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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 53, 63, and 64

[CC Docket Nos. 95-20, 98-10, WC Docket No. 10-132; FCC 13-69]

Data Practices, Computer III Further Remand: BOC Provision of Enhanced Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Report and Order eliminates comparably efficient interconnection (CEI) and open network architecture (ONA) narrowband reporting requirements applicable to the Bell Operating Companies (BOCs). These requirements have been in place to monitor the BOCs' compliance with access and interconnection services that they must offer to competitive enhanced service providers (ESPs). The Commission no longer relies on the reports in the course of its decision making, and there is nothing in the record indicating that the reports contain information that is useful to ESPs.

Eliminating them will improve the way the Commission collects, uses, and disseminates data, including by altering or eliminating collections that are no longer useful or necessary to carry out our statutory responsibilities.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jodie May, WCB, CPD, (202) 418-1580 or Jodie.May@fcc.gov.

SUPPLEMENTARY INFORMATION: In this Report and Order, we permanently eliminate annual, semi-annual, quarterly, and non-discrimination reporting requirements applicable to the BOCs’ narrowband CEI and ONA services. The Commission implemented these reporting requirements under its Computer III framework to monitor the BOCs’ compliance with the obligation to provide non-discriminatory access to basic network services for unaffiliated ESPs. In August 2011, the Commission Bureau waived the reporting requirements pending resolution of the issues in the Report and Order. The Report and Order furthers the Commission’s efforts to modernize agency data collections and reduce reporting burdens where appropriate and consistent with the public interest.

I. BACKGROUND

1. On February 8, 2011, in a Notice of Proposed Rulemaking (CEI/ONA Notice), the Commission proposed eliminating the legacy CEI/ONA narrowband reporting requirements required under the Computer III safeguards “due to a lack of continuing relevance and utility.” 76 FR 11407-01 (Mar 2, 2011). The CEI/ONA Notice stated that the Commission does not rely on any of the submissions in the course of its decision making. On August 11, 2011, the Bureau granted on its own motion a waiver of the CEI/ONA narrowband reporting requirements pending resolution of the CEI/ONA Notice. The Bureau stated that, while it did not prejudge the outcome of the rulemaking, the record suggested that the reports are of limited utility and did not justify the burden and expense of preparing them. Review of Wireline Competition Bureau Data Practices, 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, Notice of Proposed Rulemaking, WC Docket

No. 10-132, CC Docket Nos. 95-20, 98-10, 26 FCC Rcd 11280, 11280-81, para. 3 (2011). No commenter to the CEI/ONA Notice supported retaining the reporting requirements.

2. The CEI/ONA Notice sought comment on eliminating the BOCs' annual, semi-annual, quarterly, and non-discrimination reporting requirements. Prior to the waiver described above, the BOCs filed annual reports containing projected deployment schedules for ONA services by type of service and percentage of access lines and by market area; disposition of individual requests for ONA services, including action on requests deemed technically infeasible; information about ONA services that were offered through technologies that were new at the time the Commission adopted the requirements, such as Signaling System 7 and Integrated Services Digital Network systems; information about operations support services and billing; and extensive lists of services that the BOC used for its own enhanced services operations. The BOCs were also required to file semi-annual reports containing a consolidated nationwide matrix of ONA services and corresponding state and federal tariff descriptions, computer diskettes and printouts of all tariffs, information on 118 categories of network capabilities requested by ESPs, and the BOC's "ONA Services User Guide," all on paper and diskette. They filed non-discrimination reports or affidavits, most on a quarterly basis, that published intervals for installation, repair dates, trouble reports, and timelines for BOC operations as compared to BOC provisioning of service to competitors. For CEI, the Commission permits the BOCs to post their substantive CEI plans on the Internet and then notify the Bureau at the time of the postings. The BOCs are no longer required to obtain Commission pre-approval before posting the plans, but CEI reporting obligations

required the BOCs to file paper reports demonstrating compliance with certain nondiscrimination standards.

II. REPORT AND ORDER

3. In this Report and Order, we eliminate the CEI/ONA narrowband reporting requirements. The Commission no longer relies on any of the reports in the course of its decision making, and there is nothing in the record indicating that the reports contain information that remains useful to competitive ESPs. No commenter has indicated that it uses the reported data.

4. The narrowband reporting requirements are outdated in many respects. For example, the BOCs are required to report on installation and maintenance intervals for detailed categories of ONA service that the Commission established in 1990. Those reporting categories were based on service codes that were in use by the BOCs' provisioning systems during the 1980s. Recent ONA reports contain data for reporting categories that are still active, such as business and Centrex-based services, but many of the original category codes contain no provisioning data.

5. The BOCs argue that the reports increased their costs of providing service. CenturyLink states that, for each semi-annual report, which was over 500 pages and filed in older file formatting technology, it incurred internal costs plus the cost of outside consultants to prepare the reports. It further states that it incurred costs associated with having to prepare the reports jointly with other BOCs. The Commission itself has identified inefficiencies associated with requiring each BOC to file its own ONA information even though some of this information does not vary among providers. For example, each BOC reported on the network capabilities it used to provide basic

narrowband services even if the capabilities did not vary in the industry. In addition, the Commission has previously inquired about whether the annual and semi-annual reports required redundant information on ONA service availability, some of which is already delineated in state and federal tariffs filed by the BOCs. Overall, the record in the CEI/ONA Notice contains no evidence that continuing the reports would provide useful information, and we are convinced that the costs and burdens of preparing them outweigh the benefits. The Commission has stated that it must “collect the data it needs, and only the data it needs to carry out its statutory responsibilities.” Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules, IB Docket No. 04-112, First Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 7274, 7275, para. 1 (2011). Unnecessary filing and reporting requirements impose administrative costs on carriers that can lead to increased rates for consumers and are not in the public interest.

6. In light of these conclusions, we find that continued application of the narrowband CEI and ONA reporting requirements is no longer necessary. Since the Bureau waived the requirements in 2011, no commenters have indicated that the elimination of the required reports has impeded their enhanced service offerings or otherwise prevented them from obtaining non-discriminatory access to CEI/ONA services. We find that it is more efficient to detect possible access discrimination by looking at specific, focused information in the context of an individual complaint proceeding under section 208 of the Act than through these outdated monitoring reports. 47 U.S.C. 208.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Analysis

7. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. 3501-3520. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

B. Congressional Review Act

8. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

9. Final Regulatory Flexibility Certification. The Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601 et seq., requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) is independently owned and operated; (2) is not

dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

10. This Report and Order eliminates CEI/ONA narrowband reporting requirements that have been in place to monitor the BOCs' compliance with access and interconnection services that they must offer to competitive ESPs. It finds that the Commission does not rely on any of the reports in the course of its decision making, and there is nothing in the record indicating that the reports contain information that is currently useful to competitive ESPs. In addition, no commenter to the proceeding indicated that we should retain the reports. The underlying substantive requirements associated with CEI and ONA with which the BOCs must comply will remain in effect.

11. SBA defines small telecommunications entities as those with 1,500 or fewer employees. 13 CFR 121.201, NAICS Code 517110, Wired Telecommunications Carriers. This proceeding pertains to the BOCs, which, because they would not be deemed a "small business concern" under the Small Business Act and have more than 1,500 employees, do not qualify as small entities under the RFA. Therefore, we certify that the requirements of this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Report and Order including a copy of this final certification in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 801(a)(1)(A). In addition, the Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and is published in the Federal Register. 5 U.S.C. 605(b).

IV. ORDERING CLAUSE

12. IT IS ORDERED that, pursuant to Sections 1, 2, 4, 11, 201-205, 251, 272, 274-276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 161, 201-205, 251, 272, 274-276, and 303(r) this Report and Order in WC Docket No. 10-132 IS ADOPTED. The requirements of this Report and Order SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION.

Sheryl Todd.
Deputy Secretary.

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