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National Association of Regulatory Utility Commissioners

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Dorothy Attwood
Common Carrier Bureau Chief
Office of the Bureau Chief, 5th Floor
Federal Communications Commission
445 12th Street, SW Portals II Building
Washington, DC 20544

RE: **Phase 3 Initial Comments filed *In the Matter of 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 3*, CC Docket No. 00-199; and**

Request For Waiver To File "Out-Of-Time" "Phase 3" Initial Comments; Or In The Alternative Request To Treat These Comments As A Written Ex Parte.

Dear Ms. Attwood:

Because of our internal approval process, we were unable to complete these comments in time to file them by the initial comment deadline specified in the FCC's notice. The National Association of Regulatory Utility Commissioners ("NARUC") respectfully requests any waivers needed to file these comments one week out-of-time. *Alternatively, NARUC respectfully requests the comments be treated as either early reply comments or ex parte comments filed in the docket of these proceedings.*

NARUC is a quasi-governmental nonprofit organization founded in 1889. Members include the governmental bodies engaged in the regulation of carriers and utilities from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. Because of the potential impact on state commission procedures, and NARUC's stated goal of promoting more efficient regulation, NARUC has an interest in this proceeding. *NARUC applauds the efforts of the FCC staff to involve the states in this streamlining process, and respectfully suggests that the cooperative effort has been of mutual benefit.* Additionally, NARUC recognizes specific concerns individual states may have with the NPRM may vary. For this reason, we have urged states to submit individual comments as well.[1]

[1] At its Annual Convention held November 11, 2000 in San Diego, California, NARUC adopted a resolution encouraging the FCC to continue to incorporate the input of the states in this instant and on-going proceedings involving the review of the FCC's accounting, cost allocation, and reporting rules. The resolution also encouraged states to file comments in this proceeding expressing their individual concerns and views.

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BACKGROUND

In 1999, the FCC initiated a two-phased comprehensive review of its accounting rules and the related reporting requirements for incumbent local exchange carriers ("ILECs") to keep pace with changing conditions in a competitive telecommunications industry. In its Report and Order in CC Docket No. 99-253, ("Phase 1 Report and Order"), adopted on March 2, 2000 and released March 8, 2000, the FCC adopted accounting rule changes and reporting reform measures for the Automated Reporting Management Information System ("ARMIS"). In the October 2000 NPRM, the FCC initiated Phase 2 and Phase 3 of the comprehensive review of its accounting rules and reporting requirements. The NPRM seeks comment regarding FCC proposals to further streamline accounting and reporting requirements in the near-term (Phase 2) and the long-term (Phase 3) as the telecommunications industry moves towards a more competitive environment. The Phase 3 focuses on the appropriate indicia for more significant deregulation in accounting and reporting requirements. The FCC seeks to undertake a broader examination of Part 32 and ARMIS requirements with the goal of determining what additional changes can be made as competition develops, and assessing ultimately what, if any, specific accounting and reporting requirements are necessary when local exchange markets become sufficiently competitive.

DISCUSSION

NARUC appreciates the opportunity to offer comments on Phase 3 issues. In general, we applaud the FCC's continued efforts to simplify and streamline its accounting and reporting requirements. We also agree with the FCC's cautious approach to eliminating requirements that are necessary to promote universal service, foster efficient competition, and protect consumers before significant market changes occur. Because of the importance of these issues to the states, we offer the following suggestions:

There Is A Continuing Need For Uniformity In Accounts and Publicly Available Data.

The NPRM notes the FCC's accounting and reporting rules were designed to provide uniform accounting data to provide information concerning the financial condition of the ILECs, and to serve as an efficient system for both management and federal and state regulators. As carriers were allowed to provide non-regulated services without the need for structural separations, the accounting and reporting rules served the additional public policy goal of ensuring that ratepayers of regulated services did not bear the costs and risks of non-regulated activities. With the development of the universal service system, the accounting and reporting rules also served the policy of ensuring proper cost data on which to base a system of sufficient universal service support. The FCC asks whether these policies, which have relied extensively on accurate accounting and reporting data in their implementation, can be maintained with drastic reductions in accounting and reporting requirements. NARUC submits these public policy goals remain as important today as they were when they were implemented, and will continue to remain important in the future. There remains a continuing need for uniformity in accounts and publicly available data.

Congress expressed a primary concern in the 1996 Act that the ILECs not subsidize competitive services with their local services. *The most effective way federal and state regulators have found to prevent such cross-subsidy has been through the implementation of uniform accounting requirements (as required under Section 220 of the Act) and through the use of a regulated/non-regulated cost allocation process.* The FCC has in place Parts 32 and 64, and most states have adopted accounting and cost allocation rules patterned on the FCC's rules.

In addition, programs like the Universal Service Fund ("USF") remain dependent on uniform accounting and reporting requirements. Contributions into the USF, as well as payments of USF support, are directly derived from current uniform accounting data. A successful national universal service program will continue to require uniformity in accounting and reporting. For example, uniform and consistent accounting requirements provide data necessary for states, the FCC, and ILEC competitors to develop critical cost components used to establish proper universal service support. *Other public policy initiatives, including the establishment of just, reasonable, and non-discriminatory UNE and interconnection pricing, pole attachment rates, and other rates that ILECs charge its customers require uniform accounting data.* Also, without uniform accounting and reporting requirements, it will be extremely difficult for the FCC and the states to monitor such things as market share and service quality. Without a uniform accounting system, subject to public reporting, there will be little, if any, reliable data available upon which to base critical decisions that concern these important issues.

Also, as noted in the Phase 2 reply comments of the State Members of the Federal-State Joint Board on Separations ("State Members"), the FCC is considering action on the Joint Board's recommendation for an interim freeze of Part 36 category relationships and jurisdictional allocation factors for price cap carriers and allocations factors for rate-of-return carriers. *If the FCC adopts this interim freeze, the Joint Board will need the detailed Part 32 accounting records and infrastructure ARMIS reports in order to evaluate various alternatives for separations reform.* The Joint Board suggests the time to consider major simplification, or even elimination, of accounting and reporting requirements may be appropriate after the Joint Board's analysis of separations reform alternatives is completed and comprehensive separations reform is underway. We agree, if for no other reason, that the question of when to deregulate accounting and reporting requirements is premature and should not be decided until after separations reform.

At a Minimum, Elimination of an ILEC's Reporting Requirements Should Not Occur Until That Particular ILEC is Declared "Non-Dominant."

The FCC's goal in Phase 3 is to seek comment on whether and when it may no longer be necessary to impose FCC accounting and reporting requirements on ILECs. In making such a determination, NARUC submits that issues of how to quantify effective competition and determine carrier non-dominance immediately surface. *NARUC submits that elimination of the FCC's accounting and reporting requirements for ILECs should not occur until, at a minimum, an ILEC is declared non-dominant.*

Below, the NARUC provides the following suggested criteria to the FCC for consideration in its deliberations of determining the appropriate time to determine non-dominance of an ILEC. *However, NARUC also suggests that issue might be more appropriately considered in another proceeding specifically designed to identify the relevant market and market conditions under which an ILEC may be declared non-dominant.*

There Are Several Approaches Available to the FCC for Accessing Market Dominance.

Effective competition could be measured based on some measure of market share, e.g., the number of ILEC access lines. The advantage to this approach of determining "non-dominance" is access lines are measurable and reportable. As competition increases in the local exchange market, the ILECs' access line count should decrease. *However, our concern is that this measurement would not capture special access, wireless, cable television, DSL, etc. Only by capturing all access lines will a determination of non-dominance be realistic.* In light of the changing competitive and technological marketplace, a standard definition should be developed for "access lines". Without a standard definition, there will be too much subjectivity for carriers.

Other alternatives for measuring market-share could be minutes-of-use ("MOU") as the FCC used in the determination of non-dominance for ATT in 1995 or analysis of NPA-NXX number utilization. MOU may not be readily reportable from other industry segments or collected by ILECs under some forms of separation reform. But since market share alone is not a determinative measure of market power, the FCC should also consider a number of other factors, including ease of market entry, presence of alternative supply sources, demand for services from alternative carriers, and substitutability of services. The (1) identification of the relevant product and geographic markets for assessing the ILEC's market power, and (2) a determination of how to assess whether, within that market, the ILEC has market power must also be identified. We also believe that unless there are parallel facilities open to new market entrants to obtain wholesale services, the local exchange market is not open to a competitive UNE network structure. When facilities-based CLECs are established and operating in metropolitan areas, competitive pricing of ILEC UNEs should likely result. However, as long as there is a need for universal support subsidies, there will be a need for a fundamental uniform system of accounts. Without accounting uniformity, cost data would not be available for the FCC or the states to develop realistic cost models or even evaluate cost studies prepared by the carriers.

Another alternative for measuring market penetration is looking at the different tiers of competition, that is, retail and wholesale. Possible competition could be measured on the basis of access lines for the retail market. For the wholesale market, if there is no alternative provider for UNEs, there is no competition. However, using these criteria will present problems. A carrier with 25% access line penetration may still have 98% UNEs due to the non-existence of parallel networks. As long as the ILEC loop facilities are being used by CLECs, the ILEC continues to be a monopoly and therefore has the capacity to impede the ability for other market participants to compete. Wireless providers may not be an effective measure of competition because most users use wireless service in addition to their wireline service, not as an alternative to wireline service.

In determining market dominance, the question of whether dominance is determined at the operating company level or the holding company level must also be addressed. Certainly, the ILECs would suggest that such determination be made based on a certain number of access lines and at the holding company level. However, non-dominance at the holding company level does not necessarily comport with non-dominance at the operating company level. If deregulation occurs at an operating company level based on some measurement of non-dominance, a carrier operating in multiple states could be deregulated in some and not in others. The major concern we see here is with possible cross-subsidization between the holding company and the operating company as well as with the possibility of predatory pricing. Without reporting uniformity, these market abuses will be difficult to detect.

The number of collocators as a measurement of market share is inadequate since the measurement would focus on advanced services, not Plain Old Telephone Services. Additionally, the measurement does not address parallel networks; i.e., wireless or cable TV. While the FCC used such a collocation test in its pricing flexibility proceeding, that test was solely designed to determine whether competition was sufficient for allowing pricing of particular services in small geographical markets where the service was offered (i.e., Statistical Metropolitan Study Areas (SMSAs)). The use of a collocation test in determining whether an ILEC is non-dominant for purposes of this proceeding, where the carrier's entire operations are being examined, is not appropriate. NARUC urges the FCC to consider the issue of market dominance in more depth before making broad and perhaps overreaching determinations of market dominance for purposes of this proceeding.

In the NPRM, the FCC notes there is an asymmetric requirement with respect to the accounting and reporting requirements imposed on the ILECs and on others, such as CLECs, IXCs, cable companies and wireless carriers. The FCC asks whether this asymmetry impedes the ability of ILECs to compete with these other market participants. As stated in the NPRM, ILECs have 96.5% of the local service revenues. There is no evidence suggesting the FCC's accounting and reporting requirements have kept alternative firms from entering the market. The rules imposed on ILECs are designed to keep ILECs from acting in non-competitive ways; they also ensure prices competitors pay for UNEs and interconnection are just, non-discriminatory and reasonable. There is no reason to consider imposing accounting and reporting requirements on non-ILEC participants. There is also no reason to consider, at this time, eliminating entirely the requirements on ILECs. Robust competition in the local market has not yet developed and the competitive market remains fragile. Further, the cost and burden on ILECs to retain a uniform accounting and reporting system does not outweigh the benefits of the need for such requirements.

Accounting and Reporting Requirements Should be the last Regulatory Oversight Eliminated as They Are the Most Susceptible To Abuse And Anti-Competitive Practices.

NARUC submits that the accounting and reporting safeguards have been instrumental in bringing competition into the local market, and elimination of these requirements at this time could jeopardize the gains that have been made and could compromise future competition in these markets.

The road the FCC takes towards elimination of accounting and reporting requirements, and the manner and timing in which removal of these requirements occur, is of critical concern to NARUC. Removal of accounting and reporting requirements should be the last vestiges of regulatory oversight - it is the area most susceptible to abuse and anti-competitive practices.

As discussed in our comments submitted in Phase 2, our overall concern is that the Commission not act in a manner that would create a void in the FCC's and states' ability to obtain and rely on accurate information concerning costs and investments by the ILECs. The impact of new technology, changes in the network infrastructure, and changes in the marketplace for telecommunications services, warrant reforms that are conducive, not counter, to the goals of a competitive local exchange market. Of greatest concern is that deregulatory measures, such as eliminating ILEC accounting and reporting rules, not be implemented in a wholesale manner.

Deregulation of These Accounting/Reporting Requirements Should Be Based On The Same Test Of Market Dominance For Both Small And Large Carriers.

The FCC also seeks comment on the accounting and reporting treatment it should impose on small and large ILECs. NARUC submits that deregulation of these requirements should be based on the same test of market dominance for both small and large carriers.

While it may be that larger carriers will meet the test before the smaller and more rural ILECs, this is not inequitable result. Competition is likely to develop more slowly in small and rural areas and thus, ILECs in those areas will continue to enjoy market dominance. NARUC disagrees that the FCC should deregulate the accounting and reporting requirements for carriers having 2% of the access lines nation-wide. The Part 32 Class A requirements are likely to continue to be required for Rural Utility Service ("RUS") loans and for this reason, relieving 2% carriers from reporting and account requirements in a different fashion than Class A carriers makes little sense and will provide little ILEC cost savings.

CONCLUSION

The FCC and the state commissions have made several significant steps toward deregulation of the local exchange carriers and should continue these efforts. *However, the accounting and reporting should be the last vestiges of regulation to be deregulated and, in any case, should not be deregulated until there is enough competition in the local exchange market to deem local exchange carriers non-dominant.*

Without adequate accounting records, regulators are left with a minimum accounting system providing insufficient information to make informed decisions that impact our nation's telecommunications carriers. Moreover, the lack of accounting responsibility and reporting will further thwart competition because neither competitors nor users will have the information or knowledge needed to effectively participate in the competitive process. Therefore, at the present time, it is simply not in the public interest to deregulate accounting and reporting requirements.

If you have any questions about these comments, or any other NARUC position, please do not hesitate to call me at 202.898.2207 or contact me via e-mail at "jramsay@naruc.org."

Respectfully Submitted,

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