

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

|   |                       |                      |
|---|-----------------------|----------------------|
| In the Matter of  | )                     |                      |
| Petition of the Embarq Local Operating<br>Companies for Forbearance Under 47 U.S.C.<br>§ 160(c) From Enforcement of Certain of<br>ARMIS Reporting Requirements                | )<br>)<br>)<br>)      | WC Docket No. 07-204 |
| Petition of the Frontier and Citizens ILECs<br>for Forbearance Under 47 U.S.C. § 160(c)<br>From Enforcement of Certain of the<br>Commission’s ARMIS Reporting<br>Requirements | )<br>)<br>)<br>)<br>) | WC Docket No. 07-204 |
| Petition of Verizon For Forbearance<br>Under 47 U.S.C. § 160(c) From Enforcement<br>of Certain of the Commission’s<br>Recordkeeping and Reporting Requirements                | )<br>)<br>)<br>)      | WC Docket No. 07-273 |

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**JOINT COMMENTS AND OPPOSITION OF THE  
NEW JERSEY DIVISION OF RATE COUNSEL  
AND THE  
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

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Ronald K. Chen  
Public Advocate  
Stefanie A. Brand, Esq.  
Director  
Christopher J. White  
Deputy Public Advocate  
Department of the Public Advocate  
Division of Rate Counsel  
31 Clinton Street, 11th Floor  
P.O. Box 46005  
Newark, NJ 07101  
Phone (973) 648-2690  
Fax (973) 624-1047  
[www.rpa.state.nj.us](http://www.rpa.state.nj.us)  
[njratepayer@rpa.state.nj.us](mailto:njratepayer@rpa.state.nj.us)

David C. Bergmann  
Assistant Consumers' Counsel  
Chair, NASUCA  
Telecommunications Committee  
Office of the Ohio Consumers'  
Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
Phone (614) 466-8574  
Fax (614) 466-9475  
[bergmann@occ.state.oh.us](mailto:bergmann@occ.state.oh.us)

NASUCA  
8380 Colesville Road, Suite 101  
Silver Spring, MD 20910  
Phone (301) 589-6313  
Fax (301) 589-6380

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**I. INTRODUCTION**

In response to the Public Notices issued December 18, 2007, by the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> the New Jersey Division of Rate Counsel (“Rate Counsel”) and the National Association of State Utility Consumer Advocates (“NASUCA”) (collectively, “State Advocates”) hereby oppose the Petitions

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<sup>1</sup>/ “Pleading Cycle Established For Embarq Local Operating Companies And Frontier And Citizens Communications Incumbent Local Exchange Telephone Carriers Petitions Seeking Forbearance From Enforcement Of Certain ARMIS Reporting Requirements,” WC Docket No. 07-204, Public Notice, DA 07-5033 (rel. December 18, 2007); “Pleading Cycle Established For Verizon Petition Seeking Forbearance From Enforcement Of Certain Recordkeeping And Reporting Requirements,” WC Docket No. 07-273, Public Notice, DA 07-5034 (rel. December 18, 2007).

by Verizon Communication, Inc. (“Verizon”),<sup>2</sup> Embarq Local Operating Companies (“Embarq”),<sup>3</sup> and Frontier and Citizens Communications ILECs (“Frontier”)<sup>4</sup> seeking forbearance from certain recordkeeping and Automated Reporting Management Information System (“ARMIS”) reporting requirements imposed by the Federal Communications Commission (“FCC” or “Commission”).<sup>5</sup> Given that these petitions have much in common, State Advocates are submitting these combined comments.

#### **A. SUMMARY OF COMMENTS**

The Petitions filed by Verizon, Embarq, and Frontier follow closely on the heels of petitions of AT&T, Inc. (“AT&T”) and Qwest Corporation (“Qwest”) for forbearance from ARMIS reporting. In its petition, AT&T sought forbearance from ARMIS Reports 43-05, 43-06, 43-07, and 43-08.<sup>6</sup> Soon after, Qwest filed a petition seeking forbearance from all ARMIS Reports, as well as Reports 495A, 495B, and Report 492A.<sup>7</sup>

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<sup>2</sup> / *In the Matter of Petition of Verizon for Forbearance Under 47 C.F.R §160(c) From Enforcement of Certain of the Commission’s Recordkeeping and Reporting Requirements*, WC Docket No. 02-273, Petition of Verizon for Forbearance (filed November 26, 2007) (“Verizon Petition”).

<sup>3</sup> / *In the Matter of Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain ARMIS Reporting Requirements*, WC Docket No. 07-204, Petition for Forbearance (filed October 19, 2007 (“Embarq Petition”).

<sup>4</sup> / *In the Matter of Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s ARMIS Reporting Requirements*, WC Docket No. 07-204, Petition of the Frontier and Citizens ILECs for Forbearance (filed November 12, 2007) (“Frontier Petition”).

<sup>5</sup> / In these comments, “Petitioners” refers to Verizon, Embarq, and Frontier.

<sup>6</sup> / *In the Matter of Petition of AT&T Inc, for Forbearance Under 47 U.S.C. § 160 (c) from Enforcement of Certain of the Commission’s ARMIS Reporting Requirements*, WC Docket No. 07-139 (“07-139”), AT&T Inc. Petition for Forbearance (filed June 8, 2007) (“AT&T Petition”).

<sup>7</sup> / *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 (“07-204”), Qwest Petition for Forbearance (filed September 13, 2007;corrected October 1, 2007) (“Qwest Petition”).

NASUCA and its members opposed the petitions filed by Qwest<sup>8</sup> and by AT&T,<sup>9</sup> which presently are pending Commission decision. State Advocates incorporate those comments by reference here because many of the analyses and comments contained therein apply to the Verizon, Embarq and Frontier petitions.

NASUCA and its members also opposed the petition by Verizon for forbearance from dominant carrier regulation in six Metropolitan Statistical Areas (“MSAs”) (the “*Verizon Six MSA*” petition).<sup>10</sup> Likewise, NASUCA and its members also opposed a similar Qwest Communications International (“Qwest”) petition for forbearance in four Qwest MSAs.<sup>11</sup> Further, Rate Counsel and NASUCA opposed a petition filed by BellSouth Telecommunications, Inc. (“BellSouth”) for forbearance under 47 U.S.C. §

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<sup>8</sup> / 07-204, Joint Comments and Opposition of the New Jersey Division of Rate Counsel, Public Counsel Section of the Washington State Attorney General’s Office and the National Association of State Utility Consumer Advocates, filed December 6, 2007 (“State Advocates – Qwest Initial”); Joint Reply Comments of the New Jersey Division of Rate Counsel, Public Counsel Section of the Washington State Attorney General’s Office and the National Association of State Utility Consumer Advocates, filed December 21, 2007 (“State Advocates – Qwest Reply”).

<sup>9</sup> / 07-139, Comments and Opposition of the New Jersey Division of Rate Counsel, filed August 20, 2007 (“Rate Counsel - AT&T Initial”); Comments of the National Association of State Utility Consumer Advocates, filed August 20, 2007 (“NASUCA - AT&T Initial”); Reply Comments of the New Jersey Division of Rate Counsel, filed September 19, 2007; Reply Comments of the National Association of State Utility Consumer Advocates, filed September 19, 2007.

<sup>10</sup> / *In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172 (“*Verizon Six MSA* proceeding”), Comments of the National Association of State Utility Consumer Advocates, the Pennsylvania Office of Consumer Advocate, the Public Utility Law Project of New York, Inc., the Massachusetts Office of Attorney General, the Virginia Office of Attorney General, the Maryland Office of People’s Counsel, the New Jersey Division of Rate Counsel, the New Hampshire Office of Consumer Advocate and the Connecticut Office of Consumer Counsel, filed March 5, 2007. On December 5, 2007, the Commission denied Verizon’s petition. *Id.*, Memorandum Opinion and Order, FCC 07-212 (rel. December 5, 2007) (“*Verizon Six MSA Order*”).

<sup>11</sup> / *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Comments of NASUCA; Rate Counsel; Colorado Office of Consumer Counsel; Public Counsel Section of the Washington State Attorney General’s Office and Washington Electronic Business and Telecommunications Coalition, all filed August 31, 2007.

160 from enforcement of certain of the Commission's cost assignment rules,<sup>12</sup> before AT&T acquired BellSouth.<sup>13</sup>

States Advocates refer the Commission to the initial and reply comments filed on all of these forbearance petitions, because many of the arguments regarding those petitions continue to be germane to the Commission's investigation of the current petitions for forbearance submitted by incumbent local exchange carriers ("ILECs"). All of these petitions involve the ILECs' consistent overestimation of the extent of competition in their markets, and equally consistent underestimation of the public interest in the regulations from which the Petitioners seek forbearance.

The table below summarizes the reporting and recordkeeping requirements from which ILECs recently have sought forbearance.

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<sup>12</sup> / *Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 05-342. Rate Counsel submitted initial and reply comments in WC Docket 05-342 on January 23, 2006, and February 10, 2006, respectively, opposing BellSouth's petition. NASUCA filed reply comments, on February 13, 2006. On January 25, 2007, AT&T also filed a petition for forbearance from the Commission's cost allocation rules. *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 07-21. On February 9, 2007, AT&T, on behalf of BellSouth, withdrew the petition filed in WC Docket No. 05-342 and re-filed the BellSouth petition in WC Docket No. 07-21. Rate Counsel submitted comments on March 15, 2007 opposing the petitions for forbearance in WC Docket No. 07-21. In those comments, the Rate Counsel referred the Commission to its initial and reply comments filed in Docket No. 05-342 and supported NASUCA's positions as to why the grant of the petition is not in the public interest. The Commission has taken no further action in the proceeding.

<sup>13</sup> / *In the Matter of AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189 (announced December 29, 2006, rel. March 26, 2007) ("*AT&T/BellSouth Merger Order*"). AT&T and BellSouth merged on December 29, 2006. "AT&T and BellSouth Join to Create a Premier Global Communications Company," December 29, 2006, [www.att.com](http://www.att.com).

| Recent Forbearance Requests    |          |           |            |                          |            |
|--------------------------------|----------|-----------|------------|--------------------------|------------|
|                                | AT&T     | Qwest     | Embarq     | Frontier and<br>Citizens | Verizon    |
| Date of Petition               | 6/8/2007 | 9/13/2007 | 10/19/2007 | 11/12/2007               | 11/26/2007 |
| ARMIS Report 43-01             |          | X         |            |                          | X          |
| ARMIS Report 43-02             |          | X         |            |                          | X          |
| ARMIS Report 43-03             |          | X         |            |                          | X          |
| ARMIS Report 43-04             |          | X         |            |                          | X          |
| ARMIS Report 43-05             | X        | X         | X          | X                        | X          |
| ARMIS Report 43-06             | X        | X         | *          | *                        | X          |
| ARMIS Report 43-07             | X        | X         | *          | *                        | X          |
| ARMIS Report 43-08             | X        | X         | X          | X                        | X          |
| Report 495A                    |          | X         |            |                          | X          |
| Report 495B                    |          | X         |            |                          | X          |
| Report 492A                    |          | X         |            |                          | X          |
| Affiliate Transaction Rules    |          |           |            |                          | X          |
| Rate-of-Return Reporting Rules |          |           |            |                          | X          |
| Property Record Rules          |          |           |            |                          | X          |

\* Currently only RBOCs are required to submit Report 43-06 and 43-07. Embarq and Frontier and Citizens do not file Reports 43-06 and 43-07.

As this table shows, the Embarq and Frontier petitions are the most limited, with AT&T slightly more expansive. Qwest takes things somewhat further. But Verizon goes furthest of all. Yet the arguments on each petition essentially apply to all of the others.

The ILECs' multiple and overlapping requests for forbearance underscore the importance of the Commission improving its forbearance process. As State Advocates previously stated:

[T]he Commission's recent Notice of Proposed Rulemaking ("NPRM") brings to bear on this proceeding a topic bigger than Qwest's petition itself. Namely, through this NPRM, the Commission recognizes that the forbearance process is out of control, that it is not being used as it was intended, and that this improper use may have harmful consequences for telecommunications consumers.<sup>14</sup>

<sup>14/</sup> State Advocates – Qwest Reply, at 13, citing *In the Matter of Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Notice of Proposed Rule Making, WC Docket No. 07-267.

For the reasons enumerated in the above-cited comments, most recently those opposing Qwest's ARMIS Petition, the ILEC Petitions in this proceeding are not only flawed on procedural grounds, but also fail to satisfy the Commission's well-established three-prong test for forbearance. The ILECs' Petitions bear directly on states' access to valuable data and information, and, therefore, the Commission's deliberations in this proceeding could affect states' ability to carry out their regulatory responsibilities. As has been the Commission's long tradition, states and the Commission should work collaboratively on matters of importance to interstate and intrastate regulation and oversight of telecommunications services and infrastructure. Finally, the Petitions raise matters that potentially affect all ILECs, and, therefore, these matters would be aired more appropriately in a rulemaking informed by the recommendations of a federal-state joint board, instead of in the piece-meal fashion currently being used by the companies.

Despite serious misgivings about the fundamentally inappropriate forum in which these Petitions are being considered, State Advocates provide a preliminary assessment of the Petitions in these initial comments. Based on their review, State Advocates conclude that the Petitions are contrary to the public interest, procedurally flawed, and should be denied in their entirety.<sup>15</sup>

What is new here is that not only does Verizon seek forbearance in its Petition from *reporting* requirements, but also from *recordkeeping* requirements. Allowing Verizon to withdraw from its recordkeeping requirements could hamper the ability of consumer advocates and regulators to seek information in state and federal proceedings through data and information requests, and also could limit the usefulness of any future

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<sup>15</sup> / Further, based on review of others' filings in this proceeding, State Advocates may supplement the concerns and analyses set forth in this opposition in reply comments.

audits that state or federal regulators may undertake. If Verizon is no longer required to keep its records in a way that is amenable to data and audit requests, such requests in the future could be met with a response of “no such data exist,” or “collecting such data would be unduly burdensome and would require a special study.” For this and other reasons discussed in these and earlier comments, State Advocates urge the Commission to reject Verizon’s request to discontinue its required recordkeeping.

State Advocates also note that Verizon’s Petition goes beyond the others in another sense. Not only does Verizon want the FCC to forbear from the reporting and recordkeeping requirements that the FCC’s rules impose, Verizon also seeks to have the Commission preempt state recordkeeping and reporting requirements.<sup>16</sup> This request is as wrongheaded as the rest of Verizon’s (and the other ILECs’) requests.

As mentioned above, all of these petitions depend on an exaggeration of the extent and the impact of competition in the telecommunications market. State Advocates’ comments here show the lack of basis in these ILEC arguments, and that the petitions should be denied.

## **B. INTEREST OF STATE ADVOCATES**

Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities.<sup>17</sup> Rate Counsel participates actively in relevant Federal and state

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<sup>16</sup> Verizon Petition at 5.

<sup>17</sup> / Effective July 1, 2006, the New Jersey Division of Ratepayer Advocate is now the New Jersey Division of Rate Counsel. The Rate Counsel, formerly known as the New Jersey Ratepayer Advocate, is a Division within the Department of the Public Advocate. The Department of the Public Advocate is a government agency that gives a voice to New Jerseyans who often lack adequate representation in our political system. The Department of the Public Advocate was originally established in 1974, but it was abolished by the New Jersey State Legislature and New Jersey Governor Whitman in 1994. The Division of the Ratepayer Advocate was established in 1994 through enactment of Governor Christine Todd

administrative and judicial proceedings. The above-captioned proceedings are germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996. The New Jersey Legislature has declared that it is the policy of that state to provide diversity in the supply of telecommunications services, and it has found that competition will "promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." As these comments demonstrate, if granted, the Petitioners' request for forbearance from reporting requirements would unnecessarily and unduly constrain the ability of Rate Counsel and state regulators to assess quality of service including comparisons of the performance of Bell operating companies ("BOCs") (AT&T, Qwest and Verizon) and other ILECs (such as Embarq and Frontier). Also, if granted, the Petitions would limit access to important public information about operating statistics, costs, and network infrastructure.

NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent

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Whitman's Reorganization Plan. The mission of the Ratepayer Advocate is to make sure that all classes of utility consumers receive safe, adequate and proper utility service at affordable rates that are just and nondiscriminatory. In addition, the Ratepayer Advocate works to insure that all consumers are knowledgeable about the choices they have in the emerging age of utility competition. The Department of the Public Advocate was reconstituted as a principal executive department of the State on January 17, 2006, pursuant to the Public Advocate Restoration Act of 2005, P.L. 2005, c. 155 (*N.J.S.A.* §§ 52:27EE-1 *et seq.*). The Department is authorized by statute to "represent the public interest in such administrative and court proceedings . . . as the Public Advocate deems shall best serve the public interest," *N.J.S.A.* § 52:27EE-57, *i.e.*, an "interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens." *N.J.S.A.* §52:27EE-12, and the office of the Rate Counsel, formerly known as the Ratepayer Advocate, became a division therein to continue its mission of protecting New Jersey ratepayers.

the interests of utility consumers before state and federal regulators and in the courts.<sup>18</sup> Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Rate Counsel is a member of NASUCA. NASUCA's associate and affiliate members also serve utility consumers, but are not created by state law or do not have statewide authority.

The Commission's deliberations in this proceeding affect households and businesses nationwide because, among other things:

- ARMIS data provides a valuable tool to state and federal regulators for benchmarking. The Petitions bear directly on consumer advocates' ability to compare service quality performance among ILECs. Therefore, the Petitions, if granted, would hamper consumer advocates' efforts to improve basic local telephone service.
- ARMIS data provides a public source of information. Information about BOC operations is important to ensure that the marketplace works efficiently, consumers have open access to information, and regulators can detect where consumers are receiving sub-par levels of quality for basic service.
- These Petitions follows closely on the heels of AT&T's and Qwest's similar request for forbearance. Indeed, State Advocates predicted that other carriers would file "me too" petitions.<sup>19</sup>

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<sup>18</sup> / See, *e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d).

<sup>19</sup> / State Advocates – Qwest Initial, at 9.

- The property recordkeeping rules from which Verizon seeks forbearance are an essential component of the monitoring that allows regulators to confirm that carriers are accounting for property appropriately.
- The Petitions, if granted, would contribute to the piecemeal dismantling of long-established policy in a context that is inappropriately narrow. If the Commission is considering revamping its reporting requirements, it should assess such measures through a broader rulemaking proceeding in which it can address comprehensively the wide-ranging implications of such changes for state regulators, consumers, and competitors.
- Verizon's request for preemption would eliminate the ability of state commissions to address the vital issues covered by the reporting and recordkeeping requirements currently in federal law. Its position depends on distortion of both the forbearance process and the reasons for federal preemption.

As the industry continues its evolution, it is vital that fundamental basic local service remains protected by the oversight allowed by the ARMIS reports, particularly for those consumers who rely on basic service and may never purchase a competitive service.

## **II. ANALYSIS OF PETITIONS**

### **A. OVERVIEW**

As stated, rather than repeat in their entirety the analyses and discussions in comments that State Advocates have previously filed with the FCC regarding other ILEC

petitions for forbearance from reporting requirements, State Advocates incorporate by reference these previously filed comments.<sup>20</sup>

**B. REPORTING AND RECORDKEEPING FROM WHICH PETITIONERS SEEK FORBEARANCE**

**1. Verizon**

As explained in its Petition, Verizon seeks forbearance from:

(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.<sup>21</sup>

Verizon seeks forbearance from all ARMIS reporting – the financial reports (Reports 43-01, 43-02,43-03,43-04,495A and 495B); the service quality reports (Reports 43-05 and 43-06); and the infrastructure reports (Reports 43-07 and 43-08).<sup>22</sup> State Advocates described fully the ARMIS reports in their comments opposing Qwest’s petition for forbearance, and, as noted above, incorporate by reference those comments.<sup>23</sup>

In addition to the ARMIS reporting requirements, Verizon also seeks forbearance from affiliate transaction rules.<sup>24</sup> These rules are designed to ensure that consumers of regulated services do not inappropriately subsidize nonregulated services. The affiliate transaction rules, which are detailed in Parts 32 and 64 of the FCC’s rules, outline the

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<sup>20</sup> / See footnotes 8 and 9, *supra*.

<sup>21</sup> / Verizon Petition, at footnote 2.

<sup>22</sup> / *Id.*, at 11.

<sup>23</sup> / State Advocates – Qwest Initial, at 11-16.

<sup>24</sup> / Verizon Petition, at 19.

process that a carrier must use to value assets and services when transferring assets and services to or from an affiliate.<sup>25</sup> Verizon asserts that “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.”<sup>26</sup> Yet Verizon’s strategic and business decisions to pursue multiple lines of business create multiple opportunities for cross-subsidization, making affiliate transaction rules particularly important to protect consumers of basic non-competitive services.<sup>27</sup>

Verizon also requests forbearance from the Part 69 separations reporting process.<sup>28</sup> As related by Verizon,

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<sup>25</sup> / See 47 C.F.R. § 32.27.

<sup>26</sup> / Verizon Petition, at 19.

<sup>27</sup> / The way in which Verizon prices and offers its many bundled packages, and the impact of such bundles on the rates, quality, terms, and conditions of à la carte services raise concerns, which states are presently investigating. Verizon stated in a letter to the Maryland Public Service Commission in an apparent effort to alleviate Commission concerns about missed repair appointments and long repair intervals that Verizon Maryland is “[m]oving 50 technicians from building our fiber-optic network in Maryland to focus on repairing our traditional network to get our missed appointments back into compliance with the Commission’s standards.” *In the Matter of the Commission’s Investigation into Verizon Maryland, Inc.’s Service Performance and Service Quality Standards*, Maryland PSC Case No. 9114, Letter to the Maryland Public Service Commission from William R. Roberts, President of Verizon Maryland, Inc., August 22, 2007. Verizon Maryland’s pursuit of its FiOS services apparently is jeopardizing the quality of basic local service. See, e.g., *id.*, Order Initiating Proceeding, To Show Cause and to Produce Documents and Evidence, Order No. 81546, August 3, 2007; *id.*, Order Establishing Interim Reporting, Order No. 81658, October 15, 2007. Also, in a recent proposed order in Maryland, the Hearing Examiner rejected Verizon’s proposed tariff filings, including a filing in which Verizon Maryland combines services of its affiliates with those of Verizon Maryland. *In the Matter of the Commission’s Investigation into Verizon Maryland, Inc.’s Affiliate Relationships*, Maryland PSC Case No. 9120, Proposed Order of Hearing Examiner, January 7, 2008. See also *In the Matter of the Appropriate Forms of Regulating Telephone Companies*, Maryland PSC Case No. 9133, Order Initiating Proceeding Regarding Appropriate Form of Regulation, January 3, 2008. The classification of Verizon DC’s bundled services is one of several issues under investigation in the District of Columbia. *In the Matter of Verizon Washington, DC Inc.’s Price Cap Plan 2007 for the Provision of Local Telecommunications Services in the District of Columbia*, Public Service Commission of the District of Columbia Formal Case No. 1057.

<sup>28</sup> / Verizon Petition, at 29-30.

Part 69 is part of a multi-step process required to calculate the revenue requirements and rates for the various interstate access elements. The process begins with an incumbent LEC 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.<sup>29</sup>

Verizon seeks forbearance from the last step of this process, namely apportioning the regulated interstate costs between interexchange and access element buckets. In addition, Verizon seeks forbearance from Part 65, Subpart E, which requires ILECs to file rate of return information on Report 492A.<sup>30</sup>

Verizon also seeks forbearance from the requirements detailed 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”).<sup>31</sup> According to FCC rules, “The telecommunications plant accounts (2001 to 2007 inclusive) are designed to show the investment in the company’s tangible and intangible telecommunications plant which ordinarily has a service life of more than one year, including such plant whether used by the company or others in providing telecommunications service.”<sup>32</sup> Verizon seeks forbearance specifically from Subsection (e) - Basic property records, and

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<sup>29</sup> / *Id.*, at 29-30.

<sup>30</sup> / *Id.*, at 30.

<sup>31</sup> / *Id.*, at 33.

<sup>32</sup> / 47 C.F.R. § 32.2000 (a) (1).

Subsection (f) – Standard practices for establishing and maintaining continuing property records.<sup>33</sup>

## **2. Embarq**

Embarq seeks forbearance from two ARMIS reports, Report 43-05 (Service Quality Report), and 43-08 (Operating Data Report).<sup>34</sup>

## **3. Frontier and Citizens**

The Frontier and Citizens ILECs seek forbearance from ARMIS Reports 43-05 (Service Quality Report), and 43-08 (Operating Data Report).<sup>35</sup>

### **III. THE PETITIONERS HAVE FAILED TO DEMONSTRATE THAT THEIR PETITIONS MEET THE ACT'S THREE-PART TEST.**

Federal and state regulators are responsible for protecting ratepayers from anticompetitive behavior by ILECs. ILECs continue to dominate the local markets that they have traditionally served, and are rapidly re-gaining control of the long-distance market as well as the broadband market. ILECs continue to exert control over bottleneck local facilities. Regulatory accountability continues to be necessary to protect consumers and competitors from incumbent local carriers' anticompetitive behavior.

Section 10 of the Act includes a three-part test that governs whether the Commission shall forbear from applying any regulation or provision of the Act. In broad terms, the three-part test requires the Commission to address the following:

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<sup>33</sup> / Verizon Petition, at 33 and footnote 54.

<sup>34</sup> / Embarq Petition, at 1.

<sup>35</sup> / Frontier Petition, at 2.

1. Is the regulation necessary to ensure that the rates for the relevant services are just and reasonable?
2. Is the enforcement of the regulation necessary to protect consumers?
3. Would forbearance from applying the regulation be consistent with the public interest?<sup>36</sup>

In addition, under 47 U.S.C. § 160(b), the Commission is required to consider whether forbearance would promote competition as part of its determination of the public interest.

As explained by the Commission:

The Commission is obligated to forbear under section 10(a) only if all three elements of the forbearance criteria are satisfied. Thus, the Commission “could properly deny a petition for forbearance if it finds that any one of the three prongs is unsatisfied.” As discussed below, we find that the Core Forbearance Petition does not meet certain of the statutory forbearance criteria and, accordingly, we deny the petition.<sup>37</sup>

The Petitioners have failed to demonstrate that their Petitions satisfy this three-part test. Specifically, as these comments demonstrate, forbearance from applying the ARMIS reporting and recordkeeping requirements would be inconsistent with the public interest. Furthermore, Section 10 is constitutionally infirm in that it violates the doctrines of separation of powers and equal protection, and the 10th and 11th Amendments to the Constitution. State Advocates renew the arguments and incorporate those arguments

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<sup>36</sup> / 47 U.S.C. § 160.

<sup>37</sup> / *In the Matter of Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, WC Docket No. 06-100, *Memorandum Opinion and Order*, July 26, 2007, notes omitted. See also *Cellular Telecommunications & Internet Assoc. v. Federal Communications Commission*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three prongs of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong).

hereto with respect to the constitutional infirmities associated with the Commission's forbearance authority.<sup>38</sup>

#### **IV. FORBEARANCE WOULD NOT SERVE THE PUBLIC INTEREST.**

##### **A. ILECS CONTINUE TO DOMINATE TELECOMMUNICATIONS MARKETS.**

In support of their Petitions for forbearance from recordkeeping and reporting, Verizon,<sup>39</sup> Embarq,<sup>40</sup> and Frontier<sup>41</sup> each depict a purportedly competitive market, in which customers who are dissatisfied with their service can turn to suppliers other than ILECs. However, the ILECs' descriptions of the market as "competitive" are exaggerated and their oft-repeated "laundry list" of "competitive alternatives" misses the point for consumers of basic local service.

Cable-based voice service is typically offered as part of a package, with prices that exceed significantly those for à la carte basic local service. Furthermore, a national consumer organization advises consumers to retain their landline even if they switch to a

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<sup>38</sup>/ See Rate Counsel's Ex Parte filing dated December 7, 2004 in the UNE Remand proceeding (CC Docket No. 01-338 and WC Docket No. 04-313).

<sup>39</sup>/ Verizon states that the recordkeeping and reporting requirements "have no place in today's vibrantly competitive communications marketplace." Verizon Petition, at 1. Verizon further asserts that "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." *Id.*, at 3.

<sup>40</sup>/ Embarq refers to "today's competitive services market," and further asserts that "any price cap ILEC that allows service to deteriorate will quickly lose customers who can and do choose other options, including cable telephony, wireless, VoIP, and wireline CLEC services." Embarq Petition, at 4-5.

<sup>41</sup>/ Frontier describes the market for telecommunications services as a "robustly competitive marketplace," and states that "all ILECs including Frontier face vastly greater competition today than they did when the Commission imposed these reporting requirements." Frontier Petition, at 3, 6.

cable-based alternative.<sup>42</sup> Wireless service is more appropriately considered a complement to basic wireline service, rather than a substitute, as is evidenced by the continued presence of 167.5 million wireline subscribers,<sup>43</sup> despite the ever-growing number of wireless subscribers. VoIP requires a consumer to purchase a broadband connection, which is not necessary with traditional wireline voice service, and also raises public safety concerns such as reliable access to E-911 service and access to the network during power outages.<sup>44</sup> Each of these factors demonstrates the lack of true competitive alternatives available to consumers.<sup>45</sup>

The FCC has previously and appropriately recognized that intermodal services can only be considered to be substitutes where consumers have affirmatively viewed them as such. In its order approving the AT&T/BellSouth merger, the FCC stated,

Based on the factors discussed in this section, we conclude that mobile wireless services should be included within the product market for local services *to the extent that customers rely on wireless services as a complete substitute for, rather than a complement to, wireline services.*<sup>46</sup>

The FCC's language suggests that only customers who have indeed substituted wireless service for wireline service (*i.e.*, "cut the cord") should be included in any assessment of the status of competition in relevant product markets. In other words, if, for example,

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<sup>42</sup> / *Consumer Reports*, in its February 2008 issue, advises: "If you're switching to cable telephone service . . . consider spending about \$20 a month to retain basic landline service. A landline is more reliable for 911 calls and will continue to work in power outages." "Internet, TV, phone bundling can cut bills," *Consumer Reports*, February 2008, at 34.

<sup>43</sup> / *Id.*

<sup>44</sup> / See *Application of Verizon Virginia, Inc. And Verizon South, Inc. For a Determination that Retail Services are Competitive and Deregulating and Detariffing of the Same*, Virginia State Corporation Commission Case No. PUC-2007-00008, *Order on Application*, December 14, 2007, at 25, stating that "present-day reliability and public safety concerns with VoIP cannot be ignored."

<sup>45</sup> / See NASUCA Comments in the *Verizon Six MSA* proceeding, at 43-52.

<sup>46</sup> / *AT&T BellSouth Order*, at para. 96, citing, among others, declaration of Susan M. Baldwin and Sarah M. Bosley on behalf of the New Jersey Division of the Ratepayer Advocate (emphasis added).

10% of consumers have “cut the cord,” all other wireless consumers should be *excluded* from the relevant product market.<sup>47</sup> Wireless telecommunications services indisputably are widespread, but their relevance to an assessment of competition is limited to those instances where customers have determined that wireless service is a substitute for rather than complement to basic local service.

Further, industry interest in marketing triple and quadruple play packages of voice, data, video, and wireless does not provide evidence of competition for affordable à la carte basic local exchange service. In fact, the competitors do not offer stand-alone basic service, which most of the ARMIS data is needed to protect.<sup>48</sup> Likewise, the emerging duopoly between cable and telephone companies does not represent effective competition for consumers. FCC Commissioner Copps suggested that prior forbearance orders may have erred in their reliance on intermodal competition. Commissioner Copps stated:

I concur in this decision because the Commission continues to rely too heavily on the intermodal efforts of a single alternative provider to decide whether we should forbear from the incumbent’s retail and wholesale obligations. The Telecom Act envisioned more than just a cable-telephone duopoly as sufficient competition in the marketplace. ... However, I remain concerned that under the Commission’s analysis, forbearance might be deemed appropriate were cable found to have a larger market share. Such a finding in the future would put at risk smaller competitive providers as evidenced by the fact that some competitors chose not to compete in Omaha after the *Qwest-Omaha* forbearance decision. I would have been more comfortable with an analysis less accepting of duopoly as a competitive marketplace and that did not lead us further down this road.<sup>49</sup>

Commissioner Adelstein also expressed concerns about a duopoly, stating:

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<sup>47</sup> / See also *Verizon Six MSA Order*, Appendix B (which explains the FCC’s calculation of market shares) and is consistent with this logic.

<sup>48</sup> See NASUCA Comments in the *Verizon Six MSA* proceeding, at 52-61.

<sup>49</sup> / *Verizon Six MSA Order*, Statement of Commissioner Michael J. Copps, Concurring.

I continue to believe that the Act contemplates a competitive environment based on more than a simple rivalry – or duopoly – of a wireline and cable provider. Section 10 requires the Commission to consider, among other things, competitive conditions, the protection of consumers, and the public interest. The Commission must be ready to respond to a dynamic marketplace but it must also beware of the potential to lock consumers into a choice between two providers, a result that would have been more likely were relief granted here and one that would fall far short of the vital goals of the 1996 Act.<sup>50</sup>

A duopoly is not an effective form of competition for either customers of basic service or for customers seeking advanced services.

The Commission’s data demonstrate that ILECs nationwide continue to dominate 83% share of the retail wireline market, which is an *increase* from 81% in June 2005.<sup>51</sup> Furthermore, ILECs not only dominate the vast majority of the local market *directly* – through their own retail services – but also *indirectly* through resale, unbundled network element platform (“UNE-P”), UNE loop, and most recently, the wholesale products that have replaced UNE-P, such as Verizon’s “Wholesale Advantage” product. As the table below shows, ILECs still own or control 93% of the end-user switched access lines nationally.<sup>52</sup>

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<sup>50</sup> / *Id.*, Statement of Commissioner Jonathan S. Adelstein, Concurring.

<sup>51</sup> / Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of December 31, 2006* (December 2007) (“Competition Report”), at Table 1. See also *id.*, at Tables 10 and 11.

<sup>52</sup> / *Id.*

**Incumbent LECs own or control 93% of the end-user switched access lines as of December 31, 2006**

|   |             |
|---|-------------|
| Total incumbent lines                                 | 138,847,926 |
| Total CLEC lines                                      | 28,656,090  |
| Total end-user switched access lines                  | 167,504,016 |
| CLEC share of end-user switched access lines          | 17%         |
| <br>  |             |
| CLEC resold lines                                     | 5,818,469   |
| CLEC UNE lines  | 11,668,896  |
| CLEC-owned lines                                      | 11,168,753  |
| Total CLEC lines                                      | 28,656,118  |
| <br>  |             |
| CLEC-owned lines as a percentage of all lines         | 7%          |
| <br>  |             |
| Percent of all lines owned or controlled by incumbent | 93%         |

State Advocates urge the Commission to reject the Petitioners' assertions that the market for telecommunications service is sufficiently competitive to discipline the behavior and performance of the largest market participants. Although intermodal alternatives are available, they do not provide economic substitutes for the basic local service that needs the ARMIS protections the most. Instead, in the wake of substantial industry consolidation and the FCC's *UNE TRRO* decision, there are fewer prospects than ever for affordable alternatives to basic local telephone service. Therefore the connection between required reporting and consumer protection is as strong, if not stronger, than when the FCC adopted the rules for ARMIS reporting. As Commissioners Copps and Adelstein stated late last year:

Also troublesome is the fact that the Order finds that "potential" competition is sufficient to protect consumers. In places where substantial competition does not demonstrably exist, it seems that forbearance actually can make the problem worse as "potential" competitors will have

even less ability to successfully compete to provide a check on any anti-competitive behavior.<sup>53</sup>

The FCC’s analysis and reasoning regarding the status of competition in local markets in its recent order denying Verizon’s petitions for forbearance in six MSAs are applicable to these forbearance proceedings. The FCC stated:

We find that Verizon is subject to competition in the 6 MSAs from both intra- and intermodal competitors. The record indicates that a number of competitive LECs (i.e., intramodal competitors) compete with Verizon for mass market customers in certain areas of the 6 MSAs. The evidence also shows, however, that in serving mass market customers many of these intramodal competitors rely on access to Verizon’s last-mile network facilities, including UNEs, and Verizon’s other wholesale services in all 6 MSAs. We also find that Verizon is subject to intermodal competition, particularly competition from cable operators in the 6 MSAs, primarily for residential services. We do not include providers of “over-the-top” or nomadic voice over Internet Protocol (VoIP) services in our competitive analysis because there are no data in the record that justify finding that these providers offer close substitute services.<sup>54</sup>

The FCC determined that Verizon’s market share remained high enough to warrant continued regulation:

In particular, Verizon’s market shares in the MSAs at issue, measured consistent with our approach in the *Qwest Omaha Forbearance Order* and *ACS Dominance Forbearance Order*, are sufficiently high to suggest that competition in these MSAs is not adequate to ensure that the “charges, practices, classifications, or regulations . . . for [] or in connection with that . . . telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory” absent the regulations at issue.<sup>55</sup>

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<sup>53</sup> / *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*; FCC WC Docket No. 06-125, Memorandum Opinion and Order, FCC 07-180 (rel October 12, 2007), Joint Statement of Commissioner Michael J. Copps and Commissioner Jonathan S. Adelstein, Dissenting, at 42.

<sup>54</sup> / *Verizon Six MSA Order*, at para. 23, notes omitted.

<sup>55</sup> / *Id.*, at para. 27, note omitted.

In denying Verizon's forbearance request for the six MSAs, the FCC relied, in part, on the absence of a showing that facilities-based competitors had a significant share of the market, noting:

[W]e do not find the limited evidence regarding competition in the 6 MSAs based on resale and Verizon's Wholesale Advantage service sufficient to overcome the significantly less convincing evidence regarding Verizon's market shares and the success of its facilities-based competitors than was present in the *Qwest Omaha Forbearance Order* and *ACS Dominance Forbearance Order*.<sup>56</sup>

Those findings are pertinent to the forbearance petitions under consideration here. The Commission should make the same findings in response to these petitions.

**B. REPORTING RULES ARE DESIGNED TO PROTECT CONSUMERS, AND REMAIN NECESSARY.**

Petitioners repeatedly contend that reporting is either outdated or not designed for consumer protection. Verizon states that rate of return reporting does not protect consumers because it no longer serves any regulatory purpose,<sup>57</sup> and that market forces protect consumers.<sup>58</sup> Embarq asserts that ARMIS Report 43-05 and 43-08 reporting is not necessary to ensure that rates are just, reasonable, and nondiscriminatory because these reports were "never meant to ensure ILEC charges are just and reasonable."<sup>59</sup> Verizon and Embarq are wrong.

Among the fundamental purposes of industry oversight are to ensure quality service at reasonable rates, and to prevent anti-competitive cross-subsidization. ARMIS reporting contributes to regulators' oversight. For the Petitioners to argue that certain

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<sup>56</sup> / *Id.*, at footnote 100.

<sup>57</sup> / Verizon Petition, at 33.

<sup>58</sup> / *Id.*, at 32.

<sup>59</sup> / Embarq Petition, at 7.

ARMIS reports have no place in protecting consumers because those reports deal with investment, or operations, or technical service quality measures, misses the point of reporting requirements. It is disingenuous for the Petitioners to claim that a certain report was “never meant to ensure that ILEC charges are just and reasonable.”<sup>60</sup> The reports are part of an overall regulatory system that protects consumers. Service quality reports exist not for the sake of having reports but rather to assist regulators in monitoring whether consumers receive acceptable quality, regardless of whether the ILECs in question are regulated by price cap or rate-of-return regulation. Similarly, the purpose of investment-related reporting is to assist regulators in assessing whether price cap regulated carriers may be shortchanging consumers of non-competitive services in the long-run by reducing essential investment in the short-term.

In the real world, the promises of competition -- in terms of lower rates and higher service quality for wireline telephone service -- have seldom been met. Specifically as to rates, in the *Verizon Six MSA* proceeding, NASUCA presented extensive evidence of price increases imposed by Verizon in the face of supposed competition.<sup>61</sup>

**C. PRICE CAP REGULATION DOES NOT RENDER REPORTING IRRELEVANT.**

Petitioners repeatedly assert that the reporting requirements should be lifted because the reporting has no place in a price cap regime. Verizon states that ARMIS reporting is not necessary to ensure just, reasonable, and nondiscriminatory charges because “Verizon’s rates under price cap regulation are unaffected by data”<sup>62</sup> reported in

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<sup>60</sup> / Embarq Petition, at 7.

<sup>61</sup> / *Verizon Six MSA* proceeding, ex parte letter from Joel Cheskis, Pennsylvania Office of Consumer Advocate (filed November 8, 2007).

<sup>62</sup> / Verizon Petition, at 14.

the ARMIS system, and that, because the transition from rate of return regulation has been completed, the original reasons for ARMIS reporting are no longer valid.<sup>63</sup> As for affiliate transaction rules, Verizon theorizes that “under price cap regulation, the costs that Verizon records on its books as a result of these rules have no bearing on interstate rates,”<sup>64</sup> and “there no longer is a connection between carrier costs and rates under price cap regulation.”<sup>65</sup> Like Verizon, Embarq argues that ARMIS report 43-08 is unnecessary to ensure that rates are just, reasonable, and nondiscriminatory because the “information about the physical and operating characteristics of price cap ILEC networks” has nothing to do with ILEC charges.<sup>66</sup> According to Embarq, the reporting was designed to ensure that ILECs did not under-invest in networks during the transition to price cap regulation.<sup>67</sup>

According to Embarq, “nearly every measure of service quality” has improved in the past seven years,<sup>68</sup> and the “transition from rate of return to price cap regulation is long over.”<sup>69</sup> Contrary to Embarq’s implication, the time required to complete the repair of residential basic local exchange service has increased substantially in recent years for Embarq at the holding company level, as well as within states, such as New Jersey, Pennsylvania, and Ohio. In New Jersey, the ARMIS data show that initial out of service repair interval for residential customers increased each year from 2001 to 2006, from 15

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<sup>63</sup> / *Id.*, at 14-15.

<sup>64</sup> / *Id.*, at 24.

<sup>65</sup> / *Id.*

<sup>66</sup> / Embarq Petition, at 10-11.

<sup>67</sup> / *Id.*

<sup>68</sup> / *Id.*, at 8.

<sup>69</sup> / *Id.*, at 5.

hours in 2001, to 24.2 hours in 2006. The experience in Pennsylvania is similar - a yearly increase from 12.4 hours in 2001 to 18.5 in 2006. In Ohio, Embarq's quality in this area declined from 2001 to 2006, with the repair time lengthening from 14.5 hours in 2001 to 22.7 hours in 2006. At the holding company level, the ARMIS data show that Embarq's average repair interval for residential customers increased from 13.9 hours in 2001 to 18.8 hours in 2006.<sup>70</sup>

State Advocates demonstrated that ARMIS reporting continues to be necessary under price cap regulation in their comments opposing Qwest's petition for forbearance.<sup>71</sup> Among other examples, State Advocates pointed to the Commission's "Special Access" proceeding, where "even under price caps, ILECs are able to extract monopoly rents from consumers and competitors that rely on special access service."<sup>72</sup> ARMIS reporting is a key tool for regulators to determine where markets fail, as in the special access market.

State Advocates also provided evidence that, contrary to Embarq's assertions,<sup>73</sup> examples of deteriorating service quality abound, even now after the transition to price cap regulation. Regarding AT&T, State Advocates noted that it "must certainly be convenient to be so blind to one's own history of service quality problems."<sup>74</sup> State

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<sup>70</sup> / ARMIS Report 43-05, Table II, Row 145, accessed January 25, 2008.

<sup>71</sup> / State Advocates – Qwest Initial, at 37-39.

<sup>72</sup> / *Id.*, at 38. See also *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, FCC WC Docket No. 05-25, RM-10593, Comments of the New Jersey Division of the Ratepayer Advocate, June 13, 2005; *id.*, Reply Comments of the New Jersey Division of the Ratepayer Advocate, July 29, 2005; and *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, FCC WC Docket No. 05-25; RM-10593, Comments of the New Jersey Division of Rate Counsel, August 8, 2007; *id.*, Reply Comments of the New Jersey Division of Rate Counsel, August 15, 2007.

<sup>73</sup> / Embarq Petition, at 4.

<sup>74</sup> / NASUCA - AT&T Initial, at 4.

Advocates also discussed Verizon’s recent service quality problems.<sup>75</sup> “These problems provide the ‘strong connection’ between the regulation and what the Commission wanted the regulation to accomplish, on which AT&T insists in its Petition.”<sup>76</sup>

**D. REPORTING DOES NOT IMPEDE INNOVATION.**

Verizon calls attention to new services under development by T-Mobile and Sprint, and states that these companies are able to “quickly deploy these dual-mode services without the backdrop of the Commission’s affiliate transaction rules.”<sup>77</sup> State Advocates, however, doubt that affiliate transaction reporting prevents Verizon from introducing new products. In fact, one need look no further than Verizon’s FiOS efforts to see that Verizon is able to innovate and introduce new services even while submitting regularly required reports. Clearly, affiliate transaction reporting does not impair Verizon. Furthermore, although some consumers surely value innovation, the required reporting protects *all* consumers of basic telephone service by establishing baselines for quality of service and other performance data.

**E. OTHER REPORTING REQUIREMENTS DO NOT SUBSTITUTE FOR ARMIS REPORTING.**

Verizon asserts that the reporting requirements it now seeks to avoid are redundant because it reports the data elsewhere, because Verizon is already subject to Security and Exchange Commission (“SEC”) rules, and because it keeps its accounting

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<sup>75</sup> / *Id.*, at 5.

<sup>76</sup> / *Id.*

<sup>77</sup> / Verizon Petition, at 28.

records in accordance with Generally Accepted Accounting Practices (“GAAP”).<sup>78</sup> Frontier and Citizens make similar claims.<sup>79</sup>

State Advocates provided numerous examples in previous comments detailing the reasons that ARMIS reporting is unique and not readily replaced by alternative reporting mechanisms such as Form 477 reporting, major outage reporting, and SEC reports: For example, Form 477s are confidential - not public, like ARMIS reports - and contain data that is more aggregated than data reported through ARMIS.<sup>80</sup> Form 477s also lack the detailed deployment data found in ARMIS Reports 43-07 and 43-08.<sup>81</sup> Major outage reports are limited in scope and not released to the public.<sup>82</sup> SEC reporting is a wholly inadequate substitute for ARMIS reporting, as it is designed for shareholder protection, and focuses on issues relevant for financial regulation.<sup>83</sup>

Frontier also mentions the service quality reporting that was required of Verizon as part of the Commission’s approval of the Verizon/MCI merger.<sup>84</sup> However, Frontier fails to mention that this merger-related reporting expires after only 10 quarterly reports; the reporting remains in effect only until September 20, 2008. A similar requirement placed on AT&T (as a result of its merger with BellSouth) expires February 12, 2010.<sup>85</sup> This temporary merger-related reporting is an inadequate substitute for permanent, regular reporting.

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<sup>78</sup> / *Id.*, at 25, 35-36.

<sup>79</sup> / Frontier Petition, at 7-8.

<sup>80</sup> / State Advocates – Qwest Initial, at 39.

<sup>81</sup> / NASUCA - AT&T Initial, at 7.

<sup>82</sup> / *Id.*, at 6.

<sup>83</sup> / State Advocates – Qwest Initial, at 16.

<sup>84</sup> / Frontier Petition, at footnote 17.

<sup>85</sup> / *AT&T/BellSouth Merger Order*, at 150.

Although the other non-FCC reporting mechanisms may also assist regulators in fulfilling their oversight responsibilities, ARMIS reporting continues to be necessary. As State Advocates previously pointed out about ARMIS reports, “[t]he valuable data contained therein cannot be otherwise obtained by regulators except through the burdensome and sporadic process of issuing data and information requests in regulatory proceedings.”<sup>86</sup> State Advocates urge the Commission to find that regular, systematic reporting not only provides greater protection for consumers, but is also *less* burdensome for carriers than a reporting system requiring sporadic, unsystematic requests for operational, financial, and service quality data. In short, the alternatives to the current reporting system might be worse not only for consumers, but also for carriers.

**F. UNDERLYING DATA IS ESSENTIAL TO REGULATORS, STATE ADVOCATES, AND CONSUMERS.**

Both Verizon and Embarq argue that ARMIS reports are of no use to consumers.<sup>87</sup> Quoting the Commission, Verizon states, “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.’”<sup>88</sup> Verizon also states that consumers can consult its quarterly and annual reports to the SEC.<sup>89</sup> Verizon further states that “[l]ikewise, information about Verizon’s network is reported on Form 477 as well as on Verizon’s major service outage reports....”<sup>90</sup> Embarq contends that service quality

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<sup>86</sup> / State Advocates – Qwest Initial, at 16. This would be made even more difficult, if not impossible, if Verizon’s proposal for preemption were granted. See Section V., below.

<sup>87</sup> / Verizon Petition, at 15-16; Embarq Petition, at 8.

<sup>88</sup> / Verizon Petition, at 16, quoting *2000 Biennial Regulatory Review -- Telecommunications Service Quality Reporting Requirements*, Notice of Proposed Rulemaking, 15 FCC Rcd at 22117 (2000).

<sup>89</sup> / *Id.*, at 16.

<sup>90</sup> / *Id.*, at 16.

reports are not necessary to protect consumers because they are “very technical in nature.”<sup>91</sup> Instead, according to Embarq, consumers are protected by the incentives inherent in price cap regulation.<sup>92</sup>

Contrary to the ILECs’ assertions, State Advocates have enumerated many uses for ARMIS reporting, including uses by consumers.<sup>93</sup> For example, in the comments opposing Qwest’s Petition, State Advocates noted,

ARMIS will also enable the public to know how Qwest is performing in relation to other carriers and in relation to its own operations in other Qwest states. ARMIS provides public information, while much service quality reporting is made in Washington and other states under seal. ARMIS service quality reports provide a single public source of data to track intra, inter-company and interjurisdictional performance.<sup>94</sup>

Consumer advocates use ARMIS to monitor service quality among regions, over time, and for different classes of consumers.<sup>95</sup> State regulators use ARMIS to monitor the success of alternative plans of regulation,<sup>96</sup> and to evaluate industry consolidation.<sup>97</sup> ARMIS data allow regulators and consumer advocates to determine if intrastate operations are improperly subsidizing interstate operations.<sup>98</sup> Expert witnesses (even those testifying on behalf of RBOCs) rely on ARMIS data to examine market share, return on capital,<sup>99</sup> and deployment of broadband facilities.<sup>100</sup> As pointed out in previous

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<sup>91</sup> / Embarq Petition, at 8.

<sup>92</sup> / *Id.*, at 9.

<sup>93</sup> / See footnotes 8 and 9, above.

<sup>94</sup> / State Advocates – Qwest Initial, at 20.

<sup>95</sup> / *Id.*, at 24, 27-30.

<sup>96</sup> / *Id.*, at 17.

<sup>97</sup> / *Id.*, at 23.

<sup>98</sup> / *Id.*, at 36.

<sup>99</sup> / *Id.*, at 18.

<sup>100</sup> / *Id.*, at 19.

comments, “The FCC itself uses data from ARMIS reports 43-05, 43-07 and 43-08 to prepare its *Trends in Telephone Services* report.”<sup>101</sup> State Advocates previously observed that California recently relieved carriers of California-specific reporting requirements *because regulators there determined that ARMIS data would suffice*.<sup>102</sup> The telecommunications industry continues to evolve, and, information is essential to enable regulators to monitor the impact of that evolution on consumers.

A petition of the Pennsylvania Office of Consumer Advocate (“OCA”) demonstrates a common and essential use of ARMIS data. The OCA stated,

ARMIS data from the Federal Communications Commission illustrates this service quality decline. The data shows that trouble reports per 100 lines are on the increase, that trouble clearing times have generally increased -- including trouble clearing time for out-of-service complaints - - and that the average order installation time has not improved in recent years. The PA OCA has relied on ARMIS data in part to demonstrate that the Pennsylvania-specific reporting requirements should be modified and updated. Without the ARMIS data, it would be more difficult for the Pennsylvania Commission to consider the value and merits of its own reporting requirements.<sup>103</sup>

Doing away with these reporting requirements would indeed disserve the public interest.

**G. PETITIONERS FAIL TO DEMONSTRATE THAT GAAP PROTECTS CONSUMERS ADEQUATELY AND THAT PROPERTY RECORD RULES ARE UNNECESSARY.**

Verizon contends, without support or citations, that “GAAP and other applicable safeguards and controls” adequately protect consumers.<sup>104</sup> State Advocates urge the Commission to direct Verizon to provide specific references to the specific GAAP rules

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<sup>101</sup> / NASUCA - AT&T Initial, at 7.

<sup>102</sup> / *Id.*, at 3.

<sup>103</sup> / *Petition Of The Office Of Consumer Advocate For A Rulemaking To Amend Title 52 Pa Code § 63*, Docket No. P-00021985, Comments of the Office of Consumer Advocate (April 18, 2006), at 19.

<sup>104</sup> / Verizon Petition, at 35.

and “other applicable safeguards and controls” to which it refers, and, furthermore, to provide a mapping of the property record rules to the relevant and specific portions of the “GAAP and other applicable safeguards and controls” that Verizon contends would substitute for the FCC’s property record requirements. In the absence of more specificity, the Commission should reject out-of-hand Verizon’s request for forbearance from property record rules. If Verizon provides such information, it still must be reviewed; NASUCA submits that it will be found that Verizon still does not meet the standards for forbearance.

Furthermore, there is an important historic difference between GAAP rules and the FCC’s rules, which is in part illustrated by the fact that most businesses seek, where permissible to expense items, whereas under FCC rules, ILECs traditionally have depreciated items. The FCC’s rules were specifically designed to provide accountability and to protect consumers where companies are not disciplined by competition. Regulated companies confront different financial incentives than unregulated companies, and, accordingly, regulatory accounting differs from GAAP accounting.

Contrary to Verizon’s contention that the market is “vibrantly competitive,”<sup>105</sup> as discussed earlier in these comments (and in previously submitted comments), Verizon (and other ILECs) continue to dominate their local markets.<sup>106</sup> Therefore, regulators’ access to detailed property records is essential to ensure that costs are not being erroneously assigned and allocated to non-competitive services. Indeed, as Verizon increasingly enters new markets, pursues triple-play customers, and pushes its FiOS-based services, comprehensive property records are more essential than ever to ensure

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<sup>105</sup> / *Id.*, at 1.

<sup>106</sup> See also the *Verizon Six MSA Order*.

that consumers of non-competitive services (such as special access, switched access, and local loops) are not subsidizing improperly Verizon's unregulated lines of business. The fact that Verizon has one foot in the non-competitive camp and one foot in the unregulated camp heightens the need for the FCC to have access to accounting information, and further, the need for such information to be audited routinely.

In an earlier order regarding an investigation into continuing property record audits of certain ILECs, the FCC stated:

Finally, while we decline here to further pursue investigation in the CPR audits with regard to whether the CPRs reflected assets that were not purchased or used by the RBOCs in accordance with our rules, we remain concerned about the poor record keeping that these audits revealed. ... Accordingly, we direct the Common Carrier Bureau to work with the RBOCs to evaluate and improve the accuracy of their property records and accounts to ensure compliance with our requirements going forward.<sup>107</sup>

State Advocates are unable based on any publicly available documentation, to conclude that such efforts occurred and whether the accuracy of property records has improved. State Advocates urge the Commission not only to deny Verizon's petition for forbearance from property record rules but furthermore to assess the status of ILEC efforts to comply with the Commission's earlier directive regarding improvements to those records.

Verizon also states that: "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

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<sup>107</sup> *In the Matter of 1998 Biennial Regulatory Review -- Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, CC Docket No. 98-137, *Ameritech Corporation Telephone Companies' Continuing Property Records Audit, et al.*, CC Docket No. 99-117, *GTE Telephone Operating Companies Release of Information Obtained During Joint Audit*, AAD File No. 98-26, Second Report and Order in CC Docket No. 99-137 and Order in CC Docket No. 99-117 and AAD File No. 98-26, FCC 00-396 (rel. November 7, 2000), at para. 13.

property records rules.”<sup>108</sup> Verizon fails to substantiate the purported burden of “customiz[ing] its systems. Certainly a company with annual revenues of more than \$88 billion<sup>109</sup> should be able to obtain the necessary software at a reasonable price. At a minimum, the Commission should direct Verizon to specify when and from which vendors it has solicited proposals regarding the necessary system customization, and provide the Commission with those proposals. In this way, the Commission could better evaluate Verizon’s assertions as to the purportedly high costs of obtaining such customization.

**H. PETITIONERS FAIL TO SHOW THAT THE COSTS OF REPORTING OUTWEIGH BENEFITS.**

Verizon argues that forbearance from ARMIS reporting is “in the public interest because it would “eliminate unnecessary regulations that impose costs on the industry.”<sup>110</sup> Verizon also

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.... 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.<sup>111</sup>

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<sup>108</sup> / Verizon Petition, at 36.

<sup>109</sup> / Verizon 2006 Annual Report, at 6.

<sup>110</sup> / Verizon Petition, at 17.

<sup>111</sup> / *Id.*, at 17-18.

According to Verizon, affiliate transaction reporting constitutes “a complex and time-consuming exercise of recording assets and services transferred or provided between themselves and any of their non-regulated affiliates.”<sup>112</sup>

Embarq cites an Office of Management and Budget (“OMB”) estimate that each service quality report requires 849 hours to prepare,<sup>113</sup> and cites the OMB estimate that 160 hours are required by each respondent for ARMIS Report 43-08 reporting.<sup>114</sup> Frontier states that the cost of providing ARMIS Report 43-05 data exceeds \$25,000 annually, and requires 400 hours.<sup>115</sup>

Recognizing that regulatory reporting is not a costless exercise, State Advocates reiterate here what was argued in earlier comments, namely, that the Petitioners fail “to show that the purported burden of submitting ARMIS and 492A reports to the Commission outweighs the significant benefit to regulators and consumers of having standardized public information.”<sup>116</sup> And although the hours assertedly required to comply with reporting requirements look impressive at first glance, they are easily discounted when one considers that Verizon has approximately 238,000 employees,<sup>117</sup> and Embarq 18,000.<sup>118</sup> The purported burden pales in significance to the importance of ensuring that regulators and consumer advocates are informed adequately about ILECs’ operations, assets, and service quality. The dedication of six employees out of 238,000 to

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<sup>112</sup> / *Id.*, at 19.

<sup>113</sup> / Embarq Petition, at 9.

<sup>114</sup> / *Id.*, at 14.

<sup>115</sup> / Frontier Petition, at 10.

<sup>116</sup> / State Advocates – Qwest Initial, at 35.

<sup>117</sup> / Verizon *Investor Quarterly*, Third Quarter 2007, at 14.

<sup>118</sup> / Press Release, “Embarq Corporation Provides Details for Fourth Quarter 2007 Earnings Release and Conference Call,” January 10, 2008.

the process of ARMIS service quality reporting hardly seems burdensome, particularly in light of the significant service quality deterioration occurring in the Verizon footprint.<sup>119</sup>

Furthermore, presumably ILECs track diverse data and information as an integral part of running their businesses consistent with best practices. Also, ILECs that are pursuing multiple lines of business presumably need to assess the profitability of distinct business units, and to do so, require detailed accounting data. Businesses, particularly those of the size and scope of the ILECs, presumably seek to maintain accounting and recordkeeping in order to run their operations efficiently. Therefore, providing cost and accounting data to the FCC should represent minimal, if any, additional effort for the ILECs. The Petitioners apparently would have the Commission instead conclude that, but for regulatory requirements, ILECs do not otherwise routinely track and monitor their costs, investment, plant, expenses, property, and other essential aspects of their business operations. Similarly, if the level of competition is present as ILECs contend, then it is reasonable to assume that ILECs must monitor their service quality in order to retain and attract customers in a multi-supplier market. By contrast if, as State Advocates demonstrate, such competition is not yet effective, service quality reporting is necessary to inform regulators and to protect consumers.

Petitioners cannot have it both ways. As described above, on one hand, the Petitioners argue that the data reporting for which they seek forbearance is easily replaced by other reporting mechanisms. On the other hand, they argue that the reporting process is burdensome and costly. If the data *is* reported elsewhere, then the marginal cost of ARMIS (and affiliate transaction, rate of return, and property) reporting is

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<sup>119</sup> / See comments referenced in footnotes 8 and 9, *supra*.

minimal. The Petitioners do not demonstrate how forbearance from these FCC requirements will reduce the burden of reporting when SEC, GAAP, Form 477, and other reporting requirements are taken into consideration.

**I. ALTHOUGH RELATIVELY FEW CARRIERS ARE OBLIGED TO REPORT, THESE ILECS SERVE THE MAJORITY OF CONSUMERS.**

The Petitioners argue that forbearance is in the public interest because reporting imposes costs on only a small subset of competitors.<sup>120</sup> Verizon points out that

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.<sup>121</sup>

Verizon concludes that because the burden of ARMIS reporting is borne by only a few competitors, it is in the public interest for the Commission to grant forbearance from these requirements.<sup>122</sup> Frontier states that reporting requirements are “unbalanced” “because they apply only to a small segment of the market”.<sup>123</sup>

As State Advocates previously explained, “Although ARMIS reporting is required of only relatively few ILECs, these ILECs are responsible for the telephone service of a vast majority of Americans.”<sup>124</sup> Furthermore, State Advocates noted that it *would* be better if all carriers filed these reports. In the alternative, however, it is imperative that dominant carriers continue to file. “Otherwise, there would be no central repository of

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<sup>120</sup> / Verizon Petition, at 36; Embarq Petition, at 14; Frontier Petition, at 7.

<sup>121</sup> / Verizon Petition, at 16.

<sup>122</sup> / *Id.*, at 19.

<sup>123</sup> / Frontier Petition, at 7.

<sup>124</sup> / State Advocates – Qwest Initial, at 34.

publicly available information on any telecommunications provider's service; little or nothing for ILEC customers to compare their ILEC's performance to, and little or nothing for customers of other carriers to look at and for comparison with their service."<sup>125</sup> If the carriers serving the majority of consumer lines are not required to report to the Commission regularly, then the Commission will lose the ability to monitor the industry and to protect consumers.

## **V. THE COMMISSION MUST NOT PREEMPT STATE REPORTING REQUIREMENTS.**

As State Advocates have described, the reporting and record-keeping requirements contain vital protections for consumers, and are or should be used by this Commission and by the States. Granting Verizon's petition (and Embarq's and Frontier's) would truly disserve the public interest.

Almost as a throwaway, however, Verizon includes an argument that should also be definitively rejected by this Commission: Verizon asserts that if the FCC grants any of the requests for forbearance from the recordkeeping and reporting requirements, "the Commission should also make clear that states may not lawfully impose recordkeeping and reporting requirements that are inconsistent with the Commission's decision to forbear."<sup>126</sup>

There is simply no precedent or authority for the proposition that if the Commission decides (incorrectly) to forbear from federal reporting and record-keeping requirements, this establishes any basis for preemption of state requirements for reporting

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<sup>125</sup> / NASUCA - AT&T Initial, at 4.

<sup>126</sup> / Id. at 5.

and record-keeping addressing intrastate matters.<sup>127</sup> The Supreme Court rejected a similar FCC attempt to enlarge its §151 jurisdiction (over interstate wireline carriers in this case), in contravention of §152(b)'s limits on the FCC's authority.<sup>128</sup>

It is ironic that Verizon proposes preemption of State reporting and record-keeping requirements, because this is contrary to the arguments of the ILECs **that federal requirements are not needed to fulfill state purposes because the states have adequate powers of their own.**<sup>129</sup> Under Verizon's argument, **no one** would have the power to require its public utility operations to report or keep records. That would be a result that would allow consumers to be disserved throughout the Nation.

## VI. CONCLUSION

For the foregoing reasons, the Commission should deny the Petitions for forbearance filed by Embarq, Frontier and Citizens, and Verizon. Their Petitions are flawed procedurally and also fail on their merits. The Petitioners have not sustained their burden of proving that the Petitions are consistent with the public interest.

Respectfully submitted,

Ronald K. Chen  
Public Advocate  
Stefanie A. Brand, Esq.  
Director  
Christopher J. White  
Deputy Public Advocate

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<sup>127</sup> / The cases cited by Verizon in a footnote all have to do with federal agencies taking actions indirectly that they are not allowed to do directly. That is not what Verizon is seeking, which is to bar state agencies from doing what a federal agency has chosen not to do.

<sup>128</sup> / *Louisiana Public Serv. Comm'n v. FCC*, 476 U.S. 355, 374-375 (1986). *Louisiana PSC* still applies. See *Iowa Utilities Board*, 525 U.S. 366, 381 n.7 (1999); see also *Maryland Public Service Comm'n v. FCC*, 909 F.2d 1510, 1516 (D.C. Cir. 1990).

<sup>129</sup> / See, e.g., CC Docket 07-204, Qwest Reply to Oppositions, filed December 21, 2007, at 5.

Department of the Public Advocate  
Division of Rate Counsel  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, NJ 07101  
Phone (973) 648-2690  
Fax (973) 624-1047  
[www.rpa.state.nj.us](http://www.rpa.state.nj.us)  
[njratepayer@rpa.state.nj.us](mailto:njratepayer@rpa.state.nj.us)

David C. Bergmann  
Assistant Consumers' Counsel  
Chair, NASUCA Telecommunications  
Committee  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
Phone (614) 466-8574  
Fax (614) 466-9475  
[bergmann@occ.state.oh.us](mailto:bergmann@occ.state.oh.us)

NASUCA  
8380 Colesville Road, Suite 101  
Silver Spring, MD 20910  
Phone (301) 589-6313  
Fax (301) 589-6380

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