Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering	)	WC Docket No. 08-190
	)	
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
	)	
Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)	)	
	)	
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 Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements	)	
	)	
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 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

REPLY COMMENTS OF AT&T INC.

AT&T Inc., on behalf of itself and its wholly-owned subsidiaries, respectfully submits its reply comments in the above-captioned proceeding regarding the need, if any, for collection by

the Commission of industry-wide data previously collected through certain Automated Reporting Management Information System (ARMIS) reports concerning (*inter alia*) service quality, customer satisfaction, infrastructure investment, and operating data.[1]

The record in this proceeding clearly establishes that the Commission need not, and should not, continue to collect such data. A broad cross-section of commenters overwhelmingly agrees with AT&T that the development of robust competition in communications markets obviates any need for continued collection of these data. These commenters include the Competitive Enterprise Institute, large carriers (*e.g.*, Verizon and Qwest), small carriers (*e.g.*, OPASTCO, WTA, the Rural Nebraska LECs and the Rural Vermont ITCs), satellite providers (such as Hughes Network Systems and the Satellite Industry Association), cable companies (NCTA), and wireless companies (including CTIA, Wireless Communications Association International, Verizon, AT&T, and Sprint Nextel). These parties agree that, in light of marketplace developments, there is no justification for continuing to collect the data at issue, and that retention and expansion to other providers of such data collection requirements would impose significant costs with no off-setting benefits. That is particularly so for wireless, a service that (as CTIA points out) is characterized by massive investment in networks and fierce competition based on service quality, and which is the subject of numerous, independent consumer quality surveys (like those published by J.D. Power and Associates, and Consumer Reports).[2]

A majority of the commenters also agreed with AT&T that, if the Commission concludes that collection of service quality, customer satisfaction and infrastructure data is necessary (notwithstanding overwhelming opposition to collection of such data), it should collect that information from all companies

[1] *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, et al.*, WC Docket Nos. 08-190, *et al.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008) (Order and NPRM).

[2] CTIA Comments at 2-3.

providing wireline services to get as complete a picture as possible. Indeed, even those few parties supporting collection of such data do so "if collected from the entire relevant industry."[3]

Only four parties support collection of such data.[4] But even these parties do not agree on what data the Commission should collect, or why. The California PUC, for example, supports collection of "*some of* the ARMIS reporting data" now collected through ARMIS[5] on the grounds that making service quality data available to the public provides an incentive for carriers to offer reliable service and spurs innovation, and that infrastructure data are necessary to enable the Commission and Congress to evaluate whether carriers are providing high quality services, meeting public safety goals, and uniformly deploying broadband networks.[6] The Michigan PSC supports continued collection of the data previously collected through the ARMIS Reports at issue not because such data is necessary to further federal regulatory objectives, but because such data have been "important tools available to state commissions."[7] The Texas OPUC, on the other hand, supports continued collection of certain infrastructure, operating, and service quality (but not customer satisfaction) data to enable state commissions to compare the level of service quality to that of other states (AT&T notes, however, that neither the Texas PUC, nor any other state commission other than California and Michigan advocated collection of such data for this or any other

[3] California PUC Comments at 3 (collection of certain data "are worth retaining if extended to cover the entire industry"), and 4 (agreeing that collection of infrastructure and operating data would be useful "but only if collected from the entire relevant industry"). *See also* Michigan PSC Comments at 3 ("If all carriers were required to file certain ARMIS data with the FCC, the MPSC would have an important benchmark with which to verify" data filed by smaller carriers with the MPSC; and therefore urging the Commission to require "all relevant industry providers to report data similar to that collected on ARMIS Reports 43-05, 43-06, 43-07, and 43-08"), Texas Office of Public Utility Counsel Comments at 2 (supporting continued collection of infrastructure, operating, and service quality from all relevant providers).

[4] These parties include only two state commissions – the California PUC and Michigan PSC, the Texas Office of Public Utility Counsel (Texas OPUC), and Free Press.

[5] These data include the data collected in Tables I and II, and IV and IVA of ARMIS Report 43-05, ARMIS Report 43-06 in its entirety, Tables I and II of ARMIS Report 43-07, and Tables II and IV of ARMIS Report 43-08.

[6] California PUC Comments at 2-4, 5-6 (emphasis in original).

[7] Michigan PSC Comments at 2.

purpose). And, Free Press maintains that ARMIS data (without specifying to which ARMIS data it refers) provides the Commission and state regulators a valuable monitoring tool (although, of what, is unclear), and argues that the Commission should update reporting to reflect the current marketplace by expanding service quality and infrastructure reporting to include broadband.

None of these parties' claims provide any basis for adopting the data collection requirements they propose. As an initial matter, the California PUC, Michigan PSC and Texas OPUC do not even attempt to identify a federal objective for collecting the data at issue, arguing instead that the Commission should collect such data based on purported state regulatory needs. But, as AT&T and others observed in their opening comments, the Commission may not impose regulatory requirements (and, in particular, data reporting obligations) unless it finds such requirements are necessary to meet a specific federal policy objective, and that other, less burdensome and intrusive means would not suffice.[8]

Free Press, on the other hand, claims that collecting the ARMIS data at issue (and, indeed, expanding it to include broadband) would further federal regulatory objectives. Specifically, it claims that ARMIS data provides a purportedly valuable monitoring tool for consumers and the Commission to monitor the industry and safeguard consumers.[9] In this regard, it asserts that, while the communications marketplace has changed in the years since ARMIS was established, "[what] has not changed . . . is the simple fact that today's essential communications technology – broadband – is offered in a marketplace

[8] AT&T Comments at 5. *See also*, *e.g.*, WCA Comments at 2 (noting that, under the Paperwork Reduction Act, the Commission must demonstrate that a proposed information collection requirement "is necessary for the proper performance of the functions of the agency, including that the information has practical utility"); Verizon Comments at 9-11; and Rural Nebraska LECs at 4.

[9] Free Press Comments at 3-5. Free Press claims that such data also is "of particular value to state regulators," which "play a valuable role in protecting consumers and have detailed their extensive use of the ARMIS data in the record." *Id.* at 4. But, as discussed above, the Commission may impose *federal* information collection requirements only to promote *federal*, not *state*, objectives. In any event, only two state commissions filed in support of continuing (and expanding to other providers) the ARMIS reporting requirements at issue. Plainly, if such information truly were vital to state interests, which is by no means the case, other state commissions also would have filed in support of the proposed data collection requirements.

that lacks adequate competition."[10] It further contends that collection of ARMIS-like data regarding broadband is necessary for the Commission to maintain appropriate regulatory oversight over broadband.[11]

Free Press's claims regarding a lack of competition in the communications marketplace (and, in particular, with respect to broadband), and the need for ARMIS (or ARMIS-like) data to monitor the industry and safeguard consumers simply ignores evidence to the contrary and prior Commission orders that testify to the competitiveness of these markets. As AT&T and others observed, competition for communications services has exploded over the past decade, as inter- and intra-modal competitors have entered each others' markets and competed head-to-head to provide bundled packages of voice, video and data services over different platforms.[12] That is particularly so with respect to broadband services, which are provided over a variety of platforms that continue to evolve and advance, and none of which holds an insurmountable lead over the others. As the Competitive Enterprise Institute aptly observes, as broadband technologies have evolved, consumer choice in broadband and voice service has expanded significantly:[13]

> Ninety-five percent of all homes passed by cable – or roughly 118 million households – can sign up for cable broadband. DSL is available to 79 percent of all households that have telephone lines. Fiber optics will be available to 12 million homes by the end of 2008. Third-generation (3G) wireless broadband covers the primary residences of more than nine out of 10 Americans. And satellite broadband is available to anyone living in the lower 48 states whose home has a clear view of the southern sky.[14]

The notion that the communications marketplace (and in particular the market for broadband) is not competitive, or that service providers can skimp on investment (which flies in the face of the hundreds of

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[10] Free Press Comments at 1; *id.* at 5-6 ("The domination of local broadband markets by incumbent telephone and incumbent cable companies is well established, and meets the formal definition of a true duopoly.").

[11] *Id.* at 5.

[12] AT&T Comments at 5-6; CTIA Comments at 3-5; Hughes Network Systems Comments at 3-5; NCTA Comments at 2-3; Competitive Enterprise Institute at 2-6.

[13] Competitive Enterprise Institute Comments at 4.

[14] *Id.* (citations omitted).

billions of dollars that service providers across the industry have invested over the past decade) or customer service under existing market conditions, is not supported by the facts.[15] Again, as the Competitive Enterprise Institute correctly explains:

> In the increasingly dynamic marketplace for telecommunications services, any firm that offers inferior service will be disciplined by competitive forces. Similarly, any provider that misrepresents certain aspects of its services runs the risk of spurring public backlash, as recent incidents of blogosphere outrage have illustrated. . . . There is simply no basis for the assumption that firms would shun service quality and reliability were it not for regulatory oversight.[16]

Simply put, market forces will better protect consumers and promote investment than onerous regulatory oversight ever could. In these circumstances, adoption of the data collection requirements advocated by Free Press would impose significant costs with little (if any) off-setting benefits.

That is especially true given the alternative sources for such data. As AT&T, the Competitive Enterprise Institute, and others observed in their opening comments, ARMIS service quality and customer satisfaction reports duplicate functions already performed by a variety of private consumer reporting organizations and websites – including J.D. Power, the American Consumer Satisfaction Index, and others.[17] In addition, the Commission's Consumer and Governmental Affairs Bureau tracks consumer inquiries and complaints regarding service quality and other service related issues, as do state regulatory authorities.[18]

Likewise, the Commission already collects (or will collect) extensive information sufficient to meet (if it does not already) broadband policy and public safety objectives. Specifically, the Commission requires all communications providers offering voice or paging services (including cable, satellite,

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[15] AT&T Comments at 6-7; CTIA Comments at 3-5; Hughes Network Systems Comments at 3-5; NCTA Comments at 2-3.

[16] Competitive Enterprise Institute Comments at 5 (citations omitted).

[17] AT&T Comments at 6-8; Competitive Enterprise Institute Comments at 3; Qwest Comments at 3; Sprint Comments at 3.

[18] AT&T Comments at 7; Hughes Network Systems Comments at 5.

wireless and traditional wireline providers) to comply with network outage reporting requirements.[19] It also collects extensive information on broadband deployment through FCC Form 477, and recently adopted amendments expanding the reporting obligations of broadband service providers.[20] Additionally, on October 10, 2008, the President signed into law the Broadband Data Improvement Act, which requires the Commission to conduct surveys of consumers to compile data on where broadband services are deployed, the number and types of consumers purchasing such services, and the prices consumers are paying for them.[21]

In light of these alternative sources of information, the Commission simply cannot justify imposing any additional reporting requirements – at least not until it has had an opportunity to evaluate the data it now will gather through these alternative sources. And, adoption of any such requirements would violate the Paperwork Reduction Act (PRA) and invite rejection by the Office of Management and Budget. As WCA notes, under the PRA, the Commission may not impose reporting obligations unless it shows that the proposed information collection is "necessary for the proper performance of the functions of the agency."[22] Even then, the Commission must show that it has narrowly tailored such reporting obligations to "reduce[] to the extent practicable and appropriate the burden on persons [required to] provide information to or for the agency."[23] Given the alternative sources for the data at issue, the Commission simply could not make the requisite showing to adopt the data reporting obligations proposed by Free Press – certainly not at this time. Accordingly, the Commission should reject those proposed requirements.

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[19] AT&T Comments at 7.

[20] *Id.*; Verizon Comments at 5-6.

[21] Broadband Data Improvement Act, Pub. L. No. 110-385 (2008).

[22] WCA at 2, citing 44 U.S.C. § 3506(c)(3)(A).

[23] *Id.* at 2-3, citing 44 U.S.C. § 3506(c)(3)(C).

For the foregoing reasons, and those discussed in AT&T's opening comments, the Commission should reject its tentative conclusion that it should collect service quality, customer satisfaction, infrastructure, and operating data.

Respectfully submitted,

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