

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

In the Matter of

Petition of Verizon for Forbearance
Under 47 U.S.C. § 160(c) From Enforcement
of Certain of the Commission's Recordkeeping
and Reporting Requirements

WC Docket No. 07-273

AT&T INC. REPLY COMMENTS

AT&T Inc. ("AT&T") respectfully submits these reply comments in support of Verizon's November 2007 petition requesting that the Commission forbear from enforcing its ARMIS and other "recordkeeping" requirements.¹

AT&T agrees with Verizon that developments in the communications marketplace have obviated the "rate-of-return regulation, recordkeeping and reporting requirements" that are at issue in its petition.² These regulatory "relics," as Verizon put it, simply do not have a place in today's competitive environment, and it is appropriate for the Commission to acknowledge that fact by forbearing from the outdated regulations identified in Verizon's petition.

Indeed, a number of the requirements at issue (particularly Reports 43-05 through 43-08) were developed to monitor the initial effectiveness of the Commission's price cap regime after it

¹ AT&T also has sought forbearance from various accounting requirements and ARMIS reporting requirements. *See* Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 (c) from Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21; Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 (c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-139. Although the relief that AT&T has requested, and the arguments expressed in those petitions, differ from Verizon's petition in a number of ways, both carriers are in full accord that unnecessary Commission reporting requirements should be eliminated, and that Section 10 is an appropriate vehicle for that purpose.

² Verizon Petition at 1-2.

was adopted in 1990. They were intended, thus, to be *transitional*, not permanent.³ Without question, the Commission has had ample time and experience with its price cap formulas to recognize that its predictive judgments in 1990 about price caps' effectiveness have been validated.⁴ As Verizon's petition makes clear, continuing to maintain an expensive, burdensome and asymmetric, ILEC-only reporting regime – given the realities of today's multi-faceted, competitive communications marketplace – distorts, not enhances, competition.⁵

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

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

Ad Hoc argues that the Commission should deny Verizon's petition because failing to do so would constitute an "abrupt reversal" of the Commission's legal and policy conclusions in its recent order establishing a de-regulatory framework for interstate long distance services provided by the BOCs.⁶ Sprint expands on this point, arguing that Verizon's petition seeks to "circumvent the safeguards adopted" in the Commission's 272 Sunset Orders.⁷ Comptel echoes these positions, arguing that granting Verizon's petition would be "inconsistent" with that Order and, indeed, it would be "disingenuous" for the Commission to grant relief in light of its decision in the 272 Sunset Order.⁸ These arguments are meritless.

³ *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).

⁴ *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6828 (1990).

⁵ *See* Verizon Petition at 2-3. AT&T has argued in its own ARMIS petition that such asymmetric reporting provides only an incomplete, and therefore distorted, picture of the communications industry to the Commission. *See* AT&T's ARMIS Forbearance Petition at **17-20**.

⁶ *See In the Matters of Section 272 (f) (1) Sunset of the BOC Separate Affiliate and Related Requirements, et ors.*, WC Docket No. 02-112, *et ors.*, Report and Order and Memorandum Opinion and Order, 20 FCC Rcd 16,440 (2007) (272 Sunset Order). *See* Ad Hoc Petition at 2-4.

⁷ Sprint Nextel's Comments at 11-12.

⁸ Comptel's Comments at 2-3.

The gist of these commenters' argument is that, because the *272 Sunset Order* did not grant accounting or ARMIS relief to the BOCs, the Commission has predetermined that accounting relief should not be granted to the BOCs *in the future*, e.g., through forbearance requests such as Verizon's. The premise of this argument rests on a gross distortion of the *272 Sunset Order*. First, the *272 Sunset Order* fails to discuss or even mention AT&T's accounting and ARMIS forbearance petitions – which are similar to Verizon's petition and which were on file well before the *272 Sunset Order*'s release. Thus, it is not reasonable to suggest, as Sprint Nextel does,⁹ that Verizon has some additional burden of proof to address the Commission's presumed rejection of the relief Verizon now seeks – because the Commission, with full knowledge of AT&T's petitions (which were clearly before it), said nothing in derogation of those petitions.

This conclusion is underscored by the substance of the Commission's decision in the *272 Sunset Order*. Although the *272 Sunset Order* maintained certain requirements for the BOCs and independent incumbent LECs (*i.e.*, that costs and revenues associated with the covered long distance services be treated as nonregulated for accounting purposes), that decision merely restated the regulatory *status quo* ("... in-region, interLATA ... services provided by the BOCs on an integrated basis *currently are required* to be treated as nonregulated for accounting purposes"),¹⁰ and nothing more. The *Order* did not purport to address AT&T's pending forbearance requests and any commenter's suggestion to the contrary is baseless.

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

⁹ See Sprint Nextel's Comments at 12.

¹⁰ *272 Sunset Order* at ¶ 93 (emphasis added).

Verizon seeks that kind of carrier-specific review here and its petition should be considered on its merits.

2. Forbearance Is A Proper Vehicle for Relief.

Some commenters contend that the Commission should reject Section 10 proceedings as a mechanism to address the issues Verizon has raised in its petition.¹¹ In their view, broader rulemaking proceedings (*e.g.*, on intercarrier compensation reform), or federal-state joint board proceedings, are the sole appropriate means for dealing with the matters in Verizon's petition. As discussed below, these arguments are contrary to both law and sound public policy.

First, the view that the Commission may shun forbearance proceedings in favor of rulemakings is deeply flawed as a matter of law. Section 10 imposes an express, mandatory duty upon the Commission to rule upon forbearance petitions such as Verizon's.¹² As the Commission has been reminded by the courts, "Congress enacted section 10 as a 'viable . . . means of seeking forbearance' from regulation, and the Commission has 'no authority to sweep it away' on the grounds that it would prefer to determine the appropriate regulatory treatment . . . through a different mechanism."¹³ Further, the "availability of . . . an alternative route for seeking [forbearance] does not diminish the Commission's responsibility to fully consider petitions under [section] 10."¹⁴ Thus, contrary to some commenters' suggestions, the possibility that the subject matter of Verizon's petition is arguably related to, or might fit within, the scope of other regulatory proceedings cannot negate Verizon's procedural and substantive rights to forbearance under Section 10.

¹¹ See Ad Hoc's Comments at 18-19; California Public Utilities Commission's Comments at 8; New York State Public Service Commission's Comments at 2-3; Public Service Commission of Wisconsin's Comments at 1-3; Sprint Nextel's Comments at 3-7, 8-10; Washington Utilities and Transportation Commission's Comments at 15.

¹² 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).

¹³ *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).

¹⁴ *Id.*

Second, even if the Commission had the discretion to defer action on Verizon's petition in favor of a rulemaking proceeding (which it does not), doing so would be manifestly unreasonable. The Commission's *Phase III* proceeding,¹⁵ which opposing commenters would presumably view as an (if not *the*) appropriate mechanism to address the reporting and recordkeeping issues in Verizon's petition, have yielded a record bulging with proof that these reporting requirements are largely, if not entirely, unnecessary. Yet, the Commission has chosen to take no action in that proceeding for *more than seven years*.

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

¹⁵ *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 Verizon's forbearance petition no longer have a "strong connection" to legitimate regulatory goals,¹⁶ the Commission should grant the petition.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Theodore C. Marcus", written in black ink on a white background. The signature is fluid and somewhat stylized, with a long horizontal flourish extending to the right.

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March 17, 2008

¹⁶ See *Cellular Telecommunications & Internet Association v. F.C.C.*, 330 F.3d 501, 512 (D.C. Cir. 2003).