

SUPPORTING STATEMENT

A. Justification:

1. Sections 201, 202, 203, 204 and 205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201, 202, 203, 204 and 205, require that common carriers establish just and reasonable charges, practices and regulations which must be filed with the Commission which is required to determine whether such schedules are just, reasonable and not unduly discriminatory.

Part 61 of the Commission's rules establishes the procedures for filing tariffs which contain the charges, practices and regulations of the common carriers, supporting economic data and other related documents. The supporting data must also conform to other parts of the rules such as Parts 36 and 69. Part 61 prescribes the framework for the initial establishment of and subsequent revisions to tariffs. Issuing carriers that do not conform to Part 61 may be required to post their schedules or rates and regulations. See 47 C.F.R. § 61.72.

On April 28, 2000, the Court of Appeals upheld the Commission's order¹ requiring detariffing of all interstate, domestic, interexchange services and lifted the stay on May 1, 2000.² On May 9, 2000, the Common Carrier Bureau (now known as the Wireline Competition Bureau) issued a Public Notice³ implementing a transition plan and asking for comments on modifications to the transition plan. Since the end of the nine-month transition period, on January 31, 2001, interstate, domestic, interexchange services are no longer filed with the FCC with some exceptions. Carriers are permitted to file tariffs for dial-around 1+ services and for new customers for a limited period of time.

On March 3, 2001, the Commission released a Report and Order in IB Docket No. 00-202, requiring the detariffing of interstate international, interexchange services with some exceptions.⁴ On May 2, 2001, the International Bureau issued a Public Notice⁵ implementing a nine-month transition plan. Since the end of the nine-month transition period, on January 28, 2002, international interexchange services are no longer filed with the FCC with some exceptions. Carriers must still file tariffs for international dial-around services, inbound

¹ *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace Detariffing Order*, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 20730 (1996) (*Detariffing Order*).

² *MCI Telecommunications Corporation v. FCC*, 209 F. 3d 760 (D.C. Cir. 2000); *MCI Telecommunications Corporation v. FCC*, No. 96-1459, slip op. (D.C. Cir May 1, 2000).

³ *Domestic, Interexchange Carrier Detariffing Order Takes Effect*, CC Docket No. 96-61, Public Notice, 16 FCC Rcd 3688 (Com. Car. Bur. 2000) (*Notice*).

⁴ *2000 Biennial Regulatory Review, Policy and Rules Concerning the International Interexchange Marketplace*, IB Docket No. 00-202, Report and Order, 16 FCC Rcd 10647 (2001) (*International Order*).

⁵ *International Detariffing Order Takes Effect*, IB Docket No.00-202, Public Notice, 16 FCC Rcd 9372 (Intern. Bur. 2001) (*Notice*).

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international collect calls, “on-demand” Mobile Satellite Services (MSS) and for new customers for a limited period of time.

On April 27, 2001, the Commission released the Seventh Report and Order (i.e., the *CLEC Access Order*) in CC Docket No. 96-262, which limited the application of the Commission’s tariff rules to interstate access services provided by nondominant local exchange carriers (i.e., CLECs).⁶ Pursuant to this order, Competitive Local Exchange Carrier (CLEC) access rates that are at or below a benchmark set by the Commission will be presumed to be just and reasonable and may be imposed by tariff. Above the benchmark, CLEC access services will be mandatorily detariffed. For purposes of this order, CLECs were required to revise their existing tariffs to bring their rates into line with the benchmark. CLECs followed similar procedures on an annual basis for three years, until 2004, as the benchmark declined pursuant to a schedule adopted by the Commission.

On September 23, 2005, the Commission released the *Wireline Broadband Internet Access Services Order*, which permits facilities-based providers to offer broadband Internet access transmission arrangements for wireline broadband Internet access services on a common carrier basis or a non-common carrier basis.⁷ If the provider decides to offer broadband Internet access transmission service on a common carrier basis, the Commission allows them to do so on a permissive detariffed basis.

On August 31, 2007, the Commission released the *Section 272 Sunset Order*, which found the Bell Operating Companies (BOCs) to be nondominant in the provision of in-region, interstate and international, long distances services, whether they provide these services directly or through affiliates that are neither section 272 nor rule 64.1903 affiliates.⁸ Accordingly, AT&T, Verizon and Qwest are now barred from filing tariffs for in-region, interstate and international, long distance services pursuant to section 203 of the Act and sections 61.31-61.38 and 61.43 of our rules.

⁶ *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Order, 16 FCC Rcd 3832 (2001) (*CLEC Access Order*).

⁷ Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises; Consumer Protection in the Broadband Era, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (rel. Sept. 23, 2005) (*Wireline Broadband Internet Access Services Order*).

⁸ *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket Nos. 02-112 and 06-120, CC Docket No. 00-175, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (*Section 272 Sunset Order*).

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The Commission is seeking approval of this information collection as a “revision” following release of the *Section 272 Sunset Order* on August 31, 2007. We are submitting this to OMB in order to obtain the full three-year clearance.

As noted on the OMB Form 83i, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority is contained in sections 1-5, 201-205, 208, 251-271, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 201-205, 208, 251-271, 403, 502, and 503.

2. The information collected through a carrier’s tariff is used by the Commission to determine whether services offered are just and reasonable as the Act requires. The tariffs and any supporting documentation are examined in order to determine if the services are offered in a just and reasonable manner.
3. Currently, all nondominant carriers, both domestic and international, are required to file tariffs (where still mandated or permitted) on discs and diskettes, except for informational tariffs filed by operator service providers which are filed on paper. All dominant incumbent local exchange carriers are required to file interstate tariffs electronically.

Pursuant to an *Order*, Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, adopted January 29, 1997, released January 31, 1997, FCC 97-23, the Commission established a mandatory electronic filing system for all incumbent local exchange carriers. Authority was delegated to the Chief, Common Carrier Bureau to establish a program to implement this electronic filing system. (See OMB Control No. 3060-0745).

Finally, pursuant to an *Order* on the Electronic Tariff Filing System (ETFS), adopted May 28, 1998, released May 28, 1998, DA 98-914, all incumbent local exchange carriers were directed to file interstate tariffs and associated documents through the Internet on the Electronic Tariff Filing System as of July 1, 1998. Paper filings are not accepted.

4. We know of no duplication of this information. There is no similar information available in this area.
5. As discussed in prior OMB filings, small incumbent local exchange carriers are not considered by the Commission to constitute small entities within the meaning of the Regulatory Flexibility Act, since they are dominant in the provision of local exchange and access services. The Commission, nevertheless, is committed to reducing the regulatory burdens on small incumbent local exchange carriers whenever possible consistent with the Commission’s other public interest responsibilities. Nondominant local exchange carriers are permitted, but not required, to file tariffs under the Commission’s rules. Some Nondominant local exchange carriers may qualify as small businesses under the Regulatory Flexibility Act. See *CLEC Access Order*, ¶¶ 115-116.

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6. Generally, the Commission has no control over when carriers file new tariffs or revise existing tariffs. If tariffs were ordered to be filed at specific intervals, the Commission would not become aware of unjust or unreasonable charges in a timely manner. The result would be an inability to minimize any adverse effects on the public.

The only instances where the Commission requires tariff filings are in Part 61, 47 C.F.R. § 61.43, and in Part 69 of the Commission's rules, which require one annual submission of access tariffs from incumbent local exchange carriers at a specified time. This annual filing is, however, limited in scope and does not preclude tariff filings at other times during the year.

7. Section 61.20(c) of the Commission's rules requires that nondominant carriers file three complete copies of their tariff submissions and one additional copy of the cover letter. Section 61.32(c) of the Commission's rules requires that dominant carriers who file on paper file four copies of their tariff submissions. Multiple copies are needed to maintain the Commission's public reference room and to provide working copies to staff members.
8. The Commission placed a notice in the Federal Register as required by 5 C.F.R. § 1320.8(d). See 73 FR 19502, dated April 10, 2008. No comments were received.
9. The Commission does not anticipate providing any payment or gift to respondents.
10. All tariff filings are public information, freely available to the public. The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information, which they believe to be confidential under 47 C.F.R. § 0.459 of the Commission's rules.
11. The collection does not involve questions of a sensitive nature, nor are there any privacy impacts.
12. The following represents the estimates of hour burden of the collections of information. We note that the hour burden imposed by the requirement is very difficult to quantify. The following represents our best estimate.

Tariffs filed pursuant to Part 61.

- a. Number of respondents: **580**
- b. Frequency of response: On occasion and biennial reporting requirements.
- c. Number of Response Annually: **1,160**

We estimate respondents, on average, submit about 2 filings per year.

580 respondents x 2 responses/annum = 1,160 responses

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- d. Annual burden per respondent: **50 hours.**
- e. Total annual hour burden: **58,000 hours.**

580 respondents x 2 responses/annum x 50 hours/response = 58,000 hours

- f. Total estimate of annualized cost to respondents for the hour burdens for collection of information: **\$2,610,000.**
- g. Explanation of calculation: It is difficult to provide a sound estimate of respondent's cost without conducting a survey. However, assuming that respondents use mid to senior level personnel to comply with Part 61 requirements comparable in pay to the Federal government, we estimate respondent's cost to be \$45 per hour. Thus,

580 x 2 filings = 1160 filings x 50 hours x \$45 per hour = \$2,610,000.

13. The following represents the Commission's estimate of the annual cost burden for respondents or recordkeepers resulting from the collections of information:

- (a) Total capital and start-up cost component (annualized over its expected useful life): \$0.
The requirements will not require the purchase of additional equipment.
- (b) Total operation and maintenance and purchase of services component: **\$899,000.**

Respondents are subject to a filing fee of \$775. Thus:

580 respondents filing an average of 2 filings a year: 1160 x \$775 = **\$899,000.**

- (c) Total annualized cost requested: **\$899,000.**

14. Annualized cost to the Federal government to handle all tariffs has been estimated to be approximately \$1,073,406.

The annualized cost to the Federal Government is at a minimum the annual budget of the Pricing Policy Division of the Wireline Competition Bureau. In addition, all other bureaus within the Commission would be affected, some, such as the Enforcement Bureau, to a much greater extent than others.

Activities of other Commission groups outside the Wireline Competition Bureau would also be affected, such as the Dockets and Publication Branches. Since tariff matters involve several organizational units within the Commission, in varying degree, it would be impossible to give a complete meaningful estimation of governmental cost without conducting an in-depth study.

15. The Commission note that the following changes:

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- (a) There is one program change—the total annual cost has been increased (adjustment) from \$835,200 to \$899,000, due to the increase in the filing fee, from \$720 to \$775; and
- (b) There are two adjustments—the Commission now believes that respondents require only 50 hours rather than 57 hours to complete each tariff filing, which has resulted in a decrease from 66,120 hours to 58,000 hours in the total annual hourly burden estimate.

There are no other program changes or adjustments to the other burden estimates since the previous submission.

- 16. There are no plans for publication of the results.
- 17. The Commission does not intend to seek approval not to display the expiration date for OMB approval of the information collection since there are no FCC forms included in this information collection.
- 18. As noted in item 7 above, the Commission requires Part 61 nondominant carrier respondents to submit 4 copies of their filings.

In addition, the Commission notes that the 60 day Federal Register Notice incorrectly stated that this information collection was being submitted under the “delegated authority;” it will be submitted as a “revision of a currently approved collection” since the estimated hour burden exceeds the 5,000 hour threshold for “delegated” collections, and the rules authorizing the collection has been changed pursuant to the *Section 272 Sunset Order* released on August 31, 2007, as noted above.

Furthermore, the Commission notes that it has adjusted its estimate for the total annual hourly burden from 66,120 hours to 58,000 hours (adjustment) as a result of a change in the estimated time per response from 57 hours to 50 hours.

There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

This information collection does not employ any statistical methods.