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

In the Matter of	)	
	)	
Federal-State Joint Conference On Accounting Issues	)	WC Docket No. 02-269
	)	
2000 Biennial Regulatory Review - Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II	)	CC Docket No. 00-199
	)	
Jurisdictional Separations Reform and Referral to the Federal-State Joint Board	)	CC Docket No. 80-286
	)	
Local Competition and Broadband Reporting	)	CC Docket No. 99-301

REPLY COMMENTS OF VERIZON

I. Introduction and Summary

A majority of the commenters oppose the Joint Conference's recommendations. The Commission has already eliminated some accounting regulations and reporting requirements because it found there was no federal need for them. The Commission should not reinstate these regulations, as the Joint Conference recommends. Rather, the Commission should eliminate other accounting regulations and reporting requirements that are no longer necessary.

A few commenters want the Commission to reimpose regulatory requirements – for which there is no federal need – solely to satisfy what they believe are state commission desires. The Commission, however, has already determined that it cannot and should not impose

regulatory requirements in the absence of a clear federal need. State commissions are well-equipped to obtain the information they need directly from the carriers they regulate.

Moreover, only one state commission – the Wisconsin Commission –filed comments in this proceeding, and those comments amply demonstrate how it has been able to obtain the information it needs without federal accounting rules. The fact that no other state has weighed in to support the Joint Conference recommendations undermines any assertions that these regulations are somehow "necessary" to support state needs.

II. The New Rules Proposed by the Joint Conference Are Not Necessary for a Federal Purpose.

Pursuant to the deregulatory nature of the Act, and of Section 11 in particular,[1] the Commission has a duty to *eliminate* unnecessary accounting requirements. Approximately two years ago, the Commission found there was no *federal* need for certain accounting and reporting rules, and it therefore eliminated them.[2] Many of the Joint Conference's recommendations suggest that the Commission revisit (and undo) those prior decisions.

A majority of the commenters agree that the Commission should not retreat from its prior findings to reinstate accounting regulations for which it has already found there is no *federal* need. For example, Sprint states that "[t]he changes recommended by the Joint Conference Recommendations to the federal accounting rules and ARMIS reporting requirements are

---

[1] "Section 11 of the Communications Act requires that the Commission review every two years those regulations that are 'no longer necessary in the public interest as a result of meaningful economic competition between providers' of telecommunications service." *Federal-State Joint Conference on Accounting Issues*, Request for Comment, 17 FCC Rcd 24902, at 1 (2002) (*citing* 47 U.S.C. § 161).

[2] *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, 16 FCC Rcd 19911 (2001) ("*Phase 2 Order*").

unwarranted." Sprint Comments at 9. Similarly, Qwest states that "[n]ot only would such an approach violate the dictates of Section 11, it would burden a small number of carriers, the large ILECs, with costly and unnecessary accounting and reporting requirements simply to provide state commissions with information that they may find to be of interest." Qwest Comments at 3.

As the Commission itself recently stated, "if we cannot identify a federal need for a regulation, we are not justified in maintaining such a requirement at the federal level."[3] In other words, those who argue that the Commission should reimpose accounting rules or the ARMIS reporting requirements, "should identify with specificity which rules should remain in place and provide a full analysis of the justification for that rule, on a rule-by-rule basis."[4]

The few commenters that support the Joint Conference's recommendation offer no justification or evidence of any federal need for reimposing regulatory requirements. AT&T, for example, simply quotes the Joint Conference recommendations no less than 50 times as "support" for reimposing regulatory reporting requirements and offers no independent evidence or justification for those requirements.

Instead of turning back the clock to reinstate regulatory requirements that serve no federal purpose, the Commission should move forward to eliminate even more regulatory requirements that can no longer be justified at the federal level. As Verizon explained in its comments, the Commission should eliminate the detailed continuing property record rules and improve the forecasting requirements for nonregulated usage of central office and outside plant. In addition, the Commission should begin the effort to phase out the accounting and ARMIS

---

[3] *See Phase 2 Order* ¶ 207.

[4] *See Phase 2 Order* ¶ 209.

regulations, with the goal of eventually transitioning away from separate regulatory accounting. *See* Verizon Comments at 20-26.

III. The Commission Cannot and Should Not Reimpose Regulatory Requirements Simply to Meet the Desires of State Regulatory Commissions or Other Stakeholders.

A few commenters assert that the Commission has the authority to adopt accounting and reporting requirements to meet the needs of state regulatory commissions and other stakeholders. These assertions are at odds with the Act, and with this Commission's prior statements on the purposes of biennial review. As the Commission has already recognized, it cannot adopt the Joint Conference's recommendations that are designed to meet the needs of state regulators or other stakeholders.[5] Moreover, the fact that only a single state commission (Wisconsin) even commented on the Joint Conference's recommendations completely undermines any assertion that these rules are somehow "necessary" for all states' needs.

AT&T argues that "the fact that Congress *requires* the Commission to consult with states when adopting regulatory accounting standards confirms that Congress intended the Commission to implement regulations that are important to both, or either, the states and the Commission in carrying out their regulatory responsibilities." AT&T Comments at 10. AT&T is misreading the statute. Where both the FCC and the states have a federal need for accounting information, the FCC will consult with the states to insure that the federal accounting rules satisfy both federal and state needs. By contrast, where there is no federal need for accounting information, there is

---

[5] If the Commission cannot articulate *specific* reasons why there is a "federal need" for a *specific* rule or regulation, it is "not justified in maintaining such a requirement at the federal level." *Phase 2 Order* ¶ 207.

no need to coordinate with the state commissions because they can obtain the particular information they need directly from the carriers.

The Commission has consistently rejected requests to impose federal accounting requirements simply to satisfy state desires. In its *Phase 2 Order*, the Commission rejected state commission requests to maintain separate reporting of directory advertising revenues, finding that "nothing we decide today restricts state commissions from receiving these data from carriers when state-specific reasons require them to do so." *Phase 2 Order* ¶ 36. The Commission also rejected state commission requests to maintain separate federal accounting of property held for future use, based on similar rationale:

> We recognize that this account may be important to state regulators in cases where property held for future telecommunications use is excluded from the rate base. . . . We expect, however, that companies will provide these records to the state commissions, if needed for state rate cases.

Phase 2 Order ¶ 38.

Moreover, even if the Commission could consider states' needs as a justification for adding federal accounting regulations, commenters have failed to "identify with specificity which rules should remain in place and provide a full analysis of the justification for that rule, on a rule-by-rule basis." *Phase 2 Order* ¶ 209. AT&T argues that "[a]bsent a uniform federally-mandated system of accounts, each state would be left to implement its own accounting reporting requirements in order to carry out its obligations under the Act." AT&T Comments at 10. But the same would be true where the Commission establishes federal accounts. Nothing requires the states to use the information in federal accounts, and nothing precludes the states from imposing their own separate information requirements on the carriers they regulate.

In fact, the Wisconsin Commission made clear that it would *not* use much of the information recommended by the Joint Conference. For example, the Wisconsin Commission

stated that it "is not requesting separate accounts/subaccounts for USF-related activity at this time." Wisconsin Comments at 13. In addition, the Wisconsin Commission "did not find that it needed accounting data to determine unbundled local loops or unbundled local transport rates . . . ." Wisconsin Comments at 10.

NASUCA argues that "[t]he need to provide a central source for information for use by the states is, in fact, an implicit federal need." NASUCA Comments at 4. NASUCA's argument is a transparent attempt to bootstrap a state need into a federal need. Absent a federal need for information to fulfill a federal regulatory obligation, no collection of state needs can create a federal need for the information.

Only one state commission – the Wisconsin Commission – filed comments in this proceeding. And those comments demonstrate that state commissions can obtain the information they need in the absence of federal accounting and reporting requirements.

For example, the Wisconsin Commission noted that "[i]n its docket 05-US-113, Final Decision, the Wisconsin Commission decided that while the FCC USOA does not require maintenance of these accounts for Class B ILECs, this Commission would require Class B ILECs to report this information in the ILEC annual reports filed with the Wisconsin Commission." Wisconsin Comments at 8-9. Similarly, the Wisconsin Commission notes that "it currently obtains total fiber optic sheath miles information from ILECs in the ILEC annual report filed with the Wisconsin Commission." Wisconsin Comments at 18. Finally, "[i]n its docket 05-US-113, Final Decision, the Wisconsin Commission adopted a 6-year data retention requirement for selected revenue accounts [and] adopted separate reporting in its ILEC annual report for selected revenue items to the extent necessary to allow the identification of assessable revenues

for remainder, intrastate telephone relay, and intrastate universal service (USF) assessments . . . ." Wisconsin Comments at 9.

Given that the record does not reflect a consensus need for these rules on a national basis, there is simply no basis for adopting federal regulatory requirements to meet individual state desires.

IV. The Burden Is On the Proponents of Additional Regulations to Prove, on a Rule-By-Rule Basis, Using Specific Evidence, That Such Regulations Are Necessary.

AT&T also argues that the Commission can "repeal or modify regulations only if two conditions are present: (1) the Commission finds that there exists 'meaningful economic competition' and (2) the Commission finds that 'as a result' of that 'meaningful economic competition' the existing regulation is 'no longer necessary in the public interest.'" AT&T Comments at 10-11; *see also* NASUCA Comments at 7 ("[i]t is thus only when 'meaning economic competition' exists that the Commission is allowed to determine that an accounting requirement is unnecessary"). AT&T's argument is without merit.

The Commission has already determined that it can go beyond Section 11 to eliminate accounting and reporting requirements. In its *Phase 2 Order*, the Commission found that it could – and should – eliminate regulatory requirements that serve no federal purpose *without* making any determinations about the existence of competition.

> We are not, however, limiting our analysis to whether meaningful economic competition exists and therefore rule changes may be justified under the standard in section 11. Instead, we are going beyond section 11 to determine whether our accounting rules should be revised and streamlined to serve the public interest and how we can revise these rules to have validity today. . . . [W]e have the inherent authority to consider at any time whether our rules should be repealed or modified; thus, we need not make a finding in this proceeding that meaningful economic competition exists in order to make rule changes.

Phase 2 Order ¶ 23. AT&T's arguments about whether there is meaningful economic competition are therefore completely irrelevant.[6]

Moreover, even under Section 11, the regulatory requirements at issue easily satisfy the Commission's test for elimination. The Commission has held that its obligation under Section 11 is to "reevaluate rules in light of current competitive market conditions to see that the conclusion [it] reached in adopting the rule – that [the rule] was needed to further the public interest – remains valid."[7] The increase in inter-modal and intra-modal competitors, all of which operate without these accounting requirements, provides *additional* support to eliminate the burden on incumbent carriers. *See, e.g.* Verizon Comments at 24, n.13; Joint Comments of BellSouth, SBC, Verizon, Qwest, Frontier, and CBT, CC 00-199, at 4-5, 16-17 (filed Apr. 8, 2002). Indeed, the Commission has already found that these regulatory requirements are no longer needed to further the public interest and it did so with knowledge of current competitive market conditions.

---

[6] For example, AT&T argues that "[t]he regulatory accounts, however, confirm that . . . there is not sufficient facilities-based competition to prevent the Bells from exercising market power over [special access] services." AT&T Comments at 6. As Verizon explained in its opposition to AT&T's petition to decrease special access rates, the category-specific returns reported in ARMIS "are entirely arbitrary and, as the Commission has warned, 'do not serve a ratemaking purpose.'" *AT&T Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Opposition of Verizon, at 21 (filed Dec. 2, 2002) (quoting *Policy and Rules Concerning Rates for Dominant Carriers*, Order on Reconsideration, 6 FCC Rcd 2637, at ¶ 199 (1991)).

[7] *See 2002 Biennial Regulatory Review*, 18 FCC Rcd 4726, ¶ 21 (2003), *affirmed, Cellco Partnership v. FCC*, No. 02-1262, 2004 U.S. App. LEXIS 2413, slip op. at 7 (D.C. Cir. Feb. 13, 2004).

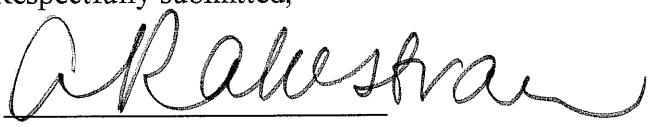
V. The Commission Should Promptly Suspend Implementation of Certain Phase 2 Accounting and Reporting Requirement Rule Changes until January 1, 2005

The Commission extended on an interim basis until June 30, 2004, the current suspension of the implementation of four accounting and reporting requirement rule modifications previously adapted by the Commission in its *Phase 2 Order*. *See Order* (rel. Dec. 23, 2003). All of the commenters that addressed this issue urged the Commission to extend the suspension until January 1, 2005. The Commission should promptly issue an order suspending implementation of the four accounting and reporting requirement rule modifications until January 1, 2005, in order to avoid unnecessary work as the current deadline approaches.

VI. Conclusion

The Commission should focus on the deregulatory purposes of the Act, and of Section 11 in particular, and eliminate accounting and ARMIS reporting regulations that are no longer "necessary" and serve no federal regulatory purpose.

Respectfully submitted,



Ann H. Rakestraw
1515 North Court House Road
Suite 500
Arlington, VA 22201
(703) 351-3174

Of Counsel
Michael E. Glover
Edward Shakin

James G. Pachulski
TechNet Law Group, P.C.
1100 New York Avenue, NW
Suite 365
Washington, DC 20005
(202) 589-0120

Counsel for Verizon

February 17, 2004