

272 Sunset Order; WC Docket No. 06-120; Access Charge Reform, CC Docket No. 96-262, *First Report and Order; Second Order on Reconsideration and Memorandum Opinion and Order; and Fifth Report and Order*

SUPPORTING STATEMENT

A. Justification:

1. *Circumstances that make the collection necessary:*

In the 1999 *Fifth Report and Order (Pricing Flexibility Order)*,¹ the Commission modified the rules that govern the provision of interstate access services by those price cap local exchange carriers (LECs) subject to price regulation to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996. The pricing flexibility framework adopted in the *Pricing Flexibility Order* was designed to grant greater flexibility to price cap LECs as competition develops, while ensuring that: (1) price cap LECs do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) price cap LECs do not increase rates to unreasonable levels for customers that lack competitive alternatives.

In the August 2012 *Report and Order*,² the Commission suspended, on an interim basis, the 90-day deadline for the granting of pricing flexibility pending adoption of a new regulatory framework. Notwithstanding the temporary suspension, the Commission is seeking Office of Management and Budget (OMB) approval for an extension to obtain the full three-year clearance for this expiring collection in the event the suspension is lifted. The Commission will separately seek OMB's approval for any subsequent modification of this collection, as a result of changes to the pricing flexibility rules, in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13.

The information collection requirements are as follows:

- a. **Showings under the Market-Based Approach:** In the *Pricing Flexibility Order*, the Commission provided detailed rules for implementing the market-based approach, pursuant to which price cap LECs would receive pricing flexibility in the provision of interstate access services as competition for those services develops. See 47 C.F.R. §§ 1.774; 69.701 *et seq.* The *Pricing Flexibility Order* granted immediate pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal of certain interstate interexchange services from price cap regulation. The *Pricing Flexibility Order* also provided for additional pricing flexibility, to be granted in two phases, that is contingent upon competitive showings. See 47 C.F.R. §§ 69.709, 69.711, 69.713.

To obtain Phase I relief:

- Price cap LECs must demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide the services at issue.
 - For instance, for dedicated transport and special access services, price cap LECs must

¹ *Fifth Report and Order and Notice of Proposed Rulemaking*, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*), *aff'd*, *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

² *In the Matter of Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order, 25 FCC Rcd 10557 (2012).

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demonstrate that unaffiliated competitors have collocated in at least 15 percent of the LEC's wire centers within a Metropolitan Statistical Area (MSA) or collocated in wire centers accounting for 30 percent of the LEC's revenues from these services within an MSA.

- o Higher thresholds apply, however, for channel terminations between a LEC end office and an end user customer. In that case, the LEC must demonstrate that unaffiliated competitors have collocated in 50 percent of the price cap LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the price cap LEC's revenues from this service within an MSA.
- For traffic-sensitive, common line, and the traffic-sensitive components of tandem-switched transport services, a LEC must show that competitors offer service over their own facilities to 15 percent of the price cap LEC's customer locations within an MSA. Phase I relief permits price cap LECs to offer, on one day's notice, volume and term discounts and contract tariffs for these services, so long as the services provided pursuant to contract are removed from price caps.

To obtain Phase II relief:

- Price cap LECs must demonstrate that competitors have established a significant market presence (*i.e.*, that competition for a particular service within the MSA is sufficient to preclude the incumbent from exploiting any individual market power over a sustained period) for provision of the services at issue.
 - Phase II relief for dedicated transport and special access services is warranted when a price cap LEC demonstrates that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA.
 - A higher threshold applies to channel terminations between a LEC end office and an end user customer. In that case, a price cap LEC must show that unaffiliated competitors have collocated in 65 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 85 percent of the LEC's revenues from this service within an MSA.
 - Phase II relief permits price cap LECs to file tariffs for these services on one day's notice, free from both our Part 61 rate level and our Part 69 rate structure rules.
- b. Contract-based Tariff Filings: Price cap LECs who have made a Phase I showing may offer contract-based tariffs. Contract-based tariffs enable price cap LECs to tailor services to their customers' individual needs, but also prevent targeting by requiring that price cap LECs make contract tariffs available to all similarly situated customers.³
- c. Contract Tariff Certification: AT&T, Qwest and Verizon incumbent LECs are required, pursuant to the 272

³ See 47 C.F.R. §§ 61.55 and 69.727.

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Sunset Order,⁴ to provide a certification to the Commission, pursuant to 47 C.F.R. § 69.727(a)(iii), prior to providing contract tariff services to itself or to any affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate for use in the provision of any in-region, long distance services to provide service pursuant to that contract tariff to an unaffiliated customer.

- d. Provision of Customer-Specific Presubscribed Interexchange Carrier Charge (PICC) Data to Interexchange Carriers (IXCs): Incumbent price cap LECs are required, pursuant to the *Second Order on Reconsideration and Memorandum Opinion and Order*,⁵ to provide IXCs with customer-specific data that specifies the number and type(s) of PICCs being assessed on each line.

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.

The Commission's statutory authority to collect this information is provided under 47 U.S.C. §§ 201-205, 303(r).

2. The need for these information collection requirements is as follows:

The information to be collected would be submitted to the FCC by price cap LECs for use in determining whether the LECs should be granted regulatory relief pursuant to the *Pricing Flexibility Order*.

The information collected under the *Second Order on Reconsideration and Memorandum Opinion and Order* would be submitted by the LECs to interexchange carriers for use in developing the most cost-efficient rates and structures.

The certification required of AT&T, Verizon and Qwest will ensure that equal protection is in place in the event the BOCs provide in-region, long distance services directly.

3. The Commission has established a program of mandatory electronic filing of tariffs and associated documents by incumbent local exchange carriers. These carriers must file tariffs and associated documents electronically in accordance with the requirements established by the Wireline Competition Bureau. Other parties may also file documents in tariff proceedings via the Electronic Tariff Filing System. See 47 C.F.R. § 1.774(e).
4. There will be no duplication of information. In most instances, the information sought is unique to each carrier.

⁴ *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, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (272 Sunset Order).*

⁵ *See Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure, Second Order on Reconsideration and Memorandum Opinion and Order, 12 FCC Rcd 16606 (2007) (Second Order on Reconsideration and Memorandum Opinion and Order)*

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5. The majority of the information collection requirements affect only incumbent price cap LECs, which are mostly or entirely large entities. Nonetheless, these information collection requirements may also affect small entities in some instances.
6. These information collection requirements are necessary to allow the Commission to become aware of unjust or unreasonable charges in a timely manner. Without these information collection requirements, the Commission would not be able to minimize any adverse effects on the public.
7. FCC requirements do not impose any obligations that would require parties to report information to the FCC more often than quarterly, nor will our requirements impose any other special circumstances.
8. Pursuant to 5 C.F.R. § 1320.8(d), the Commission published a 60-day notice in the *Federal Register* on June 16, 2014 (*See* 79 FR 34310-34311). No comments were received.
9. The Commission does not anticipate providing any payment or gift to respondents.
10. The information is not of a confidential nature. Respondents who believe certain information to be of a proprietary nature may request confidential treatment in accordance with the procedures described in 47 C.F.R. § 0.459. See also 47 C.F.R. § 1.774(b).
11. The information is not of a sensitive nature. There are no privacy impacts.
12. The following represents the estimated hour burden of the information collections:
 - a. **Reporting Requirement: Showings Under Market-Based Approach**
 1. Number of respondents: **13**.
 2. Frequency of response: One time filing (reporting requirement).
 3. Total number of responses annually: Approximately **91**.

The total annual responses are as follows:

Phase I:

- We estimate that a dedicated transport and special access filer (except channel terminations to end users) will submit **no more than 1 filing annually**.
- We estimate that a channel termination to end users filer will submit **no more than 2 filings annually**.
- We estimate that a common line and traffic sensitive services filer may submit **no more than 1 filing annually**.

Phase I Total: 13 + 26 + 13 = 52 filings (responses).

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Phase II:

- We estimate that a dedicated transport and special access filer (except channel terminations to end users) may submit **approximately 1 filing annually**.
- We estimate that channel terminations to end users may submit **approximately 2 filings annually**.

Phase II Totals: 13+ 26 = 39 filings (responses).

Phases I and II Total: 52 + 39 = 91 filings/year (responses).

4. Estimated time per response: Approximately 5-300 hours.
5. Total annual burden: **4,290** hours.

Phase I:

- We estimate that each dedicated transport and special access (except channel terminations to end users) filing will take approximately 5 hours to prepare and submit:

13 responses x 5 hours per response = 65 hours.

- We estimate that each of the 2 channel terminations to end users filings will take approximately 5 hours to prepare and submit:

26 responses x 5 hours per response = 130 hours.

- We estimate that each of the 13 common line and traffic sensitive services filings will take approximately 300 hours to prepare and submit:

13 responses x 300 hours per response = 3,900 hours.

Phase I Totals: 65 hours + 130 hours + 3,900 = 4,095 hours

Phase II:

- We estimate that each of the dedicated transport and special access (except channel terminations to end users) filings will take approximately 5 hours to prepare and submit:

13 responses x 5 hours per response = 65 hours

- We estimate that each of the 2 channel terminations to end users filings will take 5 hours to prepare and submit:

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26 responses x 5 hours per response = 130 hours.

Phase II Totals: 65 hours + 130 hours = 195 hours

Total for Phases I & II: 4,095 hours + 195 hours = **4,290 hours**

6. Total estimate of “in house” cost to respondents: **\$235,950**

7. Explanation of calculation:

The Commission estimates that the respondents will use senior staff to prepare the approximately 91 filings, totaling 4,290 hours annually at a cost of approximately \$55 per hour. Thus:

4,290 hours/year x \$55 = \$235,950

b. Reporting Requirement: Contract-Based Tariff Filings

1. Number of respondents: Approximately **13**.

2. Frequency of response: Occasional reporting requirement as needed by filer.

3. Total number of responses annually: Approximately **260** responses.

4. Estimated time per response: 3 hours.

5. Total annual burden: **780** hours.

The Commission estimates that approximately 13 entities will require approximately 3 hours of reporting time per filing.

13 respondents x 20 submissions/year x 3 hours = 780 hours.

6. Total estimate of “in house” cost to respondents: **\$31,200**.

7. Explanation of calculation:

It is difficult to provide a sound estimate of respondent’s cost without conducting a survey. Assuming that respondents use mid to senior level personnel to comply with Part 61 requirements comparable in pay to Federal government, we estimate respondent’s cost to be approximately \$40 per hour.

13 respondents x 20 filings/year x 3 hours/filing x \$40/hour = \$31,200.

c. Reporting requirement: Contract Tariff Certification:

1. Number of respondents: **3**.

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2. Frequency of response: On occasion reporting requirement.

This obligation is required each time each respondent provides contract tariff services to itself or to any affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate for use in the provision of any in-region, long distance services.

3. Total number of responses annually: **3**.

4. Estimated time per response: 20 hours.

5. Total annual burden: **60 hours**.

The Commission estimates that this requirement will take approximately 20 hours and that the 3 respondent entities (BOCs) will respond once a year.

3 respondents x 1 submission/year x 20 hours = 60 hours

6. Total estimate of “in house” cost to respondents: **\$2,400**.

7. Explanation of calculation:

The Commission estimates that respondents will use staff equivalent to mid to senior level personnel to complete and file the information, which we estimate to be approximately \$40 per hour.

We estimate it will take approximately 20 hours to comply with the requirement:

3 respondents x 20 hours per filing x \$40/hour = \$2,400.

- d. **Third-Party Disclosure Requirement: Provision of Customer-Specific Presubscribed Interexchange Carrier Charge (PICC) Data to Interexchange Carriers (IXCs)**

1. Number of respondents: **13**.

2. Frequency of response: Third-party disclosure requirement.

3. Total number of responses annually: **13**.

4. Estimated time per response: 80 hours.

5. Total annual burden: **1,040 hours**.

The Commission estimates that this requirement will take approximately 80 hours and that the 13 respondent entities will respond once a year.

13 respondents x 1 submission/year x 80 hours = 1,040 hours

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6. Total estimate of “in house” cost to respondents: \$41,600.

8. Explanation of calculation:

The Commission estimates that respondents will use staff equivalent to mid to senior level personnel to complete and file the information, which we estimate to be approximately \$40 per hour.

We estimate it will take approximately 80 hours to comply with the requirement:

13 respondents x 80 hours per filing x \$80/hour = \$41,600

Information Collection Requirements	Number of Respondents	Number of Responses	Burden Hours	Industry Costs (“In house”)
a. Showings under market-based approach	13	91	4,290	\$235,950
b. Contract-based tariff filings	13	260	780	\$31,200
c. Contract tariff certification	3	3	60	\$2,400
d. Provision of PICC data to IXCs	13	13	1,040	\$41,600
Total	13	367	6,170	\$311,150

Total Number of Respondents: 13

Total Number of Responses Annually: 367

(a) Reporting Requirements Responses: 354 responses

(b) Third Party Disclosure Responses: 13 responses

Total Annual Burden Hours: 6,170 hours.

(a) Reporting Requirements: 5,130 hours

(b) Third Party Disclosure: 1,040 hours

Total Industry Costs: \$ 311,150

13 a. The following represents the Commission’s estimate of the annual cost burden to respondents or record keepers resulting from this collection of information:

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These information collection requirements impose no start-up costs on respondents.

- b. Estimated operations and maintenance and purchase of services component: **\$310,115.**

Respondents are subject to a filing fee of \$845. Thus:

367 responses x \$845 filing fee = **\$310,115.**

The Commission is reporting an increase in the filing fee (from \$815 to \$845).

- c. Total annualized cost requested: **\$310,115.**

14. Estimated costs to the Commission:

- a. Market-Based Approach: The Commission estimates that it will take approximately 5 hours to review each first and second category of Phase I filings and 80 hours for category 3, or approximately 90 hours to review all Phase I filings. We further estimate that it will take approximately 5 hours to review each first and second category of Phase II filings, or approximately 10 hours to review these Phase II filings. Thus, the Commission will spend approximately 100 hours in total. We estimate 91 filings. At a cost of \$55/hour, this translates to a total for the Commission of:

91 filings x 20 hours x \$55/hour = \$100,100 annually.

- b. Contract-based Tariff Filings: We estimate that the time required to review contract-based tariff filings is approximately 3 hours. At a cost of \$55/hour, this equals a total cost for the Commission of:

260 filings x 3 hours x \$55/hour = \$42,900.

- c. Contract Tariff Certification: The Commission notes that it does not review this information collection requirement.

- d. Provision of PICC data to IXCs: The Commission notes that it does not review this information collection requirement.

Cost to the Commission: \$85,800 + 42,900 = **\$143,000**

15. The Commission notes the following changes since the previous submission:

- (a) We have revised the total number of respondents from 17 to 13 based on a decrease in the total number of price cap carriers.
- (b) We have decreased the number of showings under the market-based approach from 377 to 91, based on current empirical data.
- (c) We have eliminated two information collection requirements (Proposed Deaveraging of Common Line

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and Traffic Sensitive Access Elements; Proposed Common Line and Traffic Sensitive Phase II Showings”) that were proposed in the *Fifth Report and Order and Notice of Proposed Rulemaking (Pricing Flexibility Order)*,⁶ but were not adopted by the Commission in subsequent orders. Elimination of these requirements decreases the burden estimate by 1,090 hours.

- (d) We have added an information requirement concerning the LECs’ provision of Customer-Specific Presubscribed Interexchange Carrier Charge (PICC) data to interexchange carriers. This requirement, which increases the burden estimate by 1,040 hours, was omitted in the previous submission.
- (e) Based on the above, the total number of responses annually has been reduced from 887 to 367. The total annual burden of this information collection is now 6,170 hours, a decrease of 22,665 hours from the previously approved burden of 28,835 hours.
- (f) The Commission has increased the tariff filing fee from \$815 to \$845, but, due to the decrease in respondents, the total annual cost is now \$10,895, a decrease of \$6,220 from the previously approved \$17,115, so the total annual cost is now \$310,115.

16. The Commission does not anticipate that it will publish any of the information.

17. We do not seek approval to not display the expiration date for OMB approval of the information collections.

18. There are no exceptions to the certification statement in Question 19.

B. Collection of Information Employing Statistical Methods:

The Commission does not anticipate that the collection of information will employ statistical methods.

⁶ *Pricing Flexibility Order*, 14 FCC Rcd at 14235, para. 5.