

**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
)	
)	
Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership)	WC Docket No. 07-38
)	

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I. Introduction

In the June 2008 *Broadband Data Order*, the Commission emphasized that improved collection of broadband data creates significant value.¹ Similar sentiments were expressed in the *ARMIS Forbearance Order*.² Broadband has become society's most important medium for communication. And, statutory obligations require the Commission to evaluate and promote broadband deployment. That obligation has never been more critical, as recent events have highlighted the importance of regulatory oversight for the economic success of the country. By gathering industry-wide data on broadband infrastructure, the Commission will be able to monitor both public and private investment in broadband, and thus better able to construct considerate broadband policy.

II. Discussion

The Commission and Congress have long recognized the importance of monitoring the historically concentrated communications industry. The ARMIS forms are part of a variety of reporting forms employed by the Commission to fulfill the agency's oversight role, and the public, along with the communications industry, have long benefited from this supervision. As the Commission has recognized, the philosophy developed for voice services should be extended to broadband.³ Similarly, many of the metrics collected through ARMIS retain use for modern day policymaking. Nonetheless, the Commission must modernize ARMIS reporting to include the "entire relevant

¹ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, ¶1 (rel. June 12, 2008).

² *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190, Memorandum Opinion and Order, ¶10 (rel. Sept. 6, 2008) ("ARMIS Order and NPRM").

³ *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, (rel. March 30, 2000) ("Form 477 Order").

industry.”⁴ In doing so, the Commission’s use of ARMIS data can be expanded to improve the Commission’s broadband assessment and policies.

A. Despite Provider’s Claims, ARMIS Retains Significant Value to the Commission and Consumers

Many providers attempt to convince the Commission that little can be gained by expanding or continuing to collect ARMIS data, claiming any final product would be “of little use.”⁵ Of course, this contradicts the comments of not only consumer groups, unions, state regulators and other providers, but also the Commission’s own tentative conclusions. The Commission rightly recognized that collection of this data would continue to serve a multitude of uses, including informing consumers and assisting “public safety and broadband policymaking.”⁶

The utility of ARMIS reports to monitor infrastructure is evident in ongoing processes to reform the Commission’s Universal Service Fund (USF). The Commission’s OIG recently reported audit results estimating that nearly \$1 billion of the over \$4 billion in annual High Cost Program support were overpayments.⁷ If the Commission wants to improve and modernize the fund for the broadband era, it must follow-through on its 1997 decision to base USF support on forward-looking costs, determined through cost models.⁸ Such models require detailed, accurate, and up-to-date information on network infrastructure – and the leading models currently under development all rely heavily on ARMIS data.⁹

⁴ ARMIS Order and NPRM, ¶34.

⁵ Comments of Qwest Communications at 3.

⁶ ARMIS Order and NPRM, ¶21.

⁷ Office of Inspector General, *The High Cost Program, Initial Statistical Analysis of Data from the 2007/2008 Compliances Attestation Examinations*, Nov. 26, 2008, p. 16.

⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9164-65 (1997).

⁹ See for example James W. Stegman, Dr. Steve Parsons, and Mike Wilson *The Advanced Services Model: Proposal for a Competitive and Efficient Universal Service High-Cost Approach for a Broadband World*,

Furthermore, the infrastructure stimulus package currently being discussed by President-elect Obama and Congressional leaders is likely to include broadband investment.¹¹ ARMIS data on broadband infrastructure can provide a useful monitoring tool to enable the Commission to determine the specific effects of potential investments on broadband deployment.

Among the many benefits of ARMIS data, the Commission has consistently identified informing and protecting consumers.¹² Providers attempt to challenge this finding.¹³ However, they largely fail to recognize the goal of the Commission's Notice of Proposed Rulemaking.¹⁴ In fact, most commenters do not even attempt to deny that the data captured through ARMIS could be vastly improved were the collection modernized and expanded. An ARMIS system reflecting the current broadband market would both inform consumers and allow the Commission to provide the necessary consumer protections. Commenters objecting to collection of ARMIS data on the basis that they do not reflect the broadband market are therefore misguided. Rather, modernized ARMIS data would allow consumers groups to compile information for the "entire relevant industry" and provide assessments to consumers.¹⁵

CostQuest Associates. The hybrid cost proxy model also relies on ARMIS data. *See* Design History of HCPM, available at <http://www.fcc.gov/wcb/tapd/hcpm/history.doc>.

¹¹ *See for example* Grant Gross, "Obama: Broadband, computers part of stimulus package," *IDG News Service*, Dec. 8, 2008, available at <http://www.networkworld.com/news/2008/120808-obama-broadband-computers-part-of.html>; Corey Boles and Fawn Johnson, "Stimulus Plan to Include Internet-Access Funds," *Wall Street Journal*, Dec. 2, 2008, available at <http://online.wsj.com/article/SB122825292368073455.html>.

¹² ARMIS Order and NPRM, ¶10.

¹³ Comments of Qwest Communications at 3; Comments of Verizon and Verizon Wireless at 4; Comments of CTIA – The Wireless Association at 3.

¹⁴ ARMIS Order and NPRM, ¶35. ("We also recognize the possibility that service quality and customer satisfaction data contained in ARMIS Reports 43-05 and 43-06 might be useful to consumers to help them make informed choices in a competitive market, but only if available from the entire relevant industry. We thus tentatively conclude that we should collect this type of information, and seek comment on the specific information that we should collect.")

¹⁵ ARMIS Order and NPRM, ¶34.

State regulators have also identified numerous uses for this data. ARMIS data is used by many states for comparison and verification purposes. Numerous states have also utilized ARMIS data in “contested cases and similar proceedings.”¹⁶ State regulators recognize the current market for broadband is characterized by an entrenched duopoly, and as a result consumers do not have access to an adequate level of information on broadband services¹⁷ – a problem with which the Commission is already familiar.¹⁸

Modernized ARMIS data will be helpful to the Commission in responding to requests from the public and the industry, but may prove to be of even greater utility to the internal functions of the Commission. As the Commission has recognized, the benefits of modernized data collection will extend to policymaking.²¹ Understanding the investment level and resulting infrastructure of a provider’s network will aid in considering the merits of forbearance petitions, complaints, and rulemaking petitions. Broadband infrastructure and investment data will also provide considerable assistance in determining whether the requirements of Section 706 of the Telecommunications Act of

¹⁶ Comments of the Michigan Public Utility Commission at 3. *See also* Comments of the California Public Utilities Commission and the People of the State of California at 3-6; Comments of the Texas Public Utility Commission at 5; Comments of New Jersey Division of Rate Counsel, WC Docket No. 07-139, Sept. 19, 2007, pp. 4-8.

¹⁷ Reply Comments of NASUCA, WC Docket No. 07-52, Feb. 28, 2008, pp. 3-4; Reply Comments of New Jersey Rate Counsel, WC Docket No. 07-52, Feb. 28, 2008, p. 11.

¹⁸ *Formal Complaint of Free Press & Public Knowledge Against Comcast Corp. for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices; Petition of Free Press et al. for Declaratory Ruling That Degrading an Internet Application Violates the FCC’s Internet Policy Statement & Does Not Meet an Exception for “Reasonable Network Management,”* WC Docket No. 07-52, Memorandum Opinion and Order, ¶52-53 (rel. Aug. 20, 2008); Statement of Chairman Kevin Martin, Before the United States Senate Committee on Commerce, Science and Transportation, April 22, 2008, p. 6; *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. §160(c) with regard to Broadband Services Provided via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided via Fiber to the Premises; Consumer Protection in the Broadband Era*, WC Docket No. 04-242, 05-271, CC Docket Nos. 95-20, 98-10, 01-337, 02-33, Report and Order and Notice of Proposed Rulemaking, ¶146.

²¹ ARMIS Order and NPRM, ¶21.

1996 are being met, and will help with any Commission activity involving rate regulation and cost assessments. AT&T has recognized this value of modernized ARMIS data:

[C]ollection of infrastructure investment and operating data from all companies providing wireline services would provide the Commission with a more complete picture of competition for special access, broadband and other services, and thus a firmer foundation for Commission policy.²²

Similarly, Sprint Nextel and COMPTTEL have recognized the value of ARMIS data in opposing the forbearance petitions ultimately granted by the Commission.²³

B. Third-Party Data Is Not A Substitute For Commission Collection

Many providers have sought to convince the Commission that third-party information would be an adequate substitute for Commission collection.²⁴ This argument was often repeated in Commission proceedings to improve the broadband data collected through Form 477. Clearly, old habits die hard. In rejecting these same arguments as far back as 2000, the Commission stated:

In our experience, other publicly available information sources present less than complete pictures of actual conditions and trends in developing local telephone service markets and in the deployment of broadband. Nor do we find, among the publicly available sources suggested by commenters, the type of regular, consistent and comprehensive data necessary to illustrate developments in these markets. Several commenters suggest we rely on company reports to shareholders and to other regulatory agencies, or on the studies prepared by private consulting firms that are based on such company reports. We find these sources to be incomplete and inconsistent...It is also our experience that publicly available reports often contain data reflecting incongruent time periods...Moreover, financial and investment analysts tend to collect more complete information about publicly traded companies than about privately held companies...perhaps as a result of this focus, analyst report tend to lack data concerning developments in rural and underserved markets and by smaller companies.²⁵

²² Comments of AT&T, Inc. at 10.

²³ Ex Parte Letter from Sprint Nextel Corporation and COMPTTEL, WC Docket No. 07-139, Aug. 29, 2008.

²⁴ Comments of Verizon and Verizon Wireless at 7; Comments of AT&T, Inc. at 7-8; Comments of CTIA – The Wireless Association at 3; Comments of Sprint Nextel Corporation at 3.

²⁵ Form 477 Order, ¶14. [Footnotes Omitted]

The Commission has accurately identified many of our core concerns with third-party data collection, namely that these sources lack consistency and detail.²⁶ Furthermore, the underlying data would most likely not be made available to the Commission, let alone the public.

The Commission should also be concerned with the voluntary nature of the reporting inherent in third-party sources. The Commission has recently witnessed an illustrative case of the inherent danger of relying solely on third-party data as the basis for policymaking. Consider the November 2007 debate over cable ownership, a dispute centered on the use of certain third-party data. The source of this information, Warren Communications, responded to two Commissioners' requests for further information on how the data was collected.²⁷ The company sought to express confidence on the data provided but was still compelled to note, "data compilations that depend on the voluntary cooperation of competitive enterprises obviously will have gaps."²⁸ Warren Communications also noted that cable operators "have become particularly reluctant to provide current homes-passed figures."²⁹ Although data collection by third parties remains subject to the whims of industry participation, failing to provide accurate information to the Commission for mandatory reporting can result in "fine or imprisonment," eliminating these concerns.³¹

²⁶ See also Consumers Union et al. Further Reply Comments, WC Docket No. 07-38, Sept. 2, 2008, p. 6-7.

²⁷ U.S. House of Representatives, Committee on Energy and Commerce, 110th Congress, *Deception and Distrust: The Federal Communications Commission Under Chairman Kevin J. Martin*, December 2008, Exhibit 13.

²⁸ *Id.*

²⁹ *Id.*

³¹ Pursuant to 47 U.S.C. 220(e), See Section V, <http://www.fcc.gov/Forms/Form477/477instr.pdf>.

We also second the Commission's finding that data from "other regulatory agencies" is inadequate.³² Even a cursory look at the suggestions from providers reveals little detailed information. For example, the Commission's Public Safety and Homeland Security Bureau Disaster Information Reporting System, suggested by Verizon, is certainly not sufficient.³³ As the Commission is undoubtedly aware, this system is voluntary, confidential, and only "activated in response to a crisis."³⁴ Multiple providers also mention the existing outage reports as an adequate replacement.³⁵ First, the FCC has sealed these reports from the public.³⁶ Furthermore, a fallen tree provides little insight into the level of investment occurring within a network. In addition, outage reports were insufficient in the monitoring of the legacy cable and phone industries.³⁷ To gather the broadband infrastructure data necessary to inform policymaking and consumers, the Commission must modernize the collection performed through ARMIS.

C. Confidentiality Concerns Expressed by Providers Should be Dismissed

Since the inception of the ARMIS reporting system, the Commission has long heard claims from reporting entities that the information collected would be of great use

³² Form 477 Order, ¶14

³³ See Comments of Verizon and Verizon Wireless at 8.

³⁴ *The FCC's Public Safety & Homeland Security Bureau Launches Disaster Information Reporting System (DIRS)*, Public Notice DA 07-3871, Sept. 11, 2007, available at <http://www.fcc.gov/pshs/services/cip/dirs/DA-07-3871A1.PDF>.

³⁵ See Comments of the National Cable & Telecommunications Association at 3; Comments of Verizon and Verizon Wireless at 7; Comments of AT&T, Inc at 7; Comments of Sprint Nextel Corporation at 4.

³⁶ Network Outage Reporting System, User Manual, Sept. 11, 2006, p. 6, available at http://www.fcc.gov/pshs/outage/nors_manual.pdf. ("The only people allowed to view your outage reports are authorized FCC and DHS personnel.")

³⁷ See Comments of Free Press at 3-4.

to competitors.³⁸ The Commission has expressed skepticism of these arguments, and has recognized the significant public interest benefits gained with publicly accessible data. Providers have shown their position to be unreasonable recently by opposing Commission publication of broadband pricing information nine months after its collection.³⁹

Both the Common Carrier Bureau and the Commission have recognized the usefulness of publicly available ARMIS data.⁴⁰ This value continues to the present day. Public availability provides an important check of the data reported to the Commission.⁴¹ As we have consistently stated, without providing the Commission with a specific example of detriment resulting from the data's release, public access should be provided. With the proliferation of broadband Internet access and an explosion in computing power, the public is now provided a true opportunity to make use of ARMIS.⁴² By providing meaningful data encompassing the entire broadband industry to the public, the Commission can be rest assured the current participatory model now common across the Internet would extend to include valuable information pertaining to Internet service providers. As the Commission has previously stated:

By making the information available, consumers, investors, and policymakers will be better able to make informed decisions on the development of these markets. Such information has value because a better-informed marketplace promotes a more efficient marketplace. Also, by allowing public release of as much of the information as possible, associations, scholars, and others will be able to use the information in their independent analyses of Commission policies, thereby aiding the Commission in crafting regulations that address specific

³⁸ See for example *Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules)*, CC Docket No. 86-182, Report and Order, ¶47 (rel. Sept. 17, 1987) ("Original ARMIS Order").

³⁹ See Comments of Consumers Union et al., WC Doeket No. 07-38, Sept. 2, 2008, pp. 9-11.

⁴⁰ See Comments of Free Press at 10.

⁴¹ See for example Lee L. Selwyn, Susan M Gately, Helen E. Golding and Colin B. Weir, *Special Access Overpricing and The US Economy*, August 2007, Appendix 1, pp. 5-6.

⁴² Contrast this with the original 1987 *Order* creating the ARMIS system, which reveals a point in time when a member of the public would have difficulty gaining access, despite the automated availability of the data. See Original ARMIS Order.

market problems and eliminating those regulations that have outlived their usefulness.⁴³

III. Conclusion

In light of recent events, the utility of modernized and expanded ARMIS data collection has only increased. We urge the Commission to act on the tentative conclusions put forth in the Notice of Proposed Rulemaking.

Respectfully submitted,

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⁴³ Form 477 Order, ¶96.