCE: ARMIS 43-05 Service Quality Report, Table II. Finally, some mid-sized carriers report increased installation and repair time for telecommunications services provided to interexchange carriers. In 1997, Aliant reported an average installation interval for all special access services of 15.4 days, which increased from 10.75 days in 1994. SNET reported an installation interval for all special access services of 14.9 days in 1997, which increased from 11.8 days in 1994. Rochester Telephone reported a repair interval of 51 hours for all special access services in 1997, which increased from 4.3 hours in 1994. For its repair interval for high speed special access services, Aliant reported a 4.2 hours repair time in 1997, which increased from 3.07 hours in 1994. CBT reported a 4 hour repair time for high speed special access services in 1997, which increased from 2.9 days in 1994. SOURCE: ARMIS 43-05 Service Quality Report, Table I.

[90] Petition at 23.

service during the transition to a competitive market. We therefore deny ITTA's petition to forbear from requiring mid-sized ILECs to file the ARMIS 43-05 Service Quality Report.

IV. CONCLUSION

40. In this Report and Order, we review our ARMIS reporting requirements as part of our biennial regulatory review under section 11 of the Communications Act and adopt changes to minimize the reporting burden on carriers. For mid-sized ILECs, we raise the revenue threshold, allowing mid-sized ILECs currently required to use Class A accounts to use Class B accounts and we eliminate the requirement to file 21 tables from the ARMIS 43-02 report. We also eliminate the requirement that carriers report inside wire and payphone data as well as most of the currently required equal access information. In addition, we eliminate additional rows from ARMIS reports 43-01 and 43-04 for all ILECs. We revise the ARMIS reporting requirements for ILECs by eliminating paper filing and diskette filing requirements; this change will become effective once electronic filing procedures are implemented. Finally, we deny the petition for forbearance filed by ITTA to the extent ITTA seeks forbearance from (1) applying the seven ARMIS financial and operating reports to mid-sized ILECs and (2) requiring mid-sized ILECs to file the ARMIS 43-05 Service Quality Report.

V. PROCEDURAL ISSUES

A. Regulatory Flexibility Act

41. Regulatory Flexibility Certification. The Regulatory Flexibility Act (RFA)[91] requires that an agency prepare a regulatory flexibility analysis 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."[92] In the *ARMIS Notice*,[93] the Commission certified that the proposed rules would not have a significant economic impact on a substantial number of small entities because such rules would reduce reporting requirements and the changes should be easy and inexpensive for incumbent local exchange carriers to implement. The Commission stated that the potential impact of the proposed rules, if adopted, would be beneficial and would not amount to a significant economic impact on affected entities. No comments were received concerning this certification. The Commission now reaffirms this certification with respect to the rules adopted in this Report and Order. The Commission anticipates that the rule changes adopted here will reduce regulatory and procedural burdens on small entities. The rule modifications do not impose any additional compliance burden on persons dealing with the Commission,

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[91] The RFA, 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 Act of 1996 (SBREFA).

[92] 5 U.S.C. 605(b).

[93] 1998 Biennial Regulatory Review -- Review of ARMIS Reporting Requirements, CC Docket No. 98-117, *Notice of Proposed Rulemaking*, 13 FCC Rcd 13695 (1998).

including small entities. Accordingly, the Commission certifies, pursuant to section 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small business entities, as defined by the RFA.

42. Report to Congress. The Office of Public Affairs, Reference Operations Division, shall provide a copy of this certification to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress pursuant to the SBREFA.[94] This certification will also be published in the Federal Register.[95]

B. Paperwork Reduction Act

43. Final Paperwork Reduction Act Analysis. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and has been approved in accordance with the provisions of that Act. The Office of Management and Budget (OMB) approved the requirements under OMB control number 3060-0845 which expires 10/31/2001.

VI. ORDERING CLAUSES

44. Accordingly, IT IS ORDERED, pursuant to the provisions of sections 1, 4, 11, 201-205, 215, 218, 219, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 161, 201-205, 215, 218, 219, 220, and 403, that the requirements set forth herein ARE ADOPTED, and shall become effective upon approval from the Office of Management and Budget.

45. IT IS FURTHER ORDERED, that the Chief, Common Carrier Bureau is delegated the authority to take the necessary steps to implement electronic filing of ARMIS data and to release a Public Notice advising the effective date of the new electronic filing procedures.

46. 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 Independent Telephone and Telecommunications Alliance's Petition for Forbearance is DENIED to the extent indicated herein.

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94 *See* 5 U.S.C. 801(a)(1)(A).

95 *See* 5 U.S.C. 605(b).

47. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Final Regulatory Flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.[96]

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

[96] *See* 5 U.S.C. 605(b).

APPENDIX A
Parties filing comments and reply comments in CC Docket No. 98-117

Parties filing comments

ALLTEL Communications Services Corporation (ALLTEL)
Ameritech
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation and BellSouth Telecommunications, Inc. (BellSouth)
General Services Administration (GSA)
Independent Telephone and Telecommunications Alliance (ITTA)
MCI Telecommunications Corporation (MCI)
Southwestern Bell Telephone Company, Pacific Bell, Nevada Bell (SBC)
Sprint Local Telephone Companies (Sprint)
United States Telephone Association (USTA)
US West, Inc. (US West)

Parties filing reply comments

Ameritech
AT&T
Bell Atlantic
BellSouth
Cincinnati Bell Telephone Company (CBT)
GSA
MCI
National Cable Television Association (NCTA)
Public Service Commission of Wisconsin (Wisconsin Commission)
SBC
Sprint
USTA
US West

APPENDIX B
Rows, Columns, and Tables Eliminated

ARMIS 43-01 -- Annual Summary Report
(these rows and columns eliminated for all carriers)

rows 1110,1610, and 1980

columns i, j, and o

ARMIS 43-02 -- USOA Report
(these tables eliminated for mid-sized ILECs only)

tables B-3 and B-5 through B-15
tables C-1, C-2, C-4, and C-5
tables I-3 through I-7

ARMIS 43-04 -- Access Report
(these rows and columns eliminated for all carriers)

rows 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 41, 43, 45, 47, 48, 49, 50, 51, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 90, 91, 92, and 93
rows 1422, 1423, 1424, 5032, and 5033
rows 999, 1004, 1210, 1211, 1391, 1419, 1521, 5020, 5021, 5070, and 5071
rows 1214, 1215, 1217, and 1219
rows 1241, 1242, 1243, 1281, 1282, 1283, 1334, 1340, 1341, 1351, 1352, and 1360
rows 1427, 1456, 1457, and 1458
rows 7240, 7241, 7242, 7243, 7244, 7247, 7251, 7252, 7253, 7254, 7255, 7256, 7257, and 7258
row 9000

columns e, f, and k

Separate Statement
of
Commissioner Susan Ness

Re: ITTA Petition for Forbearance

We are in the middle of a turbulent period as we transition from monopoly to competition. Many rules -- and even statutory provisions -- that were put into place during a monopoly regime may no longer be necessary to effectuate their intended purpose.

Recognizing that the marketplace is rapidly evolving, Congress wisely provided the Commission with a flexible tool to forbear from enforcement of provisions of law and regulations where the Commission finds it serves the public interest to do so.

The forbearance petition filed by the Independent Telephone and Telecommunications Alliance (ITTA) affords us an opportunity to review particular rules to determine whether they continue to be necessary to serve the public interest. The petition requests regulatory relief for mid-sized local exchange carriers that serve less than two percent of the nation s access lines.

Under a section 10 forbearance analysis, the Commission must forbear from applying any rule or regulation if the Commission determines that (1) enforcement is not necessary to ensure that charges and practices are just and reasonable, (2) enforcement is not necessary for the protection of consumers, and (3) forbearance is consistent with the public interest.

In a series of orders, we grant the forbearance requested in some instances; we go beyond what was requested in some instances by providing relief to a broader class of carriers; and in a few limited instances we conclude that continued enforcement is necessary for the protection of consumers.

One request that the majority does not grant is forbearance from the Commission s requirement that incumbent local exchange carriers offer certain services through separate affiliates. While our separate affiliate rules have served a very important purpose in the past, separation may be less essential as competition evolves. Based on the record in this proceeding, however, I am not convinced that competition has developed to the point where consumers will be adequately protected if we forbear from our rules. I look forward to working with the parties to develop a better record and to determine whether structural separation promotes competition or detracts from the competitive market place.

CONSOLIDATED SEPARATE STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: Petition for Forbearance of the Independent Telephone & Telecommunications Alliance; Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area

I support these items to the extent that they provide the relief requested by the Independent Telephone & Telecommunications Alliances (ITTA) petition. I object, however, to the extent that the regulatory relief requested is denied or some lesser regulatory relief is provided. Moreover, I question the overall approach that the Commission has taken to this forbearance petition.

I start with the presumption that the ITTA petition has been "deemed granted" in full because of the Commission's failure either (i) to deny the petition within one year after receiving it, or (ii) to make an explicit finding that a 90 day extension was necessary to meet the statutory requirements. Section 10 of the Communications Act is very clear: "The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of subsection (a)." The statute is thus specific that it is the "Commission" which must grant any extension and must do so upon a finding that the extension is necessary to meet the purposes of section 10(a). I do not believe that the bureau, acting on its own motion and without even prior consultation with the "Commission," can act to extend this statutory time-frame. I do not believe that the 90 day extension can be effectively used by the bureau without even briefing the Commission on the merits of the underlying petition, determining whether or not there are any new or novel questions of fact, law or policy, and receiving some signal from a majority of the "Commission" that an extension of time is warranted under these particular circumstances.

In addition, I disagree with several aspects of the approach that the Commission has taken to this forbearance petition. In several instances, the Commission determines that ITTA has not met the criteria for forbearance to the extent that the petition requests relief beyond that which is granted in a contemporaneous rulemaking proceeding. *See e.g.*, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, Third Memorandum Opinion and Order in AAD File No. 98-43, at para. 10 (denying relief to the extent that petition "extends beyond the relief granted in the *LEC Classification Second Order on Reconsideration*.") *See also*, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, Sixth Memorandum Opinion and Order in AAD File No. 98-43, at para. 2 ("Although we do not grant forbearance from our rules regarding applications for special permission at this time, we are considering whether, and how, we should modify some of our rules that necessitate applications for special permission as part of our ongoing biennial review rulemaking and expect to make a final decision on the basis of that more complete record in the near future."). I am troubled that the Commission has decided to provide some lesser form of regulatory relief than that which was requested -- doing so in a separate rulemaking where the Commission has more discretion -- and then has used that proceeding as part of the justification for denying full regulatory forbearance as requested. In other words, the Commission has determined that the simplest method of dealing with these petitions is to deny the forbearance relief at issue while at the same time providing lesser relief in a separate rulemaking

proceeding. But that is not the process the statute requires. Moreover, under such an approach, the Commission is able to avoid the difficult question of why, when considering the same facts, particular regulatory relief is appropriate and other regulatory relief would contravene the statute. Such distinctions would frequently be difficult to justify as the forbearance criteria focus on general standards -- e.g. "protection of consumers," or "in the public interest." I object to the Commission's attempt to avoid the objective rigor of the section 10 forbearance test by providing regulatory relief in separate proceedings where the Commission has more discretion.

In addition, this approach lends itself to eliminating one set of requirements and at the same time adopting new -- albeit lesser -- regulatory restrictions that would not be justified under section 10 alone. *See e.g.*, Biennial Regulatory review of Accounting and Cost Allocation Requirements, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, Fourth Memorandum Opinion and Order in AAD File No. 98-43, at par. 25 (reinterpreting ITTA petition as not asking to forbear from Class A accounting altogether but "[e]ssentially . . . asking us to change our rules, not to forbear from applying the current rules."). While section 10 provides that the Commission may be able to forbear "in whole or in part" from a particular provision or regulation, *see* section 10(c), it does not provide the Commission with any authority to *adopt* new regulations or to *impose* separate conditions in the context of a forbearance petition. Section 10's primary emphasis is on deregulation, and I will not support this provision, or any of the proceedings required by a section 10 petition, being used as an opportunity to authorize new regulatory restrictions or conditions. I fear that this type of expansive reading of the Commission's authority under the Act's forbearance provisions will lead the Commission astray from its clear statutory duties and limitations.

Finally, as I have stated previously, I am concerned that the Commission is placing too high a burden on the parties requesting forbearance relief. I believe that the Section 10 forbearance scheme requires the Commission to justify continued regulation in light of the competitive conditions in the marketplace. The Commission cannot meet their statutory obligations by simply shifting the burden to petitioners to justify forbearance.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL

Re: Petition for Forbearance of the Independent Telephone and Telecommunications Alliance (AAD File No. 98-43)*, and related proceedings* (CC Docket No. 97-11, CC Docket No. 98-81, CC Docket No. 96-150, CC Docket No. 98-117, WT Docket No. 96-162, CC Docket No. 96-149, CC Docket No. 96-61)

I am pleased to join my colleagues in granting some of the regulatory relief requested in the forbearance petition filed by the Independent Telephone and Telecommunications Alliance (ITTA) on behalf of mid-sized local exchange carriers. Although I concur in the results of most of these items (especially where regulatory relief is granted), I am, however, compelled to dissent in part to three of the decisions, and I continue to be concerned about the Commission s handling and analysis of forbearance requests under section 10 of the Communications Act.

In these various items (some concern other ongoing rulemaking proceedings), we address nine regulatory requirements from which ITTA, on behalf of mid-sized LECs, requested forbearance. We adopted seven different Orders in response to the petition (and other petitions or notices). In looking at these Orders as a package and individually, while some relief is granted, I continue to be concerned that, where forbearance is denied, these petitions are not being treated in a manner fully consistent with the intent and spirit of section 10 of the Act. While I concur with the outcome of most of these items -- since I believe we are reaching the correct result -- I do continue to question (along lines similar to those I have expressed elsewhere) our means and methods for handling forbearance petitions.

I must respectfully dissent, however, from the continued application of separate affiliate requirements for the provision of in-region interexchange services and commercial mobile radio services (CMRS) by mid-sized LECs. My reasons are twofold. First, I continue to be uneasy with the degree to which reliance on this and similar regulatory devices is based on speculation about anticompetitive behavior. I fully understand that any analysis about potentially harmful future conduct entails some assessment of likely conduct. Historically, the agency has stewarded the basic principle of nondiscrimination, resulting in regulatory protections against cost misallocation and anticompetitive behavior flowing from control of a "bottleneck" facility. Our precedents, such as separate affiliate requirements, were rightly premised on the existence of a true monopolist (sanctioned by the state) and the associated risks. In that environment, not only did the incumbent have monopoly power, there was no prospect of competition nor any watchful present or future competitors. These safeguards were designed to protect consumers from the potential ill effects of such accumulated power.

I believe, however, that much has changed. The movement toward a competitive environment means that we must take into fuller consideration the necessity, viability, and the potentially distorting competitive consequences of old familiar regulatory devices. Thus, to the extent we must speculate about potential harm (to competition and consumers) we must, too, factor in more fully the potential disciplining effects of both real competition and potential competition. I see a continued tendency to invoke the ancient mantra "to protect against discriminatory this or that" as glib justification for continued regulatory constraints. I believe we must work harder and press more heavily on the traditional rationales. I do not believe we did so in this case. Moreover, to do so will take time and resources, which we do not have when forbearance petitions are presented for deliberation with only a second or two left on the statutory shot-

clock, as was the case here.

My second concern rests with the extent that the Commission expresses a tendency to justify certain regulatory restrictions in the name of promoting or advancing competition. That alone, of course, may be worthy, but we are not free to do so in a manner that involves intermediate judgements that differ from those reached by Congress. Let me explain more fully.

Prior to the 1996 Act, I believe both Judge Greene and the FCC did seek to create limited competitive markets out of the monopoly provider s control and, concomitantly, impose safeguards designed to keep the monopolist from thwarting fledgling competitors as well as ensuring that core regulatory goals were not compromised by such competitive forays. These competitive excursions were limited and usually merely incremental voyages into competitive service markets. But, we must be reminded that the fundamental paradigm remained regulation and central control over the most prized services. The key point is that Judge Greene and the Commission had a fairly wide birth to develop the conditions of their market-opening efforts.

The 1996 Act, however, altered the paradigm and structured the basic terms of competition. Competitive services were to become the rule, and regulated services the limited exceptions. By its act, Congress crafted a comprehensive competitive model, designed specifically to supplant the MFJ. In weaving this fabric, Congress made a number of significant judgements. The one most relevant here is that it concluded that, rather than restrict the ILECs to regulated wholesale service, it allowed ILECs to compete at the retail level as well. This judgement may prove unwise or unworkable, but it is the one that Congress chose.

Congress was not oblivious to the challenges or perils of allowing the ILECs to compete, however, in long distance and other services while they still controlled many of the necessary facilities and inputs that other competitors would need. It addressed this problem by crafting an access and interconnection regime (sections 251 and 252) that placed unique duties and obligations on ILECs. In addition, Congress recognized that different classes of LECs required different levels of safeguards and incentives. Bell Operating Companies (BOCs), and they alone, are subject to sections 271 and 272. ILECs have more duties and obligations than CLECs, and so on. Thus, whether one likes it or not, *Congress* substantially addressed the dangers of bottleneck control and discriminatory incentives in the Act.

As a consequence, I believe, the Commission is not as free (as it perhaps was prior to the Act) to steward a transition to a competition regime different than that of the one chosen by Congress. Specifically, as it relates to the question of separate affiliates, we must be careful not to impose regulatory requirements that in practical effect amount to wholesale/retail separations, where Congress intended none. (I note that in contrast to the carriers petitioning here, BOCs are expressly subject to separate affiliates for some services). For this reason, I am uncomfortable with the analysis proffered to support continued separate affiliate requirements. We cite bottlenecks and incentives in what subtly (though perhaps unintentionally) seems to me a preference for wholesale separation in a competitive market. By way of illustration, the Orders often speak of the importance of separate affiliates to ensure that they obtain facilities on an "arm s length basis" and to ensure that all competing in-region providers and other carriers

have the same access (*i.e.*, wholesale).

Though Congress made judgements about the competitive ground-rules, it did not endeavor to sweep through our regulations and apply those judgments to each and every structural requirement on the books. Instead, it directed us to search out such rules and apply the new paradigm. To do so, it gave the Commission the twin engines of the biennial review and forbearance. This is one reason I believe that section 10 is important in evaluating the continued validity of separate affiliate requirements, not otherwise mandated by law, where competitive conditions and/or other regulatory or enforcement mechanisms are already in place.

I believe that the petition before us raised substantial questions with regard to the need for structural separation in light of present conditions. Accordingly, I believe that in response to ITTA's forbearance petition, we should have examined more carefully alternative methods of enforcing core ILEC responsibilities to see if there wasn't a more rational, limited approach. For example, we should have explored including a sunset of the structural separation requirement for in-region interexchange services like that available to BOCs in section 272 and treating mid-sized LECs more like rural carriers under the CMRS separate affiliate requirement.

For these reasons, I respectfully dissent in part from these particular decisions.