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

In the Matter of	)	
	)	
Petition of Verizon for Forbearance	)	WC Docket No. 07-273
Under 47 U.S.C. § 160(c) from	)	
Enforcement of Certain of the	)	
Commission's Recordkeeping and	)	
Reporting Requirements	)	

OPPOSITION OF ADHOC TELECOMMUNICATIONS USERS COMMITTEE

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SUMMARY

The Commission cannot reasonably grant Verizon's petition seeking forbearance relief from accounting, allocation and reporting requirements. In recent orders the Commission has found that Bell Operating Companies ("BOC"), including, of course, Verizon, retain market power and has required that the BOCs continue to comply with non-structural safeguards, including those from which Verizon seeks forbearance relief. Verizon has not provided a basis for Commission reversal of those recent orders.

Contrary to Verizon's assertions, cost data are still relevant to proper regulation under the Commission's price caps rules. The Commission needs the data to evaluate (1) above and below band filings, (2) requests for exogenous cost adjustments to price cap indices, (3) whether applicable indices have produced competitive market carrier pricing, and (4) whether Verizon's rates are just and reasonable. Price caps regulation is not, despite the efforts of Verizon and other BOCs at mischaracterization, tantamount to rate deregulation. Moreover, granting Verizon's petition would make rational reform of inter-carrier compensation mechanisms needlessly difficult.

Verizon's assertion that other accounting requirements are more than sufficient is baseless. The accounting requirements specified by GAAP, Sarbanes-Oxley, the Securities and Exchange Commission, and the Foreign Corrupt Practices Act would not allocate costs and revenues between service categories and would otherwise not produce the data that the Commission needs to meet its statutory obligations. The non-FCC imposed accounting requirements

are designed to meet needs different than those the Commission must satisfy. All of these accounting requirements existed at the times the Commission concluded that the public interest requires continued application of Commission accounting, allocation and reporting requirements.

The state of the marketplace does not justify the forbearance relief sought by Verizon. The Commission has previously found that the market for switched access services purchased by long distance carriers, and indirectly by end users, suffers from an inherent "market failure." Nothing has changed in that regard. There is no basis for reversal of the Commission's prior findings. Nor is there a basis for concluding that the special access market is effectively competitive.

Finally, Verizon's arguments that the requirements from which it seeks forbearance relief are unreasonably burdensome, discourage investment and put it at a competitive disadvantage are, to put it charitably, also without merit. Verizon has invested over $20 billion in its FiOS project, and has not identified one investment that it would have made otherwise, but did not make because of Commission requirements. Perhaps, this is the case because the Commission administration of price caps regulation has allowed Verizon to engage in massive cross-subsidization of competitive ventures by monopoly services. Finally, the resources that Verizon must expend to comply with the subject requirements are miniscule compared to Verizon's total employee base and more than justified by the benefits of retaining the requirements from which it seeks forbearance relief.

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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

OPPOSITION OF THE ADHOC TELECOMMUNICATIONS USERS COMMITTEE

Pursuant to the Commission's December 18, 2007 Public Notice[1] in the docket captioned above, the AdHoc Telecommunications Users Committee ("AdHoc")[2] hereby submits its Opposition to the petition filed by AT&T Inc. ("AT&T").

INTRODUCTION

Verizon seeks Commission forbearance relief from virtually every significant Commission rule regarding the manner in which Verizon accounts for

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[1] *Pleading Cycle Established For Verizon Petition Seeking Forbearance From Enforcement Of Certain Recordkeeping and Reporting Requirements,* DA 07-5034.

[2] AdHoc is an unincorporated association that represents its members' interests in telecommunication matters pending before the FCC and the courts. Its members are among the nation's largest and most sophisticated corporate buyers of telecommunications services and products. Twenty-two of AdHoc's twenty-three members are Fortune 500 companies, including eight of the Fortune 100. They estimate their combined spend on communications products and services at between two and three billion dollars per year. AdHoc admits no carriers as members and accepts no carrier funding. AdHoc's self-interest is served by avoiding the imposition of unnecessary regulatory constraints on incumbent service providers, such as AT&T. In an effectively competitive market, AdHoc's members do not need regulation to protect their interests and would not advocate it.

and allocates costs and revenues and the reporting of that data to the Commission. Regardless of the requirement from which Verizon seeks forbearance, Verizon's justification is the same: (1) the data are irrelevant under price caps regulation; (2) other accounting requirements are sufficient; (3) the telecommunications market is intensely competitive; and (4) compliance with the regulations from which it seeks forbearance relief is (i) burdensome, (ii) puts Verizon at a competitive disadvantage, and (iii) discourages investment. Verizon's arguments fail, however, and do not support the relief requested in the above-captioned petition.

I. Contrary To Verizon's Assertions, Cost Information Is Relevant To Commission Regulation Of Verizon's Rates.

Incentive regulation, such as price caps regulation, does not render carrier costs irrelevant, and is not tantamount to rate deregulation. Continuing to require timely and accurate cost accounting and allocations does not constitute reimposition of rate-of-return regulation.

A. Commission Orders Preclude Grant Of Verizon's Petition.

Recently the Commission authorized Verizon and other Bell Operating Companies ("BOCs") to provide in-region, interstate long distance services directly or through affiliates subject to non-dominant carrier regulation as long as Verizon and the BOCs comply with specified safeguards and obligations.[3] Therein the Commission made findings and imposed requirements on Verizon that are logically incompatible with granting the above-referenced Verizon

[3] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements,* 22 FCC Rcd 16440 (2007), (*Sunset Order)*.

Petition. The Commission found that each of the BOCs possess, “[e]xclusionary market power within its respective regions by reason of its control over these bottleneck access facilities.”[4] Nevertheless, the Commission eliminated the separate subsidiary requirement for in-region, long distance service. To protect consumers and competition in the face of this exclusionary market power, the Commission retained existing non-structural safeguards and imposed additional requirements reasoning that the “[n]on-structural safeguards provide substantial protection against anticompetitive discrimination and improper cost shifting by the BOCs in connection with their provision of in-region, long distance services.”[5] Among the existing obligations BOCs are required to meet are the Commission’s accounting and cost allocation rules and related reporting requirements.[6] The Commission’s reasons should be dispositive of the above-referenced Verizon petition for forbearance.

> [T]he continued treatment of the costs of, and revenues from, the direct provision of in-region, long distance services as non-regulated for accounting purposes will provide an important protection against improper cost shifting by the BOCs and their independent incumbent LEC affiliates. This accounting treatment also will address concerns of continued compliance with section 254(k*)* of the Act, and will lessen the chance that costs associated with such services are inadvertently assigned to a local exchange or exchange access category.[7]

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4 *See Id.* ¶ 64.

5 *Id.* ¶¶ 84, 85.

6 *Id.* ¶ 90.

7 *Id.* ¶ 94.

On the same day on which the Commission issued the *Sunset Order,* it found that it would not be in "the public interest" to grant AT&T any relief from dominant carrier regulation *beyond* what was granted in the *Sunset Order*, specifically, the Commission found:

> As part of the new regulatory framework established in the *section 272 Sunset Order*, AT&T will be subject to certain targeted safeguards as well as other continuing legal requirements. The framework reflects our expert policy judgment regarding the appropriate relief from dominant carrier regulation and *section 272* safeguards balanced against the competing public interest concerns. The reasons that persuaded us to adopt this new framework also persuade us that it would be contrary to the public interest to alter or eliminate it in response to AT&T's petition. Therefore we find that granting AT&T relief from dominant carrier regulation different from, or in addition to, that granted in the *section 272 Sunset Order* would be inconsistent with the public interest under section 10 (a) (3). [Footnotes omitted].[8]

Verizon has not provided any persuasive evidence or reasoning that would justify an abrupt Commission reversal of the factual findings and legal and policy conclusions in the *Sunset Order* or *AT&T Order.* On this basis alone, the Commission must reject Verizon's petition.

Even more recently, in denying Verizon's petitions seeking forbearance from *Computer III* requirements for services it offers in the Boston, New York, Philadelphia, Pittsburg, Providence and Virginia Beach Metropolitan Statistical Areas ("MSAs"), the Commission concluded that,

[8] *Petition of AT&T Inc. for Forbearance Under 47 USC 160 with Regard to Certain Dominant Carrier Regulations for In-Region Interexchange Services,* 22 FCC Rcd 16556 (2007), (AT&T Order).

> The Commission adopted the *Computer II* structural safeguards and the *Computer III* non-structural safeguards in order to prevent the BOCs from using "exclusionary market power" arising from their control over ubiquitous local telephone networks to impede competition in the enhanced services market. The record does not demonstrate that Verizon no longer possesses exclusionary market power, and thus as in the *section 272 Order,* we must assume that Verizon still possesses such market power. Verizon's exercise of exclusionary market power could both lead to "charges, practices, classifications, or regulations … for [ ] or in connection with" Verizon's interexchange services [that] are unjust, unreasonable, or unjustly or unreasonably discriminatory" and could harm consumers. Such results would be contrary to the public interest. We thus are unable to find on this record that forbearance from the *Computer III* requirements satisfy any of the criteria of section 10(a).[9]

The *Computer III* non-structural safeguards that the Commission decided to retain less than two months ago include, of course, the accounting, cost allocation and reporting requirements from which Verizon seeks forbearance relief in the subject petition. Again, Verizon has not presented evidence that would justify the relief requested. Indeed, as explained in section III below, the switched access services market suffers from "market failures" that preclude such evidence. Accordingly, the Commission must deny the above-captioned petition for forbearance.

[9] *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburg, Providence and Virginia Beach Metropolitan Statistical Areas,* WC Docket No. 06-172, FCC 07-212, released December 5, 2007, (footnotes omitted) (*Verizon Six MSA Order)*.

B. Price Caps Regulation Requires Proper Accounting, Allocations And Reporting.

Nor does Verizon's distorted view of price caps regulation justify the forbearance it seeks. Price caps regulation is intended to encourage carrier efficiency and produce results very similar to those that competitive markets would yield. When regulatory authorities, including the Commission, prescribe price caps formulas, regulatory oversight does not end. Regulators must continue to evaluate the operation of the price caps system and revise the formulas or indices as necessary. An important measure of the system's efficacy includes carrier earnings. In order to determine whether the formulas were properly specified to begin with and to evaluate the formulas over time as circumstances and industry conditions change, the Commission needs to review carrier earnings. Earnings that are consistently too low or too high indicate the need for revisions to the formulas.[10] Without cost assignment and allocation rules, carriers subject to price cap regulation could misallocate costs to repress earnings levels and thus (1) avoid formula adjustments that would result in rate reductions, (2) support formula adjustments that would yield rate increases, and (3) cross-subsidize unregulated services, such as FiOS.[11] Grant of Verizon's

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[10] Verizon currently must file Form 492A "to enable the Commission to monitor access tariff and price-caps earnings." FCC Form 492A "General Instructions." Verizon, of course, asks the Commission to forbear from enforcing this requirement.

[11] *See* Kenneth Train, *Optimal Regulation* 327 (1991) (under price cap regulation, a firm will have an incentive to "waste so as to convince the regulator to allow a higher cap"). A Commission-convened Joint Conference on Accounting, which was comprised of members of the FCC and state public utility commissioners, concluded that a dominant local carrier can benefit from cost allocation by "making its regulated earnings appear as low as possible, such as when it is pursuing a takings claim, seeking regulatory relief based on allegedly depressed earnings, or is subject to a profit-sharing requirement. Recommendation by Joint Conference, *Federal-State Joint Conference On Accounting Issues,* WC Docket No. 02-269 at 24 (Oct. 9, 2003).

petition would create precisely this environment, and would therefore be unjustified under the statutory forbearance standards.[12]

Verizon's petition relies on a high-level description of price caps systems to argue that costs are no longer relevant to the Commission's regime. But a more detailed understanding of the price caps rules reveals that those rules themselves preserve costs as an element of Verizon's ratemaking and the Commission's evaluation of Verizon's rates. For example, the Commission has explained that price caps carriers' tariff filings that include rate changes below the pricing bands established by the Commission, "[m]ust be accompanied by an *average variable cost showing*…."[13] Tariff filings by price caps carriers that include above-band rates "[m]ust be accompanied by a *detailed cost showing* that will enable the Commission to determine compliance with statutory requirements of just and reasonable rates that are not unjustly discriminatory."[14]

Moreover, under the Commission's price caps rules, all exogenous cost changes set forth in section 61.45(d) of the Commission's rules involve changes in the underlying regulated interstate costs of Verizon and require Verizon to adjust its price caps indices to reflect such cost changes. Exogenous costs are not limited to those specified in section 61.45(d). The Commission at one point stated that it has "[r]etained the discretion to consider extending exogenous cost treatments to 'other extraordinary cost changes that the Commission shall permit

[12] *See* 47 USC § 160

[13] *Policy and Rules Concerning Rates for Dominant Carriers,* CC Docket No. 87-313, 5 FCC Rcd 6786, 6789 (1990), (emphasis added).

[14] *Id.* (emphasis added).

or require.'"[15] AdHoc believes that since the inception of price cap regulation for incumbent LECs in 1991, the BOCs have made exogenous adjustments to their price cap indices every, or virtually, every year. Thus, contrary to Verizon's arguments, its costs are relevant to setting the indices that generally control rates in a price caps environment.

Finally, as the Commission is aware, the so-called "CALLS" plan has expired and may be replaced with a permanent plan which could be a form of price cap regulation that uses a productivity offset to calculate price cap indices.[16] Historically, costs have been relevant to setting the productivity offset, the "X-Factor," in the Commission's price caps rules. Total factor productivity ("TFP") studies, the method used most recently by the Commission to measure the productivity of local exchange price caps carriers, is the "[r]elationship between the output of goods and services to inputs of basic factors of production – capital, labor, and materials."[17] The Commission's description of the TFP methodology that it used most recently makes clear that costs, including accounting costs, are critical to the methodology.[18] Determining the costs relevant to TFP studies would be an exercise in futility if Verizon's petition were granted. Yet the Commission cannot reasonably conclude at this point in time

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[15] *Price Cap Performance Review for Local Exchange Carriers,* 12 FCC Rcd 16642, 16711 (1997).

[16] *Access Charge Reform,* Sixth Report and Order, CC Docket Nos. 96-262 and 94-1, Report and Order, CC Docket No. 99-249, Eleventh Report and Order, CC Docket No. 96-45, 15 FCC Rcd 12962 (released May 31, 2000) (*CALLS Order)*.

[17] *Price Cap Performance Review for Local Exchange Carriers,* 12 FCC Rcd 16642, 16679 (1997); *rev'd and remanded in part, United States Telephone Ass'n v.FCC,* 188 F3d 521 (D.C. Cir. 1999).

[18] *Id. at* 16679, 16773, 16776-77, 16782.

that TFP studies will be irrelevant to regulation of Verizon's rates in a post-"CALLS" environment.

C. The Forbearance Sought By Verizon Would Be Inconsistent With Section 201(b).

Under the Communications Act, the Commission is obligated to ensure that the charges of common carriers for regulated interstate telecommunications services are "just and reasonable."[19] The courts have recognized that the Commission must "execute and enforce" the provisions of the Communications Act and that it may not abdicate its duty to ensure that statutory standards are met, including the requirement that ILEC rates be "just and reasonable."[20] As the U.S. Court of Appeals for the Second Circuit recognized in *American Telephone & Telegraph Co. v. FCC*,

> [t]he Communications Act requires . . . that rates . . . be just, fair, reasonable and non-discriminatory. . . . We are aware of no authority for the proposition that the FCC may abdicate its responsibility to perform [this duty] and ensure that these statutory standards are met.[21]

Section 10 of the Act allows the Commission to forbear from enforcing section 201 if it can reasonably find that enforcement of section 201 is not necessary to ensure just and reasonable pricing and practices and to protect consumers. But the Commission cannot make such a finding with respect to

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[19] 47 U.S.C. § 201(b) (rates shall be just and reasonable).

[20] *See MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186, 1192 (D.C. Cir. 1985) (*quoting* 47 U.S.C. § 151); *cf. Southwestern Bell Telephone Co. v. FCC*, 10 F.3d 892, 894 (D.C. Cir. 1993).

[21] *American Telephone & Telegraph Co. v. FCC*, 572 F.2d 17, 25 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978) (citations omitted).

special access rates given the record in the *Special Access Rulemaking* and prior findings regarding switched access service.[22]

The courts have determined that, when Congress requires an agency to set or oversee regulated companies' rates, which is the case with respect to access service rates, the agency must ensure that those rates fall within a "zone of reasonableness."[23] The "zone of reasonableness" encompasses both the minimum and maximum rate levels that an agency may authorize a regulated company to charge. In *Farmers Union Central Exch. v. FERC*, the U.S. Court of Appeals for the D.C. Circuit explained:

> When the inquiry is whether the rate is reasonable to a producer, the underlying focus of concern is on the question of whether it is high enough to both maintain the producer's credit and attract capital. . . . When the inquiry is whether a given rate is just and reasonable to the consumer, the underlying concern is whether it is low enough so that exploitation by the [regulated business] is prevented.[24]

If this Commission were to forbear from enforcing the cost assignment, allocation and reporting rules targeted by Verizon's petition, without a reasonable finding that the interstate access market is effectively competitive (which the Commission cannot make in the case of special access and most switched

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[22] *Special Access Rates for Price Caps Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Service,* WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005).

[23] *See e.g.*, *Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968); *United States v. FCC*, 707 F.2d 610, 612 (D.C. Cir. 1983).

[24] *Farmers Union Central Exch. v. FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984).

services), the Commission would foreclose the very inquiry cited by the courts and contravene the Commission's statutory responsibilities.

Moreover, federal courts have consistently reviewed the earnings of regulated companies in addressing claims regarding the reasonableness of carrier rates.[25] In *Hope Natural Gas*, the Supreme Court held that, at a minimum, a regulated entity's rates must produce sufficient revenues to cover operating expenses and capital costs and yield a return "commensurate with returns on investments in other enterprises having corresponding risks."[26] Similarly, in its more recent decision in *Duquesne Light Co. v. Barasch,* the Supreme Court explained that the reasonableness of a regulated company's rates turns on whether the company is earning a fair return on investment, given the risks the company faces under the ratemaking system to which it is subject.[27]

The statutory "just and reasonable" standard simply does not permit regulated entities to earn unlimited profits. As the Court explained in *United States v. FCC,* regulated utilities are entitled to earn enough revenue to cover operating expenses and capital costs, but "[t]he return should not be higher than necessary for this purpose . . . because otherwise ratepayers would pay the excessive prices that regulation is intended to prevent."[28] Thus, even in a price caps regime, the ultimate test of the reasonableness of a rate is not whether the rate is consistent with the price caps showing required at the time it is filed, but

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[25] *See e.g., FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *American Telephone and Telegraph Co. v. FCC*, 836 F.2d 1386, 1390 (D.C. Cir. 1988).

[26] *Id.* 320 U.S. at 603.

[27] *Duquesne Light Co. v. Barasch,* 488 U.S. 299, 310 (1989).

[28] *United States v. FCC,* 707 F.2d at 612 (citations omitted).

whether the rate produces revenues far in excess of what is required to cover operating expenses and capital costs.

AdHoc does not dispute that the Commission has broad discretion to craft a regulatory scheme that satisfies the requirement that carriers' charges be just and reasonable. Such discretion must, however, be exercised in a manner that produces rates within the zone of reasonableness. Granting Verizon's petition would be utterly incompatible with the Commission's responsibilities under the Act, including section 10 of the Act, since it would eliminate the Commission's ability to determine whether rates are in the zone of reasonableness.

II. Other Recordkeeping and Reporting Requirements Do Not Eliminate the Need for FCC Reporting Requirements.

Verizon's claims that the need for continued enforcement of the FCC's recordkeeping and reporting requirements is "obviate[d]" because Verizon must also comply with other federally mandated reporting requirements are without merit.[29] The reporting and recordkeeping required by the Securities and Exchange Commission (SEC), Generally Accepted Accounting Provisions (GAAP), and Sarbanes-Oxley (all cited by Verizon in its Petition) are designed primarily to protect *investors* (Verizon's owners) and to allow *investors* to accurately evaluate the performance of the firm. The reporting and recordkeeping required by the Foreign Corrupt Practices Act (also cited by Verizon in its Petition) is primarily designed to identify and discourage *bribery* in

[29] Verizon Petition at 3-4, 7, 26.

foreign contracting and operations.[30] Conversely, the FCC's reporting and recordkeeping requirements are designed to protect *customers* from improper profit-maximizing behavior in a less than fully competitive marketplace. The information required by the SEC, GAAP and the other accounting requirements cited by Verizon are not sufficient for the FCC to ensure Verizon's compliance with the Telecommunications Act, just as surely as the FCC's ARMIS data would not be sufficient to fulfill the SEC's mandate to protect investors.

To put Verizon's claims in this regard in the proper light, imagine Verizon petitioning the SEC to allow it to discontinue its SEC filing requirements and disclosures to investors simply because it also files other, unrelated and irrelevant data with the FCC. Yet, here, Verizon tries exactly that ploy. The FCC's mandate and responsibilities are no less important than that of the SEC.[31] The FCC is

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[30] Specifically the bribery of foreign governments to 'obtain, retain, or direct business to' a US Corporation. *See* the Department of Justice's Layperson's Guide to the Foreign Corrupt Practices Act, *available at* http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html

[31] AdHoc has discussed the lack of competition for access services to business users in extensive detail in other pleadings. *See, e.g.,* Comments of AdHoc Telecommunications Users Committee (Jan. 22, 2002) at 2-3, *filed in Performance Measurements and Standards for Interstate Special Access Services*, CC Docket Nos. 01-321, 00-51, 98-147, 96-98, 98-141, 96-149, 00-229, Notice of Proposed Rulemaking, 16 FCC Rcd 20896 (2001); Comments of AdHoc Telecommunications Users Committee (Mar. 1, 2002) at 14-17, filed in *Review of Regulatory Requirements for Incumbent LEC Broadband Services; SBC Petition for Expedited Ruling That It Is Non-Dominant in its Provision of Advanced Services and for Forbearance From Dominant Carrier Regulation of These Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001); Reply Comments of AdHoc Telecommunications Users Committee (Jul. 1, 2002) at i, *filed in Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities,* CC Docket Nos. 02-33, 95-20, and 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002); Comments of AdHoc Telecommunications Users Committee (Dec. 2, 2002) at 5, filed in *AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM No. 10593; Comments of AdHoc Telecommunications Users Committee (Jun. 30, 2003) at 6, filed in Section 272(f)(1) *Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, and *2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003); Reply Comments of AdHoc Telecommunications Users Committee (September 23, 2004) at 3-14, filed in *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223,

charged with ensuring that Verizon does not leverage its control of, and corresponding ability to extract monopoly profits from those who rely on Verizon's services. (See section III below for a discussion of bottleneck control and market failure relevant to Verizon's petition.) The Commission cannot satisfy its responsibilities without the reporting and recordkeeping requirements that Verizon seeks to dismantle.

Since the purpose and function to which the reported financial data is put is very different, Verizon's insistence that SEC regulations, GAAP[32], the Foreign Corrupt Practices Act and Sarbanes Oxley data somehow eliminate the need for the FCC's data collection and accounting practices would have credence if, and only if, the data being collected was the same. But that is not the case. Only the FCC's rules require the tracking and allocation of costs between classes of services and between non-competitive (regulated) and competitive (unregulated) services. The SEC, Foreign Corrupt Practices and Sarbanes Oxley data focuses

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Memorandum Opinion and Order, FCC 05-170 (rel. Dec. 2, 2005); Reply Comments of AdHoc Telecommunications Users Committee (May 10, 2005), filed in *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65*;* Reply Comments of AdHoc Telecommunications Users Committee (May 24, 2005) at pp. 8-23, filed in *Qwest Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75; Comments and Reply Comments of AdHoc Telecommunications Users Committee (June 13, 2005 and July 29, 2005), filed in *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005); Comments of AdHoc Telecommunications Users Committee (February 22, 2006), filed in *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunset Pursuant To 47 U.S.C. § 160*, WC Docket No. 05-333 , Letter from Colleen Boothby, Counsel for AdHoc Telecommunications Users Committee, to Marlene Dortch, Secretary, FCC, WC Docket No. 04-440 (filed Mar. 16, 2006).

[32] Verizon's references to GAAP are curious. The FCC *adjusted* its accounting and reporting regulations to reflect GAAP accounting practices in 1985. *In the Matter of Revision of the Uniform System of Accounts for Telephone Companies to Accommodate Generally Accepted Accounting Principles (Parts 31, 33, 42and 43 of the FCC's Rules)*, 102 F.C.C.2d 964 (1985).

upon the entire firm – not, as Verizon seems to suggest, on the allocation of costs and revenues between affiliates.[33]

The cross-subsidization of competitive services with monopoly services revenues *within* Verizon is not a concern of the SEC's – so it's cost accounting and revenue collection activities are not designed to identify such activities. Similarly, Sarbanes Oxley rules and reporting requirements seek to ensure that *investors* are not led astray by improper management actions and disclosure – not to ensure that rates are "just and reasonable" for the customers purchasing a firm's products.

There is no group that wishes more wholeheartedly than AdHoc that the market for switched and special access services was fully and vibrantly competitive and that no regulations beyond those required by the SEC, GAAP, the Foreign Corrupt Practices Act and Sarbanes Oxley were needed to keep the availability and pricing of those services offered by the incumbent provider "just and reasonable." For the foreseeable future, however, that simply is not the case.

III. Verizon's "Claims" Of Competition Do Not Justify Forbearance.

A. The Competitive "Evidence" Provided By Verizon Is Not Relevant To The Access Service Markets That Would Be Affected By Grant Of Its Petition.

Verizon's assertions about competition from cable television companies, wireless service providers and VoIP do not justify the forbearance sought with respect to switched access carrier's carrier charges (herein after referred to as

33 Verizon Petition at 25 -26.

"switched access") and special access services. Indeed, Verizon's claims are simply irrelevant to the level of competition for special and switched services.

Unfortunately the telecommunication market is not as competitive as Verizon claims. In the absence of effective competition, effective rate regulation is necessary and cost data is a prerequisite to effective rate regulation, even under price caps regulation.

The special access service market is not effectively competitive. Market forces have proven to be insufficient to control Verizon's pricing of special access services. Special access rates of return have been so excessive that they undermine any assertion that the special access market is effectively competitive.[34] Service providers in competitive markets cannot sustain the returns produced by those rates.

Inroads made by cable television companies, wireless service providers and VoIP service providers may be relevant to assessing competition for switched access connections, *i.e.,* access lines, but are irrelevant to the market failures inherent in the market for switched access carrier's carrier services bought directly by long distance carriers and indirectly by others.[35] Terminating switched access is not provided in a competitive market. When a long distance call is terminated or a toll-free call is initiated, the long distance carrier who must pay for access service does not select the provider of terminating access. Instead, the end user selects the terminating access provider and may, of course, use a long distance carrier other than the long distance carrier seeking to

[34] *See* Comments of AdHoc in *Special Access* rulemaking, *supra* note 22.

[35] *See* Verizon Petition at 5-7.

terminate traffic to that end user. Because they do not select the terminating carrier, long distance carriers cannot use market alternatives to control their terminating access service costs. In short, there is market failure. Recognizing this market failure, the Commission concluded that it cannot take a hands-off approach with respect to terminating access. [36] If the Commission were, however, to grant Verizon's petition, it would, *de facto* and without justification, reverse itself by effectively deregulating interstate terminating access service rates.

Nor can the Commission now logically conclude that effective competition exists with respect to originating access service. The Commission initially exercised no regulation of access service rates imposed by competitive local exchange carriers ("CLECs"), believing that the rates charged by the ILECs would constrain CLEC access service rates.[37] In the Seventh and Eighth Reports and Orders in the *Access Charge Reform* proceeding,[38] the Commission addressed disputes between long distance carriers and CLECs over the CLECs' access service rates. The Commission concluded that the competition which may exist for consumer access lines does not equate to competition for access service purchased by long distance carriers. In the *Seventh Report and Order,* the Commission explained that,

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[36] *See Access Charge Reform,* CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 16135-36 (1997), *aff'd sub. nom. Southwestern Bell v. FCC,* 153 F.3d 523 (8th Cir. 1998).

[37] Of course, the Commission has always regulated the interstate access service rates charged by dominant providers of exchange access service.

[38] *Access Charge Reform,* CC Docket No. 96-262, Seventh Report and Order, 16 FCC Rcd 9923 (2001); *Access Charge Reform,* CC Docket No. 96-262, Eighth Report and Order, 19 FCC Rcd 9108 (2004).

> [al]though the end user chooses her access provider, she does not pay that provider's access charges. Rather, the access charges are paid by the caller's IXC [long distance service provider], which has little practical means of affecting the caller's choice of access provider (and even less opportunity to affect the called party's choice of provider) and thus cannot easily avoid the expensive ones. [T]he Commission has [also] interpreted section 254(g) to require IXCs geographically to average their rates and thereby to spread the cost of both originating and terminating access over all their end users. Consequently, IXCs have little or no ability to create incentives for their customers to choose CLECs with low access charges. Since the IXCs are effectively unable either to pass through access charges to their end users or to create other incentives for end users to choose LECs with low access rates, the party causing the costs – the end user that chooses the high-priced LEC – has no incentive to minimize cost.[39]

Thus, the Commission's own analysis shows that the marketplace cannot provide a check on LEC pricing for interstate carrier's carrier access services. Indeed, the Commission to date has never proposed deregulating switched access charges. But, let there be no mistake; deregulation is the relief sought by Verizon in its petition, because without reliable cost data, price caps regulation has extremely limited utility as a mechanism to regulate the access service rates charged by price cap carriers. The market failure dynamic that is inherent in the access service market requires denial of Verizon's petition.

Finally, the Commission must consider the impact of Verizon's proposal on general reform of intercarrier compensation mechanisms. If it were to grant Verizon's petition, the Commission would lose access to important cost data that would be relevant to virtually all of the intercarrier compensation reform

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39 *Id.* Seventh Report and Order, 16 FCC Rcd at 9935 ¶ 31.

proposals advanced by parties to the Commission's intercarrier compensation proceeding.[40] There is no rational basis for assuming that price caps local exchange carriers should be allowed to recover the same revenues under a reformed intercarrier compensation mechanism as they currently realize. At the very least, that should be an open issue that the Commission should not now prejudge, which is precisely what a grant of Verizon's petition would force the Commission to do.

B. Even If The "Evidence" Were Relevant, Verizon Has Not Demonstrated That Competition Is Adequate to Constrain Its Pricing.

In its December, 2007 Order denying Verizon's seeking forbearance relief from a broad range of regulatory requirements in six of the Metropolitan Statistical Areas (MSAs) it serves, the Commission stated:

> "[V]erizon's market shares in the MSAs at issue, measured consistent with out approach in the *Qwest Omaha Forbearance Order* and *ACS Dominance Forbearance Order*, are sufficiently high to suggest that competition in these MSAs is not adequate to ensure that the "charges, practices, classifications, or regulations…for [] or in connection with that…telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory" absent the regulations at issue."[41]

The "evidence" provided by Verizon in the forbearance petition *du jour*, is markedly less substantial and detailed that the support found wanting just two months ago. If the more detailed evidence submitted by Verizon for the six MSAs where it faces the greatest level of competition demonstrates an

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[40] *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001); Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005).

[41] *See Verizon Six MSAs Order* ¶ 27.

insufficient level of competition to warrant deregulation, Verizon's handwaving about competitive conditions across its entire footprint that suffices for competitive evidence in the instant Petition cannot possibly be found to satisfy the forbearance requirements set forth in section 10 (a)(1) of the Communications Act.[42]

IV. Compliance With The Rules For Which Verizon Seeks Forbearance Relief Is Not Unduly Burdensome.

Verizon also argues that compliance with the rules from which it seeks forbearance is burdensome,[43] imposes a competitive disadvantage[44] and discourages investment.[45]

The subject requirements do not impose an undue burden on Verizon. A reasonable interpretation of Verizon's pleading is that Verizon believes it is unduly burdensome to devote approximately 4.5 full time employees ("FTEs") to collect the data and prepare the ARMIS reports.[46] Obviously 4.5 FTEs is miniscule given a base of about 200,000 FTEs.[47] If more than 4.5 FTEs are needed to gather the data and produce the reports, Verizon has not specified the number. In the absence of effective competition in the switched and special access markets, even more FTEs would be justified because the data are essential to protecting the public. Put differently, the benefits far outweigh the burden.

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42 47 U.S.C. 160(a)(1)

43 Verizon Petition at 16-18.

44 *Id.* at 18-19.

45 *Id.* at 1-2.

46 *Id.* at 17. 4.5 FTEs = 7940 person hours ÷ 1776 hours (37 hours/week x 48 weeks).

47 *See* https://www22.verizon.com/about/careers/faq.html

It is almost laughable that Verizon argues that the subject requirements impose a material competitive disadvantage on it, particularly in light of the Commission's apparent acquiescence in Verizon's use of monopoly service revenues, *i.e.,* special and switched access service revenues, to support entry into the video programming delivery business and other ventures. If anything, the regulatory system, or at least the Commission's administration of the current regulatory system, has served Verizon's interests quite well.

Verizon's claim that the currently applicable data collection and reporting requirements has discouraged investment is, to put it bluntly, ridiculous. Verizon reportedly has invested over $20 billion dollars in its FiOS network.[48] Verizon has failed to identify a single investment that it *would* have made but did not make because of the data collection and reporting requirements from which it seeks Commission forbearance.

In sum, Verizon's arguments regarding (1) the heavy burden of complying with the Commission's data collecting and reporting rules; (2) the competitive disadvantage it suffers under because of those rules; and (3) disincentive it has to invest in its network because of those rules are utterly without merit. They are makeweight arguments that the Commission should reject.[49]

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[48] At least some in the investment community question the business case for Verizon's FiOS investment. *See e.g.,* http://www.alleyinsider.com/2008/01/verizon-vz-fios-great-for-subscribers-stinks-for-investors.html

[49] AdHoc has previously submitted evidence critiquing Verizon's claims that the FCC's deregulatory initiatives to date have "resulted in a substantial increase in investment in communications equipment, including broadband facilities." *See* AdHoc *Ex Parte* filing dated October 10, 2007 in WC Docket 06-125 and WC 06-147 and the attached *Declaration of Colin B. Weir.* In that *Ex Parte* AdHoc revealed that Verizon's capital additions to Telecommunications Plant in Service increased by $48.8-Billion during the period 1997-2001, which was prior to pricing flexibility and broadband deregulation, but increased by only $35.4-Billion during the period 2002-2006, which was after the reduction in regulation. In other words, Verizon spent

V. Conclusion

In view of the forgoing, AdHoc submits that the Commission must reject Verizon's Petition. Failure to do so would constitute *de facto* rate deregulation of markets in which Verizon possesses market power or in which normal market place forces do not work.

Respectfully submitted

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37.7% more on telecommunications plant (including broadband) during the period in which price cap regulation was applied without relaxation than it did during the subsequent period of reduced regulation.

Certificate of Service

I, Dorothy R. Nederman, hereby certify that true and correct copies of the preceding Comments of the Ad Hoc Telecommunications Users Committee were filed electronically this 1st day of February, 2008 via the FCC's ECFS system and by email to:

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