Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review –	)	
Comprehensive Review of the	)	CC Docket No. 00-199
Accounting Requirements and	)	
ARMIS Reporting Requirements for	)	
Incumbent Local Exchange Carriers:	)	
Phase 2 and Phase 3.	)	

PHASE 2 REPLY COMMENTS OF THE OHIO CONSUMERS' COUNSEL AND THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

Introduction

The Ohio Consumers' Counsel ("OCC") and the National Association of State Utility Consumer Advocates ("NASUCA") offer these reply comments in response to certain of the comments filed pursuant to the Notice of Proposed Rulemaking ("Notice") released in this docket on October 18, 2000.[1] The OCC is the statutory representative of Ohio customers of investor-owned utilities.[2] NASUCA is an association of 41 consumer advocates in 39 states and the District of Columbia. NASUCA's members -- including

[1] The OCC and NASUCA filed Phase 2 comments on December 21, 2000. Phase 2 comments responded to herein include those of ALLTEL Communications Corporation ("ALLTEL"), AT&T Corp. ("AT&T"), BellSouth Corporation ("BellSouth"), Cincinnati Bell Telephone Company ("CBT"), the Florida Public Service Commission ("FlaPSC"), the Idaho Public Utilities Commission ("IdPUC"), the Independent Telephone and Telecommunications Alliance ("ITTA"), Iowa Telecommunications Services, Inc. ("ITSI"), the Maryland Public Service Commission ("MdPSC"), the National Association of Regulatory Utilities Commissioners ("NARUC"), Qwest Corporation ("Qwest"), Roseville Telephone Company ("Roseville"), the Rural Utilities Service ("RUS"), Sprint Corporation ("Sprint"), United States Telecom Association ("USTA"), the Utah Public Service Commission and the Utah Division of Public Utilities ("UPSC/UDPU"), Verizon, the Public Service Commission of Wisconsin ("WisPSC"), and WorldCom Inc. ("WorldCom").

[2] See Ohio Rev. Code Chapter 4911.

the OCC -- are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

The Notice requested comments on "various measures to eliminate or streamline existing accounting and reporting requirements" included in the current rules of the Commission. Notice, ¶ 2. At base, the comments filed fell into two predictable categories: On the one hand, incumbent local exchange carriers ("ILECs") supported substantial reductions in accounting detail and reporting requirements. On the other hand, regulators, consumer representatives and government agencies supported narrow changes and limited reductions in reporting.[3]

Two immediate and overarching responses to the ILEC comments should initially be made. First: Although all the ILECs supported lessening the amount of Universal System of Accounts ("USOA") detail by combining accounts, none of these commenters gave any indication that in their *internal* accounting they use and rely only on such aggregated information. The kind of detail included in the Class A USOA accounts is no more than that which an effective communications firm would keep for reporting of past results and for future planning. "RUS questions whether any prudent management team would rely on limited Class B account information to make critical management decisions." RUS at 2.[4]

Second: Despite their internal need for this information, the ILECs contend that the regulatory burden of the Class A USOA needs to be reduced. Yet the ILECs provide

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[3] Competitors also supported requiring this information from the ILECs. See, e.g., WorldCom.

[4] Indeed, RUS argued that this detail is needed even for the smaller firms served by RUS. *Id*.

scarcely any information to show that the level of competition for the ILECs' business justifies such reductions under the statute. As AT&T states, "[t]he Class A carriers continue to have overwhelming market power…." AT&T at 2.[5]

CBT states that "requiring a subset of all telecommunications carriers, namely the ILECs, to report data, which heretofore has never been reported, cannot be justified in the name of competition." CBT at 3. The need for the data can easily be justified given the *lack* of competition seen throughout the nation, particularly for residential consumers.

Regulators and others demonstrated the need for the Class A USOA detail.

The MdPSC graphically states the reasons not to eliminate the detail provided by Class A accounts:

> The loss of the detail provided in Class A accounting requirements would undermine our ability to understand the nature of the carriers' costs, which are largely driven by their network plant investments. Under Class B accounting, almost nothing would be known about these costs. For example, under Class B accounting, all outside cable and wire investments are contained in one account. Thus, with Class B accounting, no detail would be available regarding the construction or makeup of the various types of outside plant.

MdPSC at 3; see also NARUC at 5. FlaPSC states that "the loss of the detail … would inhibit our ability to understand the nature of the ILECs' costs." FlaPSC at 4.

This information is needed for a wide variety of regulatory purposes. RUS pointed out that Class A account detail is needed for universal service purposes. RUS at

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[5] ITSI claims that it is seeing "significant facilities-based competition from neighboring rural incumbent local exchange carriers and municipal utility entities that are overbuilding [ITSI's] exchanges." ITSI at 5-6. ITSI's claimed line losses of 20-98% (*id.* at 6, n. 11) appear to be significant, although requiring further detail before acceptance. Yet ITSI would have the Commission free it from reporting requirements because the reduction of that expense would level the playing field compared to its rural ILEC neighbors, who receive universal service funding and so can keep rates low. ITSI at 6. It would clearly be preferable for ITSI to seek to receive high cost funding for its territory, than to deregulate all mid-sized carriers based on the apparently unique experience of ITSI.

2; see also AT&T at 3; MdPSC at 3. MdPSC also notes that the detail is needed for pricing unbundled network elements ("UNEs") and pole attachment rates, and for setting depreciation rates. *Id.* at 3-4; see also FlaPSC at 5; AT&T at 4. UPSC/UDPU use Class A account detail for cost allocations. UPSC/UDPU at 1.

RUS notes that Class A detail is needed for its loan evaluations. RUS at 2. This level of account detail apparently is feasible for the rural ILECs that RUS serves. *Id.* at 3.

In the end, as AT&T states:

> [E]liminating the Class A accounts the Commission purposes to eliminate in Appendix 3 of the NPRM would strip out vital detail on $105 billion of monopoly revenues controlled by the largest carriers. These carriers would simply report total local, total toll, and total miscellaneous revenues. There would no longer be any detailed reporting on local and toll private line revenues, basic area service revenues, nonrecurring local and vertical service revenues, wireless revenues, carrier billing, among other items. Even more importantly, there would be no reporting of S,G&A expenses. Under such circumstances, it would be impossible for regulators or the industry to perform any meaningful cost benchmarking analysis of the incumbents' operations.

AT&T at 3. Sprint agrees. Sprint at 2; see also IdPUC at 4. NYPSC fears that losing this revenue detail "will eliminate data necessary to monitor the development of competition." NYPSC at 1.[6]

The ILECs' comments fail to address any of these issues, despite clear notice that the issues needed to be reviewed in this proceeding. See, e.g., Notice, ¶18. For example, Qwest merely states that "the accounting and information needs of today's regulators … differ significantly from those of past regulators…." Qwest at 2, n.6. Apparently, most of

[6] The New York Commission finds this information necessary despite the fact that competition in New York was sufficient to gain Verizon § 271 approval from this Commission.

the state regulators disagree.[7] BellSouth wants the Commission to do away with "outdated and useless regulation." BellSouth at 3. Apparently, most of the state regulators see current uses for the information.

The mid-sized carriers have not shown any reason to further relax their accounting or reporting requirements.

ITTA points to the "Independent Telecommunications Consumer Enhancement Act of 2000," H.R. 3850, as a reason for the Commission to relax requirements for the mid-sized carriers. ITTA at 5-6. These pleas should be disregarded.

In the first place, of course, H.R. 3850 did not become law. Indeed, after moving quickly through the House as a rural telco and infrastructure promotion measure, the bill met organized opposition in the Senate where the implications of the law became known.[8] The Commission cannot give significant credence to this bill as any support for Congress' intentions.

H.R. 3850 would have automatically granted relief from federal CAM requirements and ARMIS reporting to carriers with less than two percent of the nation's access lines. See ITTA at 5-6. Despite the fact that H. R. 3850 did not become law, ITTA seeks to have the Commission grant the same automatic relief. The illogical nature of this approach is magnified by ITTA's citation to the two percent standard contained in 47 U.S.C. 251(f)(2), which ITTA describes as "Congress' view of a proper differentiation" between large ILECs and small and mid-sized ILECs. ITTA at 13. Yet the differentiation

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[7] Qwest argues that "necessary" under the Act means more than "merely helpful or of general interest to regulators." Qwest at 4. The regulators' views expressed in the comments rise well above the level of having merely a general interest in this information.

[8] Including the fact that despite its title, the bill did nothing to "enhance" consumers and imposed no requirements on the carriers to provide customer benefits in exchange for deregulation.

in § 251(f)(2) had nothing to do with "heightened Commission regulation and scrutiny" (*id*.) and, in fact, provided nothing automatic to the 2% carriers. Sec 251(f)(2) allows a 2% carrier to petition a state commission for suspension or modification of the interconnection requirements of § 251(b) or (c) -- allowing local exchange competition in the carrier's territory, and allows the state commission to grant the suspension or modification only if the individual carrier demonstrates that a requirement will have a significant adverse impact on consumers or is unduly economically burdensome or is technically infeasible. See ITTA at 13.[9]

Hence, at best, the statutory 2% criterion would be a basis for the Commission to allow mid-sized carriers -- and it should be remembered that the 2% criterion includes carriers with more than 3.4 million access lines -- to petition for relief from reporting requirements on a carrier-by-carrier basis. Carriers do so now. The 2% criterion is no basis for an automatic exemption for all mid-sized carriers.[10]

On a related subject, the current $112 million indexed threshold, AT&T points out that when the Commission established the threshold in 1996 the Commission found that for carriers above the threshold the benefits to ratepayers outweighed the cost of compliance. AT&T at 9; see *Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications*, CC Docket No. 96-193, Order and Notice of Proposed Rulemaking, 11 FCC Rcd. 11716, ¶¶ 7-12 (1996). The cost of compliance has not increased and the benefits to ratepayers have not decreased since

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[9] Interestingly, ITTA omits "unduly" from its recitation of the §251(f)(2) criterion on the economic burden.

[10] ALLTEL also proposes the use of a 2% standard. ALLTEL at 4.

that 1996 Commission finding.[11] The finding should, therefore, be made again in this docket.

Sprint supports eliminating CAM and ARMIS filing requirements for all mid-sized carriers, which would "simplify[] the system and recogniz[e] that the only meaningful ILEC dividing line is between the RBOCs and the independent ILECs." Sprint at 2. This idea that all the other ILECs can be treated equally means that Sprint, with its $5.2 billion revenues (*id*. at 3), would be treated the same as Roseville, with its $114 million in revenues, and the same as the smallest carriers, e.g., the Vaughnsville Telephone Company in Ohio with its 370 customers and $320,000 in annual revenues.[12] Clearly, Sprint has much more in common with Qwest, with its $11.2 billion in revenues (Sprint at 3), than it does with Vaughnsville Telephone.

As a fall-back, Sprint supports raising the indexed revenue threshold. Sprint at 5. Sprint's ultimate proposal -- $400 million in place of the current $114 million -- is based entirely on the number of carriers that would be relieved of reporting requirements, rather than on any supposed distinction among large and mid-sized carriers. Likewise, ITI's $750 million threshold (ITI at 2) is designed to free as many carriers as possible from ARMIS requirements.

A number of the mid-sized ILECs dispute the value of the ARMIS information provided by those companies. For example, CBT states, "Carriers with less than 2% of the nation's access lines make up only 2.4% of the total access lines and 2.1% of the total

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[11] AT&T also points to some indicators that mid-sized carriers may need more, not less regulatory scrutiny. AT&T at 10.

[12] See Annual Report of Vaughnsville Telephone Company to the Public Utilities Commission of Ohio for the year 1999, at Schedules 5 and 28.

operating revenue of the reporting companies." CBT at 11 (footnote omitted). Roseville adds that "[e]ach individual mid-sized company is so small that it cannot impact nationwide trends." Roseville at 9.[13] Yet there remains value in comparing the monolithic RBOCs to the mid-sized companies *taken together*. Further, the mid-sized companies have generally seen even less competition than the RBOCs, which makes the ARMIS information all the more necessary for the protection of the mid-sized companies' customers, who are still captive to their ILEC.

The ILECs have not shown that accounting or reporting requirements are an undue burden.[14]

The main thrusts of the Notice are reducing accounting detail and ARMIS reporting. In each of these areas, the ILECs have not shown an undue burden from the current requirements.

Accounting. MdPSC crystallizes the key issue with regard to class accounting:

> The USTA argument that Class A accounting requirements are too burdensome does not seem particularly compelling when it is known that these carriers maintain from 2000 to 3500 accounts in each of their own accounting systems. To comply with the FCC's Class A accounting, they simply aggregate their own account balances into the Class A format of approximately 300 accounts.

MdPSC at 4; see also IdPUC at 4; UPSC/UDPU at 2. Nothing in the ILEC arguments addresses this issue.

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[13] ITTA has a slightly different point: That the mid-sized ARMIS carriers are not representative of the whole group of mid-sized and small carriers. ITTA at 10. Clearly, it would be useful to have ARMIS data for *all* ILECs; yet the Commission was correct in determining that the usefulness of small ILEC ARMIS data was outweighed by the burden collecting that data would impose on the small ILECs. As previously noted, the Commission correctly came to the opposite conclusion for the mid-sized ARMIS ILECs.

[14] This is true generally, but also true with regard to specifics like the "forecast use" rule. The OCC and NASUCA supported retaining the rule. A number of regulators are in accord. See, e.g., MDPSC at 5. See also FlaPSC at 10 (affiliate transactions).

USTA brings back into the docket an Arthur Andersen analysis showing savings from moving from Class A accounting to Generally Accepted Accounting Principles ("GAAP") and from Class A to Class B. USTA at 6. The analysis shows an average savings of $20 million annually from moving to GAAP, and an average savings from moving from Class A to Class B of ten percent of those savings (*id*.), or $2 million annually. The Class A reporting carriers are SBC Communications, Inc., Qwest, Verizon, and BellSouth Corporation. Notice, ¶ 5. That moving from Class A to Class B would save these huge carriers only $2 million a year shows how feeble are the ILECs' claims of "Class A burden."

ARMIS. Here again, MdPSC focuses on the key issue: "One of the real values of the ARMIS data is that it is collected in a uniform and standard format so that the states and the public have efficient and reliable access to it." MdPSC at 6; see also FlaPSC at 11; IdPUC at 7; WisPSC at 19. IdPUC points out that reliance on the investigative capabilities of individual states could increase reporting expense above current levels. IdPUC at 3.

ITTA attaches specific numbers to the supposed cost of ARMIS reporting. ITTA claims that two new ARMIS reporters, Citizens Communications and Roseville, spent $1.83 to $2.06 per year per access lines for their first ARMIS reports. ITTA at 20. Roseville provides the detail for ITTA's claims -- these are actually Roseville's *estimates*. Roseville at 4-5. The estimates are called into question by the lack of comparison to Roseville's *actual* experience, especially given the extension of Roseville's first filing requirement. See *id*. at 2, n.2. Quite apart from the lack of supporting detail for these claims, it is to be hoped that there will be a learning curve, and that the costs will decline with experience on the ILEC's part. Roseville so indicates. *Id*. at 5. Further, there does not appear to be any threat of rate cases from these companies on account of the reporting requirements; their financial situation appears quite healthy. Indeed, given that Roseville's revenues are "just above" the $114 million ARMIS threshold (*id*. at 2), with its 132,000 access lines (*id*.) Roseville enjoys annual revenue per access line of $863. The $1.21 *annual* per-line cost of ARMIS reporting claimed by Roseville (*id*. at 5) is thus 0.14% of Roseville's annual revenue. CBT claimed it cost $283,000 to comply with ARMIS. ITSI at 4. This is 0.38% of CBT's annual revenue of $750 million.[15] For its part, Sprint claims a $250,000 annual cost for preparing the ARMIS reports. Sprint at 4. This is 0.048% of Sprint's annual revenue. This reporting expense is not an undue burden for these carriers to bear.

The Commission should add the accounts and subaccounts proposed by state commission staff.

The Commission set out for comment the proposals of state commission staff for additional account detail "to meet their data needs to implement the 1996 Act and to keep pace with changes in technology and the regulatory environment." Notice, ¶ 20 (footnotes omitted). A number of ILECs have raised the issue that adopting new requirements is not proper in a Section 11 proceeding intended to reduce regulatory burdens. See, e.g., USTA at 9. Clearly, all the ILECs had notice of this issue, and had the opportunity to comment on the proposals. See, e.g., *id.* at 9-10; Verizon at 3-4.[16] If the Commission is required to

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[15] See Annual Report of Cincinnati Bell Telephone Company to the Public Utilities Commission of Ohio (1999) at Schedule 5.

[16] USTA says it lacks "an explanation as to what information these states are requesting and whether all states need this information…." USTA at 9. In the first place, the information is specified in Appendix 5 to the Notice. Further, the fact that NARUC supports the addition of the accounts can serve as an indication

hew strictly to the requirements of § 11, then, as pointed out previously, virtually none of the current regulatory accounting and reporting framework could be dispensed with *based on the record before the Commission* because there has been no showing that meaningful economic competition exists for most of the ILECs.[17]

Verizon claims that the state staff proposals would "drastically increase the carriers' reporting requirements …." Verizon at 3. A review of Appendix 5 to the Notice shows that there is nothing drastic about the addition of 18 sub-accounts to the already existing 296 Class A accounts. See Notice, Appendix 1. Neither is there anything drastic about the 6 new revenue and expense accounts that are proposed. See Notice, Appendix 5.

On specific issues, WorldCom notes the importance of subaccounts for loop and interoffice transport for UNEs. WorldCom at 3-4. WorldCom also notes the importance of breaking out interstate access revenues into those for services that have been granted pricing flexibility and those that remain under the price cap. WorldCom at 7; see Access Charge Reform, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-262 (rel. August 27, 1999).

Sprint says that the additional information provided by the proposed reporting requirements is unnecessary, "because all of the subject revenues are already included today in other accounts." Sprint at 10. Yet that is precisely the point, and no one argued that the dollars were not already reported in the aggregate. It is the specific dollars in

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that its membership needs the data (see NARUC at 6) just as USTA's positions (USTA at 10-12) can be taken as an argument that *none* of the states need this information.

[17] Under the terms of the ILECs' argument, Phase 3 of the Notice would also be improper because it is not clearly part of the biennial review process.

each ILEC's accounts for each of, e.g., "reciprocal compensation, federal USF, state USF, resale, wholesale and collocation…" (*id.*) that are needed to evaluate the ILECs' performance.

Section 11 of the Telecommunications Act does not require wholesale abandonment of regulation.

Qwest alleges that Section 11 "establishes a statutory presumption that regulation is not necessary…." Qwest at 3, n. 8. Section 11 does no such thing. The codification of Section 11, 47 U.S.C. § 161 provides for a biennial review of regulation, makes the determining factor in the review whether "any such regulation is no longer necessary in the public interest *as the result of meaningful competition between providers of such service*…", and requires the Commission, once such finding has been made, to repeal the regulation. (Emphasis added.) Qwest would expand the last provision to an independent requirement "to determine the absolute minimum set of accounting and reporting requirements that is necessary for it to perform its statutory duties under the Act." Qwest at 3. This is the sort of presumption that Congress knows perfectly well how to make explicit, and did not. More importantly, under such a presumption the requirement to show meaningful competition would be mere surplusage.

Taking another tack, Qwest asserts later that "the burden of proof should shift to those advocating retention of existing requirements once ILECs have made a prima facie showing that a requirement is unnecessary." Qwest at 5. Because the statutory requirement is for a showing of meaningful economic competition, it should be clear that the ILECs have failed to make such a prima facie showing.

Qwest would ignore the statute and would set up a four-part structure, framed as questions under which all regulations would be reviewed to see if the information is *required*. Qwest at 8.[18] For example, "Is the proposed information required to regulate ILECs in a price cap/CALLS environment?" *Id*. Yet Qwest's deregulatory eagerness brings it to the position that "if the answer to *any one* of the above questions is no -- the requirement would not be necessary and should be eliminated or significantly modified." *Id*. (emphasis added). Logically, of course, if the answer to any one of Qwest's questions is yes, the requirement would be necessary. It would be virtually impossible for a regulation to be important for each and every one of Qwest's four issues.

Conclusion

The Notice was issued pursuant to the directive of 47 U.S.C. § 161, which requires the Commission biennially to review its regulations pertaining to telecommunications service to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." See Notice, ¶ 10. Under that standard, virtually none of the regulations discussed in the Notice could be reduced or eliminated, because even where there exists "meaningful economic competition" for local telecommunications service, the incumbent carriers remain dominant in their markets.[19] Indeed, AT&T argues that there is no "meaningful economic competition" and that there has been no evidence of such. AT&T at 1. Equally importantly, for residential consumers in particular competition is either nonexistent or, at best, minimal.

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[18] Qwest's conflation of "necessary" with "required" deserves a careful review.

[19] Clearly, all of the ILECs are still far more dominant in their local markets than AT&T was in the long distance market when the Commission found it to be "non-dominant."

NARUC states that "[w]hile it is important for the FCC to continue to streamline and reduce burdens on the ILECs as the local exchange market transitions to a competitive market, the need to monitor ILECs costs, investment, and cost allocation practices at this time is also important." NARUC at 4. Again, it is especially important for residential consumers for whom the transition to a competitive market has just begun and will be a long time to complete.

Respectfully submitted,

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