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August 27, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Petition of AT&T 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

Dear Ms. Dortch:

No commenter in this proceeding offers a single compelling justification for requiring federal taxpayers to foot the bill for a central repository of incomplete samplings of service quality, customer satisfaction, infrastructure and operating data which is not routinely used by federal regulators. While appropriate and useful at one time, ARMIS Reports 43-05, 43-06, 43-07 and 43-08 have outlived their original purpose and are now merely examples of wasteful government.

AT&T points out that these reports were adopted 18 years ago on an interim basis and are only required of 3-11 (depending on the report) of the largest incumbent phone companies – not of the hundreds of smaller incumbents, let alone any of the new entrants.[1]

The original purpose of these reports was to allow the Commission to monitor the success of its price cap experiment, begun in 1990. There can be no doubt the experiment has been a success, because no one is advocating a return to rate-of-return regulation. If there is no further need to validate the price cap experiment, there can be no further need to collect the data.

Although a couple of states have commented that they rely on the data generated by the four reports,[2] there is no reason states cannot collect similar data on their own. States can also obtain information about service quality and investment by carefully

[1] *Comments of AT&T,* WC Docket No. 07-139 (Jun. 8, 2007) at 4, 9.
[2] *Reply Comments of the California Public Utilites Commission and the People of the State of California,* WC Docket No. 07-139 (Sept. 19, 2007) at 2; *Letter from Robin Ancona, Director, Telecommunications Division, Michigan Public Services Commission, to Marlene Dortch, Secretary, Federal Communications Commission,* WC Docket No. 07-139 (Apr. 18, 2008); *Reply Comments of the New Jersey Division of Rate Counsel,* WC Docket No. 07-139 (Sept. 19, 2007) at 4-8; and *Comments of the Public Utility Commission of Texas,* WC Docket No. 07-139 (Aug. 6, 2007) at 2, 4-5.

monitoring consumer complaints and company disclosures; and from the media, investment analysts and researchers such as J.D. Powers and Associates.

AT&T and the National Association of State Utility Consumer Advocates miss the mark when they advocate more disclosure by other market participants.[3] The fact that smaller incumbents and new entrants have never been asked to submit similar data reveals that it must not be necessary for regulators to have the data for the protection of those customers. If the data is not necessary, the Commission should not be collecting it at all.

The fact is, most consumers do not have to do business with an incumbent phone company if they are dissatisfied with the price or the quality of service. Cable phone service is presently available to over 100 million homes and more than 15.1 million currently subscribe, according to the National Cable and Telecommunications Association.[4] Cable voice subscribership has been growing by more than one million per quarter.[5] One study estimates that the market potential for cable voice service over the next 15 years to be 38.8 million residential and 1.6 million small business subscribers.[6] And a growing number of cell phone customers are "wireless-only" or "mostly-wireless." Almost one-third of the nation's households fell into one of these two categories in 2007, according to a study conducted by the Centers for Disease Control of the U.S. Department of Health and Human Services.[7]

As a general matter, the more information the Commission collects and makes available concerning service quality, customer satisfaction, investment and equipment, or similar matters, the more likely that the Commission will facilitate collusive practices within the telecommunications industry. The Commission's job is to protect consumers, not competitors.

Some commenters want the Commission to consider whether to eliminate or modify the four ARMIS reports in a broader rulemaking proceeding. For example, the Communications Workers of America object to "selective exemption" from ARMIS

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[3] *Comments of AT&T* at 18-20 and *Comments of NASUCA*, WC Docket No. 07-139 (Aug. 20, 2007) at 4.

[4] "Digital Phone / Cable Telephony - Full Brief ," National Cable and Telecommunications Association (NCTA) *available at* http://www.ncta.com/IssueBrief.aspx?contentId=3023&view=2.

[5] "Digital Phone / Cable Telephony (VoIP - Voice over Internet Protocol)," NCTA, *available at* http://www.ncta.com/IssueBrief.aspx?contentId=3023.

[6] "Consumer Benefits from Cable-Telco Competition," by Michael D. Pelcovits, Ph.D. and Daniel E. Haar (Nov. 2007) at 10, 24 *available at* http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf.

[7] "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2007," by Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics (May 13, 2008) ("Preliminary results from the July-December 2007 National Health Interview Survey (NHIS) indicate that nearly one out of every six American homes (15.8%) had only wireless telephones during the second half of 2007. In addition, more than one out of every eight American homes (13.1%) received all or almost all calls on wireless telephones despite having a landline telephone in the home.") *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200805.htm.

reporting requirements.[8] But as Verizon points out, the Commission has the ability to grant ARMIS relief to multiple carriers in a single proceeding.[9]

The principal difference between a forbearance proceeding and a normal rulemaking proceeding is that a forbearance proceeding has a self-enforcing deadline, whereas a rulemaking proceeding can languish for eternity. Indeed, as AT&T also points out, the Commission has been considering whether to eliminate the service quality and customer satisfaction reports since 2000.[10] The fact that the Commission has sat on this question for 8 years proves the wisdom of Congress in enacting a forbearance process, which includes a "deemed granted" clause. The Commission, with all due respect, ignores naked deadlines when it chooses. The Commission has obviously given up on the biennial review process, which is the other procedure Congress included in the Telecommunications Act of 1996 to facilitate deregulation. The Commission conducted the last biennial review in 2002. Therefore, the obvious conclusion is that eliminating the "deemed granted" clause could drive a stake through deregulation.[11]

Clearly, there is no legitimate reason for the Commission to deny AT&T's request for forbearance from the requirement to file ARMIS Reports 43-05, 43-06, 43-07 and 43-08. The Commission has little, if any, use for the reports, because the reports are not necessary to ensure that the value of telephone services is just and reasonable. The reports do not provide information which is necessary for the protection of consumers. And forbearance from requiring the reports is clearly in the public interest because it would promote competition, at a minimum, by limiting possibilities for collusion.

For these reasons, the Commission should forbear from requiring any entity to file these reports.

Respectfully Submitted,

/s/

Hance Haney
Director
Senior Fellow
Technology & Democracy Project
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[8] *Comments of CWA*, WC Docket No. 07-139 (Aug. 20, 2007) at 1.
[9] *Letter from Ann Berkowitz, Associate Director-Federal Regulatory, Verizon Communications, to Marlene Dortch, Secretary, Federal Communications Commission*, WC Docket No. 07-139 (Aug. 8, 2008) at 2-3.
[10] *Comments of AT&T* at 11-12.
[11] There are proposals before the Senate and House of Representatives to delete the "deemed granted clause" from 47 U.S.C. §160(c). *See* S. 2469 and H.R. 3914 (110th Cong.).