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

In the Matter of	)	
	)	
2018 Biennial Review of Telecommunications Regulations	)	WC Docket No. 18-378
	)	
	)	
Rule Parts Containing Regulations Administered by the Wireline Competition Bureau (WCB)	)	
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	)	

COMMENTS OF
USTELECOM – THE BROADBAND ASSOCIATION

Diane Griffin Holland
Patrick Halley
B. Lynn Follansbee

601 New Jersey Avenue, NW, Suite 600
Washington, D.C. 20001
(202) 326-7300

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SUMMARY

One of the most practical and powerful tools given to the Commission in the Telecommunications Act of 1996 is the directive to "review all regulations . . . that apply to the operations or activities of any provider of telecommunications service" and repeal or modify any such rules found "to be no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."[1] It is particularly important that the Commission, in undertaking this review, thoroughly reevaluate its legacy rules, especially those enacted years ago for a communications marketplace that was far less technologically advanced and competitive than today's, to ensure that they do not interfere with industry commitments and efforts to build, upgrade, and maintain broadband infrastructure throughout the country.

No individual common carrier or group of providers dominates the voice communications marketplace today, and the market for broadband services, especially business broadband, is thriving and competitive. Regulations must keep up with the lightning speed pace of technology and innovation if we are to meet the communications needs of this and the next generations to come. Backward-looking, investment-stifling regulations developed for the monopoly telephone era will only impede innovation and discourage companies from continuing to invest in modern, next-generation networks. The Commission therefore must continue to act on its commitment to encourage the deployment of and transition to next-generation networks "by further reforming regulatory processes that unnecessarily stand in the way."[2]

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[1] 47 U.S.C. 161(a), (b).

[2] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, WC Docket No. 17-84, FCC 18-74, ¶ 1 (rel. Jun. 8, 2018) (*Wireline Broadband Deployment Second Report and Order*).

The core inquiry under the biennial review is whether meaningful economic competition exists, and where it does, what regulations the Commission must repeal or modify because they are no longer necessary. Where such competition does not exist, the Commission should still consider whether the regulations should be modernized to better address the needs of today's communications marketplace.

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USTelecom – The Broadband Association (USTelecom) submits these comments in response to the Federal Communications Commission's (FCC or Commission) Public Notice seeking comment on what rules should be modified or repealed as part of the 2018 biennial review.[3] In touting the importance of the biennial review in 2016, Commissioner O'Rielly correctly noted, "Commission requirements carry real consequences, even beyond compliance costs, as they can drive business decisions and the markets that providers enter, ignore or exit."[4] Thus, the biennial review process should be championed as "a simple and powerful tool for scrubbing outdated regulations from our books and promoting private sector innovation and investment."[5] The 2018 biennial review also offers an opportunity to accelerate Chairman Pai's

[3] Public Notice, FCC Bureaus and Offices Seek Public Comment in 2018 Biennial Review of Telecommunications Regulations, DA 18-1260 (Dec. 17, 2018).

[4] Public Notice, Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations, DA 16-149, Statement of Commissioner Michael O'Rielly (Nov. 3, 2016).

[5] *Id.*, Statement of Commissioner Ajit Pai.

recently initiated "5G Fast Plan," which includes a goal of "modernizing outdated regulations to promote 5G backhaul and digital opportunity for all Americans."[6]

I. INTRODUCTION

Since the 2016 biennial review inquiry, the Commission has taken numerous meaningful steps to modernize its rules governing the operations or activities of providers of telecommunications service. For example, in 2018, the Commission modernized its payphone compensation rules by eliminating burdensome audit and associated reporting requirements, relaxing company certification requirements, and eliminating expired interim and intermediate per-payphone compensation rules that no longer apply to any entity.[7]

Similarly, last year the Commission modernized various rules governing pole attachments, taking important steps toward further expanding investment in broadband deployment. Most significantly, the Commission adopted fundamental changes to the agency's rate structure governing incumbent local exchange carrier (ILEC) pole attachments. These rate reforms will substantially increase broadband deployment and competition by eliminating the significant rate inconsistencies between ILECs, competitive LECs and cable attachers.[8]

More significantly, the Commission has taken action in furtherance of its commitment to eliminating regulations that impose burdens without serving a necessary regulatory purpose, while encouraging investment in and deployment of advanced technologies and next-generation

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[6] A description of the 5G Fast Plan is available at https://www.fcc.gov/5G.

[7] *See Modernization of Payphone Compensation Rules, et al..,* Report and Order, 33 FCC Rcd 2589 (2018) (initiated in part in response to comments in the 2016 Biennial Review).

[8] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling , 33 FCC Rcd 7705, (2018) (*Accelerating Broadband Deployment Third R&O & Declaratory Ruling*).

services. For example, the Commission eliminated most price regulation of business data services (BDS), formerly referred to as special access, and otherwise modernized the rules governing the provision of BDS after finding robust and widespread competition for services in that market.[9] In addition, recent regulatory modernization efforts for rules governing section 214 service discontinuance applications and notice of network changes, including copper retirement, have recognized that, due to extensive competition and the availability of attractive alternatives to legacy services, these offerings should no longer be subject to burdensome processes that add time and costs without concomitant benefits to consumers.[10]

The Commission has explained that streamlining and other regulatory reforms would "enable carriers to more rapidly shift resources away from maintaining outdated legacy infrastructure and services and towards the construction of next-generation broadband networks bringing innovative new broadband services."[11] USTelecom applauds the Commission for adopting and proposing additional measures that will reduce the costs of deploying high-speed broadband networks, making it more economically feasible for carriers to extend the reach of their networks, thereby increasing competition among broadband providers in communities across the country.

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[9] *See Business Data Services in an Internet Protocol Environment, et al.*, Report and Order, 32 FCC Rcd 3459 (2017) (*BDS Order*).

[10] *See, e.g., Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, 33 FCC Rcd 5660 (2018). *See also Accelerating Broadband Deployment Third R&O & Declaratory Ruling, supra* note 8 (adopting rules that speed the process and reduce the costs of attaching new facilities to utility poles).

[11] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 11129-30, ¶ 3 (2017) (*2017 Accelerating Wireline Broadband Deployment Order*).

Despite these reforms, there are many remaining legacy regulations that unnecessarily increase provider costs, especially for small carriers, and reduce incentives for new investments in broadband, impeding the building of infrastructure that this country will need to meet present and future broadband needs. Monopoly-era regulations have no place in today's marketplace where competition for communications services, including voice, mobile, video, and data, is thriving. For example, only a projected 11 percent of households will be subscribed to incumbent switched access voice lines by the end of 2018, down dramatically from 93 percent of household subscribers in 2003.[12] For broadband services, as of mid-year 2017, 98 percent of Americans had at least one fixed broadband network platform available at any speed and 91 percent had at least two fixed platforms at any speed, while 99.9 percent of Americans had at least one mobile broadband network available and nearly all Americans had a choice among LTE providers.[13]

As USTelecom stated in comments to the 2016 biennial review, providers' ability to successfully innovate and lead the world in broadband deployment "depends on a commitment by the Commission to maintain economic regulation only where necessary to facilitate and encourage competition, but to otherwise get out of the way so the marketplace ultimately can drive investment and determine winners and losers."[14] We offer input on certain of the Commission's rules that we believe are no longer necessary in the public interest as a result of

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[12] *See* Patrick Brogan, *U.S. Industry Metrics and Trends 2018*, USTELECOM, at 10 (Mar. 1, 2018) (2018 USTelecom Industry Metrics and Trends), https://www.ustelecom.org/wp-content/uploads/2018/12/USTelecom-Industry-Metrics-and-Trends-2018.pdf.

[13] *See* Patrick Brogan, *U.S. Broadband Availability Mid-Year 2017*, USTELECOM RESEARCH BRIEF, at 2 (Nov. 30, 2018), https://www.ustelecom.org/wp-content/uploads/2018/12/US-BB-Availability-2017-1H-.pdf. In addition, satellite providers offer national coverage and can now offer service capable of meeting FCC broadband speed standards. *Id.*

[14] Comments of the United States Telecom Association, WC Docket No. 16-132, at 5 (USTelecom 2016 Biennial Comments).

meaningful economic competition, with a focus on economic regulations that primarily affect our member companies that make it harder and costlier for them to continue investing in broadband infrastructure.[15]

II. DISCUSSION

In 2017, broadband providers responded to increased competition by investing over $76 billion in broadband, a slight increase over previous years. Those investing in new infrastructure and technologies understand that the best way to compete for customers today is with newer technologies and more robust service offerings that consumers and businesses demand. This market-driven, competitive landscape will continue to thrive only if it is unencumbered with burdensome economic regulations that encourage resale over facilities investment or otherwise take away the incentives and advantages of facilities-based competition.

A. The Commission Should Reexamine Monopoly-Era Regulations That Apply Only to Bell Operating Companies and Incumbent Local Exchange Companies.

Since the dawn of communications regulation, Bell operating companies (BOCs) and ILECs have been subject to heightened regulation due to their status as former monopolist providers of local telephone service.[16] This made sense when these carriers were deemed to be "dominant" providers of service. But the Commission two years ago settled that dispute by removing the outdated designation of ILECs as "dominant" in the provision of legacy switched access voice services,[17] in recognition of the widespread competition they face in almost every

[15] *See* Appendix, listing rule parts that the Commission should consider repealing or revising.

[16] Both the 1996 Act and the Commission's rules impose additional requirements on ILECs. *See, e.g.*, 47 U.S.C. § 251(c); 47 C.F.R. §§ 51.301-335 (Subpart D—Additional Obligations of Incumbent Local Exchange Carriers).

[17] *See Technology Transitions, et al.*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283 (2016) (*Technology Transitions Declaratory Ruling & Order*).

area of the country. That ruling alone justifies a reexamination of every rule that singles out ILECs, as well as BOCs in many instances, for more stringent regulation because of their regulatory status.

Section 251 Unbundling and Resale Obligations. USTelecom has already petitioned the Commission to forbear from enforcement of the unbundling and resale obligations under sections 251(c)(3) and (4) and implementing regulations, which require ILECs to share their network facilities and resell their services at rates set more than a decade ago.[18] These rates bear no relationship to what today's competitive market-based rates would look like, and properly resetting them to reflect today's marketplace realities would expend an enormous amount of time and resources for all stakeholders. Moreover, there is no need to look backwards and preserve these market-opening requirements because the competition for which unbundling and resale requirements were designed has been achieved.

The Commission should examine *all* existing regulations that apply to providers solely by virtue of their regulatory label as BOCs or ILECs to determine if they are no longer necessary in the public interest as the result of meaningful economic competition, including obligations already being examined in other proceedings such as the USTelecom 2018 Forbearance Petition. Competition from cable companies, facilities-based CLECs, wireless companies, VoIP providers, edge providers and other competitors has erased any ability ILECs may have once had to exert market power, making this category of regulatory obligations particularly well-suited for

[18] *See* Petition of Forbearance of USTelecom – The Broadband Association, WC Docket No. 18-141 (May 4, 2018) (USTelecom 2018 Forbearance Petition). The petition demonstrates that forbearance is warranted with regard to these obligations because the marketplace is irrevocably open to competition, and both consumers and the public interest will benefit because forbearance will lead to more sustainable facilities-based competition, reduce compliance costs, and free up capital for investment in next-generation networks.

modernization and/or repeal.

Certain Obligations Arising Under Section 272. As noted in comments to the 2016 biennial review and in the USTelecom 2018 Forbearance Petition,[19] the Commission denied a previous request from USTelecom for forbearance relief from certain regional BOC (RBOC) requirements intended to protect long distance competition. Specifically, RBOCs remain subject to time interval requirements for affiliate service requests in section 272(e)(1) and the long-distance separate affiliate requirement for independent ILECs in section 64.1903 of the Commission's rules.[20] RBOCs are likewise still subject to special access performance metrics obligations imposed (or voluntarily agreed to) as conditions for relief from dominant carrier regulation in their provision of in-region, interstate long distance services directly or through a non-separate affiliate.[21]

Today, all-distance voice services are being offered by multiple wireline, wireless, and cable providers, and any-distance communication is widely available using apps and other IP-based alternatives. Consequently, there is no longer a need for specific rules to protect long distance service competition. Likewise, competition for special access is robust and widespread, as evidenced by the significant BDS pricing relief granted by the Commission in 2017,[22] so there is no longer a need to maintain rules that distinguish between separate and non-separate RBOC

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[19] *See, e.g.*, Comments of CenturyLink, WC Docket No. 16-132, EB Docket No. 16-120, WT Docket No. 16-138, at 8-10 (Dec. 5, 2016); USTelecom 2018 Forbearance Petition at 33-35.

[20] 47 U.S.C. § 272(e)(1); 47 C.F.R. §64.1903.

[21] *See* USTelecom 2018 Forbearance Petition at 34 (*citing Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, et al*., Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16487-89, ¶¶ 96-98 & n.283 (2007)); *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunsets,* Memorandum Opinion and Order, 22 FCC Red 5207, 5240-41, ¶¶ 64-66 (2007) .

[22] *See BDS Order, supra* note 9.

affiliates. The public interest is not served by unnecessary rules that harken back to a period when BOCs held a significant share of the voice market and could potentially use market power to gain advantage over competitors. The Commission should therefore eliminate these and any other remaining obligations and conditions solely intended to protect long distance and special access competition through separate affiliate requirements.

B. The Commission Should Eliminate Costly and Burdensome Accounting, Reporting, and Recordkeeping Regulations.

As in previous biennial reviews, USTelecom and others in the 2016 proceeding asked the Commission to reconsider its accounting, reporting, and recordkeeping requirements.[23] Many outdated requirements governing valuations of services and assets, cost allocation, auditing, and reporting remain on the books but no longer serve a valid regulatory purpose. Unnecessary accounting, reporting, and recordkeeping regulations are also a drain on limited Commission resources. It is therefore imperative that only those regulations that serve a legitimate regulatory purpose be retained. The Commission therefore should examine all such requirements to determine whether they are necessary in the public interest or ripe for repeal as a result of meaningful competition.[24]

ARMIS Business Line Count Reporting. The Commission should eliminate the requirement to report business access line count data via the ARMIS 43-08 Report. Currently, price cap ILECs are required to report annually on the number of business access lines in each state as of December 31st.[25] The ARMIS 43-08 report provides a year-end snapshot of business

[23] *See, e.g.,* USTelecom 2016 Biennial Comments at 9-10.

[24] To the extent the Commission has already provided conditional relief for the requirements in this section through forbearance or other measures, we encourage the Commission to take the final step of eliminating any remaining requirements altogether.

[25] FCC ARMIS Reports – Instructions, Reporting Instructions/Procedures (Feb. 2018)

access lines in service by state, including single access lines (including UNE-Platform lines), other business voice-grade equivalent lines (*e.g.* Centrex/PBX trunks) and payphone lines. In 2008, the Commission noted in the *ARMIS Forbearance Order* that the business line count data submitted in the ARMIS 43-08 report was used in the "non-impairment thresholds for the Commission's unbundling rules," and therefore denied forbearance from this filing requirement.[26] At that time, however, the Commission failed to acknowledge that the very same data was also being submitted to the Commission in the Form 477 program. Specifically, all telecommunications carriers are required to submit the same business line count data in the Form 477 data collection program on a biannual basis.[27] Consequently, the Commission should eliminate the reporting requirements for data provided in the ARMIS 43-08 report because they are completely duplicative of data provided in the 477 submissions.

C. The Commission Should Further Streamline and Repeal Other Regulations as Necessary to Improve Efficiency, Consistency, and Fairness in Commission Processes.

Tariffing Requirements. As noted in our comments to the 2016 biennial review, competition has brought into question the continuing utility of the tariffing regime. One need

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https://www.fcc.gov/economics-analytics/industry-analysis-division/armis/armis-instructions-data. *See also* FCC Report 43-08 – Report Definition – Form (Feb. 2018) https://www.fcc.gov/sites/default/files/definitions08_2017.pdf.

[26] *See Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, et al.*, Memorandum Opinion and Order, WC Docket 80-190, FCC 08-203, ¶ 19 (2008) (*ARMIS Forbearance Order*).

[27] *FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions*, OMB Control No. 3060-0816, (last checked January 10, 2019), https://transition.fcc.gov/form477/477inst.pdf (requiring biannual reporting of local telephone and broadband data as of June 30th and December 31st, including business access line counts (including retail voice-grade equivalents), wholesale voice-grade equivalents (including UNE-Platform lines), and payphone lines).

only examine the extent of recent detariffing by the Commission to conclude that its decades-old system of tariffing is ripe for reform. Although tariffing still serves a valid regulatory purpose in some instances – for example, to set out terms and conditions of service offerings in the absence of negotiated agreements – because fewer and fewer services offered today are subject to pricing regulation, tariffs in general have become less prevalent and less important.[28]

The Commission should carefully consider to what extent remaining tariffing requirements continue to serve a useful purpose in today's competitive marketplace. For example, the Commission should consider relaxing and streamlining some tariffing requirements to cut down on the volume of paperwork that must be filed, which would considerably reduce the burden on carriers that are still required to file.[29]

CPNI Certification. The record keeping and annual certification required by sections 64.2009(c) and (e) of the Commission's rules are both unnecessary and burdensome. For this very reason, in October 2016, the Commission removed the requirements, asserting that, "[e]liminating these requirements reduced burdens for all carriers."[30] The Commission also determined that providers "are likely to keep records necessary to allow for any necessary enforcement without the need for specific requirements, and that notifications of data breaches to customers and to enforcement agencies (including the Commission) will ensure compliance with the rules and a

[28] Moreover, as we previously noted, the fact that only a subset of providers (that have steadily lost market share over the last decade) has to file tariffs gives an economic advantage to their competitors that have no tariffing requirements. The tariffing regime is also a drain on Commission resources. *See* USTelecom 2016 Biennial Review Comments at 11-12.

[29] One suggestion would be to allow providers to replace consecutive blank pages with a single page. *See* Comments of Verizon, WC Docket No. 18-378, at §II.A. (Feb. 8, 2019).

[30] *See Protecting the Privacy of Customers of Broadband and Other Telecommunications Services,* Report and Order, 31 FCC Rcd 13911, 14005 ¶ 234 (2016) (*2016 Privacy Order*).

workable level of transparency for customers."[31] President Trump signed into law a resolution of disapproval (S.J. Res. 34) under the Congressional Review Act (CRA), resulting in the *2016 Privacy Order* being "treated as though such a rule had never taken effect."[32]

In June 2017, the Commission confirmed that the Commission's rules implementing Section 222 of the Act for telecommunications carriers that existed before the *2016 Privacy Order* were again in effect pursuant to the CRA resolution, "including the annual compliance certification requirements and recordkeeping requirements set out in Section 64.2009(e) and (c)."[33] Shortly thereafter, the collection associated with this rule came up for review under the Paperwork Reduction Act (PRA).[34] OMB renewed the collection but noted in its Terms of Clearance: "Before the next three-year renewal FCC should reevaluate its current use of the information collections associated with 47 CFR 64.2009 section (c) and (e) and consider revising or removing them if they no longer provide practical utility."[35]

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[31] *Id.*

[32] 5 U.S.C. § 801(f). The CRA was not invoked because of the issue above. Rather, action taken by Congress and the President was to address parity issues around the regulation of broadband privacy that were separate and apart from the elimination of the certification and other administrative requirements.

[33] *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Order, 32 FCC Rcd 5442, 5443 ¶2 (2017) (*2017 Privacy Order*).

[34] Paperwork Reduction Act of 1995, Pub. L.104-13, 109 Stat. 163 (1995), *codified at* 44 U.S.C. 3501 *et seq.* In response to the Commission's notice, Notice and Request for Comments, *Information Collection Being Reviewed by the Federal Communications Commission*, 82 FR 43364 (Sep. 15, 2017) (*September 2017 PRA Notice*), USTelecom and others submitted comments asking OMB not to renew the certification as burdensome and no longer necessary. *See, e.g.,* Comments of USTelecom and Voice on the Internet Coalition, *Information Collection Being Submitted for Review and Approval to the Office of Management and Budget*, OMB 3060-0715, 82 FR 43364 (Oct. 16, 2017).

[35] *See* Notice of Office of Management and Budget Action OMB 3060-0715 (Jan. 31, 2018).

The Commission should now remove these recordkeeping and annual certification requirements, which provide no meaningful benefit to protect consumers' private information. The safeguards established by section 64.2009 are no longer necessary since the customer notice, consent, and choice rules have been in effect for so long that compliance is already a well-established part of carriers' and VoIP providers' operating systems.[36] Continuing to require the annual certification is particularly burdensome because a company officer must certify,[37] which requires companies to move through many administrative layers. Moreover, requiring such a recertification *annually* creates unnecessary regulatory hurdles. Removing these types of regulatory barriers is consistent with Commission action in other proceedings,[38] and removal of the administrative burdens required by the CPNI rules would reduce unnecessary red tape and allow carriers and interconnected VoIP providers to spend resources more efficiently.

CPNI Marketing Restrictions. The Commission should modify or remove the service-category-based CPNI marketing restrictions that unreasonably limit carriers' ability to inform their customers of the benefits of new products and services. The current rules are based on three categories of services (local, interexchange and CMRS), and prohibit the use of a customer's CPNI to market a service offering within a category to which the customer does not subscribe without the customer's approval.[39] However, the standalone long-distance market is virtually extinct, with almost 60% of telephone households projected to have replaced wireline service

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[36] *September 2017 PRA Notice*, Supporting Statement 8.

[37] 47 C.F.R. §64.2009(e).

[38] *See e.g., Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed Satellite Service*, IB Docket No. 17-95 (May 18, 2017).

[39] *See* 47 C.F.R. § 64.2005.

with all-distance wireless service by year-end 2018,[40] and with telecommunications carriers routinely offering double and triple play packages combining all-distance voice services with Internet and video services on a single bill. Twenty-year old marketing restrictions based on categories of service that fail to reflect today's telecommunications marketplace or customer expectations do not serve the public interest.

In today's converged communications marketplace, customers expect their carriers to offer and provide a variety of services, and with regard to bundled services, most customers reasonably understand such service offerings to be within the scope of their existing service relationship.[41] Revising the CPNI marketing rules to reflect this reality therefore would be consistent with customer expectations.[42] There is no statutory impediment to such changes. Accordingly, the Commission should initiate a rulemaking to revise these outdated rules.

Tribal Service Discontinuance Notice Requirements. In the *2017 Wireline Infrastructure Order* adopted in November 2017,[43] the Commission eliminated the ILEC requirement to provide direct notice of planned copper retirements to state commissions,

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[40] *See* 2018 USTelecom Industry Metrics and Trends, *supra* note [12], at 10.

[41] *Cf. Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, 14 FCC Rcd 14409, 14433-34 ¶¶ 43-45 (1999) (noting that customers expect their service providers to offer CPE and information services along with the underlying telecommunications service where they are "necessary to or used in" the provision of that telecommunications service).

[42] *See, e.g.,* FTC Report, *Protecting Consumer Privacy in an Era of Rapid Change*, at 40 (Mar. 2012), https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf (finding that "most first-party marketing practices are consistent with the consumer's relationship with the business and thus do not necessitate consumer choice").

[43] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* 32 FCC Rcd 11128 (2017).

governors, Tribal Nations, and the Department of Defense,[44] but kept in place a parallel notice requirement for planned service discontinuances, reductions, or impairments.[45] The required notice to Tribal Nations[46] for discontinuances that are national or otherwise broad in scope could entail notice to more than 500 entities. These notices can be voluminous, and take a significant amount of time and effort to prepare and deliver. Also, ILECs may lack sufficient information to determine if and when a discontinuance will affect a particular Tribal Nation's territory or its members.

Because the actual customers living in Tribal Nation territories that will be subject to a service discontinuance must and do receive adequate notice of such discontinuance, the Commission should consider whether the second, redundant notice required to be given to the customer's Tribal Nation authority can be streamlined without depriving those entities of the written notice the Commission has determined is warranted. A streamlined notice could entail a brief, written letter detailing the circumstances of the planned discontinuance, but instead of including the entire section 214 application, a link to an electronic address in the Electronic Comment Filing System (ECFS) on the Commission's website could be provided for Tribal Entities interested in viewing the complete application.[47] This modification would still provide

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[44] *See id.* at 11152, ¶¶ 56-57. These expanded notice requirements had been adopted in the *2015 Technology Transitions Order* to conform to existing requirements applicable to service discontinuances. *See Technology Transitions, et al.*, 30 FCC Rcd 9372, 9412, ¶ 70 (2015) (*2015 Tech Transitions Order*).

[45] 47 C.F.R. § 63.71(a) (requiring notification to the state public utility commission, the governor of the State, and Tribal Nations in which a discontinuance, reduction, or impairment of service is proposed, and to the Department of Defense). For brevity, we will refer to "discontinuance, reduction, or impairment" as "discontinuance" herein.

[46] That is, "to any federally-recognized Tribal Nations with authority over the Tribal lands in which the discontinuance, reduction, or impairment of service is proposed." 47 C.F.R. §63.71(a).

[47] The letter could also provide instructions for obtaining a hard copy of the application from the

the "written" notice required by the Commission's rules, but would save time (as well as a few trees) and result in less confusion for Tribal Nations. For the same reasons, we urge the Commission to consider this modification to section 63.71(a) for notice to Tribal Nations as well as other governmental officials and entities.

Geographic Rate Averaging Certification. The Commission should no longer require providers to certify annually that the rates they charge customers in rural and high-cost areas for long-distance service are no higher than the rates charged to customers in urban areas.[48] Continuing to require the certification is particularly burdensome because a company officer must certify, which typically requires multiple layers of review within each company. Moreover, it is unclear whether anyone at the Commission reviews the certifications or otherwise puts them to any use. Removing this certification requirement would eliminate unnecessary red tape and allow providers to spend those resources more efficiently.

Subscriber Line Charge (SLC) Pricing Flexibility for Price Cap Carriers. The Commission should remove the rules specifying rates for price-cap carriers' end-user common line charges.[49] The statutory standard for repeal under the biennial review is clearly met, as there can be no serious argument that retail price regulation of price-cap carriers remains necessary in today's hyper-competitive voice telephony market. Instead, price-cap carriers should have the same pricing flexibility under Commission rules as other voice providers, including other local exchange carrier competitors.

FCC's Reference Information Center.

[48] *See* 47 C.F.R. § 64.1900 (certification requirement). *See also* 47 U.S.C. § 254(g) (geographic rate averaging requirement); 47 C.F.R. § 64.1801 (implementing regulation).

[49] Specifically, the Commission should eliminate 47 C.F.R. §§ 69.152(d), (e), & (k).

It is well-documented that price-cap carriers no longer have market power, or even particularly large market shares for voice services.[50] In fact, the Commission in 2016 declared them to be non-dominant in the related market for switched access services in response to a petition from USTelecom.[51] Last year, the Commission referred to that decision in the *8YY Access Charge Reform Notice of Proposed Rulemaking*, stating that "incumbent LECs, like competitive LECs, should be able to recover revenues … directly from their end users, subject only to the discipline of the market."[52] We agree. Indeed, the Commission should not wait for a decision in the 8YY docket to remove rules that limit price-cap carrier end-user pricing. Instead, the Commission should promptly eliminate these unnecessary rules in its biennial review if that opportunity arises earlier.

III. CONCLUSION

We appreciate the continued work of the Commission to modernize its rules as part of the charge to ensure that the nation's communications needs are met. Every two years, the biennial review is a stark reminder that the Commission should constantly be reviewing its rules affecting telecommunications service and providers, and making an honest assessment of whether the state of competition in telecommunications markets warrants elimination or modification of any requirements. This review is an opportunity for the Commission to signal its approval to providers that are using multiple platforms and facilities to compete successfully for voice, video, and data telecommunications customers. It can do so by modifying or eliminating any

[50] *See supra* note 12 and accompanying text.

[51] *See Technology Transitions Declaratory Ruling & Order*, *supra* note 17.

[52] *8YY Access Charge Reform*, Further Notice of Proposed Rulemaking, 33 FCC Rcd 5723, ¶ 63 (2018).

requirements that take away incentives for providers to continue to invest in and build the world's best broadband infrastructure.

Respectfully submitted,

USTELECOM ASSOCIATION

/s/ Diane Holland

By: _____

Diane Griffin Holland
Patrick Halley
B. Lynn Follansbee

607 14th Street, NW, Suite 400
Washington, D.C. 20005
(202) 326-7300

February 8, 2019

APPENDIX

Rules Parts to Review for Repeal or Revision

Part 1 – Practice and Procedure
- Subpart E—Complaints, Applications, Tariffs, and Reports Involving Common Carriers

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