

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

In the Matter of)	
)	
Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering)	WC Docket No. 08-190
)	
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
)	
Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c))	
)	
Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements)	WC Docket No. 07-204
)	
Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements)	
)	
Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements)	WC Docket No. 07-273
)	
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
)	

MEMORANDUM OPINION AND ORDER AND NOTICE OF PROPOSED RULEMAKING

Adopted: September 6, 2008

Released: September 6, 2008

Comment Date: (30 days after publication in the Federal Register)

Reply Comment Date: (60 days after publication in the Federal Register)

By the Commission: Chairman Martin and Commissioners Tate and McDowell issuing separate statements; Commissioners Copps and Adelstein approving in part, concurring in part, dissenting in part, and issuing separate statements.

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I. INTRODUCTION

1. In this Order, we grant significant forbearance from carriers' obligation to file Automated Reporting Management Information System (ARMIS) Reports 43-05, 43-06, 43-07, and 43-08 (collectively, the "ARMIS service quality and infrastructure reports"). In particular, with certain limited exceptions, we find that the section 10 criteria are met for the ARMIS service quality and infrastructure reports, subject to certain conditions. Therefore, we grant certain conditional forbearance with respect to all carriers currently subject to those reporting requirements. We also recognize, however, that the Commission has continually sought to ensure that it has access to the data necessary for its public safety and broadband policymaking, and that certain infrastructure and operating data might be useful, but only if collected on an industry-wide basis. We therefore seek comment on whether such data should be collected from all relevant providers in furtherance of those goals. In addition, certain service quality and customer satisfaction data might be useful, but only if collected on an industry-wide basis. Therefore, we seek comment on whether the Commission should collect such data on an industry-wide basis. Finally, we extend to Verizon and Qwest the conditional forbearance granted to AT&T in the *AT&T Cost Assignment Forbearance Order*.

II. BACKGROUND

2. In 1990, the Commission shifted to a price cap regulation system for the larger incumbent LECs.¹ Price caps is a form of incentive regulation that seeks to “harness the profit-making incentives common to all businesses to produce a set of outcomes that advance the public interest goals of just, reasonable, and nondiscriminatory rates, as well as a communications system that offers innovative, high quality services.”² In the *Price Cap Order*, the Commission established certain ARMIS reports³ in order to monitor two potential concerns raised by price cap regulation: first, that carriers might lower quality of service, instead of being more productive, in order to increase short term profits;⁴ and second, that carriers might not spend money on infrastructure development.⁵ In response to these possibilities, the Commission created ARMIS reports that would serve as “safety nets” and provide the Commission and the states with information to determine whether the Commission’s and the states’ regulatory goals concerning quality of service were being met.⁶ The Commission adopted ARMIS Reports 43-05 and 43-06 to collect service quality and customer satisfaction information. Although the Commission found that it had authority to impose service quality standards, it declined to do so because it “might impinge upon state efforts in that area.”⁷ In addition, ARMIS Reports 43-07 and 43-08 were established to collect infrastructure and operating data. In adopting those new ARMIS infrastructure reports, the Commission found that information on plant in service is a good indicator of investment in service quality.⁸

3. In its *2000 Biennial Service Quality NPRM*, the Commission proposed to eliminate the bulk of ARMIS Report 43-05, reducing more than 30 categories of information collected through that report down to six.⁹ The *2000 Biennial Service Quality NPRM* also invited comment on eliminating ARMIS

¹ *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, para. 2 (1990) (*Price Cap Order*).

² *Id.*

³ A summary of the information currently collected through ARMIS Reports 43-05, 43-06, 43-07, and 43-08 is included as Appendix A.

⁴ *Price Cap Order*, 5 FCC Rcd at 6827, para. 334.

⁵ *Id.* at 6827, 6830, paras. 334-37, 357; see also *Policy and Rules Concerning Rates for Dominant Carriers*, Order on Reconsideration, CC Docket No. 87-313, 6 FCC Rcd 2637, para. 175 (1991) (*Price Cap Order on Reconsideration*).

⁶ *Price Cap Order*, 5 FCC Rcd at 6827, para. 337; see also *Price Cap Order on Reconsideration* at para. 179 (adopting monitoring reports “in an abundance of caution”); *Price Cap Order on Reconsideration* at para. 17 (explaining that monitoring reports were designed to address commenters’ concerns).

⁷ *Price Cap Order*, 5 FCC Rcd at 6830, para. 358.

⁸ *Id.* at 6830, para. 357.

⁹ *Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, CC Docket No. 00-229, Notice of Proposed Rulemaking, 15 FCC Rcd 22113, 22114, para. 2 (2000) (*Biennial Service Quality NPRM*).

Report 43-06 completely. The Commission stated that “[a]ctual complaint information may be a better indicator of trends in service quality than” the surveys reported through ARMIS Report 43-06.¹⁰

4. In 2001, as part of another series of decisions revising and streamlining ARMIS reporting requirements, the Commission’s *Phase 2 Order* removed ARMIS Report 43-07 reporting requirements that were “redundant or that have clearly outlived their usefulness.”¹¹ The *Phase 2 Order* also reduced the scope of ARMIS Report 43-08 by removing reporting requirements that were no longer relevant to any policy analysis.¹² In the accompanying *Phase 3 FNPRM*, the Commission sought comment on whether to retain the ARMIS reporting requirements, including alternatives to current reporting requirements.¹³ The Commission also “encourage[d] our state colleagues to consider alternative sources of such information at the state level.”¹⁴ The Commission observed that “[t]here may well come a time in the relatively near future when we conclude that there is no ongoing federal need to maintain these requirements at the federal level.”¹⁵

5. On June 8, 2007, AT&T filed a petition¹⁶ for forbearance from Commission rules that require carriers to file four ARMIS Reports: (1) ARMIS Report 43-05 Service Quality; (2) ARMIS Report 43-06 Customer Satisfaction; (3) ARMIS Report 43-07 Infrastructure; and (4) ARMIS Report 43-08 Operating

¹⁰ *Biennial Service Quality NPRM*, 15 FCC Rcd at 22125, para. 42.

¹¹ *2000 Biennial Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 00-199, 16 FCC Rcd 19911, 19970, para. 160 (2001) (*Phase 2 Order* or *Phase 3 FNPRM*). Among other things, the Commission removed requirements to report numbers of electromechanical switches, touch tone capability and equal access, ISDN capabilities and information relating to the Signaling System 7 (SS7), interoffice working facilities, DS-0 fiber terminated at the customer premises, and call-setup time. *Phase 2 Order* at 19970-75, paras. 161-176.

¹² The Commission removed requirements to report satellite channels and video circuits for carriers’ radio relay and microwave systems, to separate categories for analog versus digital access lines, and to report certain categories of access lines per consumer. *Phase 2 Order* at 19977, paras. 179-182.

¹³ *Phase 3 FNPRM*, 16 FCC Rcd at 19985-86, para. 208.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s ARMIS Reporting Requirements, WC Docket No. 07-139 (filed June 8, 2007) (AT&T Petition); see 47 C.F.R. §§ 43.21(g)-(j). The petition seeks relief for the following affiliates: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, Nevada Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P., Wisconsin Bell, Inc., SBC Advanced Solutions, Inc., Ameritech Advanced Data Services, Inc. of Illinois, Ameritech Advanced Data Services, Inc. of Indiana, Ameritech Advanced Data Services, Inc. of Michigan, Ameritech Advanced Data Services, Inc. of Ohio, Ameritech Advanced Data Services, Inc. of Wisconsin, and BellSouth Telecommunications, Inc. On June 6, 2008, the Wireline Competition Bureau (Bureau) extended until September 6, 2008, the date by which the AT&T Petition shall be deemed granted in the absence of a Commission decision. *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, Order (WCB rel. June 6, 2008). A list of commenters is included in Appendix B.

Data.¹⁷ AT&T contends that these ARMIS reports no longer fulfill their original purpose, nor is there otherwise any current federal need for those ARMIS data.¹⁸ In particular, AT&T observes that these ARMIS reports are collected from only a discrete subset of the industry.¹⁹ Thus, AT&T asserts that, to the extent that there is a possible federal need for certain data, they should be collected on an industry-wide basis, rather than through the current ARMIS service quality and infrastructure reports.²⁰

6. In addition, on April 24, 2008, we conditionally granted AT&T's petitions for forbearance²¹ from the Cost Assignment Rules.²² The grant was expressly conditioned on, among other things, the

¹⁷ We note that certain carriers other than AT&T also have pending petitions for forbearance seeking some or all of the relief granted in this Order from the ARMIS service quality and infrastructure reporting requirements. *See generally* Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), WC Docket No. 07-204 (filed Sept. 13, 2007) (Qwest Petition); Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, WC Docket No. 07-204 (filed Oct. 19, 2007) (Embarq Petition); Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204 (filed Nov. 13, 2007) (Frontier/Citizens Petition); Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273 (filed Nov. 26, 2007) (Verizon Petition). We address the merits of those requests in this Order. To the extent that the petitions seek other regulatory relief, those requests remain pending. *See, e.g.*, Qwest Petition at 10-16, 22-25 (seeking forbearance from ARMIS Reports 43-01 through 43-04 and Forms 492A, 495A, and 495B); Verizon Petition at 11-36 (seeking forbearance from ARMIS Reports 43-01 through 43-04 and Forms 492A, 495A, and 495B, as well as certain other accounting and reporting requirements).

¹⁸ AT&T Petition at 3-7.

¹⁹ *Id.* at 5-6.

²⁰ *Id.* at 7-8.

²¹ *See generally* Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules; 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 Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (*AT&T Cost Assignment Forbearance Order*), *pet. for recon. pending, pet. for review pending, NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir. filed June 23, 2008).

²² In the *AT&T Cost Assignment Forbearance Order*, we referred to the statutory provision and Commission rules from which AT&T was granted forbearance collectively as the "Cost Assignment Rules." *See AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7303, para. 1 n. 2; 7307, para. 12. Specifically, we granted AT&T forbearance from section 220(a)(2) of the Act (to a limited extent) and various rules, including the following: section 32.23 (nonregulated activities); section 32.27 (transactions with affiliates); Part 64, Subpart I (allocation of costs); Part 36 (jurisdictional separations procedures); Part 69, Subparts D and E (cost apportionment); and other related rules that are derivatives of, or dependent on, the foregoing rules. *See, e.g.*, 47 C.F.R. §§ 32.23, 32.27, Part 64 Subpart I, Part 36, Part 69 Subparts D and E. AT&T also received forbearance from certain ARMIS reporting requirements, and we extend that relief here, as well. The AT&T Petitions list each rule from which Legacy AT&T and Legacy BellSouth were granted forbearance. *See* Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21, Attach. 1 (filed Jan. 25, 2007) (Legacy AT&T Petition); Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket Nos. 07-21, 05-342, App. 1 (filed Feb. 9, 2007) (Legacy BellSouth Petition) (collectively, "AT&T Petitions"). In (continued....)

Wireline Competition Bureau's (Bureau) approval of a compliance plan to be filed by AT&T describing in detail how it will continue to fulfill its statutory and regulatory obligations.²³ On May 23, 2008, Verizon, on behalf of itself and Qwest, requested that the Commission grant the same forbearance to Verizon and Qwest.²⁴ Those parties have raised the issue of the overlap between the ARMIS requirements at issue in AT&T's ARMIS forbearance petition and the cost assignment relief previously granted to AT&T.²⁵

III. MEMORANDUM OPINION AND ORDER

7. In this Order, we grant in significant part AT&T's petition for forbearance from the ARMIS service quality and infrastructure reporting requirements, subject to certain conditions. In addition, we find that the conclusions underlying our forbearance decision for AT&T also hold true for the other carriers required to file ARMIS Reports 43-05, 43-06, 43-07, and 43-08. Therefore, consistent with section 10, we extend the conditional forbearance from those ARMIS reports to all carriers required to file them under our rules. Further, we take this opportunity to extend to Verizon and Qwest the conditional forbearance granted to AT&T in the *AT&T Cost Assignment Forbearance Order*.

A. Charges, Practices, Classifications and Regulations

8. We find that the ARMIS service quality and infrastructure reporting requirements are not "necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier . . . are just and reasonable and are not unjustly or unreasonably discriminatory" under section 10(a)(1).²⁶ We agree with the petitioners that ARMIS Reports 43-05, 43-06, 43-07, and 43-08 were not originally designed to ensure that carriers' rates, terms, and conditions were just and reasonable or not unjustly or unreasonably discriminatory.²⁷ These ARMIS reports were adopted to monitor the "theoretical concern" that price cap carriers might reduce service quality or network investment to increase short-term profits, rather than being designed to address the rates, terms, and conditions under which carriers offered their services.²⁸ Moreover, these incumbent LECs' rates,

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this Order, we again use the term "Cost Assignment Rules" to refer to the statutory provision and Commission rules from which AT&T was granted forbearance in the *AT&T Cost Assignment Forbearance Order*.

²³ See *id.* at 7319-20, para. 31.

²⁴ Letter from Ann Berkowitz, Associate Director – Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-21, 07-273, 07-204 (filed May 23, 2008) (Verizon/Qwest Request). This letter was subsequently put out for public comment. See Comment Sought on Request of Verizon and Qwest to Extend Forbearance Relief From Cost Assignment Rules, WC Docket No. 07-21, Public Notice, DA 08-1361 (Wireline Comp. Bur. rel. June 6, 2008).

²⁵ See, e.g., Letter from Ann Berkowitz, Associate Director, Federal Regulatory, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-21, 07-139, 07-204, 07-273 (filed Aug. 8, 2008); Letter from Lynn Starr, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-21, 07-139, 07-204, 07-273 (filed Sept. 2, 2008).

²⁶ 47 U.S.C. § 160(a)(1).

²⁷ See, e.g., AT&T Petition at 10-11; Qwest Petition at 18, 20-21; Embarq Petition at 7, 11 (arguing that Report 43-08 was never used to ensure reasonable rates); Frontier/Citizens Petition at 12; Verizon Petition at 12.

²⁸ See *Price Cap Order*, 5 FCC Rcd at 6827, para. 334; see, e.g., AT&T Petition at 13 (arguing that original purpose of these reports is moot); Embarq Petition at 4 (same).

terms, and conditions remain generally subject to dominant carrier pricing and tariffing regulation, which will be unaffected by any forbearance here.²⁹ Thus, we do not find these ARMIS reports necessary today to ensure that carriers' charges, practices, classifications or regulations are just and reasonable and are not unjustly or unreasonably discriminatory.³⁰

9. We reject the generalized assertion that forbearance is not warranted because the service quality reports are necessary for states to ensure just and reasonably-priced services.³¹ For example, the California Commission states that it eliminated California-specific monitoring reports on the basis that it would largely rely on ARMIS reports instead.³² It asserts that it intended to rely on the ARMIS reports "as part of its monitoring program to ensure that the competitive market is functioning well and customers will receive good quality at just and reasonably-priced services."³³ However, the California Commission does not explain how the specific ARMIS reports at issue here could be used to ensure just and reasonable rates. Moreover, the Commission recently concluded that it "[does] not have authority under sections 2(a) and 10 of the Act to maintain federal regulatory requirements that meet the three-prong forbearance

²⁹ See, e.g., Qwest Petition at 18, 20-21. While some carriers have gotten relief from dominant carrier pricing and tariffing regulation for certain services, that relief has been based on findings regarding the significant extent of competition for those services. See, e.g., *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 08-168 (rel. Aug. 5, 2008); *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112; *2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175; *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (*Section 272 Sunset Order*); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007).

³⁰ For these reasons, we reject the claims of some commenters that the ARMIS reports at issue here are somehow necessary to maintain reasonable rates. See, e.g., New Jersey Rate Counsel Comments (AT&T Pet.) at 9-10 (arguing that information is essential to a well-functioning market "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 quality"); CompTel Reply Comments (Qwest Pet.) at 3-4 (arguing that the Commission needs the data to ensure just and reasonable rates). Similarly, while other commenters claim that these data address the "terms and conditions" – if not the rates – of carriers' offerings, we find that their arguments in fact focus on consumer protection issues, discussed below. See, e.g., Sprint Nextel Comments (Embarq and Frontier/Citizens Pets.) at 8-10.

³¹ E.g., New Jersey Rate Counsel Comments (AT&T Pet.) at 19; NASUCA Comments (AT&T Pet.) at 3; Michigan Comments (AT&T Pet.) at 2; New Jersey Rate Counsel Comments (Frontier Pet.) at 22.

³² California Commission Reply Comments (AT&T Pet.) at 2; see also California Commission Comments (Qwest Pet.) at 3 (same); Letter from Helen M. Mickiewicz, Assistant General Counsel, California Commission, to Marlene Dortch, Secretary, Federal Communications Commission, Docket Nos. 07-139, 07-204, 07-273 (filed Aug. 26, 2008); Letter from Atif Malik, New Jersey Citizen Action, to Marlene Dortch, Secretary, Federal Communications Commission, Docket No. 07-139 at 2-3 (filed Aug. 26, 2008); Letter from Kenneth R. Peres, Communications Workers of America, to Marlene Dortch, Secretary, Federal Communications Commission, Docket No. 07-139 at 2-3 (filed Aug. 27, 2008).

³³ California Commission Reply Comments (AT&T Pet.) at 2-3.

test with regard to interstate services in order to maintain regulatory burdens that may produce information helpful to state commissions for intrastate regulatory purposes solely.”³⁴ We emphasize that nothing we do today preempts the ability of any state commission to exercise its own state authority as permitted under state law,³⁵ and the record indicates that numerous states continue to take action to address service quality as they deem appropriate.³⁶ Indeed, in 2001 the Commission “encourage[d] our state colleagues to consider alternative sources of such information at the state level” because “[t]here may well come a time in the relatively near future when we conclude that there is no ongoing federal need to maintain these requirements at the federal level.”³⁷

B. Protection of Consumers

10. Section 10(a)(2) of the Act requires the Commission to determine whether continued enforcement of these filing requirements is necessary to protect consumers.³⁸ We recognize that consumer protection was behind much of the original intent for requiring disclosure of service quality and infrastructure investment information through these ARMIS reports.³⁹

11. With respect to all the ARMIS reports at issue here, we recognize that the current partial and uneven data collection hinder their usefulness as a federal consumer protection tool as the data collections are structured today.⁴⁰ As an initial matter, the Commission does not use the data to enforce federal

³⁴ *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules; 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. 07-21, WC Docket No. 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302, 7321, para. 32 (2008) (*Cost Assignment Forbearance Order*) (citing 47 U.S.C. §§ 152(a), 160).

³⁵ *Id.* at 7321, para. 33.

³⁶ *See, e.g.*, AT&T Petition at 13 n. 33 (asserting that a number of states “are involved in service quality issues” and “have service quality requirements”); Frontier/Citizens Petition at 7-8 & n.18 (observing that state regulatory agencies obtain service quality and infrastructure data through other means than ARMIS reporting, and noting that 19 states where Frontier/Citizens operates require service quality reporting, and four other states have targeted processes for addressing service quality complaints); New Jersey Rate Counsel Comments (AT&T Pet.) at 18 (citing a history of state regulatory oversight of service quality in Illinois); Qwest Reply Comments (Qwest Pet.) at 5-10 (discussing state information collection and service quality requirements in various states where Qwest operates).

³⁷ *Phase 3 NPRM*, 16 FCC Rcd at 19985-86, para. 208.

³⁸ 47 U.S.C. § 160(a)(2).

³⁹ *See, e.g.*, CWA Comments (AT&T Pet.) at 2.

⁴⁰ *See, e.g.*, AT&T Reply Comments (AT&T Pet.) at 2-5, 7-8 (noting the shortcomings in the ARMIS data collections and the availability of other data for consumer protection needs); Frontier Petition at 12 (arguing that there is no strong connection between the filing requirement and historic speculation about customer service); Qwest Petition at 18 (arguing that there is no strong connection between the filing requirements and consumer protection); Qwest Reply Comments (Qwest Pet.) at 4 (arguing that there is no federal need for the data collection); Verizon Petition at 12 (arguing that the reports are not necessary to protect consumers); Letter from James Y. Kerr, II, Commissioner, North Carolina Commission, to Kevin Martin, Chairman, Federal Communications Commission, WC Docket No. 07-139 at 1-2 (filed Aug. 26, 2008) (asserting that decisions based on information provided by only a small percentage of existing carriers will likely lead to flawed policy).

service quality rules, declining to “impinge upon state efforts in that area.”⁴¹ Nor do the data enable comparison among competitors or allow evaluation of the industry as a whole.⁴² Only certain large incumbent LECs file the ARMIS service quality and infrastructure reports at issue here. As the petitioners observe, the Commission does not impose such requirements on cable companies, wireless providers, or other competitive telecommunications carriers, nor even on other incumbent LECs.⁴³ In addition, the current reporting requirements may exclude the activities of parent companies or non-telecommunications affiliates of those entities that do file ARMIS reports.⁴⁴ Reporting of that information thus is a function of how the particular company has chosen to structure its operations, and does not necessarily provide a complete picture of the activities of the reporting company.

12. With respect to service quality and customer satisfaction data of the sort collected through ARMIS Reports 43-05 and 43-06, we recognize the potential for such information to help consumers make informed choices in a competitive market. We find, however, that to make truly informed choices, consumers would need to have the relevant service quality information from all of the relevant providers. Consequently, we seek comment in the Notice of Proposed Rulemaking below regarding whether to initiate such an industry-wide data collection. We note that the reporting carriers have committed to continue collecting service quality and customer satisfaction data, and to filing those data publicly through ARMIS Report 43-05 and 43-06 filings for twenty four months from the effective date of this order.⁴⁵ This will ensure continuity with regard to the service quality and customer satisfaction data that

⁴¹ *Price Cap Order*, 5 FCC Rcd at 6830, para. 358.

⁴² For these same reasons, we reject the arguments of some parties that we should retain these asymmetrical reporting requirements for purposes of evaluating special access services or any other marketplace. *See, e.g.*, BT Americas Comment (Embarq and Frontier/Citizens Pet.) at 8; CWA Comments (AT&T Pet.) at 2, 6 (arguing that consumers need access to data to compare service offerings).

⁴³ *See, e.g.*, AT&T Petition at 17-20; Qwest Petition at 20; Embarq Petition at 6; Frontier/Citizens Petition at 6-8; Verizon Petition at 16.

⁴⁴ For example, ARMIS Report 43-07 is not designed to capture the activities of parent companies or non-telecommunications affiliates. Thus, AT&T does not report any information on rows 0487 - Total xDSL Term. at Customer Premises, and 0488 - xDSL Term. at Customer Premises via Hybrid Fiber/Metallic Interface Locations. *See Electronic ARMIS Filing System (EAFS) Data Retrieval Module*, <http://fjallfoss.fcc.gov/eafs7/MainMenu.cfm>.

⁴⁵ *See* Letter from Robert W. Quinn, Senior Vice President, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-139 (filed September 6, 2008*); Letter from Eric Einhorn, V.P. Federal Government Affairs, Windstream Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-139 (filed September 6, 2008*); Letter from Gregg C. Sayre, Associate General Counsel – Eastern Region, Frontier Communications Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-139 (filed September 6, 2008*); Letter from Robert D. Shannon, Attorney – Regulatory & Government Relations, CenturyTel, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-139 (filed September 6, 2008*); Letter from Edward B. Krachmer, Director-Regulatory Affairs, Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-139 (filed September 6, 2008*); Letter from Christopher J. Wilson, Vice President and General Counsel, Cincinnati Bell Telephone Company, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-139 (filed September 6, 2008*); Letter from Melissa E. Newman, Vice President – Federal Regulatory, Qwest Communications International, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-139 (filed September 6, 2008*); Letter from Suzanne A. Guyer, Senior Vice President – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-139 (filed September 6, 2008*); Letter from David C. Bartlett, Embarq, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-139 (filed September 6, 2008*); Letter from Walter Arroyo, Regulatory Affairs Director, Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-139 (filed September 6, 2008*); Letter from Laura Y. Otsuka, Senior Manager- (continued....)

the Commission has collected up to this point, and afford the Commission a reasonable period of time to consider whether to adopt such industry-wide reporting requirements. We therefore adopt that as a condition of our forbearance here. We grant the same forbearance relief to any similarly situated carriers who make that same commitment, and make clear that the relief we grant today is not otherwise conditional. We recognize that the reporting carriers' commitments here are time limited, and that we cannot extend such commitments or impose any further conditions on the relief granted today. Any future changes to these reporting requirements will be made in the context of the NPRM herein or some other appropriate Commission proceeding.

13. We also recognize the presence of other safeguards and sources of information that help protect consumers.⁴⁶ For example, the Commission requires all communications providers (not just a subset of incumbent LECs) to file outage reports.⁴⁷ Additionally, the Commission recently adopted significant refinements to its industry-wide broadband and local competition data collections.⁴⁸ In addition, when the Commission last sought comment on ARMIS Report 43-06 under the biennial review standard,⁴⁹ it observed that “[a]ctual complaint information may be a better indicator of trends in service quality than” the surveys reported through ARMIS Report 43-06.⁵⁰ We note that the Commission will continue to collect such complaint information notwithstanding the forbearance granted here.⁵¹ Moreover, the three regional Bell Operating Companies (BOCs) are subject to quarterly special access

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Regulatory Affairs, Hawaiian Telcom, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-139 (filed September 6, 2008*). (* These letters were filed with the Commission on September 6, 2008, although the date-stamp in the Commission's Electronic Filing System may incorrectly list September 8, 2008, the following Monday, as the filing date.)

⁴⁶ See, e.g., AT&T Reply Comments (AT&T Pet.) at 2 (stating that parties may file a complaint under section 208, 47 U.S.C. § 208, if they believe that a carrier has violated any of the Commission's rules).

⁴⁷ *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-35, 19 FCC Rcd 16830 (2004) (*Outage Reporting Order*); see also AT&T Petition at 13 (arguing that outage reports serve same purpose as service quality reports); Frontier Petition at 14 (same).

⁴⁸ See *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet (VoIP) Subscriberhip*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691 (2008); *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet (VoIP) Subscriberhip*, WC Docket No. 07-38, Order on Reconsideration, 23 FCC 9800 (2008).

⁴⁹ In every even-numbered year, the Commission must review all regulations that apply to the operations and activities of any provider of telecommunications service and determine whether any of these regulations are no longer necessary in the public interest as the result of meaningful economic competition between providers of the service. 47 U.S.C. § 161.

⁵⁰ *Biennial Service Quality NPRM*, 15 FCC Rcd at 22125, para. 42.

⁵¹ See *Quarterly Inquiries and Complaints Reports*, available at <http://www.fcc.gov/cgb/quarter/welcome.html>.

performance reporting.⁵² Also, as noted above, states remain free to adopt their own reporting requirements and service quality standards, as many already have done today.

14. We reject the argument that the ARMIS service quality and infrastructure reports are necessary because states may rely on them for state consumer protection activities.⁵³ As the Commission held in the *Cost Assignment Forbearance Order* and as noted above, the Commission “[does] not have authority under sections 2(a) and 10 of the Act to maintain federal regulatory requirements that meet the three-prong forbearance test with regard to interstate services in order to maintain regulatory burdens that may produce information helpful to state commissions for intrastate regulatory purposes solely.”⁵⁴ Any interest by state commissions or other groups in comparing intrastate service quality between states, or within a state between carriers, does not create a federal need, and nothing we do today prevents state commissions from exercising their state authority to seek any relevant information, or from standardizing their data collections with each other.⁵⁵

15. We also reject the assertions of some commenters that the Commission’s reliance on ARMIS data for the compilation of certain reports demonstrates that the continued collection of these data is necessary to protect consumers.⁵⁶ Commenters do not identify any statutory or other regulatory mandate to include the data at issue in these Commission’s reports.⁵⁷ Nor do they provide evidence demonstrating

⁵² *Section 272 Sunset Order*, 22 FCC Rcd 16440.

⁵³ See, e.g., California Commission Reply (AT&T Pet.) at 5; Texas Commission Comments (AT&T Pet.) at 2-3; CWA Comments (AT&T Pet.) at 2, 12, 15-16; New York Commission Comments (Verizon Pet.) at 2; Washington Commission Comments (Verizon Pet.) at 2; Michigan Commission Comments (Verizon Pet.) at 6. *But see*, e.g., Letter from Connie Murray, Commissioner, Missouri Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-139, 07-204, 07-273 at 1 (filed July 30, 2008) (supporting forbearance, and observing that “State Commissions have the authority to request specific up-to-date information from carriers operating in their states if they have a need.”).

⁵⁴ *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7321, para 32.

⁵⁵ *C.f.*, e.g., *Application of Qwest International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, Memorandum Opinion and Order, 17 FCC Rcd 26303, 26305-06, para. 3 (“In particular, the Regional Oversight Committee (‘ROC’), a group of state regulatory commissions in the Qwest region, including all nine states covered by this application, worked together on the design and execution of regional operations support systems (‘OSS’) testing. In addition, Idaho, Iowa, Montana, North Dakota, Utah and Wyoming worked with a number of other states in the Multistate Collaborative Process (‘MCP’) to address other section 271 issues. Moreover, in a number of instances, regulators in these states have been able to build on the work done by their fellow commissioners in other states to address issues such as pricing, for example, in an efficient manner through individual state proceedings.”); *see also* Letter from Hance Haney, Director, Discovery Institute, to Marlene Dortch, Secretary, Federal Communications Commission, Docket No. 07-139 at 1-2 (filed Aug. 27, 2008) (explaining that states can collect similar data on their own and from other sources).

⁵⁶ See, e.g., NASUCA Comments (AT&T Pet.) at 7 (citing *Trends in Telephone Service*, (IATD, rel. Feb. 2007), which the Commission staff bases on data from ARMIS reports 43-05, 43-07 and 43-08); California Commission Reply (AT&T Pet.) at 9-10.

⁵⁷ We recognize that the Universal Service Monitoring Report is released pursuant to section 54.702(i) of the Commission’s rules. 47 C.F.R. § 54.702(i). However, by its terms that rule requires only that “[i]nformation based on the Administrator’s reports will be made public by the Commission at least once a year as part of a Monitoring Report.” That rule does not require the inclusion of ARMIS service quality and infrastructure information data. (continued....)

why the inclusion of ARMIS data in these reports is necessary to protect consumers, particularly given the limitations of these ARMIS data, as well as the alternative data discussed above. Under these circumstances, we do not find that the optional inclusion of these data in Commission reports makes them necessary for the protection of consumers under section 10(a)(2).

C. Public Interest

16. Under the public interest analysis of section 10(a)(3), we again reach different conclusions for the service quality and customer satisfaction reports (ARMIS Reports 43-05 and 43-06) than we do for the infrastructure and operating data reports (ARMIS Reports 43-07 and 43-08).

17. *ARMIS Reports 43-05 and 43-06.* With respect to the service quality and customer satisfaction reports, we conclude that forbearance is in the public interest pursuant to section 10(a)(3).⁵⁸ As discussed above, subject to certain conditions, we find that the criteria of section 10(a)(1) and (a)(2) are satisfied. Given the burdens associated with the data reporting, and in light of the commitments of the reporting carriers, and other continuing regulatory requirements, we find forbearance to be in the public interest.

18. *ARMIS Reports 43-07 and 43-08.* We find that the ARMIS Report 43-07 and 43-08 data do not currently advance the consumer protection goals for which they originally were adopted.

19. However, we also identify certain discrete components of ARMIS Report 43-08 that are currently used in the furtherance of ongoing federal regulatory requirements. First, we note that the data in ARMIS Report 43-08, Table III, columns FC, FD, and FE collect business line count information used in the non-impairment thresholds for the Commission's unbundling rules.⁵⁹ We deny forbearance with respect to these data in light of this continuing federal need. Indeed, in apparent recognition of this federal need, we note that Qwest expressly excludes those reporting requirements from the scope of its forbearance request.⁶⁰

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Moreover, we agree with Verizon that such data are not "necessary" to the Commission's universal service monitoring. See Letter from Ann Berkowitz, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-21, 07-139, 07-273, 07-204 at 4-5 (filed Aug. 8, 2008) (discussing other sources of information and oversight, and describing why ARMIS data are poorly suited for such monitoring).

⁵⁸ 47 U.S.C. § 160(a)(3).

⁵⁹ *Unbundled Access to Network Elements; Review of the Section 251 Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, 2595, para. 105 (2005). In defining business line counts, the Commission emphasized that it was relying on "an objective set of data that incumbent LECs already have created for other regulatory purposes," finding that "by basing our definition in an ARMIS filing required of incumbent LECs, . . . we can be confident in the accuracy of the thresholds, and a simplified ability to obtain the necessary information." *Id.* In light of that determination, we are not persuaded in this proceeding to allow incumbent LECs to rely on their own business line counts developed for purposes of seeking regulatory relief, rather than those line counts developed for compliance with a broader, independent reporting obligation. See Letter from Ann Berkowitz, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-21, 07-139, 07-204, 07-273, at 1 (filed Sept. 3, 2008) (noting that the relevant ARMIS data are reported at the state level, while the unbundling thresholds require wire center-level data, and arguing that there thus is no need for the ARMIS reporting).

⁶⁰ Qwest Petition at 8 & n.18.

20. Second, certain other ARMIS Report 43-08 data currently are needed under the Commission's universal service rules. Sections 54.807(b) and (c) of the Commission's rules require the Universal Service Administration Corporation (USAC) to use switched access lines derived ultimately from ARMIS Report 43-08 to calculate growth in access lines as part of the formula for determining interstate access support (IAS).⁶¹ Specifically, the data come from ARMIS Report 43-08, Table III, column FI. Thus, we likewise find that forbearance from reporting these data would not be in the public interest, and we deny such relief.⁶²

21. We find conditional forbearance with respect to the remaining ARMIS Report 43-07 and 43-08 reporting requirements warranted under the criteria of section 10. For the same reasons described above in the context of ARMIS Reports 43-05 and 43-06, it is generally not in the public interest to continue to impose the remaining ARMIS Report 43-07 and 43-08 reporting obligations on a subset of providers. We recognize, however, that the remaining ARMIS Report 43-07 and 43-08 data could be useful to the Commission's policymaking and oversight efforts relating to public safety⁶³ and broadband deployment,⁶⁴ but only if collected on an industry-wide basis. Consequently, we seek comment on whether to adopt industry-wide data collection requirements in the Notice of Proposed Rulemaking below. We also recognize the loss of continuity in the data that could result upon a grant of forbearance, if the Commission subsequently imposes the reporting obligations on the entire industry. We note that the reporting carriers have committed to collect and retain these data internally for twenty four months from the effective date of this order.⁶⁵ That gives the Commission a reasonable period of time to consider whether to adopt such industry-wide reporting requirements. We therefore adopt that as a condition of our forbearance here. We grant the same forbearance relief to any similarly situated carriers who make that same commitment, and make clear that the relief we grant today is not otherwise conditional. We recognize that the reporting carriers' commitments here are time limited, and that we cannot extend such commitments or impose any further conditions on the relief granted today. Any future changes to these reporting requirements will be made in the context of the NPRM herein or some other appropriate Commission proceeding.

⁶¹ These rules refer to what is now Table 4.10 of the Statistics of Communications Common Carriers Report. 47 C.F.R. §§ 54.807(b), (c).

⁶² To the extent we change our universal service rules such that we no longer need this data, we would revisit whether to continue to collect this data.

⁶³ While we agree that certain infrastructure and operating data, if collected on an industry-wide basis, might serve certain public safety goals, we disagree with CWA's assertion that ARMIS service quality data would advance such goals. CWA Comments (AT&T Pet.) at 15. As an initial matter, we note that no ARMIS report provides any service quality standard. Rather, the Commission declined to impose service quality standards because it "might impinge upon state efforts in that area." *Price Cap Order*, 5 FCC Rcd at 6830, para. 358. Moreover, to specifically address public safety concerns associated with service outages, the Commission has adopted outage reporting requirements that, unlike the ARMIS reports at issue here, extend to "all communications providers" including "cable, satellite, and wireless providers, in addition to wireline providers." *Outage Reporting Order*, 19 FCC Rcd at 16833-34, para. 2. To the extent that additional information is needed to address public safety concerns, it would be more appropriate for the Commission to expand outage reporting or otherwise fashion public safety-specific measures, rather than continuing to collect ARMIS data that is ill-suited for that purpose.

⁶⁴ See, e.g., Texas Commission Comments (AT&T Pet.) at 4 (contending that Form 477 reporting does not collect sufficient information on broadband infrastructure).

⁶⁵ See *supra* n. 45.

D. Class of Carriers

22. Section 10 provides for forbearance from “applying any regulation or any provision of the Act to a telecommunications carrier or telecommunications service, or *class of telecommunications carriers or telecommunications services*” if the Commission determines that the regulation at issue satisfies section 10’s three-prong test.⁶⁶ The Commission’s reasoning, described above, is not specific to the characteristics of individual reporting carriers or to particular geographic areas. We thus conclude that the relevant “class” here, for purposes of section 10, includes all carriers required to file ARMIS Reports 43-05, 43-06, 43-07, and 43-08. Thus, consistent with the Commission’s approach in the past, and subject to the conditions set forth herein, we extend our forbearance to all such carriers.⁶⁷

E. Cost Assignment Forbearance

23. In this proceeding, parties have raised the issue of the overlap between the ARMIS requirements at issue here and certain cost assignment relief previously granted to AT&T.⁶⁸ Because we find that the reasoning of the *AT&T Cost Assignment Forbearance Order* applies equally to Verizon and Qwest, we therefore take the opportunity, on our own motion, to extend to them the conditional forbearance granted in the *AT&T Cost Assignment Forbearance Order*.

⁶⁶ 47 U.S.C. § 160(a) (emphasis added). Given this statutory directive, we reject certain parties’ assertions that granting relief from reporting for all applicable incumbent LECs based on a petition from one (or a few) incumbent LECs is inappropriate. *See* New Jersey Rate Counsel Reply (AT&T Pet.) at 2; California Commission Reply (AT&T Pet.) at 10; Letter from Anna M. Gomez, *et al.*, Sprint Nextel Corp. and Karen Reidy, Vice President, CompTel, to Marlene Dortch, Secretary, Federal Communications Commission, Docket Nos. 07-139, 07-204, 07-273 at 1-2, 4 (filed Aug. 29, 2008). Nor would the option of revising ARMIS reporting in the future through a rulemaking proceeding allow the Commission to avoid its statutory duty to evaluate forbearance pursuant to section 10. *See, e.g.*, *Cost Assignment Forbearance Order*, 23 FCC Rcd at 7308, para. 13; *see also id.* (quoting *AT&T Corp. v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001) (“an alternative route for seeking [relief] does not diminish the Commission’s responsibility to fully consider petitions under [section] 10”); *id.* (quoting *AT&T Corp. v. FCC*, 236 F.3d at 738) (“The Commission has no authority to sweep [section 10] away by mere reference to another, very different, regulatory mechanism.”)).

⁶⁷ *See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket Nos. 02-112, 06-120, CC Docket No. 00-175, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16498-502, paras. 117-26 (2007); *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, Order, WC Docket No. 03-171, 19 FCC Rcd 20179, 20182, 20189, paras. 10, 27 (2004), *petition for review denied*, *Core Communications, Inc.*, 455 F.3d 267 (D.C. Cir. 2006); *see also Federal-State Joint Board on Universal Service Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15098-99, para. 16 n.23 (2005).

⁶⁸ *See, e.g.*, Letter from Ann Berkowitz, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-21, 07-139, 07-204, 07-273 (filed Aug. 8, 2008); Letter from Lynn Starr, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-21, 07-139, 07-204, 07-273 (filed Sept. 2, 2008).

1. Background

24. On April 24, 2008, we conditionally granted AT&T's petitions for forbearance⁶⁹ from the Cost Assignment Rules⁷⁰ because we concluded that there is no current, federal need for the Cost Assignment Rules, as they apply to AT&T, to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; to protect consumers; and to ensure the public interest.⁷¹ The grant was expressly conditioned on, among other things, the Wireline Competition Bureau's (Bureau) approval of a compliance plan to be filed by AT&T describing in detail how it will continue to fulfill its statutory and regulatory obligations.⁷²

25. On May 23, 2008, Verizon, on behalf of itself and Qwest, requested that the Commission grant the same forbearance to Verizon and Qwest.⁷³ On June 6, 2008, the Commission released a Public Notice seeking comment on the issues raised in the Verizon/Qwest Request.⁷⁴ That Public Notice was published in the Federal Register on June 12, 2008.⁷⁵ Comments on the Verizon/Qwest Request were due June 26, 2008, and reply comments were due July 7, 2008.⁷⁶

2. Discussion

26. In this Order, we forbear, on our own motion, pursuant to section 10 of the Act, from the application of the Cost Assignment Rules to Verizon and Qwest, subject to conditions. As discussed above, we previously granted AT&T's petitions for forbearance from the Cost Assignment Rules, subject to conditions, because we found that AT&T, as a price cap carrier generally not subject to rate-of-return regulation, had demonstrated that forbearance from enforcing the Cost Assignment Rules satisfies the standard for forbearance under section 10 of the Act.⁷⁷ An integral part of the "pro-competitive, de-

⁶⁹ See generally *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*; *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 Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (*AT&T Cost Assignment Forbearance Order*), *pet. for recon. pending, pet. for review pending, NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir. filed June 23, 2008).

⁷⁰ See *supra* n. 22.

⁷¹ See *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307, para. 11.

⁷² See *id.* at 7319-20, para. 31.

⁷³ Letter from Ann Berkowitz, Associate Director – Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-21, 07-273, 07-204 (filed May 23, 2008) (Verizon/Qwest Request).

⁷⁴ See Comment Sought on Request of Verizon and Qwest to Extend Forbearance Relief From Cost Assignment Rules, WC Docket No. 07-21, Public Notice, DA 08-1361 (Wireline Comp. Bur. rel. June 6, 2008).

⁷⁵ See Comment Sought on Request of Verizon and Qwest to Extend Forbearance Relief From Cost Assignment Rules, 73 FR 33,430 (June 12, 2008).

⁷⁶ See Comment Dates Set on Request of Verizon and Qwest to Extend Forbearance Relief From Cost Assignment Rules, WC Docket No. 07-21, Public Notice, DA 08-1402 (Wireline Comp. Bur. rel. June 12, 2008).

⁷⁷ See *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7306, para. 10.

regulatory national policy framework”⁷⁸ established in the Act is the requirement, set forth in section 10, that the Commission forbear from applying any provision of the Act, or any of the Commission’s regulations, if the Commission makes certain findings with respect to such provisions or regulations.⁷⁹ Specifically, the Commission shall forbear from any statutory provision or regulation if it determines that (1) enforcement of the regulation is not necessary to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.⁸⁰ In making such determinations, the Commission also must consider pursuant to section 10(b) “whether forbearance from enforcing the provision or regulation will promote competitive market conditions.”⁸¹

27. We now find that the reasoning of the *AT&T Cost Assignment Forbearance Order* applies equally to Verizon and Qwest and therefore, pursuant to section 10, we forbear from application of the Cost Assignment Rules to these carriers. In this Order, we extend to Verizon and Qwest forbearance from the Cost Assignment Rules to the same extent granted AT&T in the *AT&T Cost Assignment Forbearance Order* and subject to the same conditions.⁸² Like AT&T, Verizon and Qwest are price cap carriers currently subject to the Cost Assignment Rules, which were developed at a time when the LECs’ interstate rates and many of their intrastate rates were set under rate-based, cost-of-service regulation. We find that the three forbearance criteria are satisfied with regard to the Cost Assignment Rules to the extent that Verizon and Qwest comply with the conditions we set forth. Specifically, we conclude that there is no current, federal need for the Cost Assignment Rules, as they apply to Verizon and Qwest, to ensure

⁷⁸ Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996).

⁷⁹ 47 U.S.C. § 160(a).

⁸⁰ *Id.*

⁸¹ 47 U.S.C. § 160(b).

⁸² We grant Verizon and Qwest forbearance, subject to conditions, from the statutory provision and Commission rules as requested in the AT&T Petitions (collectively, “Cost Assignment Rules”). Specifically, we grant limited forbearance from section 220(a)(2) of the Act to the extent that this provision contemplates separate accounting of nonregulated costs. 47 U.S.C. § 220(a)(2). We also grant forbearance from various Commission rules including the following: section 32.23 (nonregulated activities); section 32.27 (transactions with affiliates); Part 64 Subpart I, including the requirement to file Cost Allocation Manuals (CAMs) (allocation of costs); Part 36 (jurisdictional separations procedures); Part 69, Subparts D and E (cost apportionment); and other related rules that are derivative of or dependent on the foregoing rules. 47 C.F.R. § 64.903; *see, e.g.*, 47 C.F.R. §§ 32.23, 32.27, Part 64 Subpart I, Part 36, Part 69 Subparts D and E. The AT&T Petitions list each rule from which Legacy AT&T and Legacy BellSouth were granted forbearance. *See* Legacy AT&T Petition, Attach. 1; Legacy BellSouth Petition, App. 1. Finally, we grant forbearance from four of the Commission’s reporting requirements – the Access Report (ARMIS 43-04), the Rate of Return Monitoring Report (FCC Form 492), the Reg/Non-Reg Forecast Report (FCC Form 495A) and the Reg/Non-Reg Actual Usage Report (FCC Form 495B) – because forbearance from the Cost Assignment Rules renders these reports meaningless. To be clear, we do not grant forbearance from the Part 32 USOA. As we did in the *AT&T Cost Assignment Forbearance Order*, we consider the Cost Assignment Rules together as a group under the statutory forbearance criteria because, as the Commission has concluded, the various accounting rules were intended to work together to help ensure the primary statutory goal of just and reasonable rates. *See Joint Cost Order*, 2 FCC Rcd at 1298, para. 1.

that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; to protect consumers; and to ensure the public interest.⁸³

28. Although we find in this Order that forbearance from the Cost Assignment Rules as they apply to Verizon and Qwest likewise satisfies the three-prong test under section 10, just as with AT&T, we conclude that this test is only satisfied to the extent that they comply with conditions we impose here. Because we cannot conclude here that the Commission will never have any need for accounting data from Verizon and Qwest in the future, we condition this forbearance on, among other things, the provision by Verizon or Qwest of accounting data on request by the Commission for regulatory purposes, consistent with the Commission's statutory authority.⁸⁴ These conditions mitigate factors that would otherwise lead us to conclude that these rules remain necessary to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; to protect consumers; and to ensure the public interest.⁸⁵

29. We note that opponents of the forbearance we grant here to Verizon and Qwest largely raise the same arguments that we have already addressed in the context of the *AT&T Cost Assignment Forbearance Order*.⁸⁶ For the reasons discussed in detail in that order, we affirm our reasoning and analysis in the *AT&T Cost Assignment Forbearance Order* with regard to those issues.

30. We acknowledge that Verizon and Qwest, unlike AT&T, receive some rural high-cost support funding.⁸⁷ Unlike the non-rural support mechanism, rural high-cost support is cost-based so the Commission would need cost-assignment data for those regions in which Verizon and Qwest receive rural high-cost support. We conclude, however, that any cost allocation or cost assignment issues relating to Verizon's and Qwest's support can be resolved in the compliance plans that must be filed by each carrier and approved by the Bureau as a condition of forbearance.⁸⁸

31. We also recognize that Verizon and Qwest, unlike AT&T, have operating companies regulated on a rate-of-return basis on the state level.⁸⁹ Under the analysis of the *AT&T Cost Assignment Forbearance Order*, however, state rate-of-return regulation does not preclude forbearance from the federal Cost Assignment Rules. As we held in that order, and reaffirmed above, the Commission does not have authority under sections 2(a) and 10 of the Act to maintain federal regulatory requirements that meet the three-prong forbearance test with regard to interstate services in order to maintain regulatory burdens

⁸³ Cf. *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307, para. 11.

⁸⁴ See, e.g., Verizon Reply (Verizon/Qwest Request) at 6; see also Qwest Reply (Verizon/Qwest Request) at 6.

⁸⁵ Cf. *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7307, para. 11.

⁸⁶ See, e.g., Sprint Nextel *et al.* Comments (Verizon/Qwest Request) at 2, 12-15; Public Service Commission of Wisconsin Comments (Verizon Pet.) at 1-5; New York State Department of Public Service Comments (Verizon Pet.) at 2-3; Time Warner Telecom *et al.* Comments (Verizon Pet.) at 9; Sprint Nextel Comments (Verizon Pet.) at 7, 9-10; AdHoc Comments (Verizon Pet.) at 6-8, 18-19; NASUCA Comments (Qwest Pet.) at 3, 10-11.

⁸⁷ See, e.g., Sprint Nextel *et al.* Comments (Verizon/Qwest Request) at 10; Qwest Reply (Verizon/Qwest Request) at 8-9; Verizon Reply (Verizon/Qwest Request) at 6-7.

⁸⁸ See, e.g., Verizon Reply (Verizon/Qwest Request) at 6-7; Qwest Reply (Verizon/Qwest Request) at 9.

⁸⁹ See, e.g., Sprint Nextel *et al.* Comments (Verizon/Qwest Request) at 8-9; Verizon Comments (Verizon/Qwest Request) at 3-4; Qwest Reply (Verizon/Qwest Request) at 6-7.

that may produce information helpful to state commissions solely for intrastate regulatory purposes, such as for use in state rate-of-return regulation.⁹⁰ We further conclude that these rules as applied to Verizon and Qwest, price cap carriers generally not subject to interstate rate-of-return regulation, are not routinely needed to ensure that interstate charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory. Thus, as we held in the *AT&T Cost Assignment Forbearance Order*, because there is no current, federal need for the Cost Assignment Rules in these circumstances and because the section 10 criteria otherwise are met, we find that it would be beyond the Commission's authority to maintain these onerous regulatory requirements for Verizon and Qwest.⁹¹ As in the *AT&T Cost Assignment Forbearance Order*, we recognize that state commissions may exercise their own state authority to conduct their rate and other regulation as permitted under state law.⁹² We emphasize that we do not in this Order preempt any state accounting requirements adopted under state authority.

32. For the reasons discussed above, we extend the forbearance relief granted to AT&T in the *AT&T Cost Assignment Forbearance Order* to Verizon and Qwest, subject to the conditions described herein.

IV. NOTICE OF PROPOSED RULEMAKING

33. As discussed above, we find that significant forbearance from the existing ARMIS service quality and infrastructure reporting requirements is warranted pursuant to section 10 of the Act, subject to certain conditions. However, we recognize that collection of certain of that information might be warranted, if tailored in scope to be consistent with Commission objectives, and if obtained from the entire relevant industry of providers of broadband and telecommunications. Therefore, we seek comment on whether and how the Commission should collect such data on an industry-wide basis.⁹³

34. *Scope of Information Collected.* First, we seek comment on what information the Commission should collect on an industry-wide basis. Specifically, as discussed above, the Commission denied forbearance with respect to certain ARMIS Report 43-08 information. In addition, the Commission conditioned its grant of forbearance for ARMIS Report 43-07 and 43-08 on the reporting carriers maintaining their data for twenty four months from the effective date of this order. We tentatively conclude that collection of information of this type would be useful to the Commission's public safety and broadband policymaking, and seek comment on the specific information that we should collect. We seek comment on this tentative conclusion. We find, moreover, that these data would be useful only if they are collected from the entire relevant industry. Therefore, any such data collection

⁹⁰ See *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd at 7320-21, para. 32.

⁹¹ Cf. *id.* at 7321, para. 32.

⁹² See *id.* at 7321, para. 33.

⁹³ We do not find it appropriate to immediately impose reporting obligations pursuant to our pending NPRMs on ARMIS reporting. See, e.g., Letter from Linda S. Vanderloop, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-132, 00-199, 04-141 at 1 (filed July 2, 2008) (noting "AT&T pointed out that the Commission opened a rulemaking in 2000 to evaluate whether to move all reporting to the Form 477 and that rulemaking is still open"). That proceeding was not specifically targeted to the same Commission goals that are the focus our Notice here, and the comment cycle in that proceeding closed nearly a decade ago. Indeed, since that time there have been a number of significant developments in the Commission's public safety and broadband information gathering which would not be adequately reflected in the pending NPRMs nor the resulting record.

would gather this information from all facilities-based providers of broadband and/or telecommunications.

35. We also recognize the possibility that service quality and customer satisfaction data contained in ARMIS Reports 43-05 and 43-06 might be useful to consumers to help them make informed choices in a competitive market, but only if available from the entire relevant industry. We thus tentatively conclude that we should collect this type of information, and seek comment on the specific information that we should collect. We seek comment on this tentative conclusion. Again, we find that these data would be useful only if they are collected from the entire relevant industry. Thus, any such data collection would gather this information from all facilities-based providers of broadband and/or telecommunications.

36. *Mechanism for Collecting Information.* To the extent that the Commission collects any of the types of information described above, we also seek comment on the appropriate mechanism for such data collection. We tentatively conclude that the Commission should collect the infrastructure and operating data through Form 477, and seek comment on that tentative conclusion. In addition, we note that while ARMIS information generally has been publicly available, carrier-specific Form 477 data is treated as confidential. What confidentiality protections, if any, are appropriate for the information here? To the extent that commenters support Commission collection of service quality and customer satisfaction data, we also seek comment on the appropriate mechanisms for such collections. Finally, we seek comment on possible methods for reporting information, as well as suggestions of methods to maintain and report the information, that achieve the purposes of the information collection while minimizing the burden on reporting entities, including small entities.

V. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

37. Pursuant to the Regulatory Flexibility Act (“RFA”),⁹⁴ the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) for the Notice of Proposed Rulemaking for the possible significant economic impact on small entities by the policies and actions considered in this Notice. The text of the IRFA is set forth in Appendix C.

B. Ex Parte Presentations

38. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's ex parte rules.⁹⁵ Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.⁹⁶ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules as well.

⁹⁴ See 5 U.S.C. § 603. The RFA, *see* U.S.C. §601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (“CWAAA”). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (“Small Business Act”).

⁹⁵ 47 C.F.R. §§ 1.1200, 1.1206; *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No. 95-21, Report and Order, FCC 97-92, 12 FCC Rcd 7348 (1997).

⁹⁶ 47 C.F.R. § 1.1206(b)(2).

C. Comment Filing Procedures

39. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number referenced. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

40. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. The pleadings also will be available for public inspection and copying during

regular business hours in the FCC Reference Information Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C. 20554 and through the ECFS, accessible on the Commission's World Wide Website, <http://www.fcc.gov/cgb/ecfs>.

41. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to Judith-B.Herman@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 via the Internet to Kristy_L._LaLonde@omb.eop.gov or by fax to (202) 395-5167.

42. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments also must comply with section 1.49 and all other applicable sections of the Commission's rules.⁹⁷ All parties are encouraged to utilize a table of contents, and to include the name of the filing party and the date of the filing on each page of their submission. We also strongly encourage that parties track the organization set forth in this Notice in order to facilitate our internal review process.

43. Commenters who file information that they believe is proprietary may request confidential treatment pursuant to section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. *See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816 (1998), Order on Reconsideration, FCC 99-262, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act ("FOIA") must be publicly disclosed pursuant to an appropriate request. *See* 47 C.F.R. § 0.461; 5 U.S.C. § 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

D. Paperwork Reduction Act

44. The Notice of Proposed Rulemaking contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law No. 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

E. Congressional Review Act

45. The Commission will include a copy of this Notice in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. § 801(a)(1)(A).

⁹⁷ 47 C.F.R. § 1.49.

F. Accessible Formats

46. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

G. Contact Persons

47. For further information about this rulemaking proceeding, please contact Jeremy Miller, Industry Analysis and Technology Division, Wireline Competition Bureau at (202) 418-0940.

VI. EFFECTIVE DATE

48. Consistent with section 10 of the Act and our rules, this Order shall be effective on September 6, 2008.⁹⁸ The time for appeal shall run from the release date of this Order.

VII. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED that, pursuant to sections 1-5, 10, 11, 201-205, 211, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 160, 161, 201-205, 211, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt, this Memorandum Opinion and Order and Notice of Proposed Rulemaking IS ADOPTED.

50. IT IS FURTHER ORDERED that, pursuant to sections 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 160(c), the 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 IS GRANTED, subject to conditions, to the extent described herein, and otherwise IS DENIED.

51. IT IS FURTHER ORDERED that, pursuant to sections 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 160(c), the Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), IS GRANTED, subject to conditions, to the extent described herein.

52. IT IS FURTHER ORDERED that, pursuant to sections 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 160(c), the Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements IS GRANTED, subject to conditions, to the extent described herein, and otherwise IS DENIED.

53. IT IS FURTHER ORDERED that, pursuant to sections 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 160(c), the Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements IS GRANTED, subject to conditions, to the extent described herein, and otherwise IS DENIED.

⁹⁸ See 47 U.S.C. § 160(c) (deeming the petition granted as of the forbearance deadline if the Commission does not deny the petition within the time period specified in the statute); 47 C.F.R. § 1.03(a) (“[T]he Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action.”).

54. IT IS FURTHER ORDERED that, pursuant to sections 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 160(c), the Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, IS GRANTED, subject to conditions, to the extent described herein.

55. IT IS FURTHER ORDERED that, pursuant to sections 10(c) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 160(c), 220, forbearance from applying or enforcing the Cost Assignment Rules for Verizon and Qwest IS GRANTED, on the Commission's own motion, subject to conditions, to the extent described herein.

56. IT IS FURTHER ORDERED that, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), that the Commission's Memorandum Opinion and Order SHALL BE EFFECTIVE on September 6, 2008. Pursuant to sections 1.4 and 1.13 of the Commission's rules, 47 C.F.R. §§ 1.4, 1.13, the time for appeal SHALL RUN from the release date of this Memorandum Opinion and Order.

57. IT IS FURTHER ORDERED, pursuant to sections 1.103(a) and 1.427(b) of the Commission's rules, 47 C.F.R. §§ 1.103(a), 1.427(b), that this Notice of Proposed Rulemaking SHALL BE EFFECTIVE 30 days after publication of notice of the Notice in the FEDERAL REGISTER.

58. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Memorandum Opinion and Order and Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Summary of Relevant ARMIS Reports

1. *ARMIS Report No. 43-05 (Service Quality)*. ARMIS Report No. 43-05 provides information on the quality of service of the network, pursuant to section 43-21(g) of the Commission's rules. Report 43-05 is filed by all price cap incumbent LECS (both mandatory¹ and elective) at the study area and holding company levels.² The report contains the following tables:

- Table I Installation and Repair Intervals for access customers (*e.g.*, switched access, high-speed access and other special access)
- Table II Installation and Repair Intervals for business and residential local service
- Table III Common Trunk Blocking Statistics
- Table IV Total Switch Downtime covering number of switches, switches with downtime, scheduled and unscheduled downtime for occurrences under two minutes
- Table IV-A Occurrences of Two or More Minutes Duration
- Table IV Service Quality Complaints by MSA and non-MSA

2. *ARMIS Report No. 43-06 (Customer Satisfaction)*. ARMIS Report No. 43-06 provides the results of customer satisfaction surveys on residential, small business and large business customers' service experience under price-cap regulations, pursuant to section 43-21(h) of the Commission's rules. Specifically, this report contains the number of customers surveyed and the percentage that are dissatisfied with various aspects of the reporting carrier's service. Report 43-06 is filed by all mandatory price cap ILECs at study area and holding company levels.³

3. *ARMIS Report No. 43-07 (Infrastructure)*. ARMIS Report No. 43-07 provides data regarding the switching and transmission infrastructure of the reporting carrier, pursuant to section 43-21(i) of the Commission's rules. Report 43-07 is filed by all mandatory price cap ILECs at the study area and holding company levels.⁴ The report contains the following two tables:

- 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.

4. *ARMIS Report No. 43-08 (Operating Data)*. ARMIS Report No. 43-08 provides operating data about the public network, pursuant to section 43-21(j) of the Commission's rules. Report

¹ AT&T, Qwest, and Verizon are mandatory price cap incumbent LECS.

² <http://www.fcc.gov/wcb/armis/instructions/#4305>.

³ <http://www.fcc.gov/wcb/armis/instructions/#4306>.

⁴ <http://www.fcc.gov/wcb/armis/instructions/#4307>.

43-08 is filed by all Class A ILECs (large and mid-sized)⁵ at the operating company level.⁶ The report contains the following tables:

- 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.

⁵ Large and mid-sized Class A ILECs earns revenues of \$138 million or more. *See* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-08-929A1.pdf.

⁶ <http://www.fcc.gov/wcb/armis/instructions/#4308>.

APPENDIX B

List of Commenters

WC Docket No. 07-139 (AT&T Inc. Petition)

<u>Commenter</u>	<u>Abbreviation</u>
AT&T Corp.	AT&T
California Public Utilities Commission and People of the State of California	California
Communications Workers of America	CWA
Cincinnati Bell Telephone Company LLC	Cincinnati Bell
Embarq Local Operating Companies	Embarq
Michigan Public Service Commission	Michigan PSC
National Association of State Utility Consumer Advocates	NASUCA
New Jersey Division of Rate Counsel	New Jersey Rate Counsel
Public Utility Commission of Texas	Texas PUC
United States Telecom Association	USTA

WC Docket No. 07-204 (Petitions filed by Embarq, Frontier, and Qwest)

<u>Commenter</u>	<u>Abbreviation</u>
AT&T Corp.	AT&T
BT Americas Inc.	BT Americas
California Public Utilities Commission and People of the State of California	California
CenturyTel, Inc.	CenturyTel
Colorado Office of Consumer Counsel	Colorado Consumer
Colorado Public Utilities Commission	Colorado PUC
CompTel	CompTel
Embarq Local Operating Companies	Embarq
Frontier and Citizens ILECs	Frontier
Integra Telecommunications, Inc.	
New Jersey Division of Rate Counsel	New Jersey of Rate Counsel
Pennsylvania Public Utility Commission	Pennsylvania PUC
Qwest Corporation	Qwest
Sprint Nextel Corporation	Sprint Nextel
Time Warner Telecom Inc.	Time Warner Telecom
Verizon Communications Inc.	Verizon
Washington Utilities and Transportation Commission	Washington

WC Docket No. 07-273 (Verizon Communications Inc. Petition)**Commenter****Abbreviation**

AT&T Corp.	AT&T
AdHoc Telecommunications Users Committee	AdHoc
California Public Utilities Commission and People of the State of California	California
Michigan Public Service Commission	Michigan PSC
New Jersey Division of Rate Counsel	New Jersey Rate Counsel
New York Department of Public Service	New York
Pennsylvania Public Utility Commission	Pennsylvania PUC
Sprint Nextel Corporation	Sprint Nextel
Time Warner Telecom Inc.	Time Warner Telecom
Verizon Communications Inc.	Verizon
Washington Utilities and Transportation Commission	Washington
Wisconsin Public Utilities Commission	Wisconsin PUC

WC Docket No. 07-21 (Request of Verizon and Qwest to Extend Forbearance Relief from Cost Assignment Rules)**Commenter****Abbreviation**

Ad Hoc Telecommunications Users Committee	Ad Hoc
Embarq Corporation	Embarq
Frontier Communications	
National Association of State Utility Consumer Advocates	NASUCA
New Jersey Division of Rate Counsel	New Jersey Rate Counsel
New York State Public Service Commission	New York Commission
Qwest Corporation	Qwest
Sprint Nextel Corporation, COMPTTEL, T-Mobile USA, Inc., tw telecom inc., ^[1] and One Communications Corp.	Sprint Nextel <i>et al.</i>
Verizon Communications Inc.	Verizon

^[1] Time Warner Telecom Inc. amended its Certificate of Incorporation effective March 12, 2008 to change its name to tw telecom inc. in preparation for a broader name change that will be effective July 1, 2008. The company continued to use and be known as Time Warner Telecom Inc., its trade name, until July 1, 2008. See Sprint Nextel *et al.* Petition for Reconsideration.

APPENDIX C**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from today's Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the Notice, the Commission considers whether to implement reporting requirements relating to service quality and infrastructure information. Specifically, the Commission seeks comment on whether to impose reporting requirements previously required through ARMIS Reports 43-05, 43-06, 43-07 and 43-08, or similar requirements. The Commission also seeks comment on the scope of entities that should be required to report such information, if it is collected, and the mechanism for collecting that information. In addition, the Notice seeks comment on the appropriate confidentiality protections for such information. For each of these issues, the Commission also seeks comment on the burdens, including those placed on small entities, associated with possible Commission data collection and whether there are alternative rules that might lessen any burden.

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1-5, 10, 11, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 160, 161, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See 5 U.S.C. § 603(a).

⁴ 5 U.S.C. § 604(a)(3).

⁵ 5 U.S.C. § 601(6).

the term “small business concern” under the Small Business Act.⁶ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁷

5. *Incumbent Local Exchange Carriers (ILECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁸ According to Commission data,⁹ 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

6. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁰ According to Commission data,¹¹ 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees.¹² In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are “Other Local Service Providers.” Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our action.

7. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer

⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁷ 15 U.S.C. § 632.

⁸ 13 C.F.R. § 121.201, NAICS code 517110.

⁹ *Trends in Telephone Service* at Table 5.3.

¹⁰ 13 C.F.R. § 121.201, NAICS code 517110.

¹¹ *Trends in Telephone Service* at Table 5.3.

¹² *Id.*

employees), and “is not dominant in its field of operation.”¹³ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.¹⁴ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

8. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁵ According to Commission data,¹⁶ 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

9. *Toll Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁷ According to Commission data,¹⁸ 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

10. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁹ According to Commission data,²⁰ 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

11. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such

¹³ 5 U.S.C. § 601(3).

¹⁴ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

¹⁵ 13 C.F.R. § 121.201, NAICS code 517911.

¹⁶ *Trends in Telephone Service* at Table 5.3.

¹⁷ 13 C.F.R. § 121.201, NAICS code 517911.

¹⁸ *Trends in Telephone Service* at Table 5.3.

¹⁹ 13 C.F.R. § 121.201, NAICS code 517110.

²⁰ *Trends in Telephone Service* at Table 5.3.

a business is small if it has 1,500 or fewer employees.²¹ According to Commission data,²² 330 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees.²³ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by our action.

12. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁴ According to Commission data,²⁵ 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

13. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁶ According to Commission data,²⁷ 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

14. *800 and 800-Like Service Subscribers*.²⁸ Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁹ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.³⁰ According to our data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was

²¹ 13 C.F.R. § 121.201, NAICS code 517110.

²² *Trends in Telephone Service* at Table 5.3.

²³ *Id.*

²⁴ 13 C.F.R. § 121.201, NAICS code 517110.

²⁵ *Trends in Telephone Service* at Table 5.3.

²⁶ 13 C.F.R. § 121.201, NAICS code 517911.

²⁷ *Trends in Telephone Service* at Table 5.3.

²⁸ We include all toll-free number subscribers in this category, including those for 888 numbers.

²⁹ 13 C.F.R. § 121.201, NAICS code 517911.

³⁰ *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

6,008,976. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,647,941 or fewer small entity 800 subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

1. Wireless Carriers and Service Providers

15. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

16. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.³¹ Because there is not, as yet, much if any data to establish small business size standards for the different categories of wireless firms that fall under this broad, new census category, we will use data gathered under superseded census categories to estimate the relevant size standards. Prior to 2007, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of “Paging” and “Cellular and Other Wireless Telecommunications.”³² Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.³³ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.³⁴ For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.³⁵ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.³⁶ Thus, using the prior categories and the available data, we estimate that the majority of wireless firms can be considered small. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the

³¹ 13 C.F.R. § 121.201, NAICS code 517210.

³² 13 C.F.R. § 121.201, NAICS codes 517211, 517212.

³³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

³⁴ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

³⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

³⁶ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

data.³⁷ We have estimated that 221 of these are small, under the SBA small business size standard.³⁸ Thus, under this category and size standard, about half of firms can be considered small. This information is also included in paragraph 23.

17. *Common Carrier Paging.* The SBA has developed a small business size standard for the superseded category of “Paging,” under which a business is small if it has 1,500 or fewer employees.³⁹ According to Commission data,⁴⁰ 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging *Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁴¹ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁴² The SBA has approved these small business size standards.⁴³ An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.⁴⁴ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

18. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.⁴⁵ The Commission auctioned geographic area licenses in

³⁷ *Trends in Telephone Service* at Table 5.3.

³⁸ *Id.*

³⁹ 13 C.F.R. § 121.201, NAICS code 517211 (This category was changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

⁴⁰ *Trends in Telephone Service* at Table 5.3.

⁴¹ *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997) (*220 MHz Third Report and Order*).

⁴² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998).

⁴³ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, paras. 98-107 (1999).

⁴⁴ *Id.* at 10085, para. 98.

⁴⁵ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

19. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for the superseded census category of “Cellular and Other Wireless Telecommunications” services.⁴⁶ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁴⁷ According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.⁴⁸ We have estimated that 221 of these are small under the SBA small business size standard.

20. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁴⁹ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁵⁰ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.⁵¹ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁵² On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

21. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, “small businesses” were entities with average gross revenues for the prior

⁴⁶ 13 C.F.R. § 121.201, NAICS code 517212.

⁴⁷ *Id.*

⁴⁸ *Trends in Telephone Service* at Table 5.3.

⁴⁹ *See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 61 FR 33859 (July 1, 1996); *see also* 47 C.F.R. § 24.720(b).

⁵⁰ *Id.*

⁵¹ *See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

⁵² FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997). *See also Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 12 FCC Rcd 16436 (1997).

three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.⁵³ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.⁵⁴ In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission’s Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission’s partitioning and disaggregation rules.

22. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.⁵⁵ The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard.

23. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁵⁶ This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁵⁷ A “very small business” is an entity that, together

⁵³ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

⁵⁴ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

⁵⁵ 13 C.F.R. § 121.201, NAICS code 517212.

⁵⁶ *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, at paras. 291-95.

⁵⁷ *Id.* at 11068-70, para. 291.

with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards.⁵⁸ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.⁵⁹ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.⁶⁰

24. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards “small entity” and “very small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively.⁶¹ These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

25. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁶² A “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.⁶³ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13,

⁵⁸ See letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

⁵⁹ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

⁶⁰ *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

⁶¹ 47 C.F.R. § 90.814(b)(1).

⁶² See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to part 27 of the Commission’s Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000).

⁶³ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.⁶⁴

26. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.⁶⁵ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).⁶⁶ The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.⁶⁷ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

27. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.⁶⁸ We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.⁶⁹ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

28. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.⁷⁰ Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with controlling

⁶⁴ 700 MHz Guard Band Auction Closes, Public Notice, 16 FCC Rcd 4590 (2001).

⁶⁵ The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

⁶⁶ BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

⁶⁷ 13 C.F.R. § 121.201, NAICS code 517210.

⁶⁸ The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

⁶⁹ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

⁷⁰ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.⁷¹ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

29. *Fixed Microwave Services.* Fixed microwave services include common carrier,⁷² private operational-fixed,⁷³ and broadcast auxiliary radio services.⁷⁴ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.⁷⁵ The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

30. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.⁷⁶ There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size

⁷¹ *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

⁷² See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission’s Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

⁷³ Persons eligible under parts 80 and 90 of the Commission’s Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

⁷⁴ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

⁷⁵ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

⁷⁶ This service is governed by Subpart I of Part 22 of the Commission’s Rules. See 47 C.F.R. §§ 22.1001-22.1037.

standard for “Cellular and Other Wireless Telecommunications” services.⁷⁷ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁷⁸

31. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁷⁹ An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁸⁰ The SBA has approved these small business size standards.⁸¹ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

32. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (“BRS”), formerly Multipoint Distribution Service (“MDS”),⁸² and the Educational Broadband Service (“EBS”), formerly Instructional Television Fixed Service (“ITFS”),⁸³ to transmit video programming and provide broadband services to residential subscribers.⁸⁴ These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.⁸⁵ We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (“LMDS”) is a fixed

⁷⁷ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

⁷⁸ *Id.*

⁷⁹ *See Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600 (1998).

⁸⁰ *Id.*

⁸¹ *See* Letter to Kathleen O’Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

⁸² MDS, also known as Multichannel Multipoint Distribution Service (“MMDS”), is regulated by Part 21 of the Commission’s rules; *see* 47 C.F.R. Part 21, subpart K; and has been renamed the Broadband Radio Service (BRS); *see* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission’s Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004) (“*MDS/ITFS Order*”).

⁸³ ITFS systems are regulated by Part 74 of the Commission’s rules; *see* 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); *see MDS/ITFS Order*, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

⁸⁴ *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2565 ¶ 131 (2006) (“*2006 Cable Competition Report*”).

⁸⁵ *Id.*

broadband point-to-multipoint microwave service that provides for two-way video telecommunications.⁸⁶ As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.⁸⁷ Although this census category has been superseded by the new census category of Cable and Other Subscription Programming,⁸⁸ we use the size standards under the superseded census category because no standards have been established for the new category. Other standards also apply, as described.

33. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,⁸⁹ the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.⁹⁰ This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁹¹ In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.⁹² MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

34. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).⁹³ We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

⁸⁶ See Local Multipoint Distribution Service, 12 FCC Rcd 12545 (1997).

⁸⁷ 13 C.F.R. § 121.201, NAICS code 517510.

⁸⁸ 13 C.F.R. § 121.201, NAICS code 515210.

⁸⁹ MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

⁹⁰ 47 C.F.R. § 21.961(b)(1).

⁹¹ See *ITFS Order*, 10 FCC Rcd at 9589.

⁹² 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for "other telecommunications" (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

⁹³ In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

35. In the 1998 and 1999 LMDS auctions,⁹⁴ the Commission defined a small business as an entity that has annual average gross revenues of less than \$40 million in the previous three calendar years.⁹⁵ Moreover, the Commission added an additional classification for a “very small business,” which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.⁹⁶ These definitions of “small business” and “very small business” in the context of the LMDS auctions have been approved by the SBA.⁹⁷ In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission’s auction rules.

36. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.⁹⁸ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.⁹⁹ A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.¹⁰⁰ These size standards will be used in future auctions of 218-219 MHz spectrum.

37. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no

⁹⁴ The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

⁹⁵ See *LMDS Order*, 12 FCC Rcd at 12545.

⁹⁶ *Id.*

⁹⁷ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

⁹⁸ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

⁹⁹ *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

¹⁰⁰ *Id.*

more than 1,500 persons.¹⁰¹ We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent¹⁰² and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

38. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.¹⁰³ “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹⁰⁴ The SBA has approved these small business size standards.¹⁰⁵ These size standards will apply to the future auction, if held.

2. Satellite Service Providers

39. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million.¹⁰⁶ The most current Census Bureau data, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.”¹⁰⁷

40. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”¹⁰⁸ For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.¹⁰⁹ Of this total, 307

¹⁰¹ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

¹⁰² Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

¹⁰³ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(2).

¹⁰⁴ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(1).

¹⁰⁵ *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

¹⁰⁶ 13 C.F.R. § 121.201, NAICS code 517410 (2007).

¹⁰⁷ 13 C.F.R. § 121.201, NAICS codes 517919 (size standard of \$25 million).

¹⁰⁸ U.S. Census Bureau, 2002 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹⁰⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.¹¹⁰ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

41. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”¹¹¹ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.¹¹² Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.¹¹³ Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

3. Cable and OVS Operators

42. In 2007, the SBA recognized new census categories for small cable entities.¹¹⁴ However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities. In addition to the estimates provided above, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

43. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.”¹¹⁵ The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts.¹¹⁶ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category

¹¹⁰ *Id.* An additional 38 firms had annual receipts of \$25 million or more.

¹¹¹ U.S. Census Bureau, 2002 NAICS Definitions, “517910 Other Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹¹² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

¹¹³ *Id.* An additional 14 firms had annual receipts of \$25 million or more.

¹¹⁴ 13 C.F.R. § 121.201.

¹¹⁵ U.S. Census Bureau, 2002 NAICS Definitions, “517510 Cable and Other Program Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹¹⁶ 13 C.F.R. § 121.201, NAICS code 517510 (This category will be changed for purposes of the 2007 Census to “Wired Telecommunications Carriers,” NAICS code 517110.).

that operated for the entire year.¹¹⁷ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹¹⁸ Thus, under this size standard, the majority of firms can be considered small.

44. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.¹¹⁹ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.¹²⁰ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹²¹ Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.¹²² Thus, under this second size standard, most cable systems are small.

45. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹²³ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹²⁴ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.¹²⁵ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose

¹¹⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

¹¹⁸ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹¹⁹ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

¹²⁰ These data are derived from R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

¹²¹ 47 C.F.R. § 76.901(c).

¹²² Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

¹²³ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

¹²⁴ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

¹²⁵ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

gross annual revenues exceed \$250 million,¹²⁶ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

46. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.¹²⁷ As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution.¹²⁸ This standard provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.¹²⁹ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

4. Electric Power Generation, Transmission and Distribution

47. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: “This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.”¹³⁰ The SBA has developed a small business size standard for firms in this category: “A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.”¹³¹ According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year.¹³² Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

¹²⁶ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. *See* 47 C.F.R. § 76.909(b).

¹²⁷ *See* 47 U.S.C. § 573.

¹²⁸ 13 C.F.R. § 121.201, NAICS code 517110.

¹²⁹ *See* <http://www.fcc.gov/mb/ovs/csovscer.html> (current as of February 2007).

¹³⁰ U.S. Census Bureau, 2002 NAICS Definitions, “2211 Electric Power Generation, Transmission and Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF221.HTM>.

¹³¹ 13 C.F.R. § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, footnote 1.

¹³² U.S. Census Bureau, 2002 Economic Census, Subject Series: Utilities, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122 (issued Nov. 2005).

5. Internet Service Providers, Web Portals and Other Information Services

48. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals,¹³³ and (2) All Other Information Services.¹³⁴ However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities.

49. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”¹³⁵ Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.¹³⁶ According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.¹³⁷ Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

50. *Web Search Portals.* Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.”¹³⁸ The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.¹³⁹ According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year.¹⁴⁰ Of these, 303 had annual receipts of under \$5 million, and an additional 15 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

¹³³ 13 C.F.R. § 121.201, NAICS code 519130 (establishing 500 employees as a size standard).

¹³⁴ 13 C.F.R. § 121.201, NAICS code 519190 (establishing a \$7 million revenue ceiling).

¹³⁵ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers,” <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹³⁶ 13 C.F.R. § 121.201, NAICS code 518210.

¹³⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

¹³⁸ U.S. Census Bureau, “2002 NAICS Definitions: 518112 Web Search Portals”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹³⁹ 13 C.F.R. § 121.201, NAICS code 518112.

¹⁴⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518112 (issued Nov. 2005).

51. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily ... provid[e] infrastructure for hosting or data processing services.”¹⁴¹ The SBA has developed a small business size standard for this category; that size standard is \$23 million or less in average annual receipts.¹⁴² According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.¹⁴³ Of these, 6,418 had annual receipts of under \$10 million, and an additional 251 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

52. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”¹⁴⁴ Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$7 million or less in average annual receipts.¹⁴⁵ According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.¹⁴⁶ Of these, 138 had annual receipts of under \$5 million, and an additional four firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

53. *Internet Publishing and Broadcasting.* “This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.”¹⁴⁷ The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees.¹⁴⁸ According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year.¹⁴⁹ Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

¹⁴¹ U.S. Census Bureau, “2002 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹⁴² 13 C.F.R. § 121.201, NAICS code 518210.

¹⁴³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518210 (issued Nov. 2005).

¹⁴⁴ U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services”; <http://www.census.gov/epcd/naics02/def/NDEF519.HTM>.

¹⁴⁵ 13 C.F.R. § 121.201, NAICS code 519190.

¹⁴⁶ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 519190 (issued Nov. 2005).

¹⁴⁷ U.S. Census Bureau, “2002 NAICS Definitions: 516110 Internet Publishing and Broadcasting”; <http://www.census.gov/epcd/naics02/def/NDEF516.HTM>.

¹⁴⁸ 13 C.F.R. § 121.201, NAICS code 516110.

¹⁴⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 516110 (issued Nov. 2005).

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

54. In the Notice, the Commission considers whether to implement certain reporting requirements relating to service quality and infrastructure information. Specifically, the Commission seeks comment on whether to impose certain reporting requirements previously required through ARMIS Reports 43-05, 43-06, 43-07 and 43-08, or similar requirements. In addition, the Notice seeks comment on the appropriate confidentiality protections for such information. The Commission also seeks comment on the scope of entities that should be required to report such information, if it is collected, and the mechanism for collecting that information.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁵⁰

56. As noted above, the Notice seeks comment on possible methods for reporting the proposed information collections, as well as suggestions of methods to maintain and report the information that achieve the purposes of the Notice while minimizing the burden on reporting entities, including small entities. This information will assist the Commission in determining whether these various proposed information collections would impose a significant economic impact on small entities. Based on these questions, we anticipate that the record will be developed concerning alternative ways in which the Commission could lessen the burden on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

57. None.

¹⁵⁰ 5 U.S.C. § 603(c).

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), WC Docket No. 07-139; Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273; 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; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, WC Docket No. 08-190*

Today, we take another step to remove unnecessary regulatory burdens and ensure a regulatory level playing field. We eliminate outdated reporting requirements that applied to a small class of carriers, retaining only those requirements that still serve a useful regulatory purpose.

And if the Commission does believe specific information is needed in today's competitive marketplace, then we should collect that information from all industry players rather than a handful of carriers. Therefore, we initiate a proceeding to determine whether and how to collect such information across all platforms.

The ARMIS service quality and infrastructure reports adopted almost two decades ago are remnants of legacy regulation on monopoly providers. As competition increased, the need for these safeguards and the utility of these reports diminished. Moreover, their competitors are not required to file the reports. Therefore, even if some information is important to disclose publicly to help inform consumers and ensure an open market, it needs to be provided by all the competitors. Indeed, failure to require all competitive platforms to file the same information would not paint an accurate picture of the industry today. Such information is not useful or reliable unless we obtain it in a uniform manner from providers across all platforms.

I am pleased that we also extend to Verizon and Qwest the cost allocation forbearance relief that we provided AT&T earlier this year. Like the ARMIS service quality and infrastructure reports, these rules have been in effect in one form or another for decades and no longer serve the purpose for which they were imposed. Verizon and Qwest will continue to file price, revenue, and total cost information necessary to achieve the goals of price cap regulation. But we relieve them of the burden of this legacy regulation from a much different era.

**STATEMENT OF COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, CONCURRING IN PART, DISSENTING IN PART**

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), WC Docket No. 07-139; Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273; 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; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, WC Docket No. 08-190*

The collection and analysis of solid communications-related data is a linchpin in the Commission's ability to make sound decisions and provide useful guidance and assistance to consumers, states, industry-participants and other stakeholders. That is why it has been so troubling to see in to many instances the Commission headed down the road of collecting less data. Now we are confronted with forbearance requests by carriers seeking relief from the responsibility of collecting and reporting service quality, customer satisfaction, and infrastructure and operating data pursuant to the Commission's ARMIS reporting rules. Petitioners argue the current data-collection requirements are outdated and that the Commission has failed to complete an NPRM pending for *eight years* to determine what data should be collected circa 2008. Thus, they filed forbearance petitions to obtain relief.

There is no good reason for the Commission to have ended up in today's dilemma: incapable of determining with specificity what data collection continues to be important, yet faced with a ticking-clock forbearance deadline that would eliminate *all* of the reporting requirements—the good, the bad, and allegedly the ugly—identified by petitioners if the Commission fails to act.

My strong preference would be to deny these petitions outright and provide carriers, through a rulemaking, updated reporting requirements. However, there does not appear to be a majority of support for this position. Rather than having certain ARMIS data that is currently submitted to the FCC disappear into the abyss via forbearance, we reached a compromise with regard to the ARMIS reporting requirements which can keep us from plunging off a cliff. First, the Commission grants covered carriers forbearance from certain ARMIS reporting requirements. Second, forbearance is conditioned on carriers continuing to collect and publicly make available their data on service quality and customer satisfaction for two years. They also must continue to collect infrastructure and operating data for the next two years. Third, we launch a Further Notice of Proposed Rulemaking to, hopefully, accomplish what we have avoided all these years—a reasoned, rational and relevant approach to ensuring that the data necessary for consumers and for state and federal regulators will be available going-forward. While this compromise does create a risk that the aforementioned data will not be available after two years time, it gives the Commission the opportunity to do what it should have done a long time ago, which is to revise and update its reporting requirements.

To ensure that we have at least some ability to access needed data going forward, I approve the

Order's condition that the carriers continue to collect, and in certain cases report, the data provided today for another two years. I also am supportive of the Order's clear statement that the Commission is not in any way preempting state regulatory agencies from obtaining directly from carriers any data they need to perform their regulatory duties. I limit my support of part of this Order to concurrence because the analysis and reasoning relied on to reach the forbearance decision is flawed. In particular, its finding that ARMIS reports in certain circumstances are no longer necessary, too burdensome, or not useful is contrary to the views of numerous commenters, including consumer organizations, state consumer advocates, state public utility commissions, and the Communications Workers of America, among others.

I approve the Notice of Proposed Rulemaking which gives us the opportunity in the next two years to get the job done right. Importantly, the NPRM seeks comment on the type of data collection that will best enable the FCC, and all interested parties, to obtain and analyze the information needed in order to protect consumers and to assure the existence of a competitive telecommunications environment. To the extent that the Commission finds that data collected and publicly available today should continue to be collected, there appears to be every reason for this data to be made publicly available going forward.

Let me be clear: the Commission has a deep and ongoing obligation to gather this type of data so informed decisions can be made when it comes to consumer protection, competition, broadband, and public safety. I believe that today's NPRM sets us on a path so that the Commission can do a better job in the not-so-distant future. It's no slam-dunk we will do so, but I pledge my best efforts to making it come to pass in the months ahead. I encourage all stakeholders to treat this NPRM with the seriousness it merits and to give us the benefit of your best and most creative thinking. With your input, we *can* get this job done—and done right.

Finally, but just as importantly, I strongly dissent to the last minute inclusion of cost allocation forbearance relief for Verizon and Qwest. With the statutory deadline looming, this monumental change was first proposed only yesterday afternoon. No Order in connection with the cost allocation forbearance requests was previously circulated for consideration. There is no opportunity to review the relevant records, hear from stakeholders, or consider the merits of these forbearance requests. I therefore must dissent on this basis alone. The inclusion of such a far-reaching decision at this late hour badly distorts a forbearance process that has already gone awry. Furthermore, I am deeply concerned at this time that the grant of forbearance likely raises similar concerns to those I raised with Commissioner Adelstein in our dissent to cost allocation forbearance relief granted AT&T back in April.

For these reasons, I approve in part, concur in part, and dissent in part – a messy vote for a truly messy item.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN,
APPROVING IN PART, CONCURRING IN PART, DISSENTING IN PART**

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), WC Docket No. 07-139; Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273; 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; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, WC Docket No. 08-190*

I have long believed that the Commission has a responsibility to collect accurate and reliable data in order to develop effective policies and fulfill Congress's goals for the evolving telecommunications marketplace. Just as an airplane pilot would not land a plane with eyes closed and instruments off, the Commission must ensure that its decision-making is guided by sufficient data. Particularly as telecommunications markets move to a less regulated model, the FCC can also play an important role by providing information directly to consumers that will empower them to choose among competitive carriers.

With so many benefits from the Commission's efforts to collect and share market information, we should be skeptical about proposals to effectively jettison a host of reporting requirements that may help the Commission perform its consumer protection, broadband, competition, and public safety functions. It is certainly true that we must update our rules to respond to changes in the market and technology, as we are required to do regularly by statute. Unfortunately, today's item fails to carefully analyze the current collection program or develop consensus about which of these service quality, customer satisfaction, infrastructure, and operating reporting requirements remain useful, or could be revised, eliminated, or enhanced. Perhaps more troubling, the majority, on the last business day of this fifteen month review process, has taken up entirely new forbearance requests which will cast aside long-standing financial reporting requirements.

To be clear, the prudent course would be to have addressed these reporting requirements with a careful analysis and through an open and inclusive rulemaking proceeding. Yet, we are presented today with a Hobson's choice in the form of a forbearance statute that mandates a "deemed grant" – in this case total elimination of the reporting requirements – if the Commission is unable to reach compromise. Faced with these difficult circumstances, I have attempted to work with my colleagues to forge consensus where possible, with the result that I will approve-in-part, concur-in-part, and dissent-in-part to portions of this item, as described below.

Service Quality, Customer Satisfaction, Infrastructure and Operational Reporting Requirements. With respect to this data, we strike a compromise which, though imperfect, is certainly preferable to a wholesale scrapping of these reporting requirements. State public utility commissions, consumer

advocates, providers, and representatives of communications workers alike have stressed the utility of this data and have urged the Commission to take a more calibrated approach. So, I appreciate my colleagues' willingness to accommodate my desire to explore these issues more fully. Indeed, my support for this item was dependent on the Commission's decision to condition forbearance on the reporting carriers' commitment to continue this data collection for two years, while the Commission considers whether to modify these rules and apply them to a broader class of carriers. Specifically, the Order requires the reporting carriers continue filing this data for two additional years and to continue to publicly report the service quality and customer satisfaction data during this time. These conditions are essential for my support of this item, though I can only concur to the portions of this Order that rely on flawed analysis to conclude that forbearance is appropriate at all.

My support for this item was also dependent on the Commission's decision to open a Notice of Proposed Rulemaking which recognizes that this information may be useful to the Commission and consumers, particularly if collected from a broader range of providers. Notably, eight years ago, the Commission proposed to do exactly that – to revise, pare back, and in some cases, enhance many of these same reporting requirements. Certainly, eight years should have been sufficient time to have addressed this in an ordered fashion. At a minimum, having had fifteen months warning that we would have to address this by today, it is disappointing that the Commission failed to pursue a thoughtful and comprehensive rulemaking process.

Now, faced with this imminent deadline, the Commission pivots to this awkward two step process – forbearing from these reporting requirements, while at the same time seeking comment on whether those same requirements should be applied to all carriers. While this is certainly putting the cart before horse, this compromise is far better than immediate and precipitous elimination of all of the rules. It will give the Commission another opportunity to foster a collaborative approach, to engage State commissions, consumer advocates, carriers, and other interested parties, to narrow the differences, and perhaps to develop consensus. Now that we have this brief window of opportunity, I hope and expect that the Commission and outside parties will engage constructively and creatively in an effort to derive meaningful reporting requirements to be filed by a broader set of industry players that will assist policymakers and consumers. To that end, I'd like to acknowledge the efforts of AT&T and the Communications Workers of America to develop commitments that form the basis of this Order. That should be an encouraging sign as we move on to the next phase of this proceeding.

Financial Reporting Requirements. In a surprise conclusion to this proceeding, the Commission also grants two additional forbearance requests from our financial reporting requirements. Adding these new sections of the Order on the last business day cuts short outside parties' opportunity to make their views heard and denies all Commissioners the opportunity to gain the benefit of this input. This cavalier approach to the forbearance process is disappointing given the many concerns that have already been raised by Congress.

Even setting those concerns aside, elimination of these cost assignment and allocation rules undermines the Commission's ability to promote competition, consumer confidence, investor security, and the public interest, as Commissioner Copps and I detailed in our joint statement earlier this year.¹ It

¹ See Joint Statement of Commissioners Michael J. Copps and Jonathan S. Adelstein, Dissenting, *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, *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 Nos. 07-21, 05-342; Memorandum Opinion and Order (April 24, 2008).

diminishes our ability to meet our statutory obligation to ensure that telecommunications services are offered on rates, terms and conditions that are just, reasonable and not unjustly or unreasonably discriminatory. It renders meaningless important competitive safeguards that the Commission unanimously adopted just a year ago. Moreover, it will make harder the road to comprehensive universal service and intercarrier compensation reform. For all these reasons, I dissent from this portion of the item.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), WC Docket No. 07-139; Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273; 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; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, WC Docket No. 08-190*

An integral part of the pro-competitive, de-regulatory national policy framework established by Congress in the 1996 Act is the section 10 forbearance provision. Today's increasingly competitive telecommunications marketplace, including cross platform competitors like wireless and cable, provide consumers with an array of choices that ensure the consumer protection once deemed necessary through government regulation. When the Commission finds that certain filings are no longer needed to fulfill their consumer protection goals, we should grant relief accordingly. That is the case today, as we grant partial forbearance from carriers' obligation to file certain Automated Reporting Management Information System (ARMIS) "service quality and infrastructure" reports and extend relief from cost assignment rules previously granted to AT&T to Verizon and Qwest.

The ARMIS reports, created in the Commission's *Price Cap Order* nearly two decades ago, were intended to serve as "safety nets" to ensure that incumbent local exchange carriers did not lower quality of customer service to increase short-term profit or fail to invest in infrastructure under the new regulatory framework. With the advent of competition in the telecommunications marketplace the opposite has happened, with industry offering a myriad of options to the consumer, investing approximately \$68 billion in the marketplace just last year. The majority of these reports, adopted to monitor whatever "theoretical concern" there may have been, are no longer needed to fulfill their goals of consumer protection.

As a former state commissioner, I appreciate the participation of my state colleagues in this proceeding and have carefully considered their concerns. I highlight the fact that we do not preempt any state authority in this order. We clearly acknowledge and in essence bolster the consumer protection authority of the states to obtain any information from any of these carriers for their own regulatory purposes. States have always taken the lead in protecting the consumer interest and have overarching statutory authority that goes far beyond keeping data reports.

This forbearance is a reasoned approach which both grants and denies forbearance, based on specific circumstances. Thus, we find that there is still a federal need for the collection of switched access line data used by USAC to calculate growth in access lines as part of the formula for determining

interstate access support, and business line count information in the non-impairment thresholds for the Commission's unbundling rules.

As Federal Chairman of the Federal-State Joint Board on Advanced Services, I commend the Chairman for recognizing the importance of maintaining certain data that could be helpful in future policymaking considerations regarding public safety and broadband deployment.

As we all work together toward ensuring that every person in this country has broadband access, from the broadband mapping legislation proposed by Chairmen Inouye and Markey to the proceedings at the FCC, to local and state initiatives such as Connect Tennessee, it is important to ensure that we retain data that will help us achieve those goals. However, I find it inconsistent that in this order that we on one hand grant forbearance relief to a specific class of carriers and on the other hand we potentially open the door to further regulation on a broad, industry-wide basis. Undoubtedly, broadband and public safety are crucial public policy goals that may indeed require more information than is currently collected. But if we are going to impose reporting requirements on carriers involved in our public safety infrastructure and deployment of broadband we need make sure that they are treated fairly and equitably, with the data collection being as minimally burdensome and least duplicative as possible, focusing on the enunciated goals of today, not the legacy requirements of yesterday.

I agree that as competition increases in the marketplace, we should level the playing field whenever possible whether within or across platforms. However, the entire reasoning on which this order is based on -- lifting regulations that are "no longer necessary" -- is not consistent with the potential "expansion" to other providers and platforms. I hope that we will continue to pursue the data necessary for our policy goals where it makes sense, especially utilizing data which may already be provided either to other governmental entities and non-profits (such as Connected Nation), and to encourage industry-based reporting parameters in keeping with our deregulatory policies to encourage investment and deployment of services and more choice for consumers.

In this order we also grant identical cost allocation relief to Verizon and Qwest that we provided to AT&T earlier this year. Like AT&T, these companies are now largely regulated under price caps, and there is no current federal need for the specific cost assignment rules implemented under rate of return regulation. By granting this forbearance, we are leveling the regulatory playing field and ensuring continued competition among these carriers. As a condition of this forbearance, we require Verizon and Qwest to file a compliance plan, as was the case with AT&T, to ensure that the Commission has any accounting data it needs for policymaking purposes moving forward.

While I agree philosophically that we should treat like "classes of carriers" in the same manner, I would have chosen another legal vehicle. Additionally, rather than granting forbearance first and then approving a compliance plan, perhaps it would be more logically sound if the Commission had all the relevant information -- including the compliance plan -- prior to making the decision to expand relief. However, in the interest of ensuring that we are enabling competition in the marketplace by reducing the legacy barriers that unfairly burden some carriers and not others, I agree with the outcome, and hope the forthcoming compliance plan will indeed continue to protect consumers in markets and situations where necessary. Ultimately, it is our responsibility to ensure regulatory parity so that "similarly situated" classes of carriers are treated equally under the law.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), WC Docket No. 07-139; Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273; 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; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, WC Docket No. 08-190

I support AT&T's request for relief from the requirement to file ARMIS service quality and infrastructure reports in this forbearance petition and the extension of such relief to similarly situated carriers that have also requested such relief. As set forth in the order, these reports, which are filed by only a small group of carriers, no longer advance the consumer protection goals for which they were originally adopted. With this order, we are able to maintain effective consumer safeguards while also cleaning out unnecessary regulatory underbrush. Accordingly, I find that granting relief meets the statutory obligations of Section 10 and, therefore, is in the public interest.

I also am pleased that this item extends to Verizon and Qwest the relief the Commission previously afforded to AT&T eliminating certain cost allocation data collection and reporting requirements. As I said at that time, it is important to grant comparable relief to similarly situated carriers, and to do so as soon as possible.

Even after this limited forbearance order, the Commission can still gather information necessary to build a sufficient record for a legitimate regulatory purpose. For example, we appropriately deny forbearance with respect to business line count information used in the non-impairment thresholds for the Commission's unbundling rules. Further, some of the data currently provided in the ARMIS reports – if collected from a broader set of providers – could inform our decision-making with respect to public safety, broadband deployment, and perhaps other key issues. I therefore look forward to reviewing the responses to the Notice of Proposed Rulemaking asking whether and how the Commission should collect data from a broader cross-section of the industry. The fact that the relief in this order is conditioned on carriers continuing to publicly file ARMIS report data for two years will, to the extent we conclude that the collection of such data by the Commission is necessary and proper, ensure continuity.