

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
2000 Biennial Regulatory Review –)	
Comprehensive Review of the Accounting)	CC Docket No. 00-199
Requirements and ARMIS Reporting)	
Requirements for Incumbent Local Exchange)	
Carriers:)	
Phase 2 and 3)	
)	
Local Competition and Broadband Reporting)	CC Docket No. 99-301

REPLY COMMENTS OF QWEST CORPORATION

Pursuant to the Federal Communications Commission’s (“Commission”) *Further Notice of Proposed Rulemaking* (“Notice”),¹ Qwest Corporation (“Qwest”) hereby replies to comments filed in Phase 3 of the above-captioned proceeding. In the opening round of comments in this proceeding, Qwest filed joint comments with a number of other large incumbent local exchange carriers (“ILEC”).² Qwest, as part of the Coalition, concurred with the other ILECs on such issues as the elimination of Part 32 Accounting Requirements and permissive maintenance of books in accordance with Generally Accepted Accounting Principles, the elimination of Part 32 Accounting and ARMIS reporting requirements for Universal Service, Pole and Conduit attachments, and the elimination of the affiliate transaction rules for price cap carriers, and

¹ *In the Matter of 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd. 19911 (2001).*

accordingly limits this reply to the elimination of the ARMIS reporting requirements as required by Section 11 of the 1996 Act.³

I. INTRODUCTION AND SUMMARY

A. Section 11 Standard of Review

The vast majority of information contained in the ARMIS reports is no longer “necessary” for the Commission to perform its regulatory duties. Thus, 47 U.S.C. § 161 (*i.e.*, Section 11 of the Communications Act of 1934, as amended) requires the elimination or modification of the regulation requiring such reports.

Section 11 requires that, in every even-numbered year, the Commission review its regulations and “determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of [telecommunications] service.”⁴ If the Commission determines that a regulation fails to meet this standard, the “Commission shall repeal or modify [the] regulation.”⁵ The language of the statute provides no discretion for the Commission once it determines that a regulation “is no longer necessary in the public interest.” At that point, the regulation must either be eliminated or modified.

² Joint Comments filed by BellSouth Corporation, Southwestern Bell Communications, Inc., the Verizon telephone companies, Qwest Corporation and The Frontier and Citizens Incumbent Local Exchange Carriers and Cincinnati Bell Telephone Company on Apr. 8, 2002 (“Coalition”).

³ Qwest has previously broached this subject with the Commission in comments and reply comments, filed in CC Docket No. 00-229, on Jan. 12, 2001 and Feb. 16, 2001, respectively.

⁴ 47 U.S.C. § 161(a)(2).

⁵ *Id.* at § 161(b). *And see Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002) (citing *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002) (“*Fox Television Stations*”) with approval and asserting that “This sentence appears as the last sentence of Congress’s instruction that the Commission review each of its ownership rules every two years ‘which the [*Fox Television Stations*] court characterized as designed to continue the process of deregulation.”).

In undertaking a Section 11 analysis, it is critical to keep in mind that the statute creates a presumption that an existing regulation (in this case, ARMIS reporting requirements) is not necessary,⁶ with a concomitant statutory command that regulations be eliminated or modified if they are not proven to be still necessary. Stated differently, it is up to the government to prove that an existing regulation **is necessary** before it can be retained.⁷ Those opposing the continuation of the regulation are not required to prove the lack of continued need for the regulation. At a minimum, Section 11 processes should force the burden of proof to shift to those advocating retention of existing requirements once carriers subject to burdensome regulations have made a *prima facie* case showing that a requirement is unnecessary.

B. Commenters Fail to Prove the “Necessity” of ARMIS Reports

⁶ *Fox Television Stations*, 280 F.3d at 1048 (Section 11 “carrie[s] with it a presumption in favor of repealing or modifying” existing rules). *And see Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d at 159, 171 (citing *Fox Television Stations* with approval; *and see* Dissent of Judge Sentelle, observing that it is not sufficient “to have assumed the need for [a] rule, and then attempted to justify it” and arguing that action taken contrary to Section 11 should result in a vacation of the challenged rule rather than a remand).

Compare Furchtgott-Roth Comprehensive Report on FCC’s Biennial Review Process, rel. Dec. 21, 1998 at 4-5 (Section 11 creates a presumption that existing rules are not necessary unless the Commission finds that they are; “the Commission must affirmatively determine that a rule is necessary in the public interest; otherwise, it must be repealed or modified”). *And see id.* at 7 (“[i]n at least one part of the 1996 Act, however, Congress’ deregulatory mandate is unquestionable”), 9 (“the Commission must affirmatively determine that a rule is necessary in the public interest; otherwise, it must be repealed or modified”), 10 (“under Section 11, the FCC was ordered to deregulate”), 14 (“Congress’ clear direction in Section 11 to deregulate the industry systematically is not given our full attention.”), 17 (“[s]ubsection 11(a) was adopted as part of an act especially intended to ‘reduce regulation’ and itself is in a section entitled ‘Regulatory Reform,’ [thus] it certainly would be reasonable, if not necessary, to construe the ‘public interest’ determinations in Subsection 11(a)(2) to require the FCC to presume a heavy burden against maintaining regulations”). *See also* Comments of Qwest Corporation, CC Docket No. 00-199, Dec. 21, 2000, at 3-4, nn.9-10.

⁷ *Fox Television Stations*, 280 F.3d at 1051 (under Section 11, “the Commission has failed to justify retention of” a challenged rule).

The existing ARMIS reporting requirements should be eliminated, as the Coalition has proposed.⁸ Applying Section 11’s “necessity” standard to the question of continuing ARMIS reports demonstrates that such reporting cannot be required in the future. At a minimum, the term “necessity” means that the information flowing from an accounting or reporting requirement must be directly used to regulate the affected companies (*i.e.*, ILECs) and that such regulation is required to protect the public interest. A requirement would not be “necessary” under this definition if the information is merely helpful or of general interest to regulators. Similarly, if an accounting or reporting requirement is the product of another era (*e.g.*, when the ILECs were regulated as monopolists subject to rate-of-return regulation) and the information is no longer directly used to regulate the provision of ILEC services in today’s environment, it is not “necessary” and should be eliminated.

In this proceeding, those seeking the continuation of ARMIS reporting have failed to prove the necessity of such reports. The fact that many commenters, and even Commission staff, may find ARMIS data to be helpful or informative⁹ is not relevant to whether the statutory standard of “necessity” is met. The controlling statutory language and judicial precedent make clear that proponents of continued regulations must prove the “necessity” of their continuance and anything less will not be sustained. As the District of Columbia Court of Appeals has clearly stated, the directive of Section 11 “is clear that a regulation should be retained only insofar as it is necessary in, not merely consonant with, the public interest.”¹⁰

⁸ Coalition at Section III.

⁹ See Illinois Commerce Commission at 1-2; National Association of State Utility Consumer Advocates at 10-11; Michigan Public Service Commission at 6, 9.

¹⁰ *Fox Television Stations*, 280 F.3d at 1050 (the Court agreed with appellants that the Commission’s finding that retaining a rule because it “continues to serve the public interest” was “too low a standard” and that the statutory standard was as quoted above). See also Coalition at

If the Commission is to give proper deference to Congress and comply with Section 11, it must take a “fresh look” at its ARMIS reporting requirements to determine what is “necessary” in today’s environment. In doing so, a critical factor to be considered is whether any “necessary” information (or a close proxy) is already readily-available in other Commission reports or reports of other state or federal agencies (*e.g.*, Securities and Exchange Commission). If so, it is impossible to argue that it is “necessary” that the same information be provided directly to the Commission.

II. CONTRARY TO THE ASSERTIONS OF SOME COMMENTERS,
ARMIS REPORTING REQUIREMENTS ARE NO LONGER
“NECESSARY” IN TODAY’S ENVIRONMENT

The ARMIS reports consist of both financial and network (*i.e.*, infrastructure and quality of service) reports. Many of the financial reporting requirements contained in ARMIS 43-01 through 43-04 pre-date ARMIS initiation. Rather, they were the product of rate-of-return, rate-base regulation and were incorporated into ARMIS by the Commission in 1987.

Qwest does not question the fact that certain company-specific financial information may be necessary for the Commission to perform its duties. However, Qwest does not believe that ARMIS reports 43-01 through 43-04 have been shown to be necessary in their current form. As the Coalition observed, much of the same information is available from standardized reports such as the 10K.¹¹ At a minimum, the Commission should modify the existing ARMIS reporting requirement and consolidate the financial ARMIS reports while it transitions to a 10K-based report.

3 and n.10. (**Note:** Former Commissioner Furchtgott-Roth dissented from the Commission’s decision not to repeal or modify the rules in question in *Fox Television Stations, Fox Television Stations*, 280 F.3d at 1036-37.)

¹¹ Coalition at 17.

The infrastructure and quality of service reports, ARMIS 43-05 through 43-08, were created when the Commission adopted its price cap rules in 1991. At that time, the Commission was concerned that large ILECs subject to price cap regulation (*i.e.*, rather than traditional rate-of-return regulation) might have an incentive to increase profits by deferring network maintenance and investment, thereby lowering service quality. In order to determine whether the ILECs were allowing their service to deteriorate under price cap regulation, the Commission established the ARMIS infrastructure and quality of service reporting requirements. Thus, the Commission had a plausible justification, if not a “need,” for this information in the early years of price cap regulation.

Any such regulatory need has long ceased to exist. Contrary to the claims and fears of price cap opponents in 1990-91, ILEC service quality did not decline. With the passage of time since the adoption of price cap regulation, increased local exchange competition, the unbundling of ILEC network elements after passage of the 1996 Act, and significant technological change over the last decade, it is no longer possible to make valid comparisons between pre- and post-price cap operations of ILECs. But it no longer matters, since neither the Commission nor anyone else is using ARMIS infrastructure and quality of service reports for their original purpose: to determine whether the change from rate-of-return regulation to price cap regulation negatively affected service quality. While some commenters find the ARMIS infrastructure reports to be “helpful,”¹² none has articulated a valid federal need for these reports. As such, these reports should be eliminated.

If the Commission determines that some portion of the information currently reported in ARMIS 43-05 through 43-08 is needed for the Commission to perform its regulatory duties, the

Commission should modify its existing regulations and collect this information from all carriers on Form 477, as the Joint Commenters suggest.¹³

A. ARMIS 43-01, 43-02, 43-03 and 43-04

ARMIS reports 43-01, 43-02, 43-03, and 43-04 contain financial information of carriers with annual operating revenues that are equal to or above an indexed revenue threshold. ARMIS 43-01 summarizes the carriers' accounting and cost allocation data prescribed in Parts 32, 36, 64, 65 and 69 of the Commission's rules. ARMIS 43-02 collects basic accounting information. ARMIS 43-03 collects information on how costs are allocated between regulated and non-regulated activities. ARMIS 43-04 collects information on how costs are separated between the federal and state jurisdictions. All but ARMIS report 43-02 are reported on the study area level. ARMIS report 43-02 is reported at the operating company level.

The comments of filing parties fail to demonstrate that the ARMIS reports 43-01 through 43-04 are "necessary" in their current form. At a minimum, these reports must be streamlined to further eliminate unnecessary reporting requirements. Qwest supports the United States Telecom Association's ("USTA") proposal and agrees that SEC Form 10-K and annual shareholder reports can be utilized to capture much of the relevant financial information needed by the Commission.¹⁴ This change would greatly reduce the burden of gathering and compiling data that is outdated and irrelevant. And, there would still be room for carriers to provide additional information to the Commission where it has a particular need for financial information and is unable to obtain the desired information through 10-K or annual shareholder reporting.

¹² See, e.g., Public Service Commission of Wisconsin at 8; Indiana Utility Regulatory Commission at 1; National Association of Regulatory Utility Commissioners at 19.

¹³ Coalition at 17.

¹⁴ USTA comments, filed Dec. 21, 2000, CC Docket No. 00-199 at 22-25.

Replacing the financial ARMIS reports with 10-K-based reporting should be the long-term goal of the Commission. In the meanwhile, as an interim measure, the Commission should not delay in consolidating ARMIS reports 43-01, 43-02, 43-03, and 43-04 into a single report at an operating company level.¹⁵ This can be accomplished within a year and will greatly reduce carriers' onerous reporting burden while the Commission moves to a 10-K-based reporting regime.

B. ARMIS 43-05, 43-06, 43-07 and 43-08

These reports contain infrastructure and quality of service information of ILECs for the prior year. With the passage of the 1996 Act and the advent of extensive Section 271 proceedings in the states, much of the data in the ARMIS network reports is no longer relevant for purposes of monitoring the overall quality of local service.

When these reports were first adopted, the reporting companies (the large ILECs) provided local service to over 95% of all telecommunications subscribers and there were few, if any, competitive providers of local service. This is no longer true. Over the last three years the number of cities with CLEC networks has increased by more than 70 percent, CLEC fiber has grown by more than 80 percent, CLEC circuit switches and packet switches have both nearly doubled, and buildings served by CLECs have more than tripled. The CLECs' share of access lines in the Bell Operating Company regions is at least 16 percent, and likely closer to 20 percent. By contrast, ILEC access lines have steadily declined in each of the last three years.¹⁶ Thus, the ARMIS network reports, even if they were a good indicator of service quality -- which they are not -- no longer cover the universe of local service providers.

¹⁵ USTA's proposal would reduce the number of pages to be filed for the ARMIS financial reports from 191 to five. *Id.* at 23.

¹⁶ See UNE Fact Book, UNE Remand proceeding, I-1, I-6

Furthermore, even if the Commission's primary focus is on large ILECs and their provision of service to CLECs, the ARMIS network reports are not the place to turn for this information. The extensive performance standards adopted in Section 271 proceedings provide a much more current and detailed view of ILEC service quality than the ARMIS reports. Moreover, ILECs have a significant incentive to meet or exceed Section 271 performance standards since failure to do so results in direct adverse financial impacts on the ILECs subject to these provisions.

The ARMIS 43-06 report which purports to measure customer satisfaction should also be eliminated. It is of limited usefulness in comparing ILECs since each ILEC conducts its own customer survey using slightly different techniques. More comparable information is available from unaffiliated firms that conduct nationwide industry surveys using uniform questions and statistical techniques. As such, there is no need or purpose for individual ILECs to report the results in ARMIS.

III. CONCLUSION

As the foregoing demonstrates, neither the ARMIS financial nor network reports are necessary for the Commission to perform its regulatory duties in today's environment. As such, these reports should be eliminated in their entirety. If the Commission declines to immediately eliminate ARMIS reporting requirements, it should establish a date certain within three years for these requirements to "sunset." In the alternative, if the Commission declines to eliminate

ARMIS reporting requirements, it should consolidate the ARMIS financial reports, ARMIS 43-01 through ARMIS 43-04, in a single streamlined report and collect any necessary infrastructure and quality of service information from all carriers on Form 477.

Respectfully submitted,

QWEST CORPORATION

By: James T. Hannon
Sharon J. Devine
James T. Hannon
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2860

Its Attorneys

May 7, 2002

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY COMMENTS OF QWEST CORPORATION** to be filed with the FCC via its Electronic Comment Filing System, and a copy of the **REPLY COMMENTS** to be served, via email, on all parties listed below.*

Richard Grozier
Richard Grozier

May 7, 2002

*Parties wishing to receive a hard copy may contact Kelseau Powe in our Washington, DC office at 202-429-3114.

AT&T Corp.

Judy Sello

jsello@lga.att.com

BellSouth Corporation

Richard M. Sbaratta

richard.sbaratta@bellsouth.com

Cole, Raywid & Braverman, LLP

Paul Glist

pglist@crblaw.com

Frontier Communications

Gregg C. Sayre

gregg_sayre@frontiercorp.com

General Services Administration

George N. Barclay

george.barclay@gsa.gov

Illinois Commerce Commission

Myra Karegianes

mkaregia@icc.state.il.us

Latham & Watkins (ITTA)

Karen Brinkmann

karen.brinkmann@lw.com

Michigan Public Service Commission

David A. Voges

vogesd@michigan.gov

National Association of Regulatory Utility Commissioners
James Bradford Ramsay jramsay@naruc.org

National Association of State Consumer Utility Advocates
Kathleen F. O'Reilly kforeilly@igc.org
Michael J. Travieso mike@opc.state.md.us

National Cable & Telecommunications Association
Daniel L. Brenner dbrenner@ncta.com

Public Utilities Commission – State of California
Gretchen T. Dumas gtd@cpuc.ca.gov

Qualex International qualexint@aol.com

Sprint Corporation
Jay C. Keithley jay.c.keithley@mail.sprint.com

Verizon Communications, Inc.
Ann H. Rakestraw ann.h.rakestraw@verizon.com

Wisconsin Public Service Commission
Lynda L. Dorr lynda.dorr@psc.state.wi.us

WorldCom, Inc.
Alan Buzacott alan.buzacott@wcom.com

jsello@lga.att.com, richard.sbaratta@bellsouth.com, pglist@crblaw.com, gregg_sayre@frontiercorp.com,
george.barclay@gsa.gov, mkaregia@icc.state.il.us, karen.brinkmann@lw.com, vogesd@michigan.gov,
jramsay@naruc.org, mike@opc.state.md.us, dbrenner@ncta.com, gtd@cpuc.ca.gov, qualexint@aol.com,
jay.c.keithley@mail.sprint.com, ann.h.rakestraw@verizon.com, lynda.dorr@psc.state.wi.us,
alan.buzacott@wcom.com, kforeilly@igc.org