

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

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

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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 )

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**Comments of BT Americas Inc. on Behalf of Itself and other BT Entities**

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Dated: February 1, 2008

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**Comments of BT Americas Inc. on Behalf of Itself and other BT Entities**

Pursuant to the Commission’s Public Notice,<sup>1</sup> BT Americas Inc., a wholly owned indirect subsidiary of BT Group plc (“BT plc”), submits these Comments on behalf of itself and other BT operating entities in the US (collectively referred to herein as “BT”)<sup>2</sup> opposing the petition for forbearance filed by the Embarq Local Operating Companies (“Embarq”) and Frontier and Citizens Communications Incumbent Local Exchange Telephone Carriers (“Frontier”) from two Automated Reporting and Management Information System (“ARMIS”) reporting requirements -- ARMIS 43-05 (Service Quality Report) and ARMIS 43-08 (Operating Data Report). These

<sup>1</sup> DA 07-5033 (December 18, 2007).

<sup>2</sup> BT holds section 214 licenses and employs approximately 4000 people in the United States. BT through its Global Services group serves the global information and communications technology needs of large business (“enterprise”) customers worldwide.

petitions must be denied because these reports are essential for the Commission to make informed decisions about the extent to which it can deregulate critical telecommunications services.

### **INTRODUCTION AND SUMMARY**

The rules and reporting requirements as to which Embarq and Frontier seek forbearance are critical for services such as special access. Petitioners fail to distinguish between the consumer and business markets when claiming that local markets are competitive. The special access market, which is essential to enterprise business customers and wholesale purchasers who seek to serve those customers, is not competitive.

ARMIS Report 43-05 captures data on the quality of service an ILEC provides to its retail and wholesale customers such as BT. Data from ARMIS Report 43-08 has been heavily relied upon by the parties in the special access proceeding (and the recent BOC merger proceedings) to establish the incumbent providers' dominant market power in the special access market. And petitioners have not demonstrated how the data provided in these ARMIS reports are otherwise publicly available.

Neither Petitioner has proffered *any* evidence to substantiate their claims that compliance is burdensome for them. On the other hand, BT's experience outside the U.S. demonstrates that these reports are in the public interest – that the availability of the data provided in these reports leads to lower prices and higher investment in innovative technologies and services.

### **ARGUMENT**

Section 10 of the Act provides that the Commission “shall forbear from applying any regulation or provision” if it determines that:

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that

telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;  
(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and  
(3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>3</sup>

In evaluating the public interest, the Commission must ask whether forbearance “will promote competitive market conditions.”<sup>4</sup> However, “... the Commission may not forbear from applying the requirements of section 251(c) or 271 ... until it determines that those requirements have been fully implemented.”<sup>5</sup>

As shown below, the reporting requirements as to which the Petitioners seek forbearance are essential to monitoring whether those filing the reports are engaged in improper non-price discrimination against unaffiliated carriers. Granting Embarq’s and Frontier’s forbearance requests will harm consumers<sup>6</sup> and not be in the public interest – to the contrary, continued reporting is essential if consumers are to see lower prices and more market-driven investment in innovative technologies and services.

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<sup>3</sup> 47 U.S.C. § 160(a).

<sup>4</sup> *Id.* § 160(b).

<sup>5</sup> *Id.* § 160(d).

<sup>6</sup> Frontier’s quote from the Notice of Proposed Rulemaking, *In the Matter of the 2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, 15 FCC Rcd. 22113 ¶ 14 (2000) that this data “may not be easily translated by consumers” Frontier’s Petition at 13 has been proven wrong. As shown below, consumers include residential consumers and business consumers. The filings in the *Special Access Proceedings* by *e.g.* American Petroleum Institute in WC Docket No. 05-25 & RM No. 10593 on June 14, 2005 (Comments in the 2005 Refresh Proceeding) August 2, 2005 (Reply Comments) and August 8, 2007 (Comments in the 2007 Refresh Proceeding) and AdHoc (*see e.g.*, n. 14 *infra*) demonstrate that large enterprise business customers certainly understand this data. So can other consumers, *see e.g.*, the ex parte filed by the Consumers Union in WC Docket No. 05-25 & RM No. 10593 (October 4, 2007).

I. THE DATA EMBARQ AND FRONTIER NO LONGER WISH TO REPORT IS CRITICAL AND IS NOT OTHERWISE AVAILABLE

A. The Data is Critical Because there is Market Failure in the Special Access Market

1. There is a Need to Evaluate Competition in the Business Market Separately from the Residential Market

The Commission needs to distinguish between mass market (residential/small business) customers on the one hand and large (enterprise) business customers on the other. While there may be more competition, and hence more choices available, for some segments of the mass market, that does not mean that there is effective competition or adequate implementation in the enterprise business market.

The Commission has recognized the enterprise market, at least on the retail level, as a discrete market segment.<sup>7</sup> Application of traditional market definition principles<sup>8</sup> demonstrates that there is a discrete market for access to be supplied to enterprise customers separate and apart from the mass market.

The nature of the two markets is fundamentally different. Mass market customers need access connectivity to a single location. Large multi-site enterprise business customers need “universal connectivity” to all their sites, including not only sites in Central Business Districts,

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<sup>7</sup> See e.g., *In re Application of SBC Commc’ns Inc. & AT&T Corp.*, Memorandum Opinion and Order, WC Dkt. No. WC Dkt. No. 05-65, FCC 05-183 (Nov. 17, 2005) (“*SBC/AT&T Merger Order*”) ¶ 58.

<sup>8</sup> Applying such a rigorous analysis, supported by evidence, is essential for a reasoned decision compliant with due process and the Administrative Procedure Act, 5 USC §556(d) (agency action must be supported by “reliable, probative, and substantial evidence”) and consistent with the Commission’s obligation under *Section 1.1* of the WTO Reference Paper, GATS/SC/90/Suppl.2, 11 April 1997, which provides that “appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.” Cf. *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*, Memorandum Opinion and Order, FCC 07-180 ¶¶ 20 (“it is appropriate for us to look more broadly at competitive trends without regard to specific geographic markets”) and 23 (“We recognize that the record in this proceeding does not include detailed market share information for particular enterprise broadband services ... we do not find it essential to have such detailed information”) (rel. Oct. 12, 2007) (“*AT&T Broadband Forbearance Order*”).

but more often, due to lower labor and land costs as well as for tax reasons, in suburban, exurban and even rural areas. And this “multi-site requirement” includes access for remote workers. A supplier must be able to provide connectivity at the right speeds and at the right level of security to *all* of the enterprise customer’s sites if the supplier is to successfully compete for its business.

The conditions of competition for supply of businesses in the U.S. are different from the supply of mass market services. Last mile access to business customers outside of central business districts, *i.e.* to the vast bulk of sites, is usually only possible from one incumbent supplier. The Incumbent Local Exchange Carriers (“ILECs”) dominate the business access market.<sup>9</sup> Thus, the United States Government Accountability Office recently found that special access competitors provide access service to only 6% of business customer sites for services at 2 Mbps and 15 to 25% of sites for services at 45 Mbps and above.<sup>10</sup>

## 2. There is No Meaningful Competition in the Business Market

Contrary to the impression created by Embarq and Frontier<sup>11</sup> the special access market, essential to enterprise business customers and to wholesale providers seeking to serve those customers, is not competitive. To the contrary, data submitted in the *Special Access Proceeding* showed the incumbents’ ability to impose onerous conditions on purchasers, reflecting persistent, indeed worsening, market failure in this market.

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<sup>9</sup> Despite what the Commission wrote in the *AT&T Broadband Forbearance Order* ¶24, enterprise customers do not have effective “countervailing buyer power” for at least three reasons. First, even strong buyers may be relatively small purchasers in particular (geographic and/or product) markets. Second, the cost of the product or service may be a relatively insignificant part of the overall cost of the end product, and the strong buyer, for strategic may not have the incentive to exercise any countervailing market power that it may have. Finally, dominant undertakings have strategies to minimize buyer power, including the conditional rebate strategy. Such rebates could be used to lock in sufficient demand so that remaining providers could not realize minimum economies of scale and scope. Thus strong buyers could not exercise any countervailing power by threatening to take their business elsewhere or to self-provision.

<sup>10</sup> GAO 07-80 Telecommunications. FCC needs to improve its ability to monitor and determine the extent of competition in dedicated access services, at 20 (November, 2006).

<sup>11</sup> Embarq Petition at 4 and 12; Frontier Petition at 3.

The evidence in the most recent iteration of the *Special Access Proceeding* demonstrated that prices for short haul private line services have increased since 1999, sometimes as much as 25%,<sup>12</sup> and that when special access rates were compared to UNE rates, special access rates were almost double UNE rates.<sup>13</sup> The evidence also demonstrated that the BOCs' rate of return for special access ranged from 52% to 132% in 2006<sup>14</sup> a substantial increase from 2001, where the BOCs' earned market dominant rates of return ranging from 21.72%, to 54.6%.<sup>15</sup>

Petitioners argue that "consumers" have "options," including cable telephony, wireless, facilities based Voice over Internet Protocol ("VoIP") and wireline Competitive Local Exchange Carrier ("CLEC") services without distinguishing between residential and business services.<sup>16</sup>

In fact:

- There is no meaningful cable competition for access services in the *enterprise* market because cable operators are focused on shoring up their residential services against emerging competition with the incumbent BOCs and they do not have sufficient additional capacity to serve the business market as well.<sup>17</sup> Nor is there any evidence of an emerging cable wholesale special access market.

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<sup>12</sup> Declaration of Janet S. Fischer on Behalf of Global Crossing, appended to Global Crossing's Comments, ¶ 5 and Tables 1-4, WC Docket No. 05-25 & RM No. 10593 (August 8, 2007).

<sup>13</sup> Sprint Nextel's Comments, WC Docket No. 05-25 & RM No. 10593 (August 8, 2007) at 4 ("BOC special access prices, both those price capped and those subject to pricing flexibility, remain at supra-competitive levels – in many instances twice as high as the cost of the comparable unbundled network elements ("UNEs")") and 21-23; *see also*, TWTC *et al* Comments, WC Docket No. 05-25 & RM No. 10593 (August 8, 2007) at 29 ("ILEC rates area almost universally higher than UNE rates, and are often two times higher than most competitive wholesale providers' (including TWTC's) rates in both Phase II and price cap areas, especially for circuits with any interoffice mileage").

<sup>14</sup> *See* Comments of the AdHoc Telecommunications Users Committee, WC Docket No. 05-25 & RM No. 10593 (August 8, 2007) ("AdHoc's Comments") at 5-6.

<sup>15</sup> *Stith Special Access Declaration* appended to AT&T Corp, Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM No 10593 (Oct. 15, 2002) (rates calculated from 2001 ARMIS 43-01, Table 1, Cost and Revenue Table, Column S, Rows 1910 and 1915 were: VZ 21.72%, VZ (excluding NYNEX), 37.08%, Qwest 46.58%, BLS 49.26% and SBC 54.6%).

<sup>16</sup> Embarq Petition at 4-5 and 12-13; Frontier at 3, 6-7, 13.

<sup>17</sup> BT's Comments at 9, n. 24, noting the report by Heavy Reading (Sterling Perrin), *Cable vs. Telcos: The Battle for the Enterprise Market* ("Cox Communications Inc. ... regarded as the most aggressive MSO in the space yet makes only 6 percent of its revenue there" and that includes all business customers, including small and medium businesses). [http://www.lightreading.com/document.asp?doc\\_id=89210](http://www.lightreading.com/document.asp?doc_id=89210). *See*, [http://goliath.ecnext.com/coms2/gi\\_0199-5228147/Cable-Operators-May-Miss-a.html](http://goliath.ecnext.com/coms2/gi_0199-5228147/Cable-Operators-May-Miss-a.html) (Feb. 15, 2006). The

- Wireless has not emerged as a meaningful competitive alternative for enterprise customers and in any event the incumbent wireline broadband access providers control the U.S wireless market.<sup>18</sup>
- Wi-Fi and WiMax don't have the bandwidth, service quality or reliability required for enterprise network services.<sup>19</sup>
- VoIP is not an access technology and certainly not an independent source of competition in light of the recent judicial developments demonstrating that the BOCs control key patents for this technology.<sup>20</sup>

As to wireline CLECs, none have the ubiquitous fiber rich, POP rich, in-region reach of the ILECs who built such networks subsidized by nearly a century of rate-of-return regulation.<sup>21</sup>

The CLECs with the greatest potential for succeeding, AT&T and MCI, were acquired by the BOCs. The other national or regional competitive carriers were, or are, being driven out of the market, unable to achieve minimum scale as a result of the BOCs "lock-in" long term "discount"

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Executive Summary and Table of Contents of this Report can be found at,

<http://translate.google.com/translate?hl=en&sl=ja&u=http://www.dri.co.jp/auto/report/hr/hrcvst06.htm&sa=X&oi=translate&resnum=7&ct=result&prev=/search%3Fq%3DHeavy%2BReading%2B%252B%2B%25E2%2580%259CCable%2Bvs.%2BTelcos:%2BThe%2BBattle%2Bfor%2Bthe%2BEnterprise%2BMarket%25E2%2580%259D%2B%26hl%3Den%26rls%3DSUNA,SUNA:2006-29,SUNA:en> (Feb. 17, 2006).

<sup>18</sup> The total U.S. Market was 230.8 million subscribers, and the four largest carriers were: Cingular Wireless with almost 61 million subscribers (26.5%); Verizon Wireless with over 59 million (25.6%); Sprint Nextel with 48 million (21%); and T-Mobile with 25 million (11%). Market Share: Mobile Connections, North America, 4Q06, Gartner Dataquest. *See more generally* BT's Reply Comments in *In the Matter of Skype Communications, S.A.R.L. Petition to Confirm a Consumer's Right to Use Internet Communications Software and Attach Devices to Wireless Networks*, RM No. 11361 (filed May 15, 2007) and BT's Reply Comments in *Implementation of Section 6002(b) Of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 07-71 (filed May 22, 2007) which are incorporated herein by reference.

<sup>19</sup> WiMax services (using non-certified CPE) offer consumers between 512 Kbps and 1,536 Kbps — a far cry from the WiMAX Forum's 70 Mbps boast – Forrester Research, *Let's Get Real About WiMax*, July 2005. WiFi is a more highly contended and less secure service. *See also*, *AT&T scales back plan for citywide Wi-Fi in St. Louis*, Orlando Sentinel (28 October 2007) ("AT&T engineers couldn't find a cheap way to power the network's transmitters, which carry the network signal and send it to people's computers. One estimate required 50 transmitters per square mile").

<sup>20</sup> *See e.g.*, <http://news.moneycentral.msn.com/provider/providerarticle.aspx?feed=OBR&Date=20070308&ID=6589920>; *see also*, Slip Copy, 2007 WL 528749 (E.D. Va., Feb. 12, 2007) (setting forth the patent claims). *Cf. United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir.), *cert. denied*, 534 U.S. 952 (2001) (regarding the positioning of Java applications).

<sup>21</sup> AdHoc's Comments WC Docket No. 05-25, RM-10593 (August 8, 2007) at 7 (discussing "the severe security and reliability concerns raised by cable-based services and technologies"). The level of reliability and security demanded by residential customers for transmission of a "YouTube" program is far less than the demanding levels of reliability and security demanded by financial institutions for the transmission of data related to financial transactions, or defense firms transmitting critical plans relating to national security applications.

bundled plans. There is also no meaningful intra-modal competition from the better financed ILECs. For example, AT&T's filings in the BellSouth merger in 2006 demonstrated that eight years after SBC had adopted an "aggressive" strategy to enter 30 out-of-region markets as a facilities-based competitor,<sup>22</sup> and *even after it had acquired AT&T Corp's national "fiber rich, POP rich" facilities* the previous year, AT&T was a meaningless special access competitor outside its region.<sup>23</sup>

### 3. The Data Is Critical For the Commission and the Public

ARMIS Report 43-05 captures data on the quality of service an ILEC provides to its retail and wholesale customers such as BT. Data from ARMIS Report 43-08 was heavily relied upon by the parties in the special access proceeding (and the recent BOC merger proceedings) to establish the incumbent providers' dominant market in special access services.<sup>24</sup>

### 4. Petitioners Have Not Demonstrated That This Data Is Otherwise Available

Neither Frontier nor Embarq make any effort to show how the data reported ARMIS Report 43-05 relating to service quality<sup>25</sup> and ARMIS Report 43-08 relating to infrastructure<sup>26</sup> can be found in either their outage reports filed under Part 4 of the Commission's Rules,<sup>27</sup> their

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<sup>22</sup> *Application of SBC Communs. & Ameritech Corp. for Transfer of Control to SBC Communications*, CC No. 98-141 (July 24, 1998) at 17.

<sup>23</sup> *See also, Applications of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184 (Dec. 30, 1998) (Bell Atlantic's similar announcement of its intent to enter as a facilities-based carrier out-of-region).

<sup>24</sup> *See e.g., Comments of AdHoc Telecommunications User Committee*, WC Docket No. 05-25 & RM No. 10593 (August 8, 2007) at 20, n. 25 (ARMIS 43-08).

<sup>25</sup> Frontier's Petition at 5 (providing data on installation and repair intervals (interstate and local), common trunk blockage, switch downtime and service quality complaints).

<sup>26</sup> *Id.* at 6 ("covering carriers' outside plant, access lines in service by technology and by customer, number of telephone calls and billed access minutes").

<sup>27</sup> Embarq Petition at 10; Frontier's Petition at 14.

Form 477s,<sup>28</sup> or state regulatory filings. Indeed Frontier’s discussion of the inequity of imposing “the detailed accounting and reporting requirements” of ARMIS Report 43-08 on incumbents while CLECs only have to file Form 477, and urging the Commission to have CLECs file the more detailed ARMIS data in their Form 477s, demonstrates that the ARMIS Report 43-08 contains critical information not found in Form 477.<sup>29</sup>

5. Neither Petitioner Has Demonstrated That Compliance is Burdensome

Embarq’s claim that filing these reports is “tedious”<sup>30</sup> is not a basis for forbearing from this important regulatory requirement. Nor has either Petitioner substantiated its claim that compliance is “expensive” or “burdensome.” Embarq’s claim that it is “uncertain” as to the cost of compliance is not credible and its reliance on generic Office of Management and Budget (“OMB”) numbers<sup>31</sup> is not sufficient to meet its burden of proof. Nor is Frontier’s conclusory allegation as to hours or cost sufficient without some form of substantiation.<sup>32</sup>

II. THE EUROPEAN EXPERIENCE DEMONSTRATES THAT GRANTING FORBEARANCE IS NOT IN THE PUBLIC INTEREST

The experience from other countries shows that where, as here, it has been shown that there is an enduring local access bottleneck controlled by the incumbent carriers, the public reporting of the data as to which Petitioners seek forbearance is *essential* for the development and launch of new products and services that consumers want.

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<sup>28</sup> Embarq’s Petition at 6. See <http://www.fcc.gov/web/filing.html1#localcomp>.

<sup>29</sup> Frontier’s Petition at 18-21.

<sup>30</sup> Embarq Petition at 6, Frontier’s Petition at 18.

<sup>31</sup> Embarq Petition at 9 and 14.

<sup>32</sup> Frontier’s Petition at 8.

A. The ECTA Regulatory Scorecard and the UK Experience Provide Benchmarks Demonstrating that Such Reports and Regulations Are in the Public Interest

The European Competitive Telecommunications Association (ECTA) does an annual benchmark of 19 European countries. The most recent (2007) ECTA Regulatory Scorecard found that the “[t]he United Kingdom remains the highest scoring country overall for effective regulation of the telecoms sector.”<sup>33</sup> The authors further concluded, based on their 19 country survey, that “the lowest prices and highest investment occurs where regulators have strong tools to enforce EU pro-competition rules.”<sup>34</sup> And it is clear from that study that one of those “key tools” for realizing lower prices and higher investment is the public availability of data on the quality of the services provided.

Specifically, the 2007 Regulatory Scorecard recommended that for business services, National Regulatory Authorities should “[a]pply and publish KPIs [Key Performance Indicators] that allow industry to compare whether services provided by dominant operators to competitors match expressed demand and the standard of services supplied internally.”<sup>35</sup> Thus BT has an obligation in the U.K. to publish KPIs on quality of service. For example on Partial Private Circuits (“PPCs”) (what is called special access in the U.S.) BT is required to publish KPIs on a quarterly basis.<sup>36</sup> Both BT’s Wholesale group and Openreach publish KPIs.<sup>37</sup>

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<sup>33</sup> European Competitive Telecommunications Association, Regulatory Scorecard, November 2007, p.3 (“Regulatory Scorecard”). Available from <http://www.ectaportal.com/en/>

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[http://www.ectaportal.com/en/upload/File/Regulatory%20Scorecards/2007/2007\\_Regulatory\\_Scorecard\\_press\\_release\\_final.pdf](http://www.ectaportal.com/en/upload/File/Regulatory%20Scorecards/2007/2007_Regulatory_Scorecard_press_release_final.pdf)

<sup>35</sup> *Id* at 9. ERG is the European Regulators Group set up by the Commission and composed of the heads of each relevant national regulatory authority in each Member State or their representative. Commission decision, 2002/627/EC of 29 July 2002. The “best practice” can be found in *ERG Common Position: Guidelines for implementing the Commission Recommendation C (2005) 3480 on Accounting Separation & Cost Accounting Systems under the Regulatory Framework for Electronic Communications*, at [http://www.erg.eu.int/doc/publications/consult\\_accounting\\_sep/erg\\_05\\_29\\_erg\\_cp\\_rec\\_as\\_and\\_cas\\_final.pdf](http://www.erg.eu.int/doc/publications/consult_accounting_sep/erg_05_29_erg_cp_rec_as_and_cas_final.pdf)

<sup>36</sup> Available from BT Wholesale website.

[http://www.btwholesale.com/application?pageid=editorial\\_one\\_column&nodeId=navigation/node/data/Pricing\\_and](http://www.btwholesale.com/application?pageid=editorial_one_column&nodeId=navigation/node/data/Pricing_and)

B. The New Zealand Experience Similarly Confirm the Importance of Such Reports and Regulations in Promoting Competition and Innovation

The ECTA analysis is confirmed by the experience in New Zealand. New Zealand initially adopted a deregulatory process similar to that being implemented in the United States only to find that it began slipping behind its OECD peers in broadband services.<sup>38</sup> In response, the Government, in December 2005, commenced a “stocktake” of the telecommunications sector.<sup>39</sup> That analysis showed that the governing Telecommunications Act 2001 “at present does not provide the Commission with specific powers to [] provide for public information disclosure of relevant undue discrimination performance measures including applicable accounting information.”<sup>40</sup> It concluded that “[a] transparency requirement that enables the regulator to specify the precise information to be made available can render undue discrimination actions less likely to succeed by making the behaviour observable and enabling initiation of enforcement action.”<sup>41</sup> It was accordingly recommended that New Zealand require the incumbent provider to make available the following “publicly available” information:

- “information including in respect of similar services the access provider supplies to itself, including technical specifications, network characteristics, service order provision characteristics,”

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\_Contracts/Reference\_Offers/Partial\_Private\_Circuits\_PPC\_Reference\_Offer/PPC\_Quality\_of\_Service\_Performance/navNode\_PPC\_Quality\_of\_Service\_Performance.

<sup>37</sup> For BT Wholesale, *see* [http://www.btwholesale.com/application?origin=child\\_link\\_index.jsp&event=bea.portal.framework.internal.refresh&pageid=editorial\\_two\\_column&nodeId=navigation/node/data/Footer/About\\_BTW/Key\\_Performance\\_Indicators/navNode\\_Key\\_Performance\\_Indicators](http://www.btwholesale.com/application?origin=child_link_index.jsp&event=bea.portal.framework.internal.refresh&pageid=editorial_two_column&nodeId=navigation/node/data/Footer/About_BTW/Key_Performance_Indicators/navNode_Key_Performance_Indicators). For Openreach *see e.g.*, for LLUs (Local Loop Unbundling) <http://www.openreach.co.uk/orpg/products/llu/kpi/kpi.do>.

<sup>38</sup> See the Statement of Communications and Information Technology Minister, Hon David Cunliffe, (March 5, 2006) (“Cunliffe Statement”) at <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=25636>.

<sup>39</sup> *Id.*

<sup>40</sup> Regulatory Measures to Address Wholesale Supply Discrimination Issues and Information Needs (Published 28 April 2006) at 12. This report can be found at [http://www.med.govt.nz/templates/MultipageDocumentTOC\\_\\_\\_\\_20558.aspx](http://www.med.govt.nz/templates/MultipageDocumentTOC____20558.aspx).

<sup>41</sup> *Id.* at 13.

- “accounting records . . . pricing and revenue related data, cost related data, including in relation to equivalent services and related services supplied by the access provider to its own affiliates,”
  - “business unit accounting information that is required in respect of the resolution of terms and conditions of a regulated service or the monitoring or enforcement of a determination,”
  - “from access providers, which is required by the parties to efficiently monitor compliance with the relevant access principles.”<sup>42</sup>
- C. The Public Interest in Innovative Investment Requires the Denial of Verizon’s Forbearance Petition So Long as there is Market Failure in the U.S. Special Access Market

Petitioners argue there has been significant investment primarily by the incumbent providers under the current reporting regime.<sup>43</sup> They attribute that to competition, but since it happened while ARMIS reports had to be filed, then to the extent it has occurred, it is just as, if not more, likely attributable to those reporting requirements. In any event, neither Petitioner has demonstrated BOC innovative investment in the business special access market. To the contrary, the truly market-driven investment in this market has declined as competitors have been acquired by the incumbent carriers or driven out of the market.

As a result, the U.S. lags in broadband access penetration.<sup>44</sup> A good example is Ethernet, a protocol which is particularly efficient for the transfer of Internet Protocol (IP) packets and is used in place of the traditional synchronous digital hierarchy (SDH) protocol. Ethernet provides higher bandwidth at lower prices than traditional special access. This is good for businesses, consumers and the economy at large. Ethernet is more widely deployed in Europe than in U.S.,

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<sup>42</sup> *Id* at 14-15.

<sup>43</sup> Embarq’s Petition at 5. *Cf.* Frontier’s Petition at 15-17.

<sup>44</sup> Free Press, Consumers Union, Consumer Federation of America, *Broadband Reality Check II, The Truth Behind America’s Digital Decline*, (Aug. 2006) (“*Broadband Reality Check IP*”) (study, relying on OECD data, found that the U.S. remains sixteenth in the world in broadband deployment and Americans pay more per megabit than consumers in other countries).

even though enterprise customers want it wherever they do business.<sup>45</sup> The reason for the lag in U.S. Ethernet deployment: the incumbent providers, who control the access bottleneck, refuse to provide the facilities needed to provide an efficient Ethernet solution, in order to retain the revenue and high margins of their legacy services.

## CONCLUSION

For the foregoing reasons, Embarq's and Frontier's Petitions for Forbearance should be denied in their entirety.

Respectfully submitted.

BT AMERICAS INC.

By:

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<sup>45</sup> Boyd Chastant, *International Ethernet Services: An Overview*, IDC (Apr 2007) ("In Europe ... Ethernet access is more widely available [than in the U.S.] and typically lower priced ... Ethernet services ... offer less ability for carriers to work their way up the value chain alongside customers and ... requires carriers to invest in new service for which they then need to charge less, cannibalizing or preventing growth of customer bases of superior-quality services for which they charge more (e.g., private line, VPN) ... AT&T does not currently offer end-to-end international Ethernet services. It claims ongoing VPLS trials toward offering such service internationally by sometime in 2008. It ... appears — like many other carriers — to be waiting to see how much pressure the market will exert over the next couple of years in the direction of pushing Ethernet services internationally."); *see also*, Phil Sayer, *Making Sense of European Ethernet Services*, Forrester, (May 1, 2007).