

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

In the Matter of	)	CG Docket No. 10-266
	)	
2010 Biennial Review of	)	EB Docket No. 10-267
Telecommunications Regulations	)	
	)	IB Docket No. 10-268
	)	
	)	ET Docket No. 10-269
	)	
	)	PS Docket No. 10-270
	)	
	)	WT Docket No. 10-271
	)	
	)	WC Docket No. 10-272

**Reply Comments  
of  
The Ad Hoc Telecommunications Users Committee**

The Ad Hoc Telecommunications Users Committee (“Ad Hoc”) hereby replies to comments submitted in the above-captioned dockets by the Alliance for Telecommunications Industry Solutions (“ATIS”), AT&T, Inc. (“AT&T”) and Verizon and Verizon Wireless (“Verizon”). The Commission should deny the overly broad deregulatory requests discussed below.

AT&T and Verizon contend that the Commission should no longer require them to maintain Basic Property and Continuing Property Records.<sup>1</sup> AT&T also urges the Commission to eliminate collection of data and reporting on Jurisdictional Differences and Lobbying Expenses.<sup>2</sup> Verizon, AT&T and ATIS believe that no purpose is served

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<sup>1</sup> AT&T, WC10-272 Comments at 3-4; Verizon and Verizon Wireless, Comments at 5-6.

<sup>2</sup> AT&T, WC10-272 Comments at 5-7.

by continued reporting of many network outages.<sup>3</sup> AT&T then paints with a broader brush maintaining that the Commission should eliminate data collection and reporting requirements that do not apply to providers of cable television and wireless services.<sup>4</sup> Both carriers argue that the telecommunications market is competitive and that continued collection and reporting of cost data is unnecessary because price cap regulation breaks the link between costs and prices.<sup>5</sup> Not surprisingly, Verizon attempts to associate its requests with President Obama's recent directive that Executive Branch departments and agencies eliminate unnecessary regulation.<sup>6</sup>

Ad Hoc fully supports elimination of unnecessary regulation. When markets are effectively competitive, unnecessary economic regulations should be eliminated. When markets are not effectively competitive, economic regulation is necessary to protect consumers – residential and business – from abusive pricing and practices.

Ad Hoc disagrees with the contention of AT&T and Verizon that the entire telecommunications market, if there is such a thing, is competitive. AT&T and Verizon have submitted no data to support their contention, and Ad Hoc has a very different view of the interstate access service market. Nor does the Commission share the AT&T/Verizon view of the telecommunications landscape. In 2007, the Commission found that each BOC continues to have exclusionary market power within its respective regions by reason of its control over bottleneck facilities.<sup>7</sup> In June 2010, the

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<sup>3</sup> Verizon, Comments at 14-16; AT&T and ATIS, Comments in PS 10-270.

<sup>4</sup> AT&T WC10-272, Comments at 2.

<sup>5</sup> *Id.* at 3; Verizon, Comments at 5.

<sup>6</sup> Verizon, Comments at 1.

<sup>7</sup> *Section 272 (f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review of 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*, 22 FCC Rcd 16440, 16472-16473 (2007).

Commission concluded that Qwest “[P]ossesses market power over originating and terminating switched access.”<sup>8</sup> The analysis that led to this conclusion is not specific to Phoenix. In the same order, the Commission found, *inter alia*, that (1) “[T]he move from monopoly to duopoly is not alone necessarily sufficient to justify forbearance in proceedings such as this [petition for forbearance],”<sup>9</sup> (2) previous predictions mitigating concerns associated with duopoly, “have not been borne out by subsequent developments,”<sup>10</sup> and (3) that neither the markets for wholesale nor retail services are competitive in Phoenix.<sup>11</sup> Finally, in assessing Qwest’s plea for forbearance for “the sole purpose of achieving regulatory parity,” with the local cable operator, the Commission concluded that, “[g]iven the lack of evidence of sufficient actual or potential competition here, we find that potential competitive harms associated with forbearance outweigh any theoretical benefits arising from regulatory parity.”<sup>12</sup>

AT&T and Verizon’s comments do not address any of the tests used by the Commission in evaluating Qwest’s Phoenix forbearance petition. Accordingly, AT&T and Verizon have not justified regulatory changes based on the existence of effectively competitive telecommunications markets, and have failed to meet the requirements under Section 11 of the Communications Act for repeal of the economic regulations identified above.<sup>13</sup>

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<sup>8</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622, 8664 (2010).

<sup>9</sup> *Id.* at 8637.

<sup>10</sup> *Id.* at 8639.

<sup>11</sup> *Id.* at 8658-9, 8661-4, and 8667-8.

<sup>12</sup> *Id.* at 8676.

<sup>13</sup> Section 11 of the Communications Act of 1934, as amended, states that in every even numbered year the Commission,

“(1) shall review all regulations issued under this Act in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service; and

Nor have the comments of AT&T and Verizon justified elimination of regulations based on the assertion that price cap regulation has severed the link between costs and rates. In an order conditionally granting an AT&T petition seeking regulatory forbearance from certain cost allocation and reporting requirements, the Commission noted that AT&T did not seek relief from Part 32 of the Commission's Rules (Uniform System of Accounts) and rejected AT&T's claim that there would never be a need for accounting information to adjust the price caps regime.<sup>14</sup> The Commission stated that because it has a continuing responsibility to ensure that rates are just, reasonable and not unreasonably discriminatory, it might need accounting data to meet that responsibility. Accordingly, the Commission granted AT&T's petition with a condition, to wit, the relief would be granted only after AT&T filed and the FCC's Wireline Competition Bureau approved a cost allocation plan.<sup>15</sup> Thus, AT&T stretches too far in asserting that costs are irrelevant under price caps regulation.

Moreover, several parties, including Ad Hoc, have asked the Commission to reconsider its conditional grant of AT&T's petition for forbearance relief and subsequent grant to Qwest and Verizon.<sup>16</sup> Ad Hoc also has asked the Commission to review the Wireline Competition Bureau's approval of the cost allocation plans filed by the BOCs.

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(2) shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."

After making such determinations, the Commission is to repeal or modify regulations it determines no longer necessary in the public interest. 47 U.S.C. § 161.

<sup>14</sup> *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, 23 FCC Rcd 7302 (2008).

<sup>15</sup> The Commission granted the same forbearance relief to Qwest and Verizon. *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; 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 AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, 23 FCC Rcd 13647 (2008).

<sup>16</sup> Sprint Nextel Corporation, COMPTel, The Ad Hoc Telecommunications Users Committee, Time Warner Telecom, Inc., *Petition for Reconsideration*, WC Docket Nos. 07-21 and 05-342, filed May 27, 2008.

The Commission has yet to act on these petitions. The Commission should act on these petitions before even considering effectively extending the relief by elimination of the data collection and reporting requirements identified in this Reply.

Those portions of the commenter's filings specifically seeking to eliminate portions of the rules related to "Network Outage Reports" (NORs) codified in Part 4 of 47 CFR (Disruptions to Communications) are similarly unsupported. The purpose of this Biennial Review is to determine whether any FCC regulation is "no longer necessary in the public interest *as the result of meaningful economic competition between providers of such service*" [emphasis added].<sup>17</sup> AT&T claims "the market is working well to regulate the overall quality and reliability of networks,"<sup>18</sup> but neither it, Verizon, nor ATIS has made any showing that "meaningful competition" has eliminated the need for the NORs rules. They offer no evidence that the number of reported outages has dropped because "meaningful competition" has incited carriers to improve their overall quality of service. They offer no evidence that "meaningful competition" has lessened the likelihood of a natural disaster or terrorist attack on the network. Instead the FCC data cited by ATIS (50,000 outages impacting at least 30,000 customers for at least 30 minutes since 2005<sup>19</sup> compared to 126 reported outages in 2003<sup>20</sup>) suggests that sufficient meaningful competition does not exist to "regulate the overall quality and reliability of networks."

All three commenters claim that the present NORs reporting mechanism provides no real benefit, but provide no data to support the claim and make no effort to

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<sup>17</sup> 47 U.S.C. § 161.

<sup>18</sup> AT&T, PS-270 Comments at 2.

<sup>19</sup> ATIS at 5.

<sup>20</sup> AT&T, PS 10-270 Comments at 4.

do so.<sup>21</sup> Claims that the NORs rules are “burdensome” are also unsupported.<sup>22</sup> They provide nothing more than a recitation of the dollars and hours that it takes to comply – falling far short of a showing that the reports are burdensome – particularly when viewed in relation to the \$300 billion<sup>23</sup> in annual revenues earned by those subject to the reporting requirements. The cost of experiencing a single 30-minute or more outage to an enterprise customer can be hundreds of thousands of dollars – far greater than the cost of reporting that single outage by the carrier.

Moreover, ATIS, seeking elimination of only the first “Notification” in the reporting plan makes no effort to isolate the costs of the “Notification” that it recommends eliminating and indeed there is nothing in its filing that would suggest that eliminating the “Notification” while retaining more detailed “Initial” and “Final” reports would have a measurable impact on the overall costs incurred in the NORs reporting process.

Both ATIS and AT&T cite the fact that the annual quantity of NORs reports is significantly greater than the FCC indicated it expected when the rules were first adopted,<sup>24</sup> but that in and of itself does not make the reporting process burdensome. If anything AT&T’s comments suggest that even the 10,000 incidents ATIS estimates understates the real level of ongoing outages since the FCC has levied \$2 million in fines for carriers failing to file NORs reports since 2007.<sup>25</sup> Given the importance of the

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<sup>21</sup> ATIS at 4, AT&T PS 10-270 Comments at 4, Verizon at 14-16.

<sup>22</sup> ATIS at 4, AT&T PS 10-270 Comments at 5. AT&T reports that it spends about 12-hours completing the NORs reporting for each incident – an estimate that includes time spent “justifying and explaining” why a NOR was filed “within the company.”

<sup>23</sup> Table 1.1 (Telecommunications Industry Revenues – Total) in the Federal-State Joint Board on Universal Service’s December 2010 Monitoring Report.

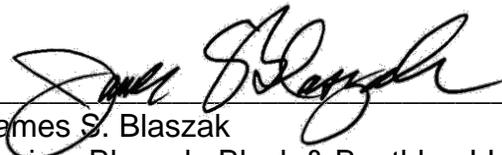
<sup>24</sup> ATIS at 5, AT&T PS 10-270 Comments at 4, Verizon at 15. The ATIS comments report that the original PRA estimate was based upon an expectation of 139 outage reports per year when in fact there have been 50,000 outage reports filed over the past five years – an average of 10,000 per year.

<sup>25</sup> AT&T, PS 10-270 Comments at 5.

telecommunications infrastructure to the well-being of the Nation, ATIS's estimate of 10,000 NORs events per year (more than one an hour every hour of every day of the year) suggests that the Commission should consider an investigation to better understand why the level of reportable outages has increased so significantly over the last half dozen years.

In view of the forgoing, Ad Hoc urges the Commission to not grant the requests of ATIS, AT&T and Verizon for repeal of the economic regulations identified above, the network outage regulations or all data collection and reporting requirements that do not apply to cable television providers.

Respectfully submitted,



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