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

In the Matter of	)	
	)	
Petition of Verizon For Forbearance Under	)	WC Docket No. _______
47 U.S.C. § 160(c) From Enforcement of	)	
Certain of the Commission's	)	
Recordkeeping and Reporting	)	
Requirements	)	

PETITION OF VERIZON FOR FORBEARANCE

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PETITION OF VERIZON[1] FOR FORBEARANCE

I. INTRODUCTION AND SUMMARY

Pursuant to 47 U.S.C. § 160(c) and 47 C.F.R. § 1.53, Verizon respectfully petitions the Commission for forbearance from certain of its recordkeeping and reporting requirements.[2] Developed under rate-of-return regulation, the recordkeeping and reporting requirements that are the subject of Verizon's Petition are obsolete relics of a bygone regulatory era. These requirements have no place in today's vibrantly competitive communications marketplace, and

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[1] The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

[2] The requirements that are the subject of this Petition include: (i) the Automated Reporting Management Information System ("ARMIS") reporting rules; (ii) the Commission's affiliate transaction and related rules ("affiliate transaction rules"); (iii) Part 65, Subpart E and Part 69, Subparts D and E ("rate-of-return reporting rules"); and (iv) the Commission's property record and related rules ("property record rules"). The Petition also seeks limited forbearance from 47 U.S.C. § 254(k) to the extent this provision contemplates the accounting methodology for assets and services transferred or provided between an incumbent local exchange carrier ("LEC") and any of its nonregulated affiliates embodied in the Commission's affiliate transaction rules. Attachment 1 contains a detailed listing of each specific rule from which Verizon seeks forbearance, which collectively are referred to as "the recordkeeping and reporting requirements."

they impede investment and technological innovation. Accordingly, the Commission should forbear from enforcing them.

The recordkeeping and reporting requirements addressed in Verizon's Petition apply only to a limited number of competitors. These asymmetrical regulations distort competition to the detriment of consumers and effectively favor certain classes of competitors and certain technologies over others. This asymmetric regulatory regime results from the Commission's now outdated regulatory traditions rather than the modern needs of communications consumers. Moreover, these antiquated regulatory requirements frustrate the ability of carriers to meet consumers' needs by delaying the launch of desirable new products and services.

The elimination of outdated and unnecessary regulations, such as the recordkeeping and reporting requirements that are the subject of Verizon's Petition, is necessary to ensure that the pro-competitive, deregulatory goals of the Telecommunications Act of 1996 ("1996 Act") are realized.[3] The 1996 Act embodies the principle that efficient government agencies should eliminate unnecessary and inefficient rules and requirements. In fact, Congress expressly directed that the Commission eliminate outdated and unnecessary telecommunications regulations that are no longer in the public interest.[4] In other contexts as well, the Commission has recognized the public interest benefits of eliminating outdated regulatory requirements.[5]

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[3] *See, e.g., AT&T v. FCC*, 452 F3d 830, 832 (D.C. Cir. 2006) ("Critical to Congress's deregulation strategy, the [1996] Act added section 10 to the Communications Act of 1934"); *2000 Biennial Regulatory Review*, Notice of Proposed Rulemaking, 15 FCC Rcd 20008, 20010 ¶ 1 (2000) ("The major purpose of the 1996 Act is to establish 'a pro-competitive, deregulatory national policy framework' designed to make available to all Americans advanced telecommunications and information technologies and services 'by opening all telecommunications markets to competition.' Congress empowered the Commission with an important tool to realize this goal in Section 10 of the Act.") (citations omitted).

[4] *See* 47 U.S.C. § 161 (mandating that the Commission review all of its regulations relating to providers of telecommunications service and "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition

Granting forbearance from the recordkeeping and reporting requirements at issue is particularly appropriate given the changes that have occurred since those requirements were adopted. For example, today's communications marketplace is vastly different from the monopoly-era market that prompted the Commission to adopt the recordkeeping and reporting requirements in the first place. While end users once bought local service from their local phone company and long distance service from one of several interexchange carriers, that is no longer the case. As the Commission recently found, consumers currently have access to, and increasingly are purchasing telephony services from a variety of sources, including cable companies, wireless carriers, and Voice over Internet Protocol ("VoIP") providers.[6]

Similarly, in the past twenty years, there has been a transformation in the recordkeeping and reporting requirements that govern companies such as Verizon. For example, Verizon is subject to expanded recordkeeping and reporting obligations in its capacity as a publicly traded company, including those imposed by the Securities and Exchange Commission ("SEC"),

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between providers of such service," in which case the Commission "shall repeal or modify" the subject regulation).

[5] *See, e.g., Applications of National Football League; Request for Waiver of the Call Sign Identification Requirements of 47 C.F.R. § 90.425*, 20 FCC Rcd 17064, 17065 ¶ 4 (2005) (concluding that "it serves the public interest to eliminate an unnecessary regulatory requirement that burdens a licensee in the conduct of its business"); *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, Notice of Proposed Rulemaking, 10 FCC Rcd 10624, 10626 ¶ 10 (1995) (proposing to eliminate unnecessary regulatory requirements applicable to satellite carriers); *Amendment of the Commission's Space Station Licensing Rules and Policies; 2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Fourth Report and Order, 19 FCC Rcd 7419 (2004) (eliminating certain regulatory requirements as part of the Commission's "continuing effort to eliminate outdated regulatory requirements and expedite provision of satellite services to the public"); *see also* 47 C.F.R. § 54.711(c) (allowing the Bureau to "waive, reduce, modify, or eliminate reporting requirements that prove unnecessary ...").

[6] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Report and Order and Memorandum Opinion and Order, WC Docket No. 02-112, 42 CR 597, ¶ 27 (Aug. 31, 2007) ("*Non-Dominant Order*").

Generally Accepted Accounting Principles ("GAAP"), the Foreign Corrupt Practices Act, and the Sarbanes-Oxley Act. In addition, the Commission has adopted and expanded reporting requirements for all telecommunications carriers and broadband providers through its Form 477. The information that Verizon must record, maintain, and disclose in order to comply with these legal and regulatory obligations obviates the need for the continued enforcement of the Commission's recordkeeping and reporting requirements that are the subject of Verizon's Petition.

The Commission has not just the power but the *duty* under Section 10 of the 1996 Act to forbear from enforcing regulatory requirements if the Commission determines that: (1) the enforcement of such requirements is not necessary "to ensure that the charges, practices, classifications, or regulations" for the carrier or service in question "are just and reasonable and are not unjustly or unreasonably discriminatory"; (2) enforcement of such requirements is not necessary "for the protection of consumers"; and (3) forbearance is consistent with the public interest, which requires the Commission to consider whether forbearance "will promote competition among providers of telecommunications services." 47 U.S.C. § 160. Each of these three statutory requirements for forbearance is satisfied here.

First, Verizon operates in a vigorously competitive market and is subject to price cap regulation at the federal level. Consequently, the recordkeeping and reporting requirements at issue have no bearing on whether Verizon's interstate charges, practices, classifications, or regulations are just, reasonable, or nondiscriminatory. Second, consumers are protected by allowing the marketplace to provide them with a robust choice of services from a variety of competing providers, not by continuing to impose outdated regulatory rules. Third, the same benefits to competition and to consumers discussed above ensure that forbearance is in the public interest. *See* 47 U.S.C. § 160(b). Conversely, continuing to apply these recordkeeping and reporting requirements would distort competition and *harm* the public interest by imposing unnecessary costs and burdens on the limited number of competitors subject to such requirements.

Because the criteria for forbearance have been satisfied, the Commission must grant Verizon's Petition. Consistent with 47 U.S.C. § 160(e), the Commission also should make clear that states may not lawfully impose recordkeeping and reporting requirements that are inconsistent with the Commission's decision to forbear.[7] The benefits of forbearance would be lost if states impose different recordkeeping and reporting regimes in conflict with the federal decision to forbear.

II. COMPETITION AND OTHER LEGAL REPORTING OBLIGATIONS AND CONSUMER SAFEGUARDS ELIMINATE THE NEED FOR THE RECORDKEEPING AND REPORTING REQUIREMENTS AT ISSUE.

From a competitive standpoint, the communications marketplace is vastly different today than when the recordkeeping and reporting requirements at issue were adopted. Customers seeking voice service have a host of choices, including cable companies, wireless carriers, and VoIP providers.

Cable companies have been particularly successful competitors and collectively are expected to serve more than 13 million voice lines by year-end 2007 and more than 19 million

[7] *See, e.g., Richmond Power and Light of City of Richmond, Ind. v. FERC,* 574 F.2d 610, 620 (D.C. Cir. 1978) ("What the Commission is prohibited from doing directly it may not achieve by indirection"); *Kinney v. Weaver,* 111 F. Supp.2d 831, 840 (E.D. Tex. 2000) ("[N]umerous cases have held that governmental entities cannot do indirectly that which they cannot do directly"); *Littell v. Udall,* 242 F. Supp. 635, 640 (D.D.C. 1965) ("It would be wholly unrealistic for this Court to accept the Secretary's interpretation of this statute so as to permit him to do indirectly what he cannot do directly").

lines by year-end 2008.[8] Cable companies provide voice service on a near ubiquitous basis over their own networks and are expected to offer telephony service (IP-based or circuit-switched) to some 95 percent of households by the end of this year and to 99 percent of U.S. households by the end of 2008.[9]

For example, Comcast currently markets voice telephone service to 40 million homes, which represents 83 percent of its cable footprint. As of September 30, 2007, Comcast had approximately 3.8 million voice telephone customers and its phone revenues increased 91 percent to $1.2 billion from $652 million in 2006.[10] Likewise, Time Warner Cable had more than 2.6 million voice telephone customers as of September 2007, which represents an 11 percent penetration of service-ready homes passed, and it added 275,000 digital voice customers during the third quarter of 2007, marking its largest quarterly gain ever.[11] Cox provides voice telephone service to more than 2.1 million residential customers and 160,000 businesses.[12] Charter currently provides telephone service to more than 800,000 customers, more than double

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[8] Craig Moffett, *et al.*, Bernstein Research, *VoIP: The End of the Beginning,* at Ex. 8 (April 3, 2007).

[9] *Id.* at Ex. 3.

[10] Press Release, "Comcast Reports Third Quarter 2007 Results" (Oct. 25, 2007) (available at http://media.corporate-ir.net/media_files/irol/11/118591/Earnings_3Q07/release_pdf.pdf).

[11] Press Release, "Time Warner Cable Reports Third Quarter 2007 Results" (Nov. 7, 2007) (available at http://files.shareholder.com/downloads/TWC/176374502x0x142004/f93e9bb7-2f1c-4d32-bc01-50e5b44fdfdb/FINAL_TWC%203Q07%20PR_110607.pdf).

[12] News Release, "Cox Communications Receives J.D. Power and Associates' Highest Honor in Residential Telephone Satisfaction in Three Regions" (July 11, 2007) (available at http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=1024989&).

the number of customers it served as of September 2006, and Charter expects its telephone service to reach approximately 10 million homes passed by the end of 2008.[13]

Wireless companies also are successfully offering competing telephony service. According to the Commission's most recent wireless report, 98 percent of the total U.S. population already has access to three or more different wireless providers in the counties in which they live.[14] Wireless handsets are rapidly displacing landline telephones. Approximately 14 percent of adults in the United States live in households with at least one cellphone but no landline telephone, and, from September 2006 to April 2007, the percentage of Americans in cellphone-only households for the first time overtook the percentage in landline-only households.[15]

Independent VoIP providers also are aggressively marketing their services and competing for voice customers.[16] In an effort to entice customers to purchase its VoIP service, Via Talk, for example, is offering new customers "two unlimited phone lines for the price of one" in addition to a "match in the form of a service credit, up to 3 months of free service for any prepaid

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[13] Press Release, "Charter Reports Third-Quarter Financial and Operating Results" (Nov. 7, 2007) (available at http://phx.corporate-ir.net/phoenix.zhtml?c=112298&p=irol-newsArticle&ID=1074737&highlight=).

[14] *See Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Eleventh Report, 21 FCC Rcd 10947, ¶ 41 (Sept. 29, 2006) (proceeding terminated). According to the same report, "94 percent of the U.S. population, live[s] in counties with four or more mobile telephone operators competing to offer service . . . 51 percent of the U.S. population, live[s] in counties with five or more mobile telephone operators competing to offer service, and 18 percent of the population, live[s] in counties with six or more mobile telephone operators competing to offer service." *Id.*

[15] Alex Mindlin, *Cellphone-Only Homes Hit a Milestone*, N.Y. Times (Aug. 27, 2007).

[16] *See, e.g.*, Jason Armstrong, *et al.*, Goldman Sachs, *2007 Telecom Outlook: Sector Not Cheap, But Opportunities Abound*, at Ex. 14 (Feb. 6, 2007) (estimating that cable and stand-alone VoIP will serve more than 20% of voice access lines by end-of-year 2010).

contracts [a customer] ha[s] with any other phone service provider, for service switched to [its] network."[17]

The Commission has recognized the need to eliminate outdated regulatory requirements in the face of such increased competition. For example, the Commission recently eliminated "unnecessarily burdensome regulation" of the provision of in-region, long distance services by the Bell Operating Companies ("BOCs"), in part, because "intermodal competition between wireline services and services provided on alternative service platforms, such as facilities-based VoIP and mobile wireless, has been increasing and is likely to continue to increase."[18]

Granting Verizon's Petition in light of increased competition is consistent with the Commission's long-held view that "competition can protect consumers better than the best-designed and most vigilant regulation."[19] It also would advance the Commission's desire to level the competitive playing field by eliminating regulations that disparately impact only one group of competitors.[20]

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[17] *See* http://www.viatalk.com/internet_phone_special.htm (last visited Oct. 19, 2007).

[18] *Non-Dominant Order* ¶ 27.

[19] *The Merger of MCI Communications Corporation and British Telecommunications plc*, GN Docket No. 96-245, Memorandum Opinion and Order, 12 FCC Rcd 15351, ¶ 204 (1997); *see also Comsat Corp.; Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier; Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation*, Order and Notice of Proposed Rulemaking, 13 FCC Rcd 14083, ¶ 134 (1998) (noting the Commission's actions "to limit the application of unnecessary regulation where competition would serve as a better regulator").

[20] *See, e.g., Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended,* Memorandum Opinion and Order, WC Docket No. 06-109, 42 CR 463, ¶¶ 129 (Aug. 20, 2007) ("*ACS Forbearance Order*") ("disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers"); *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4696 ¶ 21 (2005) (noting that "in a market where carriers are offering the same services and competing for the same customers, disparate treatment of different types of carriers or types of traffic has significant competitive implications" and could give one carrier "a competitive

The elimination of the recordkeeping and reporting requirements at issue also is appropriate given the changes that have occurred in other federal statutes that require companies such as Verizon to maintain detailed and accurate records. For example, the Sarbanes-Oxley Act enacted in 2002 applies to Verizon and imposes significant recordkeeping requirements by expanding the scope of work that an auditor must perform and by requiring management and auditors to assess, document and report on the effectiveness of financial reporting internal controls.[21] As a public company, Verizon also is subject to the Foreign Corrupt Practices Act, which requires every publicly traded company to make and keep "books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." 15 U.S.C. § 78m(b)(2)(A). These additional, overarching requirements to maintain accurate and complete records obviate any continued need for the Commission's antiquated recordkeeping requirements.

The same is true for the Commission's outdated reporting requirements that are the subject of Verizon's Petition. Consistent with SEC regulations, Verizon reports financial information to the SEC, including an annual Form 10-K and quarterly Form 10-Q reports. 15 U.S.C. §§ 78m, 780(d). Likewise, information about Verizon's network is reported on Form 477, which collects data about Verizon's broadband connections, and about Verizon's wired and wireless local telephone service in individual states. The information provided by Verizon on Form 477 is specifically geared toward describing broadband infrastructure and competition for local telephone service. All carriers are required to complete Form 477, making this a far more

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advantage over another type of carrier ..."); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5920 ¶ 53 (2007) (noting that the "disparate treatment" of competitors "would introduce competitive distortions into the marketplace").

[21] *See generally* Public Company Accounting Reform and Corporate Responsibility Act of 2002 (Sarbanes-Oxley Act of 2002), 15 U.S.C. § 7201 et. seq. (2006).

useful comparative tool for the Commission and consumers than the Commission's other reporting requirements.[22] To the extent information about Verizon's infrastructure is relevant to a competitive analysis, the information is captured in Form 477. In addition, Verizon also is required to report major service outages. Thus, these enhanced reporting obligations obviate the need for the reporting requirements that are the subject of Verizon's Petition.

Moreover, granting forbearance would not affect the consumer safeguards put in place by the Commission's recent *Non-Dominant Order*. In the *Non-Dominant Order* the Commission established "imputation requirements to help monitor BOC provisioning of [access] services for possible price discrimination" *Id.* ¶ 95. In order "[t]o facilitate the transparency of each carrier's imputation of in-region, long distance costs," the Commission indicated that the BOCs should reflect the imputation charges in their ARMIS filings, "accompanied by an explanatory footnote for each line item identifying the amount imputed." *Id.* ¶ 104. The Commission further pointed to ARMIS filings as the repository of information concerning the imputation amounts, but that direction presumed the status quo ARMIS filing obligations. Even with that obligation removed, Verizon would be required to maintain records concerning the amounts imputed or charged consistent with the *Non-Dominant Order* itself and the accounting safeguards discussed below. *Id.*

The Commission also indicated in the *Non-Dominant Order* that its affiliate transaction rules would continue to apply to any transactions that the BOCs "have with affiliates that provide long distance services." *Id.* ¶ 102. But those rules are unnecessary to ensure that Verizon's rates are just, reasonable, and nondiscriminatory or to protect consumers for all of the reasons explained below. This is true regardless of the services being provided by the affiliate.

[22] *See* FCC Form 477 (available at http://www.fcc.gov/wcb/filing.html#localcomp).

Furthermore, the specific amounts required to be imputed or charged pursuant to the *Non-Dominant Order* obviate the need for further compliance with the affiliate transaction rules, since the price for the primary service provided by the BOC to its affiliate – access – has been established by the Commission and will be recorded in accordance with the Commission's imputation and nondiscriminatory pricing requirements.

III. THE COMMISSION SHOULD FORBEAR FROM ITS RECORDKEEPING AND REPORTING REQUIREMENTS.

Forbearance is required if the Commission determines that: (1) enforcement of a regulatory requirement is not necessary "to ensure that the charges, practices, classifications, or regulations" for the carrier or service in question "are just and reasonable and are not unjustly or unreasonably discriminatory"; (2) enforcement of a regulatory requirement is not necessary "for the protection of consumers"; and (3) forbearance is consistent with the public interest. 47 U.S.C. § 160(a). Each of these three statutory requirements is satisfied here, and the Commission should grant Verizon's Petition.

A. ARMIS Reporting Requirements.

Verizon seeks forbearance from the ARMIS reporting requirements. ARMIS is an automated reporting system developed by the Commission in 1987 for collecting financial, operating, service quality, and network infrastructure information from certain incumbent LECs.[23] The ARMIS reports can be divided into three categories: financial reports (Reports 43-01, 43-02, 43-03, 43-04, 495A and 495B); service quality reports (Reports 43-05 and 43-06); and

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[23] *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 and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19911, 19918 (2001) ("*Phase Two Order*").

infrastructure reports (Reports 43-07 and 43-08). Under price cap regulation these reports have nothing to do with Verizon's rates and are not necessary to ensure that Verizon's practices are otherwise just, reasonable, and nondiscriminatory or to protect consumers. Forbearance from the ARMIS reporting requirements is also consistent with the public interest because preparation of the reports requires an unnecessary investment of resources by only a few among many competitors, which imposes extra costs on only some competitors.

The Commission adopted ARMIS financial reports to "facilitate the timely and efficient analysis of revenue requirements and rates of return, to provide an improved basis for audit and other oversight functions, and to enhance [the Commission's] ability to quantify the effects of alternative policy proposals."[24] Reports 43-03 and 43-04 were designed to "obtain the details of the results of [its] jurisdictional separations and access rules in order to fulfill [its] regulatory obligation to ascertain that cost allocations are being properly made and that changes in [its] rules are being properly implemented." *ARMIS Order,* 2 FCC Rcd 5770, ¶ 45. Reports 495A and 495B were adopted because "forecasts of relative use were identified ... as key elements in the accurate allocation of costs on a cost causal basis because many costs are incurred in anticipation of future demand rather than in response to the current level and pattern of demand for service." *Id.*

After adopting price cap regulation, the Commission preserved the ARMIS financial reports in order to monitor the transition to price caps and to compile financial data sufficient to conduct a subsequent review of its then-new regulatory regime.[25] At the same time, the

[24] *Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules)*, Report and Order, 2 FCC Rcd 5770, ¶ 1 (1987) ("*ARMIS Order*").

[25] *Policy and Rules Concerning Rates for Dominant Carriers*, Order on Reconsideration, 6 FCC Rcd 2637, ¶ 198 (1991) ("*Carrier Rate Order*").

Commission added the ARMIS service quality and infrastructure reports in order to: (1) respond to concerns about the transition to price cap regulation; (2) accumulate data in order to facilitate the Commission's review of the price cap regime; and (3) out of "an abundance of caution." *Carrier Rate Order,* 6 FCC Rcd 2637, ¶ 179. In short, the ARMIS reports at issue were intended as temporary mechanisms to ensure that price cap regulation functioned properly.

In reexamining the ARMIS reporting requirements in 2000, the Commission recognized that significant changes in the marketplace had made some ARMIS reporting requirements obsolete. The Commission concluded that certain infrastructure investment reporting requirements were "redundant or outmoded" and that "there may be no need to collect such data in the long term," particularly given the Commission's Form 477 reporting requirements. *Phase Two Order*, 16 FCC Rcd at 19970, ¶160. Unlike the ARMIS reports, which are generated by a limited number of competitors, all carriers must complete the Form 477, which the Commission uses to analyze industry trends. While the Commission was not ready to eliminate ARMIS reporting requirements seven years ago because of the "early stage of competition," *id.,* the Commission itself acknowledged that the question was not whether ARMIS reporting should be eliminated – "but rather when."[26] That time is now.

(1) ARMIS reporting requirements are not necessary to ensure just, reasonable, and nondiscriminatory rates.

The ARMIS reports are not necessary to ensure that Verizon's rates are just, reasonable, and nondiscriminatory. As the Commission long has recognized, robust competition such as that

[26] *Phase Two Order*, 16 FCC Rcd at 19970, ¶ 206 (expressing skepticism that ARMIS reporting requirements "should continue for the indefinite future," noting that "[a]s competition continues to develop, the original justifications for our accounting and reporting requirements may no longer be valid" and that the rules may be unnecessarily burdensome by "imposing detailed accounting and reporting requirements on only one class of competitors").

typifying all segments of today's communications industry "is the most effective means of ensuring that the charges, practices, classifications, and regulations with respect to [a telecommunications service] are just and reasonable, and not unjustly or unreasonably discriminatory."[27] In today's market, competition from cable companies, wireless carriers, and VoIP providers constrains the rates that incumbent LECs can charge for their services. Requiring incumbent LECs to continue to invest the administrative and financial resources to gather and report the data required by ARMIS in today's environment undermines competition and disserves consumers.

Today's price cap regime makes the ARMIS reports even more unnecessary to ensure Verizon charges just, reasonable and nondiscriminatory rates. Verizon's rates under price cap regulation are unaffected by data concerning: (i) the financial information reflected in ARMIS Reports 43-01 and 43-02; (ii) the assignment of joint costs between Verizon's regulated and non-regulated activities in ARMIS Report 43-03; (iii) the separation of Verizon's revenues and costs between interstate and intrastate jurisdictions and the assignment of interstate amounts for access services in ARMIS Report 43-04; (iv) service quality and customer satisfaction survey results in ARMIS Reports 43-05 and 43-06; and (v) switching equipment and transmission facilities, outside plant statistics and other operating information in ARMIS Reports 43-07 and 43-08. Because the price cap regime has been in place for nearly seventeen years, and the 1996 Act has

[27] *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance,* Memorandum Opinion and Order, 14 FCC Rcd 16252, ¶ 31 (1999); *see also Implementation of Sections 3(n) and 332 of the Communications Act,* Second Report & Order, 9 FCC Rcd 1411, ¶ 174 (1994) ("[c]ompetition, along with the impending advent of additional competitors, leads to reasonable rates"); *see also id.* ¶ 173 ("in a competitive market, market forces are generally sufficient to ensure the lawfulness of rate levels, rate structures, and terms and conditions of service. . ."); *Market Entry and Regulation of Foreign-Affiliated Entities,* Report and Order, 11 FCC Rcd 3873, 3878 (1995) ("where we can reduce our regulations because of effective competition, carriers are better able to respond to consumer demand for innovative services at the lowest reasonable price").

been "fully implemented,"[28] whatever purported rationale may have existed for adopting and maintaining the ARMIS reports has long since disappeared.[29]

(2) ARMIS reporting requirements are not necessary to protect consumers.

Just as the Commission's ARMIS reports are not necessary to ensure that rates are just, reasonable, and nondiscriminatory, they are unnecessary to protect consumers. Consumers are best protected by the robust competition in the communications marketplace, not by the Commission's ARMIS reporting requirements. As Chairman Martin has observed, "[m]arket forces and competition are better drivers of innovation and better protectors of consumer interest. Competition – not regulation – best leads to better services and lower prices."[30]

Furthermore, the arcane regulatory information reported in ARMIS is of no use to consumers. *See Price Cap Order*, 5 FCC Rcd at 6830 (noting that, in a competitive marketplace, "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"). As the Commission has observed, while consumers are theoretically able to monitor trends based on the information contained in the ARMIS reports, such data are technical in nature and not understood by consumers. *See 2000 Biennial Regulatory Review -- Telecommunications Service*

[28] *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415, ¶¶ 52-53 (2005).

[29] Indeed, more than five years ago, the Commission eliminated the Accounting Safeguards Division, which was principally responsible for reviewing ARMIS reports. *See generally Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau, And Other Organizational Changes*, Order, 17 FCC Rcd 4672 (2002).

[30] Remarks of Chairman Kevin J. Martin, Georgetown University McDonough School of Business's Center for Business and Public Policy (Nov. 30, 2006).

Quality Reporting Requirements, Notice of Proposed Rulemaking, 15 FCC Rcd 22113, 22118 (2000).

In addition, ARMIS reporting requirements only apply to a small subset of incumbent LECs and not to all competing providers. Only the three remaining BOCs – Verizon, AT&T and Qwest – are required to file all of the ARMIS reports. Other incumbent LECs are only required to file a limited number of ARMIS reports, depending upon their annual revenues and the regulatory regime under which they operate.[31] Competitive LECs, cable companies, wireless carriers and independent VoIP providers are not subject to *any* ARMIS reporting requirements, and thus neither consumers nor regulators could possibly obtain an accurate picture of the industry by analyzing ARMIS reports, even assuming these reports contained otherwise relevant information (which is not the case). As the Commission previously has recognized, the information reflected in ARMIS reports "is of limited use to consumers if they do not have access to comparable information for all carriers in their area." *Id.*, 15 FCC Rcd at 22117.

To the extent consumers are interested in information about Verizon, Verizon reports financial information on an annual and quarterly basis to the SEC. Likewise, information about Verizon's network is reported on Form 477 as well as on Verizon's major service outage reports. Thus, none of the reporting requirements that are the subject of Verizon's Petition are necessary to protect consumers.

(3) Forbearance from ARMIS reporting requirements is in the public interest.

Granting forbearance from the ARMIS reporting requirements is in the public interest. The same benefits to competition and to consumers discussed above ensure that forbearance is in

[31] As of 2006, Century Tel, Cincinnati Bell, Citizens, Embarq, Iowa Telecom, and Windstream filed ARMIS Reports 43-01, 43-05 and 43-08, while Commonwealth Telephone and SureWest Telephone filed ARMIS Reports 43-01 and 43-08.

the pubic interest. 47 U.S.C. § 160(c). Furthermore, it is in the public interest to eliminate unnecessary regulations that impose costs on the industry, and every government agency should strive to increase efficiencies by doing away with outdated regulatory requirements.[32]

Preparing ARMIS reports is a costly and time-consuming exercise. Verizon estimates that these reports involve approximately 277,852 data points and require approximately 7,940 person hours to produce.

For the financial reports, Verizon spends nearly six weeks generating the reports. Its employees: (i) ensure that the reports comply with the Commission's ARMIS reporting specifications; (ii) oversee any systems work that may be required when the Commission's specifications change; (iii) verify the accuracy of the ARMIS data by conducting trend analyses; (iv) identify and research any material variances in the data from prior years; (v) develop an explanation of any such variances; and (vi) ensure consistency in the data between the multiple ARMIS reports being filed. All of this is independent of and in addition to the normal financial recordkeeping and reporting that Verizon must do as a publicly traded company subject to SEC rules.

For the service quality and infrastructure reports, six employees are dedicated to generating these reports, approximately 70 employees are directly involved in the data gathering process required to produce the reports, and hundreds of other employees are involved in providing the relevant data reflected in the reports. Data collection, training of data owners, and

[32] *See, e.g.*, Wireline Competition Bureau, Federal Communications Commission, Biennial Regulatory Review 2006, Staff Report, 22 FCC Rcd 2803 (2007) (recognizing that the Commission's "affiliate transaction rules impose administrative costs on carriers subject to these requirements"); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C. 2d 384, ¶ 109 (1980) *("Computer II")* (avoidance of unnecessary cost is in the public interest).

review of data sources to ensure information is preserved and available continues throughout the year.

To ensure accuracy and consistency in its service quality and infrastructure reports, Verizon conducts annual training for the individuals who contribute data or are involved in the data gathering process. Verizon also reviews past ARMIS reports to examine trends and identify any statistically significant differences in the data. Any such differences must be investigated and explained.

Verizon also conducts extensive validation efforts in preparing the service quality and infrastructure reports, which include ensuring that the data is in the proper format as required by the Commission and that the data are consistent between the reports being filed. These validation efforts continue through the preparation of the final reports.

When the service quality and infrastructure reports have been finalized, Verizon must engage in an attestation process, which requires that all director-level personnel involved in the data gathering process verify that the data are accurate. These verifications are then relied upon by the Verizon officer who certifies the accuracy of the reports consistent with the Commission's rules.

Eliminating the burden associated with ARMIS reporting requirements is particularly appropriate because these requirements distort competition by imposing costs on only a small subset of competitors. *See ACS Forbearance Order*, ¶ 117 (public interest is served by "eliminating the market distortions" caused by "asymmetrical regulation"). As the Commission recently observed, "disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers." *Id.* ¶

129. Because the burdens imposed by ARMIS reporting only apply to a narrow segment of the marketplace, it is in the public interest to forbear from these requirements.

B. Affiliate Transaction Rules.

Verizon also seeks forbearance from the Commission's affiliate transaction rules, which require incumbent LECs to engage in a complex and time-consuming exercise of recording assets and services transferred or provided between themselves and any of their non-regulated affiliates. Application of the affiliate transaction rules very much depends on the nature of the assets or services at issue and on the structure of the underlying arrangements with affiliates. Nonetheless, these rules have a particularly significant impact on Verizon, which has dozens of related entities that provide a variety of products and services including wireless (Cellco Partnership d/b/a Verizon Wireless), enterprise (Verizon Business Services), and support services such as billing and collection and real estate management.

Forbearance is appropriate because the affiliate transaction rules are not necessary to ensure Verizon's rates are just, reasonable, and nondiscriminatory or to protect consumers. Like all public companies, Verizon is subject to myriad accounting safeguards other than the affiliate transaction rules. These existing safeguards provide all public companies, Verizon included, with adequate inducement to properly record transactions with affiliated entities. Forbearance from the affiliate transaction rules is also consistent with the public interest because these rules potentially constrain development and launch of new products and services that consumers want.

(1) The affiliate transaction rules are not necessary to ensure just, reasonable, and nondiscriminatory rates.

As the Commission recognized when it adopted the affiliate transaction rules, the rules were the byproduct of rate-of-return regulation, which necessitated establishing transfer pricing requirements for transactions between the incumbent LEC and its affiliates.[33] Under rate-of-return regulation, rate levels were directly linked to a carrier's costs,[34] and the affiliate transaction rules protected ratepayers from an improper shifting of costs.[35] Specifically, the affiliate transaction rules were intended to prevent an incumbent LEC from recording the purchase of assets or services from an affiliate at above-market prices and then passing that cost on to the incumbent LEC's ratepayers. Likewise, the rules were intended to keep an incumbent LEC from recording services or assets sold to an affiliate at below-cost prices and subsequently recovering the shortfall from ratepayers under rate-of-return regulation.

The affiliate transaction rules create a complicated and burdensome maze of regulation for valuing and pricing certain transactions. Under the rules, if a tariff or interconnection agreement exists for the product, service, or asset that is transferred or provided between the incumbent LEC and its nonregulated affiliate, the transaction is recorded at that rate. 47 C.F.R. §

[33] *Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates,* Notice of Proposed Rulemaking, 1993 FCC LEXIS 6523, ¶ 8 (1993) (noting that the affiliate transactions rules were designed to compensate "for the faulty incentives traditional rate of return regulation gives carriers in relation to affiliate transactions" by eliminating the ability of carriers to recover from ratepayers overcharges or undercharges for "assets and services obtained from their nonregulated affiliates").

[34] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking In CC Docket No. 00-256, Fifteenth Report and Order In CC Docket No. 96-45, and Report and Order In CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, ¶ 19 (2001).

[35] *Puerto Rico Telephone Co.; Petition for Waiver of Section 32.27 of the Commission's Rules*, Memorandum Opinion and Order, 15 FCC Rcd 7044, 7045 (1999) ("the affiliate transactions rules protect ratepayers from bearing the risks and costs associated with an incumbent LEC's nonregulated activities"); *see also Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities; Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and Their Affiliates,* Report and Order, 2 FCC Rcd 1298, 1335 ¶ 290 (1987) (affiliate transaction rules serve as a safeguard "to prevent cost shifting to ratepayers by means of improper transfer pricing").

32.27(b), (c). If no tariff or equivalent is available, the value of the product, service, or asset is recorded at the prevailing market price, provided that at least 25 percent of Verizon's sales of the product or service are to unaffiliated third parties. This 25 percent threshold is applied "on an asset-by-asset and service-by-service basis, rather than on a product-line or service-line basis." 47 C.F.R. § 32.27(d).

When neither a tariff nor interconnection agreement exists and in the absence of a prevailing market price, the value of the product or service must be determined by comparing the estimated fair market value of the product or service to its fully distributed cost, depending upon whether a product or service is involved and the total value of the products or services provided. This is a particularly complicated and cumbersome process.

For example, Verizon often provides system/database access to its nonregulated affiliates. In determining the cost of these systems, Verizon – again, depending on the nature of the assets or services at issue and the structure of the underlying arrangements with affiliates – could be required to: (i) complete a comprehensive systems review to determine any and all systems where access will be granted; (ii) perform a detailed review of historical records to identify the total development cost of the system(s) involved and any amounts that were capitalized; (iii) identify the hardware that the system(s) is running on; (iv) identify the current processing costs for the system(s) involved; (v) calculate net book costs or fully distributed costs; and (vi) calculate the amount that the nonregulated affiliate(s) should pay to gain access to the system, as well as their portion of the ongoing costs to run the system. This process can take months and requires significant resources to complete.

When an asset is sold by or transferred from a nonregulated affiliate to a Verizon incumbent LEC, the asset must be recorded at no more than net book cost, provided that the total aggregate annual value of the asset is less than $500,000. If the aggregate annual value of the asset is equal to or greater than $500,000, a study must be conducted to determine the fair market value of the asset, after which the asset sold by or transferred from an affiliate to the incumbent ILEC is recorded at no more than the lower of fair market value or net book cost. *See* 47 C.F.R. § 32.27(b).

When an asset is sold by or transferred from a Verizon incumbent LEC to a nonregulated affiliate, the asset must be recorded at no less than net book cost, provided that the total aggregate annual value of the asset is less than $500,000. If the aggregate annual value of the asset is equal to or greater than $500,000, the incumbent ILEC must calculate net book cost and conduct a fair market value study, after which the asset being sold by or transferred from the incumbent ILEC is recorded at no less than the higher of fair market value or net book cost. *See id.*[36]

Whenever the aggregate annual value of the asset or service being sold, transferred or provided is equal to or greater than $500,000, the incumbent LEC must conduct a study to determine the fair market value of such asset or service, which can be a costly and time consuming exercise.

For example, earlier this year a Verizon affiliate providing custom work services to the incumbent ILEC in the New York City metropolitan area engaged Frost & Sullivan to determine the fair-market value of those services, which included innerduct route feasibility, engineering, inspection, and construction services. In connection with this study, Frost & Sullivan sent requests for proposals ("RFP") to seven vendors operating in the New York City area, analyzed

[36] A very similar process is required for services provided between Verizon and its nonregulated affiliates, except that the comparison is between estimated fair market value and fully distributed cost. *See* 47 C.F.R. § 32.27(c).

each vendor's response to the RFP, and calculated the fair market value of the services being provided by the Verizon affiliate based on the information provided in response to the RFP. This study took two months and cost approximately $40,000 to complete – time and money that Verizon's competitors are not required to expend prior to deploying new products and services.

Another fair market value study conducted by Frost & Sullivan was commissioned by a former Verizon affiliate that provided support services to the back office activities of the Verizon ILEC's Remittance Processing Centers in California and Texas. The study was designed to determine the fair market value of those services, which included magnetic ink character recognition, optical character recognition, amount entry, and other services. To complete the study, Frost & Sullivan assembled a team consisting of a project manager, senior project consultant, and senior research analysts, which performed the following tasks:

- conducted interviews with the Verizon affiliate personnel;
- completed a comprehensive review of secondary sources to identify companies offering similar services to those provided by the Verizon affiliate, which included reviewing on-line databases, trade journals, and other resources;
- developed a list of potential interview contacts with companies offering similar services to those provided by the Verizon affiliate;
- designed interview guidelines to determine the market prices;
- conducted interviews with other companies;
- collected and analyzed the data after each interview;
- prepared a written fair market value report.

Determining the fair market value of the affiliate's services required that Frost & Sullivan go so far as to calculate the average price per activity by estimating the volume of transactions and quantifying the number of keystrokes required for each transaction.

The time-consuming and costly process of documenting, tracking, and recording transactions in accordance with the Commission's affiliate transaction rules does not ensure that the incumbent LECs' rates are just, reasonable, and nondiscriminatory. Under price cap regulation, the costs that Verizon records on its books as a result of these rules have no bearing on interstate rates. The very purpose of price cap regulation was to create a situation where carriers would become more efficient in their operations and to develop new services in response to customer demand. Ratepayers are protected in this regulatory environment by the maximum caps on prices, and carriers such as Verizon may not exceed them. Because "price cap regulation severs the direct link between regulated costs and prices," the regulatory focus is properly on a carrier's prices, not its costs.[37]

Although the Commission intended the affiliate transaction rules to act as a safeguard to prevent cost shifting to ratepayers by means of improper transfer pricing, there no longer is a connection between carrier costs and rates under price cap regulation.[38] For instance, the prices that Verizon can charge under price cap regulation are not affected by whether the value of an

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[37] *See Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards,* Report and Order, 6 FCC Rcd 7571, 7596 ¶ 55 (1991), *vacated in part and remanded, California v. FCC,* 39 F.3d 919 (9th Cir. 1994), *cert. denied* 514 U.S. 1050 (1995); *see also United States v. Western Electric Co.*, 993 F.2d 1572, 1580 (D.C. Cir.), *cert. denied* 510 U.S. 984 (1993) ("[price cap regulation] reduces any [Bell Operating Company's] ability to shift costs from unregulated to regulated activities, because the increase in costs for the regulated activity does not automatically cause an increase in legal rate ceiling").

[38] *See, e.g., Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities,* Report and Order and Notice of Proposed Rulemaking, CC Docket Nos. 02-33, 01-337, 95-20 98-10, and WC Docket Nos. 04-242, 05-271, 20 FCC Rcd 14853 (2005) ("... the BOCs costs are no longer used to determine the BOCs' price cap rates"), *aff'd Time Warner Telecom v. FCC,* 2007 U.S. App. LEXIS 24204 (3rd Cir. Oct. 16, 2007).

asset transferred between a Verizon incumbent LEC and one of its affiliates is recorded at the lower of fair market value or net book cost as required by the Commission's affiliate transaction rules or at levels contemplated by GAAP. Because cost shifting in connection with affiliate transfer pricing can no longer result in a corresponding increase in regulated interstate prices, the need for the affiliate transaction rules to guard against such cost shifting has vanished.[39]

(2) The affiliate transaction rules are not necessary to protect consumers.

The affiliate transaction rules are not necessary to protect consumers, particularly given that Verizon already is subject to the same requirements as every other publicly held company to maintain accurate records to ensure that the provision of services or the purchase, transfer, and retirement or disposition of assets are made in accordance with Verizon policies and are properly valued in the Company's financial records. As a publicly traded company, Verizon is subject to the jurisdiction and regulations of the SEC. As such, it must maintain its books in accordance with GAAP, which is universally recognized as the proper set of principles under which companies should record financial data for management and reporting purposes. Indeed, the Commission has accepted GAAP as an appropriate means of maintaining regulatory books, directing that an incumbent LEC's regulated separate affiliate use GAAP for accounting purposes.[40]

[39] Consistent with the Commission's rules, Verizon's Cost Allocation Manual contains information about its affiliates and detailed descriptions of assets and services provided between Verizon and its non-regulated affiliates. *See* 47 C.F.R. § 64.903. Likewise, consistent with the Commission's rules, Verizon's affiliate transactions are reviewed and subject to the annual Cost Allocation Manual audit for compliance with the Commission's valuation requirements. *See* 47 C.F.R. § 64.904. Verizon seeks forbearance from these affiliate transaction-related requirements as well.

[40] *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996,* 11 FCC Rcd 17539, 17618, 17649 ¶¶ 170 & 243 (1996); *see also Revision of the Uniform System of Accounts and Financial Reporting Requirements for*

GAAP embraces a number of established accounting principles in addition to pronouncements by the Financial Accounting Standards Board and the American Institute of Certified Public Accountants ("AICPA") that are binding on both private and publicly traded companies. For example, GAAP has a general principle of matching revenues with expenses and provides guidance that financial statements include all costs of doing business, including those of an affiliate.[41] GAAP also requires that any gain or loss from a transaction where a public company transfers assets between affiliated entities be eliminated for consolidation purposes.[42] Additionally, GAAP requires that Verizon maintain a system of effective internal controls, as defined in the AICPA's Statement on Auditing Standards No. 55, "Consideration of the Internal Control Structure in a Financial Statement Audit." These internal controls are designed to protect assets from physical loss due to theft, deterioration, destruction, misappropriation or misuse and to ensure that asset purchases, transfers, and retirements or dispositions are made in accordance with management's authorization and are properly valued in a company's financial records.

In addition, other federal statutes require that Verizon maintain detailed and accurate records, including: (i) the Sarbanes-Oxley Act, which requires that Verizon adhere to significant recordkeeping requirements; and (ii) the Foreign Corrupt Practices Act, which requires that Verizon maintain detailed records accurately and fairly reflecting transactions and dispositions of Verizon's assets. Verizon's compliance with these requirements is evaluated annually by

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Class A and Class B Telephone Companies (Parts 31, 33, 42 and 43 of the FCC's Rules), Report and Order, 60 Rad. Reg. 2d (P&F) 111, 1138 ¶ 112 (1986) (moving "the accounting practices of the telecommunications industry closer to the more widely accepted accounting practices of the unregulated American business community is in the public interest").

[41] *See* Financial Accounting Standards Board, Statement of Concepts 5 and 6; *see also* Financial Accounting Standards Board, Staff Accounting Bulletin, Topic 1 and Bulletin 98.

[42] *See* Accounting Research Bulletin (ARB) 51, *Consolidated Financial Statements*.

independent auditors prior to their expressing an opinion on the Company's financial statements. The Company's annual financial statements also include a Report of Management, which acknowledges management's responsibility for internal controls and attests to the existence of a strong control structure which provides reasonable assurance that assets are safeguarded from unauthorized use or disposition, that transactions are properly recorded and executed, and that the financial records permit the preparation of reliable financial statements. Accordingly, the Commission's affiliate transaction rules are unnecessary to protect consumers.

(3) Forbearance from the affiliate transaction rules is in the public interest.

Granting forbearance from the affiliate transaction rules is in the public interest. As noted above, it is in the public interest to eliminate unnecessary regulations that impose costs on the industry, especially when the regulations distort competition by only imposing costly burdens on a small subset of competitors.

In order to compete successfully in that market, Verizon must be able to offer innovative voice, video, and data services that often require inputs from multiple affiliates. While Verizon's competitors can offer services directly from the drawing board to their customers, the affiliate transaction rules handicap Verizon in the marketplace to the detriment of customers by adding to the complexity of and delay the introduction of innovative offerings by requiring needless and resource-intensive recordkeeping exercises. The competitive distortions caused by the asymmetrical affiliate transaction rules from which Verizon seeks forbearance are only magnified in today's vibrantly competitive marketplace.

For instance, customers are demanding single number/single device services, such as dual purpose handsets that operate on both wireless and wireline networks.[43] In response to this demand, T-Mobile recently launched its "T-Mobile HotSpot@Home" service, which allows customers to use a single phone while at home and away; the phone is used with a wireless router provided by T-Mobile by which calls are automatically routed over the WiFi network (either at home or when close to a T-Mobile hotspot) and are seamlessly handed off to T-Mobile's network when the customer is out of WiFi range.[44] Similarly, Sprint offers its AIRAVE service, which is a device intended to replace a customer's landline by offering unlimited incoming, outgoing, and long distance calls with enhanced coverage inside the home; the service allows Sprint customers utilizing their broadband service to keep the same CDMA phone they currently use and enjoy enhanced and mobile phone coverage in the home or office even if the existing wireless coverage is poor.[45]

Both T-Mobile and Sprint are able to quickly deploy these dual-mode services without the backdrop of the Commission's affiliate transaction rules. By contrast, while application of the affiliate transaction rules obviously would depend on the nature of the service and the structure of any underlying arrangements with affiliates, before launching similar converged services, incumbent LECs could first be forced to comply with the cumbersome affiliate

[43] *See, e.g., Dual-mode WiFi/Cellular VoIP Phones Sales Up*, Cellular-News (Jan. 26, 2007) (available at www.cellular-news.com/story/21624.php) (noting that the "fastest growing segment" of the mobile phone market is the dual-mode, WiFi/cellular VoIP phone, which is projected to enjoy "a 5-year compound annual growth rate of 198% between 2006 and 2010").

[44] T-Mobile HotSpot@Home – General Information (available at http://support.t-mobile.com/knowbase/root/public/tm23449.htm?&printpage=1); *T-Mobile Launches @Home, Dual-Mode WiFi Handsets*, Daily TechRag (June 26, 2007) (available at www.dailytechrag.com/node/5940/print).

[45] Sprint AIRAVE, http://airave.sprint.com/tellMeMore.html (last visited Oct. 3, 2007); Mark Milliman, *Sprint AIRAVE Attempts To Enhance In-Home Coverage*, (Sept. 18, 2007) (http://seekingalpha.com/article/47531-sprint-airave-attempts-to-enhance-in-home-coverage).

transaction process. Where the affiliate transaction process applies, it would force an incumbent LEC to: (i) identify each affiliate that would be transferring or providing goods or services in connection with offering dual-mode service; (ii) determine whether a tariff or interconnection agreement exists for each such good or service and, if so, record the price from that tariff or agreement; (iii) for those goods and services for which no tariff or interconnection agreement exists, determine whether the 25 percent threshold has been satisfied on an asset-by-asset basis and service-by-service basis in order to record the value of the product or service at the prevailing market price; (iv) calculate the fair market value of the product or service when neither a tariff nor interconnection agreement exists and in the absence of a prevailing market price; (v) calculate net book costs or fully distributed costs; and (vi) compare the estimated fair market value of the product or service to its net book cost or fully distributed cost, depending upon whether a product or service is involved and the total aggregate annual value of the asset or service used in offering a dual-mode service.

No rational commercial entity would conduct business this way when selling goods and services to *itself*. The requirements of the Commission's affiliate transactions rules serve only to frustrate efficient management of a modern communications company and the provision of new services that consumers want, to the detriment of consumers. Thus, forbearance from the affiliate transaction rules is in the public interest.

C. Rate-of-Return Reporting Rules.

Part 69 is part of a multi-step process required to calculate the revenue requirements and rates for the various interstate access elements.[46] The process begins with an incumbent LEC

[46] *Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, To Conform It With Part 36, Jurisdictional Separations Procedures*, Report and Order, 2 FCC Rcd 6447, ¶ 4 (1987); *Amendment of Part 69 of the Commission's Rules and Regulations, Access*

recording its revenues, expenses and cost of investment in the accounts prescribed by the Uniform System of Accounts ("USOA"). The next step is the segregation of costs associated with regulated services from those associated with nonregulated services in accordance with Part 64 of the Commission's Rules. Next, the regulated revenues must be assigned and costs apportioned to the state or interstate jurisdiction pursuant to the Commission's separations process. Finally, regulated interstate costs must be apportioned between the various interexchange and access element buckets as prescribed in Part 69, Subparts D and E. *Access Charge Order,* ¶ 2 (1988). It is this final step from which Verizon seeks forbearance. Verizon also seeks forbearance from Part 65, Subpart E, which requires incumbent LECs to file a rate-of-return monitoring report on an annual basis – Report 492A.

Under price cap regulation these rate-of-return reporting rules have nothing to do with Verizon's rates and are not necessary to ensure that Verizon's practices are otherwise just, reasonable, and nondiscriminatory or to protect consumers. Forbearance from these rules is also consistent with the public interest because compliance requires an unnecessary investment of resources by only a few among many competitors, thus constraining competition.

(1) The rate-of-return reporting rules are not necessary to ensure just, reasonable, and nondiscriminatory rates.

The rate-of-return reporting rules do not ensure that Verizon's rates are just, reasonable and nondiscriminatory because these rules are the remnants of rate-of-return regulation that serve no valid regulatory purpose under price cap regulation. Subparts D and E of Part 69 contain the cost allocation rules first adopted in 1983 for apportioning investment and expense among the interexchange category and the access elements to be charged to interexchange carriers and end

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Charges, To Conform It With Part 36, Jurisdictional Separations Procedures, Order on Reconsideration, 4 FCC Rcd 765, ¶ 2 (1988) (*"Access Charge Order"*).

users after the breakup of the Bell System.[47] The cost allocation rules in Subparts D and E were designed for developing access charges for rate-of-return carriers.[48]

Form 492A required by Part 65, Subpart E of the Commission's rules was originally developed in 1986 as a quarterly report to "monitor[] carriers' interstate rates of return for use in the enforcement of the Commission's rate of return prescriptions and to assist the Commission in the tariff review process."[49] When the Commission adopted ARMIS in 1987, the rate-of-return monitoring report was changed to an annual report, "filed at the end of a review period and ... used for rate of return enforcement purposes."[50] The Form 492A report subsequently was modified for price cap carriers to remove "any rate of return reporting that requires data at less aggregated levels than total interstate earnings," since the sharing and low end adjustment mechanisms under the price cap regime in place at the time were based on total interstate rate of return.[51]

Although the Part 69 rules apportion the interstate regulated revenues, investment and expenses among categories and access elements in order to enable carriers to compute cost-based

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[47] *MTS and WATS Market Structure*, CC Docket No. 78-72 Phase I, Memorandum Opinion and Order, 97 F.C.C.2d 682, ¶ 153 (1983).

[48] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing Usage of the Public Switched Network by Information Service and Internet Access Providers*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd 21354, 21380 ¶ 52 (1996).

[49] *AT&T, Complainant, v. Northwestern Bell Tel. Co., Defendant,* Memorandum Report and Order, 5 FCC Rcd 143, n. 48 (1990); *Amendment of Part 65, Procedures and Methodologies to Establish Reporting Requirements,* Report and Order, 1 FCC Rcd 952, ¶ 1 (1986).

[50] *Amendment of Part 65, Procedures and Methodologies to Establish Reporting Requirements,* Notice of Proposed Rulemaking, 104 FCC 2d 273, ¶ 12 (1986).

[51] *Policy and Rules Concerning Rates for Dominant Carriers,* Second Report and Order, 5 FCC Rcd 6786, ¶¶ 380 & 384 (1990), Order on Reconsideration, 6 FCC Rcd 2637 (1991).

charges,[52] price cap regulation does not depend on these cost results. Unlike rate-of-return regulation, where costs are a critical component of determining rates, the price ceilings under price cap regulation are determined without reference to costs.

The Commission abolished the sharing requirement and eliminated the low end adjustment mechanism for carriers operating under pricing flexibility, such as Verizon.[53] Indeed, in eliminating the adjustment mechanism in connection with pricing flexibility, the Commission found that doing so "might enable the Commission to relax, for that LEC, any accounting rules necessitated only by the rate-of-return-based low-end adjustment mechanism." *Pricing Flexibility Order,* 14 FCC Rcd at 14306-07, ¶ 166. Thus, there is no legitimate regulatory need for Verizon to continue to apportion costs among access elements or generate reports such as the Form 492A designed for outdated regulatory monitoring and enforcement purposes.

(2) The rate-of-return reporting rules are not necessary to protect consumers.

The rate-of-return reporting rules are unnecessary to protect consumers. As noted above, today's market forces ensure that consumers are protected. Moreover, reports that no longer serve any valid regulatory purpose cannot be said to be helpful in protecting consumers. If

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[52] *Interim 800 Exchange Access Tariffs; Bell Atlantic Telephone Companies Petition for Waiver of Part 69; Bell Atlantic Telephone Companies Tariff F.C.C. No. 1; New England Telephone and Telegraph Company Tariff F.C.C. No. 40; New York Telephone Company Tariff F.C.C. No. 41*, Memorandum Opinion and Order, 2 FCC Rcd 5905 (1987).

[53] *Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform*, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642, ¶ 152 (1997), *aff'd in part, rev'd in part, United States Telecom Ass'n v. FCC,* 188 F.3d 521 (D.C. Cir. 1999); *Access Charge Reform,* Fifth Report and Order and Notice of Proposed Rulemaking, 14 FCC Rcd 14221, n.144 (1999) ("*Pricing Flexibility Order*"). The low end adjustment mechanism was eliminated for any price cap incumbent LEC electing to exercise either Phase I or Phase II pricing flexibility, which all of the major incumbent LECs have done. *Id.*, 14 FCC Rcd at 14304, ¶ 162.

anything, these reports harm consumers by imposing unnecessary regulatory burdens on Verizon.

(3) Forbearance from the rate-of-return reporting rules is in the public interest.

As noted above, the elimination of unnecessary regulations that distort competition by imposing costs on a small subset of competitors is in the public interest. Such is the case with the rate-of-return reporting rules, which serve no valid regulatory purpose and apply only to a limited number of competitors. Accordingly, granting forbearance from the Commission's rate-of-return reporting rules is in the public interest.

D. Property Record Rules.

Verizon also seeks forbearance from the requirements in Part 32 of the Commission's rules that prescribe specific requirements for recording investment in property, plant, and equipment and for maintaining certain supporting records, including basic property records and Continuing Property Records ("CPR").[54] The basic property records consist of the CPR and all supplemental records necessary to provide the property record details required by the Commission. 47 C.F.R. § 32.2000(e)(3). Supplemental records include invoices, work orders, and engineering drawings that support the information in the CPR. These basic property records are part of the total property accounting system that preserves the identity, vintage, location, and original cost of property, as well as original and ongoing transactional data. 47 C.F.R. § 32.2000(e)(1). Incumbent LECs must ensure that their records are auditable, subject to effective internal accounting controls, and "maintained throughout the life of the property." 47 C.F.R. § 32.2000(e)(2).

[54] Incumbent LECs are required to account for investment in property, plant, and equipment in the 2000 series of accounts in Part 32. The requirements for maintaining basic property records and CPR are contained in, respectively, 47 C.F.R. §§ 32.2000(e) and (f).

Forbearance is appropriate because the property records required by the Commission are not necessary to ensure Verizon's rates are just, reasonable, and nondiscriminatory or to protect consumers. Existing accounting safeguards applicable to all public companies are adequate. Forbearance from the property records rules is also consistent with the public interest because compliance requires an unnecessary investment of resources by only a few among many competitors, thus constraining competition.

(1) The property record rules are not necessary to ensure just, reasonable, and nondiscriminatory rates.

The Commission's property record rules are completely unnecessary to ensure Verizon's rates are just, reasonable and nondiscriminatory. These rules were developed under rate-of-return regulation and serve no valid purpose under price cap regulation.[55] Price cap regulation has eliminated any need for Verizon to document the costs that make up its plant asset base to the extreme detail mandated by the Commission's rules. With rates no longer tied directly to costs, requiring that Verizon maintain such detailed property records does nothing to ensure that Verizon's rates are just, reasonable, and nondiscriminatory.

Recognizing as much and because these rules impose substantial burdens on incumbent LECs, the Commission "tentatively conclude[d]" six years ago that it "should eliminate our detailed CPR rules in three years."[56] That time period has long since passed, and Verizon's interstate rates under the Commission's price cap regime are unaffected by underlying accounting costs or the property records the Commission's rules require that Verizon continue to

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[55] *See, e.g.*, R*evision to amend Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies as it relates to the treatment of certain individual items of furniture and equipment costing $500 or less*, Order, 3 FCC Rcd 4464, ¶ 14 (1988).

[56] *Phase Two Order,* 16 FCC Rcd 19911, ¶ 212.

maintain. In fact, as discussed above, there are other legal requirements that compel Verizon to maintain accurate records of its assets which further obviate the need for compliance with the Commission's property record rules.

(2) The property record rules are not necessary to protect consumers.

The property record rules are unnecessary to protect consumers in today's vibrantly competitive marketplace. Moreover, because these rules no longer serve any valid regulatory purpose under price cap regulation, the property record rules do not protect consumers. In fact, they harm consumers by imposing unnecessary burdens on Verizon.

Consumers are adequately protected by compliance with GAAP and other applicable safeguards and controls, which are designed to protect assets from physical loss due to theft, deterioration, destruction, misappropriation or misuse and to ensure that asset purchases, transfers, and retirements or dispositions are made in accordance with management's authorization and are properly valued in a company's financial records. However, the information Verizon must record and maintain in order to comply with the Commission's property record rules goes well beyond such safeguards.

For example, under the Commission's rules, incumbent LECs must maintain their CPR by subaccount for each accounting area of their operations, which is the smallest territory of the company for which accounting records of investment are maintained for all plant accounts within the area. 47 C.F.R. § 32.2000(f)(1)(i). Incumbent LECs also must ensure that the CPR contains detailed descriptions as to the location, date of placement into service, and original cost of plant assets, and the rules specify methods for determining the original cost of property record units. 47 C.F.R. § 32.2000(f)(2) & (3). In addition, the incumbent LEC must provide a description of each property record unit, which "shall include the identification of the work under which constructed, the year of installation (unless not determinable ...), specific location of the property within each accounting area in such manner that it can be readily spot-checked for proof of physical existence, the accounting company's number or designation, and any other description used in connection with the determination of the original cost." 47 C.F.R. § 32.2000 (f)(5).

The information that Verizon must maintain in order to comply with the Commission's property records rules is voluminous. In effect, Verizon must preserve all documentation pertaining to an asset for the entire life of that asset, which in some instances can involve a lengthy period of time and an inordinate amount of data. Consumers are not protected by compelling Verizon to keep property records beyond that required by GAAP, which is the standard with which publicly traded companies in all other industries must comply.

(3) Forbearance from the property record rules is in the public interest.

As is the case with the other recordkeeping and reporting requirements that are the subject of Verizon's Petition, forbearance from the Commission's property record rules is in the public interest because the rules serve no valid regulatory purpose and distort competition by imposing costs on a small subset of competitors. For example, most of Verizon's competitors are able to realize efficiency savings in the accounting and reporting process by utilizing packaged software systems that have been developed for general ledger and related feeder systems such as the fixed asset system. Unfortunately, such efficiencies and savings are diminished, if not eliminated, for Verizon, which must expend additional resources to customize systems to maintain the detailed information required by the Commission's property records rules. Accordingly, forbearance from these rules is in the public interest.

IV. CONCLUSION

For the foregoing reasons, the Commission should grant Verizon's Petition for Forbearance and should make clear that states may not lawfully impose recordkeeping and reporting requirements that are inconsistent with the Commission's decision to forbear.

Respectfully submitted,

By: ______________________

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Attachment 1

47 C.F.R. PART 1

<u>Subpart E - Complaints, Applications, Tariffs and Reports Involving Common Carriers</u>
1.795 - Reports regarding interstate rates of return.

47 C.F.R. PART 32 – Uniform System of Accounts for Telecommunications Companies

<u>Subpart B - General Instructions</u>
32.11 – Classification of companies (to the extent the rule requires a carrier to keep Basic Property Records or Continuing Property Records)
32.23 – Nonregulated activities (to the extent the rule requires a carrier to comply with Affiliate Transaction rules)
32.27 - Transactions with affiliates.

<u>Subpart C - Instructions for Balance Sheet Accounts</u>
32.2000 - Instructions for telecommunications plant accounts.
Subsection (e) - *Basic property records.*
Subsection (f) - *Standard practices for establishing and maintaining continuing property records.*

47 C.F.R. PART 43 - Reports of Communication Common Carriers and Certain Affiliates

43.21 - Transactions with affiliates.
Subsection (d)
Subsection (e)
Subsection (f)
Subsection (g)
Subsection (h)
Subsection (i)
Subsection (j)
Subsection (k)

47 C.F.R. PART 64 - Miscellaneous Rules Relating to Common Carriers

<u>Subpart I - Allocation of Costs</u>
64.902 – Transactions with affiliates
64.903 - Cost allocation manuals (only as related to Affiliate Transaction rules)
64.904 - Independent audits (only as related to Affiliate Transaction rules)

47 C.F.R. PART 65 – Interstate Rate of Return Prescription Procedures and Methodologies

Subpart E - Rate of Return Reports
65.600 - Rate of return reports.

47 C.F.R. PART 69 – Access Charges

Subpart D - Apportionment of Net Investment
69.301 - General.
69.302 - Net investment.
69.303 - Information origination/termination equipment (IOT).
69.304 - Subscriber line cable and wire facilities.
69.305 - Carrier cable and wire facilities (C&WF).
69.306 - Central office equipment (COE).
69.307 - General support facilities.
69.308 - [Deleted]
69.309 - Other investment.
69.310 - Capital leases.

Subpart E - Apportionment of Expenses
69.401 - Direct expenses.
69.402 - Operating taxes (Account 7200).
69.403 - Marketing expense (Account 6610).
69.404 - Telephone operator services expenses in Account 6620.
69.405 - Published directory expenses in Account 6620.
69.406 - Local business office expenses in Account 6620.
69.407 - Revenue accounting expenses in Account 6620.
69.408 - All other customer services expenses in Account 6620.
69.409 - Corporate operations expenses (Accounts 6710 and 6720).
69.410 - [Deleted]
69.411 - Other expenses.
69.412 - Non-participating company payments/receipts.
69.413 - Universal Service Fund Expenses.
69.414 - Lifeline assistance expenses.
69.415 - Reallocation of certain transport expenses.

47 U.S.C. §254 – Universal service

254(k) - Subsidy of competitive services prohibited (only as related to Affiliate Transaction rules).