

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

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In the Matter of)
)
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)

WC Docket No. 07-204

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WC Docket No. 07-273

MEMORANDUM OPINION AND ORDER

Adopted: December 12, 2008

Released: December 12, 2008

By the Commission: Commissioners Tate and McDowell issuing separate statements; Commissioners Cops and Adelstein dissenting and issuing a joint statement.

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I. INTRODUCTION

1. In this Order, we continue the steps taken in the *AT&T Cost Assignment Forbearance Order*¹ and *ARMIS Forbearance Order*² to grant relief from unnecessary legacy accounting and reporting

¹ *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*, WC Docket Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (*AT&T Cost Assignment Forbearance Order*), *pet. for recon. pending, pet. for review pending, NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir. filed June 23, 2008).

² *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting* (continued....)

requirements. In particular, we grant conditional forbearance from the obligation of Qwest Corporation (Qwest), AT&T Corp. (AT&T) and Verizon to file Automated Reporting Management Information System (ARMIS) Reports 43-01, 43-02, and 43-03 (collectively, the "ARMIS Financial Reports").³ The Commission has previously granted conditional relief to these three carriers from the Cost Assignment Rules that had imposed detailed, substantive accounting obligations.⁴ In granting relief from the substantive accounting obligations, the Commission observed that the obligation to file the ARMIS Financial Reports, including both aggregated and disaggregated reports of those accounting data, was not raised in the request for forbearance.⁵ Thus, it granted only limited relief from those reporting requirements, to the extent that the data would not be available as a result of the forbearance from the accounting obligations. The issue of forbearance from the ARMIS Financial Reports now is properly before us in the present petition, and we find that the section 10 criteria are met for forbearance from the enforcement of the obligation to file those reports, subject to certain conditions. Specifically, this forbearance is conditioned on approval of a compliance plan as required by the *AT&T Cost Assignment Forbearance Order* and *ARMIS Forbearance Order*,⁶ and the carriers continuing to file certain pole attachment data publicly with the Commission.

(Continued from previous page)

Requirements; 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; 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; 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. 08-190, 07-139, 07-204, 07-273, 07-21, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008) (ARMIS Forbearance Order), pet. for recon. pending, pet. for review pending, NASUCA v. FCC, Case No. 08-1353 (D.C. Cir. filed Nov. 4, 2008).

³ Specifically, ARMIS Report 43-01 contains an aggregated reporting of carriers' financial and cost allocation data, as well as a summary of the carrier's minutes of use and billable access lines. This report also contains the breakdown of the reporting carrier's costs between regulated and nonregulated activities as defined in their Cost Allocation Manuals and Part 64 of the FCC Rules. ARMIS Report 43-02 collects the operating results of the carrier's total activities for every account in the Unified System of Accounts (USOA), as specified in Part 32 of the Commission's Rules. There is a single table in the ARMIS Report 43-03, Regulated/Unregulated Data (Table I), which contains regulated and nonregulated financial data. See <http://www.fcc.gov/wcb/armis/filereqt.html> (viewed Nov. 10, 2008). We have previously treated the Commission's accounting rules together under the rubric "Cost Assignment Rules." See *infra* note 13. Similarly, we will consider ARMIS Reports 43-01, 43-02, and 43-03 together as a group under the rubric "ARMIS Financial Reports" under the statutory forbearance criteria, because these reports were designed to work together to enforce now-defunct substantive rules, including the accounting rules, as they applied to Qwest, AT&T, and Verizon. See *ARMIS Forbearance Order*, 23 FCC Rcd at 13662-63, para. 27 n.82.

⁴ *ARMIS Forbearance Order* 23 FCC Rcd at 13648, para. 1; *AT&T Cost Assignment Forbearance Order* 23 FCC Rcd at 7307-08, para. 12 n.36 (granting AT&T conditional forbearance from complying with certain accounting rules, referred to herein as "Cost Assignment Rules").

⁵ See, e.g., *AT&T Cost Assignment Forbearance Order* 23 FCC Rcd at 7307-08, para. 12 n.36.

⁶ We note that AT&T, Verizon, and Qwest each have filed proposed compliance plans. See *Comment Dates Set on AT&T Compliance Plan for Forbearance Relief from Cost Assignment Rules*, Public Notice, DA 08-1826 (Wir. Comp. Bur., rel. July 31, 2008); *Comment Dates Set on Verizon Compliance Plan for Forbearance Relief from Cost Assignment Rules*, Public Notice, DA 08-2136 (Wir. Comp. Bur., rel. Sept. 23, 2008); *Comment Dates Set on Qwest Compliance Plan for Forbearance Relief from Cost Assignment Rules*, Public Notice, DA 08-2175 (Wir. Comp. Bur., rel. Sept. 29, 2008). The actions we take in this order do not address the merits of those filings.

II. BACKGROUND

2. Initially, incumbent local telephone companies were monopolies subject to rate-of-return rate regulation at both the federal and state levels. Under rate-of-return regulation, rates were targeted to levels that allowed carriers to recover their costs and earn a specific return on their regulated investment.⁷ Because the same local network facilities were used to provide both interstate and intrastate services, as well as both regulated and nonregulated services, however, the Commission developed the rules described below, to standardize rate-of-return rate regulation. Specifically, the Commission created rules to assign or allocate the common costs to build and maintain the network, and the revenues derived from the array of services offered over the network, by type of cost, type of service (regulated or nonregulated), jurisdiction (intrastate or interstate), and service categories.⁸ The Commission first adopted its initial ARMIS reports in 1987 after the breakup of the Bell System when large incumbent local exchange carriers (LECs) were subject to rate-of-return regulation. The primary purpose of these initial financial data gathering reports was "to facilitate the timely and efficient analysis of revenue requirements and rates of return."⁹

3. In 1990, the Commission shifted to a price cap regulation system for the larger incumbent LECs.¹⁰ Price caps is a form of incentive regulation that seeks to "harness the profit-making incentives common to all businesses to produce a set of outcomes that advance the public interest goals of just, reasonable, and nondiscriminatory rates, as well as a communications system that offers innovative, high quality services."¹¹ Since the adoption of price cap regulation, many carriers, including Qwest, AT&T, and Verizon, have moved from rate-of-return rate regulation to price cap regulation, and the Commission has modified its regulation of price cap carriers over time to reflect changing circumstances.

4. On April 24, 2008, the Commission conditionally granted substantial forbearance relief from legacy accounting requirements in the *AT&T Cost Assignment Forbearance Order*. Specifically, the Commission found that AT&T, as a price cap carrier generally not subject to rate-of-return regulation, had demonstrated that forbearance from enforcing the Cost Assignment Rules satisfies the standard for forbearance under section 10 of the Act.¹² The Commission conditionally granted AT&T's petitions for forbearance from the Cost Assignment Rules¹³ because it concluded that there is no current, federal need

⁷ See *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities; Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and their Affiliates*, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, 1300, para. 10 (1987) (*Joint Cost Order*), petition for review denied, *Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990).

⁸ Thus, the various Commission accounting rules were intended to work together to help ensure the primary statutory goal of just and reasonable rates. See *Joint Cost Order*, 2 FCC Rcd at 1299, para. 1.

⁹ *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, 2 FCC Rcd 5770 para. 1 (1987).

¹⁰ *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, para. 2 (1990) (*Price Cap Order*).

¹¹ *Id.*

¹² See *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7306, para. 10.

¹³ In the *AT&T Cost Assignment Forbearance Order*, we referred to the statutory provision and Commission rules from which AT&T was granted forbearance collectively as the "Cost Assignment Rules." See *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7303, para. 1 n. 2; 7307, para. 12. Specifically, we granted AT&T forbearance from section 220(a)(2) of the Act (to a limited extent) and various rules, including the following: section 32.23 (nonregulated activities); section 32.27 (transactions with affiliates); Part 64, Subpart I (allocation of costs); Part 36 (jurisdictional separations procedures); Part 69, Subparts D and E (cost apportionment); and other (continued....)

for the Cost Assignment Rules, as they apply to AT&T, to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; to protect consumers; and to ensure the public interest.¹⁴ Because the obligation to file the ARMIS Financial Reports was not squarely raised in AT&T's request for forbearance, the Commission granted only limited relief from those reporting requirements, to the extent that the underlying data would not be available as a result of the forbearance from the accounting obligations.¹⁵ The grant was expressly conditioned on, among other things, the approval by the Wireline Competition Bureau (Bureau) of a compliance plan to be filed by AT&T describing in detail how it will continue to fulfill its statutory and regulatory obligations.¹⁶

5. On September 13, 2007, Qwest filed a petition for forbearance from Commission rules that require carriers to file ARMIS Reports 43-01 through 43-08, ARMIS Report 495A, ARMIS Report 495B, and the 492A Report.¹⁷ On September 6, 2008, the Commission granted in part, subject to certain conditions, and denied in part Qwest's petition with respect to ARMIS Report 43-04, ARMIS Reports 43-05 and 43-06 (the "Service Quality" reports), ARMIS Reports 43-07 and 43-08 (the "Operating Data" reports), ARMIS Report 495A, ARMIS Report 495B, and the 492A Report.¹⁸ In the *ARMIS Forbearance Order*, the Commission granted forbearance from the rules requiring ARMIS Reports 43-05 and 43-06, but required as a condition of that forbearance that Qwest, AT&T, Verizon and other affected carriers continue to file these reports voluntarily for 24 months after the effective date of that order, September 6, 2008.¹⁹ These carriers also must still file Table III, columns FC, FD, FE, and FI for ARMIS Report 43-

(Continued from previous page)

related rules that are derivatives of, or dependent on, the foregoing rules. See, e.g., 47 C.F.R. §§ 32.23, 32.27, Part 64 Subpart I, Part 36, Part 69 Subparts D and E. AT&T also received forbearance from certain ARMIS reporting requirements, and we extend that relief here, as well. The AT&T Petitions list each rule from which Legacy AT&T and Legacy BellSouth were granted forbearance. See Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21, Attach. 1 (filed Jan. 25, 2007) (Legacy AT&T Petition); Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket Nos. 07-21, 05-342, App. 1 (filed Feb. 9, 2007) (Legacy BellSouth Petition) (collectively, "AT&T Petitions"). In this Order, we again use the term "Cost Assignment Rules" to refer to the statutory provision and Commission rules from which AT&T was granted forbearance in the *AT&T Cost Assignment Forbearance Order*.

¹⁴ See *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307, para. 11.

¹⁵ See, e.g., *AT&T Cost Assignment Forbearance Order* 23 FCC Rcd at 7307-08, para. 12 n.36.

¹⁶ See *id.* at 7319-20, para. 31.

¹⁷ 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), WC Docket No. 07-204 (filed Sept. 13, 2007) (Qwest Petition). The Commission extended the date by which Commission action is due on the Qwest petition by 90 days, until December 12, 2008. See 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), WC Docket No. 07-204, Order, DA 08-2096 (WCB, rel. Sept. 12, 2008). Verizon also filed a petition for forbearance seeking some or all of the relief granted in this Order from the ARMIS reports. 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 Nov. 26, 2007) (Verizon Petition). We address the merits of Verizon's requests with respect to the ARMIS Financial Reports in this Order. To the extent Verizon's petition seeks other regulatory relief, those requests remain pending. See Verizon Petition at 11-36 (seeking relief from certain other accounting and reporting requirements). Because the basis for the relief granted in this Order is our conditional forbearance from requiring AT&T to follow the Cost Assignment Rules, we also grant AT&T relief to the extent described herein.

¹⁸ *ARMIS Forbearance Order*, 23 FCC Rcd at 13648, para. 1.

¹⁹ *ARMIS Forbearance Order*, 23 FCC Rcd at 13655, para. 12.

08.²⁰ However, the *ARMIS Forbearance Order* granted conditional forbearance to these carriers from filing Report 43-07 and the remaining tables of Report 43-08 so long as they continue to collect and retain data required by these reports for 24 months after September 6, 2008.²¹

6. In the *ARMIS Forbearance Order*, the Commission also extended to Qwest and Verizon conditional relief from the Cost Assignment Rules, to the same extent, and subject to the same conditions, that forbearance was granted to AT&T in the *AT&T Cost Assignment Forbearance Order*.²² The Commission found that the reasoning of the *AT&T Cost Assignment Forbearance Order* applied equally to Verizon and Qwest and therefore, pursuant to section 10, it decided to forbear from application of the Cost Assignment Rules to these carriers. Thus, as relevant here, the Commission granted Qwest and Verizon forbearance from the Access Report (ARMIS 43-04), the Rate of Return Monitoring Report (FCC Form 492), the Reg/Non-Reg Forecast Report (FCC Form 495A) and the Reg/Non-Reg Actual Usage Report (FCC Form 495B) "because forbearance from the Cost Allocation Rules render[ed] these reports meaningless."²³ As in the *AT&T Cost Assignment Forbearance Order*, the *ARMIS Forbearance Order* did not comprehensively address the three financial ARMIS reports at issue in this Order – ARMIS 43-01, ARMIS 43-02, and ARMIS 43-03 – granting relief only to the extent that the underlying data would not be available as a result of the forbearance from the accounting obligations.²⁴

7. Thus, the only issue that remains pending from Qwest's petition is its request for forbearance from the ARMIS Financial Reports, to the extent that such relief was not already effectively granted as part of the cost assignment relief in the *ARMIS Forbearance Order*.

III. MEMORANDUM OPINION AND ORDER

8. In this Order, we grant, with conditions, Qwest's petition for forbearance from the ARMIS Financial Reports. In addition, we find that the conclusions underlying our forbearance decision for Qwest also hold true for AT&T and Verizon. Therefore, consistent with section 10, we extend the conditional forbearance to those two carriers, as well. Specifically, this forbearance is conditioned on approval of a compliance plan as required by the *AT&T Cost Assignment Forbearance Order* and *ARMIS Forbearance Order*, and the carriers continuing to file certain pole attachment data publicly with the Commission.

A. Charges, Practices, Classifications and Regulations

9. Subject to certain conditions, we find that the ARMIS Financial Reports are not "necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier . . . are just and reasonable and are not unjustly or unreasonably discriminatory" under section 10(a)(1).²⁵ We reach this conclusion for many of the same reasons that the Commission relied upon in granting conditional forbearance from the Cost Assignment Rules themselves.

10. Because Qwest's, AT&T's, and Verizon's interstate rates are now generally regulated under price caps, we agree that the ARMIS Financial Reports are unnecessary in determining whether those

²⁰ See *ARMIS Forbearance Order*, 23 FCC Rcd at 13658-59, paras. 19-20.

²¹ See *ARMIS Forbearance Order*, 23 FCC Rcd at 13648, para. 21.

²² See *ARMIS Forbearance Order*, 23 FCC Rcd at 13662-63, para. 27 n.82.

²³ See *ARMIS Forbearance Order*, 23 FCC Rcd at 13662-63, para. 27 n.82.

²⁴ *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307-08, para. 12 n.36 (2008).

²⁵ 47 U.S.C. § 160(a)(1).

carriers' rates are just, reasonable, and not unjustly or unreasonably discriminatory, consistent with our conclusions in the *AT&T Cost Assignment Forbearance Order* and *ARMIS Forbearance Order*.²⁶ Like the Cost Assignment Rules, the ARMIS Financial Reports were "developed at a time when the LECs' interstate rates and many of their intrastate rates were set under rate-based, cost-of-service regulation."²⁷ As noted above, the primary purpose of these initial financial data gathering reports was "to facilitate the timely and efficient analysis of revenue requirements and rates of return."²⁸ By contrast, "price cap regulation severs the direct link between regulated costs and prices."²⁹ Such price cap regulation of Qwest's, AT&T's, and Verizon's rates will remain in place to continue to protect consumers from unjust, unreasonable, and unjustly or unreasonably discriminatory charges, practices, classification and regulations.³⁰ Thus, we cannot conclude that there is a "strong connection" between maintaining the ARMIS Financial Reports in anticipation of a speculative need for the information at some point in the future.³¹

11. Relief from the Cost Assignment Rules also removed the carriers' obligation to generate core data for the ARMIS Financial Reports.³² ARMIS Report No. 43-01 (Annual Summary of Financial Data) contains a highly aggregated and comprehensive view of the carrier's financial data, as well as a summary of demand in minutes of use and billable access lines, ARMIS 43-02 (Uniform System of Accounts (USOA)) collects the operating results of the carrier's total activities for every account in the USOA, and ARMIS 43-03 (Joint Costs) summarizes the breakdown between the reporting carrier's regulated and nonregulated activities. Our conclusion is further reinforced by the prior conditional relief granted with respect to particular elements of the ARMIS Financial Reports, which renders the remaining data even less useful.³³ Subject to the approval of compliance plans as required by the *AT&T Cost Assignment Forbearance Order* and *ARMIS Forbearance Order*, Qwest, AT&T, and Verizon no longer will be filing a number of components of the ARMIS Financial Reports. These remaining three reports reflect only

²⁶ *ARMIS Forbearance Order*, 23 FCC Rcd at 13662-63, para. 27 n.82; *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7311, para. 16.

²⁷ *ARMIS Forbearance Order*, 23 FCC Rcd at 13662-63, para. 27

²⁸ *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, 2 FCC Rcd 5770 para. 1 (1987).

²⁹ *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7305-06, para. 8 (quoting *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, CC Docket No. 90-623, Report and Order, 6 FCC Rcd 7571, 7596, para. 55 (1991) (*Computer III Remand Order*), vacated in part and remanded, *California v. FCC*, 39 F.3d 919 (9th Cir. 1994), cert. denied, 514 U.S. 1050 (1995).

³⁰ See, e.g., *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7312, para. 18.

³¹ See *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7312-13, para. 19 (observing that regulatory "changes have eliminated ongoing tinkering with price caps," and thus "we no longer routinely need the accounting data derived from the Cost Assignment Rules for rate regulation functions."); *id.* at para. 20 (concluding "that section 10 does not allow us to find a regulatory requirement "necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory" if it is not a current need").

³² *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307-08, para. 12 n.36 (2008) (observing effect of forbearing from Cost Assignment Rules on Reports 43-01 and 43-02); AT&T Petition at 38, Attach. 6 (describing data that would no longer be available for Reports 43-01, 43-02, and 43-03).

³³ *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307-08, para. 12 n.36 (2008) (observing effect of forbearing from Cost Assignment Rules on Reports 43-01 and 43-02); AT&T Petition at 38, Attach. 6 (describing data that would no longer be available for Reports 43-01, 43-02, and 43-03).

aggregated or otherwise redundant or piecemeal collections of data that, by themselves, are no longer necessary under section 10(a)(1).³⁴

12. As the Commission previously concluded, it will have continuing responsibilities under the Act to ensure that rates are just and reasonable, and not unjustly or unreasonably discriminatory, and will need the tools, possibly including accounting data, to accomplish those statutory responsibilities.³⁵ We find, however, that there are sufficient sources of such data other than the ARMIS Financial Reports that provide accounting information that may be needed by the Commission in the future.³⁶ Even without the ARMIS Financial Reports, the Act provides the Commission with ample authority – including section 220 – to require Qwest, AT&T, and Verizon to produce any accounting data that the Commission needs for regulatory purposes, including rulemakings or adjudications, in the future.³⁷ In addition, Qwest, AT&T, and Verizon remain subject to the Part 32 USOA requirements.³⁸ Thus, this USOA account data will continue to be maintained and available to the Commission on request.³⁹ Moreover, the Commission

³⁴ See AT&T Petition at 38, Attach. 6 (describing what data remain in the reports). For example, after compliance plan approval, the cost and revenue data for ARMIS Report 43-01, Annual Summary, Table 1(c)-(v) will no longer be generated, but the "Total" column of aggregate data would be required to be filed. The submission of such aggregate data would not advance any current, federal purpose. In addition, the access line data required for Table 2 of ARMIS Report 43-01 is, for the most part, identical to the data provided on ARMIS Report 43-08, Table III, which is, in part, still in effect. *ARMIS Forbearance Order*, 23 FCC Rcd 13644, at para. 20.

³⁵ *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7314-15, para. 21.

³⁶ Moreover, as discussed above, subject to approval of the required compliance plans, Qwest, AT&T, and Verizon will not be filing many components of the ARMIS Financial Reports, rendering the remaining data on those reports of even less potential usefulness.

³⁷ See, e.g., 47 U.S.C. §§ 154(i), 208, 213, 218, 219, 220, 254(k), 403, 409; *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at para 21 (citing *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*, CC Docket Nos. 00-199, 97-212, 80-286, 99-301, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd 19911, 19980-81, para. 192 (2001) (*Phase 2 Order*) ("We note, however, that pursuant to section 220(c), the Commission has the authority to request further information or order an audit of any carrier's books to ensure compliance with our cost allocation requirements.")).

³⁸ In the *Section 272 Sunset Order*, the Commission required amounts imputed to each BOC's or BOC independent incumbent LEC affiliate's in-region, long distance operations pursuant to section 272(e)(3) and that *Order* to be debited to account 32.5280. See *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, 16491-92, para. 104 (2007) (*Section 272 Sunset Order*). As we observed in the *AT&T Cost Assignment Forbearance Order*, even after forbearance, carriers "will continue to journalize revenue to Account 5280" as required by section 32.5280(a) of the Commission's rules. *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7318-19, para. 29. We note that the *Section 272 Sunset Order* also specified that the BOCs would report their imputations to the extent relevant to their ARMIS filings, a requirement that we find superseded by our conditional forbearance from those ARMIS filing requirements. As with the other USOA account data, however, accurate imputation information must continue to be available to the Commission on request.

³⁹ ARMIS Report 43-02 simply collects the operating results of the carrier's total activities for every account in the USOA. We find that the continued availability of USOA data to the Commission upon request, to the extent that such data are needed at some point in the future, adequately responds to any concerns about forbearance from that (continued....)

also expressly conditioned the forbearance granted in the *AT&T Cost Assignment Forbearance Order* and the *ARMIS Forbearance Order* on the provision by Qwest, AT&T, and Verizon of accounting data on request by the Commission for its use in rulemakings, adjudications or for other regulatory purposes.⁴⁰ Because we rely significantly upon the analysis and conclusions in those Orders to support our forbearance determination here, we likewise condition forbearance from the ARMIS Financial Reports on the Bureau's approval of a compliance plan as required by the *AT&T Cost Assignment Forbearance Order* and the *ARMIS Forbearance Order*.

13. *Pole Attachment Data.* We impose one further condition on our forbearance from the ARMIS Financial Reports: each carrier's continued annual public filings with the Commission of the pole attachment cost data currently submitted in ARMIS Report 43-01. The Commission regulates pole attachments pursuant to section 224 of the Act, except for those states that states that certify to the Commission that they regulate pole attachments.⁴¹ As NCTA observes, moreover, the Commission's rules require a party filing a pole attachment rate complaint against a LEC to include costs data that is "based on historical or original cost methodology" and "derived from ARMIS . . . or other reports filed with state or federal regulatory agencies."⁴² The record does not reveal other sources of such data that would meet that standard and could be used today in the absence of the ARMIS data.⁴³ We recognize that the public availability of these data in alternative forms filed with the Commission would be sufficient for these purposes, and note that Qwest, AT&T and Verizon committed to file pole attachment data publicly and annually upon grant of the petitions.⁴⁴ Accordingly, for each of the three carriers, we condition our (Continued from previous page) _____ report. Similarly, subject to approval of the carriers' compliance plans, the carriers' only remaining ARMIS Report 43-03 filing obligations are largely duplicative of the USOA information in ARMIS Report 43-02.

⁴⁰ *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7319-20, para. 31; *ARMIS Forbearance Order*, 23 FCC Rcd at 13663, para. 28.

⁴¹ 47 U.S.C. § 224.

⁴² Letter to Marlene H. Dortch, Secretary, FCC, from Daniel L. Brenner, NCTA, filed in WC Docket No. 07-204 (Sept. 25, 2008) (quoting 47 C.F.R. § 1.1404(g)(2)). See also, e.g., *Amendment of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, Report and Order, 15 FCC Rcd 6453, 6529, Appendix C-1 (2000) (setting forth pole attachment formulas for local exchange carrier pole owners using ARMIS data). We note that, in the *AT&T Cost Assignment Forbearance Order*, the Commission found that the need for data in enforcement proceedings could be met through an appropriate compliance plan, which would enable the Commission to obtain the data upon request. *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7315, para. 22. The fact that parties bringing pole attachment rate complaints must include cost information as part of their initial complaint filings, and Commission rules constrain the sources of data that can be used for such filings, supports requiring the continued public availability of such data.

⁴³ We thus find inapposite Qwest's assertion that pole attachment data are only infrequently used in Commission complaint proceedings. Qwest Petition at 10. Indeed, to the extent that there are few pole attachment rate complaints filed with the Commission, the public availability of those data may be one reason why that is the case. See, e.g., *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements for Incumbent Local Exchange Carriers*, Report and Order, 16 FCC Rcd 1911, 1931, para. 48 (2001) ("Reliance on publicly available information has allowed pole owners and attaching parties to resolve rate issues without Commission involvement, which is a cost-savings benefit to utilities, cable operators, other attaching parties, and the Commission.").

⁴⁴ Qwest Oct. 23 *Ex Parte* Letter at 2; Letter from Ann Berkowitz, Verizon, to Marlene H. Dortch, Secretary, filed in WC Docket Nos. 07-204, 07-273, at 2 (Nov. 21, 2008) (voluntarily committing to file pole attachment data that the Commission uses); Letter from Linda Vandeloop, AT&T, to Marlene H. Dortch, Secretary, FCC, filed in WC Dockets Nos. 07-204, 07-273, at 1 (Dec. 11, 2008) (stating that "AT&T will continue to provide [pole attachment] information unless and until the Commission decides that it is no longer necessary"); see also Letter to Marlene H. (continued....)

grant of forbearance for pole attachment data upon the continued annual public filing, without any assertions of confidentiality, of the pole attachment cost data currently filed as part of ARMIS Report 43-01, in WC Docket No. 07-204.

14. We are also mindful of our precedent that the Commission shall forbear where it is not necessary for a current, federal need.⁴⁵ We agree with Qwest that for those states that have certified that they will regulate pole attachments themselves, and thus the Commission no longer has jurisdiction,⁴⁶ that filing pole attachment cost data with the Commission is no longer necessary on an ongoing basis. If states that adjudicate pole attachment complaints believe they need access to annual data for their own use, we expect that they may exercise their own regulatory authority to require these carriers to file data in those states.⁴⁷ In order to give states affected by this order time to implement their own regulations, if they so choose, our forbearance condition requires these three carriers to file pole attachment data for all states in the next annual filing after approval of their compliance plan, but subsequent filings with the Commission need not include data for those states that have certified to regulation of pole attachments.

B. Protection of Consumers

15. Section 10(a)(2) of the Act requires the Commission to determine whether continued enforcement of these filing requirements is necessary to protect consumers.⁴⁸ As discussed above, and subject to certain conditions, we find that the ARMIS Financial Reports are not necessary to ensure just, reasonable, and not unjustly or unreasonably discriminatory rates and practices. Subject to approval of the carriers' compliance plans, they also will not be filing significant portions of the ARMIS Financial Reports under the *AT&T Cost Assignment Forbearance Order* and *ARMIS Forbearance Order*, which renders the remaining ARMIS Financial Report data of minimal value in any event. For those same reasons, we conclude that the ARMIS Financial Reports are not necessary for consumer protection. To the extent that accounting data may in the future be necessary to ensure consumer protections, our conditions address this concern because Qwest, AT&T, and Verizon must provide the relevant data upon request by the Commission.⁴⁹

C. Public Interest

16. Section 10(a)(3) of the Act requires us to determine whether forbearance from the Commission's Cost Assignment Rules is consistent with the public interest.⁵⁰ For the reasons described (Continued from previous page)

Dortch, Secretary, FCC, from Daniel L. Brenner, NCTA, filed in WC Docket No. 07-273 (Nov. 19, 2008) (arguing that forbearance for Verizon should be conditioned on its continued, voluntary filing of such data annually); *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at para. 21 n.78 (observing that data needed for pole attachment rate formulas will remain available) citing BellSouth Reply, filed in WC Docket No. 05-342, at 4 n.8 (asserting that BellSouth would continue to file pole attachment data if its cost assignment forbearance petition were granted).

⁴⁵ See *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7321, para. 32 (concluding that the Commission does not have authority to forbear from regulations "that may produce information helpful to state commissions" only).

⁴⁶ See Public Notice, Corrected List of States That Have Certified That They Regulate Pole Attachments, 23 FCC Rcd 3878 (2008).

⁴⁷ See *id.* at 7321, para. 33 (noting that Commission's act of forbearance did not preempt any state's ability to issue regulations of its own).

⁴⁸ 47 U.S.C. § 160(a)(2).

⁴⁹ See, e.g., *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7323, para. 37.

⁵⁰ 47 U.S.C. § 160(a)(3).

above, we similarly find that conditional forbearance from the ARMIS Financial Reports is in the public interest. Those filing requirements impose burdens on Qwest, AT&T, and Verizon. Removing these requirements through the conditional forbearance we grant here provides greater flexibility and lessens the ongoing administrative costs and burdens. Given that the ARMIS Financial Reports generally no longer contain data that would serve a current, federal need, we find no countervailing public interest benefits to retaining those requirements for Qwest, AT&T, and Verizon.

D. Class of Carriers

17. Section 10 provides for forbearance from “applying any regulation or any provision of the Act to a telecommunications carrier or telecommunications service, or *class of telecommunications carriers or telecommunications services*” if the Commission determines that the regulation at issue satisfies section 10’s three-prong test.⁵¹ The Commission’s reasoning, described above, is not specific to the characteristics of individual reporting carriers or to particular geographic areas. We thus conclude that the relevant “class” here, for purposes of section 10, includes Qwest, AT&T, and Verizon. Thus, consistent with the Commission’s approach in the past, and subject to the conditions set forth herein, we extend our forbearance to all three carriers.⁵²

IV. EFFECTIVE DATE

18. Consistent with section 10 of the Act and our rules, this Order shall be effective on December 12, 2008.⁵³ The time for appeal shall run from the release date of this Order.

V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to sections 1-5, 10, 11, 201-205, 211, 215, 218-220, 224, 251-271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 160, 161, 201-205, 211, 215, 218-220, 224, 251-271, 303(r), 332, 403, 502, and 503,

⁵¹ 47 U.S.C. § 160(a) (emphasis added). Given this statutory directive, we reject certain parties’ assertions that granting relief from reporting for all applicable incumbent LECs based on a petition from one (or a few) incumbent LECs is inappropriate. See New Jersey Rate Counsel Reply (AT&T Pet.) at 2; California Commission Reply (AT&T Pet.) at 10; Letter from Anna M. Gomez, *et al.*, Sprint Nextel Corp. and Karen Reidy, Vice President, CompTel, to Marlene Dortch, Secretary, Federal Communications Commission, Docket Nos. 07-139, 07-204, 07-273 at 1-2, 4 (filed Aug. 29, 2008). Nor would the option of revising ARMIS reporting in the future through a rulemaking proceeding allow the Commission to avoid its statutory duty to evaluate forbearance pursuant to section 10. See, e.g., *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7308, para. 13; see also *id.* (quoting *AT&T Corp. v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001) (“an alternative route for seeking [relief] does not diminish the Commission’s responsibility to fully consider petitions under [section] 10”); *id.* (quoting *AT&T Corp. v. FCC*, 236 F.3d at 738) (“The Commission has no authority to sweep [section 10] away by mere reference to another, very different, regulatory mechanism.”).

⁵² *Section 272 Sunset Order*, 22 FCC Rcd at 16498-502, paras. 117-26; *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, Order, WC Docket No. 03-171, 19 FCC Rcd 20179, 20182, 20189, paras. 10, 27 (2004), *petition for review denied*, *Core Communications, Inc.*, 455 F.3d 267 (D.C. Cir. 2006); see also *Federal-State Joint Board on Universal Service Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45; Order, 20 FCC Rcd 15095, 15098-99, para. 16 n.23 (2005).

⁵³ See 47 U.S.C. § 160(c) (deeming the petition granted as of the forbearance deadline if the Commission does not deny the petition within the time period specified in the statute); 47 C.F.R. § 1.03(a) (“[T]he Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action.”).

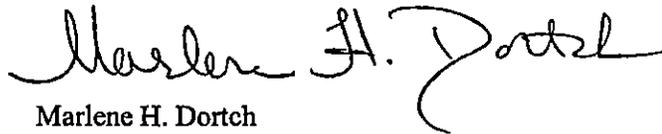
and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt, this Memorandum Opinion and Order IS ADOPTED.

20. IT IS FURTHER ORDERED that, pursuant to sections 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 160(c), 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(c), IS GRANTED, subject to conditions, to the extent described herein, and otherwise IS DENIED.

21. IT IS FURTHER ORDERED that, pursuant to sections 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 160(c), 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, IS GRANTED, subject to conditions, to the extent described herein.

22. IT IS FURTHER ORDERED that, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), that the Commission's Memorandum Opinion and Order SHALL BE EFFECTIVE on December 12, 2008. Pursuant to sections 1.4 and 1.13 of the Commission's rules, 47 C.F.R. §§ 1.4, 1.13, the time for appeal SHALL RUN from the release date of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

**JOINT DISSENTING STATEMENT OF
COMMISSIONERS MICHAEL J. COPPS AND JONATHAN S. ADELSTEIN**

Re: *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)*, WC Docket No. 07-204; *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

Today, the Commission takes another step in the dismantling of its financial reporting requirements for incumbent telecommunications providers. As we detailed in our joint statement of earlier this year, more transparency and increased accountability, not less, are essential to any plan to put the country's economy on sounder footing.⁵⁴ The Commission has ample authority and the ability to engage in a careful and transparent analysis of our financial reporting requirements and to develop revisions where appropriate. Regrettably, the Commission instead is moving towards the wholesale jettisoning of these safeguards. Given the importance of the telecommunications sector to the broader economy, this Commission should be on heightened alert to avoid complacency and the similar mistakes made in the financial and housing markets. This is not the time for the Commission to forbear from the few financial reporting requirements that remain on the books. We therefore dissent from the Commission's decision to do just that.

⁵⁴ See Joint Statement of Commissioners Michael J. Copps and Jonathan S. Adelstein, Dissenting, *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*, WC Docket Nos. 07-21, 05-342; Memorandum Opinion and Order (April 24, 2008).

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: 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), WC Docket No. 07-204; 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

Today, the Commission grants conditional forbearance from the obligation of Qwest, AT&T and Verizon to file ARMIS Reports 43-01, 43-02 and 43-03, collectively known as the "ARMIS Financial Reports."

An integral part of the pro-competitive, de-regulatory national policy framework established by Congress in the 1996 Act is the Section 10 forbearance provision. Today's increasingly competitive telecommunications marketplace, including cross platform competitors such as wireless, cable and satellite, provides consumers with an array of choices that ensure the consumer protection that was once deemed necessary through government regulation. Section 10 mandates that when the Commission finds that certain filings are no longer needed to fulfill their consumer protection goals, it "shall forbear" from regulation and reduce unnecessary legacy obligations by granting relief accordingly. The Commission should then level the playing field whenever possible for similarly situated carriers.

It is important to note that this order does not preempt state authority, nor does it prevent the FCC from requesting relevant information contained in these reports. As required in our previous orders, this forbearance is conditioned upon approval of a compliance plan which will ensure that the Commission continues to have access to necessary data. Additionally, carriers will continue to be required to file pole attachment cost data on an annual basis.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: 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), WC Docket No. 07-204; 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

I support the conditional grant of Qwest's request for relief from the requirement to file ARMIS financial reports set forth in this order, and the extension of such relief to similarly situated carriers. These reports, which are filed by only a small group of carriers and largely summarize data drawn from accounting obligations for which relief has previously been granted, no longer advance the consumer protection goals for which they were originally adopted. Our action today maintains effective consumer safeguards while also cleaning out unnecessary regulatory underbrush. Accordingly, I find that granting relief meets the statutory obligations of Section 10 and, therefore, is in the public interest.