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EX PARTE COMMENTS

By Electronic Filing

September 4, 2008

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

Re: *In the Matter of the 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; *In the Matter of the 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; *In the Matter of the 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; *In the Matter of the 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

Dear Secretary Dortch:

As the exclusive state regulator of telecommunications services within Massachusetts, the Massachusetts Department of Telecommunications and Cable ("MDTC") has a statutory duty to safeguard the public interest in Massachusetts and a mandate to ensure that competition in the cable and telecommunications markets continues to develop in a manner consistent with the public interest. In response to the petitions and various comments and ex partes filed in the above-captioned dockets pending before the Federal Communications Commission ("FCC" or "Commission"), the MDTC respectfully submits this ex parte communication. More specifically, the MDTC expresses its concern with, and addresses, Verizon's multiple requests for forbearance from the Automated Reporting Management Information System ("ARMIS") recordkeeping and reporting requirements, as well as Verizon's request that, if forbearance is

granted, the FCC should preempt state reporting requirements.[1] Since Verizon operates as a dominant incumbent local exchange carrier ("ILEC") within Massachusetts, any decision that would grant Verizon's requests would negatively impact the MDTC's monitoring and investigatory abilities. Furthermore, a blanket Order that would grant forbearance to all current ARMIS filers would create cumulative and detrimental effects at the state and federal levels, since both federal and state regulators who currently rely on this information for comparative, monitoring and regulatory purposes would suddenly be forced to find alternative means to obtain comparable information. As such, the Commission should deny Verizon's ARMIS forbearance requests. To do otherwise would be contrary to the public interest.[2]

On November 26, 2007, Verizon on behalf of itself and its affiliates filed a forbearance petition requesting that the FCC forbear from enforcing a number of the FCC's recordkeeping and reporting requirements, namely forbearance from (i) all ARMIS reporting requirements; (ii) the Commission's affiliate transaction and related rules; (iii) Part 65, Subpart E and Part 69, Subparts D and E ("rate-of-return reporting rules"); (iv) the Commission's property record and related rules; and (v) 47 U.S.C. §254(k) "to the extent this provision contemplates the accounting methodology for assets and services transferred or provided between an [ILEC] and any of its nonregulated affiliates embodied in the Commission's affiliate transaction rules."[3] During the pendency of this petition, the Commission conditionally granted AT&T forbearance from certain federal Cost Assignment Rules.[4] As a result, Verizon requested through an ex parte that the Commission grant to them the same forbearance conditionally granted to AT&T (a "me-too" request).[5] In subsequent ex partes, Verizon clarified and then specified that the scope of the "me too" forbearance required inclusion of forbearance from the ARMIS reports, to be handed down in a single Order[6] that would be applicable to all "similarly situated federal price cap carriers."[7] The MDTC hereby addresses its specific concerns with the Verizon ARMIS forbearance requests.[8]

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[1] *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 (filed November 26, 2007) ("Verizon Petition"), and Verizon Ex Partes (filed May 23, August 6, August 8, August 20, August 28 and August 29, 2008) ("Verizon Ex Partes"), and Verizon Comments (filed June 26, 2008) ("Verizon Comments"); *see also 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, incorporating same ex partes and comments.

[2] For parity purposes, all other ILEC petitions should be denied. While the MDTC only has a direct interest in the Verizon requests, our arguments apply equally to the other requests.

[3] Verizon Petition, WC Docket No. 07-273 (filed November 26, 2007).

[4] *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 Nos. 07-21, 05-342, *Memorandum Opinion and Order*, FCC 08-120, (rel. April 24, 2008).

[5] Verizon Ex Parte, WC Docket Nos. 07-21, 07-273, 07-204 (filed May 23, 2008).

[6] More specifically, Verizon seeks a single Order to be issued by the statutory deadline (September 6, 2008) set for action on a *separate* AT&T petition requesting forbearance from only certain ARMIS reporting requirements. Verizon Ex Partes, WC Docket Nos. 07-21, 07-139, 07-273, 07-204 (filed August 8, August 20, August 28 and August 29, 2008); *see also 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.

[7] Verizon Ex Parte, WC Docket Nos. 07-21, 07-139, 07-273, 07-204 (filed August 8, 2008).

[8] Verizon Petition, WC Docket No. 07-273 (filed November 26, 2007); Verizon Ex Partes, WC Docket Nos. 07-21, 07-273, 07-204 (filed May 23 and August 6, 2008); Verizon Ex Partes, WC Docket Nos. 07-21, 07-139, 07-273, 07-204 (filed August 6, August 8, August 20, August 28 and August 29, 2008).

Contrary to Verizon's assertion that the ARMIS reporting and recordkeeping requirements are "meaningless to regulators,"[9] these requirements are invaluable sources of information for state commissions such as the MDTC, and for state and federal regulators. For instance, the FCC stated just last year that the ARMIS filings are amongst a "number of legal obligations that are an important component of the regulatory framework that we find appropriate for the BOCs and their independent incumbent LEC affiliates."[10] In addition, the ARMIS data is currently being used by the Federal State Joint Board on Separations, which feels that this information "could be vital" in their reform efforts.[11] Furthermore, as many state commissions have already shown, the ARMIS reports are utilized by state regulators on a regular basis.[12]

Elimination of Verizon's ARMIS requirements would be detrimental to the MDTC's oversight abilities. Based on its own experience and on the important role that the ARMIS filings have played in past and ongoing investigations and proceedings,[13] the MDTC concurs with the assertions that the reports "provide state commissions with consistent and valuable information essential to monitor, evaluate, enforce and revise policies for competition, service quality, infrastructure, [and] telephone company operations"[14] and for benchmarking purposes.[15] For instance, Massachusetts law requires all telecommunications service providers ("TSPs") registered with the MDTC to file annual reports.[16] Verizon has fulfilled this requirement repeatedly by filing its ARMIS report with the state. If forbearance is granted, the MDTC is concerned that Verizon will no longer provide the same in-depth information to the state, depriving the MDTC of its ability to accurately provide regulatory oversight within the state, and

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[9] Verizon Ex Parte Letter, WC Docket Nos. 07-21, 07-139, 07-273, 07-204 (filed August 20, 2008).

[10] *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*, WC Docket Nos. 02-112, 06-120, CC Docket No. 00-175, *Report and Order and Memorandum Opinion and Order*, 22 FCC Rcd 16440, 16484-85, para. 90 & n.260 (2007)("*Section 272 Sunset Order*").

[11] Discussing the separations freeze that ends in July 2009 - State Members of the Separations Joint Board Comments, WC Docket No. 07-21 and CC Docket No. 80-286, at 4 (filed August 18, 2008).

[12] *See generally*: Washington Utilities and Transportation Commission Comments, WC No. 07-273 (filed February 1, 2008); New York Department of Public Service Comments, WC No. 07-273 (filed February 1, 2008); Wisconsin Public Service Commission Comments, WC No. 07-273 (filed January 31, 2008); California Public Utility Comments, WC Docket 07-273 (filed February 1, 2008); Pennsylvania Public Utility Commission Reply to Comments, WC Docket Nos. 07-204 and 07-273 (filed March 17, 2008); Texas Public Utility Commission Comments, WC Docket No. 07-139 (filed August 16, 2007); *see also* New Jersey Division of Rate Counsel Reply comments, WC Docket No. 07-139 (filed September 19, 2007); *et al.*

[13] For instance, the MDTC applied Verizon's ARMIS data in order to establish appropriate resale discount rates as well as establish the propriety of the rates and charges set forth in a state tariff filed by Verizon. *See Investigation by the Department of Telecommunications and Energy on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Department on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Massachusetts*, D.T.E. 06-61, *Final Order* (rel. January 30, 2007). Please note that the DTE was the predecessor agency to the MDTC.

[14] Texas Public Utility Commission Comments, WC Docket No. 07-139, at 5; *see also* New Jersey Division of Rate Counsel Reply comments, WC Docket No. 07-139, at 5.

[15] Pennsylvania Public Utility Commission Reply to Comments, WC Docket Nos. 07-204 and 07-273, at 8; *see also* Washington Utilities and Transportation Commission Comments, WC No. 07-273, at 2-4; California Public Utility Comments, WC Docket No. 07-273, at 3-7.

[16] Massachusetts General Laws ("MGL"), Chapter 159, Section 32 and Chapter 166, Section 11.

the ability to compare the information with reports filed by other Massachusetts TSPs, as well as compare Verizon's ARMIS data between and among the states.[17]

If ARMIS forbearance was granted, the MDTC (and all other interested parties) would be subject to inefficiencies – loss of all prospective ARMIS information that has heretofore been a readily-available source of carrier information would generate time-consuming searches and requests for information. Until the MDTC would be able to amend its rules and regulations to obtain comparable data under state law (an uncertain process in itself given potential carrier resistance as well as possible federal preemption issues),[18] there would be a critical information void caused by the loss of important ARMIS data. Such core state regulatory functions as resolving disputes between carriers and consumer complaints, promoting competition, and enforcement of state and federal rules all potentially could be hampered by time consuming data gathering from which would likely arise incomplete and inaccurate records,[19] assuming that the necessary data could be obtained at all.

In direct correlation to the increased time invested in obtaining accurate information with which to make informed decisions, the MDTC would see a subsequent increase in its own costs in order to obtain data comparable to that which the ARMIS reports currently provide. This is contrary to the public interest. While Verizon claims that its preparation of ARMIS reports "is a costly and time-consuming exercise,"[20] collection of the same data by multiple state and federal regulators and agencies would arguably create a much more "costly and time-consuming exercise" in the aggregate for both the regulators *as well as* for Verizon, which has "committed to work with [its] state commissions to ensure state needs are met."[21] In addition, coupled with its initial forbearance request in WC Docket No. 07-273, Verizon has also sought forbearance via extension of the Commission's Order that conditionally granted AT&T forbearance from the

[17] The MDTC is especially concerned by the potential loss of access to state and regional information garnered from ARMIS Reports 43-01 – Annual Summary Report, 43-02 – USOA Report (Tables B-1 "Balance Sheet Accounts," B-5 "Analysis of Entries in Accumulated Depreciation," B-6 "Summary of Investment and Accumulated Depreciation by Jurisdiction," and I-1 "Income Statement Accounts"), 43-03 – Joint Cost Report, 43-04 – Access Report, 43-05 – Service Quality Report (for comparison purposes), 43-07 – Infrastructure Report (useful for planning and amending infrastructure maintenance and development policies), and 43-08 – Operating Data Report (All Tables).

[18] For instance, as the Michigan Public Service Commission ("Michigan PSC") aptly points out, "due to a variety of deregulations and federal preemptions, state commissions have little authority to require providers to submit detailed infrastructure information." Michigan PSC Comments, WC Docket 07-139, at 2 (filed August 20, 2007).

[19] Verizon implies that current state reporting requirements and "more consumer-friendly" information provided by such entities as J.D. Power and Associates are "far more accessible and relevant" and more than sufficient for state and consumer needs (*see* Verizon Ex Parte, WC Docket Nos. 07-21, 07-139, 07-237, 07-204 – filed August 29, 2008). This assertion is false. It makes far more inherent and logical sense to have a single source of state- and nationwide-specific information continue to be available (i.e., ARMIS filings made to, and available with, the FCC), rather than to expect both regulators and consumers to sort through infinite online and purportedly "reputable" sources, which can be ambiguously "up-to-date," and which may not have any remote connection to the area in which the searcher is interested.

[20] Verizon Petition, WC Docket No. 07-273, at 17.

[21] Verizon Ex Parte Letter, WC Docket Nos. 07-21, 07-139, 07-273, 07-204, at 1 (filed August 29, 2008). Unfortunately, the MDTC has little faith in this assertion. In the recent past, Verizon has resisted and failed to comply with MDTC efforts to obtain information routinely supplied by other providers upon request or in accordance with established reporting requirements. Based on Verizon's recent track record, there is no indication that Verizon's compliance (or lack thereof) with state reporting requirements or requests will improve in the future.

"Cost Assignment Rules."[22] If this extension were granted, and based on a reasonable interpretation of the Commission's Order as it applies to AT&T, then Verizon would still be required to keep much of the ARMIS information on hand and readily accessible.[23] Therefore, one of Verizon's main arguments, that forbearance from ARMIS reporting is in the public interest since ARMIS preparation is a "costly and time-consuming exercise," is a non-sequitur. To grant Verizon (or any requesting carrier) forbearance from ARMIS reporting would create a far more "costly and time-consuming exercise" than that currently encountered. As such, the Commission should deny forbearance from ARMIS requirements since, as Verizon advocates, the "avoidance of unnecessary cost is in the public interest."[24]

Finally, the MDTC agrees with the commenters who advocate that, if the Commission does consider any revision or elimination of ARMIS reporting requirements, then this would be more properly done "through a broader rulemaking proceeding and not on a piecemeal basis" as seems to be occurring through the numerous requests filed by Qwest, Embarq, AT&T, and Verizon in the above-referenced proceedings.[25] In the alternative, and at a minimum, if the Commission decides to grant Verizon's ARMIS forbearance requests or any other request that could serve as precedent for granting Verizon forbearance, then the MDTC respectfully requests that the Commission either (1) condition the approval on Verizon being obligated to provide state regulators with any and all reasonable requests for the same or substantially similar data as contained in the ARMIS reports; or (2) institute a two-year transition period in which petitioners would still be required to file ARMIS reports, in order to grant state regulators time to institute alternative means for obtaining this data; or (3) refer the requests to the Federal State Joint Board on Separations for additional review, since forbearance would impact both federal and state regulators.

In summation, the MDTC respectfully requests that the Commission deny Verizon's forbearance requests from the ARMIS reporting requirements, and deny any other ARMIS or Cost Assignment Rules forbearance requests that could serve as precedent for granting Verizon forbearance.

Sincerely,

/s/

Sharon E. Gillett, Commissioner

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[22] Verizon Ex Parte Letter, WC Docket Nos. 07-21, 07-273, 07-204 (filed May 23, 2008).

[23] The the Commission conditionally granted AT&T's forbearance with the explicit understanding that, "[b]ecause we cannot conclude here that the Commission will never have any need for accounting data from AT&T in the future, ***we condition this forbearance on, among other things, the provision by AT&T of accounting data on request by the Commission for regulatory purposes, consistent with the Commission's statutory authority and AT&T's commitment in this proceeding***."*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 Nos. 07-21, 05-342, *Memorandum Opinion and Order*, FCC 08-120, at para. 11 (rel. April 24, 2008) (emphasis added).

[24] Verizon Petition, WC Docket No. 07-273, at 17 n. 32 – referencing *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C. 2d 384, Para. 109 (1980).

[25] California Public Utilities Commission Comments, WC Docket No. 07-237, at 8-9 (filed February 1, 2008).