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**EX PARTE**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 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 From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-139; 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; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160, WC Docket No. 07-204; et al.**

Dear Ms. Dortch:

Commission staff requested further information regarding three matters: (1) the scope of Verizon's recordkeeping and reporting forbearance petition; (2) the Commission's ability to grant ARMIS relief to multiple carriers in a single order; and (3) inclusion of certain ARMIS data in the Commission's annual universal service monitoring report. Those aspects of Verizon's petition that will remain pending when the Commission, as it must, extends the same cost assignment forbearance relief granted to AT&T to Verizon are identified below. Related to ARMIS, the Commission has the authority under the Act to grant forbearance to multiple carriers in a single order and has done so in the past. In addition, because the ARMIS reports are not necessary for effective universal service monitoring, Universal Service Fund ("USF") oversight objectives cannot preclude forbearance from the ARMIS reports. The Commission should immediately extend the cost assignment relief granted to AT&T to Verizon and should also eliminate the ARMIS reports for all similarly situated carriers in a single order issued by the statutory deadline for action on the AT&T ARMIS forbearance petition.

### **Scope of Verizon's Petition**

The primary difference between AT&T's cost assignment forbearance petition and Verizon's recordkeeping and reporting petition is inclusion of the ARMIS reports.<sup>1</sup> AT&T seeks ARMIS relief in a petition separate from its cost assignment forbearance petition. The statutory deadline for the Commission to act on AT&T's ARMIS petition is early next month. Verizon filed a single petition. Verizon's petition also seeks forbearance from the Commission's continuing property records rules. Once the Commission extends the same cost assignment forbearance relief already granted to AT&T to Verizon – if such relief is granted prior to acting on the pending ARMIS forbearance petitions – the Commission will resolve Verizon's outstanding forbearance requests with the exception of the following:

- 47 C.F.R. § 32.11 (to the extent the rule requires a carrier to keep basic property records or continuing property records)
- 47 C.F.R. § 32.27(f) (affiliate transactions average schedule subpart)
- 47 C.F.R. § 32.2000(e)-(f) (instructions for telecommunications plant accounts pertaining to basic property records and maintaining continuing property records)
- 47 C.F.R. § 43.21(e)-(k) (Commission reporting requirements covering certain ARMIS reports)
- 47 C.F.R. § 69.307(c) & (e) (apportionment of net investment – certain non-price cap company billing and collection services)
- 47 C.F.R. § 69.415 (apportionment of expenses – reallocation of certain transport expenses)
- 47 U.S.C. § 254(k) (only as related to affiliate transaction rules)

### **ARMIS Forbearance – A Single Order**

The Act expressly allows the Commission to grant forbearance to a class of similarly situated carriers when the forbearance criteria are satisfied and irrespective of whether all members of the class filed individual forbearance petitions. 47 U.S.C. § 160(a) (the Commission “shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier . . . or class of telecommunications carriers,” if the forbearance test is met) (emphasis added). The Commission has many times in the past exercised its authority to both issue a single order responding to multiple forbearance petitions and to extend forbearance to parties that had not filed formal petitions. Addressing multiple forbearance petitions in a single order, the Commission, for example, granted identical relief to several carriers that sought forbearance from application of section 271 to the broadband elements from which unbundling relief was

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<sup>1</sup> AT&T also sought and was granted broader relief from the cost assignment rules than Verizon initially requested. Verizon and Qwest since requested all of the same cost assignment relief granted to AT&T. Letter from Ann Berkowitz, Verizon, to Marlene Dortch, FCC, WC Docket Nos. 07-21, 07-273, 07-204 (May 23, 2008). The Commission sought comment on the Verizon and Qwest request but has not yet issued a further order. *Comment Sought on Request of Verizon and Qwest to Extend Forbearance Relief from Cost Assignment Rules*, WC Docket No. 07-21 (June 6, 2008).

granted under section 251.<sup>2</sup> Extending forbearance to parties other than those that filed a formal petition, the Commission also, for example, recently granted AT&T's request for forbearance from the equal access scripting requirement and on its own motion made the same relief available to all BOCs.<sup>3</sup> It makes sense for the Commission to take the same approach here with similarly situated federal price cap carriers and issue a single ARMIS forbearance order by the statutory deadline for action on the AT&T petition.

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<sup>2</sup> *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*; *SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c)*; *Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c)*; *BellSouth Telecommunications, Inc., Petition for Forbearance Under 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21496 (2004); *see also Petition of SBC Communications Inc. for Forbearance from Structural Separation Requirements of Section 272 of the Communications Act of 1934, as Amended, and Request for Relief to Provide International Directory Assistance Services*; *Petition of Verizon for Further Forbearance from Section 272 Requirements in Connection with Directory Assistance Services*; *Petition of BellSouth for Forbearance under 47 U.S.C. § 160(c) from Application of the Separate Subsidiary Requirements of Section 272 of the Communications Act of 1934, as Amended, to Provide International Directory Assistance Service*, Memorandum Opinion and Order, 19 FCC Rcd 5211 (2004) (granting SBC, Verizon, and BellSouth petitions seeking forbearance from application of section 272 to international directory assistance services); *BellSouth Petition for Forbearance for Nonlocal Directory Assistance Service*; *Petition of SBC Communications Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services*; *Petition of Bell Atlantic for Further Forbearance from Section 272 Requirements in Connection with National Directory Assistance Services*, Memorandum Opinion and Order, 15 FCC Rcd 6053 (2000) (granting BellSouth, SBC, and Bell Atlantic petitions seeking forbearance from application of section 272 to nonlocal directory assistance services); *Bell Operating Companies; Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities*, Memorandum Opinion and Order, 13 FCC Rcd 2627 (1998) (granting Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Telesis, Southwestern Bell, and US West petitions seeking forbearance from application of section 272 to E911 services).

<sup>3</sup> *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*; *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007); *see also Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) From Application of the ISP Remand Order*, Order, 19 FCC Rcd 20179 (2004), *petition for review denied*, *In re Core Communications, Inc.*, 455 F.3d 267 (D.C. Cir. 2006) (extending forbearance to parties that had not filed formal forbearance petitions when evaluating the growth caps and new market rules under the Commission's interim compensation regime for ISP traffic); *PCIA's Broadband PCS Alliance's Petition for Forbearance For Broadband PCS*, Memorandum Opinion and Order, 13 FCC Rcd 16857 (1998) (extending forbearance from international tariff requirements to all CMRS providers).

### **ARMIS Forbearance – Universal Service**

The Commission must grant forbearance unless a regulation is “necessary” to an appropriate federal objective. 47 U.S.C. § 160. This requires a “strong connection between what the agency has done by way of regulation and what the agency permissibly sought to achieve with the disputed regulation.”<sup>4</sup> There is no connection between the Commission’s necessary universal service monitoring functions and ARMIS because the Commission monitors the USF in a much more targeted way, ARMIS reports are filed by only a handful of providers, ARMIS was never designed for universal service monitoring, and the *USF Monitoring Report*<sup>5</sup> itself acknowledges that ARMIS is not suitable for program oversight.

The Commission monitors the universal service program through reporting and other rules and activities specific to the USF. For example, in order to receive universal service subsidies, those providers designated as eligible telecommunications carriers (“ETCs”) by the Commission are required to submit ongoing, detailed reports or certifications regarding: (1) wire center-level progress on service quality improvements; (2) service outages; (3) unfulfilled service requests and attempts to fulfill service orders; (4) the number of complaints per 1,000 lines or handsets; (5) compliance with service quality standards; (6) emergency functionality; (7) local usage plans; and (8) equal access acknowledgments. 47 C.F.R. § 54.209. Some individual states have different or additional federal universal service reporting requirements, and the Commission also encourages states to adopt the requirements in section 54.209 as their own.<sup>6</sup> Further, the Universal Service Administrative Company and the Commission’s Office of Inspector General conduct extensive carrier auditing of federal USF contributions and receipts, and providers are required to comply with those audits. 47 C.F.R. § 54.707; *see also* 47 U.S.C. § 220(c). The Commission’s Enforcement Bureau also regularly investigates universal service matters and initiates proceedings against USF participants.

It is not logical to suggest that the Commission could satisfy its obligation to ensure appropriate use of universal service funds by analyzing ARMIS data. There are hundreds of ETCs that receive federal universal service funding throughout the country.<sup>7</sup> But only a handful of certain incumbent LECs file ARMIS reports, depending on their size and regulatory classification, and some ARMIS reports are required only of AT&T, Verizon, and Qwest.

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<sup>4</sup> *Cellular Telecommunications & Internet Ass’n v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

<sup>5</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, CC Docket No. 98-202, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-279226A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-279226A1.pdf) (rel. Dec. 28, 2007) (“*USF Monitoring Report*” or “the report”).

<sup>6</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, ¶ 71 (2005).

<sup>7</sup> Universal Service Administrative Company, USAC FCC Filings, First Quarter Appendices – 2008, *Eligible Telecommunications Carriers - 3Q2007* (available at <http://www.usac.org/about/governance/fcc-filings/2008/Q1/LI03%20-%20Eligible%20Telecommunications%20Carriers%20-3Q2007.xls>) (identifying nearly 2,000 company-specific study areas with designated federal eligible telecommunications carriers).

Competitive LECs, cable companies, independent VoIP providers, and wireless carriers file no ARMIS reports. Reports targeted at a small fraction of ETCs serve no purpose in monitoring the overall program.

Moreover, the ARMIS reports themselves were decidedly not adopted for USF purposes. The ARMIS financial reports are obsolete relics of federal rate-of-return regulation, long replaced by the Commission's price cap regime, and the ARMIS service quality and infrastructure reports were put in place by the Commission as temporary measures to facilitate the transition to price cap regulation.<sup>8</sup>

The annual *USF Monitoring Report* does reference certain ARMIS reports and publishes certain ARMIS data. Some sections of the report address ARMIS data relating to service quality, carrier infrastructure, and carrier revenues, expenses, and investment. *USF Monitoring Report*, beginning at 9-1. ARMIS data is also a component of various other analyses in other sections of the report. But the report itself acknowledges that there is no direct link between much of the ARMIS data and universal service monitoring such that certain sections merely organize and reproduce available information "on matters that *might be affected* by the support mechanisms." *Id.* at 7 (emphasis added). In other sections the report also acknowledges that the ARMIS data is incomplete and looks to other available sources for comparable information. For example, to estimate each state's telecommunications revenues the report uses data from several sources, including ARMIS for some incumbent LECs and FCC Form 477 for competitive carriers. *Id.* at 1-9.

Please contact me if you have further questions.

Sincerely,



cc: Dana Shaffer  
Darryl Cooper  
James Eisner  
Alan Feldman  
Michael Goldstein

Marcus Maher  
Jeremy Miller  
Alex Minard  
Christi Shewman  
Cathy Zima

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<sup>8</sup> *Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules)*, Report and Order, 2 FCC Rcd 5770, ¶ 1 (1987); *Policy and Rules Concerning Rates for Dominant Carriers*, Order on Reconsideration, 6 FCC Rcd 2637, ¶ 179 (1991).