

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

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

**JOINT COMMENTS AND OPPOSITION OF THE
NEW JERSEY DIVISION OF RATE COUNSEL,
PUBLIC COUNSEL SECTION OF THE WASHINGTON STATE ATTORNEY
GENERAL'S OFFICE
AND THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

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I. INTRODUCTION

In response to the Public Notice issued September 20, 2007, by the Federal Communications Commission (“FCC” or “Commission”),¹ the New Jersey Division of Rate Counsel (“Rate Counsel”), the Public Counsel Section of the Washington State Attorney General’s Office (“Public Counsel”) and the National Association of State Utility Consumer Advocates (“NASUCA”) (collectively, “State Advocates”) hereby oppose the Petition filed September 13, 2007, by Qwest Corporation (“Qwest”) requesting forbearance under 47 U.S.C. § 160(c) from enforcement of certain of the

¹ / Federal Communications Commission Public Notice, “Pleading Cycle Established for Qwest Corporation Petition Seeking Forbearance from Enforcement of Certain ARMIS and 492A Reporting Requirements,” WC Docket No. 07-204, DA 07-3949, September 20, 2007. Reply comments originally were due November 6, 2007. The Commission subsequently extended the dates for the initial and reply comments to December 6, and December 21, 2007, respectively. WC Docket No. 07-204, *Order*, DA 07-4329, rel. October 18, 2007.

Commission's Automated Reporting Management Information System ("ARMIS") and 492A reporting requirements.²

A. Summary of Comments

Granting Qwest's Petition would be ill-advised because it would further exacerbate the information asymmetry between regulators and regulated entities. Without access to data about quality of service, operating statistics, and other information, it would become that much harder to distinguish incumbent local exchange carrier ("ILEC") rhetoric about competition from objective measures of the impact of ILECs' dominance in many markets. These comments demonstrate that ARMIS reports assist in identifying service quality trends, provide evidence of improper subsidization of unregulated services by regulated ones, and include data that show evidence of improper subsidization of interstate services by intrastate services. Foreclosing access to ARMIS reports would keep regulators, competitors, and consumer advocates in the dark, a consequence which would benefit ILECs and harm consumers.

The ability to draw from a time series/cross section database of public information provides a means to benchmark performance over time, and across jurisdictions. The telecommunications facilities provided by Qwest and the other companies subject to ARMIS reporting requirements continue to provide the basic communications infrastructure used by most consumers across the nation. The history of the last twelve years clearly shows that these markets are dynamic, but that market power continues to be a concern. The ARMIS reports provide a critical panel of data which contributes to the monitoring of these markets, and enables those who track this industry to better

² / Petition of Qwest Corporation for Forbearance from Enforcement of Certain of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), filed September 13, 2007 ("Qwest Petition").

understand the ebb and flow of competition, the deployment of new technologies, and the level of service provided by the dominant ILECs.

As NASUCA and Rate Counsel recently demonstrated in separately-filed comments opposing AT&T's petition for forbearance, forbearance proceedings are not the proper avenue for challenging reporting requirements.³ The Commission should not allow itself to be led into making possibly far-reaching policy decisions in a piece-meal fashion through forbearance proceedings. Adjustments to basic regulatory reporting, when necessary, should be accomplished in a holistic, systematic fashion, rather than on a company-by-company basis. State Advocates concur with the recent statement of Commissioners Copps and Adelstein concerning the overarching flaws in the forbearance petitions filed with the Commission. They state:

Let us start by noting what may already be obvious to many – dealing with the multitude of forbearance petitions before us is a risky and messy business. There are no requirements on the parties to be explicit in their requests or detailed in the data they provide. It is left to the Commission to sort through and if we don't, we hand over the writing of these rules to industry.⁴

Other serious concerns about the procedural aspects of the Commission's forbearance proceedings have also been raised that merit careful consideration. For

³ / *In the Matter of 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, Comments and Opposition of the New Jersey Division of Rate Counsel, filed August 20, 2007 ("Rate Counsel AT&T Initial Comments"); Comments of the National Association of State Utility Consumer Advocates, filed August 20, 2007 ("NASUCA AT&T Initial Comments"); Reply Comments of the New Jersey Division of Rate Counsel, filed September 19, 2007; Reply Comments of the National Association of State Utility Consumer Advocates, filed September 19, 2007.

⁴ / *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*; WC Docket No. 06-125, Memorandum Opinion and Order (October 11, 2007), Joint Statement of Commissioner Michael J. Copps and Commissioner Jonathan S. Adelstein, Dissenting, at 42.

example, in an *ex parte* filing, COMPTTEL raised concerns about late-filed evidence from companies seeking forbearance. COMPTTEL specifically recommended that the Commission direct the Bureau not to accept or consider newly-filed evidence and also recommended that the Commission “adopt and enforce a ‘complete when filed’ rule for forbearance petitions modeled on the rule successfully applied to Section 271 applications.”⁵ State Advocates concur with COMPTTEL that unless the Commission takes these steps, its decisions on forbearance petitions will violate the procedural requirements of the Administrative Procedure Act. State Advocates also incorporate by reference Rate Counsel’s and NASUCA’s initial and reply comments, and Public Counsel’s initial comments opposing Qwest’s petition for forbearance in four metropolitan statistical areas, WC Docket 07-97.⁶

The FCC itself has now acknowledged the issues raised by the onslaught of forbearance requests from carriers, by opening a rulemaking to consider a variety of questions such as how the Commission should provide notice and an opportunity to comment in forbearance proceedings⁷; whether to apply a “complete-as-filed” requirement on forbearance petitions, meaning the initial petition should include all

⁵ / *Petitions for Forbearance from Title II and Computer Inquiry Requirements for Enterprise Broadband Services*, WC Docket Nos. 06-124, WC-147, *ex parte* filing by COMPTTEL, August 27, 2007, at 2.

⁶ / *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Initial and Reply Comments of the New Jersey Division of Rate Counsel, filed August 31, 2007 and September 28, 2007; Initial and Reply Comments of the National Association of State Utility Consumer Advocates, filed August 31, 2007 and October 1, 2007; Comments of Public Counsel Section of the Washington State Attorney General’s Office and the Washington Electronic Business and Telecommunications Coalition, filed August 31, 2007.

⁷ *In the Matter of Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Notice of Proposed Rulemaking, FCC 07-202 (rel. November 30, 2007), ¶ 5.

information needed to support it⁸; whether a rule should specify that the petition bears the burden of proof⁹; whether the Commission should require a petitioner to separately demonstrate how it has satisfied each part of the forbearance standard¹⁰; whether there should be rules addressing the scope and interpretation of protective orders in forbearance proceedings¹¹; whether there should be rules establishing a timetable for Commission proceedings addressing forbearance petitions¹²; whether there should be additional requirements for petitions seeking forbearance from sections 251 and/or 271 of the Act¹³; whether there should be a rule requiring the issuance of a written order on all forbearance petitions, including those petitions that previously have been deemed granted¹⁴; and whether the rules should apply both to forbearance petitions filed in the future, as well as forbearance petitions already pending before the Commission.¹⁵

In response to the significant increase in the number of petitions seeking forbearance submitted by telecommunications carriers that the Commission oversees, having differing results, and in response to concerns raised by members of Congress with regard to how forbearance is used, the Commission also seeks comment on whether forbearance is an effective means for the Commission to make changes to its

⁸ Id., ¶ 6

⁹ Id.

¹⁰ Id., ¶ 7.

¹¹ Id., ¶ 8.

¹² Id., ¶ 9.

¹³ Id., ¶ 10.

¹⁴ Id., ¶ 11.

¹⁵ Id., ¶ 12.

regulations.¹⁶ The Commission also seeks comment on whether forbearance is being utilized for the purposes intended by Congress; whether there are there unintended consequences of forbearance; what are the burdens on stakeholders from forbearance proceedings; whether there are additional burdens placed on stakeholders due to the fact that there is a statutory deadline on the completion of forbearance petitions; and what are the effects of having a company-specific petition drive agency decisions, rather than industry-wide actions?¹⁷

In addition to these many concerns, with regard to the instant proceeding, State Advocates specifically ask that if the FCC considers the imposition of conditions as necessary to protect the public interest if any relief is granted, the FCC should identify both the tentative conclusions on relief to be granted and tentative conditions under consideration. Thereafter the FCC should provide an opportunity for parties to comment on and recommend changes and modifications to the tentative conditions and should also provide an opportunity to recommend the imposition of additional conditions based upon the record.

Qwest's Petition is not only flawed on procedural grounds, but also fails to satisfy the Commission's well-established three-prong test for forbearance. Qwest's Petition bears directly on states' access to valuable data and information, and, therefore, the Commission's deliberations in this proceeding could affect states' ability to carry out their regulatory responsibilities. As has been the Commission's long tradition, states and the Commission should work collaboratively on matters of importance to interstate and intrastate regulation and oversight of telecommunications services and infrastructure.

¹⁶ Id., ¶ 13.

¹⁷ Id.

Finally, the Petition raises matters that potentially affect all ILECs, and, therefore, these matters would be aired more appropriately in a rulemaking informed by the recommendations of a federal-state joint board.

Despite serious misgivings about the fundamentally inappropriate forum in which Qwest's Petition is being considered, State Advocates provide a preliminary assessment of Qwest's Petition in these initial comments. Based on their review, State Advocates conclude that the Petition is contrary to the public interest, procedurally flawed, and should be denied.¹⁸

B. Interest of Public Counsel, Rate Counsel and NASUCA in the Instant Proceeding

The Public Counsel Section of the Washington State Attorney General's Office represents the customers of state-regulated investor-owned telecommunications companies, including Qwest.¹⁹ Public Counsel has a strong interest in this matter because Qwest is the largest provider of residential wireline telecommunications service in Washington state. The absence of ARMIS reports would hinder Public Counsel's ability to advocate on behalf of Qwest's customers and impair current and future effective regulation of Qwest to the detriment of Washington consumers.

Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities.²⁰ Rate Counsel participates actively in relevant Federal and state

¹⁸ / Based on review of others' filings in this proceeding, State Advocates may supplement the concerns and analyses set forth in this opposition.

¹⁹ RCW 80.01.100.

²⁰ / Effective July 1, 2006, the New Jersey Division of Ratepayer Advocate is now the New Jersey Division of Rate Counsel. The Rate Counsel, formerly known as the New Jersey Ratepayer Advocate, is a Division within the Department of the Public Advocate. The Department of the Public Advocate is a government agency that gives a voice to New Jerseyans who often lack adequate representation in our political system. The Department of the Public Advocate was originally established

administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996. The New Jersey Legislature has declared that it is the policy of that state to provide diversity in the supply of telecommunications services, and it has found that competition will "promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." As these comments demonstrate, if granted, Qwest's request for forbearance from reporting requirements would unnecessarily and unduly constrain the ability of Rate Counsel and state regulators to assess quality of service including comparisons of the performance of Bell operating companies ("BOCs") and other ILECs.²¹ Also, if granted, Qwest's Petition would limit access to important public information about operating statistics, costs, and network infrastructure.

NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent

in 1974, but it was abolished by the New Jersey State Legislature and New Jersey Governor Whitman in 1994. The Division of the Ratepayer Advocate was established in 1994 through enactment of Governor Christine Todd Whitman's Reorganization Plan. The mission of the Ratepayer Advocate is to make sure that all classes of utility consumers receive safe, adequate and proper utility service at affordable rates that are just and nondiscriminatory. In addition, the Ratepayer Advocate works to insure that all consumers are knowledgeable about the choices they have in the emerging age of utility competition. The Department of the Public Advocate was reconstituted as a principal executive department of the State on January 17, 2006, pursuant to the Public Advocate Restoration Act of 2005, P.L. 2005, c. 155 (*N.J.S.A.* §§ 52:27EE-1 *et seq.*). The Department is authorized by statute to "represent the public interest in such administrative and court proceedings . . . as the Public Advocate deems shall best serve the public interest," *N.J.S.A.* § 52:27EE-57, *i.e.*, an "interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens." *N.J.S.A.* §52:27EE-12, and the office of the Rate Counsel, formerly known as the Ratepayer Advocate, became a division therein to continue its mission of protecting New Jersey ratepayers.

²¹ / Throughout these comments, BOC and ILEC are used interchangeably. As footnote 20 explains, small ILECs are not required to submit ARMIS reports.

the interests of utility consumers before state and federal regulators and in the courts.²² 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). Both Public Counsel and Rate Counsel are members of NASUCA. NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

The Commission's deliberations in this proceeding affect households and businesses nationwide because, among other things:

- ARMIS data provides a valuable tool to state and federal regulators for benchmarking. Qwest's Petition bears directly on consumer advocates' ability to compare service quality performance among ILECs. Therefore, Qwest's Petition, if granted, would hamper consumer advocates' efforts to improve basic local telephone service.
- ARMIS data provides a public source of information. Information about BOC operations is important to ensure that the market place works efficiently, consumers have open access to information, and regulators can detect where consumers are receiving sub-par levels of quality for basic service.
- This Petition follows closely on the heels of AT&T's similar request for forbearance, which was filed June 8, 2007.²³ Granting either petition would set an ill-advised precedent, paving the way for a "me-too" petition by Verizon.

²² / 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. § 8.33; D.C. Code Ann. § 34-804(d).

²³ / See footnote 3.

- The Petition, if granted, would contribute to the piecemeal dismantling of long-established policy in a context that is inappropriately narrow. If the Commission is considering revamping its reporting requirements, it should assess such measures through a broader rulemaking proceeding in which it can address comprehensively the wide-ranging implications of such changes for state regulators, consumers, and competitors.

As previously noted, Rate Counsel and NASUCA recently opposed AT&T's request for forbearance from ARMIS reporting requirements, including many, but not all, of the same requirements from which Qwest now seeks forbearance. Many of the arguments raised in these earlier comments pertain equally to Qwest's Petition.²⁴ Also, Rate Counsel and NASUCA previously opposed a petition filed by BellSouth Telecommunications, Inc. ("BellSouth") for forbearance under 47 U.S.C. § 160 from enforcement of certain of the Commission's cost assignment rules,²⁵ before AT&T acquired BellSouth.²⁶ State Advocates refer the Commission to the initial and reply

²⁴ See footnote 3.

²⁵ / See 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 No. 05-342. On January 25, 2007, AT&T also filed a petition for forbearance from the Commission's cost allocation rules. 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 No. 07-21. On February 9, 2007, AT&T, on behalf of BellSouth, withdrew the petition filed in WC Docket No. 05-342 and re-filed the BellSouth petition in WC Docket No. 07-21. Comments and reply comments were filed March 19, 2007 and April 9, 2007, respectively. The Commission has taken no further action in the proceeding.

²⁶ / *In the Matter of AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control*, WC Docket No. 06-74, December 29, 2006, rel. March 26, 2007. AT&T and BellSouth merged on December 29, 2006. "AT&T and BellSouth Join to Create a Premier Global Communications Company," December 29, 2006, www.att.com.

comments filed, which opposed BellSouth's earlier petition, because many of the arguments regarding the 2005 BellSouth petition are germane to this proceeding.²⁷

II. ANALYSIS OF PETITION

A. Overview of reports from which Qwest seeks forbearance.

Qwest seeks forbearance from the following ARMIS reports: 43-01 (Annual Summary), 43-02 (USOA Report), 43-03 (Joint Cost Report), 43-04 (Separations and Access Report), 43-05 (Service Quality Report), 43-06 (Customer Satisfaction Report), 43-07 (Infrastructure Report), 43-08 (Operating Data Report), 495A (Forecast of Investment Usage), 495B (Actual Usage of Investment), and Report 492A (Rate of Return Monitoring Report).²⁸ These reports are described briefly below.²⁹

ARMIS Report 43-01, Annual Summary Report: The Annual Summary Report aggregates financial data reflecting accounting, rate base, and cost allocation requirements of Parts 32, 64, 65, 36, and 69 of the FCC Rules. The 43-01 is filed on a study area basis.

ARMIS Report 43-02, USOA Report: The USOA Report collects the operating results of the carrier's activities for every account in the USOA, as specified by Part 32 of

²⁷ / Rate Counsel submitted initial and reply comments in WC Docket 05-342 on January 23, 2006, and February 10, 2006, respectively, opposing BellSouth's petition. NASUCA filed reply comments, on February 13, 2006. Rate Counsel submitted comments on March 15, 2007 opposing the petitions for forbearance in WC Docket No. 07-21. In those comments, the Rate Counsel referred the Commission to its initial and reply comments filed in Docket No. 05-342 and supported NASUCA's positions as to why the grant of the petition is not in the public interest.

²⁸ / In contrast to Qwest's request to cease essentially all ARMIS reporting, AT&T sought forbearance from four reports: 43-05 (Service Quality Report), 43-06 (Customer Satisfaction Report), 43-07 (Infrastructure Report), and 43-08 (Operating Data Report).

²⁹ / A description of the ARMIS reports and instructions to carriers can be found on the FCC's website at <http://www.fcc.gov/wcb/armis/instructions/>. Instructions for Report 492A, and the form itself, are available at <http://www.fcc.gov/Forms/Form492A/492a.pdf>.

the FCC Rules. Included in this report are items such as Balance Sheets, Statements of Cash Flows, Analysis of Accumulated Depreciation, Analysis of Services Purchased From or Sold to Affiliates, and others. Report 43-02 is filed on an operating company basis.

ARMIS Report 43-03, Joint Cost Report: The Joint Cost Report provides a breakdown of the carrier's costs between regulated and nonregulated activities as defined in their Cost Allocation Manuals and Part 64 of the FCC Rules. This report is filed on a study area basis.

ARMIS Report 43-04, Access Report: The Access Report provides the breakdown of regulated revenues between intrastate and interstate jurisdictions as defined in Part 36 of the FCC Rules, and reports the distribution of interstate costs among access charge categories as defined in Part 69 of the FCC Rules. Report 43-04 is filed on a study area basis.

*ARMIS Report 43-05, Service Quality Report:*³⁰ The Service Quality Report was a quarterly service quality report through 1995. Beginning in 1996, the report has been and continues to be filed annually. All price cap LECs (both mandatory and elective) must file.³¹ The 43-05 data is filed at the study area (jurisdiction) and the holding company levels. The following tables are included in ARMIS Report 43-05:

^{30/} AT&T had also requested forbearance from this report.

^{31/} Carrier filings requirements are summarized on the FCC's website at <http://www.fcc.gov/wcb/armis/filereqt.html>. No ARMIS reports are required of the approximate 1200 small companies with annual revenues below the current threshold of \$129-million in annual revenues. See also 47 U.S.C. § 43.21. Mid-Sized ILECs (holding companies with annual revenues less than \$7.668B) file a reduced version of the 43-01. Also, beginning with 2001 data, Mid-Sized ILECs (Non-Price Cap and Elective Price Cap Carriers) were granted relief from filing the ARMIS 43-02, 43-03 and 43-04 Reports. *Id.*

- Table I “Installation and Repair Intervals (Interexchange Access)” contains the installation and repair intervals achieved by the reporting carriers for services provided to interexchange carriers. The data is segregated between switched access and special access services.
- Table II “Installation and Repair Intervals (Local Service)” covers the installation and repair intervals achieved by the reporting carriers for local services they provide to both business and residential customers.
- Table III “Common Trunk Blockage” reports blockages on common trunk groups between the local exchange carrier’s end office and the access tandem.
- Table IV “Total Switch Downtime” summarizes the loss of local switch call processing capability, including identification of total downtime durations of less than two minutes.
- Table IV(A) “Occurrences of Two Minutes or More Downtime” provides details of all occurrences of local switch outages of two or more minutes duration.
- Table V “Service Quality Complaints” is a count of the formal complaints raised by residential and business customers in the state and interstate jurisdictions.

*ARMIS Report 43-06 Customer Satisfaction Report.*³² The Customer Satisfaction Report was a semiannual service quality report through 1995. Beginning in 1996, the report is filed annually. All mandatory price cap ILECs must file Report 43-06. Report

^{32/} AT&T had also requested forbearance from this report.

43-06 is filed at the study area (jurisdiction) and the holding company levels. The following table is included in ARMIS Report 43-06:

- Table I “Summary Customer Satisfaction Survey” contains the results of customer satisfaction surveys. Through 1993, Table I reported customer satisfaction. Beginning in 1994, Table I reports the percentage of customers that are dissatisfied with various aspects of the reporting carrier’s service.

*ARMIS Report 43-07 Infrastructure Report:*³³ The Infrastructure Report provides data regarding the infrastructure of the reporting carrier. All mandatory price cap LECs must file Report 43-07. Report 43-07 is filed at the study area (jurisdiction) and the holding company levels. The following tables are included in ARMIS Report 43-07:

- Table I “Switching Equipment” provides quantities of local switches according to type, e.g., electromechanical or digital stored program control, and by capability, e.g., equal access and ISDN. Table I also provides counts of access lines served by the various switch types and capabilities.
- Table II “Transmission Facilities” contains information on interoffice facilities and loop plant, with categories for copper, fiber, analog and digital carrier, and radio technologies.

*ARMIS Report 43-08 Operating Data Report:*³⁴ The Operating Data Report contains statistical schedules that were formerly reported in Form M. All of the tables in Report 43-08 are organized by state jurisdiction, and each report only covers the reporting carrier’s totals for that state. All ILECs whose annual revenues exceed the

^{33/} AT&T had also requested forbearance from this report.

^{34/} AT&T had also requested forbearance from this report.

\$129-million annual revenue threshold must file Report 43-08.³⁵ Report 43-08 is filed on an operating company basis. The following tables are included in ARMIS Report 43-08:

- Table I.A “Outside Plant Statistics - Cable and Wire Facilities” contains various cable and wire facility statistics by state.
- Table I.B “Outside Plant Statistics - Other” contains various outside plant statistics.
- Table II “Switched Access Lines in Service” contains counts of central office switches and switched access line statistics by state.
- Table III “Switched Access Lines in Service by Customer” contains switched and special access line statistics by state.
- Table IV “Telephone Calls” contains telephone call statistics by state.

Form 492A, Price Cap Regulation Rate-of-Return Monitoring Report: Form 492A provides the Commission with the data necessary for it to monitor access tariffs and price-cap earnings, and to enforce rate-of-return prescriptions.

ARMIS Report 495A, Forecast Report: This report provides a forecast of regulated and nonregulated investment usage at the study area level. The three year forecast and resulting investment allocation provide support for the carrier’s cost support in its access tariffs. Data contained in this report are proprietary. Report 495A is filed on a study area, consolidated access tariff area, and operating company basis.

ARMIS Report 495B, Actual Usage Report: This report shows the prior year actual regulated and nonregulated investment and usage data for cost categories that are

³⁵ / Elective and mandatory price cap carriers below the \$129-million annual revenue threshold are not required to file Report 43-08. Non-price cap ILECs, elective price cap ILECs and mandatory price cap ILECs at or above the threshold must file.

allocated on the basis of a forward-looking investment allocator. Data for this report are proprietary, and are filed on a study area, consolidated access tariff area, and operating company basis.

B. Reporting is important, and provides useful insight into the telecommunications market.

State Advocates reiterate the arguments made in comments opposing AT&T's forbearance proceeding that the data and information contained in the ARMIS reports continue to be useful to the Commission, state regulators, and consumer advocates. The valuable data contained therein cannot be otherwise obtained by regulators except through the burdensome and sporadic process of issuing data and information requests in regulatory proceedings.

According to Qwest, ARMIS and 492A reporting is “counterproductive and provides little useful information on the state of telecommunications markets.”³⁶ Qwest also states that “the data is duplicative of data that is available to the Commission from other sources including Securities and Exchange Commission (‘SEC’) reports.”³⁷ However, as these comments demonstrate below, ARMIS data is a valuable source of information for regulators and consumer advocates. The standardized presentation of data allows meaningful comparison between companies, over different geographic areas, between different customer classes, and over time. Contrary to Qwest’s claim, similar data is not available in a systematic way. Reports made to the SEC, for example, are important for protecting investors and allow regulators and consumer advocates to monitor the finances and “big-picture” operational statistics of service providers, but are

³⁶ / Qwest Petition, at 1-2.

³⁷ / *Id.*, at 2.

not designed to ensure just and reasonable rates and quality service to telecommunications consumers.

ARMIS reports, by contrast, are designed for that purpose. Qwest states that ARMIS and 492A reports are not necessary for the Commission to perform its regulatory duties.³⁸ However, among the Commission’s most important duties are to ensure just and reasonable prices for telecommunications services. The reports that inform the Commission’s deliberations are precisely those reports that Qwest seeks to withhold. Giving up this essential reporting mechanism would seriously impair the ability of the Commission to fulfill its regulatory responsibilities.

C. The Washington experience shows that ARMIS reports continue to be valuable tools for state regulators.

ARMIS reports have been important tools in the effective regulation of Qwest in Washington. The Washington Utilities and Transportation Commission (“WUTC”) recently approved an alternative form of regulation (“AFOR”) for Qwest as permitted by state law.³⁹ By state statute, the WUTC may adopt an AFOR proposal for a company if it finds that the alternative is better suited than traditional regulatory requirements to meet the states telecommunications policy goals.⁴⁰ ARMIS reports were an integral resource in this case.

One of Qwest’s witnesses, David L. Teitzel, relied on the ARMIS 43-08 Report in his pre-filed testimony, to show how competition had eroded Qwest’s market share in

³⁸ / *Id.*, at footnote 16.

³⁹ *In the Matter of the Petition of Qwest Corporation to be Regulated Under an Alternative Form of Regulation Pursuant to RCW 80.36.135*, UT-061625, Order 06, Order Accepting Settlement and Approving Alternative Form of Regulation, on Conditions (July 24, 2007), Order 09 (September 20, 2007) (acknowledging Qwest’s September 14 acceptance of AFOR) .

⁴⁰ RCW 80.36.135 (AFOR statute); RCW 80.36.300 (state telecommunications policy goals).

Washington State.⁴¹ The impact of competition was a key element of the Company's application. Mr. Teitzel also used this report to perform a cross-jurisdiction comparison of competition in telecommunications markets.⁴²

An expert witness for Public Counsel, Dr. Robert Loube, also relied on ARMIS reports in his pre-filed testimony on whether Qwest's proposal met the AFOR public policy goals, whether the proposal was anti-competitive, and whether the proposed rates were reasonable.⁴³ Specifically, Dr. Loube used ARMIS reports to calculate the size of Qwest's Washington state market share⁴⁴ and its test-year reported return on capital from interstate special access services.⁴⁵

Granting Qwest forbearance from ARMIS reporting requirements will have detrimental impacts on the WUTC's ability to regulate Qwest in the future. Qwest's AFOR is not permanent. It terminates after four years. At that time, the WUTC will conduct a full evaluation of the plan's operation and determine whether it is in the public interest for it to continue.⁴⁶ As they did with the original proposal, ARMIS reports will again play an integral role in determining whether a continued AFOR is proper. Accordingly, the absence of these reports will hamper parties' and the WUTC's evaluation of Qwest's AFOR at the end of the four year term.

The ARMIS reports are also important for monitoring Qwest's performance

⁴¹ UT-061625, Exhibit No. 11C(DLT-1TC), Direct Testimony of David L. Teitzel, p. 3.

⁴² *Id.*, p. 40-42.

⁴³ UT-061625, Exhibit No.90C (RL-1TC) and Exhibit No 94 (RL-4), Direct Testimony of Robert Loube, Ph.D.

⁴⁴ UT-061625, Exhibit No 94 (RL-4), p. 3.

⁴⁵ UT-061625, Exhibit No. 90 (RL-1TC), pp. 58-60.

⁴⁶ UT-061625, Order 06, p. 1.

during the AFOR.⁴⁷ First, Qwest’s reporting requirements under the AFOR effectively incorporate ARMIS reports in certain respects. Qwest is required by the AFOR to file an annual report in accordance with Washington Administrative Code (WAC) 480-12–385.⁴⁸ WAC 480-120-385 indicates that “Class A companies that the FCC classified as Tier 1 telecommunications companies in Docket No. 86-182 must file annual report forms adopted by the FCC.” The forbearance request would appear to have some impact on this requirement, as the grant of Qwest’s forbearance request would presumably eliminate the FCC’s “annual report forms.”

Second, ARMIS reports are helpful in evaluating whether Qwest is meeting the conditions of the AFOR. The AFOR agreement requires Qwest to increase deployment of broadband to underserved areas.⁴⁹ The ARMIS 43-07 infrastructure report contains data on DSL deployment, as well as characteristics of network deployment (e.g., fiber fed loops). This information is reported on the state level for Qwest and is important for the Commission’s evaluation of broadband deployment. While the AFOR plan provides for some annual reporting by Qwest of its broadband deployment, the ARMIS 43-07 report would provide an added valuable source of information to supplement and verify those reports. Furthermore, the reporting required by Washington will not allow comparison from public data of DSL deployment in the Qwest Washington service area with other

⁴⁷ It is worth noting that the unavailability of ARMIS reporting was not an issue discussed in the Washington AFOR proceeding. Public Counsel is not aware of any testimony by Qwest during the pendency of the case that it intended to file the ARMIS forbearance petition. The forbearance petition was filed at the FCC on September 13, one day before Qwest’s September 14 acceptance of the terms of AFOR order, originally approved by the WUTC on July 24, 2007. Thus, in the evaluation of the reporting requirements and other provisions of the AFOR there was no reason for the Washington Commission or the parties to assume that ARMIS reports would not be available during the term of the AFOR.

⁴⁸ *Id.*, ¶46.

⁴⁹ *Id.*, p. 47.

Qwest states, or the operations of other ILECs, which ARMIS 43-07 enables. Thus, the ARMIS 43-07 report would continue to have value to the Commission to assist with the monitoring of this aspect of infrastructure deployment.

Third, ARMIS 43-05 and 43-06 provide important service quality information. While the Washington AFOR provides for detailed service quality reporting, the requirements are not co-extensive with ARMIS. ARMIS will continue to be extremely valuable. It provide additional information not reported in Washington such as “repeat trouble reports.” ARMIS will also enable the public to know how Qwest is performing in relation to other carriers and in relation to its own operations in other Qwest states. ARMIS provides public information, while much service quality reporting is made in Washington and other states under seal. ARMIS service quality reports provide a single public source of data to track intra, inter-company and interjurisdictional performance.

Finally, ARMIS reports are necessary for continued tracking of competitive conditions. For example, the 43-08 data provides information on line counts by customer class. This information, while only available for Qwest (and other ILECs), can generate a reasonably accurate picture of competitive conditions on a statewide basis, when combined with other publically available data (such as data from the aggregated Form 477 reports and Census counts of households). If this ARMIS data source is removed, the Washington Commission will have great difficulty tracking and analyzing competitive conditions in the state.

D. Other states’ experience shows the need for the ARMIS reports.

Although State Advocates have not conducted a nationwide survey of state regulators’ and state advocates’ use of ARMIS reports, a few other examples illustrate the

importance of the information in these reports to state regulatory proceedings. For Qwest specifically, in Colorado, Qwest is required to file an annual report, and other supplements as required, with the Colorado PUC in accordance with Rule 4 CCR 723-2-2006.⁵⁰ Included in Qwest's annual report filing are ARMIS reports 43-02 and 43-08, which the Colorado PUC relies upon to regulate and monitor Qwest.⁵¹

As a result of an agreement reached in a Colorado PUC consolidated docket, Qwest's administrative and reporting requirements to the Colorado PUC for service quality and other reporting obligations are awaiting revision.⁵² Due to the pending revision in Qwest's reporting requirements to the Colorado PUC, the status of ARMIS reports 43-02 and 43-08 in future filings of Qwest's Annual Reports to the Colorado PUC is in question. The conventional and practical view is that because these specific reports are publicly available through the FCC's website, there is not a need to redundantly provide them in an annual report. However, if the Commission grants Qwest's Petition, Qwest will no longer have to submit ARMIS reports 43-02 and 43-08 (and other reports), and state commissions, such as Colorado's, will not be able to rely upon any of this data.

^{50/} See link to the Colorado PUC's website regarding the filing of annual reports by telephone companies at: <http://www.dora.state.co.us/puc/applications/TelecomApplications/AnnualReportRequirements.htm#ILECs>

^{51/} These ARMIS reports are required pursuant to Colorado PUC Decision No. 88513, dated April 6, 1976.

^{52/} See Order Approving Settlement With Modifications, *In The Matter Of The Combined Application Of Qwest Corporation For Reclassification And Deregulation Of Certain Part 2 Products And Services And Deregulation Of Certain Part 3 Products And Service, and Staff Of The Colorado Public Utilities Commission's Petition For A Declaratory Order Concerning The Reclassification And Deregulation Of Telecommunications Services Under Parts 2 And 3, Title 40, Article 15 Of The Colorado Revised Statutes*, Consolidated Docket Nos. 04A-411T and 04D-440T, Decision No. C05-0802, Attachment A, p. 21, June 28, 2005. This Order as well as all Orders in the Consolidated Dockets can be accessed at the following Colorado PUC website link: <http://www.dora.state.co.us/puc/DocketsDecisions/LegacyDockets/LegacyDockets.htm#04A411T>

Thus, the divergent processes at the federal level (wherein Qwest is attempting to rid itself of ARMIS reports 43-02 and 43-08) and at the Colorado state level (where the Colorado PUC relies upon these reports as part of Qwest's annual report filings, but there is movement to simply reference to the FCC's website for such reports), could result in a scenario where the Colorado PUC eliminates the filing requirement for ARMIS reports 43-02 and 43-08 as part of Qwest's annual report, and instead, merely references the FCC's website where such reports, if the Commission were to grant Qwest's Petition, would no longer be found. Given the reliance of the Colorado PUC on ARMIS reports 43-02 and 43-08, this outcome would be contrary to the public interest.

Further, Qwest has made no secret of its strategy to commence rapid deployment of video services.⁵³ In light of Qwest's and other telephone companies' deployment of video services, NASUCA recently passed a resolution concerning the need to guard against telephone companies from using their legacy operations to "subsidize the deployment or operation of video services."⁵⁴ With NASUCA's recent resolution in mind, it would be imprudent for the Commission to grant Qwest's Petition and remove ARMIS monitoring reports that will assist state commissions, and others, in guarding against the subsidization for the deployment and operation of video services through higher telephone rates and charges.

^{53/} See e.g. statements of UBS analyst John Hodulik, who discussed his "expectations that Qwest will launch a broad video strategy in 2008." Andy Vuong, *Qwest shares drop on downgrade*, The Denver Post, October 10, 2007. Linked at: http://www.denverpost.com/emailed/ci_7138400 (Among other things, the article reports: "Hodulik ... said the company should launch its own Internet Protocol-TV offering on a broad scale by running fiber-to-the-neighborhood in 2008." The article further reports that Hodulik "estimated the strategy could cost Qwest \$1.8 billion over three years to upgrade its existing infrastructure and reach six million homes, roughly half the homes in its local phone-service territory.")

^{54/} See link to this resolution at NASUCA's website at: <http://www.nasuca.org/Resolutions/video%20franchise%20resolution%20ADOPTED%206-12-07.doc>

One example outside Qwest territory is found in New Hampshire. In an ongoing proceeding before the New Hampshire Public Utilities Commission (“PUC”), service quality data that Verizon New Hampshire submits to state regulators is afforded proprietary treatment.⁵⁵ In stark contrast, the New Hampshire PUC and the general public can consider and review ARMIS-based service quality data and analyses on a public basis, not only for Verizon’s operations in New Hampshire, but also, for the vast majority of local lines throughout the country.

As noted above, ILECs file ARMIS data on a regular basis with the FCC, which enables analyses of trends over time. Information is essential to a well-functioning market as well as in a market under transition so that consumers and competitors can make informed decisions, and so that regulators can assess if and where regulatory safeguards are necessary to yield basic local service offered at just and reasonable rates and acceptable levels of service quality. Many consumers throughout the country are experiencing deteriorating service quality for their basic local service, which can be detected, in part, by analyzing ARMIS data about service quality and consumer satisfaction, provided in ARMIS Reports 43-05 and 43-06, respectively.

E. ARMIS reporting is an invaluable tool for regulators to examine basic local telephone service.

The service quality and infrastructure reports remain vital in an environment where the ILECs remain dominant in their local markets, especially for residential

⁵⁵ / See e.g. *Local Exchange Carriers Quality of Service Reporting*, New Hampshire Public Utilities Commission DT 02-105, Order Nisi (sic) Regarding Quality of Service Reporting, *Order No. 24,156*, April 11, 2003; *Verizon New England Inc., Bell Atlantic Communications Inc., NYNEX Long Distance Company, Verizon Select Services Inc. and FairPoint Communications, Inc. Joint Petition for Authority to Transfer Assets and Franchise to FairPoint Communications, Inc.*, Prefiled Direct Testimony of Susan M. Baldwin on behalf of New Hampshire Office of Consumer Advocate, New Hampshire Public Utilities Commission Docket No. DT 07-011, July 31, 2007, at Section VI.

service.⁵⁶ For example, Qwest has shown declining performance in two key quality of service metrics relating to the timeliness of its repair of residential services since 2002. Both the “Initial Out of Service Interval” and the “Repeat Out of Service Interval” have increased substantially since 2002, which means that households have been waiting longer to have their dial tone problems addressed by Qwest than they did five years ago. For initial out of service repairs, the time required to fix a problem for residential customers increased from 13.6 hours to 18.3 hours between 2002 and 2006.⁵⁷ During the same four-year span, the time required to remedy repeat out of service problems increased from 15.4 hours to 21.1 hours.⁵⁸ The ability to analyze quality of service metrics such as these, on a company-wide basis, on a statewide basis, and a time series basis is essential to distinguish between ILEC rhetoric about their operations and the level of service that they actually provide.⁵⁹ State Advocates urge the Commission to reject Qwest’s attempt to eliminate regulators’ and consumer advocates’ access to standardized, regularly filed data that is essential to identifying and quantifying operational problems.

The lack of competition for basic local residential service combined with ILECs’ pursuit of high-revenue triple-play customers (i.e., those who subscribe to local, long distance and broadband) makes service quality reporting essential. Rate Counsel has

⁵⁶ / See NASUCA AT&T Initial Comments, at 2.

⁵⁷ / FCC Report 43-05, ARMIS Service Quality Report, Table II, Installation and Repair Intervals Local Service, Row 149, accessed October 15, 2007. The analysis encompasses all Qwest territories.

⁵⁸ / FCC Report 43-05, ARMIS Service Quality Report, Table II, Installation and Repair Intervals Local Service, Row 149, accessed October 15, 2007. The analysis encompasses all Qwest territories. See Figure IB and Figure 2B, below.

⁵⁹ / See Rate Counsel AT&T Initial Comments for examples of metrics reported through the ARMIS system showing Verizon’s deteriorating service quality in New Jersey.

previously submitted to the Commission a comprehensive analysis of the cable-telecommunications duopoly and the implications of this duopoly for consumers. This paper is attached to these comments as Appendix 1.⁶⁰ In preparing this paper, Rate Counsel relied on several ARMIS reports, especially in Section 3.10 of the attached paper, which addresses Verizon's service quality, and in that context, among other things, compares service quality levels in the AT&T-served state of Illinois with the levels of those in the Verizon-served state of New Jersey. The former state has a long history, which continues to this day, of financial accountability by AT&T to consumers for its service quality. By contrast, there is no financial accountability for Verizon's service in New Jersey.

ILECs' performance assurance plans ("PAPs"), which monitor the service quality of ILECs' wholesale operations, differ in a significant way from ILECs' retail service quality plans, because, when they fail to meet PAP standards, they must pay substantial penalties to competitive local exchange carriers ("CLECs"). In contrast, except where state regulators have affirmatively established systems for financial penalties, ILECs need not compensate their retail customers for poor service quality. As a result, ILECs' incentives are to allocate resources to CLECs in a timely manner before addressing poor retail service quality.

ILECs possess the economic incentive and the opportunity to offer higher quality of service to customers of new, unregulated products as compared to customers of regulated and/or noncompetitive products. Specifically, corporate management has the

^{60/} "The Cable-Telco Duopoly's Deployment of New Jersey's Information Infrastructure: Establishing Accountability," Susan M. Baldwin, Sarah M. Bosley and Timothy E. Howington, Prepared for the Public Advocate of New Jersey, January 19, 2007.

incentive to allocate resources to the triple and quadruple play customers rather than to customers of basic telephone service.

Sufficient competition in the basic local exchange market does not exist to yield adequate service quality. Furthermore, as ILECs divert corporate attention and field personnel to their video business, service quality will likely deteriorate further.⁶¹ Therefore, safeguards are essential to protect consumers from the improper subsidization of new services with resources that should be assigned to basic regulated ones. Qwest's Petition, if granted, would severely undermine the ability of state and federal regulators to examine and to compare service quality among jurisdictions within an individual ILEC's footprint, across ILECs' footprints, and from year to year.

ARMIS Report 43-07 allows regulators to monitor the evolving mix of technologies used to provide telephone service. For example, Table II "Transmission Facilities" shows the number of kilometers of plant by type of plant (copper, fiber, or other), as well as the number of DS1s in service, and the number of subscriber lines capable of ISDN service. These data, and others like them reported in Form 43-07, inform regulators.

Rate Counsel used 43-08 Table II "Switched Access Lines in Service" to find comparable data for Verizon New Jersey and Embarq Corporation in New Jersey, which

⁶¹ / Verizon's planned sale of its landline business in three New England states provide further evidence of the vulnerability of non-FiOS customers to Verizon's corporate focus on new lines of business. In Maine, New Hampshire, and Vermont, FairPoint Communications Inc. (the company that intends to purchase Verizon's operations) considers itself a "rural, small-urban focused company" and considers northern New England customers its "bread and butter customers." "Verizon to sell lines in N.H., Vt., and Maine," Carolyn Y. Johnson, *Boston Globe*, C1, January 17, 2007, quoting Walt Leach, executive vice president of corporate development for FairPoint. By contrast, in New Jersey, rural communities' needs will likely take the back seat to Verizon's FiOS focus. Furthermore, Verizon's efforts to obtain further deregulation of its noncompetitive services will exacerbate this issue further. See e.g. *In the Matter of the Board's Investigation Regarding the Reclassification of Competitive Local Exchange Carrier (CLEC) Services as Competitive*, New Jersey Board of Public Utilities Docket No. TX06120841, Joint Direct Testimony of William E. Taylor and Paul B. Vasington, on behalf of Verizon, January 9, 2007.

data was unavailable from any other source. These data were particularly important for showing the relative size of the companies' subscriber bases. In addition, Rate Counsel used Report 43-08, Table III "Access Lines in Service by Customer," together with BOC annual reports, to demonstrate that traditional telephone companies are rapidly shifting focus and resources away from traditional telephone services.

F. State regulators continue to seek ways to establish incentives for ILECs to improve deteriorating service quality, which undermines Qwest's Petition.

Contrary to Qwest's assertion that "ILEC service quality did not decline with the introduction of price cap regulation,"⁶² state commissions continue to adopt service quality penalties and integrate service quality factors into price cap and alternative regulation plans for carriers precisely because service quality problems abound. Specific to Qwest, at least three Qwest states continue to have service quality plans in place with metrics and penalties for non-performance as part of an alternative regulatory framework: Arizona, Colorado, and New Mexico.⁶³

Elsewhere, for example, in 2005, the Vermont Public Service Board ("PSB") adopted a new alternative form of regulation for Verizon Vermont in which it retained its

⁶² / Qwest Petition, at 4.

⁶³ *In the Matter of Qwest Corporation's Filing of Renewed Price Regulation Plan*, Arizona Corporation Commission, Docket Nos. T-01051B-03-0454; T-00000D-00-0672, Decision No. 68604, p. 9 (Settlement Agreement, p. 11); *In the Matter of the Combined Application of Qwest Corporation For Reclassification And Deregulation of Certain Part 2 Products and Services and Deregulation of Certain Part 3 Products and Services*, Colorado Public Utilities Commission, Docket Nos 04A-411T, 04D-440T, Order Approving Settlement and Modifications (June 6, 2005), pp. 50-51; *In the Matter of the Development of An Alternative Form of Regulation Plan for Qwest Corporation*, New Mexico Public Regulation Commission, Case No. 05-00466-UT, Final Order on Pricing and Quality of Service (November 2006), pp. 43-56, and Appendix B.

Service Quality Plan.⁶⁴ Verizon Vermont had proposed to eliminate the plan, arguing that there was a sufficient degree of competition in the market to justify such a decision.

The Vermont PSB found that:

Existing and future competition for local exchange service and other telecommunications services alone will not substitute for a regulated approach to retail service quality. ... The existence of competitive alternatives alone will not necessarily substitute for service quality standards. Moreover, Verizon's performance over the last five years belies its assertion that competition is sufficient to protect service quality. Competition has clearly increased during this period, yet Verizon's service quality performance deteriorated. Unless we accept the premise that consumers must accept lesser service quality in a competitive market, which we do not, we can only explain this dichotomy by inferring that competition does not provide adequate restraint. ... As the Department points out, most of the New England states have imposed a set of service quality standards that include predetermined penalties or customer credits for service quality failures. The Service Quality Plan that we adopt is consistent with these other programs. We conclude that Vermont's status as a relatively small part of Verizon's territory requires a service quality plan with significant penalty dollars attached in order to achieve its purpose of maintaining adequate service quality. Unless the plan contains a strong incentive for Verizon to keep its service quality high, there is too much risk that Verizon will not take steps to preserve service quality and treat the payments as a cost of doing business.⁶⁵

Similarly, despite granting pricing flexibility for many of Verizon Maine's retail services, in 2001 the Maine PUC retained Verizon Maine's Service Quality Index ("SQI") and, in fact, increased the total number of indices and the amount of the potential

^{64/} *Investigation into a Successor Incentive Regulation Plan for Verizon New England Inc., d/b/a Verizon Vermont*, State of Vermont Public Service Board Docket No. 6959, *Order*, September 26, 2005.

^{65/} *Id.*, at 130-131.

penalty faced by the company.⁶⁶ The PUC found that precisely because Verizon Maine had gained a reduction in regulation, the SQI should be retained.⁶⁷

The Massachusetts Department of Telecommunications and Energy (“DTE”) adopted a service quality rebate, or credit, in 2003.⁶⁸ In adopting the plan, the Massachusetts DTE stated:

Although Verizon is no longer subject to price cap regulation, competition for some customers may introduce a financial incentive for the regulated entity to reduce costs by reducing service quality to other customers, so we conclude that there should continue to be some form of protection against a reduction in service quality.⁶⁹

This is precisely the situation for many price cap LECs throughout the country. Price cap LECs have the incentive to reduce the costs required to serve the basic local exchange customer and instead focus service quality efforts in competitive exchanges or in bundled services (i.e., the high margin “triple play” customer). Indeed, in Verizon Communications’ second quarter 2006 Investor Quarterly, Ivan Seidenberg, Verizon’s chairman and CEO was quoted as stating: “Verizon Telecom is tightly controlling costs in traditional businesses as we make the fiber network investments to accelerate growth and market expansion.”⁷⁰ Despite the regulatory changes undertaken at the federal and

⁶⁶ / *Maine Public Utilities Commission Investigation into Bell Atlantic-Maine’s Alternative Form of Regulation*, State of Maine Public Utilities Commission Docket No. 99-851, *Order (Part 1)*, May 9, 2001.

⁶⁷ / *Id.*, *Order (Part 2)*, June 25, 2001, at 39.

⁶⁸ / *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts’ intrastate retail telecommunications services in the Commonwealth of Massachusetts*, Massachusetts Department of Telecommunications and Energy Docket No. DTE 01-31-Phase II, *Order*, April 11, 2003, at 96, 100-101.

⁶⁹ / *Id.*, at 99.

⁷⁰ / Verizon Communications, *Investor Quarterly: VZ Second Quarter 2006*, August 1, 2006, at 2.

state level, regulators have continued to view service quality as an integral part of the regulatory regime.

Numerous state public utility commissions are investigating ILECs' deteriorating service quality. For example, state regulators in Arizona, Indiana, Maryland, and Virginia are investigating, among other things, delays in dial tone installation and lengthy repair of basic local service.⁷¹

The Commission should unequivocally reject Qwest's characterization of a "competitive telecommunications environment."⁷² If such competition existed, one would expect basic local service quality to increase, or rates to decline, or both. Qwest provides no empirical evidence of either. Instead, there is ample information that service quality for basic local service has been declining, and that intrastate regulated operations are improperly subsidizing interstate services and unregulated operations.

ARMIS reports are essential to monitor and to address ILECs' service quality deterioration and their revenue and cost assignments and allocations. ARMIS data allow analysts and regulators to identify specific service quality deficiencies, and to hold BOCs accountable.⁷³ It would be entirely adverse to the public interest to grant Qwest's Petition.

⁷¹ / See *Investigation into Qwest Service Quality*, Arizona Corporation Commission Docket No. T-01051B-07-0489; *In The Matter Of The Commission's Investigation into Verizon Maryland Inc.'s Service Performance And Service Quality Standards*, Maryland Public Service Commission Case No. 9114; Verizon State Corporation Commission Cases PUC-2007-00040; PUC-2007-00041; *Notice of Review by The Commission, Pursuant To Indiana Code § 8-1-2-58 Of Verizon's Compliance With The Terms Of Its Alternative Regulatory Plan Approved By The Commission In Cause No. 42551*, Indiana Utility Regulatory Commission Docket 43279.

⁷² / Qwest Petition, at 1.

⁷³ / *Id.*

G. ILECs continue to dominate the market.

State Advocates urge the Commission to reject Qwest’s assertion in support of its Petition that there has been “phenomenal growth in local competition.”⁷⁴ Although intermodal alternatives are available, they do not provide economic substitutes for basic local service. Instead, in the wake of substantial industry consolidation and the FCC’s *UNE TRRO* decision,⁷⁵ there are fewer prospects than ever for affordable alternatives to basic local telephone service. Therefore the connection is as strong, if not stronger, than when the FCC adopted the rules for ARMIS reporting.

The Commission’s data demonstrate that despite the growth in wireless, cable offerings, and VoIP providers, the ILECs nationwide have an 83% share of the retail market.⁷⁶ It is important to note, however, that ILECs dominate the vast majority of the local market not only *directly* – through their own retail services – but also *indirectly* by leasing wholesale facilities to their competitors (i.e., the non-facilities-based competition that occurs through resale, unbundled network element platform (“UNE-P”), UNE loop, and most recently, the wholesale products that have replaced UNE-P, such as Verizon’s “Wholesale Advantage” product). As Table 1 shows, ILECs still own or control 94% of the end-user switched access lines nationally as of June 30, 2006.⁷⁷

⁷⁴ / *Id.*, at 6.

⁷⁵ / *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC WC Docket No. 04-313; CC Docket No. 01-338, *Order on Remand*, rel. February 4, 2005 (“TRRO”).

⁷⁶ / Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of June 30, 2006*, (January 2007) (“Competition Report”), at Table 1. See also *id.*, at Tables 10 and 11.

⁷⁷ / *Id.*, at Table 10 and 11.

Table 1⁷⁸

Incumbent LECs own or control 94% of the end-user switched access lines as of June 30, 2006	
<i>Total incumbent lines</i>	142,249,668
<i>Total CLEC lines</i>	29,782,241
<i>Total end-user switched access lines</i>	172,031,909
<i>CLEC share of end-user switched access lines</i>	17%
<i>CLEC resold lines</i>	6,549,343
<i>CLEC UNE lines</i>	12,545,854
<i>CLEC-owned lines</i>	10,687,073
<i>Total CLEC lines</i>	29,782,270
<i>CLEC-owned lines as a percent of all lines</i>	6%
<i>Percent of all lines owned or controlled by incumbent</i>	94%

Nationwide, UNE-P provision reported by ILECs declined 51% from a peak in June 2004 to June 2006.⁷⁹ The decline in competition based on UNE-P may lead to a leveling off, or reversal, of the portion of the trend associated with customer migration from incumbents to other carriers for the provision of telephone lines, particularly for the residential local market. The dramatic decline in UNE-P lines contrasts sharply with UNE-P's former importance as a mode of entry for competitive suppliers.⁸⁰ Furthermore,

⁷⁸ / *Id.*

⁷⁹ / *Id.*, at Table 4. Specifically, UNE-P declined from approximately 17.1 million lines in June of 2004 to 8.4 million lines in June of 2006 nationwide. *Id.* ILECs reported a 22% decline in the number of UNE-P lines they provided to unaffiliated carriers from January to June 2006. *Id.*, at 2.

⁸⁰ / As legacy MCI explained: "Once it became likely that UNE-P would no longer be available, the limited UNE-L buildout strategy no longer made sense. This is true even in those wire centers where MCI has a relatively high concentration of existing UNE-P customers, because the potential profits from any UNE-L plans or proposals reviewed by MCI were subject to great uncertainty and depended upon certain assumptions, including reductions in the nonrecurring charge for hot cuts, that were not realized. Therefore, MCI decided not to pursue this UNE-L strategy anymore." *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, FCC WC Docket No. 05-75, Application for Transfer of Control, March 11, 2005, Appendix 1: Public Interest Statement, Declaration of Wayne Huyard (Verizon/MCI), at para. 15.

the position of CLECs in negotiating access to UNE-P facilities is now seriously weakened due to the expiration of regulated UNE-P access in March 2006, pursuant to the *TRRO*.

The declining prospect for robust wireline competition and the impact of the expiration of access to UNE-P are evidenced by the decision of MCI and AT&T (two of the largest CLECs) to throw in the towel and merge with BOCs. During the FCC's review of the Verizon/MCI merger, the applicants repeatedly suggested that MCI's business was declining and that MCI was not a competitor for Verizon's mass-market voice services.⁸¹ Yet AT&T and MCI were the largest CLECs competing with Verizon for mass market customers, which requires the question: if MCI and AT&T can't compete, who can?

Finally, the FCC's Industry Analysis and Technology Division estimates that a full 56% of the facilities-based lines served by CLECs are provided over coaxial cable connections (which would represent approximately 3 percent of all lines).⁸² This also demonstrates that the BOC estimates of increasing cable competition is already captured in the Local Competition Report and Table 1 above, and that cable competition is still fairly minimal in terms of a percentage of all telephone lines.

Clearly, competitive alternatives for affordable basic local service are de minimis. Based on all this, the Commission should reject Qwest's characterization of "phenomenal growth in local competition."⁸³ State Advocates urge the Commission to reject Qwest's

⁸¹ / Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control, FCC WC Docket No. 05-75, Application for Transfer of Control, March 11, 2005, Appendix 1: Public Interest Statement, at 49 and Declaration of Robert W. Crandall and Hal J. Singer, at para. 33.

⁸²/ Competition Report, at 2.

⁸³ / Qwest Petition, at 6.

characterization of a competitive local market. As Commissioners Copps and Adelstein recently stated:

Also troublesome is the fact that the Order finds that “potential” competition is sufficient to protect consumers. In places where substantial competition does not demonstrably exist, it seems that forbearance actually can make the problem worse as “potential” competitors will have even less ability to successfully compete to provide a check on any anti-competitive behavior.⁸⁴

H. Although relatively few ILECs may submit the reports, these large ILECs serve the vast majority of the nation’s consumers.

Although ARMIS reporting is required of only relatively few ILECs,⁸⁵ these ILECs are responsible for the telephone service of a vast majority of Americans. For example, the fact that three Bells now serve the nation when we once had seven (and the fact that the previously independent companies of Southern New England Telephone Company and GTE were acquired by BOCs) is the direct consequence of Bells’ successful efforts to acquire their potential competitors and to enlarge their home-region footprints. For example, the BOCs alone provide over 60-million switched access lines, or over 90% of the total switched access lines provided by ILECs nationally.⁸⁶ Few, if any, other providers offer affordable basic service to the residential market, and therefore the fact that they are not required to submit ARMIS data is not of the same consequence.

⁸⁴ / See footnote 4, *supra*.

⁸⁵ / Qwest Petition, at 1.

⁸⁶ / The three BOCs (Qwest, AT&T and Verizon) serve 43,187,308 business lines, including single line, multiline, and payphones. The three RBOCs serve 74,220,993 residential lines. FCC ARMIS Report 43-08. Table III. Access Lines in Service by Customer. Accessed 8/17/2007. Data as of year-end 2006. This data is not available in the local competition report which uses Form 477 data. In the local competition report, data is aggregated over all ILECs and reported on a state basis, as well as providing just residential and business lines, but not lifeline, primary, non-primary, special access lines, for example.

I. Qwest has failed to demonstrate that the burden of filing ARMIS report outweighs the benefit of standardized, public, nationwide data about BOC operations.

Qwest contends that the ARMIS reports are “unnecessarily burdensome.”⁸⁷

However, Qwest fails to show that the purported burden of submitting ARMIS and 492A reports to the Commission outweighs the significant benefit to regulators and consumers of having standardized public information. There is substantial value of having nationwide publicly available service quality data for basic telephone service, which ARMIS Report 43-05 provides, particularly at a time when ILECs’ are ignoring POTS customers and instead are pursuing the higher-revenue “triple play” customers.⁸⁸ These comments demonstrate the value of ARMIS Report 43-05 in more detail below.

NASUCA and its members have also relied previously on the summary financial data provided in ARMIS Report 43-01. For example, in the Commission’s Separations proceeding (CC Docket 80-286),⁸⁹ in analyzing the disproportionate assignment and allocation of costs to basic local service, NASUCA also analyzed the trend in revenues assigned to regulated and to unregulated services. Among other things, an affidavit submitted in support of NASUCA’s and Rate Counsel’s comments stated:

As Table 4 shows, from 2000 to 2005, the Bell total for regulated revenues decreased by 12 percent and the Bell total for nonregulated revenues increased by 5 percent. As Table 3 and Figure 2 show, during the same time period, the number of DSL subscribers has grown by over 800 percent. At a minimum, the Commission should request detailed information about the products and services that the Bells include in the

⁸⁷ / *Id.*, at 2.

⁸⁸ / See, e.g., Appendix 1 at 48-54,

⁸⁹ / *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *Order and Further Notice of Proposed Rulemaking*, released May 16, 2006 (“Separations FNPRM”).

unregulated category, including, among others, their accounting treatment of new fiber-based offerings.⁹⁰

NASUCA's analysis in the Commission's Separations proceeding also relied on the data provided in ARMIS Reports 43-03 (this report separates carrier's costs between regulated and nonregulated activities) and 43-04 (this report provides information regarding amounts subject to separations between intrastate and interstate jurisdictions)⁹¹ to illustrate why the Commission's separations rules are outdated and inadequately enforced. Among other things, the analysis stated:

The present system is grossly unfair because DSL gets a "free ride" on the common plant. For example, Table 5, below, which is based on ARMIS Report 43-04, shows that the Bells' local loop investment of more than one hundred billion dollars supports an increasing percentage of digital subscriber lines. Under the present, flawed system, Bells assign and allocate the vast majority of cable and wire investment to their regulated operations.⁹²

It is not surprising that Qwest would seek to limit regulators' access to information about Qwest's operations. Access to the ILECs' reporting of revenues, investment, separation of costs and revenues between regulated and unregulated operations, and separation of costs and revenues between intrastate and interstate operations is essential. These data enable consumer advocates and state regulators to assess whether intrastate operations are improperly subsidizing interstate operations (for example, to compare intrastate and interstate private line demand and investment) and to assess whether regulated operations are improperly subsidizing unregulated operations

⁹⁰ / See Appendix 2, at para. 77, footnote omitted, citing ARMIS Reports 43-01 and 43-03.

⁹¹ / Ms. Baldwin also concluded that "Bells are deriving an increasing percentage of their total revenues from interstate services, in large part because of increasing demand for interstate private lines and special access circuits. This evolving consumer demand underscores the importance of the Commission clarifying that states may and indeed should ensure that carriers directly assign private lines and special access circuits." *Id.*, at para. 22.

⁹² / *Id.*, para. 112.

(for example, to compare costs and revenues assigned to ILECs' digital subscriber line ("DSL") services.) Granting Qwest's Petition is contrary to the public interest because it would unnecessarily deny access by participants in the Commission's regulatory proceedings and state regulatory proceedings to data contained in ARMIS reports that informs their policy analyses and recommendations.

J. Price cap regulation does not render reporting irrelevant.

Qwest states that it "has not been subject to cost-based rate-of-return regulation in establishing prices for its interstate services since 1991."⁹³ Qwest further states that "it is clear that neither Qwest's ARMIS reports, nor its 492A report are needed for their primary purpose - to analyze Qwest's costs and rate-of-return so that the Commission could ensure that Qwest's rates were just and reasonable."⁹⁴ NASUCA's statement in its comments opposing AT&T's request for forbearance is also applicable in this proceeding:

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. 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. 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.⁹⁵

⁹³ / Qwest Petition, at 4.

⁹⁴ / *Id.*, at 5.

⁹⁵ / NASUCA-AT&T Initial, at 5.

The affidavit included as Appendix 2 explains why the FCC’s price cap system does not eliminate the need for regulatory reporting.⁹⁶ Furthermore, as Rate Counsel demonstrated in the Commission’s “Special Access” proceeding, even under price caps, ILECs are able to extract monopoly rents from consumers and competitors that rely on special access service.⁹⁷ Contrary to Qwest’s contention, the need for and importance of the reports do not depend on the existence of rate-of-return regulation.⁹⁸

Qwest contends that the Commission “established the infrastructure and quality of service reports, ARMIS 43-05 through 43-08, because it was concerned that LECs transitioning from rate-of-return regulation might have an incentive to increase profits by allowing their service to deteriorate.”⁹⁹ As these comments demonstrate, however, contrary to Qwest’s unsubstantiated assertion that “[h]istory has shown that this concern was unfounded and ILEC service quality did not decline with the introduction of price cap regulation,”¹⁰⁰ service quality for basic local telephone service *has* been deteriorating. Qwest’s argument is unpersuasive because price cap regulation has not eliminated the profit-motive, and, indeed, the ILECs’ pursuit of video and DSL services has created a compelling profit motive to focus resources on unregulated ventures to the

⁹⁶ / See Appendix 2, Separations Affidavit, paragraphs 43 through 53. See also Appendix 1, at Section 2.3.

⁹⁷ / *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, FCC WC Docket No.05-25; RM-10593, Comments of the New Jersey Division of the Ratepayer Advocate, June 13, 2005; Reply Comments of the New Jersey Division of the Ratepayer Advocate, July 29, 2005; and *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, FCC WC Docket No.05-25; RM-10593, Comments of the New Jersey Division of Rate Counsel, August 8, 2007, Reply Comments of the New Jersey Division of Rate Counsel, August 15, 2007.

⁹⁸ / Qwest Petition, at 2.

⁹⁹ / *Id.*, at 4, cite omitted.

¹⁰⁰ / *Id.*

detriment of basic service. In other words, the concerns of the Commission are as relevant today as they were when the Commission originally adopted the reports.

K. Form 477, although a valuable report, does not substitute for ARMIS reports.

In its petition Qwest states, “If the Commission determines that some portion of the information contained in the current ARMIS and 492A reports is necessary for the Commission to perform its regulatory duties, it should collect this information from all carriers in an expanded Form 477, as AT&T suggested in its petition for ARMIS relief.”¹⁰¹ State Advocates reiterate their position that Form 477 is not an adequate substitute for ARMIS reporting.

NASUCA explained in comments opposing AT&T’s request for forbearance that:

[T]he 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.¹⁰²

Actual Form 477s are considered confidential, and are not made available for public inspection.¹⁰³ Although data from Form 477s are aggregated and provided in summary form via the *Local Telephone Competition* and *High Speed Services for Internet Access* reports, the underlying data for each company are not made available for analysis.

¹⁰¹ / *Id.*, at 6-7.

¹⁰² / NASUCA-AT&T Initial, at 7.

¹⁰³ / See *In the Matter of Local Competition and Broadband Reporting*, Report and Order, 15 FCC Red 7717 (2000) at paras. 86-96.

Qwest's proposal, similar to AT&T's,¹⁰⁴ that the Commission should modify Form 477 to collect infrastructure data from "all carriers" rather than use ARMIS reports, suffers from the flaw that Form 477 filings are proprietary, and unavailable in disaggregated form to regulators, consumer advocates, and the general public except through discovery processes in state regulatory proceedings, where they are typically afforded proprietary treatment. In contrast, ARMIS reporting is public and readily available.

The Commission should not suspend ARMIS reporting in favor of a few changes to Form 477. In light of the ILECs' bottleneck control of essential facilities and in light of their dominance in local markets (particularly in the mass market), it is essential to ensure that state and federal regulation is informed by ARMIS information. NASUCA members, including Public Counsel and Rate Counsel, rely on ARMIS data in order to complete analyses of ILECs' operations and to assess the need for modifications to the regulatory framework to protect consumers.¹⁰⁵

III. QWEST HAS FAILED TO DEMONSTRATE THAT ITS PETITION MEETS THE ACT'S THREE-PART TEST.

Federal and state regulators are responsible for protecting ratepayers from anticompetitive behavior by ILECs. ILECs continue to dominate the local markets that they have traditionally served, and are rapidly re-gaining control of the long-distance market as well as the emerging broadband market. ILECs continue to exert control over bottleneck local facilities. Regulatory accountability continues to be necessary to protect consumers and competitors from incumbent local carriers' anticompetitive behavior.

¹⁰⁴ / See AT&T Petition, at 7.

¹⁰⁵ / See e.g., Appendix 1 and Appendix 2.

Section 10 of the Act includes a three-part test that governs whether the Commission shall forbear from applying any regulation or provision of its act. In broad terms, the three-part test requires the Commission to address the following:

1. Is the regulation necessary to ensure that the rates for the relevant services are just and reasonable?
2. Is the enforcement of the regulation necessary to protect consumers?
3. Would forbearance from applying the regulation be consistent with the public interest?¹⁰⁶

As explained recently by the Commission:

The Commission is obligated to forbear under section 10(a) only if all three elements of the forbearance criteria are satisfied. Thus, the Commission “could properly deny a petition for forbearance if it finds that any one of the three prongs is unsatisfied.” As discussed below, we find that the Core Forbearance Petition does not meet certain of the statutory forbearance criteria and, accordingly, we deny the petition.¹⁰⁷

Qwest has failed to demonstrate that its Petition satisfies this three-part test. Indeed, as these comments demonstrate in detail, forbearance from applying the ARMIS reporting requirements would be inconsistent with the public interest, meaning that Qwest definitively does not meet this prong of the forbearance test.

Furthermore, Section 10 is constitutionally infirm in that it violates the doctrines of separation of powers and equal protection, and the 10th and 11th amendment to the Constitution. Rate Counsel renews the arguments and incorporates those arguments

¹⁰⁶ / 47 U.S.C. § 160.

¹⁰⁷ / *In the Matter of Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, WC Docket No. 06-100, Memorandum Opinion and Order, July 26, 2007, notes omitted. See also *id.*, at note 45, which states: “See *Cellular Telecommunications & Internet Assoc. v. Federal Communications Commission*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three prongs of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong).”

hereto with respect to the constitutional infirmities associated with the Commission's forbearance authority.¹⁰⁸

IV. CONCLUSION

For the foregoing reasons, the Commission should deny Qwest's Petition for forbearance. The Petition is flawed procedurally and also fails on its merits. Qwest has not sustained its burden of proving that the Petition is consistent with the public interest.

Respectfully submitted,

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^{108/} See Rate Counsel's Ex Parte filing dated December 7, 2004 in the UNE Remand proceeding (CC Docket No. 01-338 and WC Docket No. 04-313).

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