C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301–11 and 301–74

Government employees, Travel and transportation expenses.

Dated: October 4, 2005.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR parts 301–11 and 301–74 as set forth below:

PART 301–11—PER DIEM EXPENSES

■ 1. The authority citation for 41 CFR part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

■ 2. Revise section 301–11.18 to read as follows:

§ 301–11.18 What M&IE rate will I receive if a meal(s) is furnished by the Government or is included in the registration fee?

Your M&IE rate must be adjusted for a meal(s) furnished to you by the Government (including meals furnished under the authority of Part 304 of this Title) by deducting the appropriate amount shown in the chart in this section for travel within CONUS and the chart in Appendix B of this Chapter for meal deductions for OCONUS and foreign travel. The total amount of deductions made will not cause you to receive less than the amount allowed for incidental expenses.

Total M&IE	$39	$44	$49	$54	$59	$64
Breakfast	7	8	9	10	11	12
Lunch	11	12	13	15	16	18
Dinner	18	21	24	26	29	31
Incidentals	3	3	3	3	3	3

PART 301–74—CONFERENCE PLANNING

■ 3. The authority citation for 41 CFR part 301–74 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–74.21 What is the applicable M&IE rate when meals or light refreshments are furnished by the Government or are included in the registration fee?

■ 4. Amend § 301–74.21 by revising the section heading as set forth above and removing from the introductory paragraph of the response ''at nominal or no cost''.

[FR Doc. 05–20690 Filed 10–14–05; 8:45 am]

BILLING CODE 6820–14–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 63, 64

[CC Docket Nos. 02–33; 01–337; 95–20; 98–10; WC Docket No. 04–242; FCC 05–150]

Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) establishes a regulatory framework for facilities-based providers of wireline broadband Internet access service. Under this framework, the Commission determines that facilities-based wireline broadband Internet access service is an information service, and that facilities-based providers of the service are no longer required to separate out the transmission component (*i.e.*, transmission in excess of 200 kilobits per second (kbps) in at least one direction) of wireline broadband Internet access services as a stand-alone telecommunications service under Title II of the Communications Act of 1934, as amended (Act), subject to a one-year transition period, during which providers must continue to provide existing wireline broadband Internet access transmission offerings, on a grandfathered basis, to unaffiliated information service providers (ISPs). After the transition period, facilities-based wireline broadband Internet access service providers are permitted to offer broadband Internet access services on a common carrier basis under Title II or on a non-common carrier basis. In addition, the Bell Operating Companies (BOCs) are immediately relieved of all requirements associated with the Commission's *Computer Inquiry* Orders with respect to wireline broadband Internet access services. The document further concludes that the broadband transmission component of wireline broadband Internet access service is not a telecommunication service under the Act. It also addresses other important areas relating to the provision of broadband Internet access services. Overall, this new regulatory framework encourages the ubiquitous availability of broadband to all Americans by removing outdated regulations, developing consistent regulations across broadband platforms, and encouraging broadband investment and deployment.

DATES: *Effective Date:* This rule is effective November 16, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jodie May or William Kehoe, Attorney-Advisors, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in CC Docket Nos. 02–33, 01–337, 95–20, 98–10; WC Docket No. 04–242; FCC 05–150, adopted August 5, 2005, and released September 23, 2005. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402,

Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the First Report and Order (Order)

1. *Background.* The Communications Act does not address directly how broadband Internet access service should be classified or regulated. The Act does, however, provide the Commission express directives with respect to encouraging broadband deployment, generally, and promoting and preserving a freely competitive Internet market, specifically. Consequently, the Commission initiated a Notice of Proposed Rulemaking (Wireline Broadband Notice) in 2002 (67 FR 9232, Feb. 28, 2002) to seek comment on the appropriate regulatory framework for wireline broadband Internet access service.

2. Wireline broadband Internet access service, for purposes of this proceeding, is a service that uses existing or future wireline facilities of the telephone network to provide subscribers with Internet access capabilities. The term ''Internet access service'' refers to a service that always and necessarily combines computer processing, information provision, and computer interactivity with data transport, enabling end users to run a variety of applications such as e-mail, and access Web pages and newsgroups. Wireline broadband Internet access service, like cable modem service, is a functionally integrated, finished service that inextricably intertwines information-processing capabilities with data transmission such that the consumer always uses them as a unitary service. The Commission ruled in 2002 that cable modem service was an information service under the Act (67 FR 18907, April 17, 2002). The U.S. Supreme Court affirmed that ruling in *National Cable & Telecommunications Ass'n* v. *Brand X Internet Services*, 125 S. Ct. 2688 (2005) (*Brand X*).

3. As we explained in the Wireline Broadband Notice, providers of wireline broadband Internet access service offer subscribers the ability to run a variety of applications that fit under the characteristics stated in the information service definition under the Act. These characteristics distinguish wireline broadband Internet access service from other wireline broadband services, such as stand-alone ATM service, frame relay, gigabit Ethernet service, and other high-capacity special access services, that carriers and end users have traditionally used for basic transmission purposes. That is, these services lack the key characteristics of wireline broadband Internet access service—they do not inextricably intertwine transmission with information-processing capabilities. Because carriers and end users typically use these services for basic transmission purposes, these services are telecommunications services under the statutory definitions. These broadband telecommunications services remain subject to current Title II requirements.

4. In the Wireline Broadband Notice, the Commission tentatively concluded that wireline broadband Internet access service is an information service when provided over an entity's own facilities, and that the underlying transmission component of such service constituted ''telecommunications'' and not a ''telecommunications service'' under the Act. The Commission invited comment on these tentative conclusions and its prior conclusion that ''an entity is providing a 'telecommunications service' to the extent that such entity provides only broadband transmission service on a stand-alone basis, without a broadband Internet Access service.'' Finally, the Commission sought comment on the extent to which any actions it might take in this proceeding would affect other regulatory obligations.

5. In addressing the issues before us, we draw from the records of several proceedings, including the Wireline Broadband Notice and the Notice of Proposed Rulemaking in the Incumbent LEC Broadband proceeding (67 FR 1945, Jan. 15, 2002), in which the Commission invited comment on technological and market-related issues relating to our tariffing rules for incumbent LECs' broadband telecommunications services. Consistent with the scope of the Wireline Broadband Notice, we restrict our decisions in this Order to only wireline broadband Internet access services and those wireline broadband technologies that have been utilized for such Internet access services.

6. *Regulatory Classification of Wireline Broadband Internet Access Service:* We affirm our tentative conclusion ''that wireline broadband Internet access service provided over a provider's own facilities is an information service.'' This classification is consistent both with the Commission's classification of cable modem service, as affirmed by the Supreme Court in *Brand X*, and with the Commission's earlier determination in its Report to Congress (*Federal-State Joint Board on Universal Service, Report to Congress*, CC Docket No. 96–45, 13 FCC Rcd 11501 (1998) (63 FR 43088, August 12, 1998)) that Internet access service is an information service. Applying the definitions of ''information service,'' ''telecommunications,'' and ''telecommunications service'' in the Act, we conclude that wireline broadband Internet access service provided over a provider's own facilities is appropriately classified as an information service because its providers offer a single, integrated service (*i.e.*, Internet access) to end users. That is, like cable modem service (which is usually provided over the provider's own facilities), wireline broadband Internet access service combines computer processing, information provision, and computer interactivity with data transport, enabling end users to run a variety of applications (*e.g.*, e-mail, Web pages, and newsgroups). These applications encompass the capability for ''generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications,'' and taken together constitute an information service as defined by the Act.

7. The capabilities of wireline broadband Internet access service demonstrate that this service, like cable modem service, provides end users more than pure transmission, ''between or among points selected by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' Because wireline broadband Internet access service inextricably combines the offering of powerful computer capabilities with telecommunications, we conclude that it falls within the class of services identified in the Act as ''information services.'' The information service classification applies regardless of whether subscribers use all of the functions and capabilities provided as part of the service (*e.g.*, e-mail or Web-hosting), and whether every wireline broadband Internet access service provider offers each function and capability that could be included in that service. Indeed, as with cable modem service, an end user of wireline broadband Internet access service cannot reach a third party's Web site without access to the Domain Naming Service (DNS) capability ''which (among other things) matches the Web site address the end user types into his browser (or ''clicks'' on with his mouse) with the IP address of the Web page's host server.'' The end user therefore

receives more than transparent transmission whenever he or she accesses the Internet.

8. There is no reason to classify wireline broadband Internet access services differently depending on who owns the transmission facilities. From the end user's perspective, an information service is being offered regardless of whether a wireline broadband Internet access service provider self-provides the transmission component or provides the service over transmission facilities that it does not own. As the Commission indicated in its Report to Congress, what matters is the finished product made available through a service rather than the facilities used to provide it. The end user of wireline broadband Internet access service receives an integrated package of transmission and information processing capabilities from the provider, and the identity of the owner of the transmission facilities does not affect the nature of the service to the end user. Thus, in addition to affirming our tentative conclusion above ''that wireline broadband Internet access service provided over a provider's own facilities is an information service,'' we also make clear that wireline broadband Internet access service is an information service when the provider of the retail service does not provide the service over its own transmission facilities. Not only is the classification of wireline broadband Internet access service as an information service consistent with *Brand X*, but this classification, in our view, best facilitates the goals of the Act, including promoting the ubiquitous availability of broadband Internet access services to all Americans.

9. *Regulation of Wireline Broadband Internet Access Service Providers.* Wireline broadband Internet access services provided by facilities-based carriers are currently governed by rules established in the Commission's *Computer Inquiry* proceedings. The Commission created a framework in *Computer II* (*Amendment of Section 64.702 of the Commission's Rules and Regulations* (*Computer II*), 77 FCC 2d 384 (1980)(77 FCC 2d 384 1980 (subsequent citations omitted)) that defined and distinguished between ''basic services'' and ''enhanced services.'' It determined that enhanced services were not within the scope of its Title II jurisdiction but rather were within its ancillary jurisdiction under Title I. Pursuant to its ancillary jurisdiction, the Commission required facilities-based common carriers to provide the basic transmission services underlying their enhanced services on a nondiscriminatory basis pursuant to tariffs governed by Title II of the Act. These carriers thus offered the underlying basic service at the same prices, terms, and conditions, to all enhanced service providers, including their own enhanced services operations.

10. The Commission subsequently determined that the cost of decreased efficiency and innovation imposed by the structural safeguards of *Computer II* outweighed their benefits. The Commission therefore replaced structural separation with a regime of nonstructural safeguards in its *Computer III* decisions (*Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85–229, Phase I, 104 FCC 2d 958 (1986) (51 FR 24350, July 3, 1986) (subsequent citations omitted)). This framework maintained the existing basic and enhanced service categories and adopted comparably efficient interconnection (CEI) and open network architecture (ONA) requirements as a replacement for the *Computer II* structural separation requirements for AT&T and the BOCs. When Congress enacted the 1996 Act, it created new statutory terms (*i.e.*, ''information service'' and ''telecommunications service'') that substantially incorporated the dichotomy between basic and enhanced services into the Communications Act. As we noted above, although the 1996 Act uses ''information service'' and ''telecommunications service'' instead of ''enhanced service'' and ''basic service,'' the Commission has previously determined that Congress intended the statutory categories to parallel the categories the Commission established in the *Computer Inquiry* proceeding. More specifically, the Commission found that all of the services that the Commission has previously considered to be enhanced services are ''information services.''

11. The *Computer II* obligation that all facilities-based wireline carriers that own common carrier transmission facilities and provide enhanced services must acquire transmission capacity pursuant to the same prices, terms, and conditions reflected in their tariffs when their own facilities are utilized has been applied exclusively to traditional wireline services and facilities to date. By contrast, the *Computer II* obligations do not apply to cable modem service providers or to facilities-based enhanced services providers other than traditional wireline carriers. The Commission's structural separation, CEI, and ONA rules apply only to the BOCs.

12. *Elimination of the Computer Inquiry Requirements.* The Order explains that the technology used to build networks, and the purposes for which they are built, are fundamentally changing. These changes are rapidly breaking down the formerly rigid barriers that separated one network from another. There are numerous technologies and network designs that form, or potentially could form, part of the broadband telecommunications infrastructure of the 21st century. Cable operators have deployed cable modem technology. Mobile wireless providers are increasingly offering high-speed Internet access using technologies like Evolution-Data Optimized (EV–DO) technology. Satellite providers have deployed both Ku-band and even more advanced Ka-band technology that can offer high-speed Internet access service throughout the nation. Fixed wireless operators are planning to use licensed and unlicensed spectrum to deliver broadband services, and are developing new technologies that promise ubiquitous service and greater bandwidth. Other companies are exploring the use of power lines and cables placed in gas lines to provide broadband services. The nation's wireline infrastructure also is changing and is now using digital, packet-based technology to deliver a wider range of services. The Order further states that network platforms therefore will be multi-purpose in nature and more application-based, rather than existing for a single, unitary, technologically specific purpose. More generally, the erosion of barriers between various networks and the limitations inherent in those barriers will lead to greater capacity for innovation to offer new services and products. Both the providers of network platforms and those that utilize the platforms are in a position to capitalize on these changes. In addition, as with any evolving technology, new products and providers will continue to emerge to complement existing market offerings and participants; and these offerings will grow over time as consumers demand even more advanced services, with the result that technological growth and development continue on an upward spiral.

13. We decline to continue to impose any *Computer Inquiry* requirements on facilities-based carriers in their provision of wireline broadband Internet access service. Consequently, BOCs are immediately relieved of the separate subsidiary, CEI, and ONA obligations with respect to wireline broadband Internet access services. In addition, subject to a one-year transition period for existing wireline broadband transmission services, all wireline

broadband Internet access service providers are no longer subject to the *Computer II* requirement to separate out the underlying transmission from wireline broadband Internet access service and offer it on a common carrier basis.

14. We agree with those commenters that argue that the *Computer Inquiry* obligations are inappropriate and unnecessary for today's wireline broadband Internet access market. As these parties observe, the *Computer Inquiry* rules were developed before separate and different broadband technologies began to emerge and compete for the same customers. Further, these rules were adopted based on assumptions associated with narrowband services, single purpose network platforms, and circuit-switched technology. Notably, even commenters that argue for a continued access requirement generally acknowledge that the current structural separation, CEI, and ONA requirements are outmoded and should be eliminated or replaced. Indeed, the record provides little, if any, support for retaining the structural separation option of *Computer II* or for conditioning BOC structural relief on compliance with a detailed set of regulatory requirements such as the CEI or ONA requirements. Instead, commenters arguing for continued regulation of wireline broadband Internet access service providers focus primarily on the core nondiscriminatory access obligation of *Computer II*, urging that we, at a minimum, should retain a common carrier transmission access requirement in some form. In evaluating these arguments, we are mindful that one of the Commission's most critical functions is to adapt regulation to changing technology and competitive conditions to accomplish its mandates under the Act.

15. In determining whether to eliminate the *Computer Inquiry* requirements (*e.g.*, the separate subsidiary, nondiscriminatory access to transmission, CEI, and ONA obligations) for facilities-based providers of wireline broadband Internet access services, we weigh the benefits of these requirements against their costs in accordance with our obligations under the Act. This determination is informed not only by our understanding of the current broadband Internet access market, but what our predictive judgment tells about how that market is likely to develop. It is critical to factor in these future expectations because the broadband market is evolving rapidly. At the time the *Computer Inquiry* rules were adopted, there was an implicit, if not explicit, assumption that the incumbent LEC wireline platform would remain the only network platform available to enhanced services providers. Regulated access to wireline transmission thus was essential for a competitive information services market to flourish.

16. The characteristics of the broadband market, as well as evidence that facilities-based wireline carriers have incentives to make, and indeed already make, broadband transmission capacity available to ISPs, absent regulation, are factors that influence our analysis in determining whether such regulation is still necessary. Moreover, this regulation can have a significant impact on the ability of wireline platform providers to develop and deploy innovative broadband capabilities that respond to market demands. The record shows that the additional costs of an access mandate diminish a carrier's incentive and ability to invest in and deploy broadband infrastructure investment. We find this negative impact on deployment and innovation particularly troubling in view of Congress' clear and express policy goal of ensuring broadband deployment, and its directive that we remove barriers to that deployment, if possible, consistent with our other obligations under the Act. It is precisely this negative impact on broadband infrastructure that led the Commission to eliminate other broadband-related regulation over the past two years. These factors, when weighed against the benefits of continuing these regulations, render a different policy result than the judgment reached at the time the *Computer Inquiry* rules were adopted.

17. As outlined in the Wireline Broadband Notice, we seek to adopt a comprehensive policy that ensures, consistent with the Act in general and section 706 specifically, that broadband Internet access services are available to all Americans and that undue regulation does not constrain incentives to invest in and deploy the infrastructure needed to deliver broadband Internet access services. As part of this policy, we believe that we should regulate like services in a similar manner so that all potential investors in broadband network platforms, and not just a particular group of investors, are able to make market-based, rather than regulatory-driven, investment and deployment decisions.

18. Our decision in this Order is consistent with the decision issued by the Ninth Circuit Court of Appeals in 1994, *California* v. *FCC*, 39 F.3d 919 (9th Cir. 1994). In that decision, the Ninth Circuit vacated part of the Commission's *Computer III* ONA rules. According to the court, the Commission had failed to explain how its ''diluted version of ONA,'' would prevent BOCs from exploit[ing] their monopoly control over the local networks. For the reasons discussed herein, we determine that the competitive pressures and technological changes that have arisen since 1990 have reduced the BOCs' incentive and ability to discriminate against unaffiliated ISPs in their provision of broadband Internet access service to the point that structural separation for BOC broadband Internet access service is no longer necessary. Specifically, we believe that the analysis in this Order that persuades us to eliminate not only the structural separation requirement, but all *Computer Inquiry* obligations, applicable to wireline broadband Internet access service provides the level of detail the Ninth Circuit found lacking in the Commission's prior decision eliminating that requirement.

19. The Order also analyzes the wireline broadband Internet access services marketplace, technological innovation, the opportunity for new services offered by wireline broadband Internet access service providers, the fact that wireline broadband transmission will remain available to ISPs, and Congress's objectives in section 706 of the Act regarding broadband deployment to determine that we can eliminate a mandatory common carrier broadband transmission requirement, subject to the one year transitional mechanism. We also find that we need not retain the *Computer Inquiry* regime, or any of its individual requirements, to protect against improper cross subsidization. The Commission's ratemaking methods and those of our state counterparts have changed considerably since the Ninth Circuit addressed the need for structural separation as a safeguard against cross-subsidization in 1994. We conclude that changes have further reduced the potential that the BOCs could increase rates for tariffed telecommunications services through cost shifting. Indeed, unlike the situation before the Ninth Circuit in 1994, the BOCs' costs are no longer used to determine the BOCs' price cap rates. In view of this reduced potential, we find that there is no need to retain either the *Computer II* structural separation requirement or the *Computer III* nonstructural safeguards to keep the BOCs from cross-subsidizing their broadband Internet access service operations with revenues from the telecommunications services operations. The benefits we anticipate from the

elimination of these structural and nonstructural safeguards, including the increased infrastructure investment that our new framework should generate, outweigh any protection against cross-subsidization that those safeguards provide.

20. *New Regulatory Framework for Wireline Broadband Internet Access Service Providers.* We adapt our regulatory requirements, consistent with the Act, to correct for restrictions on wireline broadband Internet access service providers' ability to incorporate advanced integrated technology into their broadband offerings, impediments to responding rapidly and efficiently to changing broadband market demands due to outdated existing rules, and constraints on broadband innovation and infrastructure investment. We eliminate the *Computer Inquiry* obligations as applied to facilities-based providers of wireline broadband Internet access service, and, in particular, the obligation to offer the transmission component of wireline broadband Internet access service on a stand-alone common carrier basis. Facilities-based wireline broadband Internet access service providers, subject to a one-year transition period which we also adopt, may choose to offer the transmission component of wireline broadband Internet access services to both affiliated and unaffiliated ISPs or others on a non-common carrier basis or a common carrier basis. We incorporate this flexibility into our new framework to account for the differing business issues affecting different wireline broadband Internet access service providers. For example, associations of rural incumbent LECs have indicated that their members may choose to offer broadband Internet access transmission service on a common carrier basis. Thus, unlike previous Commission initiatives (*e.g.*, the deregulation of CPE), we are not eliminating carriers' ability to offer wireline broadband transmission on a Title II basis. Indeed, as we discuss below, enabling carriers to offer broadband Internet access transmission in alternative ways furthers our policy objectives and is consistent with precedent.

21. *Wireline Broadband Internet Access Service Providers May Offer Transmission Service on a Non-Common Carrier Basis or a Common Carrier Basis.* The record demonstrates that allowing non-common carriage arrangements for wireline broadband transmission will best enable facilities-based wireline broadband Internet access service providers, particularly incumbent LECs, to embrace a market-based approach to their business relationships with ISPs, providing the flexibility and freedom to enter into mutually beneficial commercial arrangements with particular ISPs. Facilities-based wireline carriers as well as certain portions of the ISP community and broadband equipment manufacturers agree that market-based commercial arrangements will better serve the interests of ISPs, broadband providers, and consumers.

22. Non-common carriage contracts will permit ISPs to enter into various types of compensation arrangements for their wireline broadband Internet access transmission needs that may better accommodate their individual market circumstances. For example, ISPs and facilities-based carriers could experiment with revenue-sharing arrangements or other types of compensation-based arrangements keyed to the ISPs' marketplace performance, enabling the ISPs to avoid a fixed monthly recurring charge (as is typical with tariffed offerings) for their transmission needs during start-up periods. Non-common carriage also enables parties to a contract to modify their arrangement over time as their respective needs and requirements change without the inherent delay associated with a tariffed offering that must be made available to all ISPs. Moreover, it encourages other types of commercial arrangements with ISPs, reflecting business models based on risk sharing such as joint ventures or partnership-type arrangements, where each party brings their added value, benefiting both the consumer (through the ability to obtain a new innovative service) and each party to the commercial arrangement. Such arrangements may also encourage unaffiliated ISPs to develop innovative applications and services that differentiate them from other ISPs. The ability to deliver such innovative services over their platforms in order to attract customers will likely motivate wireline facilities-based broadband transmission providers to negotiate mutually beneficial arrangements that enable the wireline facilities-based broadband transmission provider to share the financial rewards of bringing the new Internet access applications or services to consumers.

23. A number of parties have indicated that some carriers may nevertheless choose to offer the transmission component of broadband Internet access service as a common carrier service absent the *Computer Inquiry* requirements. Other parties have indicated they would avail themselves of the opportunity to offer certain types of broadband Internet access transmission on a common carrier basis and other types of broadband Internet access transmission on a non-common carrier basis. Our primary goal in this proceeding is to facilitate broadband deployment in the manner that best promotes wireline broadband investment and innovation, and maximizes the incentives of all providers to deploy broadband. We find that we can best further this goal by providing all wireline broadband providers the flexibility to offer these services in the manner that makes the most sense as a business matter and best enables them to respond to the needs of consumers in their respective service areas.

24. We therefore conclude that providers of wireline broadband Internet access service that offer that transmission as a telecommunications service after the effective date of this Order may do so on a permissive detariffing basis. Such providers thus may, in lieu of filing tariffs with the Commission setting forth the rates, terms, and conditions under which they will provide broadband Internet access transmission service, include those rates, terms, and conditions in generally available offerings posted on their Web sites. Each such provider electing not to tariff the broadband Internet access transmission that it offers as a telecommunications service also must make physical copies of its offering reflecting the rates, terms and conditions available for public inspection at a minimum of one place of business.

25. To enable facilities-based wireline Internet access providers to maximize their ability to deploy broadband Internet access services and facilities in competition with other platform providers, under a regulatory framework that provides all market participants with the flexibility to determine how best to structure their business operations, facilities-based carriers are able to choose whether to offer wireline broadband Internet access transmission as non-common carriage or common carriage. In addition, to the extent they choose to offer that transmission as common carriage, they may do so either under tariff or on a non-tariffed basis. The Commission, on numerous occasions, has determined that a particular service can be offered on a non-common carrier or common carrier basis at the service provider's option. Similarly, here, we conclude that it is appropriate to provide facilities-based wireline broadband Internet access service providers with freedom to determine how to provide the

broadband transmission capabilities of such services.

26. In order to ensure that this flexible approach is consistent with statutory requirements, efficient, and administrable, we specify that a facilities-based wireline broadband Internet access provider may not simultaneously offer the same type of broadband Internet access transmission on both a common carrier and non-common carrier basis. It may, however, choose to make available one type of broadband Internet access transmission on a common carrier basis and another type of such transmission on a non-common carrier basis. Of course, any transmission offering that a facilities-based wireline broadband Internet access provider makes available on a tariffed common carrier basis will be subject to the terms contained in its tariff and, consistent with Title II of the Act, the provider may charge customers for that service only at the rates contained in the tariff.

27. Some commenters request that we impose certain content-related requirements on wireline broadband Internet access service providers that would prohibit them from blocking or otherwise denying access to any lawful Internet content, applications, or services a consumer wishes to access. While we agree that actively interfering with consumer access to any lawful Internet information, products, or services would be inconsistent with the statutory goals of encouraging broadband deployment and preserving and promoting the open and interconnected nature of the public Internet, we do not find sufficient evidence in the record before us that such interference by facilities-based wireline broadband Internet access service providers or others is currently occurring. We therefore decline at this time to adopt rules prohibiting such interference. Instead, we find that the better course is to articulate principles recognizing the importance of consumer choice and competition in regard to accessing and using the Internet, and we have adopted an Internet Policy Statement (*Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02–33, Policy Statement, FCC 05–151 (released September 23, 2005)) that outlines these principles. We intend to incorporate these principles into our ongoing policymaking activities. Should we see evidence that providers of telecommunications for Internet access or IP-enabled services are violating these principles, we will not hesitate to take action to address that conduct.

28. *Current Title II Unbundled Wireline Broadband Internet Access Transmission Services Must Remain Available During a One-Year Transition Period.* Although we determine above that immediate relief for wireline broadband Internet access transmission providers is warranted, we are nonetheless sensitive to the fact that the Commission's previous regulatory regime for these services has created reasonable reliance and expectation by unaffiliated ISPs on the availability of currently tariffed, broadband Internet access transmission offerings. In addition, we are concerned that a flash-cut transition may unnecessarily disrupt customers' service due to a provider's inability to adapt its business practices so quickly. We therefore adopt a one-year transition period, which begins on the effective date of this Order, in order to give both ISPs and facilities-based wireline broadband Internet access transmission providers sufficient time to adjust to our new framework. During the transition, facilities-based wireline broadband Internet access transmission providers must continue to honor existing transmission arrangements with their current ISP or other customers, but they are not required to offer such arrangements to new customers or to existing customers at new locations. If these arrangements are provided pursuant to tariffs currently on file with the Commission, wireline broadband Internet access transmission providers may retain these tariffs during the one-year period, or, alternatively, they may cancel the tariffs pursuant to normal tariff cancellation procedures provided they honor existing wireline broadband Internet access transmission arrangements in another manner. To the extent facilities-based wireline broadband Internet access transmission providers have entered into any other common carrier transmission arrangements with ISP customers that are not subject to tariffing, these arrangements must also be continued during the one-year transition unless, of course, they would otherwise expire during the transition period pursuant to their pre-existing terms. Upon the effective date of this Order, facilities-based wireline broadband Internet access providers, including the BOCs and their affiliates, are no longer required to continue taking the existing common carrier transmission arrangements that they provide to ISPs as an input to their self-provided wireline broadband Internet access service. To the extent facilities-based carriers offer new wireline broadband Internet access transmission arrangements after the effective date of this Order or provide such service to new customers, these arrangements may be made available on a common carrier basis or a non-common carrier basis as set forth above.

29. This one-year period will allow ISPs to continue operating under their current arrangements while they negotiate non-common carrier agreements with providers of wireline broadband Internet access transmission. Based on the assurances made by facilities-based wireline broadband Internet access providers and their stated desire to ensure that their platform is competitive with other broadband platforms, we strongly encourage the parties to work together to develop individual contracts that are mutually beneficial to each party. In the meantime, the ability to continue operating under existing arrangements for an additional one-year period during new contract negotiations will avoid unnecessary customer disruption. Such a transition period is consistent with previous decisions in which the Commission modified the regulatory framework for certain services subject to a transition.

30. *Discontinuation of Service.* Section 214(a) of the Act requires that, prior to discontinuing any interstate or foreign telecommunications service, a telecommunications carrier obtain from the Commission ''a certification that neither the present nor future public convenience or necessity will be adversely affected thereby.'' The reasons that persuade us not to require that the transmission component of wireline broadband Internet access service continue to be offered as a telecommunications service under Title II also persuade us that discontinuance of the provision of common carrier broadband Internet access transmission services to existing customers would not adversely affect the present or future public convenience or necessity. Instead, competition from other broadband Internet access service providers and the wireline providers' business incentives to attract ISP customers should ensure the continued availability of this transmission component, under reasonable rates, terms, and conditions. Accordingly, we find that the circumstances here meet our test for determining whether a telecommunications service may be discontinued under section 214(a).

31. Therefore, pursuant to our rule for discontinuing domestic telecommunications services, 47 CFR 63.71, we grant facilities-based, wireline broadband Internet access transmission providers blanket certification to

discontinue providing existing customers the common carrier broadband Internet access transmission services that are the subject of this Order, subject to the following conditions. First, to protect these customers against abrupt termination of service, we require that a carrier discontinuing common carrier broadband Internet access transmission service shall provide affected customers with advance notice of the discontinuance. Specifically, the carrier shall provide all affected customers with its name and address, the date of the planned discontinuance, the geographic areas where service will be discontinued, and a brief description of the service to be discontinued. In addition, on or after the date it provides the advance notice to its customers and at least 30 days prior to the date on which service will be discontinued, the carrier must file with the Commission notice of its intent to discontinue service. Carriers are not required to make any showing in this notice and do not need to obtain any additional permission from the Commission to cease service. Upon notification of discontinuance, the Commission reserves the right to take actions where appropriate under the circumstances to protect the public interest.

32. *Classification of Wireline Broadband Internet Access Transmission Component.* Above, we affirm that wireline broadband Internet access service is an information service, and decline to continue the reflexive application of the *Computer Inquiry* regime to facilities-based providers of such service. This is not, however, the end of our inquiry. The Wireline Broadband Notice also sought comment on the legal classification of the transmission component underlying facilities-based wireline broadband Internet access service. In contrast to the classification of wireline broadband Internet access service as an information service, there is considerable disagreement in the record as to the appropriate classification of the transmission component of such Internet access service. The legal classification of this transmission component has certain regulatory implications for its provider. Specifically, if the transmission component is a telecommunications service under the Act, providers of that service are subject to common carrier regulation under Title II of the Act in their provision of that service. Conversely, if the transmission component is not a telecommunications service under the Act, providers of that component are not subject to Title II requirements, except to the extent the Commission imposes similar or identical obligations pursuant to its Title I ancillary jurisdiction.

33. We address two circumstances under which the statutory classification of the transmission component arises: The provision of transmission as a wholesale input to ISPs (including affiliates) that provide wireline broadband Internet access service to end users, and the use of transmission as part and parcel of a facilities-based provider's offering of wireline broadband Internet access service using its own transmission facilities to end users. First, we address the wholesale input. Nothing in the Communications Act compels a facilities-based provider to offer the transmission component of wireline broadband Internet access service as a telecommunications service to anyone. Furthermore, consistent with the NARUC precedent, *National Ass'n of Reg. Utils. Comm'rs* v. *FCC*, 525 F.2d 630, 642 (DC Cir. 1976), *cert. denied*, 425 U.S. 992 (1976), the transmission component of wireline broadband Internet access service is a telecommunications service only if one of two conditions is met: the entity that provides the transmission voluntarily undertakes to provide it as a telecommunications service; or the Commission mandates, in the exercise of our ancillary jurisdiction under Title I, that it be offered as a telecommunications service. As to the first condition, we explain above that carriers may choose to offer this type of transmission as a common carrier service if they wish. In that circumstance, it is of course a telecommunications service. Otherwise, however, is it not, as we would not expect an ''indifferent holding out'' but a collection of individualized arrangements. As to the second condition, based on the record, we decline to continue our reflexive application of the *Computer Inquiry* requirement, which compelled the offering of a telecommunications service to ISPs. Thus, we affirm that neither the statute nor relevant precedent mandates that broadband transmission be a telecommunications service when provided to an ISP, but the provider may choose to offer it as such.

34. Second, we address the use of the transmission component as part of a facilities-based provider's offering of wireline broadband Internet access service to end users using its own transmission facilities. We conclude, consistent with *Brand X*, that such a transmission component is mere ''telecommunications'' and not a ''telecommunications service.'' As stated above, the Act in section 153(46) defines telecommunications service as ''the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.'' Thus, whether a telecommunications service is being provided turns on what the entity is ''offering * * * to the public,'' and customers' understanding of that service. End users subscribing to wireline broadband Internet access service expect to receive (and pay for) a finished, functionally integrated service that provides access to the Internet. End users do not expect to receive (or pay for) two distinct services—both Internet access service and a distinct transmission service, for example. Thus, the transmission capability is part and parcel of, and integral to, the Internet access service capabilities. Accordingly, we conclude that wireline broadband Internet access service does not include the provision of a telecommunications service to the end user irrespective of how the service provider may decide to offer the transmission component to other service providers.

35. *Effect on Existing Obligations.* The Wireline Broadband Notice sought comment on what effect classifying wireline broadband Internet access service as an information service would have on other regulatory obligations. Title II obligations have never generally applied to information services, including Internet access services. Instead, when the Commission has deemed it necessary to impose regulatory requirements on information services, it has done so pursuant to its Title I ancillary jurisdiction. Indeed, as noted above, the Commission imposed the *Computer Inquiry* obligations on facilities-based common carriers pursuant to its Title I ancillary jurisdiction. Similarly, the Commission has exercised its ancillary jurisdiction under Title I to extend accessibility obligations that mirror those under section 255 to certain information services, *i.e.*, voicemail and interactive menu service. The Commission's ancillary jurisdiction under Title I to impose regulatory obligations on broadband Internet access service providers was recently recognized by the Supreme Court in *Brand X*.

36. The Commission may exercise its ancillary jurisdiction when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is ''reasonably ancillary to the effective performance of [its] various

responsibilities.'' *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 178 (1968). We recognize that both of the predicates for ancillary jurisdiction are likely satisfied for any consumer protection, network reliability, or national security obligation that we may subsequently decide to impose on wireline broadband Internet access service providers.

37. First, we find that we have subject matter jurisdiction over providers of broadband Internet access services. These services are unquestionably ''wire communication'' as defined in section 3(52) because they transmit signals by wire or cable, or they are ''radio communication'' as defined in section 3(33) if they transmit signals by radio. The Act gives the Commission subject matter jurisdiction over ''all interstate and foreign communications by wire or radio * * * and * * * all persons engaged within the United States in such communication'' in section 2(a). Second, with regard to consumer protection obligations, we find that regulations would be ''reasonably ancillary'' to the Commission's responsibility to implement sections 222 (customer privacy), 255 (disability access), and 258 (slamming and truth-in-billing), among other provisions, of the Act. Similarly, network reliability, emergency preparedness, national security, and law enforcement requirements would each be reasonably ancillary to the Commission's obligation under section 151 of the Act to make available ''a rapid, efficient, Nation-wide, and world-wide wire and radio communication service * * * for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communication.''

38. *Federal Universal Service Contribution Obligations.* In section 254 of the Act, Congress codified our Federal universal service programs to ensure affordable telecommunications services to all Americans, including consumers living in high-cost areas, low income consumers, eligible schools and libraries, and rural health care providers. In this section, we address the universal service contribution obligations of providers of wireline broadband Internet access service. Section 254(d) of the Act states that ''[e]very telecommunications carrier that provides interstate telecommunications services shall contribute'' to universal service. In the Universal Service Order (62 FR 32862, June 17, 1997), the Commission interpreted the first sentence of section 254(d) as imposing a mandatory contribution requirement on all telecommunications carriers that provide interstate telecommunications services. We note that the Commission also has permissive authority under section 254(d) to require any provider of interstate telecommunications to contribute to the preservation and advancement of universal service if the public interest so requires. In the Wireline Broadband Notice, the Commission recognized that, under its existing rules and policies, telecommunications carriers providing telecommunications services, including broadband transmission services, are subject to universal service contribution requirements.

39. Congress required in section 254 of the Act that ''[t]here should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.'' Accordingly, we conclude that facilities-based providers of wireline broadband Internet access services must continue to contribute to existing universal service support mechanisms based on the current level of reported revenue for the transmission component of their wireline broadband Internet access services for a 270-day period after the effective date of this Order or until we adopt new contribution rules in the Universal Service Contribution Methodology proceeding (67 FR 79543, Dec. 30, 2002), whichever occurs earlier. That is, wireline broadband Internet access providers must maintain their current universal service contribution levels attributable to the provision of wireline broadband Internet access service for this 270-day period. We take this action, as a matter of policy, to preserve existing levels of universal service funding, and prevent a precipitous drop in fund levels while we consider reform of the system of universal service in the Universal Service Contribution Methodology proceeding. We are committed to ensuring that there continue to be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service. If we are unable to complete new contribution rules within the 270-day period of time, the Commission will take whatever action is necessary to preserve existing funding levels, including extending the 270-day period discussed above or expanding the contribution base. We have ample authority to take interim actions to preserve the status quo.

40. *Law Enforcement, National Security, and Emergency Preparedness: CALEA.* The Communications Assistance for Law Enforcement Act (CALEA) requires telecommunications carriers to ensure that ''equipment, facilities or services that provide a customer or subscriber with the ability to originate, terminate, or direct [communications]'' are capable of providing authorized surveillance to law enforcement agencies. In a separate order also released on September 23, 2005, *Communications Assistance for Law Enforcement Act and Broadband Access and Services,* ET Docket No. 04–295, First Report and Order and Further Notice of proposed Rulemaking, FCC 05–153 (released September 23, 2005), we conclude that providers of facilities-based broadband Internet access service, regardless of platform, are subject to CALEA. We therefore do not address CALEA issues in this Order.

41. *USA PATRIOT Act.* We find that our actions in this Order will not affect the government's implementation or enforcement of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act). This Act amended the Federal criminal code to authorize the interception of wire and electronic communications for the production of evidence of terrorism offenses and computer fraud, and modified only one section of the Communications Act, section 631 of Title VI. We conclude that the scope of activities covered under the definitions of wire communications and electronic communications is broad enough to encompass wireline broadband Internet access service regardless of the legal classification of this service, or its transmission component, under the Communications Act. Only one party submitted comments on the subject, agreeing that the legal classification of wireline broadband Internet access service as an information service will have no impact on the applicability of the USA PATRIOT Act.

42. *Emergency Preparedness and Response.* We find that our classification of wireline broadband Internet access service as an information service, and the transmission input as telecommunications (except to the extent that the provider chooses to offer that transmission on a common carrier basis), will not affect the Commission's existing rules implementing the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. But, we will nonetheless exercise our Title I authority, as necessary, to give full effect to the principles and purpose of the NSEP TSP System. The NSEP TSP System is set forth in appendix A to part 64 of the rules and provides that the Commission has ''authority over the assignment and

approval of priorities for provisioning and restoration of common carrier-provided telecommunications services.'' The facilities-based wireline broadband Internet access service providers that are the subject of our Order today are telecommunications carriers with respect to other services that they provide. Therefore, we find that these providers remain subject to the NSEP TSP.

43. The Secretary of Defense (Secretary), the only party to submit comments on this issue, expressed concern that the existing National Communications System programs will no longer apply to wireline broadband Internet access service if it is classified as an information service unless the Commission exercises its ancillary jurisdiction. As the Secretary recognizes, NSEP communications are currently provided by carriers subject to Title II. Information service providers, therefore, have not been subject to these rules unless those providers are also offering services as telecommunications carriers. Since the actions we take in this Order affect only wireline carriers that provide the transmission component of wireline broadband Internet access service, we have no reason to expect that those actions will adversely affect emergency preparedness efforts. These service providers, for the most part, provide their wireline broadband Internet access services over the same facilities used to provide other telecommunications services and thus these facilities remain subject to part 64 to the same extent as they have before. Moreover, we do agree with the Secretary's conclusion that, should the need arise, we do have the authority to regulate NSEP under Title I. We will closely monitor the development of wireline broadband Internet access service and its effect on the NSEP TSP System and, if needed, will expeditiously take all appropriate actions to promote the viability of that system.

44. Moreover, we state that our decision to classify wireline broadband Internet access service as an information service, and the transmission input as telecommunications (except when offered on a common carrier basis), has no effect whatsoever on our recently adopted E911 rules for interconnected VoIP providers (*VOIP E911 Order,* 70 FR 37273, June 29, 2005). In that Order, we required providers of interconnected VoIP to offer E911 service to their subscribers. Although interconnected VoIP is necessarily provided via broadband, nothing in the VoIP E911 Order in any way turns on the statutory classification of that broadband connection. Thus, we reaffirm that, after today's Order, interconnected VoIP providers must comply with the VoIP E911 Order regardless of how or by whom the underlying broadband connection is provided.

45. *Network Reliability and Interoperability.* We reject arguments that classifying wireline broadband Internet access service as an ''information service'' and its transmission component as ''telecommunications'' (except to the extent that the provider chooses to offer that transmission on a common carrier basis) requires that we obtain additional authorization from the Network Reliability and Interoperability Council (NRIC) at this time. NRIC, initially established by the Commission in 1992 as the Network Reliability Council, advises the Commission on recommendations to ensure optimal reliability and interoperability of the nation's communications networks. Section 256 of the Act codifies the Commission's ability and obligation to oversee network planning and set standards to enable the Commission to carry out the objectives of this section as well as the Commission's prior practices in the area of network reliability and interoperability through the NRIC. NRIC VI, the latest chartered council, significantly expanded its membership to include the Internet service industry and included among its scope of activities numerous issues relating to the Internet and broadband deployment.

46. Contrary to what some commenters suggest, we do not agree that classifying wireline broadband Internet access service as an information service would deny us the ability to oversee broadband interconnectivity. Rather, we agree with the view that our actions in this proceeding will not constrain our ability to address network reliability and interoperability issues. A purpose of section 256 is ''to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.'' This provision affords the Commission adequate authority to continue overseeing broadband interconnectivity and reliability issues, regardless of the legal classification of wireline broadband Internet access service. Moreover, NRIC's current charter directs it to make recommendations to increase the deployment and improve the security, reliability, and interoperability of ''high-speed residential Internet access service,'' and we find that its activities in this regard are consistent with section 256.

47. *Access by Persons with Disabilities.* Section 255(c) of the Act requires that ''a provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.'' Like the other Title II obligations discussed above, section 255 expressly applies to telecommunications services, not information services. Although the requirements contained in section 255 do not apply to information services, in the past the Commission has exercised its ancillary jurisdiction under Title I to extend accessibility obligations that mirror those under section 255 to two critically important information services, voicemail and interactive menu service. This Order does not affect voicemail or interactive menu service providers' obligations or other telecommunications service providers' obligations under section 255(c). We will continue to exercise our Title I authority, as necessary, to give full effect to the accessibility policy embodied in section 255.

48. In addition, section 225(b) directs the Commission to ensure ''telecommunications relay services'' (TRS), a set of services that includes both video relay service (VRS) and IP relay, are available to individuals with hearing or speech impairments. The Commission has previously determined that the statutory definition of TRS includes both information services and telecommunications services (65 FR 38432, June 21, 2000). Nothing in this Order disturbs that earlier conclusion; consequently, this Order will not affect TRS requirements or the ability of TRS users to access VRS or IP relay.

49. In addition, the Commission will remain vigilant in monitoring the development of wireline broadband Internet access service and its effects on the important policy goals of section 255. As noted above, we will exercise our ancillary jurisdiction to ensure achievement of important policy goals of section 255 and also section 225 of the Act.

50. Consistent with our decision today to require facilities-based wireline broadband Internet access service providers to continue to contribute to universal service support mechanisms for an additional 270-day period, as a matter of policy, we also require such providers to report the revenue on the Commission's FCC Form 499–A associated with the transmission component of their wireline broadband Internet access service as of the effective date of this Order for an additional 270-

day period for purposes of contributing to the TRS fund for that same 270-day period.

51. *NANPA Funding.* Pursuant to this same interim authority, we require facilities-based wireline broadband Internet access service providers to continue to contribute to the cost of numbering administration through the NANPA funding mechanism established by the Commission pursuant to section 251(e) of the Act for the same 270-day period. We take this action to ensure that the funding for this critical function does not immediately decrease while the Commission examines what, if any funding related obligations should apply to facilities-based broadband Internet access service providers. Section 251(e)(2) requires that ''[t]he cost of establishing telecommunications numbering administration arrangements * * * be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' In carrying out this statutory directive, the Commission adopted 47 CFR 52.17 of its rules, which requires, among other things, that all telecommunications carriers contribute toward the costs of numbering administration on the basis of their end-user telecommunications revenues for the prior calendar year.

52. *Obligations of Incumbent LECs Under Section 251.* The Wireline Broadband Notice sought comment on the relationship between a competitive LEC's rights under section 251 and the Commission's tentative conclusion that wireline broadband Internet access service is an information service with a telecommunications input. Several competitive LECs, and one BOC, argue that regardless of how the Commission classifies wireline broadband Internet access service, including its transmission component, competitive LECs should still be able to purchase UNEs, including UNE loops to provide stand-alone DSL telecommunications service, pursuant to section 251(c)(3) of the Act. We agree.

53. Section 251(c)(3) and the Commission's rules look at what use a competitive LEC will make of a particular network element when obtaining that element pursuant to section 251(c)(3); the use to which the incumbent LEC puts the facility is not dispositive. In this manner, even if an incumbent LEC is only providing an information service over a facility, we look to see whether the requesting carrier intends to provide a telecommunications service over that facility. Thus, competitive LECs will continue to have the same access to UNEs, including DS0s and DS1s, to which they are otherwise entitled under our rules, regardless of the statutory classification of service the incumbent LECs provide over those facilities. So long as a competitive LEC is offering an ''eligible'' telecommunications service under (which is not exclusively long distance or mobile wireless services) it may obtain that element as a UNE. See, *e.g.*, 47 CFR 51.309(b), (d). Accordingly, nothing in this Order changes a requesting telecommunications carriers' UNE rights under section 251 and our implementing rules.

54. *Cost Allocation.* In this section, we address cost allocation issues raised by our decision to allow incumbent LECs to enter into non-common carriage arrangements with affiliated and unaffiliated ISPs for the provision of wireline broadband Internet access transmission using facilities that are also used for provision of regulated telecommunications services. Specifically, we address whether we should require incumbent LECs subject to our part 64 cost allocation rules to classify that activity as a regulated activity, as opposed to a nonregulated activity, under our part 64 cost allocation rules. We conclude that incumbent LECs should classify this non-common carrier activity as a regulated activity under those rules and that this accounting treatment is consistent with section 254(k) of the Act.

55. In this Order, we allow the non-common carrier provision of wireline broadband Internet access transmission that we previously have treated as regulated, interstate special access service, but we do not preemptively deregulate any service currently regulated by any state. Therefore, as specified in 47 CFR 32.23, the provision of this transmission is to be classified as a regulated activity under part 64 ''until such time as the Commission decides otherwise.'' We do not ''decide otherwise'' at this time because we find that the costs of changing the federal accounting classification of the costs underlying this transmission would outweigh any potential benefits and that section 254(k) of the Act does not mandate such a change.

56. Because the costs of requiring that incumbent LECs classify their non-common carrier, broadband Internet access transmission operations as nonregulated activities under part 64 exceed the potential benefits, we decline to require such a classification. Classifying those operations as regulated under part 32 means that any necessary ratemaking adjustments, including any reallocations of costs, will be addressed in the ratemaking process in the relevant regulatory jurisdiction. In our case, that is the interstate jurisdiction. Currently, some price cap carriers treat broadband special access services as price cap services, while others treat these broadband services as services excluded from price caps. Price cap carriers that have tariffed these services under price caps, and that choose to replace these tariffed services with non-common carriage arrangements, will make the appropriate adjustments to the actual price index (API) and price cap index (PCI) for the special access basket. The ordinary application of the price cap rate formulas will ensure that other special access rates remain consistent with the price cap rules after deregulation of broadband transmission services. Carriers that have excluded broadband transmission services from price caps will not need to make these adjustments.

57. Our ruling here with respect to the accounting treatment of broadband Internet access transmission provided on a non-common carrier basis does not change the accounting treatment that applies to broadband Internet access service provided to end users. That is, and always has been, an information service. An incumbent LEC that offers this service must continue to account for it as a nonregulated activity.

58. We note that our decision to treat the non-common carrier provision of broadband Internet access transmission as a regulated activity under part 64 will affect the results of computations of the rate of return earned on interstate Title II services. This is not a matter of practical concern with respect to most incumbent LECs regulated under the CALLS plan (65 FR 38684, June 21, 2000) or price caps, because earnings determinations are not used in determining their price cap rates. In the event that an earnings determination is needed for some ratemaking purpose, the affected carrier will have to propose a way of removing the costs of any non-Title II services from the computation. Price cap carriers that have not taken advantage of pricing flexibility, and therefore are still able to take advantage of low-end adjustments to their price cap rates, will have to address this cost allocation issue if and when they seek a low-end adjustment.

59. Finally, all rate-of-return carriers that have participated in this proceeding have stated that they wish to continue offering broadband transmission as a Title II common carrier service. We have provided them with this option. As such, we do not, at this time, address the treatment of private carriage arrangements by rate-of-return carriers

because the issue is entirely hypothetical.

60. *Section 254(k).* Section 254(k) of the Act states that a telecommunications carrier ''may not use services that are not competitive to subsidize services that are subject to competition.'' That section also requires the Commission to establish, with respect to interstate services, accounting and cost allocation rules that ensure that ''services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.'' By continuing to treat the provision of wireline broadband transmission as a regulated activity under part 64, we do not change the regulatory cost allocation treatment and thus do not change their status under section 254(k). Our actions in this Order therefore do not create a violation of section 254(k).

61. We find that section 254(k) of the Act does not mandate allocation of interstate loop costs to non-common carrier broadband Internet access transmission. Under the CALLS access charge plan (65 FR 38684, June 21, 2000), the interstate loop costs of price cap carriers are not assigned to the different services that subscribers may receive over the loop, but are recovered directly from end users through the subscriber line charge. The Commission explicitly found that section 254(k) did not prohibit this cost recovery mechanism (65 FR 38684, June 21, 2000), and the Fifth Circuit upheld this finding, *Texas Office of Public Utility Counsel* v. *FCC,* 265 F.3d 313, 323–324 (5th Cir. 2001).

62. The subscriber line charge is not itself a ''service included in the definition of universal service.'' The interstate loop costs recovered through the subscriber line charge represent the costs of all jurisdictionally interstate uses of the loop. Since 1998, those uses have included both services supported by universal service, such as access to interexchange service, and broadband special access services, which are not supported by universal service. Costs need not be reallocated at this time from the subscriber line charge to non-common carrier, broadband Internet access transmission in order to prevent imposition of an unreasonable level of joint and common costs on services included in the definition of universal services. This is not, as State Consumer Advocates claim, unreasonable. Rather, it is a reasonable and rational cost allocation approach. We can take additional steps to address cost allocation issues in the future if the need arises.

63. We observe that NARUC and the State Consumer Advocates appear to assume that any reallocation of loop costs to broadband Internet access transmission would be given effect in the ratemaking process in such a way that consumers who do not receive wireline broadband Internet access service over their loops would have their tariffed rates reduced. This ratemaking approach would likely produce a relatively small per-line rate reduction for the large number of consumers who do not receive this broadband service, while leaving a larger per-line amount to be recovered from the smaller number of consumers who receive both narrowband and broadband services over their loops. This form of cost reallocation produces anomalous results, and we do not adopt it. It would cause a consumer who buys the two services over the same loop to pay much more for that facility than a consumer who buys only narrowband service, even though the cost of that facility is fixed and does not vary in proportion to usage. It would be possible to devise a scheme in which costs were reallocated only with respect to those loops on which both services are being provided, but this would seem to produce only a shifting of charges from one part of the customer's bill to another.

64. We note that the question whether there should be any changes to the jurisdictional allocation of loop costs in light of use of the loop for broadband services was referred to the Federal-State Joint Board on Separations in 1999. Specifically, in the wake of the Commission's determination in its 1999 tariff investigation that GTE's ADSL service was an interstate special access service subject to federal tariffing, NARUC filed a petition for clarification regarding the proper allocation under part 36 of the Commission's rules of loop costs associated with DSL services, *GTE Telephone Operating Cos. GTOC Tariff No. 1, GTOC Transmittal No. 1148,* 17 FCC Rcd 27409 (1999). Noting that issues associated with how to allocate local loop plant between voice and data services for purposes of jurisdictional separations were beyond the scope of the limited investigation in the tariff proceeding, the Commission stated that it would address these important issues in conjunction with the Joint Board, *GTE Telephone Operating Cos. GTOC Tariff No. 1, GTOC Transmittal No. 1148,* 17 FCC Rcd at 27412, para. 9. This issue remains pending. In any event, separations is now subject to a five-year freeze, and the Joint Board is working on the approach that should follow this freeze; the issues we describe in this Order already fall within this context. After the Joint Board makes its recommendation, we can reexamine the question of how any additional costs that might be assigned to the interstate jurisdiction may be recovered by local exchange carriers.

65. *Enforcement.* We intend to swiftly and vigorously enforce the terms of this Order. Significantly, through review of consumer complaints and other relevant information, we will monitor all consumer-related problems arising in this market and take appropriate enforcement action where necessary. Similarly, we will continue to monitor the interconnection and interoperability practices of all industry participants, including facilities-based Internet access providers, and reserve the ability to act under our ancillary authority in the event of a pattern of anti-competitive conduct.

Final Paperwork Reduction Act Analysis

66. This Report and Order does not contain any information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''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).

Final Regulatory Flexibility Certification

67. As required by the Regulatory Flexibility Act, see 5 U.S.C. 603, the Commission has prepared a Final Regulatory Flexibility Certification of the possible significant economic impact on small entities of the policies and rules addressed in this Report and Order.

68. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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).

69. In the Wireline Broadband Notice, the Commission sought comment generally on the appropriate statutory classification for wireline broadband Internet access service provided over a provider's own facilities, and on what regulatory requirements, if any, should be imposed on the telecommunications component of wireline broadband Internet access service. Specifically, the Commission sought comment on whether the *Computer Inquiry* requirements should be modified or eliminated as applied to self-provisioned wireline broadband Internet access service, as well as how the Commission's tentative conclusion that wireline broadband Internet access service is an information service would affect the CALEA assistance capabilities, the USA PATRIOT Act, other national security or emergency preparedness obligations, network reliability and interoperability, and existing consumer protection requirements, such as § 214 of the Act, CPNI requirements under section 222 of the Act, and requirements for access to persons with disabilities under section 255 of the Act. The Commission also sought comment on how to continue to meet the goals of universal service under section 254 of the Act in a marketplace where competing providers are deploying broadband Internet access, including how the regulatory status of wireline broadband Internet access could impact the system of assessments and contributions to universal service. Finally, the Wireline Broadband Notice also invited comment on the relationship between the statutory classification of wireline broadband Internet access service and an incumbent LEC's obligation to provide access to UNEs under sections 251 and 252.

70. The Order eliminates the *Computer Inquiry* requirements on facilities-based carriers in their provision of wireline broadband Internet access service. Consequently, BOCs are immediately relieved of the separate subsidiary, CEI, and ONA obligations with respect to wireline broadband Internet access services. In addition, subject to a one-year transition period for existing wireline broadband transmission services, all wireline broadband Internet access service providers are no longer subject to the *Computer II* requirement to separate out the underlying transmission from wireline broadband Internet access service and offer it on a common carrier basis. We determine in this Order that wireline broadband Internet access service is an information service, as that term is defined in the statute. To the extent that the regulatory obligations discussed above apply to the transmission component of wireline broadband Internet access service when provided to ISPs or others on a stand-alone common carrier basis, these obligations will continue to apply when carriers offer broadband Internet access service transmission on a common carrier basis, both during the transition and thereafter.

71. The rule changes adopted in this Order apply, for the most part, only to BOCs (*Computer Inquiry* separate subsidiary, CEI, and ONA obligations with respect to wireline broadband Internet access services). In addition, all facilities-based wireline broadband Internet access service providers are no longer subject to the *Computer II* requirement to separate out the underlying transmission. Neither the Commission nor the SBA has developed a small business size standard specifically applicable to providers of incumbent local exchange service and interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. This provides that such a carrier is a small entity if it employs no more than 1,500 employees. None of the four BOCs that would be affected by amendment of these rules meets this standard. To the extent that any other wireline provider would be classified as a small entity, it would not be negatively affected by the regulatory relief we grant in this Order.

72. Therefore, we certify that the requirements of the Order will not have a significant economic impact on a substantial number of small entities. We note that one party, TeleTruth, filed comments in response to the IFRAs in the Wireline Broadband Notice and Incumbent LEC Broadband Notice proceedings. TeleTruth argues that these IRFAs are deficient because they fail to assess the potential impact of the actions proposed in those proceedings on small ISPs and small competitive LECs and that our implementation of the RFA is otherwise deficient. These arguments are identical to, and indeed filed as part of the same pleading as, arguments the Commission previously has rejected. We therefore again reject these arguments for the reasons stated in our prior Orders responding to TeleTruth's comments.

73. The Commission will send a copy of the Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and a summary of the Order and final certification will be published in the **Federal Register**.

Ordering Clauses

74. Accordingly, *It is ordered* that, pursuant to sections 1–4, 10, 201–205, 214, 222, 225, 251, 252, 254–256, 258, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 201–205, 214, 222, 225, 251, 252, 254–256, 258, 303(r), and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, the Report and Order and Notice of Proposed Rulemaking are adopted.

75. *It is further ordered,* pursuant to sections 1–4, 10, 201–205, 214, 222, 225, 251, 252, 254–256, 258, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 201–205, 214, 222, 225, 251, 252, 254–256, 258, 303(r), and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that wireline broadband Internet access transmission providers are granted blanket certification to discontinue the provision of common carrier broadband Internet access transmission services to existing customers as set forth and subject to the conditions stated in this Order.

76. *It is further ordered,* pursuant to sections 1–4, 10, 201–205, 214, 222, 225, 251, 252, 254–256, 258, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 201–205, 214, 222, 225, 251, 252, 254–256, 258, 303(r), and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that the Conditional Petition for Forbearance Under 47 U.S.C. 160(c) filed by the Verizon Telephone Companies in WC Docket No. 04–242 on June 28, 2004, is denied as moot.

77. *It is further ordered,* pursuant to sections 1–4, 10, 201–205, 214, 222, 225, 251, 252, 254–256, 258, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 201–205, 214, 222, 225, 251, 252, 254–256, 258, 303(r), and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, that the Petition for Declaratory Ruling or, Alternatively, for Interim Waiver filed in WC Docket No. 04–242 by the Verizon Telephone Companies on June 28, 2004, is dismissed as moot.

78. *It is further ordered,* pursuant to §§ 1.103(a) and 1.427(b) of the Commission's rules, 47 CFR 1.103(a), 1.427(b), that this Report and Order

shall be effective 30 days after publication of the Report and Order in the **Federal Register**.

79. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 51, 63, 64

Communications, Telephone, Broadband Internet access services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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