

**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of Qwest Corporation for	)	
Forbearance from Enforcement of the	)	WC Docket No. 07-204
Commission’s ARMIS and 492A	)	
Reporting Requirements Pursuant to 47	)	
U.S.C. § 160	)	
	)	
Petition of Verizon For Forbearance Under	)	
47 U.S.C. § 160(c) From Enforcement of	)	WC Docket No. 07-273
Certain of the Commission’s	)	
Recordkeeping and Reporting	)	
Requirements	)	

**OPPOSITION OF VERIZON<sup>1</sup>**  
**TO PETITION FOR PARTIAL RECONSIDERATION**

The National Cable & Telecommunications Association (“NCTA”) petitions for partial reconsideration of the Commission’s decision to eliminate the ARMIS financial reports.<sup>2</sup> NCTA does not challenge the balance of the *ARMIS Forbearance Order* but asks the Commission to reconsider phasing out its ARMIS reporting requirements with respect to pole attachment data for those states that regulate their own pole attachments rates. *Petition* at 1; *ARMIS Forbearance Order* ¶ 14. The Commission correctly found that there is no federal need for this ARMIS data, and NCTA does not identify any such federal need in its *Petition*. The Commission should deny the *Petition*.

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<sup>1</sup> The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications, Inc. (collectively “Verizon”).

<sup>2</sup> *Petition for Partial Reconsideration*, National Cable & Telecommunications Association, WC Docket Nos. 07-204, 07-273 (filed Jan. 12, 2009) (“*Petition*”); *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 Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s Recordkeeping and Reporting Requirements*, Memorandum Opinion and Order, WC Docket Nos. 07-204, 07-273 (Dec. 12, 2008) (“*ARMIS Forbearance Order*”).

The Commission eliminated most of the ARMIS financial reporting obligations as applied to AT&T, Verizon, and Qwest in the *ARMIS Forbearance Order* because carrier costs are irrelevant under the Commission’s federal price cap regime. *Id.* ¶ 10. A portion of ARMIS Report 43-01 contains cost data related to pole attachments. In order to regulate pole attachment rates under section 224(b) of the Act, the Commission conditioned forbearance relief on continued filing of pole attachment data derived from this ARMIS report. *Id.* ¶ 13; 47 U.S.C. § 224(b). However, under “reverse preemption” authority granted in section 224(c) of the Act some states regulate pole attachment rates themselves. 47 U.S.C. § 224(c). In those situations “the Commission no longer has jurisdiction.” *ARMIS Forbearance Order* ¶ 14. Thus for those states that regulate their own pole attachment rates the Commission also eliminated federal ARMIS reporting of pole attachment data after one year. *Id.*

NCTA contends that the Commission should reconsider phasing out ARMIS pole attachment data for those states that regulate their own pole attachment rates because: (1) the Act requires the Commission to exercise federal supervision over pole attachment rates; and (2) some states that regulate their own pole attachment rates use the federal ARMIS data. *Petition* at 4-5. Both arguments lack merit.

***Mandatory federal pole attachment regulation.*** First, as to common carriers such as AT&T, Verizon, and Qwest, there is nothing special about the Commission’s role with respect to pole attachment rates. Unless a state assumes the responsibility for regulation of its own pole attachment rates under section 224(c), section 224(b)(1) directs the Commission to “regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable.” 47 U.S.C. § 224(b)(1). Section 224(b)(2) then directs the Commission to issue rules to carry out this mandate. 47 U.S.C. § 224(b)(2). The Commission has similar

responsibilities for interstate telecommunication services. Section 201(b) provides that “[a]ll charges, practices, classifications, and regulations for and in connection with [communications] service shall be just and reasonable.” 47 U.S.C. § 201(b). Likewise, this section authorizes the Commission to prescribe rules to carry out its duties under Title II.

NCTA alleges that there is something about the mandatory language of section 224 that prohibits the Commission from granting forbearance from reporting pole attachment data through the federal ARMIS process. *Petition* at 4. Nothing in section 224 compels this conclusion. Section 224 does not reference ARMIS reporting. The Commission has a duty to grant forbearance from any unnecessary regulation or provision of the Act. Section 10 provides that “the Commission *shall forbear* from applying any regulation or any provision of this chapter” if the Commission determines that a regulation or provision of the Act is not necessary for a legitimate federal purpose. 47 U.S.C. § 160(a) (emphasis added). Section 10 makes no distinction between those provisions of the Act that require the Commission to exercise regulatory authority and those provisions that grant the Commission permissive rulemaking authority.

Second, NCTA’s assertion that the Act prescribes a federal role over pole attachment rates in all instances is inaccurate. *Petition* at 4. Section 224(c) expressly provides that the Commission shall *not* have jurisdiction “with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by a State.” 47 U.S.C. § 224(c). Thus, there is no federal need for ARMIS pole attachment data when a state regulates its own rates because, as the Commission itself found, “the Commission no longer has jurisdiction.” *ARMIS Forbearance Order* ¶ 14.

NCTA attempts to salvage a federal role in those states that regulate pole attachment rates themselves, observing that if a state fails to resolve an individual pole attachment complaint “jurisdiction reverts to the Commission.” *Petition* at 4; 47 C.F.R. § 1.1414(e). If that were to happen, however, going forward there would be no basis for such a state to certify to the Commission that “[i]t has issued *and made effective* rules and regulations implementing the state’s regulatory authority over pole attachments. . . .” 47 C.F.R. § 1.1414(a)(3) (emphasis added). Consistent with section 1.1414(e) and the *ARMIS Forbearance Order*, AT&T, Verizon, and Qwest would then again be required to file ARMIS pole attachment data for that state. If there is any federal need for ARMIS pole attachment data for states that regulate their own rates, therefore, that need does not arise unless and until the Commission in fact reclaims jurisdiction in accordance with section 1.1414(e).

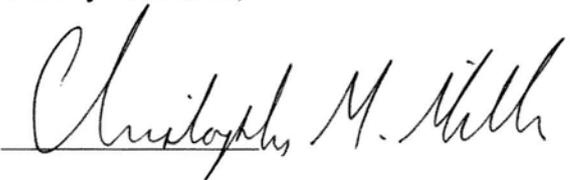
***State uses for ARMIS pole attachment data.*** For related reasons, NCTA’s argument that the Commission should have retained the ARMIS pole attachment data for all states because some states that regulate their own pole attachment rates use the federal report is unavailing. The courts and the Commission itself have been clear that state uses for federal regulations cannot prevent forbearance under section 10. *See Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules; Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order, 23 FCC Rcd 7302, ¶ 32 (2008) (“We conclude that we do 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.”); *In the Matter of 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19911, ¶ 207 (2001) (“We believe that, if we cannot identify a federal need for a regulation, we are not justified in maintaining such a requirement at the federal level.”); *see also Cellular Telecomms. & Internet Ass'n v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003) (section 10 requires “a *strong connection* between what [the Commission] has done by way of regulation and what [the Commission] *permissibly sought to achieve* with the disputed regulation”) (emphasis added).

Moreover, parties usually negotiate the rates charged for pole attachments. Thus, in the context of these existing and future contract arrangements, Verizon will continue to provide other parties access to appropriate data to establish and review rates as required.

For these reasons, the Commission should deny the *Petition*.

Respectfully submitted,

By: 

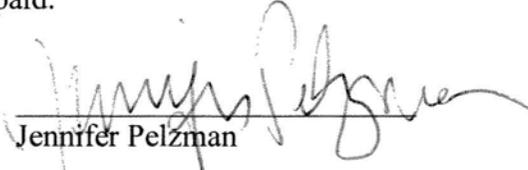
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January 22, 2009

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of January 2009, I caused copies of the foregoing Opposition of Verizon to Petition for Partial Reconsideration to be served upon each of the parties listed below by first-class mail, postage prepaid.

  
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