

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Petition of BellSouth Telecommunications,) WC Docket No. 05-342
Inc. For Forbearance Under 47 U.S.C. § 160)
From Enforcement of Certain of the)
Commission’s Cost Assignment Rules)

REPLY COMMENTS

Qwest Communications International Inc. (“Qwest”), on behalf of its affiliates, submits these Reply Comments in support of BellSouth Telecommunications, Inc.’s (“BellSouth”) petition requesting that the Federal Communications Commission (“Commission”) forbear from applying its cost assignment rules.¹

I. INTRODUCTION

In its petition BellSouth asks the Commission to forbear from applying a wide array of cost assignment rules including the Part 32 affiliate transactions rules, the Part 64 cost allocation rules, the Part 69 cost apportionment rules and the Part 36 jurisdictional separations rules.² While BellSouth’s request for forbearance appears to be unusually broad in scope, it merely highlights the wide array of overlapping and burdensome cost assignment rules that apply to large incumbent local exchange carriers (“ILECs”) like BellSouth. The petition points out that these rules are largely the legacy of rate-of-return regulation and are of limited, if any, value

¹ *In the Matter of Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules*, WC Docket No. 05-342, filed Dec. 6, 2005 (“BellSouth petition”); Public Notice, DA 05-3185 (rel. Dec. 22, 2005).

² BellSouth petition at 1-8, *et seq.*

under price cap regulation.³ Moreover, as BellSouth and AT&T Inc. (“AT&T”) point out, any benefits associated with the continued imposition of these rules are far out-weighted by the costs.⁴

Not surprisingly, Time Warner Telecom (“Time Warner”), Ad Hoc Telecommunications Users Committee (“Ad Hoc”) and the New Jersey Division of the Ratepayer Advocate (“New Jersey Advocate”) oppose BellSouth’s request for forbearance. Opponents cite numerous reasons why the BellSouth petition should be denied. While many of these claims are inconsequential and should be dismissed out of hand, the heart of opponents’ opposition is the claim that the Commission will be unable to ensure that rates are “just, reasonable and not unreasonably discriminatory” in the absence of applying “legacy” cost assignment rules adopted under rate-of-return regulation.⁵ The Commission should reject opponents’ erroneous logic in evaluating BellSouth’s petition.

A far better question for the Commission to ask itself in ruling on BellSouth’s petition is: Would the Commission adopt the same cost assignment rules in today’s price cap environment? Qwest believes that the answer to this question is self-evident -- no. If the Commission comes to

³ *Id.* at 10-23.

⁴ *Id.* at 4, 23-45, 62-76 and AT&T Comments in Support of BellSouth’s Petition for Forbearance, filed herein on Jan. 23, 2006, at 4-7.

⁵ “Without such costs, the Commission would be unable to satisfy its obligation to assure that special access and other rates subject to its jurisdiction are just and reasonable.” Ad Hoc Opposition, filed herein on Jan. 23, 2006, at 2. “Moreover, although it has at times been reluctant to acknowledge it, the Commission has relied, *and will undoubtedly be required to rely in the future*, on costs recorded pursuant [to] the Commission accounting rules as the basis for reassessing the level of the price cap indices applicable to individual price cap baskets.” Time Warner Opposition, filed herein on Jan. 23, 2006, at 8 (emphasis in original). “There is no evidence that state and federal price caps are just and reasonable rates, and, therefore, the Commission should reject BellSouth’s reliance on the existence of price cap systems as support for its petition for forbearance from cost accounting requirements.” New Jersey Advocate Comments, filed herein on Jan. 23, 2006, at 25.

the same conclusion, as it should, it cannot justify continued regulation and must grant BellSouth's petition.⁶

II. BELLSOUTH'S PETITION HAS DEMONSTRATED THAT FORBEARANCE IS JUSTIFIED UNDER SECTION 10

Contrary to the assertions of opponents, BellSouth has demonstrated that it has satisfied the requirements of Section 10 for forbearance. The first statutory criterion for forbearance requires that the Commission determine whether application of its cost assignment rules to BellSouth is necessary to ensure that rates and practices are just, reasonable and not unreasonably discriminatory.⁷ As BellSouth demonstrates in its petition, its rates are governed by both price cap regulation and competition and cost assignments play little, if any, role in establishing BellSouth's rates in either state or interstate jurisdictions.⁸ The New Jersey Advocate's convoluted argument that BellSouth's petition must be rejected because "[t]here is no evidence that state and federal price caps are just and reasonable rates"⁹ should be dismissed as meritless after 15 years experience with price cap regulation at the federal level. Similarly, the Commission should reject Ad Hoc and Time Warner's arguments which fail to demonstrate that retention of existing cost assignment rules are necessary to ensure that BellSouth's prices are just and reasonable. As such, the Commission should find that BellSouth has satisfied Section 10's first criterion.

⁶ It is telling that no regulatory agencies in the states served by BellSouth filed any comments in opposition to BellSouth's petition.

⁷ See 47 U.S.C. § 160(a)(1).

⁸ See BellSouth petition at 23-54.

⁹ New Jersey Advocate Comments at 16, 25.

The second statutory criterion for forbearance requires that the Commission find that enforcement of the cost assignment rules is not necessary for the protection of consumers.¹⁰ AT&T confirms that BellSouth is correct in its assertion that enforcement of the cost assignment rules provides no additional protection to consumers.¹¹ In fact, AT&T states that “[e]nforcement of these outdated rules is not only unnecessary for the protection of consumers, but affirmatively harms consumers.”¹² While some parties may challenge AT&T’s statement, it should be unquestioned that carriers devote a significant amount of resources to complying with the Commission’s cost assignment rules.¹³ Regardless of whether the cost assignment rules “affirmatively harm” consumers, these rules provide no additional protection to consumers in today’s regulatory environment. Therefore, the Commission should find that BellSouth’s petition demonstrates that the cost assignment rules are not necessary to protect consumers and that BellSouth has satisfied Section 10’s second criterion for forbearance.

Lastly, Section 10 requires that the Commission find that forbearance from applying the cost assignment rules is consistent with the public interest.¹⁴ In making its public interest determination, the Commission considers whether forbearance “will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”¹⁵ BellSouth more than adequately demonstrates in its petition why forbearance from applying the cost assignment rules would be in the public

¹⁰ See 47 U.S.C. § 160(a)(2).

¹¹ See AT&T Comments at 4-5.

¹² *Id.* at 5.

¹³ AT&T indicates that it devotes over 40 full-time employees to this task. See *id.*

¹⁴ See 47 U.S.C. § 160(a)(3).

¹⁵ 47 U.S.C. § 160(b).

interest.¹⁶ AT&T succinctly summarizes BellSouth's position in stating: "Removing unnecessary regulatory burdens on carriers makes them more efficient competitors and allows them to dedicate their resources to addressing the needs of the market."¹⁷ Even in the absence of any other public interest reasons, and there are many, this reason alone is sufficient grounds for the Commission to find that BellSouth has satisfied the third forbearance criterion.

In summary, BellSouth has demonstrated that forbearance is justified under Section 10 and the Commission should find as such.

III. VERIZON IS CORRECT IN ITS ASSERTION THAT, EVEN WITH FORBEARANCE, STATES MAY NOT IMPOSE INCONSISTENT SEPARATIONS RULES

Verizon's comments on BellSouth's forbearance petition focus primarily on jurisdictional separations issues. Verizon asks the Commission to extend the current separations freeze which will expire in June 2006 and to confirm that "the freeze precludes states from imposing inconsistent separations requirements."¹⁸ Verizon rightfully points out that "the Commission should not create or tolerate a situation where the same investment is split between two different jurisdictions in two different ways."¹⁹ Nor may it lawfully do so under current law. The Commission has preempted the field of separations and states may not adopt inconsistent jurisdictional cost allocation rules that could lead to changing inter/intrastate cost assignments – even with forbearance.²⁰

¹⁶ See BellSouth petition at 62-76.

¹⁷ AT&T Comments at 6.

¹⁸ Verizon Comments, filed herein on Jan. 23, 2006, at 1.

¹⁹ *Id.* at 4.

²⁰ The field of separations – the assignment of telecommunications costs between state and interstate jurisdictions – has been entirely preempted by the FCC. In addressing the use of state-

While the Commission may relieve a carrier such as BellSouth of its obligations under existing separations rules through forbearance, in no way does forbearance expand states' jurisdiction. Thus, as Verizon correctly observes, states are not permitted under the existing separations freeze to take any actions that would lead to the reclassification of investment or costs from intrastate to the interstate jurisdiction.²¹ "Permitting states to engage in such reallocation would undermine not only the freeze, but the entire concept of a unified national approach to jurisdictional separations."²² Thus, state jurisdiction over inter/intrastate cost assignments will remain unchanged regardless of whether the Commission grants BellSouth's petition requesting forbearance from the separations rules.

IV. CONCLUSION

The Commission should find that BellSouth has satisfied the requirements of Section 10 of the Act and forbear from applying its cost assignment rules to BellSouth. In doing so, the

developed separations procedures for intrastate ratemaking purposes in *Hawaiian Telephone Company v. Public Utilities Commission of State of Hawaii*, the Ninth Circuit Court of Appeals held that state authority has been preempted by the FCC. "This history, the statutory framework underlying it, and the need for consistent apportionment between interstate and intrastate operations, are sufficient to convince us that FCC Order 81-312 necessarily preempted any independent separations procedures of the Hawaii PUC." *See Hawaiian Telephone Company v. Public Utilities Commission of State of Hawaii*, 827 F.2d 1264, 1276 (9th Cir. 1987), *cert. denied*, 487 U.S. 1218 (1988). *Also see Crockett Tel. Co. v. FCC*, 963 F.2d 1564, 1567 (D.C. Cir. 1992) and 47 U.S.C. § 221(c). In *Crockett*, the Court stated, in citing *Smith v. Illinois Bell* 282 U.S. 133, 159 (1930), "[a]lthough each state has great freedom to regulate intrastate rates, once the FCC has applied its jurisdictional separation, that part of the cost base deemed to be interstate is outside the jurisdictional reach of the state regulatory agency." *Crockett Tel. Co. v. FCC*, 963 F.2d at 1567.

²¹ Verizon Comments at 6.

²² *Id.*, citing *Crockett Tel. Co. v. FCC*, 963 F.2d at 1567, 1573.

Commission should also confirm that forbearance does not in any way expand state jurisdiction over inter/intrastate cost assignments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused the foregoing **REPLY COMMENTS** of Qwest Communications International Inc. to be 1) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 05-342, 2) served, via e-mail on Ronald Kaufman, Pricing Policy Division, Wireline Competition Bureau at ronald.kaufman@fcc.gov, 3) served, via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com, and 4) served via First Class United States Mail, postage prepaid, upon the parties listed on the attached service list.

/s/ Ross Dino

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