

This submission is being made pursuant to 44 U.S.C. 3507 of the Paperwork Reduction Act of 1995 to extend existing collection 3060-0734.

## **SUPPORTING STATEMENT**

### **A. Justification:**

1. Section 272 of the Act requires that each Bell Operating Company (BOC) initially provide in-region, interLATA (Local Access and Transport Area) services through a separate corporate affiliate and comply with certain transactional and nondiscrimination requirements set forth in the statute. Section 272(d) requires a biennial audit to ensure compliance with the structural and transactional requirements of section 272.

The Commission adopted both accounting and non-accounting rules to implement the statutory requirements of section 272. In conjunction with this, the Commission found that the BOCs were dominant carriers with market power in the provision of local exchange and exchange access services within their service areas, and that they had the incentive and ability to discriminate against their long distance competitors, and engage in other anti-competitive conduct.

Under section 272 and the Commission's implementing rules, a BOC and its section 272 affiliate may not jointly own transmission and switching equipment, although this restriction is subject to sunset. The separate section 272 affiliate must maintain separate books of account and have separate officers and directors. The separate section 272 affiliate may not obtain credit under arrangements that would permit the creditor to look to the assets of the BOC. The section 272 affiliate must conduct all transactions with the BOC on an arm's length basis, pursuant to the Commission's affiliate transaction rules, with the terms and conditions of such transactions reduced to writing and available for public inspection on the Internet.

Section 272(f)(2) provides that the provisions of section 272, except for section 272(e), sunset with respect to interLATA information services four years after enactment of the Telecommunications Act of 1996, unless the Commission extends such four-year period. Section 272(f)(1) provides that the provisions of section 272, except for section 272(e), sunset with respect to interLATA telecommunications services three years after a BOC or BOC affiliate is authorized under section 271 to provide in-region, interLATA services, unless the Commission extends such three-year-period. Sunset has occurred in all 48 affected states and the District of Columbia.

As a consequence of these sunsets, each BOC is now free to provide interLATA telecommunications services and interLATA information services without complying with the section 272 requirements, other than those in section 272(e). A BOC that chooses to

provide in-region, interstate, interLATA telecommunications services without complying with the section 272 requirements is, however, subject to either of two alternative regulatory regimes in its provision of those services: (a) dominant carrier regulation; or (b) regulation

pursuant to *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*). OMB has approved this latter regulatory regime under control numbers 3060-0760 and 3060-1120, as follows:

- (1) OMB Control Number 3060-0760, Access Charge Reform. This collection applies to the requirement that 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, a BOC must file a certification with the Commission that it provides that service to an unaffiliated customer.
2. OMB Control Number 3060-1120, Service Quality Measurement Plan for Interstate Special Access and Monthly Usage Reporting Requirements. See 74 Fed. Reg. 4345 (Jan. 26, 2009). This collection applies to the special access metrics and monthly usage reporting requirements adopted in the *Section 272 Sunset R&O*.

The following provides a synopsis of the Commission's collections of information currently approved under control number 3060-0734. These information collections will apply to a BOC only to the extent it chooses to provide in-region, interstate, interLATA telecommunications services in accordance with the section 272 requirements:

**A. Safeguards for Unseparated Operations -- (See collection 3060-0470)**

**B. Safeguards for Separated Operations:**

**B. 1. Affiliate Transaction Rules – Modification of Valuation Methods -- (See collection 3060-0470)**

**B.2. Estimated Fair Market Value – Recordkeeping Requirements** – The Commission does not specify the procedures carriers must use to estimate fair market value. The Commission does, however, require that carriers use methods that are routinely used by the general business community. The Commission requires that when situations arise involving transactions that are not easily valued by independent means, carriers must maintain records sufficient to support their value determination. Retention of these records is routine in the normal course of business and thus will not impose a significant burden on respondents.

**C. Affiliated Company Record Requirements:**

**C.1. Section 272(b)(2) – Affiliated Company Books, Records, and Accounts** – This provision requires that separate affiliates maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the BOC of which it is an affiliate. Under this section, separate affiliates must maintain their books, records, and accounts in accordance with generally accepted accounting principles. This requirement is codified at 47 C.F.R. § 53.203(b).

**C.2. Section 272(b)(5) – Arm’s Length Requirement** – This requires that a separate affiliate conduct all transactions with the BOC of which it is an affiliate on an arm’s length basis with any such transactions reduced to writing and made available for public inspection. This requirement is codified at 47 C.F.R. § 53.203(e).

**D. Section 272(d) – Audit Requirements:**

**D.1. Biennial audit** – Section 272(d) states that companies required to maintain a separate affiliate under section 272 “shall obtain and pay for a Federal/State audit every 2 years conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated under this section, and, particularly whether such company has complied with the separate accounting requirements under [section 272(b)].”

The section 272(d) audit requirements are codified in the Commission’s rules at 47 C.F.R. §§ 53.209-53.213. The Auditor’s report shall be filed with the Commission and each relevant state commission. The final audit report must include the following: (1) the findings and conclusions of the independent auditor; (2) exceptions of the federal/state joint audit team to the auditor’s findings and conclusions; (3) response of the BOC to the auditor’s findings and conclusions; and (4) reply of the independent auditor to both the exceptions of the federal/state joint audit team and the response of the BOC.

**D.2. Audit Planning** – The Commission has established certain audit planning requirements. These requirements are codified at 47 C.F.R. § 53.211 of the Commission’s rules. The rule requires that before selecting an independent auditor, the BOC shall submit preliminary audit requirements, including the proposed scope of the audit and the extent of compliance and substantive testing, to the federal/state joint audit team

**D.3. Audit Analysis and Evaluation** -- These requirements are codified at 47 C.F.R. § 53.213 of the Commission’s rules. These rules establish time frames for the review of the draft audit report, the audit findings and work papers and the final audit report.

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 statutory authority for this collection is contained in: sections 4(i), 4(j), 201-205, 218, 220, 260, 271-276, 303(r), and 403 of the Communications Act of 1934, as amended by the 1996 Act, 47 U.S.C. §§ 154(i), 154(j), 201-205, 218, 220, 260, 271-276, 303(r), & 403,

and sections 32.27, 53.209, 53.211, and 53.213 of the Commission's rules, 47 C.F.R. §§ 32.27, 53.209, 53.211, & 53.213.

2. Information collections in this rulemaking are intended to prevent discrimination, cost misallocation and other anti-competitive conduct by the BOCs.
3. Carriers are not prohibited from using improved information technology to record, disclose and/or report the data required by this information collection. Section 272(b)(5) of the Act, concerning arm's length transactions, requires that BOCs make certain information available to the public. In response to this requirement, the Commission concluded that each BOC must make the information publicly available through its Internet home page.
4. The information collections enable the Commission to meet its obligations under the Communications Act as amended. The 1996 amendments to the Communications Act allow the BOCs and other incumbent local exchange carriers to engage in previously proscribed activities such as the provision of in-region, interLATA telecommunications services. The majority of these requirements are not duplicative of other requirements applicable to the BOCs.

Section 272(d) requires that a company operating a required separate subsidiary under section 272 "shall obtain and pay for a joint Federal/State audit every 2 years conducted by an independent auditor . . . ." To the extent the biennial audit and the cost allocation manual audit under Part 64 overlap, the Commission permits the biennial audit to meet the requirement of the section 64.904 audit. The Commission also requires that each BOC obtain one audit that covers all affiliates engaged in services specified in section 272(a)(2), including resale, rather than requiring individual audits for each of these services.

5. These requirements will not result in a significant economic impact on a substantial number of small business entities. Only the BOCs and their affiliates are directly affected and they are all large corporations, or are controlled by large corporations.
6. The Commission makes an effort to require only the information collections needed to fulfill its responsibilities.
7. No known special circumstances apply to this information collection.
8. Pursuant to 5 C.F.R. § 1320.8(d), the Commission placed a notice in the Federal Register to solicit public comment. See 76 FR 14663 dated March 17, 2011 (copy attached). No comments were received.
9. There are no payments or gifts to respondents involved.
10. Respondents who believe certain information to be of a proprietary nature may solicit confidential treatment in accordance with the procedures described in 47 C.F.R. § 0.459. In addition, work papers related to the biennial audit requirement, including material obtained from the examined entities, will receive confidential treatment consistent with section 220(f)

and the Commission's policy for Part 64 audits. Under section 272, access to audit work papers and documents under section 272 is clearly limited to representatives of the Commission and of the state public utility commissions.

11. Very little of the information in this collection is of a sensitive nature except for the audit work papers, which receive confidential treatment. See our response to question 10 above for a description of the treatment of the audit work papers and other sensitive information.
12. Below are the estimates of the hour burden of the current collections of information under this number. Please note that a BOC will be subject to these burdens only in the event it elects to provide in-region, interLATA services pursuant to the regime set forth in section 272 and the Commission's implementing rules.

**A. Safeguards for Unseparated Operations** – The Commission's existing Part 64 cost allocation rules contain safeguards for unseparated operations. See OMB control number 3060-0470 for the burden associated with this requirement.

**B. Safeguards for Separated Operations:**

**B. 1. Affiliate Transaction Rules – Modification of Valuation Methods** – Local exchange carriers are currently required to follow the Commission's affiliate transaction rules and those rules will also apply to the BOCs and their transactions with any affiliates they establish as a result of the section 272 requirements of the 1996 Act. See OMB control number 3060-0470 for the burden associated with this requirement.

**B.2. Estimated Fair Market Value – Recordkeeping Requirements –**

(1) Number of respondents: Approximately 3.

(2) Frequency of response: Recordkeeping requirement.

(3) Total Number of Responses Annually: 36.

3 respondents (BOCs) x 1 recordkeeping requirement/mo. x 12 mos. = 36 responses

(4) Annual Hour Burden per Respondent: 12 hours.

(5) Total Annual Hour Burden: 36 hours.

3 respondents (RBOCs) x 1 hr/recordkeeping requirement/mo. x 12 mos. = 36 hours

(6) How the Burden Estimate is Calculated: This burden estimate is for recordkeeping associated with the requirement that carriers maintain records to support their determination of estimated fair market value. These records are required for those affiliate transactions that are not easily valued by independent means. It is difficult to estimate the number of transactions that will fit this category. However, we estimate

that the burden of maintaining these records will be minimal because the Commission believes that respondent RBOCs use sophisticated IT, automation, and standardized business practices to comply with this recordkeeping function. We estimate respondents spend approximately 1 hour a month for filing and maintaining these records.

3 RBOCs x 1 hour/recordkeeping/month x 12 months = 36 hours/annum

- (7) Estimates of annualized office cost to respondents for the hour burdens for collection of information: \$2,597.40.

Assuming that the LECs in complying with the requirement will use personnel who are comparable in pay and status to a GS-5/Step 5 Federal employee (\$18.50), plus 30% for overhead, the cost estimate is as follows:

3 LECs x 36 hours/annum/recordkeeping x \$18.50/hour = \$1,998.00.  
30% overhead = \$ 599.40  
Total = \$2,597.40

### **C. Affiliated Company Records Requirements (Hourly Burden):**

#### **C.1. Section 272(b)(2) – Affiliated Company Books, Records, and Accounts**

- (1) Number of Respondents: 3.  
(2) Frequency of Response: Record keeping requirement.  
(3) Total Number of Responses Annually: 3.

3 respondents x 1 recordkeeping requirement/annum = 3 responses

- (4) Annual Hour Burden per Respondent: 4,593 hours per affiliate  
(5) Total Annual Hour Burden: 13,779 hours.

- (6) How the Burden Estimate is calculated: It is difficult to estimate the hours involved in maintaining books, records and accounts for the affiliate company. In estimating the burden for this record requirement, we used information contained in the OMB Supporting Statement for the Commission's Part 32 Uniform System of Accounts (USOA) for Class B carriers as the basis for our assumptions. Class B carriers, which are under the indexed revenue threshold, are allowed to keep less detailed records under the Part 32 USOA. (In the OMB Supporting Statement for Part 32, the burden associated with Class B record requirements is 18,372 hours per carrier, per year.) It has been our experience that the affiliated companies establish their own books of account and maintain their records and accounts in accordance with generally accepted accounting principles (GAAP). For purposes of estimating the burden, we

do not anticipate that this record requirement will exceed 25% of the burden associated with Part 32 Class B record requirements.

3 respondents (affiliates) x 4,593 hrs/recordkeeping & accounting reqs/yr = 13,779 hrs

- (7) Estimate of annualized office cost to respondents for the hour burdens for collection of information: \$607,597.90.

Assuming the affiliated companies use in-house personnel comparable in pay to a GS-11, Step 5, Federal employee (\$33.92/hour), plus 30% overhead) the cost estimate is as follows:

3 affiliates x 4,593 hours x \$33.92 = \$467,383.00  
30% overhead = \$140,214.90  
Total = \$607,597.90

**C.2. Section 272(b)(5) – Arm’s Length Requirement** – The Commission requires that the BOCs’ separate affiliates provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction within 10 days of the transaction. The information must be made available at the principal place of business of the BOC. BOCs must also make the full texts of the written descriptions of their transactions available to the public on the Internet within 10 days of the transaction. The burden associated with the requirement is divided into two sections and is calculated as follows:

**Posting to the Internet within 10 Days:**

- (1) Number of Respondents: Approximately 3 (RBOCs).  
(2) Frequency of Response: Third party disclosure requirements.  
(3) Total Number of Responses Annually: 720

The Commission estimates that the three Regional Bell Operating Companies (RBOCS) make Internet postings approximately 20 times each month.

3 respondents (RBOCs) x 20 3<sup>rd</sup> party disclosures/mo. x 12 mos. = 720 responses.

- (4) Annual Hour Burden per Respondent: 240 hours.  
(5) Total Annual Hour Burden: 720 hours,  
(6) How the burden was estimated: This requirement directs the separate affiliate to make publicly available a written description of affiliate transactions with the BOC on the Internet. These affiliate transactions are posted on the RBOC’s “home page.” The estimates are based on observations resulting from completed section 272 audits.

3 RBOCs x 240 hours for Internet postings/year = 720 hours

- (7) Estimate of annualized office cost to respondents for the hour burdens for collection of information: \$31,749.12.

Assuming the RBOCs use personnel comparable in pay to a GS-11, Step 5 (\$33.92/hour) Federal employee, plus 30% overhead, to do these Internet postings annually. The “in house” cost estimate is as follows:

3 RBOCs x 240 hours/annum x \$33.92 = \$24,422.40  
30% overhead = \$ 7,326.72  
Total = \$31,749.12

**Maintenance of Contracts at BOC Headquarters:**

- (1) Number of Respondents: Approximately 3.  
(2) Frequency of Response: Third party disclosure requirement (contract maintenance activities)  
(3) Total Number of Responses Annually: 720

The Commission notes that the BOCs do approximately 20 maintenance contracts per month.

3 BOCs x 20 3<sup>rd</sup> party disclosures/month x 12 months = 720 responses

- (4) Annual Hour Burden per Respondent: 120 hours.  
(5) Total Annual Hour Burden: 360 hours  
(6) How the burden was estimated: This requirement directs the separate affiliate to make publicly available a written description of affiliate transactions with the BOC at the principal place of business of the BOC. The estimates are based on observations resulting from completed section 272 audits.

3 BOCs x 20 responses/month x 0.5 hours/response x 12 months = 360 hours

- (7) Estimate of annualized office cost to respondents for the hour burdens for collection of information: \$15,874.56. Assuming the BOCs use personnel comparable in pay to a GS-11, Step 5 (\$33.92/hour) Federal employee, plus 30% overhead, the “in house” cost estimate is as follows:

3 BOCs x 120 hours for affiliate transaction contracts x \$33.92/hour = \$12,211.20  
30% overhead = \$ 3,663.36  
Total = \$15,874.56

**D.1. Biennial Federal/State Audit, D.2. Audit Planning, and D.3. Audit Analysis and Evaluation**

- (1) Number of Respondents: Approximately 3.
- (2) Frequency of Response: Biennial reporting and third party disclosure requirements.
- (3) Number of Responses Annually: 6.

3 respondents (RBOCs) x 1 audit/respondent = 3 responses

3 respondents (RBOCs) x 1 3<sup>rd</sup> party disclosure = 3 responses

Total: 3 + 3 = 6 responses

- (4) Annual Hour Burden per Respondent: 19,200 hours (RBOCs).

- (5) Total Annual Hour Burden: 57,600 hours

- (6) How the burden was estimated: This burden estimate reflects time expended by the RBOCs in drafting preliminary audit procedures, negotiating those procedures with the Commission, responding to audit requests for data, and responding to other Commission inquiries, etc. This estimate is based on our experience participating in the biennial audit process.

159 hrs/month/audit x 12 months x 10 employees/RBOC = 19,080 hours.

3 respondents x 19,080 hours/response = 57,240 hours

1 hour/month/3<sup>rd</sup> party disclosure x 12 months x 10 employees = 120 hours

3 respondents x 120 hours/3<sup>rd</sup> party disclosure = 360 hours

Total: 57,240 + 360 = 57,600 hours

- (7) Estimates of annualized office cost to respondents for the hour burden for collection of information: \$2,784,960.

Assuming that respondents use personnel comparable in pay to a GS-13/Step 5 Federal employee (\$48.35/hour), we estimate their cost to be based on the following:

3 RBOCs x 19,200 hours/audit x \$48.35 per hour = \$2,784,960.

Information Collection Requirements	Respondents	Total Responses Annually	Total Annual Hour Burden	Total "In House" Costs

B.2. Estimated Fair Market Value	3	36	36	\$2,597.40
C.1. Section 272(b)(2)	3	3	13,779	\$607,597.90
C.2. Section 272(b)(5)				
Posting to Internet within 10 days	3	720	720	\$31,749.12
Maintenance of Contracts @BOC headquarters	3	720	360	\$15,874.56
D.1. Biennial Federal/State Audit et al	3	36	57,600	\$2,784,960.00
<b>TOTALS</b>	<b>3</b>	<b>1,515</b>	<b>72,495</b>	<b>\$3,442,778.98</b>

**Total Number of Respondents: 3**

**Total Number of Responses Annually: 1,551**

**Total Annual Hourly Burden: 72,495 hours.**

**Total Office and Overhead Costs: \$3,442,778.98**

13. We estimate the cost to each respondent for the collections covered by this OMB authorization as shown below.

**A. Safeguards for Unseparated Operations:**

- (a) Total capital and start-up cost: \$0.
- (b) Total Operations and Maintenance: \$0.

**B. Safeguards for Separated Operations:**

**B.1. Affiliate Transactions Rules – Modification of Valuation Methods**

- (a) Total capital and start-up cost: \$0.
- (b) Total Operations and Maintenance: \$0.

**B.2. Estimated Fair Market Value – Recordkeeping Requirements**

- (a) Total capital and start-up cost: \$0.
- (b) Total Operations and Maintenance: \$0.

**C. Affiliated Company Record Requirements:**

**C.1. Section 272(b)(2) – Affiliated Company Books, Records and Accounts**

- (a) Total capital and start-up cost: \$0.

(b) Total Operations and Maintenance: \$0.

**C.2. Section 272(b)(5) – Arm’s Length Requirement**

(a) Total Capital and Start-up Cost: \$0.

(b) Total Operations and Maintenance: \$0.

**D.1. Biennial Federal/State Audit, D.2. Audit Planning, and D.3. Audit Analysis and Evaluation.** – Estimate \$500,000 per year per respondent. This is a total of \$1.5 million annually for all respondents:

\$500,000/audit x 3 RBOCs = \$1.5 million.

The following represents the Commission’s estimate of the biennial independent audit cost burden:

(a)(1) Total capital and start-up costs (annualized over its expected useful life): \$0.00.

(2) Total operation and maintenance and purchase of services component: **\$1.5 million.**

The RBOCs incur audit fees charged by the independent auditor for the conduct of the biennial federal/state audit. The auditor’s report is a product of the biennial federal/state audit conducted by an independent auditor in compliance with the requirements codified at 47 C.F.R. §§ 53.211 and 53.213. The auditor’s report must be filed with the Commission. This burden estimate includes audit fees, but does not include the expenses incurred by the RBOC for its own staff to work on audit design, audit planning, and data request responses. Those estimates are addressed above in Section 12, D.1. Biennial Federal/State Audit, D.2. Audit Planning, and D.3. Audit Analysis and Evaluation.

The cost estimates filed with this submission reflect an increase from those previously filed. These changes reflect updated salary estimates.

**Total Capital and Start-up Cost for all collections: \$0**

**Total Operations and Maintenance for all collections: \$1,500,000**

**Total Annualized Cost Requested: None**

14. We estimate that there will be no annualized costs to government from these collections because the BOCs are unlikely to elect to provide in-region, interLATA services pursuant to section 272. We also estimate that the annualized costs to the federal government would be \$1,500,000, as shown below, if the BOCs were to elect to operate under the section 272

regime. We have revised the burden estimates for these collections in this submission based on updated salary information.

**A. Safeguards for Unseparated Operations** – The annualized cost to the federal government is not expected to increase significantly for this requirement.

**B. Safeguards for Separated Operations:**

**B.1. Affiliate Transactions Rules – Modification of Valuation Methods** – The annualized cost to the federal government is not expected to increase significantly for this requirement.

**B.2. Estimated Fair Market Value – Recordkeeping Requirements** – This is a recordkeeping requirement. The Commission will incur no cost.

**C. Affiliated Company Record Requirements:**

**C.1. Section 272(b)(2) – Affiliated Company Books, Records and Accounts** – This is a recordkeeping requirement. The Commission will incur no cost.

**C.2. Section 272 (b)(5) – Arm’s Length Requirement** – The annualized cost to the federal government is not expected to increase for this requirement.

**D.1. Biennial Federal/State Audit, D.2. Audit Planning, and D.3. Audit Analysis and Evaluation - \$567,099**

The Commission staff and members of the federal/state joint audit team participate in audit planning and review the work products generated during the biennial audit process. The Commission section 272 audit team is staffed by one GS-15 and two GS-14 auditors on a full-time basis, and one GS-14 auditor on a part-time basis. The annual salaries for these staff members are approximated as follows:

- \$140,259.00 - GS-15 (Step 5)
- \$119,238.00 - GS-14 (Step 5)
- \$119,238.00 - GS-14 (Step 5)
- \$ 89,428.50 - GS-14 (Step 5) (part-time (75%))

\$468,163.50 – Total annual salaries  
\$140,449.05– Overhead costs (\$468,163.50x 30%)  
**\$608,612.55– Total Cost**

Total Annualized Cost to Government for all Collections = \$608,612.55. These changes reflect our experience with the actual staffing for these audits.

15. The Commission adjusted to the burden estimates for the information collection requirements contained herein to update salary information.

16. Any section 272 audit reports received by the Commission will be posted on our Electronic Comment Filing System (ECFSs) and can be accessed by the public.
17. The Commission is not seeking approval to not display the expiration date for OMB approval of the information collection.
18. There are no other exceptions to the Certification Statement.

**B. Collections of Information Employing Statistical Methods:**

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