

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Qwest Corporation for Forbearance)	WC Docket No. 07-204
From Enforcement of the Commission’s)	
ARMIS and 492A Reporting Requirements)	
Pursuant to 47 U.S.C. § 160(c))	
)	
Petition of Verizon for Forbearance Under)	WC Docket No. 07-273
47 U.S.C. § 160(c) From Enforcement of)	
Certain of the Commission’s Recordkeeping)	
And Reporting Requirements)	

**PETITION FOR PARTIAL RECONSIDERATION OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

Pursuant to 47 C.F.R. § 1.106, the National Cable & Telecommunications Association (“NCTA”) hereby requests reconsideration on a narrow issue in the Commission’s decision to grant the forbearance petitions filed by Qwest and Verizon in the above-referenced dockets and to extend similar relief to AT&T.¹ Although the Commission appropriately conditioned the relief granted on the three carriers continuing to file with the Commission the data necessary to calculate pole attachment rates, its decision not to apply that condition with respect to states that regulate pole attachment rates overlooked important federal policy issues and assumed facts not in the record. Accordingly, the Commission should reconsider that portion of the *Order* and require the continued filing of publicly available pole attachment data for all states and the District of Columbia.

¹ *Petition of Qwest Corp. for Forbearance from Enforcement of the Commission’s ARMIS and 492A Reporting Requirements; Petition of Verizon for Forbearance from Enforcement of Certain of the Commission’s Recordkeeping and Reporting Requirements*, WC Docket Nos. 07-204, 07-273, Memorandum Opinion and Order, FCC 08-271 (rel. Dec. 12, 2008) (*Order*).

INTRODUCTION AND SUMMARY

For the past two decades, the Commission has required large incumbent LECs to file certain financial and operational data using the Automated Reporting Management Information System (ARMIS). Among the filings that ILECs must make on an annual basis is Table III of the ARMIS 43-01 report, which contains all the data needed to calculate pole attachment rates under the rate formulas established by Congress in Section 224 of the Communications Act.²

In the petitions filed in the above-referenced dockets, Qwest and Verizon asked the Commission to forbear from a variety of ARMIS reporting obligations, including all of the ARMIS 43-01 report. Both ILECs argued that ARMIS data no longer is needed because they face extensive competition in the marketplace and because they no longer are subject to cost-based rate-of-return regulation.³

NCTA did not oppose either petition, but it did request that the Commission condition any relief from ARMIS filing obligations on a requirement that each carrier continue making publicly available any data needed to calculate pole attachment rates.⁴ NCTA first explained that competition in the marketplace for retail telecommunications services does not mean that there is competition in the market for pole attachments. There is no competition (and no prospect of such competition) that constrains the ability of pole owners to impose unreasonable rates, terms, and conditions for pole attachments.

² 47 U.S.C. § 224.

³ Petition for Forbearance of Qwest Corporation at 10, WC Docket No. 07-204 (filed Sept. 13, 2007); Petition of Verizon for Forbearance at 13-15, WC Docket No. 07-273 (filed Nov. 26, 2007).

⁴ See Letter from Daniel L. Brenner, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-204 (filed Sept. 25, 2008); Letter from Daniel L. Brenner, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-273 (filed Nov. 19, 2008).

NCTA also explained that the Commission's formulas for calculating cable and telecommunications pole attachment rates require the use of the data in ARMIS 43-01.⁵ Unlike most other services offered by the ILECs, pole attachment rates are subject to traditional, cost-based rate regulation. Without ARMIS data, no attaching party could calculate the rates for attaching to an ILEC's poles or determine whether any rates are reasonable. As the Commission found in 2001, it is precisely because the relevant cost data *is* publicly available that pole owners and attaching parties generally are able to negotiate reasonable pole attachment rates without any involvement by the Commission.⁶

In response to NCTA's letters, both Qwest and Verizon offered to voluntarily file the relevant data on an annual basis and make it publicly available as a condition of any grant of forbearance.⁷ AT&T, which apparently learned that it was going to receive the same relief as Qwest and Verizon even though it had not filed a forbearance petition, made a similar offer.⁸

In the *Order*, the Commission granted the Qwest and Verizon petitions and extended the same relief to AT&T. The Commission agreed with NCTA that such relief should be conditioned on "each carrier's continued annual public filings with the Commission of the pole

⁵ Specifically, rate complaints must include cost data that is "based upon historical or original cost methodology" and "derived from ARMIS . . . or other reports filed with state or federal regulatory agencies." 47 C.F.R. § 1.1404 (g)(2).

⁶ "Reliance on publicly available information has allowed pole owners and attaching parties to resolve rate issues without Commission involvement, which is a cost-savings benefit to utilities, cable operators, other attaching parties, and the Commission." *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers*, Report and Order, 16 FCC Rcd 19911, 19931, ¶ 48 (2001).

⁷ See Letter from Melissa E. Newman, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-204 (filed Oct. 23, 2008) ("Qwest also agrees to voluntarily, publicly file pole attachment data . . . with the Commission upon grant of Qwest's pending ARMIS forbearance petition. Qwest will update its pole attachment data annually."); Letter from Ann Berkowitz, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-273 (filed Nov. 21, 2008) ("Verizon also voluntarily commits to annually file the limited information derived from this report that is used for pole attachment purposes on or before April 1 each year.").

⁸ See Letter from Linda Vandeloop, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 07-204, 07-273 (filed Dec. 11, 2008) ("AT&T will continue to provide that information unless and until the Commission decides that is no longer necessary.").

attachment cost data currently submitted in ARMIS Report 43-01.”⁹ The Commission found, however, that this filing was “no longer necessary on an ongoing basis” with respect to states that have certified that they will regulate pole attachment rates themselves.¹⁰ For the reasons explained below, this latter finding was not based on the record of the proceedings and is contrary to the terms and policies established in Section 224. Given these deficiencies, and the obvious public interest benefits of maintaining a uniform data collection regime for all states, the exception to the requirement to file pole data should be removed.

I. IT WAS UNREASONABLE FOR THE COMMISSION NOT TO CONDITION RELIEF ON CONTINUED FILING OF POLE ATTACHMENT DATA IN ALL STATES

The Commission concluded that unconditional forbearance was required with respect to ARMIS obligations covering states that regulate pole attachment rates because filing pole attachment data for these states “is not necessary for a current, federal need.”¹¹ That finding reflects a misreading of the relevant statutory provisions. Section 224 of the Communications Act is a *federal statute requiring* the Commission to regulate pole attachments to ensure that they are reasonable.¹² While states may elect to regulate pole attachment rates instead of the Commission, any such state must certify to the Commission that it has rules in place to carry out that task in a manner that considers the needs of customers of attaching parties and pole owners.¹³ Moreover, if a certified state fails to timely resolve a pole attachment complaint, jurisdiction reverts to the Commission “notwithstanding any such certification.”¹⁴ Consequently,

⁹ *Order* at ¶ 13

¹⁰ *Id.* at ¶ 14.

¹¹ *Id.*

¹² 47 U.S.C. § 224(b)(1).

¹³ 47 U.S.C. § 224(c)(2).

¹⁴ 47 C.F.R. § 1.1414(e).

while Section 224 does not give the Commission jurisdiction to regulate rates in states that do it themselves, it establishes a federal interest in making sure that consumers in all states receive the benefits of pole attachment regulation and requires the Commission to be ready and able to step in should circumstances require.

The Commission acted in derogation of its duties under Section 224 by granting ILECs unconditional relief from the ARMIS requirement to make pole attachment data publicly available with respect to such states. First, the Commission has created an unnecessary risk that data will not be available to attaching parties with respect to a particular state. The Commission found that “[t]he record does not reveal other sources of such data that would meet that standard and could be used today in the absence of ARMIS data.”¹⁵ Given the importance of the data and the lack of alternative sources, the Commission erred in failing to consider, as it has in prior cases,¹⁶ whether states have in fact adopted, or even have the authority to adopt, comparable data requirements. It simply assumed that states would take such action and that they would do so in a timely manner. But the record included no evidence on which the Commission could base such assumptions and the Commission made no attempt to ascertain the facts.

A more thorough analysis by the Commission would have revealed that many states have in fact relied on the availability of ARMIS data in deciding whether, and how, to regulate pole attachment rates. The Commission’s rules require states that regulate pole attachment rates to certify that they have a “publicly available” methodology and many states have chosen to rely on the Commission’s rate formulas and the use of ARMIS data in applying those formulas. In

¹⁵ *Order* at ¶ 13

¹⁶ *2000 Biennial Regulatory Review*, CC Docket No. 00-199 et al., Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19911, 19985, ¶ 207 (2001) (seeking comment on whether three years is sufficient time to transition from federal to state data collection and whether any states are constrained in their ability to collect the necessary data).

Massachusetts, for example, the state commission followed the Commission's general approach because relying upon publicly available data "simplifies the regulation of pole attachment rates as much as possible."¹⁷ Similarly, the New York commission, agreeing with arguments made by Verizon, found that reliance on ARMIS data was preferable to use of a carrier's internal accounting records.¹⁸

Even if the record supported the Commission's assumption that all states that regulate pole attachment rates also have the necessary authority to adopt data collection requirements, the Commission erred in finding that elimination of the federal obligation to make such data available was in the public interest as required under Section 10 of the Act. There is substantial benefit to the Commission, the states, and attaching parties in having a uniform, easily accessible, set of data that covers every state. These benefits are particularly significant given that most states use the same rate formulas as the Commission, and therefore need the same data that was collected in the ARMIS reports. And the fact that the carriers volunteered to continue filing this data with the Commission is strong evidence that the burdens associated with the existing federal obligation are minimal.

There are significant costs, and no countervailing benefits, to replacing this clear federal requirement with 20 different state requirements. The prospect of multiple state proceedings that produce disparate filing requirements would seem to be a poor result even for the ILECs. Indeed, in other contexts, such as the regulation of VoIP services, these same carriers have been quite vociferous in explaining the benefits of a uniform federal regime as compared to regulation

¹⁷ See *Cablevision of Boston v. Boston Edison Co.*, No. DPU/DTE 97-82 at 19 (Mass. Dept. Pub. Utils. April 15, 1998); see also *Greater Media, Inc., et al. v. New England Telephone and Telegraph Co.*, No. DPU 91-218 at 34 (Mass. Dept. Pub. Utils. April 17, 1992), *aff'd*, *Greater Media, Inc. v. Department of Public Utilities*, 415 Mass. 409 (1993).

¹⁸ *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, No. 98-C-1357, Supplemental Recommended Decision On Pricing Of Ducts And Conduits at 21 (N.Y. P.S.C. June 18, 2001).

by individual states.¹⁹ Because of the strong federal interest in reasonable pole attachment rates, even in states that regulate rates themselves, the Commission should have conditioned any ARMIS relief on continued filing of data for every state.

CONCLUSION

For the reasons explained above, the Commission should have conditioned its forbearance relief to Qwest, Verizon, and AT&T on the continued public availability of pole attachment data for all states. Accordingly, the Commission should reconsider its decision not to impose such a condition with respect to states that regulate pole attachment rates and require the continued filing of pole attachment data in Table III of ARMIS Report 43-01 for all 50 states and the District of Columbia.

Respectfully submitted,

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¹⁹ See, e.g., Comments of Verizon at 5, CC Docket No. 01-92, *et al.* (filed Nov. 26, 2008) (“The most important task before the Commission is to reaffirm explicitly that all VoIP and IP-enabled services, regardless of provider or technology, are interstate services subject to the Commission’s exclusive jurisdiction – *not* to more than 50 different sets of economic regulation.”) (emphasis in original).

CERTIFICATE OF SERVICE

I, Gretchen M. Lohmann, do hereby certify that I caused one copy of the foregoing
Petition for Partial Reconsideration of the National Cable & Telecommunications Association to
be served by postage pre-paid, first class mail, this 12^h day of January 2009.

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