LATHAM & WATKINS
ATTORNEYS AT LAW
1001 PENNSYLVANIA AVE., N.W.
SUITE 1300
WASHINGTON, D.C. 20004-2505
TELEPHONE (202) 637-2200
FAX (202) 637-2201

PAUL R. WATKINS (1899 - 1973)
DANA LATHAM (1898 - 1974)

CHICAGO OFFICE
SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
PHONE (312) 876-7700, FAX 993-9767

HONG KONG OFFICE
20TH FLOOR
STANDARD CHARTERED BANK BUILDING
4 DES VOEUX ROAD CENTRAL, HONG KONG
PHONE +852-2522-7886, FAX 2522-7006

LONDON OFFICE
99 BISHOPSGATE, ELEVENTH FLOOR
LONDON EC2M 3XF ENGLAND
PHONE +44-20-7710-1000, FAX 7374-4460

LOS ANGELES OFFICE
633 WEST FIFTH STREET, SUITE 4000
LOS ANGELES, CALIFORNIA 90071-2007
PHONE (213) 485-1234, FAX 891-8763

MOSCOW OFFICE
ULITSA GASHEKA, 7, 9TH FLOOR
MOSCOW 123056, RUSSIA
PHONE +7-095 785-1234, FAX 785-1235

NEW JERSEY OFFICE
ONE NEWARK CENTER, 16TH FLOOR
NEWARK, NEW JERSEY 07101-3174
PHONE (973) 639-1234, FAX 639-7298

NEW YORK OFFICE
885 THIRD AVENUE, SUITE 1000
NEW YORK, NEW YORK 10022-4802
PHONE (212) 906-1200, FAX 751-4864

ORANGE COUNTY OFFICE
650 TOWN CENTER DRIVE, SUITE 2000
COSTA MESA, CALIFORNIA 92626-1925
PHONE (714) 540-1235, FAX 755-8290

SAN DIEGO OFFICE
[illegible] STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
PHONE (619) 236-1234, FAX 696-7419

SAN FRANCISCO OFFICE
505 MONTGOMERY STREET, SUITE 1900
SAN FRANCISCO, CALIFORNIA 94111-2562
PHONE (415) 391-0600, FAX 395-8095

SILICON VALLEY OFFICE
135 COMMONWEALTH DRIVE
MENLO PARK, CALIFORNIA 94025
PHONE (650) 328-4600, FAX 463-2600

SINGAPORE OFFICE
80 RAFFLES PLACE, #14-20
UOB PLAZA 2, SINGAPORE 048624
PHONE +65-536-1161, FAX 536-1171

TOKYO OFFICE
KANEMATSU BUILDING, 5TH FLOOR
2-14-1 KYOBASHI, CHUO-KU
TOKYO 104-0031, JAPAN
PHONE +813-5524-1900, FAX 5524-1901

DOCKET FILE COPY ORIGINAL

January 12, 2001

RECEIVED
JAN 12 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FILE NO. 023976-0008

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ITTA Comments for Telecommunications Service Quality Reporting Requirements Proceeding, CC Docket No. 00-229

Dear Ms. Salas:

Please find enclosed an original and four copies, plus one copy for date-stamp return receipt purposes, of the comments of the Independent Telephone & Telecommunications Alliance in *2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, Notice of Proposed Rulemaking in CC Docket No. 00-229, FCC 00-399 (rel. Nov. 9, 2000). If you have any questions or comments related to these comments, please do not hesitate to contact me directly at (202) 637-1008. Thank you for your consideration in this matter.

Sincerely,

Benoit Jacqmotte

Enclosures

No. of Copies rec'd 0+4
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED
JAN 12 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	CC Docket No. 00-229
Telecommunications Service Quality	)	
Reporting Requirements	)	

COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

David W. Zesiger, Executive Director
The Independent Telephone &
Telecommunications Alliance
1300 Connecticut Avenue, N.W.
Suite 600
Washington, D.C. 20036

Karen Brinkmann
Richard R. Cameron
Benoit Jacqmotte
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004

Its Attorneys

January 12, 2001

Summary

The scope of Section 11 does not permit the Commission to create new reporting requirements. Because the original basis and concerns for implementing the service quality reporting requirements have proven unfounded, these rules should be repealed because they are no longer necessary in the public interest.

Instead, the Commission should exempt two percent and smaller carriers from any service quality reporting. Historically, the Commission and Congress have recognized the special circumstances and capabilities of the small and mid-sized carriers into its analysis of the imposition of regulatory requirements on these carriers. Similarly, the NARUC White Paper proposal does not require non-reporting carriers to commence reporting service quality information.

In its notice, the Commission has not justified imposing additional mandatory service quality reporting obligations on two percent carriers. History has shown that incentive regulation does not, of itself, cause service quality to decline. Two percent carriers have long maintained high levels of service quality to their customers and typically improve service quality and launch new services when they acquire local exchanges from larger carriers.

Additionally, the Commission's proposed reporting program is flawed. The data to be reported under the Commission's proposal are not necessary in a competitive market. Much of the information the Commission wishes to have reported is available to consumers directly from carriers. The proposed reporting requirements are largely duplicative of state requirements. The Commission's proposed use of thresholds and voluntary reporting do not meet the requirements of the Section 11 standard. Finally, the Commission's proposal to require carriers to report service quality information more than once per year is a direct violation of the 1996 Act's statutory provisions directing the Commission to permit carriers to file ARMIS data no more than annually.

TABLE OF CONTENTS

Page

I. INTRODUCTION **1**

II. BACKGROUND AND HISTORY OF SERVICE QUALITY REPORTING REQUIREMENTS **3**

III. SECTION 11 DOES NOT PERMIT THE CREATION OF NEW REPORTING REQUIREMENTS .. **5**

IV. THE COMMISSION SHOULD ELIMINATE ALL SERVICE QUALITY REPORTING REQUIREMENTS FOR TWO PERCENT CARRIERS **7**

A. THE COMMISSION SHOULD CONTINUE TO ADHERE TO THE FUNDAMENTAL PRINCIPLE OF DIFFERENTIATION IN REGULATING TWO PERCENT CARRIERS 7

1. The Commission Should Not Abandon Its Historical Commitment To The Principle Of Differentiation Among Carriers *8*

2. Congress Has Endorsed The Core Principle Of Differentiation *9*

3. The DOT Program, After Which The Commission Modeled Its Proposal, Is Voluntary For Small Carriers *10*

4. The NARUC Proposal Does Not Require Non-Reporting Carriers To Commence Reporting Service Quality Information *11*

B. THE COMMISSION HAS NOT JUSTIFIED IMPOSING ADDITIONAL MANDATORY SERVICE QUALITY REPORTING OBLIGATIONS ON TWO PERCENT CARRIERS 11

V. THE PROPOSED SERVICE QUALITY REPORTING PROGRAM IS FATALLY FLAWED **12**

A. THE COMMISSION DOES NOT NEED TO COLLECT DATA FROM COMPETITIVE CARRIERS OR COMPETITIVE SERVICES TO FULFILL ITS STATUTORY MANDATE 12

B. THE PROPOSED REPORTING REQUIREMENTS LARGELY DUPLICATE OF STATE SERVICE QUALITY REPORTING 13

C. THE USE OF SERVICE QUALITY THRESHOLDS DOES NOT MEET THE REQUIREMENTS OF THE SECTION 11 STANDARD 14

D. THE COMMISSION'S PROPOSAL TO REQUIRE COLLECTION OF ARMIS DATA MORE THAN YEARLY IS A DIRECT VIOLATION OF THE 1996 ACT 15

VI. CONCLUSION **16**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	CC Docket No. 00-229
Telecommunications Service Quality	)	
Reporting Requirements	)	

COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in connection with the Commission's review of its service quality reporting requirements for local exchange carriers (LECs).[1]

I. INTRODUCTION

ITTA is an organization of mid-sized incumbent LECs (ILECs) each serving fewer than two percent of the nation's access lines. ITTA members collectively serve over eight million access lines in over 40 states and offer a diversified range of services to their customers. ITTA's smallest member company serves just under 100,000 access lines, while its largest serves over two million. While most ITTA members are regulated by the Commission under rate-of-return regulation, several, such as Cincinnati Bell Telephone Company and Citizens Communications, have elected price cap regulation. Similarly, most members qualify as rural

---

1 *2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, Notice of Proposed Rulemaking in CC Docket No. 00-229, FCC 00-399 (rel. Nov. 9, 2000) (*Service Quality Notice*).

telephone companies within the meaning of Section 3(37) of the Communications Act of 1934, as amended (Act).[2]

In the Service Quality Notice, the Commission proposes to streamline the Automated Reporting Management Information System (ARMIS) 43-05 Service Quality report, currently submitted by price cap LECs, and the ARMIS 43-06 Customer Satisfaction report, currently submitted by mandatory price cap LECs.[3] The Commission also proposes, however, to substantially *increase* the ARMIS service quality reporting burdens by making them applicable to competitive services, competitive LECs (CLECs) and small and mid-sized ILECs.[4] Alternatively, the Commission proposes, *inter alia*, voluntary service quality reporting for LECs below certain line count or revenue thresholds and carrier relief from reporting obligations if certain performance thresholds are met.[5]

ITTA opposes the Commission's proposal to expand its service quality reporting requirements to new classes of ILECs and CLECs, as well as to competitive services. Under Section 11 of the Act,[6] the Commission must eliminate rules that are no longer in the public interest. The Biennial Review process is not the proper forum within which to consider the imposition of new reporting requirements.

Instead, the Commission should exempt all two percent carriers from any service quality reporting obligations. Such action would be consistent with the Commission's other recent proposals to eliminate accounting and reporting burdens on mid-sized ILECs under

---

2 47 U.S.C. § 153(37).

3 *See* Service Quality Notice at ¶¶ 2, 14-15.

4 *See id.* at ¶ 29.

5 *Id.* at ¶¶ 29-32.

Section 11. Differentiation of such regulatory burdens among different segments of the local exchange industry has been a fundamental tenet of the Commission's ARMIS reporting and other regulatory policies for decades. ITTA specifically supports the Commission's recent efforts in another proceeding to reduce or eliminate the cost allocation manual (CAM) requirements and Automated Reporting Management Information System (ARMIS) reporting burdens on mid-sized carriers and urges the Commission to adopt a similar exception.[7]

II. BACKGROUND AND HISTORY OF SERVICE QUALITY REPORTING REQUIREMENTS

The Commission introduced the current system of service quality monitoring and reporting in 1991 in connection with its transition to mandatory price cap regulation of the eight largest ILECs then existing.[8] The Commission decided that price cap regulation should be optional for small and mid-sized ILECs, because "mid-sized carriers, those just below the largest eight in size [the Regional Bell Operating Companies (RBOCs) and General Telephone and Telegraph Company (GTOC)], might not be able to generate productivity gains of the same magnitude as the largest LECs."[9]

Responding to the "theoretical concern that LECs under price cap regulation might seek to increase their profits not by becoming more productive, but by lowering the quality of the service they provide," the Commission decided to institute service quality reporting

---

6 47 U.S.C. § 161

7 *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers, Phase 2 and Phase 3*, Notice of Proposed Rulemaking in CC Docket No. 00-199, FCC 00-364 (rel. Oct. 18, 2000) (*Accounting Reporting Notice*).

8 *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order in CC Docket No. 87-313, FCC 90-313, Erratum DA 90-1543, 5 FCC Rcd 6786 (rel. Oct. 4, 1990, cor. Oct. 31, 1990) (*LEC Price Cap Order*), *modified on recon.*, FCC 91-115, Erratum DA 91-539, Erratum DA 91-544, 6 FCC Rcd 2637 (rel. Apr. 17, 1991, cor. Apr. 26, 1991, cor. Apr. 30, 1991).

9 LEC Price Cap Order at ¶ 6.

requirements for price cap LECs.[10] Both mandatory and voluntary price cap regulation Tier 1 LECs were required to submit quarterly service quality information, and these reports were integrated into ARMIS.[11]

In recognition of the principle of differentiation between different classes of carriers, the Commission specifically has exempted small and mid-sized carriers from ARMIS report 43-06 obligations.[12] In contrast, the Commission decided that small and mid-sized carriers electing price cap regulation would be required to submit to the same service quality reporting requirements as the mandatory price cap carriers.[13] In so finding, the Commission did acknowledge, however, that such requirements "might be more difficult for a small LEC to meet than for a large LEC."[14]

The Commission also maintained the exemption from all ARMIS reporting for all Tier 2 companies.[15] Noting its "sensitivity to small carriers' concerns," the Commission

---

10 *Id.* at ¶ 334.

11 Service Quality Notice at ¶ 8; *see also* LEC Price Cap Order at ¶¶ 338-349. Tier 1 carriers were defined by the Commission as those companies having more than $100 million in total company regulated revenues, as determined by the 1984 Annual Statistical Volume II of the United States Telecommunications Association Statistical Reports of Class A and B telephone companies for the year 1983, and Tier 2 carriers were defined as all other carriers. *Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies*, Report and Order in CC Docket No. 86-182, FCC 87-242; Erratum DA 87-1418, (rel. Sept. 17, 1987, Cor. Oct. 7, 1987), *modif. on recon.*, Order on Reconsideration, FCC 88-311 (rel. Oct. 4, 1988), fn. 4 (*citing Commission Requirements for Cost Support Material to be filed with Access Tariff on March 1, 1985,* Public Notice, Mimeo No. 2133 (rel. Jan. 25, 1985)). Class A companies are currently defined at 47 C.F.R. § 32.11(a)(1) as having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold, and Class B companies are defined as all other companies.

12 *See 1998 Biennial Regulatory Review – Review of ARMIS Reporting Requirements, et al.*, Report and Order in CC Docket No. 98-117, Fifth Memorandum Opinion and Order in AAD File No. 98-43, FCC 99-107 (rel. June 30, 1999) (*ARMIS Reporting Reduction Order*), ¶ 8. Additionally, the Commission made a similar distinction between mandatory and voluntary price cap carriers when it considered infrastructure data reporting burdens. *See* LEC Price Cap Order at n. 502.

13 *See* LEC Price Cap Order at ¶ 364.

14 *Id.*

15 *See id.* at ¶ 383.

concluded that "in monitoring the RBOCs and GTOC, and any Tier 1 LECs that elect price cap regulation, we will be assuring a broad and accurate overview of the price cap program."[16]

III. SECTION 11 DOES NOT PERMIT THE CREATION OF NEW REPORTING REQUIREMENTS

The Commission's proposals in this proceeding to impose new regulation on small and mid-sized ILECs, and CLECs, are fundamentally inconsistent with the Biennial Review process under Section 11.[17] Although the scope of the Commission's responsibilities under Section 11 has been the subject of extensive debate,[18] it is clear that Section 11 does *not* grant the Commission the authority to enact new rules, as it proposes to do here. To the contrary, Section 11 requires the Commission, in every even-numbered year, to "review all regulations issued under this Act in effect at the time of review that apply to the operations or activities of any provider of telecommunications service."[19] The Commission then must repeal or modify regulations that are no longer necessary in the public interest.[20]

In the Staff Report issued in connection with the 2000 Biennial Regulatory Review process, the Commission staff set forth the framework which guided its analysis in

---

16 *Id.*

17 Indeed, although styled as a Biennial Review proceeding, the Commission's ordering clauses nowhere invoke Section 11 as statutory authority to conduct this proceeding. *See* Service Quality Notice at ¶¶ 54-55.

18 *See, e.g.,* "Biennial Review 2000 Staff Report Released," *Public Notice*, FCC 00-346 (rel. Sept. 19, 2000), Separate Statement of Commissioner Harold Furchtgott-Roth. In his statement, Commissioner Furchtgott-Roth criticized the report for providing neither a detailed survey of the rationale of each rule, nor the reasoning of why each rule once was, remains and will in the future remain in the public interest. Commissioner Furchtgott-Roth leveled similar criticism in his analysis of the implementation of Section 11 during the 1998 Biennial Regulatory Review process, noting that the Commission must review all of its telecommunications rules and affirm that rules are actually necessary in the public interest. If the Commission is unable to make this determination, Section 11 requires the Commission to modify or repeal each rule to conform to this standard. *See* COMMISSIONER HAROLD W. FURCHTGOTT-ROTH, *REPORT ON IMPLEMENTATION OF SECTION 11 BY THE FEDERAL COMMUNICATIONS COMMISSION* (rel. Dec. 21, 1998), pp. 4-6.

19 47 U.S.C. § 161(a).

determining whether to recommend modification or elimination of Commission rules under Section 11. In doing so, the staff considered the original purpose of the rule and the degree to which the original purpose remains valid in today's telecommunications markets. Specifically, the staff considered: "(1) the purpose of the rule, (2) the advantages of the rule, (3) the disadvantages of the rule, (4) what impact competitive developments have had on the rule; and (5) whether to recommend modification or revocation of the rule."[21] In the 2000 Review Staff Report's recommendations related to changes to Parts 32 and 43 of the Commission's rules, the staff recommended substantial reductions in the accounting requirements and a continuation of the ongoing efforts to streamline current ARMIS reporting requirements.[22]

The Commission's current proposals to increase regulation of two percent carriers, and impose new regulations on CLECs and competitive services, cannot be supported under the rubric of the Biennial Review process. It is unclear under what authority the Commission seeks to extend service quality reporting burdens to new classes of carriers and service providers within the context of a Section 11 proceeding. As detailed *supra*,[23] the Commission enacted service quality reporting in response to concerns that LECs regulated under price cap might seek to increase profits by lowering service quality as opposed to improving their productivity and performance. Service quality data collected since the transition to price cap regulation, however, prove otherwise. There is nothing in these data to indicate that incentive regulation causes service quality to decline. Because the Commission's concerns

---

20 *Id.* at § 161(b).

21 FEDERAL COMMUNICATIONS COMMISSION, *BIENNIAL REGULATORY REVIEW 2000*, STAFF REPORT (rel. Sept. 18, 2000), ¶ 12 (*2000 Review Staff Report*).

22 2000 Review Staff Report at pp. 72, 80. Indeed, the staff recommended that the Commission conduct an initial Biennial Review analysis when any new rule is adopted setting forth the original purpose of the rule. *See id.* at ¶ 11.

regarding a decline of service quality within the context of incentive regulation have proven unfounded, a proper Section 11 analysis of the service quality reporting rules requires the Commission to eliminate these rules as unnecessary in the public interest.

History has proven that price caps or other forms of incentive regulation do not, in themselves, cause service quality to decrease. Price cap carriers now face competition, which assures that consumers will have high-quality choices guaranteed by the marketplace, rather than by a regulatory regime. In line with the Section 11 mandate required by law, the Commission should take the opportunity to accomplish what the Biennial Review process was designed for: the abolishment of regulations that are no longer necessary in the public interest because of meaningful economic competition.

IV. THE COMMISSION SHOULD ELIMINATE ALL SERVICE QUALITY REPORTING REQUIREMENTS FOR TWO PERCENT CARRIERS

A. THE COMMISSION SHOULD CONTINUE TO ADHERE TO THE FUNDAMENTAL PRINCIPLE OF DIFFERENTIATION IN REGULATING TWO PERCENT CARRIERS

In its efforts to streamline service quality reporting requirements for small and mid-sized carriers, the Commission should continue to differentiate between small and mid-sized carriers on the one hand and large carriers on the other, consistent with (i) its own past practices; (ii) Congressional intent as demonstrated in the Telecommunications Act of 1996[24] and the Independent Telecommunications Consumer Enhancement Act of 2000[25]; and (iii) the Department of Transportation's (DOT) airline service quality reporting regime.[26]

---

23 *See* Sec. II.

24 P.L. 104-104 (1996) (*1996 Act*).

25 47 U.S.C. § 251(f)(2); H.R. 3850, 106th Cong. (2000) (*H.R. 3850*).

26 *See generally* Service Quality Notice at ¶ 12.

1. The Commission Should Not Abandon Its Historical Commitment To The Principle Of Differentiation Among Carriers

The central principle of size-based differentiation has always been a core tenet of the Commission's reporting requirements and other regulatory obligations. In the implementation of this principle, the Commission has always balanced the costs associated with reporting obligations with the burdens on the entities involved. For example, in its recent efforts to streamline ARMIS reporting requirements for carriers, the Commission explained that the adopted "reduction in reporting requirements is based on a balancing of our regulatory needs for information from mid-sized ILECs against our desire not to impose unreasonable or unnecessary reporting requirements on telephone companies."[27] Indeed, in the LEC Price Cap Order, the Commission expressly concluded that the costs of service quality reporting for smaller non-price cap LECs, with their limited resources, would outweigh any benefits.[28]

In contrast, the Commission has made no attempt to quantify start-up costs for Class B carriers required to commence service quality reporting in the Service Quality Notice. These small and mid-sized carriers incur far greater costs per line than the larger carriers when they are required to commence complying with new reporting obligations. The Commission has repeatedly determined in the past that the benefits of requiring small and mid-sized carriers to comply with reporting requirements designed for large carriers are outweighed by the burdens, especially considering the limited resources available to the local exchange carriers with fewer than two percent of subscriber lines installed in the aggregate nationwide (two percent carriers).

---

27 ARMIS Reporting Reduction Order at ¶ 12.

28 *See* LEC Price Cap Order; Sec. I.B.

One of the specific policy goals of the Commission in developing its recent Strategic Plan was to "reduce the burden of filing, reporting, record keeping, and accounting requirements across all telecommunications industries, *particularly for small companies*, where no longer necessary to further the public interest."[29] Many of these carriers also face increased competition from CLECs. Because of these carriers' limited size and resources, the impact of such competition is often deeper and more profound than the competition faced by the largest carriers, which usually have more resources and many more customers than any CLECs against which they might compete. Two percent carriers and other small telecommunications service providers are uniquely positioned in the telecommunications market to both effectively increase competition and deploy new services to underserved regions. It is patently against the public interest to require these carriers to incur additional reporting requirements in contravention of the principle of differentiation.

2. Congress Has Endorsed The Core Principle Of Differentiation

Congress has also long endorsed differentiating between LECs on the basis of size, most recently in the 1996 Act and in H.R. 3850. In enacting Section 251(f)(2) as part of the 1996 Act, Congress explicitly endorsed the differentiation of two percent carriers as a class of carriers entitled to additional regulatory relief.[30] In addition, in H.R. 3850, the U.S. House of Representatives explicitly exempted two percent carriers from all ARMIS filings, including service quality reports. The House found that existing regulations concerning ILECs are typically tailored to the circumstances of the largest ILECs and impose disproportionate burdens on two percent carriers, impeding such carriers' ability to deploy broadband telecommunications

---

29 FEDERAL COMMUNICATIONS COMMISSION, *STRATEGIC PLAN: A NEW FCC FOR THE 21ST CENTURY* (rel. Aug. 1999) (emphasis supplied).

services and launch competitive initiatives in less densely populated regions of the U.S.[31] H.R. 3850 would require the Commission to evaluate specifically the burden any proposed regulatory, compliance or reporting requirements would have on two percent carriers.[32]

3. The DOT Program, After Which The Commission Modeled Its Proposal, Is Voluntary For Small Carriers

As noted in the Service Quality Notice,[33] only those air carriers accounting for at least one percent of domestic scheduled-passenger revenues are required to report service quality data to DOT.[34] DOT specifically found that given the likely cost disparity between requiring large and small carriers submit service quality data, only large carriers would be required to file such data. Specifically, DOT found that by "limiting the number of carriers that are required to report data, the burdens on smaller carriers of reporting information are eliminated" and that "the carriers that must report information and the airports specified represent a large percentage of delays nationwide."[35] Under DOT's program, air carriers not required to submit such information are permitted to file voluntary reports, as long as such reports are submitted in the same form and manner, and at the same time, as required reports.[36]

---

30 47 U.S.C. § 251(f)(2).

31 H.R. 3850 at § 2(a)(4).

32 *Id.* at § 4.

33 Service Quality Notice at ¶ 12.

34 *See* 14 C.F.R. § 243.2; *see also Airline Service Quality Performance*, Final Rule, Department of Transportation, 52 F.R. 34056 (rel. Sept. 9, 1987), p. 34057 (*Airline Quality Final Rule*). In accordance with the rule, the list of air carriers required to file is recalculated yearly, according to updated data.

35 Airline Quality Final Rule at p. 34061.

36 See 14 C.F.R. § 234.7(c).

4. The NARUC Proposal Does Not Require Non-Reporting Carriers To Commence Reporting Service Quality Information

The National Association of Regulatory Utility Commissioners (NARUC) Service Quality White Paper explicitly states that its proposal "is not intended to require that a company not already reporting for state or federal purposes would be required to do so for this report."[37] Accordingly, even NARUC does not advocate a requirement that would necessitate service quality data reporting by additional classes of carriers. Consistent with NARUC's proposal, the Commission should not impose new service quality reporting requirements on small and mid-sized ILECs, CLECs and other entities not currently required to comply with burdensome Federal service quality reporting obligations.

B. THE COMMISSION HAS NOT JUSTIFIED IMPOSING ADDITIONAL MANDATORY SERVICE QUALITY REPORTING OBLIGATIONS ON TWO PERCENT CARRIERS

Much of the information contained in the Commission's service quality report, such as repair or installation intervals, is readily available to consumers directly from their carriers and service providers. Accordingly, there exists no need for mandatory service quality reporting requirements. The Commission should rely on service providers acting within the marketplace to provide service quality information to consumers.

As proposed, the revised service quality reporting requirements will not even achieve the Commission's objective to place needed competitive information into the hands of consumers. Market forces will ensure that carriers continue to provide high-quality services. Any that do not will quickly lose customers to more competitive rivals. Furthermore, markets demand that carriers respond quickly and accurately to customer requests for the information the

---

[37] NARUC Technology Policy Subgroup "Service Quality White Paper" (rel. Nov. 11, 1998), Preamble ¶ 4, notwithstanding the Commission's statements in Service Quality Notice at ¶ 29.

Commission identifies. For example, installation and repair interval information is routinely discussed when a customer inquires about service with a provider. Other categories of information, *e.g.*, missed installations and missed repair appointments, are unnecessary in a competitive environment, because a customer subjected to such treatment would quickly seek an alternative service provider.

Additionally, there is nothing to suggest that service quality is a systemic or chronic issue among small and mid-sized carriers generally. In fact, when mid-sized carriers acquire exchanges from larger carriers, they typically *improve* service quality and launch new services. For example, in connection with the purchase of local exchange properties in Arkansas, the Bureau's Accounting Policy Division found that the mid-sized ILEC applying to purchase the properties "proposes to offer customers additional access to voice mail, caller ID, additional choice in long distance providers, local Internet dial-up access, greater access to advanced services, such as broadband Internet access using Digital Subscriber Line (DSL) technology, and improved customer and community services."[38]

V. THE PROPOSED SERVICE QUALITY REPORTING PROGRAM IS FATALLY FLAWED

A. THE COMMISSION DOES NOT NEED TO COLLECT DATA FROM COMPETITIVE CARRIERS OR COMPETITIVE SERVICES TO FULFILL ITS STATUTORY MANDATE

The Commission does not need service quality information collected from additional carriers or for competitive services, either as a competitive or regulatory matter, to fulfill its statutory duties. Under Section 706 of the 1996 Act, the Commission has a discrete

---

[38] *CenturyTel of Northwest Arkansas, LLC, CenturyTel of Central Arkansas, LLC and GTE Arkansas Incorporated, GTE Midwest Incorporated, GTE Southwest Incorporated, Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, et al.*, Memorandum Opinion and Order in CC Docket No. 96-45, DA 00-1434 (rel. June 27, 2000), ¶ 12. The

statutory duty to report to Congress on the deployment of broadband communications technology. In the Second 706 Report, the Commission described its efforts to create a data collection effort designed to obtain "greater insight into the development of high-speed markets within particular geographic areas."[39] In the Broadband Report, the Commission specified the data set it would require reporting entities to generate and explained that "the information we have chosen to collect best balances our need to collect targeted data with our desire to minimize reporting burdens."[40] The Commission did not impose any service quality reporting requirements on broadband service providers in this proceeding, precisely because it does not need this information to fulfill its statutory mandate

B. THE PROPOSED REPORTING REQUIREMENTS LARGELY DUPLICATE OF STATE SERVICE QUALITY REPORTING

The Commission's proposed reporting requirements overlap with existing state requirements. As the Commission notes, thirty states already require service quality reporting independent of existing ARMIS reporting.[41] According to the NRRI Recent Developments Paper, at least 26 states have undertaken service quality regulation revisions since July 1995.[42] In a period of great regulatory revision and activity by state commissions, ITTA submits that the

---

Accounting Policy Division concluded that the mid-sized ILEC desiring to purchase the properties had "demonstrated that the customers in this exchange will likely be well served" by the new LEC provider. *Id.*

39 *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996,* Second Report in CC Docket No. 98-146, FCC 00-290 (rel. Aug. 21, 2000) (*Second 706 Report*), ¶ 258 (*referring to Local Competition and Broadband Reporting,* Report and Order in CC Docket No. 99-301, FCC 00-114 (rel. Mar. 30, 2000) (*Broadband Reporting Order*)).

40 Broadband Reporting Order at ¶ 63.

41 Service Quality Notice at fn. 7 (*citing* "Recent Developments in Telecommunications Service Quality Regulation," The National Regulatory Research Institute (NRRI) (July 20, 1998) (*NRRI Recent Developments Paper*)).

42 NRRI Recent Developments Paper at Sec. 1. *See also id.* at Table 1.

Commission should refrain from muddying the regulatory waters by expanding its own regulatory requirements for telecommunications carriers.

C. THE USE OF SERVICE QUALITY THRESHOLDS DOES NOT MEET THE REQUIREMENTS OF THE SECTION 11 STANDARD

The Commission's proposal to set minimal threshold of service quality below which no service quality reporting would be required does not present a workable solution.[43] While the Commission claims such an approach would "relieve carriers of reporting obligations for good behavior, while enabling consumers to learn of problems in carrier performance," in fact the "benchmark" proposal would fail to provide relief to carriers, in accordance with Section 11.[44] Carriers would be required to continue to prepare the report data in order to determine if they meet the benchmark. In establishing a benchmark that would represent functionally a minimum level of acceptable service quality, the Commission would in effect be substituting its judgment for that of consumers, in direct violation of the spirit of Section 11. This would be precisely the type of streamlining "without reducing the overall regulatory burdens" the Commission explicitly sought to avoid in this proceeding.[45] Furthermore, such a benchmark would require constant monitoring and revision because the minimum level of acceptable service quality is an evolving concept based on advanced in technology. Markets are far better at assessing such quality levels through competition and innovation.

---

43 Service Quality Notice at ¶ 31.

44 *Id.*

45 *Id.* at ¶ 10.

D. THE COMMISSION'S PROPOSAL TO REQUIRE COLLECTION OF ARMIS DATA MORE THAN YEARLY IS A DIRECT VIOLATION OF THE 1996 ACT

The Commission proposes to gather service quality information from reporting carriers more than once per year and suggests the possibility of requiring carriers to post service quality information on their websites on a more frequent basis.[46] Section 402 of the 1996 Act requires the Commission to permit "any common carrier to file cost allocation manual or ARMIS reports annually, to the extent such carrier is required to file such manuals or reports."[47] The Commission may not evade the plain meaning of this section by requiring carriers to report ARMIS service quality data more than once per year. Additionally, the Commission may not ignore Congressional intent simply by moving the reporting requirement out of ARMIS or, as it suggests in the Service Quality Notice, by splitting the reporting requirement into an ARMIS submission component and a website posting component. Congress's mandate in the 1996 Act is clear: to the extent the Commission requires carriers to submit ARMIS report information, carriers are to be permitted to submit this information on at most a yearly basis.

---

46 *Id.* at ¶¶ 33-35.

47 1996 Act at § 402(b)(2)(B).

VI. CONCLUSION

ITTA urges the Commission to continue to exempt all small and mid-sized ILECs and other small telecommunications service providers from all ARMIS service quality reporting requirements, as described in its Comments in this proceeding.

Respectfully submitted,

THE INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE

David W. Zesiger
Executive Director
The Independent Telephone &
Telecommunications Alliance
1300 Connecticut Avenue, N.W., Suite 600
Washington, D.C. 20036

Karen Brinkmann
Richard R. Cameron
Benoit Jacqmotte
Latham & Watkins
1001 Pennsylvania Avenue, N.W., Suite 1300
Washington, D.C. 20004-2505

Its Attorneys

DC_DOCS\352550.5 [W97]