

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of	)	
	)	
Petition of USTelecom For Forbearance Under	)	WC Docket No. 12-61
47 U.S.C. § 160(c) From Enforcement Of	)	
Certain Legacy Telecommunications	)	
Regulations	)	
	)	
ARMIS Report 43-08	)	OMB Control Number: 3060-0496
	)	
ILEC Structural Separation Requirements	)	OMB Control Number: 3060-0775
	)	
Prepaid Calling Card Service Provider	)	OMB Control Number: 3060-1096
Certification	)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (“USTelecom”) respectfully responds to the Commission’s request, pursuant to the Paperwork Reduction Act of 1995 (“PRA”), for comments on expiring information collections, three of which relate to outdated telecommunications regulations that have no relevancy in today’s marketplace.¹ Two of these information collections are the subject of a pending petition for forbearance filed by USTelecom pursuant to section 10 of the Telecommunications Act of 1996,² and the Commission previously

¹ See *Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 78 Fed. Reg. 6100 (Jan. 29, 2013); *Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 78 Fed. Reg. 6102 (Jan. 29, 2013). The three information collections that are the subject of USTelecom’s comments are: (i) OMB Control Number 3060-0775 – the Section 64.1903 ILEC Structural Separation Requirements; (ii) OMB Control Number 3060-1096 – the Section 64.5001 Prepaid Calling Card Service Provider Certification; and (iii) OMB Control Number 3060-0496 – ARMIS Report 43-08.

² See *Petition of USTelecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61 (filed Feb. 16, 2012) (“USTelecom Petition”).

granted forbearance from the third information collection more than four years ago.³ Because, by definition, a regulation that meets the statutory standards for forbearance is not “necessary for the proper performance of the functions of the agency” and has no “practical utility” as required under the PRA,⁴ these information collections cannot lawfully be extended by the Office of Management and Budget (“OMB”) and should be allowed to expire.

I. THE COLLECTION OF INFORMATION FOR WHICH THERE IS NO DEMONSTRATED NEED SHOULD BE ELIMINATED.

Among the stated purposes of the PRA are to “minimize the paperwork burden ... resulting from the collection of information by or for the Federal Government” and to “ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government.”⁵ Consistent with the policies underlying the PRA, the Obama Administration has endorsed “getting rid of absurd and unnecessary paperwork requirements that waste time and money”⁶ and “cutting down on the paperwork that saddles businesses with huge administrative costs.”⁷ The

³ See *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, et al., Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008) (“*ARMIS Forbearance Order*”).

⁴ See 44 U.S.C. § 3506(c)(3)(A); 5 C.F.R. § 1320.5(d)(1).

⁵ 44 U.S.C. § 3501.

⁶ President Barack Obama, “Toward a 21st Century Regulatory System,” *Wall Street Journal*, January 18, 2011, *available at* <http://online.wsj.com/article/SB10001424052748703396604576088272112103698.html>.

⁷ Remarks by President Obama to the Chamber of Commerce, U.S. Chamber of Commerce Headquarters, Washington, D.C., February 7, 2011 (<http://www.whitehouse.gov/the-pressoffice/2011/02/07/remarks-president-chamber-commerce>); *see also* Cass R. Sunstein, Office of Information and Regulatory Affairs, “Minimizing Paperwork and Reporting Burdens; Data Call for the 2011 Information Collection Budget,” Memorandum for Chief Information Officers, at 1 (Feb. 23, 2011) (“Paperwork and reporting requirements impose significant burdens on the American people, including those who run businesses, both large and small”) (http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/2011_ICB_Data_Call.pdf).

PRA attempts to achieve these goals by requiring federal agencies to; (i) review each collection of information, which should include “an evaluation of the need for the collection of information”;⁸ and (ii) certify that each such information collection “is necessary for the proper performance of the functions of the agency” and has “practical utility.”⁹

Consistent with these requirements, OMB’s regulations require that an agency, in order to obtain approval of an information collection, demonstrate that it has taken “every reasonable step to ensure that the proposed collection of information: (i) [i]s the least burdensome necessary for the proper performance of the agency’s functions to comply with legal requirements and achieve program objectives; (ii) [i]s not duplicative of information otherwise accessible to the agency; and (iii) [h]as practical utility.”¹⁰ Additionally, the regulations explain that “[p]ractical utility means the actual, not merely the theoretical or potential, usefulness of information to or for an agency,” and that in evaluating practical utility “OMB will take into account whether the agency demonstrates actual timely use for the information.”¹¹ Finally, in performing its mandatory review of information collections, an agency must conduct “an evaluation of the continued need for such collection.”¹²

II. AN INFORMATION COLLECTION THAT MEETS THE STANDARD FOR FORBEARANCE IS NEITHER NECESSARY FOR THE COMMISSION’S PROPER PERFORMANCE OF ITS FUNCTIONS NOR OF ANY PRACTICAL UTILITY AS REQUIRED BY THE PRA.

By definition, any rule that meets the requirements of forbearance will not be “necessary for the proper performance of the functions” of the Commission and will not be of any “practical

⁸ 44 U.S.C. § 3506(c)(1).

⁹ 44 U.S.C. § 3506(c)(3)(A).

¹⁰ 5 C.F.R. § 1320.5(d)(1).

¹¹ 5 C.F.R. § 1320.3(l).

¹² 5 C.F.R. § 1320.5(d)(1).

utility” as required by the PRA. Forbearance is a regulatory mechanism created by Congress as a means for the Commission to eliminate outdated regulations that have been made unnecessary or ineffective due to changes in the marketplace.¹³ As such, it has similar objectives to the Paperwork Reduction Act.¹⁴ Pursuant to section 10 of the 1996 Act, the Commission is statutorily required to forbear from applying to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, any statute or regulation if: (1) the enforcement of such requirements is not necessary “to ensure that the charges, practices, classifications, or regulations” for the carrier or service in question “are just and reasonable and are not unjustly or unreasonably discriminatory”; (2) enforcement of such requirements is not necessary “for the protection of consumers”; and (3) forbearance is consistent with the public interest.¹⁵ If the Commission does not deny a valid forbearance petition within one year (a deadline that may be extended for 90 days), the petition will be deemed granted by operation of law and forbearance will apply automatically.¹⁶

When the statutory requirements for forbearance are met, the Commission *must* forbear from applying the rule to the relevant service provider or providers. Clearly, a rule that the Commission is prohibited from applying under section 10 cannot be deemed “necessary for the proper performance” of the Commission’s functions or to have any “practical utility” under the

¹³ See, e.g., *United States Telecom Association Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Order, FCC 13-23, ¶ 2 (rel. Feb. 28, 2013).

¹⁴ Indeed, the Paperwork Reduction Act of 1995 and the Telecommunications Act of 1996 were enacted by the same 104th Congress. See Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat 163 (1995); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat 56 (1996).

¹⁵ 47 U.S.C. § 160(a).

¹⁶ 47 U.S.C. § 160(c).

PRA. Therefore, to the extent forbearance from a rule is warranted, any information collection based upon that rule cannot pass PRA muster.

III. THE COMMISSION SHOULD NOT SUBMIT THE LEGACY TELECOMMUNICATIONS INFORMATION COLLECTIONS TO OMB FOR REAUTHORIZATION.

Three of the information collections on which the Commission has sought comment relate to legacy telecommunications regulations that either are the subject of a pending petition for forbearance (OMB control numbers 3060-0496 and 3060-0775) or from which the Commission has already granted forbearance (OMB control number 3060-1096). Because these rules are not necessary to the proper performance of the Commission's functions and have no practical utility, these information collections should be allowed to expire and should not be reauthorized.

A. OMB Control Numbers 3060-0775 And 3060-1096 Relate To Information Collections For Which There Is No Demonstrated Need.

OMB Control Number 3060-0775, the Section 64.1903 ILEC Structural Separation Requirements, and OMB Control Number 3060-1096, the Section 64.5001 Prepaid Calling Card Service Provider Certification, are among the rules from which USTelecom has sought forbearance.¹⁷ The same reasons why these rules are appropriate candidates for forbearance also explain why the related information collections do not meet the requirements of the PRA.

As USTelecom has explained, in light of the dramatic changes in the competitive landscape in the intervening 15 years since adoption of the structural separation requirements in section 64.1903, the rule adversely affects competition and harms consumers, and elimination of

¹⁷ See *USTelecom Petition* at 66-69, 74-75. The Wireline Competition Bureau recently extended by 90 days, or until May 17, 2013, the deadline for acting on USTelecom's Petition. See *Petition of US Telecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Order, DA 13-172 (rel. Feb. 7, 2013).

the rule is necessary to realize the pro-competitive goals of the 1996 Act.¹⁸ Because of the fierce competitive environment—including from cable telephony, wireless, and VoIP providers—any concerns that incumbent local exchange carriers (“ILECs”) are “dominant” when providing in-region, interstate, interexchange, and international telecommunications services are misguided. The Commission previously relieved the Bell Operating Companies (“BOCs”) and their independent ILEC affiliates from similar requirements, finding that rules mandating structural separation when offering in-region long distance services were not necessary to ensure that rates are just, reasonable, and nondiscriminatory or to protect consumers.¹⁹ The Commission also has recognized that section 64.1903 “may delay or prevent [carrier] efforts to respond to technological and marketplace developments, deploy innovative transmission and switching equipment, and bring new services to market.”²⁰ Therefore, forbearance from section 64.1903 would serve the public interest.

Just as structural separation requirements are not necessary ensure just, reasonable, and nondiscriminatory rates or to protect consumers, such requirements are not “the least burdensome necessary for the proper performance of the agency’s functions to comply with legal

¹⁸ *Id.* at 66-69.

¹⁹ *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, 06-120, CC Docket No. 00-175, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (“Section 272 Sunset Order”).

²⁰ *Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission’s Rules*, Memorandum Opinion and Order, 25 FCC Rcd 17704, ¶ 14 (2010) (“PRT Waiver Order”); see also *id.* (acknowledging that structural separation requirements “impose significant administrative costs on [carriers] and reduce efficiency by eliminating opportunities to take advantage of the economies of scope and scale associated with integrated operation”).

requirements and achieve program objectives.”²¹ The Commission recognized as much when it allowed the BOCs and their independent ILEC affiliates to provide in-region, interstate, and international, long distance services on an integrated basis without being subject to dominant carrier regulation as long as they complied with certain targeted safeguards as well as with other continuing statutory and regulatory obligations.²² As a result, this information collection cannot satisfy the requirements of the PRA and should be allowed to expire.

The same is true for the prepaid calling card reporting requirements in section 64.5001 of the Commission’s rules. In its Federal Register notice seeking comment on this information collection, the Commission did not even attempt to identify a use for these reports or to explain how these reports are “necessary to the proper performance” of its functions; instead, the Commission merely explained in two sentences what information is being collected.²³ This is unsurprising, as the Commission acknowledged from the outset that this rule primarily was a prophylactic measure adopted “to reduce further the incentive for carriers to report false or misleading information” amongst themselves.²⁴ As USTelecom explained in its Petition, carriers have established business practices for exchanging required data, and there is no need for certified reports, which have never served any substantive purpose at the Commission.²⁵ Thus, the collection of information related to calling cards has no practical utility.

²¹ 5 C.F.R. § 1320.5(d)(1).

²² *Section 272 Sunset Order*, ¶¶ 89-108.

²³ *See* 78 Fed. Reg. at 6102.

²⁴ *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, ¶ 38 (2006).

²⁵ *USTelecom Petition* at 74-75.

B. The Commission Has Already Determined That The Information Subject To Collection Under OMB Control Number 3060-0496 Is Unnecessary.

In 2008, the Commission granted forbearance from ARMIS Report 43-08 to all covered carriers, with the exception of information reported in Table III, columns FC, FD, FE and FI.²⁶ In finding that forbearance was warranted, the Commission determined that the vast majority of the reported information was not necessary to ensure just, reasonable, and nondiscriminatory rates or to protect consumers and that ending the obligation to file ARMIS Report 43-08 was in the public interest. Given this determination, the Commission cannot suggest that ARMIS Report 43-08 is “necessary to the proper performance” of its functions or has any “practical utility” as required to seek reauthorization under the PRA. At most, the Commission could only legitimately seek reauthorization of the information reflected in columns in Table III of the report for which it has not granted forbearance. This approach would be “the least burdensome necessary for the proper performance of the agency’s functions to comply with legal requirements and achieve program objectives,” as required by the PRA.²⁷

The Commission suggests in its Federal Register notice that it seeks extension of the collection “because petitions for reconsideration and review of those forbearance decisions are currently pending before the Commission and the U.S. Court of Appeals for the D.C. Circuit.”²⁸ This argument fails for at least two reasons. First, the possibility of future agency reconsideration or judicial reversal does not make extension of the information collection “necessary.” Instead, in the unlikely event that its forbearance decision is reconsidered or reversed, the Commission can always seek OMB authorization anew at that time. Second, and

²⁶ See *ARMIS Forbearance Order*, ¶ 19.

²⁷ 5 C.F.R. § 1320.5(d)(1).

²⁸ 78 Fed. Reg. at 6103.

more fundamentally, to be reauthorized an information collection must have practical utility, which the regulations explain “means the actual, not merely the theoretical or potential, usefulness of information to or for an agency.”²⁹ The possibility that the *ARMIS Forbearance Order* could be revisited on reconsideration or reversed on appeal does not move beyond “theoretical or potential” usefulness. As such, the Commission’s proposal to submit this information collection for reauthorization is contrary to the plain meaning of OMB’s rules, and the authorization should be permitted to expire.

IV. CONCLUSION.

For the foregoing reasons, the Commission should not request OMB approval for extension of the information collections associated with section 64.1903, section 64.5001, or ARMIS Report 43-08, and instead, these information collections should be permitted to expire.

Respectfully submitted,

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²⁹ 5 C.F.R. § 1320.3(l).