

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

In the Matter of

Petition of Qwest Corporation for Forbearance  
From Enforcement of the Commission's  
ARMIS and 492A Reporting Requirements  
Pursuant to 47 U.S.C. § 160 (c)

WC Docket No. 07-204

**AT&T INC. REPLY COMMENTS**

AT&T Inc. ("AT&T") respectfully submits these reply comments in support of the petition by Qwest Corporation ("Qwest") in September 2007 requesting that the Commission forbear from enforcing its ARMIS (Reports 43-01 through 43-08, and 495A and 495B) and Report 492A requirements.<sup>1</sup>

AT&T agrees with Qwest that the price cap system adopted by the Commission seventeen years ago has obviated many of the ARMIS reporting requirements. These requirements (particularly Reports 43-05 through 43-08) were developed to monitor the initial effectiveness of the Commission's price cap regime after it was adopted. They were intended,

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<sup>1</sup> AT&T, as Ad Hoc noted (Ad Hoc's Comments at 2-3), has pending before the Commission petitions seeking forbearance from various accounting requirements and ARMIS reporting requirements. *See* Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 (c) from Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21; 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. Although the relief that AT&T has requested, and the arguments expressed in those petitions, differ from Qwest's petition in some ways, both carriers are in full accord that unnecessary Commission reporting requirements should be eliminated, and that Section 10 is an appropriate path for that purpose.

thus, to be *transitional*, not permanent.<sup>2</sup> Without question, the Commission has had ample time and experience with price caps to recognize that its predictive judgments in 1990 about price caps' effectiveness have been validated.<sup>3</sup> It is now time to retire the ARMIS "monitors," which have long since outlived their intended purpose.

In addition to urging the Commission to grant Qwest's petition, AT&T takes this opportunity to briefly address two issues raised by opponents of that petition.

**1. The Commission's 272 Sunset Order Presents No Barrier to Qwest's Petition.**

Ad Hoc argues that the Commission should deny Qwest's petition because failing to do so would be "logically incompatible" with the Commission's recently established de-regulatory framework for long distance services provided by the BOCs, and companion decision regarding AT&T's separate petition on the same subject matter.<sup>4</sup> Sprint takes this argument even further, declaring that the Commission "should reject Qwest's attempt to bypass the conditions it imposed" in the *272 Sunset Order*.<sup>5</sup> Both commenters are utterly mistaken.

The gist of Ad Hoc's and Sprint's argument is that, because neither of those *Orders* granted accounting relief to the BOCs, the Commission has predetermined that accounting relief should not be granted to the BOCs *in the future* based on the forbearance requests by AT&T and/or Qwest. This argument is premised on a gross distortion of both *Orders*. First, neither Order discusses or even mentions AT&T's petitions – both of which were on file well before the

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<sup>2</sup> *In the Matter of 2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, CC Docket No. 00-229, Notice of Proposed Rulemaking, 15 FCC Rcd 22113, 22116 (2000).

<sup>3</sup> *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6828 (1990).

<sup>4</sup> *See In the Matters of Section 272 (f) (1) Sunset of the BOC Separate Affiliate and Related Requirements, et ors.*, WC Docket No. 02-112, *et ors.*, Report and Order and Memorandum Opinion and Order, 20 FCC Rcd 16440 (2007) (*272 Sunset Order*); *In the Matter of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 (c) With Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Memorandum Opinion and Order (2007) (*AT&T Order*) (collectively, the *Orders*).

<sup>5</sup> Sprint Nextel's Comments at 8-9. *See* Ad Hoc's Comments at 5-7.

release of the *Orders*. It is absurd to suggest, then, that the similar forbearance relief Qwest seeks in its petition (filed shortly thereafter) has been impliedly *ruled out* by the Commission in those *Orders*. Indeed, far from being filed in the teeth of recent and contrary Commission precedent, as Sprint suggests, Qwest's petition actually represents a rational judgment that the doors to its relief were left open – not shut – by the *Orders*.

This conclusion is further bolstered by the substance of the Commission's decisions in the *272 Sunset Order*. Although the *272 Sunset Order* maintained certain requirements for the BOCs and independent incumbent LECs (*i.e.*, that costs and revenues associated with the covered long distance services be treated as nonregulated for accounting purposes), that decision merely restated the regulatory *status quo* (" . . . in-region, interLATA . . . services provided by the BOCs on an integrated basis *currently are required* to be treated as nonregulated for accounting purposes"),<sup>6</sup> and nothing more.

If anything, by maintaining the *status quo*, the Commission effectively kept its decisional powder dry to address the kinds of carrier-specific issues that might arise in a Section 10 proceeding such as Qwest's. In such matters, there may be valid reasons for distinguishing the appropriate accounting and reporting treatment among LECs based on, for example, the manner in which their rates are regulated (*e.g.*, based on allocated costs) at the federal or state levels. Qwest seeks that kind of carrier-specific review here and its petition should be considered on its merits.

## **2. Forbearance Is A Proper Vehicle for Relief.**

Some commenters urge, generically, that the Commission reject Section 10 proceedings as a forum to address the kinds of issues raised in Qwest's petition.<sup>7</sup> In their view, broader rulemaking proceedings are the sole appropriate means for dealing with ARMIS's applicability and related issues -- not forbearance proceedings. These positions are deeply flawed.

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<sup>6</sup> *272 Sunset Order* at ¶ 93.

<sup>7</sup> See Ad Hoc's Comments at 7-8; California Public Utilities Commission's Comments at 3-5; Sprint Nextel's Comments at 3-5; Washington Utilities and Transportation Commission's Comments at 11-13.

First, commenters insisting that the Commission may shun forbearance proceedings in favor of rulemakings are simply wrong as a matter of law. Section 10 imposes an express, mandatory duty upon the Commission to rule upon forbearance petitions such as Qwest's.<sup>8</sup> As the Commission has been reminded by the courts, "Congress enacted section 10 as a 'viable . . . means of seeking forbearance' from regulation, and the Commission has 'no authority to sweep it away' on the grounds that it would prefer to determine the appropriate regulatory treatment . . . through a different mechanism."<sup>9</sup> Further, the "'availability of . . . an alternative route for seeking [forbearance] does not diminish the Commission's responsibility to fully consider petitions under [section] 10."<sup>10</sup> Thus, contrary to some commenters' suggestions, the possibility that the relief Qwest seeks arguably might fit within the scope of other regulatory proceedings cannot negate Qwest's procedural and substantive rights to forbearance under Section 10.

Second, even if the Commission had the discretion to defer action on Qwest's petition in favor of a rulemaking proceeding (which it does not), doing so would be manifestly unreasonable. The Commission's *Phase III* proceeding,<sup>11</sup> which opposing commenters would presumably view as an (if not *the*) appropriate mechanism to address ARMIS reporting, have yielded a record bulging with proof that ARMIS reporting requirements are no longer necessary. Yet, the Commission has chosen to take no action in that proceeding for *more than seven years*.

Section 10 forbearance exists to address precisely this kind of situation. Indeed, the arguments of Ad Hoc and others opposing forbearance might ring less hollow if they at least encouraged the Commission to take action in *Phase III*. But they are unwilling to offer even that

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<sup>8</sup> 47 U.S.C. § 160 (c). See *AT&T Corp. v. F.C.C.*, 236 F.3d 729, 738 (D.C. Cir. 2001) ("Congress has established § 10 as a viable and independent means of seeking forbearance. . . . Section 10 broadly states that the Commission *will* forbear from applying any regulation or any provision of the Act *to a telecommunications carrier* . . . if certain statutory determinations are made") (emphasis added).

<sup>9</sup> *AT&T Inc.*, 452 F.3d at 836 (D.C. Cir. 2006) (quoting *AT&T Corp. v. F.C.C.*, 236 F.3d at 738).

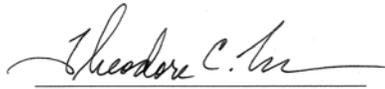
<sup>10</sup> *Id.*

<sup>11</sup> *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*, CC Docket No. 00-199, Notice of Proposed Rulemaking, CC Docket No. 00-229, 15 FCC Rcd 20568 (*Phase III*).

meager accommodation. It is thus simply not credible for them to insist that Qwest or any other carrier should forgo their statutory rights under Section 10 to seek forbearance relief while rulemaking proceedings (*e.g.*, *Phase III*) continue along for years without resolution.

Accordingly, because the reporting requirements at issue in Qwest's forbearance petition no longer have a "strong connection" to legitimate regulatory goals,<sup>12</sup> the Commission should grant the petition.

Respectfully submitted,



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December 21, 2007

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<sup>12</sup> See *Cellular Telecommunications & Internet Association v. F.C.C.*, 330 F.3d 501, 512 (D.C. Cir. 2003).