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VIA ELECTRONIC SUBMISSION

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 07-139

Dear Ms. Dortch:

AT&T submits this *ex parte* letter to reiterate that the outdated ARMIS infrastructure and operating data reporting requirements (respectively, Reports 43-07 and 43-08) that apply only to AT&T, Verizon Qwest (and, in part, to a handful of other price cap ILECs) meet the statutory test for forbearance in Section 10 of the Act, 47 U.S.C. § 160, and that, if the Commission believes that it should collect information on the nation's wireline telecommunications infrastructure, it should require such data to be reported by *all* wireline telecommunications providers, including CLECs and cable telephony providers, in the Form 477.[1]

As AT&T demonstrated in its forbearance Petition filed more than a year ago,[2] the statutory test for forbearance is easily satisfied with respect to ARMIS Reports 43-07 and 43-08. The D.C. Circuit has made clear that there must be a "*strong* connection," based on *current* regulatory uses, between the regulation at issue and whatever legitimate ends the regulation is meant to serve.[3] Here, there is no such connection at all. Reports 43-07 and 43-08 were adopted in 1990 out of an abundance of caution, purely as a means to monitor the *transition* from the

[1] Form 477, the Commission's broadband and local telephone competition data gathering tool established with the Commission's *Data Collection Order*, has been in use since 2000 for the collection of information about broadband service deployment and the development of local telephone service competition. *See Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, 19 FCC Rcd 22340 (2004) (*Data Collection Order*).

[2] *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, at 18-20 (Filed June 8, 2007) ("Petition").

[3] *Cellular Telecommunications and Internet Association* v. *FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003). *See also* Mem. Opinion & Order, *In the Matter of Petition of AT&T Inc. For Forbearance From Certain of the Commission's Cost Assignment Rules*, WC Docket No. 07-21 & WC Docket No. 05-342, ¶ 20 (Apr. 24, 2008) ("*Cost Assignment Order*").

rate-of-return regime to the price cap regime.[4] This was not because the Commission anticipated any problems, even in 1990; rather, the Commission predicted that "incentive regulation will encourage LECs to develop their infrastructure and promote innovation through the introduction of new service offerings."[5]

It has now been eighteen years since the Commission switched from rate-of-return regulation to price caps. In that long span of years, the Commission's predictive judgment that price caps would spur investment in infrastructure has been confirmed many times over, and there is no longer any possible need for special reporting requirements on AT&T to make sure the transition to price caps has no detrimental impact on its investment. Moreover, the telecommunications market has changed dramatically in the last eighteen years, and AT&T now faces an incredible array of intermodal and intramodal competitors. In today's fiercely competitive environment, AT&T and its competitors continuously spend billions to upgrade their networks to provide new and innovative services in competition with one another. Indeed, the growing intermodal competition faced by price cap LECs facing huge access line losses each quarter removes any conceivable doubt that price cap LECs have every incentive to invest heavily in their networks or risk acceleration of line losses. Despite this pervasive competition, however, AT&T, Verizon, and Qwest are the only three companies required to file these reports.

The case for forbearance, therefore, is not even close. These rules were adopted in the "all-analog, voice-only, rate-of-return regulatory environment of yesteryear"[6] – indeed, much of the information in these reports is not even relevant to the telecommunications infrastructure of today. Accordingly, this is "just the type of relief Congress designed the forbearance process to address."[7]

Although there is no legitimate need to require only three of many competing companies to report on categories of data based on "yesteryear's" "all-analog, voice-only, rate-of-return" networks, this is not to say that *no* information regarding investment in the nation's wireline communications network infrastructure would be useful. However, if such information is to be collected, it only makes sense that such information provide the Commission with a complete picture of all such investment by all companies providing wireline services.[8] As a consequence, if the Commission deems it appropriate to collect infrastructure development and operating data

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[4] *In Re Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd. 6785, ¶¶ 352-53 (1990) (*LEC Price Cap Order*) (adopting these reporting requirements to "monitor network investment and development" and "to ensure that the current high standards are maintained and improved").

[5] *LEC Price Cap Order* ¶ 351.

[6] *Cost Assignment Order*, Statement of Commissioner McDowell; *see also id.* ("Relief is especially appropriate as telecommunications traffic migrates to toward an all-I.P. world").

[7] *Id.*

[8] *See Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, ¶¶ 29-30 (2000) (*Data Gathering Order*) ("we cannot get a reasonably accurate picture of the status of local competition from incumbent-provided information alone").

information that today is contained in the ARMIS reports, AT&T does not oppose reasonable new Form 477 requirements applicable to the entire industry.[9]

As AT&T has explained, such Form 477 information could be useful to the Commission and state regulators to evaluate where regulation remains necessary – and more, importantly, where additional deregulation is sorely needed and would serve the public interest. Most notably, obtaining information from all providers on a uniform basis would be far more rational than the Commission's current hit-and-miss approach that imposes burdensome reporting requirements based on outdated specifications only on three incumbent price cap LECs and therefore provides an incomplete snapshot of network investment.

Expansion of the pool of those companies that report relevant infrastructure and operating data via Form 477 would not constitute any sea change. Indeed, the Commission long ago proposed the replacement of ARMIS Reports 43-07 and 43-08 with data to be collected in Form 477.[10] The entire wireline service industry already provides some data to the Commission through the Form 477. Any changes to Form 477 to include useful infrastructure development and operating data – updated to reflect new technologies and new competitors – would simply extend reporting requirements with which these providers already must comply today.

Thus, if there are any federal interests in collecting data on network infrastructure, those interests cannot be met by obtaining only partial information based upon outdated categories from three carriers. Rather, the Commission should modify the Form 477 to collect network infrastructure and operating data that it deems necessary and useful from *all* wireline providers. This will ensure a comprehensive, industry-wide perspective that the Commission legitimately might use to gauge broadband deployment and other developments in the marketplace.

Use of Form 477 would also address any legitimate needs of state regulators to review relevant infrastructure development and operating data. In this regard, even the three state commissions (California, Michigan and Texas) that filed comments in this proceeding claiming that they still monitor selected items reported in ARMIS Reports 43-07 and 43-08 recognize the obvious limitations of reports that are confined to three carriers and require reporting on "outdated technologies, such as electro-mechanical switches," while excluding data on IP and

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[9] At the same time, the Commission has in the past acknowledged that "there may be no need to collect [network infrastructure] data in the long term," *In re 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, et al., CC Docket No. 00-199, et al.*, 16 FCC Rcd 19911, ¶ 160 (2001) ("*Phase 2 Order*"), and thus the need to collect such information should be carefully considered and, in all events, limited to data that provides demonstrably useful information and can be provided at reasonable cost and without undue administrative burdens.

[10] *See Phase 2 Order*, 16 FCC Rcd. at 19986-87.

other newer technologies.[11] States that wish to obtain information on network infrastructure deployment and operations in order, for example, to "monitor carrier facilities and to study how they may be deployed over time," CPUC Comments at 9, would be far better served by access to relevant information from *all* providers that would be collected under a Revised Form 477. Likewise, the line count data for which the Texas PUC claims a continuing need, Texas PUC Comments at 5, would be substantially more useful to the PUC if *all* wireline providers furnished the information, as opposed to only a narrow subset of that data from one or two providers. Eliminating the ARMIS Reports and revising Form 477 so that relevant information on *all* providers' networks is obtained could therefore further legitimate needs of state commissions for such data.[12]

ARMIS Reports 43-07 and 43-08 unquestionably distort competition by imposing needless costs and burdens on only one segment of industry. Moreover, this very limitation renders them largely useless as a source of information about investment in the nation's wireline infrastructure. It is, therefore, long past time for the Commission to eliminate these requirements. Notably, the Commission proposed to replace ARMIS Reports 43-07 and 43-08 with Form 477 seven years ago. Consistent with this proposal, if the Commission, in eliminating ARMIS Reports 43-07 and 43-08 determines that it needs information on the nation's wireline infrastructure, the Commission can adopt its long pending proposal and require the entire wireline industry to provide such information via Form 477.

Respectfully submitted,

/s/ Gary Phillips

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[11] *See* Texas PUC Comments at 4. Of course, in all events, as the Commission recently recognized, forbearance would be required here even in the face of compelling state claims: the Commission simply does not "have authority under sections 2(a) and 10 of the Act to maintain federal regulatory requirements that meet the three-prong forbearance test with regard to interstate services in order to maintain regulatory burdens that may produce information helpful to state commissions for intrastate regulatory purposes solely." *Cost Assignment Order* ¶ 32.

[12] Further, as was true in the Commission's recent *Cost Assignment Order*, "when a need exists" for specific information by a state commission for "monitoring" or other legitimate state purposes, "AT&T can develop such information to meet those state-specific requirements." *Id.* ¶ 34; *id.* Statement of Commissioner McDowell ("Section 10 does not allow us to maintain a requirement merely 'just in case' it is needed in the future").