

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
 )  
Petition of AT&T Inc. for Forbearance under ) WC Docket No. 07-139  
47 U.S.C. § 160(c) from Enforcement of )  
Certain of the Commission’s ARMIS )  
Reporting Requirements. )

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**COMMENTS OF THE  
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

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**I. INTRODUCTION**

Pursuant to the Public Notice issued by the Federal Communications Commission,<sup>1</sup> the National Association of State Utility Consumer Advocates (“NASUCA”<sup>2</sup>) offers these comments in opposition to the Petition filed by AT&T Inc. (“AT&T”) requesting forbearance from certain of the Commission’s Automated Reporting Management Information System (“ARMIS”) reporting requirements for its incumbent local exchange company (“ILEC”) subsidiaries<sup>3</sup> Specifically, AT&T seeks

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<sup>1</sup> DA 07-3332 (re. July 20, 2007).

<sup>2</sup> NASUCA is a voluntary national association of more than forty consumer advocates in 41 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

<sup>3</sup>*See* 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, WC Docket No. 07-139 (filed June 8, 2007) (“Petition”).

forbearance from the rules requiring submission of ARMIS Reports 43-05 (Service Quality Report), 43-06 (Customer Satisfaction Report), 43-07 (Infrastructure Report), and 43-08 (Operating Data Report).<sup>4</sup>

NASUCA opposes AT&T's Petition. These service quality and infrastructure reports remain vital in an environment when the AT&T ILECs remain dominant in their local markets, especially for residential service. AT&T has not shown that it meets the statutory standards for forbearance.

## **II. AT&T REMAINS DOMINANT IN ITS LOCAL MARKETS.**

AT&T's Petition rests on its claims of its facing "vastly greater competition today than it did when the Commission imposed these reporting requirements."<sup>5</sup> Indeed, that may be true, **but only in relative terms**, given the minimal competition the ILECs that now make up AT&T faced in 1990. **The ILECs remain dominant in their local service operations.**<sup>6</sup>

An example from Ohio is instructive. Under a new regulatory scheme, ILECs have gained the ability to raise residential service rates based on meeting certain

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<sup>4</sup> Although the Petition is explicitly filed on behalf of AT&T's ILEC affiliates, without a doubt other companies subject to ARMIS reporting would file "me too" petitions if AT&T's is granted.

<sup>5</sup> Petition at 5.

<sup>6</sup> Given the possibility that the stand-alone long distance market is only a "fringe" market. See *In the Matter of Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207 (2007), ¶ 16.

competitive tests established by the Public Utilities Commission of Ohio (“PUCO”).<sup>7</sup> In only a few of its exchanges has AT&T Ohio been able to show a CLEC market share of greater than 15%.<sup>8</sup> An 85% market share for the incumbent remains well within the definition of “dominance.”<sup>9</sup>

ARMIS reports assume even more importance in cases where states have decreased, or eliminated entirely, in-state reporting requirements, opting instead to rely upon reports submitted by carriers to the FCC. For example, California eliminated the monitoring reports required under its New Regulatory Framework, and now relies on ARMIS data to ensure that the competitive market is functioning well in terms of providing good quality service at just and reasonable prices.<sup>10</sup>

Based solely on this fact, the ARMIS reports are still needed. At least this vital telecommunications source -- which in most states remains the carrier of last resort -- should be required to file these reports.

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<sup>7</sup> *In the Matter of the Implementation of H.B. 218 Concerning Alternative Regulation of Basic Local Exchange Service of Incumbent Local Exchange Companies*, PUCO Case No. 05-1305-TP-ORD, Opinion and Order (March 7, 2006) (see <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=4E76A38E67FF34D48525712A0070F899>), adopting inter alia Ohio Adm. Code 4901:1-4-10. It is still not clear why the PUCO felt that the existence of competition was justification for **increasing** rates for the supposedly competitive service.

<sup>8</sup> *In the Matter of the Application of AT&T Ohio for Approval of an Alternative Form of Regulation of Basic Local Exchange and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, PUCO Case No. 06-1013-TP-BLS, Opinion and Order (December 20, 2006) (see <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=4c9dde36-dd61-482f-adcd-2fccff94a968>). In other exchanges, AT&T Ohio understandably sought price-increase authority under a weaker standard that did not even require a showing of 15% CLEC market share.

<sup>9</sup> See *In the Matter of the Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Red 3271 (1995).

<sup>10</sup> See Before the California Public Utilities Commission, *Order Instituting Rulemaking on the Commission’s Own Motion to Assess and Revise the Regulation of Telecommunications Utilities*, R.05-04-005, D. 06-08-030, August 24, 2006, FOF 73.

### **III. THE SERVICE QUALITY REPORTS ARE ESPECIALLY IMPORTANT.**

Given the ILECs' dominance, it remains important for protection of their customers that they be required to publicly report the items required by ARMIS 43-05.<sup>11</sup> AT&T's arguments to the contrary do not hold water.

AT&T bemoans the fact that only certain ILECs have to file ARMIS data and cable, wireless, and other providers are not required to.<sup>12</sup> It would probably be better for consumers, who would be much better informed, if all telecommunications providers were subject to service quality and reporting requirements. But it does not appear that the Commission is inclined to such a result.

That being the case, it remains vital that the dominant carrier still be required to make these reports. Otherwise, there would be no central repository of publicly available information on **any** telecommunications provider's service; little or nothing for ILEC customers to compare their ILEC's performance to, and little or nothing for customers of other carriers to look at and for comparison with **their** service.

As a reason for forbearance, AT&T asserts that none of the "theoretical" harms of price cap regulation have materialized.<sup>13</sup> It must certainly be convenient to be so blind to one's own history of service quality problems. One of the fears in the adoption of price cap regulation was that it would create an incentive for carriers whose rates were capped to maximize profits by cutting costs related to service quality, sacrificing their customers'

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<sup>11</sup> These items include reports on installation and repair intervals, trunk blockage, switch downtime, and service quality complaints. The items collected from ARMIS 43-06 on customer satisfaction are less useful.

<sup>12</sup> Petition at 2.

<sup>13</sup> Petition at 5.

service quality in the process.<sup>14</sup> The endemic service quality problems of Ameritech (part of the current AT&T) in the late 90's occurred under the price cap regime -- on both inter- and intrastate levels.<sup>15</sup> More recently, many of the Verizon local companies -- seventeen years into the price cap era, and in the supposed highly-competitive environment cited by AT&T (and Verizon), have suffered from service quality lapses.<sup>16</sup> Or, rather, their customers have suffered as a result of their ILEC's service quality lapses. These problems provide the "strong connection" between the regulation and what the Commission wanted the regulation to accomplish, on which AT&T insists in its Petition.<sup>17</sup>

This also shows the error in AT&T's assertion that because **overall, on some of the ARMIS indices**, the ILECs have been improving means that no reporting is necessary.<sup>18</sup> A consumer is not served by an average company; it is the performance of the specific ILEC serving the customer that is particularly important.

AT&T proposes two existing sets of reports as supposedly adequate substitutes for the ARMIS reports. First, there are the service quality reports provided pursuant to mergers.<sup>19</sup> But these merger requirements do not cover all the ARMIS-reporting companies, have specific ending dates, and are not as publicly accessible as the ARMIS

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<sup>14</sup> See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6827, ¶ 334 (1990).

<sup>15</sup> See, e.g., *In the Matter of the Commission-Ordered Investigation of Ameritech Ohio Relative to Its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5, Ohio Administrative Code*, PUCO Case No. 99-938-TP-COI, Second Supplemental Opinion and Order (January 31, 2002).

<sup>16</sup> See <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/08/AR2007080802295.html>.

<sup>17</sup> Petition at 8.

<sup>18</sup> Petition at 10.

<sup>19</sup> Id. at 7, n.15.

reports. AT&T also claims that the outage reports now required by the Commission should suffice for service quality information.<sup>20</sup> But the outage reports are limited in scope, addressing only service outages as required by the Commission's rules. "Service quality" for consumers extends well beyond the situation where the service is simply not available, as in an outage.

More important, however, is that unlike ARMIS reports, the outage reports are not made available to the public. The Commission has authority to issue periodic reports based upon its review of the filed outage reports. Such Commission reports could serve to alert Congress and the public as to any patterns or ongoing systemic problems that may require legislation or revised regulations if the industry has not addressed the problems, e.g., through the development and application of Best Practices. However, the Commission has yet to exercise that authority. Thus the notion of substituting the outage reports for the current ARMIS reporting fails to meet the need met by the ARMIS reports.

**IV. THE ARMIS 43-07 AND 43-08 REPORTS PROVIDE IMPORTANT INFORMATION TO THE COMMISSION AND THE STATES THAT WOULD NOT BE CONTAINED IN A MODIFIED FORM 477**

As for the 43-07 Infrastructure Report and the 43-08 Operating Data Report, AT&T suggests that the Commission instead use a revamped and more granular Form 477 in place of these two ARMIS reports.<sup>21</sup> Although NASUCA does not oppose, and in fact supports, the use of a revamped Form 477, which would apply to all carriers

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<sup>20</sup> Petition at 12-13.

<sup>21</sup> AT&T Petition at 18-19.

regardless of technology, not just certain ILECs, this form cannot take the place of the ARMIS reports. This is because Form 477 can be -- and often is -- filed as a confidential document. This means that only the Commission will have access to this information in granular form. By contrast, the ARMIS information for the dominant carriers is publicly available.

Further, the information contained in Form 477 reports data in terms of line counts, by technology and type of service provider. It is not a substitute for the data collected in the 43-07 Infrastructure Report and the 43-08 Operating Data Report. A modified Form 477 would not include important data from ARMIS 43-07 about the actual deployment of facilities, that can be used by state commissions to determine, for example, if service to some regions of a state are provided over facilities that are incapable of providing newer advanced services and monitor the situation over a period of time. Nor would AT&T's revised Form 477 replace the data provided in ARMIS 43-08, which allows states to examine calling patterns.

The FCC itself uses data from ARMIS reports 43-05, 43-07 and 43-08 to prepare its *Trends in Telephone Services* report.<sup>22</sup> The 2007 report relied on ARMIS report 43-08 to provide data on usage<sup>23</sup> and reports 43-07 and 43-08 to provide data to support its analysis of technology and infrastructure.<sup>24</sup>

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<sup>22</sup> *Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Competition Bureau, February, 2007.

<sup>23</sup> *Id.*, p. 10-1, p. 10.4, (Table 10.2).

<sup>24</sup> *id.*, p. 17-1, p. 17-5 (Table 17-1), p. 17-6 (Table 17.2), and p. 17.7 (Table 17.3).

**V. CONCLUSION**

For the reasons set forth herein, AT&T's request for the Commission to forbear from requiring AT&T's ILEC subsidiaries to file the specified ARMIS reports should be denied.

Respectfully submitted,

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