

**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 of ARMIS Reporting Requirements))))	WC Docket No. 07-204
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 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

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

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
njratepayer@rpa.state.nj.us

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications
Committee
Office of 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

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

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I. INTRODUCTION

The New Jersey Division of Rate Counsel (“Rate Counsel”) and the National Association of State Utility Consumer Advocates (“NASUCA”) (collectively, “State Advocates”) hereby file these reply comments with the Federal Communications Commission (“FCC” or “Commission”) in response to the initial comments filed regarding the petitions for forbearance submitted by the Embarq Local Operating Companies (“Embarq”), Frontier and Citizens Communications Incumbent Local Operating Companies (“Frontier”), and Verizon Communications Inc. (“Verizon”)

(collectively, the “Petitions” and the “Petitioners”).¹ Only CenturyTel, Inc. (“CenturyTel”) filed comments in support of any of the petitions for forbearance, limited to support of Embarq’s and Frontier’s petitions for forbearance. This means that no party supported Verizon’s petition. State regulators, competitive local exchange carriers (“CLECs”), and telecommunications users all filed comments opposing the Petitions.²

II. THE DATA DO NOT SHOW AN IMPROVEMENT IN SERVICE QUALITY.

As support for the Petitioners’ request for forbearance from Automated Reporting Management Information System (“ARMIS”) Report 43-05 reporting, CenturyTel references Embarq’s assertion that service quality has improved, not declined,³ and adds that “[c]urrent data clearly show that ILEC service quality has improved.”⁴ CenturyTel then selectively quotes statistics from the FCC’s recently released report on the service quality of incumbent local exchange carriers (“ILECs”),⁵ purportedly showing an

¹ / State Advocates filed initial comments opposing all three Petitions. State Advocates also recently submitted initial comments in response to the FCC’s notice of proposed rulemaking regarding forbearance procedures. *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*, WC Docket No. 07-267 (“07-267”), *Notice of Proposed Rulemaking*, FCC 07-202 (rel. November 30, 2007) (“*NPRM*”).

² / In addition to State Advocates, commenters opposing the requests of Embarq and Frontier (WC Docket No. 07-207) were: BT Americas, Inc. (“BT Americas”); the California Public Utilities Commission and the People of the State of California (“California PUC”); COMPTEL; Sprint Nextel Corporation (“Sprint Nextel”); and the Washington Utilities and Transportation Commission (“Washington UTC”). In addition to State Advocates, parties filing comments opposing Verizon’s request for forbearance (WC Docket No. 07-273) were: Ad Hoc Telecommunications Users Committee (“Ad Hoc”); California PUC; COMPTEL; the Michigan Public Service Commission (“Michigan PSC”); the New York State Department of Public Service (“New York DPS”); Sprint Nextel; Time Warner Telecom, Cbeyond, and One Communications (“Time Warner et al.”); Washington UTC; and the Public Service Commission of Wisconsin (“Wisconsin PSC”).

³ / CenturyTel, at 3, citing Embarq Petition, at 3-6.

⁴ / *Id.*, at 3.

⁵ / *Id.*, at 4, citing Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, *Quality of Service of Incumbent Local Exchange Carriers*, February 2008 (“*ILEC Quality of Service Report*”).

improvement in service quality.⁶ CenturyTel refers to the average number of complaints per million lines for the industry as a whole, the length of installation intervals for the industry as a whole, the percent of switches with outages for the industry as a whole, and the trouble report rate for large companies.⁷

However even a cursory review of the FCC's announcement that accompanied its release of the *ILEC Quality of Service Report* reveals significant declines in service quality. For example, the press release points to trouble reports per thousand lines increasing on average 2.1% annually for the industry as a whole, and repair intervals increasing on average 5.5% annually for the overall industry.⁸

According to the *ILEC Quality of Service Report*, the only industry-wide trends found to be statistically significant were:

- Trouble reports per thousand lines are *increasing* on average 2.1% annually for the industry overall and 6.9% annually for the smaller companies.
- Repair intervals are *increasing* on average 5.5% annually for the industry overall, 6.7% annually for the larger companies, and 4.7% annually for the smaller companies.
- Percentage of switches with outages is decreasing on average 11.1% per year for the industry as a whole and 11.2% per year for the larger companies.
- Percentage of installation commitments met is increasing for small companies on average 0.8% annually.⁹

⁶ / CenturyTel, at 3-4.

⁷ / Id.

⁸ / Federal Communications Commission, Press Release "FCC Releases Report On Quality Of Service Of Incumbent Local Exchange Carriers," February 1, 2008.

⁹ / *ILEC Quality of Service Report*, at 2 (emphasis added).

The *ILEC Quality of Service Report* states that “[n]o statistically significant long-term upward or downward trends were observed in any of the other indicators of large-company, small-company or industry-wide performance.”¹⁰ This means that three of the four statistics purportedly showing improvements pointed out by CenturyTel fall into the category of “not statistically significant.” In contrast, however, several of the measures that *are* statistically significant (for example, the increase in trouble reports for the whole industry and small companies, and the lengthening repair times for all companies) do show *a decline* in service quality.

Furthermore, the Commission states in the *ILEC Quality of Service Report* that “[w]e note however, that the absence of an industry trend does not exclude the possibility that individual companies have significant performance trends.”¹¹ In other words, pointing to a few positive, but not statistically significant, measures for the industry as a whole does not alter the fact that some individual companies, including Embarq, Frontier and Citizens, and Verizon, provide *inferior and declining* levels of service quality. The *ILEC Quality of Service Report* shows, for example, that for the three most recent years under analysis (2004-2006), Embarq had a longer residential installation interval than any of the Bell operating companies (AT&T [excluding BellSouth], BellSouth, Verizon, and Qwest).¹² In the “Small Price-Cap” category, the Frontier and Citizens companies had the longest residential installation time of any of the companies under analysis for every year reported (the years 2001 through 2006).¹³ The level of complaints about Verizon

¹⁰ / Id.

¹¹ / *ILEC Quality of Service Report*.

¹² / Id., at 18 (Chart 5A).

¹³ / Id., at 19 (Chart 5B).

nearly doubled between 2002 and 2006, while the level of complaints for other carriers was relatively stable, or even declining.¹⁴ This negative metric is consistent with Verizon’s increase in residential repair dissatisfaction from approximately 12% in 2001 to about 19% in 2006, and the steadily lengthening repair-times between 2001 and 2006.¹⁵ Thus contrary to CenturyTel’s assertion, the Petitioners do **not** provide high service quality.

In the absence of robust competition, under which consumers can switch service providers at minimal cost when they are dissatisfied with the service they receive, information such as that gathered and reported by the Commission through its ARMIS Report 43-05 is essential. Even in so-called “competitive” telecommunications environments, ILECs remain the dominant carriers in their service territories, and thus their service quality should continue to be monitored. The only objective way for regulators to determine which companies are providing inferior service, to analyze service quality trends, to assess other aspects of ILECs’ service quality, and to assess the impact of price cap regulation on ILECs’ incentives and practices is to continue to enforce the reporting obligations currently in place.

Other commenters agree with State Advocates, pointing out that ARMIS Reports *do show* a deterioration of service quality,¹⁶ and that Report 43-05 reporting is essential for regulators.¹⁷ BT Americas describes its view of the European experience, noting that “the lowest prices and highest investment occurs where regulators have strong tools to

¹⁴ / Id., at 13 (Chart 1).

¹⁵ / Id., at 20 (Chart 6) and 21 (Chart 7A).

¹⁶ / See California PUC (Docket No. 07-204), at 5; COMPTEL (Docket No. 07-204), at 3.

¹⁷ / See COMPTEL (Docket No. 07-204), at 1-2; California PUC (Docket No. 07-273), at 6-7; Washington UTC (Docket No. 07-273), at 3 and 10; Time Warner et al. (Docket No. 07-273), at 3.

enforce EU pro-competition rules,” which include publicly-available service quality data.¹⁸

III. THE LOCAL EXCHANGE MARKET IS NOT SUBJECT TO “STRONG COMPETITION.”

State Advocates demonstrated in initial comments that local telecommunications services markets in the United States are not competitive.¹⁹ Other commenters agree.²⁰ Despite evidence to the contrary, CenturyTel contends that forbearance is necessary because, according to CenturyTel, competition, rather than the accountability achieved through systematic reporting, protects consumers. According to CenturyTel, “[t]he existence of competition will ensure that competition forces carriers to provide quality service in order to retain customers.”²¹

State Advocates also question the validity of CenturyTel’s characterization of competition as “strong.”²² As support for this description, CenturyTel refers to the competition it faces in two states, Alabama and Missouri.²³ Without examination of the underlying data, State Advocates do not concede that CenturyTel faces “strong competition” throughout Alabama and Missouri. Furthermore, not only does CenturyTel fail to show why competition in *two states*, even if it truly exists, should support the

¹⁸ / BT Americas (07-204), at 10.

¹⁹ / State Advocates, at 16-22.

²⁰ / See, e.g., BT Americas (07-204), at 6-7 on weaknesses of cable telephony for businesses, and the lack of geographic “reach” of CLECs; Sprint Nextel (Docket No. 07-204), at 9 on discriminatory practices by BOCs against UNE-based interexchange carriers; Ad Hoc (07-273), at iii on market failures in the switched and special access markets; and COMPTTEL (07-273), at 4 on the special access market failure.

²¹ / CenturyTel, at 5.

²² / Id.

²³ / Id.

argument that adequate competition exists *everywhere*, it also does not explain why the status of competition for CenturyTel is relevant to the petitions filed by Embarq and Frontier. CenturyTel fails to demonstrate that adequate competition exists today to discipline ILECs' local telecommunications services.

Ad Hoc, referring to excessive rates of return that Verizon has been earning and the lack of competitive alternatives, contradicts Verizon's claim of competition, particularly in the special and switched access markets.²⁴ COMPTEL, in its opposition to Verizon's forbearance petition, also identifies the special access market failure.²⁵ These and other comments, as well as State Advocates' initial comments demonstrate that Verizon has failed to support its erroneous claim of competition.

IV. DATA ARE NECESSARY UNDER PRICE CAP REGULATION.

In support of its recommendation that the Commission forbear from reporting requirements, CenturyTel contends that ARMIS reporting was "only meant to be a 'temporary' way of monitoring ILEC service quality during the transition from rate-of-return to price cap regulation and not to ensure that rates are reasonable."²⁶ However, the *ILEC Quality of Service Report*, which CenturyTel cites elsewhere in its comments, states that "the Commission monitors quality of service data submitted by incumbent local exchange carriers that are regulated as price-cap carriers" and that the "Commission summarizes these data and publishes a report on quality of service trends annually."²⁷ The Commission mentions *price-cap carriers* specifically, and does not say anything

²⁴ Ad Hoc, at 16-20.

²⁵ / COMPTEL, at 4.

²⁶ / CenturyTel., at 6.

²⁷ / *ILEC Quality of Service Report*, at 1.

about the “temporary” nature of reporting. Reporting is an ongoing obligation that, among other things, enables the Commission to prepare and release an annual quality of service report. Should there be any doubt about the source of data used in the *ILEC Quality of Service Report*, the Commission states in footnote 4 that “[s]ource data used to prepare this report may be useful for further investigation and can be extracted from the ARMIS 43-05 and 43-06 tables on the online database maintained on the FCC website at www.fcc.gov/wcb/eafs.”²⁸ Clearly, then, the Commission makes regular use of the data reported via the ARMIS mechanism, including for carriers that are price-cap regulated.

Several commenters concur with State Advocates that the data reported through the ARMIS system is essential for monitoring price-cap carriers and encouraging competition.²⁹ Ad Hoc, for example, states that “[w]hen regulatory authorities, including the Commission, prescribe price caps formulas, regulatory oversight does not end” and further states that “[r]egulators must continue to evaluate the operation of the price caps system and revise the formulas or indices as necessary.”³⁰ The Michigan PSC states:

The use of ARMIS information is necessary in order to insure the accuracy of cost information in Michigan and the formulation of the most competitive rates for services provided.... In order to insure that competition thrives in Michigan, TELRIC/TSLRIC costs need to be as accurate as possible. ARMIS data is an important tool used by the MPSC in determining the appropriate TELRIC/TSLRIC costs for providers such as Verizon.³¹

²⁸ / Id., at footnote 4.

²⁹ / See, e.g., Sprint Nextel (07-273), at 16; Ad Hoc, at 18.

³⁰ / Ad Hoc, at 8.

³¹ / Michigan PSC, at 4-5.

A carrier does not escape oversight by virtue of price-cap regulation, and the Commission should not allow the Petitioners to sidestep oversight by avoiding essential regulatory reporting.

V. THE BENEFITS OF REPORTING EXCEED THE BURDEN.

CenturyTel supports the petitions for forbearance from filing Report 43-05 “because filing the report imposes significant regulatory burdens and costs on carriers and it only applies to a small subset of ILECs that meet the applicable thresholds.”³² As support for this argument, CenturyTel refers to its own experience, noting that “while the Office of Management and Budget estimate for ARMIS Report 43-08 is estimated to be 160 hours for each respondent, it actually takes CenturyTel substantially longer at around 269 estimated man-hours.”³³ Merely quantifying the number of hours required to comply with regulations is not sufficient for comparing the cost of reporting with the benefits of accountability. CenturyTel’s own reporting experience could just as easily serve to demonstrate inefficiencies internal to CenturyTel rather than any indication of inappropriate burden. The fact that CenturyTel requires more time to comply with reporting requirements than the Office of Management and Budget (“OMB”) estimates should not be read as a criticism of either OMB’s estimate or the Commission’s reporting requirements.

Other parties comment on the relationship between the burden to carriers and the benefit to consumers of regulatory reporting. Sprint Nextel observes that “[t]he public interest, however, does not simply equate to Embarq’s and Frontier’s own private

³² / CenturyTel, at 6.

³³ / Id., at 10.

interests,”³⁴ and that the Petitioners have failed to show convincingly “how they are unable to effectively compete because of these ARMIS reporting obligations.”³⁵

Washington UTC shows that even if reporting is asymmetric among carriers, the carriers required to report for Washington (Verizon, Qwest, and CenturyTel) serve more than 85% of switched access lines in the state.³⁶ COMPTEL shows the logical inconsistencies in Embarq’s estimate of the man-hour burden of reporting, and calls it a “gross overestimation.”³⁷ Similar to State Advocates’ assertion, Ad Hoc observes that the 4.5 full time employees, which Verizon estimates are required to complete ARMIS reports are “miniscule given a base of 200,000 FTEs.”³⁸

The Petitioners would have the Commission relinquish its ability to gather and to analyze ILEC information bit by bit, or in this instance, forbearance petition by forbearance petition. Reduction of such reporting requirements, however, would impair the ability of the Commission to obtain systematic, timely data upon which to design effective and fair policies that protect consumers and encourage competition.

VI. ALTERNATIVE REPORTING MECHANISMS DO NOT SUBSTITUTE FOR ARMIS REPORTING

CenturyTel re-iterates the Petitioners’ erroneous argument that other reporting mechanisms provide the data necessary to monitor the industry. Referring to ARMIS Report 43-08, CenturyTel states, “[a]s in the case with ARMIS Report 43-05, the FCC

³⁴ / Sprint Nextel (Docket No. 07-204), at 12. *See also* Sprint Nextel (Docket No. 07-273), at 24.

³⁵ / Sprint Nextel (Docket No. 07-204), at 12.

³⁶ / Washington UTC (Docket No. 01-273), at 9.

³⁷ / COMPTEL (Docket No. 07-204), at 4.

³⁸ / Ad Hoc (Docket No. 07-273), at 20.

already has in its possession information which shows network investment by all facilities-based broadband providers is increasing.”³⁹ As State Advocates and others explain in initial comments, Form 477 reporting, while useful, does not substitute for ARMIS reporting.⁴⁰ ARMIS Report 43-08 provides a detailed breakdown of lines by residential primary, secondary, and Lifeline connections; single-line business, multi-line business, special access, and private lines; the number of local calls, interstate and intrastate toll calls, and billed minutes; the number of main access lines and remote switches; the linear quantity and makeup of cabling – metallic, fiber, or coax – and lit versus unlit fiber. These important data are available through ARMIS, separately by state and by operating company. In contrast, Form 477 reports total broadband connections by technology, provides data transfer rate information, and the percentage of broadband connections for residential use; the modes used to provision voice service (owned loops, unbundled network element (“UNE”) loops, UNE platform, and resale); and the zip codes where service is available.

Furthermore, as State Advocates state in initial comments, individual Form 477 reports are confidential.⁴¹ ARMIS reporting, by contrast, is public and provides a comprehensive and detailed view of ILECs’ actual infrastructure and how that infrastructure is used.

Other commenters explain why ARMIS reporting is essential to particular regulatory tasks. Ad Hoc points out that “[i]f it were to grant Verizon’s petition, the Commission would lose access to important cost data that would be relevant to virtually

³⁹ / CenturyTel, at 7.

⁴⁰ / See State Advocates, at 26-28; Sprint Nextel (Docket No. 07-204), at 34; Washington UTC (Docket No. 07-204), at 3; Michigan PSC (Docket No. 07-273), at 3-5.

⁴¹ / State Advocates, at 27.

all of the intercarrier compensation reform proposals advanced by parties to the Commission’s intercarrier compensation proceeding.”⁴² The New York PSC states that “ARMIS data continues to be an essential tool in evaluating competition and Verizon’s intrastate rates and practices as well as other regulatory functions.”⁴³ The Washington UTC observes that if Verizon is no longer required to file ARMIS Report 43-01, “the UTC will be compelled to require additional reporting from Verizon in lieu of ARMIS Report 43-01.”⁴⁴ These comments demonstrate that regulators depend on ARMIS reporting, and that other sources of data cannot substitute for ARMIS reporting.

VII. REPORTING SHOULD CONTINUE UNTIL COMPETITION ADEQUATELY PROTECTS CONSUMERS.

CenturyTel asserts that Report 43-08 was intended to monitor carriers for only a short time, stating that “[t]he report was only meant to be a ‘short term’ way of looking at ILEC network investment and not to ensure that rates are reasonable.”⁴⁵ State Advocates and others have demonstrated the weakness of this argument, and furthermore, neither the Petitioners nor CenturyTel present any evidence that *now* is the time to relieve reporting companies of their obligations. Even if ARMIS reporting was intended to be temporary (a proposition with which State Advocates disagree), CenturyTel has not demonstrated that that now is the proper time for the Commission to foreclose the opportunity to gather data and monitor carriers. The market still suffers from significant concentration and

⁴² / Ad Hoc, at 18-19.

⁴³ / New York PSC, at 1-2.

⁴⁴ / Washington UTC, at 5.

⁴⁵ / CenturyTel, at 9.

declining service quality. It would be premature for the Commission to give up its tools to gather cost data and to monitor carriers' service quality.

As State Advocates demonstrate in initial comments and in these reply comments, and as others have similarly shown, the Commission should deny the Petitioners' requests for forbearance. Among other reasons, local markets are not yet competitive; reporting is relevant even under price cap regimes; alternative data sources are not sufficient; federal and state regulators and consumer advocates continue to rely on ARMIS reporting and other record-keeping; and the benefits of the reports and record-keeping from which the Petitioners seek forbearance outweigh the purported burden to carriers. Furthermore, as State Advocates and others demonstrate, changes to the reporting mechanisms are better addressed in a comprehensive rulemaking rather than on a case by case basis,⁴⁶ or, at a minimum, through referral to a federal-state Joint Board.⁴⁷

VIII. CONCLUSION

The piecemeal dismantling of the regulatory reporting system, to which the pending petitions would contribute, would thwart the Commission and states in their efforts to protect consumers and to facilitate competition. The 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. For the reasons set forth above and in initial comments, State Advocates urge the Commission to deny the petitions for forbearance of Verizon, Embarq, and Frontier.

⁴⁶ / See State Advocates, at 10; California PUC (Docket No. 07-204), at 7-8; Sprint Nextel (Docket No. 07-204), at 6; Washington UTC (Docket No. 07-204), at 4; Time Warner et al. (Docket No. 07-273), at 9.

⁴⁷ / See New York PSC (Docket No. 07-273), at 2; Time Warner et al. (Docket No. 07-273), at 9; Sprint Nextel (Docket No. 07-273), at 8;

Respectfully submitted,

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
njratepayer@rpa.state.nj.us

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications
Committee
Office of 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

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