

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

In the Matter of

Petition of Embarq Local Operating Companies for Forbearance Under 47 U.S.C. §160 (c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; and 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

AT&T INC. REPLY COMMENTS

AT&T Inc. ("AT&T") respectfully submits these reply comments in support of the October and November 2007 petitions by Embarq and the Frontier and Citizens ILECs ("Petitioners") requesting that the Commission forbear from enforcing certain ARMIS reporting requirements ("Petitions").¹

AT&T agrees with the Petitioners that the price cap system adopted by the Commission seventeen years ago has obviated many of the ARMIS reporting requirements. These requirements (particularly Reports 43-05 through 43-08) were developed to monitor the initial

¹ AT&T, as CenturyTel, Inc. noted (CenturyTel's Comments at 10-11), has pending before the Commission a petition seeking forbearance from certain ARMIS reporting requirements. *See* Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 (c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-139. Although the relief that AT&T has requested, and the arguments expressed in that petition, differ somewhat from the instant Petitions, AT&T and Petitioners are fully aligned in asserting that unnecessary Commission reporting requirements should be eliminated, and that Section 10 is an appropriate path for that purpose.

effectiveness of the Commission's price cap regime after it was adopted. They were intended, thus, to be *transitional*, not permanent.² Without question, the Commission has had ample time and experience with price caps to recognize that its predictive judgments in 1990 about price caps' effectiveness have been validated.³ It is now time to retire the ARMIS "monitors," which have long since outlived their intended purpose.

In addition to urging the Commission to grant Petitioners' forbearance Petitions, AT&T cautions the Commission not to sidestep its Congressionally mandated obligation under Section 10 to address the instant forbearance Petitions, as some commenters advocate. Specifically, the California Public Utilities Commission, Sprint Nextel and the Washington Utilities and Transportation Commission urge the Commission to eschew Section 10 proceedings as a forum to address the issues raised in the Petitions.⁴ In their view, broader rulemaking proceedings are the sole appropriate means for dealing with ARMIS's applicability and related issues -- not forbearance proceedings. As discussed below, these arguments are contrary to both law and sound public policy.

First, commenters insisting that the Commission may shun forbearance proceedings in favor of rulemakings are simply wrong as a matter of law. Section 10 imposes an express, mandatory duty upon the Commission to rule upon forbearance petitions such as Petitioners'.⁵ As the Commission has been reminded by the courts, "Congress enacted section 10 as a 'viable . . . means of seeking forbearance' from regulation, and the Commission has 'no authority to

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

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

⁴ *See* California Public Utilities Commission's Comments at 7-8; Sprint Nextel's Comments at 5-6; Washington Utilities and Transportation Commission's Comments at 3-4.

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

sweep it away’ on the grounds that it would prefer to determine the appropriate regulatory treatment . . . through a different mechanism.”⁶ Further, the “‘availability of . . . an alternative route for seeking [forbearance] does not diminish the Commission’s responsibility to fully consider petitions under [section] 10.’”⁷ Thus, contrary to some commenters’ suggestions, the possibility that the relief the carriers seek arguably might fit within the scope of other regulatory proceedings cannot negate the carriers’ procedural and substantive forbearance rights under Section 10.

Second, even if the Commission had the discretion to defer action on the Petitions in favor of a rulemaking proceeding (which it does not), doing so would be manifestly unreasonable. The Commission’s *Phase III* proceeding,⁸ which opposing commenters would presumably view as an (if not *the*) appropriate mechanism to address ARMIS reporting, have yielded a record replete with proof that ARMIS reporting requirements are no longer necessary. Yet, the Commission has chosen to take no action in that proceeding for *more than seven years*.

Section 10 forbearance exists to address precisely this kind of situation. Indeed, the arguments of those opposing forbearance might ring less hollow if they at least encouraged the Commission to take action in *Phase III* based on the already well-briefed record. It is thus simply not credible for them to insist that Petitioners or any other carrier should forgo their statutory rights under Section 10 to seek forbearance relief while rulemaking proceedings (*e.g.*, *Phase III*) continue along for years without resolution.

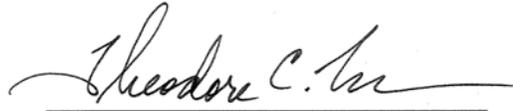
⁶ *AT&T Inc.*, 452 F.3d at 836 (D.C. Cir. 2006) (quoting *AT&T Corp. v. F.C.C.*, 236 F.3d at 738).

⁷ *Id.*

⁸ *In the Matter of 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3*, CC Docket No. 00-199, Notice of Proposed Rulemaking, CC Docket No. 00-229, 15 FCC Rcd 20568 (*Phase III*).

Accordingly, because the reporting requirements at issue in the Petitions no longer have a “strong connection” to legitimate regulatory goals,⁹ the Commission should grant the Petitions.

Respectfully submitted,

A handwritten signature in cursive script, reading "Theodore C. Marcus", written in black ink. The signature is positioned above a horizontal line.

Theodore C. Marcus
Gary L. Phillips
Paul K. Mancini

AT&T Inc.
1120 20th Street, NW
Suite 1000
Washington, DC 20036
(202) 457-2044
Its Attorneys

March 17, 2008

⁹ See *Cellular Telecommunications & Internet Association v. F.C.C.*, 330 F.3d 501, 512 (D.C. Cir. 2003).