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07-204

VIA OVERNIGHT MESSENGER

DOCKET FILE COPY ORIGINAL

November 12, 2007

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160 (c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements

WC Docket No. 07-____

Dear Ms. Dortch:

Enclosed find an original and four (4) copies of Frontier and Citizens' Petition for Forbearance in the above matter.

Please indicate your receipt of the above filing by date-stamping the enclosed photocopy of the cover letter and returning it in the post-paid return envelope I have provided.

Respectfully submitted,

Gregg C. Sayre
Associate General Counsel –
Eastern Region

GCS/hmj
Encl. (original + 4)

cc: Best Copy and Printing, Inc. (via overnight delivery)

CERTIFICATE OF SERVICE

I do hereby certify that I have this 12th day of November, 2007 served the following parties to this action with a copy of the foregoing **PETITION FOR FORBEARANCE** by hand delivery addressed to the parties listed below.

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160 (c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements.	)	**WC Docket No. 07-_____**

PETITION OF THE FRONTIER AND CITIZENS ILECS FOR FORBEARANCE

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Date: November 12, 2007

Before the
FEDERAL COMMUNICATIONS COMMISSION
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Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160 (c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements.	)	**WC Docket No. 07-_____**

PETITION OF THE FRONTIER AND CITIZENS ILECS FOR FORBEARANCE

Pursuant to 47 U.S.C. § 160(c) and 47 C.F.R. § 1.53, the Frontier and Citizens Communications Incumbent Local Exchange Telephone Carriers ("Frontier")[1], respectfully request that the Commission grant forbearance from certain outdated ARMIS reporting requirements that ceased many years ago to serve the regulatory purposes for which they were promulgated. Specifically, the Commission should forbear from its rules that require Frontier to file ARMIS Reports 43-05 (Service Quality Report) and 43-08 (Operating Data Report).[2] In this Petition, Frontier seeks similar relief[3] to that requested by AT&T Inc. in its June 8, 2007 Petition for Forbearance.[4] As will be shown below, these reports no longer have meaning in today's

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1 Frontier operates in 24 states and on a consolidated basis is a mid-sized Incumbent Local Exchange Carrier ("ILEC"). The Frontier and Citizens Communications ILECs are wholly owned by Citizens Communications Company (NYSE: CZN).

2 The rules that are the subject of this Petition are 47 C.F.R. §§ 43.21(g)-(j).

3 AT&T also petitioned for forbearance from the requirement to file ARMIS Reports 43-06 (Customer Satisfaction Report) and 43-07 (Infrastructure Report). Frontier does not file these forms. Otherwise, Frontier requests the same forbearance requested by AT&T. Frontier supports the further forbearance requested by AT&T.

4 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 (filed June 8, 2007). The Commission established dates for the submission of comments and reply comments on AT&T's Petition on August 20 and September 19, 2007 respectively. Public Notice, Pleading Cycle Established for AT&T Inc. Petition on Behalf of Its Incumbent LEC Affiliates Seeking Forbearance from Enforcement of Certain Reporting Requirements, WC Docket No. 07-139, DA 07-3332 (July 20, 2007).

regulatory and competitive environment, are redundant because similar data are gathered in other ways by the Commission and the states, and take 400 hours to gather, compile and prepare.

INTRODUCTION AND SUMMARY

The Communications Act mandates that the Commission "shall" forbear from applying a regulation if (1) enforcement of the regulation is not necessary to ensure just and reasonable rates; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest. 47 U.S.C. § 160(a). These statutory prerequisites are plainly satisfied for the two categories of ARMIS reports that are the subject of this petition: Reports 43-05 and 43-06 (quality of service), and 43-07 and 43-08 (infrastructure investment).

None of these burdensome and anachronistic reporting requirements has any remaining connection, much less the required "strong connection,"[5] to the transitory regulatory goals the Commission sought to achieve in 1990 when it acceded to requests for *temporary* reporting and monitoring safeguards in response to purely theoretical – and, in the Commission's view, almost certainly misguided – objections to its new price cap regulations. In the many years that have followed, experience has confirmed beyond doubt that price caps and the powerful market forces that appropriately discipline the behavior of all providers in today's robustly competitive marketplace work precisely as the Commission expected, obviating any conceivable justification for continuing to impose these onerous ARMIS reporting requirements on a small subset of ILECs and on *none* of their cable, CLEC, wireless or other competitors. The Commission recognized as much nearly seven years ago when it proposed to repeal or gut the bulk of the reporting requirements at issue here, and, as demonstrated below, both the statute and the public interest require that the Commission now grant the forbearance requested here.

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[5] *See Cellular Telecommunications & Internet Association v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

The Commission instituted the ARMIS reporting system in the late 1980's to facilitate rate-of-return regulation. The Bell System had just divested its local exchange companies, which at the time were still legally protected monopolies. In the wake of divestiture and the accompanying equal access requirements, the Commission for the first time was required to regulate ILECs' interstate access services sold to unaffiliated long distance carriers. Accordingly, the Commission developed detailed new rules to govern the accounting treatment of LEC costs, the allocation of joint and common costs among regulated and nonregulated activities, and rate-of-return regulation of the LECs' access rates. This new regulatory regime, founded on cost-of-service regulation, required the Commission routinely to review massive amounts of cost data from the carriers, broken down into numerous accounting categories and traced through to numerous access rate elements. The Commission adopted the financial ARMIS Reports to automate the process of reviewing these detailed cost showings and to facilitate these rate-of-return ratemaking functions.

The ink was barely dry on the first ARMIS reports, however, when the Commission eliminated their *raison d'etre*. In 1990, the Commission substantially abandoned rate-of-return regulation and replaced it with a price cap regime that ultimately severed the link between the LECs' interstate rates and the detailed cost information that the LECs reported in ARMIS. This presented the question of what to do with this elaborate but now largely superfluous reporting scheme. Even in 1990, the Commission acknowledged that ARMIS's detailed cost data would not be used in the price cap regime and were no longer necessary to any ratemaking function, but it decided to retain the reporting requirements out of an abundance of caution to monitor the LECs' performance during the transition to price caps.[6] And, to further monitor the transition to

[6] Although Frontier also believes that ARMIS Reports 43-01, 43-02 and 43-03 are likewise no longer necessary, Frontier is not seeking forbearance from those financial reporting requirements in this Petition.

price caps, the Commission added the two additional categories of ARMIS reports that are the subject of this forbearance petition, which deal with service quality and infrastructure investment.

The service quality reports are 43-05 and 43-06. Frontier files only Report 43-05, not 43-06. Report 43-05 consists of six tables, including Table I - Installation and Repair Intervals (Interexchange Access); Table II - Installation and Repair Intervals (Local Service); Table III - Common Trunk Blockage; Table IV - Total Switch Downtime; Table IV-A - Occurrences of Two Minutes or More Duration Downtime; and Table V - Service Quality Complaints. Report 43-06 collects data from surveys of residential and business customers to determine the percentage of "dissatisfied customers."[7] When it adopted price caps, the Commission predicted that the new system would result in *increased* innovation and service quality.[8] It adopted these reports, however, out "an abundance of caution" to address a "theoretical concern" that price cap LECs might reduce service quality to increase short-term profits.[9] The Commission has recently conceded that these Reports were intended merely "as part of our *transition* to price cap regulation."[10]

The two infrastructure reports are 43-07 and 43-08. Frontier files only Report 43-08, not 43-07. Report 43-07 – which is filed only by AT&T, Verizon, and Qwest – contains information on switches, including number, type and capability (*i.e.*, SS7 and ISDN), and information on transmission facilities, including sheath kilometers, interoffice working facilities, loop plant-

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[7] *See Policy and Rules Concerning Rates for Dominant Carriers*, Memorandum Opinion and Order, *supra*, at 6828.

[8] *See, e.g., Price Cap Recon. Order*, 6 FCC Rcd. 2637, ¶ 178 (1991).

[9] *See Price Cap Order* ¶¶ 335-36.

[10] Notice of Proposed Rulemaking, *In the Matter of 2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, 15 FCC Rcd. 22113, ¶ 8 (2000) ("*ARMIS 43-05 and 43-06 NPRM*") (emphasis added).

central office terminations and other transmission facility data.[11] Report 43-08 provides statistical data covering carriers' outside plant, access lines in service by technology and by customer, number of telephone calls and billed access minutes. Here again, the Commission predicted that "incentive regulation will encourage LECs to develop their infrastructure and promote innovation through the introduction of new service offerings."[12] Nonetheless, the Commission adopted these reporting requirements to "monitor network investment and development" and "to ensure that the current high standards are maintained and improved."[13]

None of the stated rationales for these reporting requirements has any force today. It has now been *seventeen years* since the Commission substantially ended rate-of-return regulation and instituted the price cap system. The initial, transition period is long over; the Commission has now had almost two decades of experience with the price cap regime. The Commission's predictive judgments in 1990 that incentive regulation would increase service quality and spur investment in infrastructure have been consistently proven correct year after year. Indeed, there was never any reason to require these reports except to guard against the relatively remote possibility that price cap regulation might not work out as intended when applied to incumbent LECs. None of those "theoretical" harms ever materialized, and after seventeen years there is no continuing reason to monitor the "transition" to price caps.

Equally important, the competitive landscape in the telecommunications market has changed dramatically, and all ILECs including Frontier face vastly greater competition today than they did when the Commission imposed these reporting requirements. As of June 30, 2006,

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[11] *See Policy and Rules Concerning Rates for Dominant Carriers*, Memorandum Opinion and Order, *supra*, at ¶ 25. Much of the information on switching is obsolete. Carriers are also required to report information on ISDN capability, even though ISDN is a declining product and customers are using other, newer technologies.

[12] *Price Cap Order* ¶ 351.

[13] *Id.* ¶¶ 352-53.

according to Commission data, there were over *217 million* wireless subscribers, compared to 92,000 at divestiture.[14] Cable telephony competes fiercely against traditional wireline carriers, and residential cable telephone subscribership increased from 1.5 million in 2001 to 9.5 million by the end of 2006.[15] The Internet has radically transformed telecommunications markets since the early 1990's, and interconnected VoIP providers had gained 4.2 million subscribers by the end of 2005.[16] In addition, numerous competitive local exchange carriers in the intervening years have built extensive facilities-based networks that compete vigorously with incumbent LECs' access services. Accordingly, it is this robust competition – not ARMIS service quality and infrastructure reporting requirements – that protects consumers and ensures that rates are just and reasonable. And, as this competition has arisen, the ARMIS reporting requirements have become more and more unbalanced, because they apply only to a small segment of the market – the large ILECs – while these ILECs' many competitors file no ARMIS reports at all.

The requested forbearance will in no way deprive the Commission of industry information that it needs to fulfill its duties. The information reported by a relative handful of carriers in these outdated ARMIS reports was never designed to serve any of the Commission's ongoing policies or initiatives, and the Commission does not, in fact, use that information in any systematic or meaningful way today. Moreover, the Commission and the state regulatory agencies obtain detailed industry network infrastructure and service quality data that actually is

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[14] *Trends in Telephone Service, Industry Analysis and Technology*, at 11-1, Table 11.3.

[15] *See* National Cable & Telecommunications Association's (NCTA's) "Residential Telephony Customers, 2001-2006" statistics at NCTA's website, at http://www.ncta.com. *See also* UBS Investment Research, *Telecommunications and Cable Services*, Report, 4 April 2007 (predicting "cable VoIP adds to continue to accelerate in 2007," going from 3.2 million in 2006 to 4.5 million in 2007).

[16] *See Universal Service Contribution Methodology, et al.*, WC Docket Nos. 06-122, *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, at ¶19 (footnote citation omitted) (*Universal Service Contribution Methodology Proceedings*). Forecasts cited by the Commission in the *Universal Service Contribution Methodology Proceedings* predict growth in residential VoIP subscribership to reach 19 million by the end of 2009. *See id.*, n. 78.

tailored to support current policies and initiatives independently through a number of other reporting requirements.[17] The Commission receives carrier-specific data on service outages from all carriers through its Part 4 rules. And all facilities-based providers submit detailed data on lines, revenues, and deployment in Form 477.

The service quality data required by Report 43-05 substantially duplicate, in inconsistent and burdensome ways, the service quality data reporting required by almost all states in which Frontier provides local exchange services.[18] It makes no policy sense to require the same categories of data to be collected and presented in different ways, particularly where the agencies most concerned with monitoring and assuring customer service have their own independent requirements. In the handful of states in which affirmative, detailed service quality reporting is not required for Frontier,[19] each state commission has a process to investigate and resolve any service quality complaints in a manner that is far more targeted and effective than referring to data on Form 43-05 that is more than a year old.

The additional costs incurred by Frontier to provide data in Form 43-05 that are similar but burdensomely different from the service quality data used by state regulators, and data in Form 43-08 that add nothing to Form 477, exceed $25,000 annually. These costs consist of engineering and regulatory employee time totaling approximately 400 hours, the equivalent of 10 full-time weeks of work.

The remainder of this petition further demonstrates that the three-part test for forbearance is met for the two categories of ARMIS reports at issue. These reports are not necessary to

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[17] For example, AT&T (and Verizon) provide detailed *quarterly* reports of their interstate service quality pursuant to Service Quality Management Plans adopted as conditions of their recent mergers.

[18] The Frontier states requiring service quality reporting are Alabama, California, Florida, Georgia, Iowa, Illinois, Indiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, New York, Ohio, Oregon, Pennsylvania, Tennessee, Wisconsin and West Virginia.

[19] Arizona, New Mexico, Nevada and Utah.

ensure just and reasonable rates – and were never designed to serve that purpose. Nor are they necessary to protect consumers. Competition, coupled with price caps and the Commission's other rules, fully protect consumers and drive carriers to improve their service and infrastructure. And in today's competitive marketplace, it is contrary to the public interest to require a small, arbitrarily selected number of carriers to file absurdly detailed service and infrastructure data reports, when their competitors are not required to make such filings at all.

Indeed, as explained below, rather than retaining outdated ARMIS reports, the Commission should use existing Form 477 to collect network infrastructure information that is necessary to carry out current policies and initiatives from *all* providers. The only way to gather such comprehensive industry-wide data on infrastructure deployment – including broadband deployment and special access facilities – is to use the Form 477, which is already required of all providers. Form 477 already collects much data at a more granular level than ARMIS and should be sufficient for the Commission's purposes. In a market that is dominated by cable providers, wireless carriers, and VoIP providers, the Commission cannot expect to fashion any meaningful policies addressing the issues that currently face the industry on the basis of reports filed only by a few ILECs. The Commission should forbear from the ARMIS 43-05 through 43-08, and use Form 477 to obtain relevant infrastructure and operating information from all facilities-based competitors.

ARGUMENT

Section 10(a) of the Act provides that "the Commission shall forbear from applying any regulation or any provision of the Act . . . if the Commission determines that (1) enforcement . . . is not necessary to ensure that the charges . . . are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement . . . is not necessary for the protection of

consumers; and (3) forbearance . . . is consistent with the public interest." 47 U.S.C. § 160(a). Once all three prongs of Section 10(a) have been met, the Commission *must* forbear from enforcing the regulation at issue. Regulatory requirements are not "necessary" for purposes of Section 10(a)(1) and 10(a)(2) unless there is a "*strong connection* between what the [Commission] has done by way of regulation and what the agency *permissibly sought to achieve* with the disputed regulation."[20] Under these standards, Frontier's Petition must be granted if the ARMIS reporting regulations at issue do not demonstrably achieve, by way of a "strong connection," the regulatory goals the Commission sought to implement with those reporting requirements. *A fortiori*, where, as here, the purposes of the rules were long ago mooted by fundamental regulatory and marketplace changes, there is no "strong connection" and the Petition should be granted.

A. ARMIS Report 43-05.

The Commission should forbear from requiring Frontier to file ARMIS Report 43-05, which implements service quality and customer satisfaction measures that the Commission adopted on an interim basis nearly two decades ago to monitor its then-new price cap regulations.[21] This Report is outmoded, redundant, and "no longer make sense in today's marketplace" – which is why the Commission proposed seven years ago to "eliminate the bulk of" Report 43-05.[22]

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[20] *CTIA*, 330 F.3d at 512 (emphases added); *see also Petition for Forbearance from E911 Accuracy Standards*, 18 FCC Rcd at 24644 ("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").

[21] ARMIS Report 43-05 requires carriers to track "more than 30 different measures of service quality," principally in five categories: "(1) installation and repair intervals for interexchange carriers; (2) installation and repair intervals for local service customers; (3) trunk blockage; (4) total switch downtime and occurrences of two minutes or more duration; and (5) federal and state service quality complaints." *ARMIS 43-05 and 43-06 NPRM* at ¶ 14. ARMIS Report 43-06, which Frontier does not file, requires carriers to conduct detailed "customer satisfaction surveys," which are then used to report "information concerning the number of dissatisfied customers." *Id.*

[22] *ARMIS 43-05 and 43-06 NPRM* ¶¶ 2, 42.

ARMIS Report 43-05 has long outlived its original – and very limited – purposes. This report was not included in the Commission's initial set of ARMIS reports, but was adopted in 1990 out of "an abundance of caution" to address a purely "theoretical concern" that arose when price caps were initially adopted: the Commission predicted that price caps would result in increased innovation and service quality, but it recognized that it could not predict "with certainty" how price cap LECs would respond to this new type of regulation.[23] In order to monitor the hypothetical possibility that price cap LECs might reduce service quality to increase short-term profits, the Commission adopted an additional "safety net" of service reporting requirements, including reports that were later integrated into ARMIS and are now known as ARMIS Reports 43-05 and 43-06.[24] As the Commission recently acknowledged, these Reports were intended to endure merely "as part of our transition to price cap regulation."[25]

Price caps have existed for nearly 20 years and the Commission's substantial experience proves that price caps work as predicted, that price cap-regulated carriers have no incentive to sacrifice quality to increase short-term profits, and that these carriers, like all providers in today's robustly competitive marketplace, are forced by competition to constantly improve service quality. Notably, the conclusions of the Commission's most recent Quality of Service Report, which is drawn directly from ARMIS Reports 43-05 and 43-06, confirms that service quality has not only remained very high, but is rapidly improving: over a six year period since 2000, virtually all of the reported service quality measures indicate "long-term improvement," particularly for large incumbent LECs, which have experienced a 16.1% annual decrease in customer complaints, an annual decrease in installation intervals by 7.4%, a trouble report rate

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[23] *Price Cap Order* ¶¶ 334-35; *Price Cap Recon Order* ¶ 179.

[24] *See Price Cap Order* ¶¶ 335-36.

[25] *ARMIS 43-05 and 43-06 NPRM* ¶ 8.

that has decreased annually by 3.7%, and switch outages that have decreased annually by 13.2%.[26] The monitoring "safety net" provided by ARMIS Report 43-05 is plainly no longer necessary. Indeed, in hindsight, given the effectiveness of price caps and of competition in creating appropriate incentives to provide high quality service, this ARMIS Report has *never* been necessary to ensure reasonable rates or to protect consumers.

As to the former, ARMIS Report 43-05 was never designed to ensure that rates are just, reasonable and nondiscriminatory; indeed, there is no connection, much less the required "strong connection," between the Report and that regulatory purpose.[27] Nor is this Report remotely necessary to protect consumers in any other sense. The Commission's sole concern that led to the adoption of the two service quality reports, Reports 43-05 and 43-06 – that price caps would lead carriers to sacrifice service quality in order to achieve short-term profits – was never more than a "theoretical" one.[28] And, in practice, the Commission's prediction – that price caps and competition would together provide ample incentives for carriers to provide high quality service – turned out to be entirely accurate. It can no longer be said that Report 43-05 is "necessary" to ensure service quality because years of experience have shown that price cap regulation does not lead carriers to sacrifice service quality.

Indeed, when the Commission proposed eliminating most of this ARMIS Report in 2000, it acknowledged that much of the information collected in Reports 43-05 and 43-06 is "technical

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[26] Quality of Service of Incumbent Local Exchange Carriers, Industry Analysis and Technology Division, Wireline Competition Bureau, § 1.2, February, 2007. Although the data indicate that repair intervals increased in 2005, the report states that "[w]eather related problems" (such as Hurricane Katrina) "were of particular note in 2005 and may have been a factor in the length of repair intervals for that year." *Id.*

[27] 47 U.S.C. § 160(a)(1); *CTIA*, 330 F.3d at 512.

[28] *Price Cap Order* ¶ 334.

in nature and may not be easily translated by consumers."[29] And even if consumers undertook the effort to interpret ARMIS service quality information, the Commission has acknowledged that it is of "limited use to consumers," because ARMIS Reports apply only to certain incumbent LECs and consumers therefore "do not have access to comparable information for all carriers in their area."[30] Rather than expecting consumers to wade through technical ARMIS Reports, consumers' interests in receiving high-quality services are far better protected through the incentives created by the price cap mechanisms themselves and, most importantly, by competitive market forces. Since ARMIS Reports 43-05 and 43-06 were first required in 1990, the level of competition in providing local services has exploded. Today, consumers can obtain competitive services from a wide array of providers, including competitive wireline carriers, wireless, cable telephony, and Internet providers. The availability of alternative providers ensures that consumers will obtain high quality service at reasonable prices.[31] ARMIS Report 43-05 provides no similar consumer benefits.

Forbearance from collecting this ARMIS Report is also "consistent with the public interest."[32] As the Commission admitted in 2000, ARMIS Reports 43-05 and 43-06 as currently configured impose significant regulatory burdens on carriers.[33] Yet, only a subset of carriers –

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[29] *ARMIS 43-05 and 43-06 NPRM* ¶ 14. This is significant because ARMIS Reports 43-05 and 43-06 are used solely for monitoring purposes; the Commission – wisely – declined to impose any national service quality standards. *Price Cap Recon Order* ¶¶ 191-92. It is simply not possible to conclude that the ARMIS Reports are "necessary" to ensure consumers can monitor carriers for low quality service when the Reports are not "easily translated by consumers."

[30] *ARMIS 43-05 and 43-06 NPRM* ¶ 10.

[31] *ARMIS 43-05 and 43-06 NPRM* ¶ 11 ("As the telecommunications market grows more competitive, the need for companies to provide good service to attract and keep customers should serve as an incentive to maintain high quality service"); *Price Cap Recon Order* ¶ 178 (LECs "must provide high quality service or their large customers will complain or will find other service providers").

[32] 47 U.S.C. § 160(a)(3).

[33] *ARMIS 43-05 and 43-06 NPRM* ¶ 1 (proposing to "eliminate reporting of many categories of information and thereby significantly reduce the regulatory burden for carriers").

wireline price cap local exchange carriers – is forced to incur these burdens.[34] It would certainly "enhance competition among providers of telecommunications services" (47 U.S.C. § 160(b)) if all providers of telecommunications services were on equal footing with regard to reporting requirements for service quality and customer satisfaction. Accordingly, forbearance from collecting ARMIS Report 43-05 would also serve the public interest.

For all of these reasons, forbearance here is warranted even if there were not other sources of information on service quality. But in fact, the Commission has other data sources for service quality information – which makes ARMIS Report 43-05 redundant and the case for forbearance even stronger. Most notably, the Commission recently extended and simplified its rules regarding mandatory outage reporting so that they "include all communications providers (cable, satellite, and wireless providers, in addition to wireline providers" that provide voice or paging communications.[35] Compared to Report 43-05, which applies only to the handful of price cap local exchange carriers, these outage reports encompass a far more comprehensive set of carriers, and could be used by the Commission to assess service quality offered by a far wider number of service providers. Further, in many cases, such alternative sources of data offer more granular data than is available through the ARMIS report. As discussed above, the large majority of states in which Frontier provides local exchange services require detailed service quality reporting. Requiring Frontier to collect and provide the same categories of data in a different format for Federal regulatory purposes is burdensome and unnecessary.

B. ARMIS Report 43-08.

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[34] *See ARMIS 43-05 and 43-06 NPRM* ¶ 29.

[35] *In the Matter of New Part 4 of the Commission's Rules Concerning Disruption to Communications*, __ FCC Rcd. ___, ¶ 2 (2004).

The Commission should also forbear from requiring Frontier to file ARMIS Report 43-08, the Operating Data Report, which "collect[s] information about the physical and operating characteristics of the incumbent local exchange carriers" and their networks.[36] ARMIS Report 43-08, too, was created to assist the Commission in a regulatory mission that is no longer needed in light of experience with price cap regulation and increased competition – in this case, to monitor for network "degradations" and "outmoded network capabilities."[37] Because of market forces and the incentives created by the switch from cost-of-service to price cap regulation, there have been such extraordinary capital investments in the network over the past 20 years that the Commission acknowledged in 2001, nearly six years ago, that "there may be no need to collect [network infrastructure] data in the long term."[38] In fact, any attempt to rely on ARMIS Report 43-08 to obtain an accurate picture of the nation's network infrastructure is fundamentally flawed, for the Report applies "only [to] one class of competitors,"[39] even though wireline competitors and other service providers have deployed significant facilities in recent years. Frontier therefore urges the Commission not only to forbear from collecting the flawed ARMIS Operating Data Report but to move forward with its longstanding proposal to require reporting of network infrastructure information that *is* relevant to current Commission policies in today's marketplace on a comprehensive basis from *all* facilities-based carriers in Form 477, which would provide a far more accurate and granular assessment of network infrastructure and of the robust competition that has resulted from providers' investments.

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[36] The ARMIS Operating Data Report contains statistical data on the operating characteristics of the LECs' networks, including outside plant, access lines in service by technology and by customer, number of telephone calls, and billed access minutes. *Phase II Report & Order* ¶ 178.

[37] Notice of Proposed Rulemaking, *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 and Phase 3*, 15 FCC Rcd 20568, ¶ 65 (2000).

[38] *Phase II Report and Order* ¶ 160.

[39] *Id.* ¶ 206.

There is no "strong connection" between Report 43-08 and the Commission's stated goal of promoting network investment. Like ARMIS Report 43-05, Report 43-08 was adopted when the Commission implemented price cap regulation and was intended to allow the Commission to determine whether its expectation that price caps would stimulate innovation was true in practice.[40] The Commission predicted that "incentive regulation will encourage LECs to develop their infrastructure and promote innovation through the introduction of new service offerings."[41] The Commission also recognized, even at this time, the powerful role that competition plays in encouraging appropriate investment in network infrastructure: "Further, where access competition has begun to emerge, LECs have rapidly upgraded their networks and implemented advanced technologies. At present, alternative access vendors are active in many areas; private networks can bypass LEC services; interexchange carriers can construct their own facilities farther into the local network. In such a market-place, where alternatives exist, if LECs fail to provide good service quality and invest in advanced technology to keep their network at the technological forefront, the market will punish them through a loss of demand."[42] Although the Commission was confident that price caps and competition would spur network development, the Commission required carriers to file ARMIS Report 43-07 (and one year later ARMIS Report 43-08) to "monitor network investment and development" in the wake of price cap regulation and "to ensure that the current high standards are maintained and improved."[43]

The Commission's experience since 1991 demonstrates unequivocally that incumbent LECs will invest in network infrastructure because competition demands it. Since price caps,

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[40] *Price Cap Order* ¶ 351-55 (discussing 43-07). ARMIS Report 43-08 was adopted a year later, in 1992. *See In the Matter of Revision of ARMIS USOA Report (FCC Report 43-02) For Tier 1 Telephone Companies*, 7 FCC Rcd. 1083, ¶10 (1992)

[41] *Price Cap Order* ¶ 351.

[42] *Id.* ¶ 355.

[43] *Id.* ¶¶ 352-53.

incumbent and competitive carriers alike have made an unprecedented level of investment to improve their networks so that they can offer consumers innovative new services.

ARMIS Report 43-08 plainly is not necessary to ensure reasonable and nondiscriminatory rates or to protect consumers. Competition will ensure that carriers offer new, innovative, pro-consumer services at reasonable rates set by market forces – like Frontier's broadband and video services.[44] Indeed, even as far back as 1991, the Commission recognized that, by "support[ing] the development of competition," it would encourage carriers to innovate[45] and provide them "with the opportunity to continue their efforts to modernize the communications infrastructure and to maintain a level of investment which will lead to the implementation of an intelligent, interconnectable, broadband public network."[46] Whatever the benefits were in the past from the Commission's use of ARMIS Report 43-08 to monitor network investments, the Report provides no such benefits now. Market forces are far more effective at stimulating investment in technologies – as Congress recognized in Section 706, when it directed the Commission to use "regulatory forbearance" and other tools to remove barriers to infrastructure development. Consistent with the directive, the Commission should forbear from outdated regulatory requirements like ARMIS Report 43-08, which does nothing to ensure reasonable rates or to protect consumers.

Forbearance from collecting this ARMIS Report is also consistent with the public interest because it will ultimately allow the Commission to gain a more complete view of network infrastructure by all carriers, and not merely the investments made by the small segment of

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[44] Frontier offers its customers video programming services through resale of EchoStar Satellite L.L.C.'s DISH Network services.

[45] An example of Frontier's innovation is its 2006 offer of a free computer to customers buying Frontier's High-Speed Internet service, thus expanding the usability, not just the availability, of broadband Internet access.

[46] *Price Cap Order* ¶ 355.

carriers that file ARMIS Report 43-08. In its most recent *Order* and *NPRM* regarding ARMIS Reports 43-07 and 43-08 – issued years ago – the Commission acknowledged that "there may be no need to collect [network infrastructure] data in the long term" and that ARMIS data from these Reports could be useful, if at all, only "in the short term" as a way for the Commission to make additional public policy judgments regarding, for example, where and when to pursue further de-regulation that would spur additional network investment.[47]

In this regard, while there is no longer any justification to collect incomplete and highly aggregated network infrastructure data from a small subset of carriers merely to "monitor" their demonstrated incentives to invest heavily in their networks, the collection of different network infrastructure data tailored to today's marketplace and regulatory priorities from all facilities-based local and broadband providers plainly would serve the public interest. The Commission could use such information, for example, to assess the level and scope of competition in particular markets so that it can rapidly pursue much-needed additional deregulatory initiatives with full knowledge of competitive conditions. As the Commission has recognized, however, ARMIS Report 43-08 does not serve these public interest goals, because it fails entirely to take account of the significant network investment in new technologies made by other providers, including small incumbent carriers, competitive wireline carriers, wireless providers, cable telephony providers, VoIP providers, and others, *none* of which file ARMIS Reports. In recognition of these deficiencies in ARMIS reports, the Commission concluded in 2000 that, [t]o the extent the Commission is concerned with monitoring the development of [newer] technologies, it may be more appropriate for the Commission to collect the appropriate

[47] *Phase II Report and Order* ¶ 160 (suggesting that ARMIS data could be useful in the short term to "evaluate the effects of public policy choices" and to "calibrate our actions").

information comprehensively."[48] Forbearance from collecting ARMIS Report 43-08 represents a critical step in eliminating "detailed accounting and reporting requirements on only one class of competitors" and thereby "promot[ing] competitive market conditions" (47 U.S.C. § 160(b)) by ensuring that the Commission has a complete, accurate, and detailed assessment of the network infrastructure for all carriers.[49]

Significantly, the Commission's Local Competition and Broadband Data Gathering Program, which uses Form 477, provides a ready vehicle for the Commission to use in collecting any necessary network infrastructure data.[50] The Commission in 2001 proposed to replace ARMIS Reports 43-07 and 43-08 with data to be collected in Form 477,[51] and to use Form 477 to collect such network infrastructure data provides several advantages over the reliance on ARMIS Report 43-08.

First and foremost, Form 477 requires "*all* facilities-based providers of broadband connections to end users to report broadband data, *all* local exchange carriers to report local telephone service data, and *all* mobile telephone carriers to report mobile telephone data."[52] In so doing, today's Form 477 avoids the exclusion of whole categories of providers, which necessarily understates the amount of competitive activity in the marketplace and renders a thorough understanding of marketplace dynamics impossible.[53] For example, the Commission

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[48] *Id.* ¶ 167.

[49] *See id.* ¶ 206 ("as formerly distinct sectors of the communications industry continue to converge, there is reason to reexamine the justifications for imposing detailed accounting and reporting requirements on only one class of competitors")

[50] Form 477, which has been in use since 2000, is already used to collect information "about two critical areas of the communications industry: the deployment of broadband services and the development of local telephone service competition." *Broadband Reporting Order* ¶ __.

[51] *Phase II Report and Order* ¶ 211.

[52] *Broadband Reporting Order* ¶ 8.

[53] *See, e.g., Data Gathering Order.* ¶¶ 29-30 ("we cannot get a reasonably accurate picture of the status of local competition from incumbent-provided information alone")

has previously stated that ARMIS Report 43-08 provides data for monitoring network growth, usage and reliability for the delivery of advanced and high-speed services. Yet, the cable modem providers that actually lead this segment of the telecommunications industry do not provide this ARMIS Report to the Commission at all, which means that reliance on ARMIS Report 43-08 will provide a grossly inaccurate view of broadband network investment.

Likewise, a recent GAO report on special access competition found serious flaws in existing data on competitors' last-mile facilities and concluded that the Commission requires a more complete source of data on special access competition.[54] Form 477 would provide an appropriate vehicle for the Commission to obtain such information and thereby gain a more complete understanding of competition for special access, broadband, and other services.

Form 477 also provides far more precision in data gathering than ARMIS Report 43-08. For ARMIS Report 43-08, reporting is made at the operating company level.[55] By contrast, when filing Form 477, carriers are required to report technology-specific lists of the Zip Codes where they have at least one connection in service.[56] Frontier believes that there is no need to make reporting for Form 477 even more granular.

Form 477, unlike ARMIS, reflects present realities and is more suited to a time in which in which competition – not regulation – drives investment and access, and where consumer demand drives innovation and determines what is offered. Replacement of ARMIS Report 43-08 with Form 477 is long overdue: the Commission's proposal has been pending since 2001, and forbearance from collecting the ARMIS Report would provide the appropriate spur to a more

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[54] *See* Letter of Gary L. Phillips, AT&T, and Bennett L. Ross, BellSouth, to Marlene Dortch, WC Docket No, 06-74, at 1, 5 (Dec. 7, 2006).

[55] *Phase II Report and Order* ¶ 14.

[56] *Broadband Reporting Order* ¶ 18.

comprehensive approach using Form 477 that would require all carriers to report on their network infrastructure, allowing the Commission to gauge competition far more accurately.

CONCLUSION

For the foregoing reasons, Frontier respectfully requests that the Commission forbear from requiring Frontier to submit ARMIS reports 43-05 and 43-08.

Respectfully submitted,

FRONTIER AND CITIZENS ILECS

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Date: November 12, 2007

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VIA OVERNIGHT MESSENGER

November 12, 2007

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160 (c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements

WC Docket No. 07-____

Dear Ms. Dortch:

Enclosed find an original and four (4) copies of Frontier and Citizens' Petition for Forbearance in the above matter.

Please indicate your receipt of the above filing by date-stamping the enclosed photocopy of the cover letter and returning it in the post-paid return envelope I have provided.

Respectfully submitted,

Gregg C. Sayre
Associate General Counsel –
Eastern Region

GCS/hmj
Encl. (original + 4)

cc: Best Copy and Printing, Inc. (via overnight delivery)

CERTIFICATE OF SERVICE

I do hereby certify that I have this 12th day of November, 2007 served the following parties to this action with a copy of the foregoing **PETITION FOR FORBEARANCE** by hand delivery addressed to the parties listed below.

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Best Copy and Printing, Inc.
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Holly M. James
Legal Assistant