Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 (c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements	WC Docket No. 07-139

AT&T INC. REPLY COMMENTS

AT&T Inc. ("AT&T") respectfully submits its reply comments in the above-captioned proceeding.

I. INTRODUCTION

Every commenter to weigh in on AT&T's ARMIS Forbearance Petition (AT&T Petition) either explicitly or implicitly acknowledges that the original price cap monitoring rationale for the service quality, customer satisfaction, and network infrastructure reporting requirements at issue in this Petition no longer exists. Nearly twenty years of Commission experience with price caps – experience that put to rest the "theoretical concerns," that prompted the supposedly transitional ARMIS requirements at issue here -- establishes that fact. Thus, the original premise for the requirements having been dissolved by the passage of time and the effectiveness of price caps, the issue at present is whether any new and valid *federal* purpose exists that justifies the continuation of the *status quo* over AT&T's Section 10 challenge. AT&T has pointed out that no such rationale exists, and a number of commenters agree.

Five commenters, on the other hand, oppose AT&T's petition. Some argue that service quality and network reporting requirements remain necessary because of an ostensible lack of competition in local telephone markets. Others argue that these reports should be retained simply because they might be useful.[1] Neither of these arguments has merit. Those who continue to claim that competition is lacking in local telephone markets are simply blinding themselves to reality. LECs, such as AT&T, are losing access lines to intermodal and intramodal competitors every quarter. Those trends show no signs of abating. If LECs decide to compromise on service quality or on network investment, they will lose customers at an even faster pace. Equally important, the Commission has other means in place to monitor service quality. Wholly apart from ARMIS data, the Commission requires network outage reporting and has recently required AT&T and other Bell operating companies wishing to provide interstate interexchange services on a detariffed basis to file quarterly reports on special access service quality. The Commission also routinely monitors the number and nature of consumer complaints it receives, and, of course, its section 208 process is available to any entity that has reason to believe that AT&T has violated Commission rules. While opponents of forbearance acknowledge most of these other sources of information about service quality, they do not explain what purpose would be served by obtaining any additional data provided through ARMIS reports. Instead, they seem to proceed from the premise that more regulation is always better than less – a premise that cannot be squared with the deregulatory intent of the 1996 Act – in particular, section 10 of that Act. Because opponents of AT&T's petition have not offered any

[1] No commenter claimed that the Customer Satisfaction Survey reported in ARMIS 43-06 is necessary or useful, and no commenter claimed that it even looked at such data. Indeed, the Texas PUC specifically stated that it does not use this report. Texas PUC Comments at 3.

compelling reason to retain the twenty-year old reporting requirements that are the subject of AT&T's petition, the Commission is bound by law to forbear from enforcing these requirements.

II. ARGUMENT

A. The Transition Period For Which These Requirements Were Intended Has Long Since Expired.

In its petition, AT&T pointed out that the ARMIS reports that were the subject of its petition were intended to be *transitional*.[2] Specifically, as AT&T noted, the Commission adopted these reports "out of an abundance of caution" to address a "theoretical concern" that, contrary to expectations, price caps might cause local exchange carriers to cut back on service quality and investment in order to increase short-term profits.[3] It has now been 17 years since the Commission implemented those "transitional" reporting requirements. Nothing that has happened since that time warrants their retention. To the contrary, the Commission's predictive judgment in 1990 that incentive regulation would spur investment in infrastructure has been validated year after year. It is thus long past time that these "transitional" reporting requirements were eliminated.

Several commenters echo these sentiments. As USTelecom suggests, "the cautionary role of the ARMIS Reports is noticeably absent" today.[4] Similarly, Cincinnati Bell observes that the "reports have never been necessary to ensure that rates are just, reasonable, and nondiscriminatory" and were only intended, originally, to "serve as a 'safety net' to ensure that

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[2] In the Matter of 2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements, Notice of Proposed Rulemaking, 15 FCC Rcd 22113, 22116 (2000) ("*ARMIS 43-05 and 43-06 NPRM*") (emphasis added).

[3] See Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6828 (1990) (*Price Cap Order*).

[4] USTelecom's Comments at 3.

ILECs did not reduce service quality following the adoption of price cap regulation."[5] And Qwest notes that ARMIS service quality and infrastructure reporting is simply not necessary "sixteen years after the transition to price cap regulation for local exchange carriers . . . ."[6] Or, as Embarq put it, "[t]hese reports no longer serve any valid regulatory purpose" and are particularly suspect because they were only meant to "be transitory in nature yet they remain in place over seventeen years after adoption despite being largely unused today and for many years."[7]

These commenters also recognize what should be an unassailable proposition; *i.e.*, that there must be a limit to the amount of time the Commission needs to "monitor the effectiveness of price caps" and to address the "theoretical concerns" of some that the subject carriers would degrade service quality and not invest in infrastructure to reap short-term earnings under the caps. These commenters, and AT&T, have shown that the concerns have not borne out over the long years of waiting to see what would happen. It is time to move forward by recognizing the effectiveness of the price caps that these requirements were imposed to monitor.

No opponent of AT&T's Petition, save two (New Jersey Rate Counsel and NASUCA), argues that the Commission must continue monitoring the effects of price caps on service quality and infrastructure investment. Rather, they introduce new non-federal, state uses, in the main, to supplant the original rationale, and they tie these uses to shopworn arguments about AT&T's local exchange market dominance to justify the continuation of the *status quo*, or attempt to prop up the requirements for their own sake (*i.e.*, the monitoring of AT&T's service quality and infrastructure investment through ARMIS is a legitimate end unto itself).[8] As discussed below,

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[5] Cincinnati Bell's Comments at 2.

[6] Qwest's Comments at 2.

[7] Embarq's Comments at 1.

[8] The New Jersey Rate Counsel attempts to turn these non-federal rationales into a federal one by claiming a purported need to continue monitoring the effects of price cap regulation on service quality

these new, non-federal purposes provide no basis for retention of these requirements, much less the required "strong connection between what the [Commission] has done by way of regulation and what the agency permissibly sought to achieve with the disputed regulation."[9].

B. There is no Other Valid Basis for Retention of the ARMIS Rules.

While no serious argument can be made that the ARMIS reports at issue remain necessary to fulfill their original purpose, some commenters nonetheless argue that such reports should be retained because of a purported lack of competition in telecommunications markets. [10] These arguments misconceive the state of competition in telephony markets today and would not justify retention of ARMIS service quality and investment reports, even if they did not.

AT&T demonstrated in its petition that telecommunications services are subject to robust and growing competition and does not repeat that showing here. Suffice it to say, as USTelecom

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and infrastructure investment. Citing ILEC DSL and video service offerings, the New Jersey Rate Counsel laments that "price cap regulation has not eliminated ILECs' profit-motive," and claims that ILECs therefore have a "compelling profit motive to focus resources on unregulated ventures to the detriment of basic service." But, as the Commission recognized when it adopted price cap regulation, a main virtue of price cap regulation is that it aligns carriers' incentives to maximize earnings with cost-control and efficient, innovative behavior in order to bring about those earnings. Hence, it was only out of an abundance of caution to address mere "theoretical concerns" that the Commission established the new ARMIS reporting requirements at issue here on a transitional basis. Seventeen years of experience has shown beyond further doubt that these theoretical concerns regarding the effects of price cap regulation were unwarranted – as the Commission thought – and the New Jersey Rate Counsel's suggestion that the jury is still out on price caps is disingenuous at best.
NASUCA, in turn, points to service problems experienced by the former Ameritech operating companies in the late 1990s and alleged service problems experienced by Verizon to justify continued reporting requirements. NASUCA Comments at 5. Any service problems experienced by the former Ameritech operating companies eight years ago are hardly reason to retain reporting requirements today; nor are any alleged service problems experienced by Verizon relevant to an AT&T forbearance petition.

[9] *See* Cellular Telecommunications & Internet Association v. FCC 330 F.3d 501, 512 (D.C. Cir. 2003); *see also Petition for Forbearance from E911 Accuracy Standards*, WT Docket No. 02-377, Order, 18 FCC Rcd 24648, 24653 (2003) ("in this context, a requirement is 'necessary' for the protection of consumers if there is a strong connection between the requirement and the goal of consumer protection").

[10] NASUCA's Comments at 4; Michigan PSC's Comments at 3; New Jersey Rate Counsel's Comments at 10-19.

noted, that of the "close to 400 million lines and/or subscribers obtaining voice service from ILEC, CLEC or wireless providers," the largest share belongs to the wireless industry, "with nearly 220 million subscribers, while ILECs account for only 36% of the total."[11] Further, that 36% number is declining and will undoubtedly continue to decline as those who have abandoned their wireline service in favor of wireless service become a growing part of the country's consumer base. And, as USTelecom observed, citing the Commission's own numbers, "these numbers do not reflect the explosive growth in cable modem voice service," and, in fact, "the 9.5 million cable VoIP subscribers referenced in [AT&'T's] Petition that was filed just 2 months ago, has since increased to 10.8 million."[12] As a result of this intense and increasing competition, AT&T and other wireline LECs continue to experience access line decreases every quarter.

Under these circumstances, claims that wireline local exchange carriers will sit on their laurels and compromise on service quality in order to pocket inflated short-term profits is sheer nonsense. As Embarq notes, "today's competitive markets for telecom services diminish the threat that any provider could, or would want to, reduce service quality to increase short-term profits", and such inefficient behavior, thus, would make no sense "because the long-term losses from [competition] would more than outweigh any short-term gains."[13] Indeed, maintaining such reporting requirements, in the face of so much competition, not only is superfluous, but tends to skew the competitive landscape by asymmetrically burdening a few competitors with requirements that others do not share. Ultimately, this is a detriment – not a benefit – to consumers.

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[11] USTelecom's Comments at 5-6.

[12] *Id*. at 6.

[13] Embarq's Comments at 2.

Moreover, the speculation by opponents of AT&T's petition about possible incentives to reduce service quality flies in the face, not only of competitive realities, but the facts on the ground with respect to LEC service quality. Thus, as AT&T noted in its petition, the Commission's most recently Quality of Service Report, which is drawn directly from these ARMIS reports, confirms that service quality has remained very high..[14]

Beyond that, the Commission has other data sources for service quality information. Most notable in that regard are the Commission's network outage requirements, which the Commission recently extended to all communications providers that provide voice or paging communications.[15] Since these reports must be filed by all carriers, not just a handful of price cap LECs, they provide a far more complete picture of overall service quality than do the ARMIS reports. Moreover, the information required in them is more granular in most instances than in the ARMIS reports, and thus permits more in-depth analysis.

In addition to network outage reports, the Commission has recently required all BOCs, including AT&T, to file quarterly reports on special access service quality. Specifically, as a condition for obtaining tariff forbearance for interstate, interexchange services provided on an integrated basis, or through a non-section 272 affiliate, BOCs must file the reports that AT&T agreed to file in merger commitments made in connection with the SBC/AT&T and AT&T/BellSouth mergers. Moreover, the Commission has a well-publicized consumer affairs bureau that monitors telecommunications consumers' complaints. States have similar operations. Thus, even if one accepted the argument that a given number of wireline local exchange customers lacked effective competitive alternatives for telecommunications services,

[14] AT&T Petition at 10.

[15] In the Matter of New Part 4 of the Commission's Rules Concerning Disruption to Communications, 19 FCC Rcd 16830 ¶ 2 (2004).

there is no reason to conclude that such customers will not even *complain* about inferior service to the Commission or to state consumer bureaus. Customers also are free to avail themselves of the section 208 complaint process. This should alleviate the concerns of those commenters who believe that consumers need to have an outlet to voice dissatisfaction with AT&T or the services it provides them.

Commenters who argue for retention of existing ARMIS requirements do not explain why such requirements remain necessary, or even useful, in the face of these alternative sources of information about AT&T's service quality. Nor, importantly, do they explain how obtaining incomplete ARMIS data from AT&T and a handful of other price cap LECs effectively advances any legitimate regulatory goal. There is no valid consumer welfare or related benefit achieved by monitoring service quality for some voice service customers while ignoring, entirely, service quality for millions of other voice service customers.[16] Similarly, there is no plausible public interest or consumer welfare justification for monitoring infrastructure developments of a three-LEC slice of the wireline platform service pie while: (1) disregarding the rest of the wireline platform service pie (*i.e.*, CLECs and LEC non-filers); and (2) totally disregarding the other platforms (*e.g.*, wireless, cable telephony, VoIP) that numerous other voice service providers use to compete effectively with the very carriers whose infrastructure investments developments are being monitored.

[16] Even opposition commenters concede the merits of this view. *See* CWA's Comments at 2; NASUCA's Comments at 4.

C. Forbearance Is A Proper Vehicle for Relief.

AT&T's Petition establishes all the elements for Section 10 relief; it should be granted, as several commenters conclude.[17] Nevertheless, two commenters urge the Commission to deny AT&T's Petition on the grounds that statutory forbearance relief should be unavailable here, apparently as a procedural or even jurisdictional matter. CWA argues that, because all price cap ILECs must file the ARMIS reports at issue, there is no "justifiable rationale" for AT&T's "selective exemption" from these requirements.[18] The New Jersey Rate Counsel similarly contends that forbearance is inappropriate, because it validates a "piecemeal" approach to broad policy questions that should be settled through rulemaking.[19] These contentions do not comport with existing law and should be rejected.

AT&T's Petition was filed under section 10 of the Act. Section 10 imposes an express, mandatory duty upon the Commission to rule upon the petitions, including the petitions of individual telecommunications carriers, as is the case here.[20] As the Commission has been repeatedly reminded by the courts, "Congress enacted section 10 as a 'viable . . . means of seeking forbearance' from regulation, and the Commission has 'no authority to sweep it away' on the grounds that it would prefer to determine the appropriate regulatory treatment . . . through a different mechanism."[21]

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[17] *See* USTelecom's Comments at 1; Embarq's Comments at 1; Qwest's Comments at 1; Cincinnati Bell's Comments at 1.

[18] CWA's Comments at 1.

[19] New Jersey Rate Counsel's Comments at 3.

[20] 47 U.S.C. § 160 (c). *See AT&T Corp. v. F.C.C.*, 236 F.3d 729, 738 (D.C. Cir. 2001) ("Congress has established § 10 as a viable and independent means of seeking forbearance. . . . Section 10 broadly states that the Commission *will* forbear from applying any regulation or any provision of the Act *to a telecommunications carrier* . . . if certain statutory determinations are made") (emphasis added).

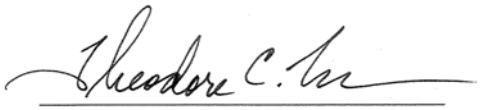
[21] *AT&T Inc. v. F.C.C.*, 452 F.3d 830, 836 (D.C. Cir. 2006) (quoting *AT&T Corp. v. F.C.C.*, 236 F.3d at 738).

Further, the "'availability of . . . an alternative route for seeking [forbearance] does not diminish the Commission's responsibility to fully consider petitions under [section] 10.'"[22] Thus, contrary to some commenters' suggestions, the fact that the individual carrier relief sought here may have broader potential impacts (*e.g.*, "me too" petitions, etc.) does not negate a carrier's procedural and substantive rights to pursue relief under Section 10. CWA's and the New Jersey Rate Counsel's positions, thus, are meritless.

III. CONCLUSION

For the foregoing reasons, and for the reasons provided in AT&T's Petition, the Commission should grant the Petition.

Respectfully submitted,



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[22] *AT&T Inc. v. F.C.C.*, 452 F.3d at 836 (quoting *AT&T Corp. v. F.C.C.*, 236 F.3d at 738).